

Human Rights and Fundamental Freedoms in the Jurisdiction of the European Court of Justice

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Overview

The European Economic Community (EEC) has been founded in the 1950s in order to promote Europe-wide trade and the mobility of capital, goods, services and employees. Whereas the right to mobility has been extended to all EU citizens in 1992, it was not before 2000 that the Charter of Fundamental Rights of the European Union has been proclaimed. The seminar “Human Rights and Fundamental Freedoms in the Jurisdiction of the European Court of Justice” aims at analyzing the scope and content of the European Human Rights approach and at reflecting it in the context of migration law, social security law and labor law.

The sessions will cover:

- The Right to Equality and Non-Discrimination
- The Right to Asylum
- Migration and the Right to Social Security

Session 1: (June 20th 2022, 10.00 am-17.00 pm, SemR II): The Right to Equality and Non-Discrimination

1. European Perspectives on Anti-Discrimination Law
2. European Case Law on Discrimination

Objectives:

Examination of relevant case law both of the European Court of Human Rights and the European Court of Justice concerning the right to freedom from discrimination and discussion of related national law approaches.

Recommended reading:

Council of Europe, European Court of Human Rights & European Union Agency for Fundamental Rights (ed.), European Non-Discrimination Law 2018, <https://fra.europa.eu/en/publication/2018/handbook-european-law-non-discrimination>

European Court of Human Rights (Grand Chamber), Judgement of July 1, 2014, S.A.S. v. France – Ban on wearing burqa or niqab in public places.

European Court of Human Rights, Judgment of December 5, 2017, Hamidović v. Bosnia and Herzegovina – Expulsion from court room for wearing a skullcap.

European Court of Human Rights (Grand Chamber), Judgement of March 18, 2011, Lautsi v. Italy – Classroom Crucifix;

European Court of Human Rights, Judgement of January 15, 2013, Eweida and others v. The United Kingdom – Protection against employers prohibiting the wearing of religious symbols.

European Court of Human Rights, Judgement of April 6, 2017, A.P., Garçon and Nicot v. France – Legal requirements for rectification of civil status for transgender persons.

European Court of Human Rights (Grand Chamber), Judgement of December 22, 2009, Sejdić and Finci v. Bosnia and Herzegovina – Prohibition imposed on a Rom and a Jew to run for Presidency and Parliament.

European Court of Justice, Judgement of April 17, 2018, Vera Egenberger vs. Evangelisches Werk für Diakonie und Entwicklung e. V., C-414/16 - Occupational activities within churches and other organisations the ethos of which is based on religion or belief — Religion or belief constituting a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos.

European Court of Justice, Judgement of July 10, 2008, Centrum voor gelijkheid van kansen en voor racismebestrijding vs. Firma Feryn NV, C-54/07 - Discriminatory criteria for selecting staff - Burden of proof - Penalties.

European Court of Justice, Judgement of March 14, 2017, Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA, C-188/15 — Discrimination based on religion or belief — Genuine and determining occupational requirement — Meaning — Customer's wish not to have services provided by a worker wearing an Islamic headscarf.

European Court of Justice, Judgement of July 16, 2015, CHEZ Razpredelenie Bulgaria AD vs. Komisia za zashtita ot diskriminatsia, C-83/14 - Urban districts lived in mainly by persons of Roma origin - Concepts

of 'direct discrimination' and 'indirect discrimination' - Possible - Offensive and stigmatising effect of the measure.

European Court of Justice, Judgement of April 6, 2017, *Jyske Finans A/S vs Ligebehandlingsnævnet*, C-668/15 - Equal treatment between persons irrespective of racial or ethnic origin - Credit institution requiring additional proof of identity from third country nationals.

Dewhurst, E., The Development of EU Case-Law on Age Discrimination in Employment: 'Will You Still Need Me? Will You Still Feed Me? When I'm Sixty-Four', in: *European Law Journal* 2013, Vol. 19, Issue 4, pp. 517-544.

Schwellnus, G., Reasons for Constitutionalization: Non-Discrimination, Minority Rights and Social Rights in the Convention on the EU Charter of Fundamental Rights, in: *Journal of European Public Policy* 2006, Vol. 13 Issue 8, pp. 1265-1283.

Session 2: (June 27th 2022, 10.00 am-17.00 pm, SemR II): The Right to Asylum

1. Basic Principles of the Common European Asylum System
2. Case Law on the Rights of Refugees

Objectives:

Examination of relevant case law concerning entry and treatment of refugees to protection procedures and to social services.

Recommended reading:

Boeles, den Heijer & Lodder, European Migration Law, 2014, Intersentia Publishers.

Drywood, E., Who's in and Who's out? The Court's Emerging Case Law on the Definition of a Refugee, in: Common Market Law Review 2014, Vol. 51, Issue 4, pp. 1093-1124.

European Court of Human Rights & European Union Agency for Fundamental Rights (ed.), The Handbook on European Law Relating to Asylum, Borders and Immigration 2013, <https://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration>

Foblets & Carlier, Law and Migration in a Changing World, 2020, Springer Publishing.

Ippolito, F., Migration and asylum cases before the court of justice of the European Union: putting the EU charter of fundamental rights to test?, in: European Journal of Migration and Law 2015, Vol. 17, issue 1, pp. 1-38.

Küçük, E., The Principle of Solidarity and Fairness in Sharing Responsibility: More than Window Dressing?, in: European Law Journal 2016, Vol. 22, Issue 4, pp.448-469.

Nicolosi, S.F., Going Unnoticed? Diagnosing the Right to Asylum in the Charter of Fundamental Rights of the European Union, in: European Law Journal 2017, Vol. 23, Issue 1/2, pp. 94-117.

European Court of Justice, Judgement of November 7, 2013, X and Y and Z, C-199/12 to C-201/12 - Minimum standards relating to the conditions for granting refugee status or subsidiary protection status - Membership of a particular social group - Sexual orientation.

European Court of Justice, Judgement of December 2011, N.S., C-411/10 - Prohibition of inhuman or degrading treatment - Common European Asylum System - Concept of 'safe countries' - Rebuttable presumption of compliance of the Member State in charge with fundamental rights.

European Court of Justice, Judgement of September 2012, Y and Z, C-71/11 and C-99/11 - Minimum standards for determining who qualifies for refugee status or for subsidiary protection status - Definition of 'acts of persecution' - Acts by authorities designed to prohibit the manifestation of a person's religion in public.

European Court of Justice, Judgment of September 27, 2012, Cimade and GISTI, C-179/11 - Obligation to guarantee asylum seekers minimum reception conditions during the procedure of taking charge or taking back by the responsible Member State.

European Court of Human Rights (Grand Chamber), Judgement of February 23, 2012, Hirsi Jamaa and Others v. Italy – Push-backs of migrants on high sea by the Italian coastguard.

European Court of Human Rights, Judgement of December 11, 2018, M.A. and Others v. Lithuania – Chechen refugees prevented from filing asylum applications in Lithuania and pushed back at the border with Belarus.

Session 3: (July 11th 2022, 10.00 am-17.00 pm, SemR II): Migration and The Right to Social Security

1. Basic Principles of European Social Security Law

2. Migration and Access to Social Welfare

Objective:

Analysing the interrelation between migration law and social security law and the concept of “social citizenship” in the relevant case law.

Recommended Reading:

Cappelen, C. & Peters, Y., Diversity and welfare state legitimacy in Europe. The challenge of intra-EU migration, in: *Journal of European Public Policy* 2018, Vol. 25, Issue 9, pp. 1336-1356.

Ferrera, M., The Contentious Politics of Hospitality: Intra-EU Mobility and Social Rights, in: *European Law Journal* 2016, Vol. 22, Issue 6, pp. 791-805.

Hoogenboom, A., In Search of a Rationale for the EU Citizenship Jurisprudence, in: *Oxford Journal of Legal Studies* 2015, Vol. 35, Issue 2, pp. 301-324.

Pennings, F., EU Citizenship: Access to Social Benefits in Other EU Member States, in: *International Journal of Comparative Labour Law & Industrial Relations* 2012, Vol. 28, Issue 3, pp. 307-333.

Pennings, F., *Introduction to European Social Security Law*, 7th edition 2020, Intersentia Publishing.

Pennings, F. & Vonk, G., *Research Handbook on European Social Security Law*, 2015 E.Elgar Publishing.

Reich, N., Union Citizenship-Metaphor or Source of Rights?, in: *European Law Journal* 2001, Vol. 7 Issue 1, pp. 4-23.

Strumia, F., European Citizenship and EU Immigration: A Democratic Bridge between the Third Country Nationals' Right to Belong and the Member States' Power to Exclude, in: *European Law Journal* 2016, Vol. 22, Issue 4, pp. 417-447.

Thym, D., 'Citizens' and 'Foreigners' in EU Law. Migration Law and its Cosmopolitan Outlook, in: *European Law Journal* 2016, Vol. 22, Issue 3, pp. 296-316.

European Court of Justice, Judgement of March 1, 2016, Alo and Osso, C-443/14 and C-444/14 - Subsidiary protection status - Social welfare - Freedom of movement within the host Member State - Obligation to reside in a particular place.

European Court of Justice, Judgement of November 21, 2018, Ayubi, C-713/17 - Rules relating to the content of international protection - Refugees with temporary right of residence - Social protection - Different treatment.

European Court of Justice, Judgment of September 20, 2001, Rudy Grzelczyk vs. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve, C-184/99 - National legislation which guarantees a minimum subsistence allowance only for nationals.

European Court of Justice, Judgement of November 11, 2014, Elisabeta Dano and Florin Dano vs. Jobcenter Leipzig, C-333/13 - Free movement of - Economically inactive nationals of a Member State residing in the territory of another Member State - Condition requiring sufficient resources.

European Court of Justice, Judgement of September 15, 2015, Jobcenter Berlin Neukölln vs. Nazifa Alimanovic and Others, C-67/14 - Freedom of movement for persons - Member State nationals who are job-seekers and resident in a different Member State.

European Court of Human Rights, Judgement of September 16, 1996, Gaygusuz vs. Austria, Application no. 17371/90 - Right to Social Security - Equal Treatment - Right to exclude Non-Nationals from Social Security Benefits that are financed out of Contributions.

European Court of Justice, Judgement of September 30, 2003, Poirrez vs. France, Application no. 40892/98, Right to Social Security - Equal Treatment - Right to exclude Non-Nationals from Social Security Benefits that are financed out of taxes.