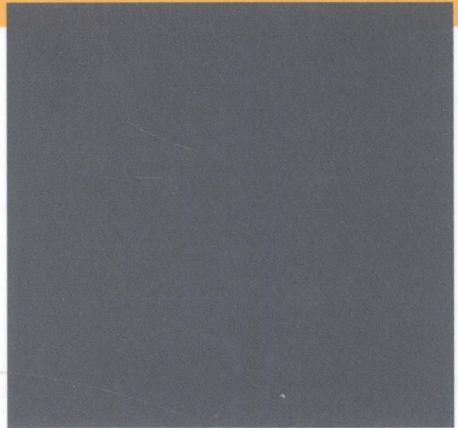


The Protection of Fundamental Rights in the Legal Order of the European Union

With Emphasis on the
Institutional Protection of those Rights



Manfred A. Daus



PETER LANG Internationaler Verlag der Wissenschaften

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Preface

The composition of this study took place during an eventful and turbulent period in terms of European fundamental rights. After about four decades of gradual development of a Community fundamental rights doctrine by an increasingly problem-oriented casuistry of the European Court of Justice (ECJ), the way to a fundamental rights codification at the Community/Union level was paved for the first time with the adoption of the Charter of Fundamental Rights of the European Union on 7 December 2000, which today embodies the key substance of the European *acquis* in the area of fundamental rights.

Initially, this Charter was adopted as a mere solemn proclamation, without a direct legally binding effect, although the unanimous intention of all the political powers involved aimed, from the very beginning, to shape the Charter in such a manner that the finality of a smooth integration in the primary law of the Union was kept in view. In doing so, the Treaty establishing a Constitution for Europe (of 29 October 2004), which was in preparation at that time, was thought of first of all, in which the Charter of Fundamental Rights should be inserted as Chapter II. After the failure of the ambitious constitutional plans as a result of the negative outcome of the referendums in France and the Netherlands, the efforts then concentrated on structurally linking the Charter of Fundamental Rights to the Lisbon Reform Treaty (of 13 December 2007), which was conceived as the successor to the Treaty establishing a Constitution for Europe. The link should take the form of a cross-reference in the Lisbon Reform Treaty, drawing attention to that the Charter of Fundamental Rights shall be legally binding and have the same legal value as the Treaties (Art. 6(1) 1st sentence TEU, new version).

On the basis of the law-making judicature of the ECJ, the first main part of the present paper traces the aforementioned developments, so as to subsequently address the second focal point, the institutional protection of fundamental rights, i.e., the system of legal protection in the Community/Union and its effects on the substantive protection of fundamental rights. In this context, in particular, the question has been examined whether the existing means of actions and judgments are suitable to guarantee an efficient protection of fundamental rights in the Community/Union legal order, or whether they require modification and, if need be, whether the method of a mere adaptation or expansion of the applicable

provisions for legal protection or rather a substantive supplementation of these provisions, for instance, by introducing a specific Union fundamental rights complaint, should be aspired. In conclusion, an adaptation of the existing instruments for the protection of fundamental rights to the legitimate need of the fundamental rights-holders is favoured. On the other hand, the creation of a specific fundamental rights complaint as a new, additional procedural instrument with subsidiary character is deemed to be unnecessary.

The present study is a translation of the original German study “*Der Schutz der Grundrechte in der Rechtsordnung der Europäischen Union, unter besonderer Berücksichtigung des institutionellen Schutzes dieser Rechte*” (Peter Lang, 2010, 175 pages). Thereby, however, consideration was given to the fact that, in the meantime, the Lisbon Reform Treaty has entered into force on 1 December 2009.

Mr. Mohit Sehdev, New Delhi, was in charge of the translation and revision work. The author is full of praise for Mr. Sehdev, and expresses his sincere thanks for Mr. Sehdev’s professional cooperation in the realisation of the English text version.

Bamberg, 2010

Prof. Dr. Dr. Dr. h.c. mult. Manfred A. Daus

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List of abbreviations

AöR	Archiv des öffentlichen Rechts [Journal – Archive of Public Law]
BVerfG	Bundesverfassungsgericht [German Federal Constitutional Court]
BVerfGE	Collection of decisions of the Federal Constitutional Court
cf.	Compare (<i>Latin</i> : confer)
CFI	Court of First Instance of the European Communities
DÖV	Die Öffentliche Verwaltung [Public Administration (Journal)]
DVBl	Deutsches Verwaltungsblatt [German Administrative Journal]
e.g.	For example
EC	European Community/Communities
EC Treaty	Treaty establishing the European Community (name of the EEC Treaty in the version of Maastricht Treaty on European Union)
ECHR	European Convention on Human Rights
ECJ	Court of Justice of the European Communities /Court of Justice of the European Union / European Court of Justice
ECR	European Court Records (from 1990: Part I of the official records)
ECSC	European Coal and Steel Community
ECSC Treaty	Treaty establishing the Coal and Steel Community
ECTHR	European Court of Human Rights
EEC	European Economic Community
EEC Treaty	Treaty establishing the European Economic Community
ELR	European Law Review [Journal]
EP/PE	European Parliament
et seq.	and the following one [<i>Latin</i> : et sequens]
et seqq.	and those following [<i>Latin</i> : et sequentes]
etc.	et cetera
EU	European Union
EU Treaty	Treaty on European Union

EuGE	Collection of decisions of the Court of First Instance of the European Communities (Part II of the official records)
EuGRZ	Europäische Grundrechte [Journal – European Fundamental Rights]
EuR	Europarecht [Journal – European Law]
Euratom	European Atomic Energy Community
Euratom Treaty	Treaty establishing the European Atomic Energy Community
EuZW	Europäische Zeitschrift für Wirtschaftsrecht [European Journal of Business Law]
GC	General Court of the European Union
GG	Grundgesetz [German Basic Law]
Hrsg.	Publisher/Editor
i.e.	that is [<i>Latin</i> : id est]
ibid.	In the same place
ibidem	In the same place
JÖR	Jahrbuch des Öffentlichen Rechts der Gegenwart [Yearbook of Modern Public Law]
JuS	Juristische Schulung [Periodical – Legal Training]
JZ	Juristenzeitung [Law Journal]
NJW	Neue Juristische Wochenschrift [German Law Journal]
No.	Number
NVwZ	Neue Zeitschrift für Verwaltungsrecht [New Journal for Administrative Law]
OJ.	Official Journal of the European Communities
OSCE	Organisation for Security and Co-operation in Europe
p.	Page
SJZ	Schweizerische Juristenzeitung [Swiss Law Journal]
TEC	Treaty establishing the European Community (name of the EEC Treaty in the version of Maastricht Treaty on European Union)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNTS	United Nations Treaty Series
viz.	that is to say [<i>Latin</i> : Videlicet]
vol.	Volume
v/vs.	versus
ZEuS	Zeitschrift für europarechtliche Studien [Journal for European Law Studies]
ZRP	Zeitschrift für Rechtspolitik [Journal of Law and Policy]