

Abstract of the doctoral thesis:

Die Grundrechtsprüfung durch den EuGH

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Systematisierung, Analyse und Kontextualisierung der Rechtsprechung nach Inkrafttreten der Charta der Grundrechte der Europäischen Union¹

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In 2009 the Charter of Fundamental Rights of the European Union (CFR) entered into force and became the first written catalogue of fundamental rights at EU level. The main interpreter of this Charter, the Court of Justice (ECJ), has quoted or has mentioned the CFR since its entry into force in 696 decisions (as of 31/12/2017). One third of these decisions contains a scrutiny of conformity of the measure in question with the fundamental rights of the Charter. In the other cases, the ECJ mentions the CFR, for example, while interpreting secondary law or while rejecting the admissibility of a Charter-related question in the preliminary ruling procedure. In this thesis all decisions in which the CFR is cited are classified according to whether the Court of Justice carries out a fundamental rights test in the respective case. Furthermore, a distinction is made according to how extensive this examination is: in some cases, the ECJ rejects a violation of the Charter in only a few sentences, while in other decisions its remarks extend over numerous paragraphs.

Article 52 (1) CFR forms and structures the fundamental rights test based on the Charter. Dogmatic requirements for the scrutiny of conformity with fundamental rights are therefore derived from this paragraph. In addition, criteria can be developed from the scientific criticism of the fundamental rights case-law of the Court of Justice before the Charter entered into force, insofar as it is transferable to the situation under the CFR. Based on these criteria, the fundamental rights reviews of the Court of Justice are examined dogmatically.

This analysis shows a disparate picture: on the one hand, significant improvements in comparison to the situation before the Charter can be observed. The Court of Justice, for example, no longer restricts its scrutiny to an examination whether the essence of a right is violated. In the context of the disproportionate test the ECJ deals with the conflicting positions, whereby in preliminary ruling procedures as well as in opinions it examines the interests of all persons possibly concerned. All in all, numerous decisions largely meet the requirements of the Charter. On the other hand, there are also many decisions that do not meet the requirements of the CFR. This applies especially if the Court of Justice rejects an infringement of a fundamental right in only one sentence or omits individual stages of the fundamental right check. Dogmatically, the divergences can hardly be explained.

However, the differences in the doctrine of the fundamental rights review can at least partly be explained by the context of the respective decisions. The influence of many contexts on the fundamental case-law of the Court of Justice is probable – but only the influence of few contexts

¹ „The Fundamental Rights Review by the ECJ – Systematisation, Analysis and Contextualisation of the Case-Law after the Entry into Force of the Charter of Fundamental Rights of the European Union”.

can be verified. There are concrete indications in the decisions that the tension between consolidation and innovation, which is already laid down in the Charter itself, influences the Court's doctrine of the fundamental rights test. It can also be shown that the institutional and procedural context affects the dogmatic approach of the ECJ. The specific nature of the preliminary ruling procedure, for example, can explain why the Court of Justice carries out the balancing of interests in this procedure by looking at all – maybe only possibly – persons concerned. Finally, dogmatic characteristics in some cases can be traced back to the Opinions of the Advocates General.

Almost ten years after the entry into force of the Charter a clear conclusion cannot be drawn regarding the fundamental rights review by the Court of Justice. Overall, however, the Court seems to assume the task of protecting fundamental rights.