

**C. Busch & H. Schulte-Nölke (Eds.), *EU Compendium – Fundamental Rights and Private Law*, Sellier European Law Publishers, Munich, 2011, 110 pp., hardback, € 19.00, ISBN 978-3-86653-939-6.**

The harmonization of private law is a serious trend in the European Union. Projects such as the *Draft Common Frame of Reference* aim at reaching an overall agreement on a common legal basis. Nevertheless, given the difficulties in conciliating deep cross-border differences, many issues remain contentious. This is where, according to the editors of this book, fundamental rights could come into play and serve as an alternative by providing guidelines for harmonization (p. 23). In this respect, comparative law is an inevitable step and makes a priceless contribution towards identifying the aforementioned differences and providing some tools to find accurate solutions.

To promote the development of a European society based on respect for fundamental rights, the European Legal Studies Institute at the University of Osnabrück (Germany) organized the *Fundamental Rights Action Plan* (FRAP) in 2009. The goal of the FRAP is mainly to respond to the lack of knowledge regarding the influence fundamental rights have on private law in Europe, and to improve knowledge of the interplay between fundamental rights and both civil and commercial litigation. Therefore, the FRAP aims at mapping the law, building a bridge between research and practice, and providing practical tools for judges and legislators (*Preface*, p. xvi).

This book is part of the FRAP initiative. To this extent, it fully befits this initiative by gathering both relevant academic sources and pertinent practical cases from 21 EU Member States.<sup>2</sup>

The first part of the book provides an overview of legal sources, effects and perspectives on fundamental rights in the EU and their influence on private law. Drafted by Christoph Busch, this part introduces the reader to a ‘multi-level system of fundamental rights protection’ (p. 1). The author briefly explains the interactions among national, European or international sources enshrining fundamental rights, while also providing guidelines on how national courts deal with

2 These comprise Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovenia, Sweden, The Netherlands and the United Kingdom (*Preface*, p. xvii).

them. This part carefully addresses the question of the interplay between fundamental rights and private law. The author emphasizes that, nowadays, it is part of the '*acquis commun*' that fundamental rights not only protect individuals against the States, but also influence relationships between individuals (p. 10). Whether one justifies this influence out of the direct or indirect horizontal effect approach (p. 10) or out of the *à la mode* positive obligation approach (p. 14) is a matter of conceptual controversy.

Part two is devoted to the actual and practical impact that fundamental rights have on private law. It is divided into five areas of private law that are known to have a great influence on the everyday life of individuals: contract law, torts law, property law, family law and inheritance law. A comparative overview precedes summaries of the various selected cases for each one of those areas. Each overview is then divided into a general analysis and subcategories called 'hot spots', *i.e.* topics in which the impact of fundamental rights is especially noticeable (p. 26). Furthermore, for some of the different areas of law addressed, a few technical points or consequences are finally brought under the title 'techniques'. From the broad range of areas of law addressed in this part, only contract law will be mentioned in this brief review. The part on contract law first addresses general clauses to the extent they refer to fundamental rights and protect the parties by restricting their freedom of contract in many European legal systems (p. 27). It then discusses some more specific issues, namely the respect of the personal sphere that protects the tenant in the case of a long-term leasehold contract, or the right to freedom of profession that protects an employee from abusive non-competition clauses (p. 29). In conclusion, it finally briefly exposes the consequences of a violation of fundamental rights (p. 30).

The structure and content of part three are somehow uncommon, but positively so: they provide a synthesis of several comparative case studies that were discussed by judges from across the EU, at a two-day workshop held at the European Legal Studies Institute in Osnabrück (p. 66). As the cases are real EU Member States or European Court of Human Rights (ECtHR) cases, the practical insights are of great interest. A part of the exercise was to ask the judges to answer three questions: How would each case be decided in their jurisdiction? Would the court only use private law to decide the case or would it also include fundamental rights? Which sources of fundamental rights would the court cite if the latter were the case? The selected cases address the issues of non-competition clauses in a commercial agency contract (p. 66), the tenancy contract and commercial association (p. 71), the change of building design (p. 74) and the medical professional secret (p. 78). This survey compares the different approaches applied in the EU Member States with a view on the interplay between private law and fundamental rights.

The book offers an interesting combination of an academic and a practical point of view. It contains not only general theoretical overviews that help the reader to situate himself in the sphere of the different domestic laws, but also numerous cases. The task was ambitious and difficult given the chosen interdisciplinary approach, which includes five different areas of private law. One could argue that the cases summarized in the second part do not always precisely fit

into a 'hot spot' subcategory aforementioned. Thus, it is sometimes difficult for the reader to easily locate the cases he or she is looking for. A table of cases would have been useful. Nevertheless, this drawback is outweighed by the many interesting and important findings this book brings to scholars and practitioners alike. The editors as well as the authors are to be complimented for the wide range of topics presented in a concise, precise and clear manner.

One objective of the book was to build a bridge between research and practice. It is recommended to all scholars, students, practitioners and lawmakers who are interested in the question of how to improve the harmonization of the effects of fundamental rights on private law through the EU.

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