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Book Review Federica Casarosa/Madalina Moraru (eds), The Practice of Judicial Interaction in the Field of Fundamental Rights – The Added Value of the Charter of Fundamental Rights of the EU, Cheltenham: Edward Elgar 2022, 448 pp, 130,00 £, ISBN 978-1-80037-121-7

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In the brief period since the Charter of Fundamental Rights has come into life it had enormous effects on fundamental rights protection in Europe. Solemnly declared on 7 December 2000, the Charter has become part of EU primary law on 1 December 2009. While already its declaration had considerable repercussions on national jurisprudence since somewhat more than a decade, its legally binding nature strengthened these effects even more. Nonetheless, many doubts remain, as the Charter was not meant to replace national fundamental rights protection. It is rather the case that the Charter often operates in parallel with national fundamental rights as Judge *Nina Póltorak* explains in her contribution. As *Gabriel Toggenburg* sets out the Charter has come along with a series of caveats "as if the Union had grown fearful of its own courage".

It is the primary task of this book to sort out the field of application of the Charter and the extent to which it is binding for national jurisprudence. To this end, primary attention is devoted to the ECJ jurisprudence, but also national jurisprudence is paid considerable attention to. For the time being, no clear, no definite answer as to the relationship between EU fundamental rights protection and national fundamental rights protection can be given. The ECJ judgment in *Åkerberg Fransson* of 2013[1] seemed to extend considerably the field of application of the Charter but subsequently the ECJ had to distinguish somewhat its jurisprudence. Some Member States showed considerable opposition against what they felt as a too sweeping undermining of the limitations implanted into the Charter text as to its reach and its practical impact.

Without doubt, the Charter has engendered a new form of dialogue (or "interaction", a term preferred by this book's editors)[2] between the national, the international and the EU level of fundamental rights protection. It is the aim of this book to identify not only the status quo of the resulting multi-level fundamental rights protection, but also the underlying forces and the trajectory along which this process seems to develop.

[1] C-617/10, ECJ judgment of 26 February 2013, ECLI:EU:C:2013:105.

[2] See the introductory contribution by *Federica Casarosa* and *Madalina Moraru*.

The book is divided into three parts: "horizontal issues" (dealing with fundamental questions as to the effect, the reach and the limit of the Charter), "sector specific issues" (concentrating on diverse areas where the Charter had ground-breaking effects or is expected to have so, such as in the field of anti-discrimination measures, consumer law, and asylum and migration law) and "remedies and sanctions", devising pivotal areas of implementation and future developments of the Charter-related jurisprudence.

For this review, two issues stand out in this context: the present working and the future of the preliminary reference procedure[3] and the fact that the Charter is interpreted and implemented in a widely different manner across the European Union.

As to the preliminary reference procedure an important case is mentioned in the book: *Consorzio Italian Management*[4]. This case was not yet decided when the book went into print but it had the potential to disrupt totally the individual rights protection within the European Union if the Court had accepted the invitation by AG *Bobek* to limit accessibility of this instrument even more than this is already the case on the basis of the CILFIT jurisprudence. As we know, most fortunately, this has not happened and by its judgment of 6 October 2021 the ECJ vigorously strengthened this procedure in favour of the individual.[5] Nonetheless, the time has come to consider how individuals should get direct access to the ECJ also in view of the fact that access to the European Court of Human Rights has come to be next to non-existent and also in consideration of the fact that some national Supreme Courts do not refer questions to the ECJ even where highly relevant questions of the interpretation of EU law are raised. In part, they do so even without giving reasons – in spite of what is consolidated EU and international jurisprudence. This author has pointed to this intolerable situation with regard to Austria.[6]

And a highly topical article by Judge *Edith Zeller* highlights a further judicial problem, again with reference to Austria. The author illustrates how judges in the Austrian Administrative Judiciary system are chosen. Judge *Zeller* evidences that Court Presidents of the nine federal administrative courts in Austria are appointed in full discretion by the executive power. And they are endowed with enormous power: They have power over judicial careers, administrative power, budgetary power, media power, ambassadorial power and jurisprudential power. Once appointed they decide over the recruitment, supervision and dismissal of all court personnel. The selection process cannot be legally challenged and no access to courts exists.[7] Similar problems exist as to the selection procedure for judges at these courts (taking place, needless to say, according to different procedures) which in general lacks transparency.

[3] See in particular the contribution by *Fabrizio Cafaggi*.

[4] See C-561/19, ECJ judgment of 6 October 2021, ECLI:EU:C:2021:799.

[5] *Peter Hilpold*, Stärkung der Vorlagepflicht letztinstanzlicher Gerichte, 74 NJW 45/2021, pp 3290–3294.

[6] See, for example, *Hilpold*, Ringen um europäische Werte – Österreich in der EU, in Rechtsstaatlichkeit, Grundrechte und Solidarität in Österreich und in Europa – Festgabe zum 85. Geburtstag von Professor Heinrich Neisser, einem europäischen Humanisten, edited together with Andreas Raffeiner and Walter Steinmair (2021) pp 262–298.

[7] Most critically, as Judge *Zeller* points out, extremely extensive powers exist for the (politically appointed) presidents of the federal administrative courts also in the field of disciplinary measures.

While the situation in the Austrian federal court system might be extreme, also the ordinary judicial system is affected with similar problems.[8]

Very effectively *Zeller* presents the question of how we dare to challenge the politically determined appointment process in some Eastern European countries while the systems in Western European countries, which are often presented – in a very generalizing way – as a benchmark, at closer scrutiny present appalling deficiencies.[9]

On a whole, we can say that thinking about the relevance of the Charter within the European legal system is, at the same time, a challenge to reflect more generally about the relevance of EU law within the single Member States. It is necessary to react against tendencies that seem to undermine – in a very serious manner – the rule of law in some "new" EU Member States. But for the rest of the EU Member States there is no reason to lean back or to lecture other countries in an overweening manner. As of yet, the potential lying inside the Charter has been laid bare only to a very limited extent and we can be grateful for initiatives such as those standing behind studies like the collective writing here under review. Most probably, however, it will not suffice to delegate the protection and the further development of human rights protection as well as the protection of the rule of law mainly to the ECJ and to scholarly debate. The time has come to strengthen the position of the individual within the EU procedural order in a decisive way and to permit direct access to the ECJ. The Conference on the Future of Europe offers a good opportunity to take this overdue step.

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[8] See *Lovrek*, Die Richter sind in Ausübung ihres richterlichen Amtes unabhängig, in Peter Hilpold/Manfred Matzka/Walter Hämmerle (eds), 100 Jahre Verfassung (2020) pp 107–109. In Austria we have similar problems at universities. While in the more distant past, discriminated candidates for university chairs had the possibility to go to Court, the University law introduced under the *Schüssel/Gehrer* government in 2002 abolished any effective access to Court and even the Supreme Court (OGH) denies this access and is not willing to submit this question to the ECJ. The OGH does not even give reason for this denial. *Gornig/Piva* clearly demonstrate that this position is untenable. See *Gilbert Gornig/Paolo Piva*, Zum Feststellungsinteresse übergangener Bewerberinnen und Bewerber im universitären Berufungsverfahren – Zugleich eine Replik zu Schweighofer, N@HZ 4/2020, pp 131–134.

[9] See also *Peter Hilpold*, Unabhängigkeit der Gerichte vor Gericht, Wiener Zeitung 15 January 2021, p 12, https://www.wienerzeitung.at/themen/recht/recht/2088585-Unabhaengigkeit-der-Gerichte-vor-Gericht.html.