Course EU Constitutional Law (2018) – Assignments XG and MM

Seminar 1: Conflicts of Rights (2 hours) – 15th of October

Seminar 2: EU Charter of Fundamental Rights I (2 hours) – 16th of October

Seminar 3: EU Charter of Fundamental Rights II (2 hours) – 18th of October

Seminar 4: Accession to ECHR and Opinion 2/13 – Debate on Accession – 19th of October and Opinion 2/13

Seminar 5: Discussion on Mutual trust and Opinion 2/13 and Mutual Trust (1 hour) - 24th of October

Seminar 6: Fundamental Rights and European Integration (1 hour) – (Taricco II + Egenberger + Coman + LM) - 24th of October

Seminar 7: The Impact of the Charter on the Case Law I (2 hours) – Focus on the Freedom to Conduct Business

Seminar 8: The Impact of the Charter on the Case Law II (2 hours) – Focus on the Right to be Forgotten

Seminar 9: The Impact of the Charter on the Case Law III (2 hours) – Focus on Good Administration and Ne Bis in Idem

Seminar 10 (Extra): Citizenship (2 Hours) – Ruiz Zambrano + Dano + Coman

Seminar 11 (Extra): Subsidiarity (2 Hours)

Case law and General Literature

CJEU Case Law

Case 117/76 & 16/77 Ruckdeschel [1977] ECR 1753
Case 5/88 Wachauf [1989].
Case C-185/95 P Baustahlgewebe [1998].
Case C-235/92 P Montecatini [1999].
Case C-107/97 Max Rombi [2000].
Case C-413/99 Baumbast [2003] 3 CMLR 23.
Cases C-20/00 and C-64/00 Booker Aquaculture [2002].
Case C-60/00 Carpenter [2002] 2 CMLR 64.
Case C-94/00 Roquette [2002].
Case C-109/01 Akrich [2003].
Case C-112/00 Schmidberger [2003].
Case C-138/02 Collins [2004].
Case C-36/02 Omega [2004] ECR I-9609.
Case Parliament v. Council [2006]
Case Spain v. Council [2006]
Case C-355/04 P Segi v. Council [2007]
Case C-432/05 Unibet [2007]
Case C-438/05 Viking Line [2007]
Case C-341/05 Laval [2007]
Case C-275/06 Promusicae [2008]
Case C-127/08 Metok [2008]
Case C-244/06 Dynamic Medien [2008]
Case C-450/06 Varec [2008]
Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat [2008]
Case C-385/07 P Der Grüne Punkt [2009]
Case C-101/08 Audiolux [2009]
Case C-578/08 Chakroun [2010]
Case C-555/07 Küçükdeveci [2010]
Case C-400/10 PPU McB [2010]
Case C-279/09 DEB [2010]
Case C-550/07 P Akzo v. Commission [2010]
Cases C-92 and 93/09 Volker and Schecke [2010]
Case C-407/08 P Knauf Gips v. Commission [2010]
Case C-145/09 Tsakouridis [2010]
Case C-481/10 PPU Aguirre Zarragut [2010]
Case C-110/10 P Solvay [2011]
Case C-34/09 Ruiz-Zambrano [2011]
Case C-69/10 Samba Diong [2011]
Case C-236/09 Test-Achats [2011]
Case C-457/09 Chartry [2011]
Case C-411/10 NS [2011] – read MSS
Case C-329/11 Achughbabian [2011]
Case C-256/11 Dereci [2011]
Case C-70/10 Scarlet Extended [2011] read AG
Case C-147/08, Jürgen Römer v Freie und Hansestadt Hamburg [2011]
Case C-282/10 Dominguez [2012]
Case C-17/10 Toshiba Corporations [2012]
Cases C-611/10 and C-612/10 Hudzýnski [2012]
Case C-40/11 Iida [2013]
Case C-199/11 Otis v. Commission [2012]
Case C-317/11 Rainer Reimann. [2013]
Case C-283/11 Sky Österreich [2013]
Case C-617/10 Åkerberg. [2013]
Case C-300/11 ZZ [2013]
Case C-399/11 Melloni [2013]
Case C-396/11 Radu [2013]
Case C-584/10 P Commission v. Kadi II [2013]
Case C-426/11 Mark Alemo-Herron [2013]
Case C-501/11 P Schindler v. Commission [2013]
Case C-168/13 PPU Jeremy F. v Premier minister [2013]
Case C-128/12 Sindicato dellos Bancos do Norte [2013]
Case C-264/12 Sindicato Nacional [2014]
Case C-131/12 Google Spain [2014]
Case C-176/12 Association de Médiation Sociale [2014]
Cases C-293/12 and C-594/12 Digital Rights Ireland and Seitlinger and Others [2014].
Case C-394/12 Abdullahi [2013]
Case C-604/12 H. N. [2014]
Cases C-141/12 Y.S. v Minister voor Immigratie, Integratie en Asiel and C-372/12 Minister voor Immigratie, Integratie en Asiel v M. S. [2014]
Case C-390/12 Pfleger [2014]
Cases C-29/13 and 30/13 Global Trans Lodzhistik [2014]
Case C-198/13 Julian Hernández [2014]
Case C-202/13 McCarthy Rodriguez [2014]
Case C-206/13 Siragusa [2014]
Case C-249/13 Khaled Boudjlida v Préfet des Pyrénées-Atlantiques [2014]
Case C-483/12 Pelckmans Turnhout [2014]
Case C-356/12 Glatzel [2014]
Case C-333/13 Dano [2014]
Case C-129/14 PPU Zoran Spasic [2014]
Opinion 2/13 [2014]
Case C-354/13 Kaltoft [2015]
Case C-446/12 and 449/12 Willems [2015]
Case C-316/13 Fenoll [2015]
Case C- 441/14 Dansk Industri [2015]
Case C-547/14 Philip Morris [2016]
Case C-165/14 Rendón Márin [2016]
Case C-202/15 AGET-Iraklis [2016]
Cases C-404 and 659/15 Aryniosi and Caldararu [2016]
Case C-72/15 Rosneft [2017]
Case C-42/17 Taricco II [2017]
Case C-414/16 Egenberger [2018]
Case C-524/15 Menci [2018]
Case C-673/16 Coman [2018]
Case C-216/18 PPU LM [2018]
Case C-122/17 David Smith [2018]

General Literature

Books

Alexy, A Theory of Constitutional Rights (OUP, 2002).
Tridimas, General Principles of EU law, (OUP, 2010).
Tuori, European Constitutionalism (CUP, 2015).
Usher, General principles of EC law (Longman, 1998).

Articles

X Groussot and L Pech “Fundamental Rights Protection in the EU Post Lisbon Treaty” available at SSRN.com
X Groussot, L Pech and G T Petursson: “The Scope of Application of Fundamental Rights on Member States’ Action: In Search of Certainty in EU Adjudication” available at SSRN.com
X Groussot and I Olsson, Clarifying or Diluting the Application of the EU Charter of Fundamental Rights? – The Judgments in Åkerberg and Melloni from the 26th of February 2013 available at SSRN.com
D. Leczykiewicz, “Horizontal Effect of Fundamental Rights: In Search of Social Justice or Private Autonomy in EU Law?” available at SSRN.com

EctHR

Niemietz [1992]
Open Door Counselling v Ireland [1992]
Funke [1993]
Procola [1995]
Vermeulen [1996]
*Matthews [1999]
Kress [2001]
Goodwin [2002]
Cola Est [2002]
Bosphorus v. Ireland [2005]
Scoppola v. Italy, Appl No 1024/03,2009.
Kokkelvisserij v. Netherlands [2009]
Zolotukhin v. Russia [ 2009 ]
MSS v. Belgium and Greece, Appl No 20696/09 [2011]
Sneersone and Kanpanella v. Italy [2011]
Menarini [2012]
Povse v. Austria [2013]
Tarakhel v. Switzerland [2014]
Seminar 1: Conflicts of Rights – Case Law seminar

**Homework:** Read and comment the starred cases together with the related AG Opinions

- Case C-159/90 *Grogan* [1991]
- Case C-415/93 *Bosman* [1995]
- Case C-368/95 *Familiapress* [1997]
- Case C-281/98 *Angonese* [2000]
- Case C-60/00 *Carpenter* [2002]
- *Case C-112/00 *Schmidberger* [2003]
- *Case C-36/02 *Omega* [2004]
- *Case C-438/05 *Viking Line* [2007]
- *Case C-341/05 *Laval* [2007]
- *Case C-275/06 *Promusicae* [2008]
- Cases C-92 and 93/09 *Volker and Schecke* [2010]
- *Case C-70/10 *Scarlet Extended* [2011]
- Case C-1/11 *Interseroh Scrap* [2012]
- Case C-426/11 *Mark Alemo-Herron* [2013]
- Case C-131/12 *Google Spain* [2014]
- Cases C-293/12 and C-594/12 *Digital Rights Ireland and Seitlinger and Others* [2014]

Seminars 2 and 3: EU Charter of Fundamental Rights 1 and 2 (4 hours)

**Homework:**
1) Read and comment the starred cases together with the related AG Opinions.
2) Answer the questions

- Case C-555/07 *Küçükdeveci* [2010]
- Case C-400/10 PPU McB [2010]
- *Case C-279/09 *DEB* [2010]
- Case C-550/07 P *Akzo v. Commission* [2010]
- Case C-407/08 P *Knauf Gips v. Commission* [2010]
- Case C-145/09 *Tsakouridis* [2010]
- Case C-481/10 PPU *Aguirre Zarraga* [2010]
- Case C-110/10 P *Solvay* [2011]
- Find information regarding the process of elaboration of the Charter

-Read the Charter

-Describe the different rights enshrined in the Charter (Chapter 1 to Chapter 6) – draw a comparison with the sources of the Charter, e.g European Convention on Human Rights.

- Focus on Article 51 EUCFR – what is the meaning/ scope of Article 51? – Please argue (find information)

- Focus on Article 52 EUCFR - what is the meaning/ scope of Article 52? Please argue (find information)

- Focus on Article 53 EUCFR- what is the meaning/ scope of Article 53? Please argue (find information)

-Read Protocol 30 on the Opt-out of UK and Poland. Does this Protocol authorize UK and Poland to Opt-Out from the Charter? Please argue

-Debate: Do you think that the judgments in Åkerberg and Melloni bring a new shift as to the protection of human rights in the EU?
- What is now the relationship between the Charter’s rights and the General Principle of EU Law?

**Recommended reading:**

X Groussot and L Pech “Fundamental Rights Protection in the EU Post Lisbon Treaty” available at SSRN.com

X Groussot, L Pech and G T Petursson: “The Scope of Application of Fundamental Rights on Member States' Action: In Search of Certainty in EU Adjudication available at SSRN.com

X Groussot and I Olsson, Clarifying or Diluting the Application of the EU Charter of Fundamental Rights? – The Judgments in Åkerberg and Melloni from the 26th of February 2013 available at SSRN.com

**Extended Reading**


**Seminar 4: Accession to ECHR – Protocol 8 – Draft Accession Treaty**

**Homework:** 1) Read and comment the starred cases together with the related AG Opinions. 2) Answer the questions

*Case C-411/10 NS [2011]. Read the Opinion of the AG also.*

European Court of Human Rights:
Niemietz [1992]
Open Door Counselling v Ireland [1992]
Funke [1993]
Procola [1995]
Vermeulen [1996]
Matthews [1999]
Kress [2001]
Goodwin [2002]
Cola Est [2002]
*Bosphorus v. Ireland [2005]
Jussila [2006]
Scoppola v. Italy, Appl No 1024/03,2009.
Kokkelvisserij v. Netherlands [2009]
Zolotukhin v. Russia [2009]
*MSS v. Belgium and Greece, Appl No 20696/09 [2011]
* Menarini [2012]
* Tarakhel v. Switzerland [2014]
Avotins v. Latvia [2016]

**EFTA Court:**

*Posten Norge* [2012]

Read the draft accession agreement of 11-12 October 2011

Describe and assess the co-defendant system.

Describe and assess the prior authorization system.

How do you understand the Bophorus doctrine? Is it a good way to deal with the interaction between the Strasbourg and Luxembourg system? Should this doctrine be dropped after accession to the ECHR?

**Debate on Accession** (the class will be divided into two groups):

Argue in favour of accession to ECHR (what are the arguments in favour of accession?)

Argue against the accession to ECHR (what are the arguments against accession?)

Seminar 5: Opinion 2/13 and Mutual Trust

**Homework:** 1) Read and comment the starred cases together with the related AG Opinions.
2) Answer the questions

**Debate on Opinion 2/13**

Read the Opinion and the View of the Advocate General

Do you think that the legal analysis of the Court is solid?

Is it the end of the process of accession?

Can the specificity of the EU legal order be reconciled with the principle of equality?

The Opinion is imbued with the concept of Mutual Trust. What does this mean? Are we assisting to a new transformation of the principle of Mutual Trust?

Is Mutual Trust a rule or a principle?

**Recommended reading:**


**For the debate on Mutual Trust and Opinion 2/13.**


Seminar 6: Fundamental Rights and European Integration

**Homework:** 1) Read the article (X. Groussot and A. Zemskova) and the starred cases together with the related AG Opinions. 2) Answer the two questions

Compulsory reading:


Question 1: Why are the EU fundamental rights so resilient in EU law?

Question 2: Can we say and is it right today that there is a spill-over of rights in EU law?

Cases:

*Case C-42/17 Taricco II [2017]*  
*Case C-414/16 Egenberger [2018]*  
Case C-524/15 Menci [2018]  
Case C-673/16 Coman [2018]  
*Case C-216/18 PPU LM [2018]*  
Case C-122/17 David Smith [2018]

Seminar 7: The Impact of the Charter – Case Law Seminar I

**Homework:** 1) Read and comment all the cases together with the related AG Opinions. 2) Answer the questions.

Case C-199/11 *Otis v. Commission* [2012]  
Case C-17/10 *Toshiba Corporations* [2012]  
Case C-501/11 *P Schindler v. Commission* [2013]  
Case C-283/11 *Sky Österreich* [2013]  
Case C-426/11 *Mark Alemo-Herron* [2013]  
Case C-202/15 *AGET-Iraklis* [2016]

- Read the Opinion of AG Cruz-Villalón in Case C-176/12 *Association de Médiation Sociale* [2014], Opinion delivered on 18 July 2013. Explain the differences between the reasoning of the ECJ and the Opinion of the Advocate General? What is the approach followed by the ECJ (See also Case C-356/12 *Glatzel* [2014], paras 74-78).

- What is the impact of the Charter on due process principles / rights of the defense? (Toshiba, Otis and Schindler) Is there any impact on the autonomy of EU law vis à vis ECHR law?

- What is the impact of the Charter on the principle of proportionality?
-What is the impact of the Charter on the freedom to conduct business?

**Debate on Article 16 of the Charter:** Can Article 16 of the Charter be used by the Court as an effective tool of judicial review of the Member States Action? What is the relationship of Article 16 with the economic freedoms enshrine the TFEU? Can Article 16 bring a shift in EU law adjudication?

**Recommended reading:**

Dorota Leczykiewicz, “Horizontal Effect of Fundamental Rights: In Search of Social Justice or Private Autonomy in EU Law?” available at SSRN.com

Xavier Groussot, Gunnar Thor Petursson, Justin Pierce, “Weak Right, Strong Court: The Freedom to Conduct Business and the EU Charter of Fundamental Rights” available at SSRN.com

**Seminar 8: The Impact of the Charter – Case Law Seminar II**

**Homework:** 1) Read and comment all the cases together with the related AG Opinions. 2) Answer the questions.

Case C-131/12 *Google Spain* [2014] **N.B** Read the Opinion of the AG also.
Cases C-293/12 and C-594/12 *Digital Rights Ireland and Seitlinger and Others* [2014] **N.B** Read the Opinion of AG also.

-Is the EJC’s judicial style and approach, in fundamental rights cases, self-referential and simplistic? If so why?

-What are the weaknesses of the ECJ’s Judgment in the *Google Spain* case?

-Was the ECJ, by virtue of Article 52 (3), obliged to refer to the relevant ECHR case-law?

-Elaborate on the differences between the AG’ and the ECJ’s approach in the case *Google Spain*. Do you agree with the ECJ’s or AG’s analysis? Please argue.

-Do you agree with the ECJ’s statement that: ‘fundamental rights to privacy and data protection should, ‘as a rule’ override ‘not only the economic interest of the operator but also the interest of the general public in finding that information’? Is this statement contrary to the ECJ’s test of balancing between fundamental rights previously employed for instance in the case *Promusicae*?

- Argue the case *Google Spain* in the context of Article 16 of the Charter.

**Debate on the right to be forgotten**
Argue in favour of the right to be forgotten in the context of the case Google Spain
Argue against the right to be forgotten

- What is the relationship between rights to privacy and data protection i.e. between Articles 7 and 8 of the Charter?

- Is proportionality review under Article 5(4) TEU, and the proportionality of the limitations on the exercise of fundamental rights within the meaning of Article 52(1) of the Charter different? If so Why? Argue.

- Elaborate on the scope and meaning of Article 52(1) of the charter and compare the cases Google Spain and Digital Rights.

- Compare the judgments in the cases Google Spain and Digital Rights. Do you see the different approach? Is the Charter guiding norm in fundamental rights adjudication in Europe? If so, what is the indication leading to this kind of conclusion?

Recommended reading:

Van Alsenoy et al, Search Engines after 'Google Spain': Internet@Liberty or Privacy@Peril?, 2014, SSRN.com.

Seminar 9: The Impact of the Charter – Case Law Seminar III

Homework: 1) Read and comment all the starred cases together with the related AG Opinions. 2) Answer the questions.

* Case C-604/12 H. N. [2014] N.B Read the Opinion of the AG also.
Cases C-141/12 Y.S. v Minister voor Immigratie, Integratie en Asiel and C-372/12 Minister voor Immigratie, Integratie en Asiel v M, S. [2014].
Case C-249/13 Khaled Boudjlida v Préfet des Pyrénées-Atlantiques [2014]
* Case C-129/14 PPU Zoran Spasic [2014]
Case C-72/15 Rosneft [2017]

Debate on Good Administration and Effectiveness

- What is the scope of article 41? Is the principle of good administration enshrined in ECHR? The wording of Article 41(1) of the Charter refers to relations between individuals and the ‘institutions, bodies and agencies of the Union’; does this mean that the right to good administration is not incumbent in the same way on the Member States?

- Explain the relationship between Article 41 of the Charter and the principle of effectiveness? What is the standard of judicial review used by the ECJ in H.N?
Can national procedural rule, giving rise to a situation in which an individual’s case is solved within unreasonable length of time, infringe Article 41 of the Charter and the principle of effectiveness?

- Is the H.N. case confirmed by the recent case law of the ECJ? Is there a hierarchical relationship between Charter’s rights and the general principles of EU law?

**Debate on Ne Bis in Idem**

- What is the relationship between Article 50 of the Charter and Article 54 CISA?

- Is the scope of application of Article 50 of the Charter, Article 50 CISA and Article 4 of the Protocol 7 to the ECHR the same? Is *ne bis in idem* under EU Law different and autonomous from the ECHR interpretation of article 4 of the protocol 7 to the ECHR? (Consider cases *Toshiba* and *Akerberg* also)

- Was the restriction, of the principle of *ne bis in idem* required by the execution condition referred to in Article 54 CISA, proportionate? If so, on what basis?

Argue whether the *Spasic* case indicates the potential risk of conflict between an EU policy and the ECHR interpretation of *ne bis in idem*? What can be the rationale behind the ECJ’s style of adjudication based on autonomous interpretation and sole reliance on the Charter?

**Seminar 10: Citizenship – Case Law seminar**

**Homework:** Read and comment the starred cases together with the related AG Opinions

Case 186/87 Cowan [1989]
Case C-168/91 Konstantinidis [1993]
Case C-274/96 Bickel and Franz [1998]
Case C-85/96 Martínez Sala [1998]
Case C-184/99 Grzeczyk [2002]
Case C-224/98 D’Hoop [2002]
Case C-148/02 Garcia Avello [2003]
Case C-282/01 Orfanopoulos [2004]
*Case C-138/02 Collins [2004]*
Case C-456/02 Trojani [2004]
*Case C-209/03 Bidar [2005]*
Case C-258/04 Ionidis [2005]
Cases C-11/06 and C-12/06 Morgan and Bucher [2007]
Case 524/06 Huber [2008]
Case C-158/07 Förster [2008]
Cases C-22/08 and C-23/08 Vatsouras and Koupantze [2008]
Case C-145/09 Tsakouridis [2010]
*Case C-135/08 Rotteman [2010]
Case C-208/09 Sayn-Wittgenstein [2010]
*Case C-34/09 Ruiz Zambrano [2011]. Imperative: Read the Opinion of the AG Sharpston!
*Case C-434/09 McCarthy [2011]
*Case C-256/11 Dereci [2011]
Opinion of AG Maciej Szpunar in Case C-202/13 McCarthy Rodriguez [2014]
*Case C-333/13 Dano [2014]
Case C-165/14 Rendón Márin [2016]

Interpretation of the Citizenship Directive

Case C-162/09 Lassal [2010]
Cases C-424/10 and C-425/10 Ziolkowski [2011]
C-249/11 Byankov [2012]
Case C-63/11 Rahman [2012]
Case C-202/11 Las [2013]
Case C-300/11 ZZ [2013]
Case C-529/11 Olaitan Ajoke Alarape [2013]
C-140/12 Peter Brey [2013]
Opinion of AG Maciej Szpunar in Case C-202/13 McCarthy Rodriguez [2014]

Seminar 11: Subsidiarity

**Homework:**

Read Article 5 TEU – Please comment

Is there any evolution of the principle of subsidiarity with the Lisbon Treaty?

Explain the yellow card system? Is it an effective system?


Read the Case C-58/08 Vodafone [2010]

Read the Case C-547/14 Philip Morris [2016] /compare with the Opinion of AG Kokott

Read the article of Lenaerts (in recommended reading). Explain the theory of process-oriented review and review the pros and cons of this theory.

**Recommended Reading**
