

Margit Bühler, *Einschränkung von Grundrechten nach der Europäischen Grundrechtecharta*. Berlin: Duncker & Humblot, 2005. 515 pages. ISBN 3-428-11578-3. EUR 88.

The book under review, whose title might be translated as “Limitations to Fundamental Rights under the European Charter of Fundamental Rights”, is based on the author’s PhD thesis, which was written under the supervision of Prof. Wolfgang Graf Vizthum and was accepted by the law faculty of the university of Tuebingen in 2004. According to the book’s preface, legal developments until August 2003 have been taken into account.

The subject is certainly a core theme of European constitutional law. It remains important independently of the fate of the Constitutional Treaty which should have transformed the European Charter of Fundamental Rights into hard law. The book is a solid piece of scholarship. The bibliography is extensive, and contains mostly German literature, with some English and French works as well. It is surprising, but perhaps typical for the “German” approach to the subject matter, that the book does not contain a table of cases, although this might have been useful in an area of law which has been largely shaped by the case law. The book is divided in two large parts, the first covering the limitations of fundamental rights before the adoption of the European Charter of Fundamental Rights, the second one dealing with the limitations according to the Charter. The book ends with a part containing conclusions, prospects and summarizing theses, presented in 40 pages.

The treatment of the subject is very rational and comprehensive and does not only cover fundamental rights *stricto sensu*, but also the classic Community freedoms, whose “fundamental rights character” is disputed. In the first part, the author criticizes, on good grounds, the very generous acceptance of limitations to fundamental rights by the ECJ which has sometimes rendered those rights meaningless. Although the European Charter is in principle based on the preceding case law, it did make the legal regime of limitations of fundamental rights more systematic. Differing from the scheme followed in the ECHR, the Charter contains general provisions on limitations in Articles 52–54, and does not describe the limitations separately for each fundamental right. In consequence, the second part of the book under review consists of a detailed interpretation of those Charter provisions. The somewhat obscure Article 53 is discussed in detail, and its revision is suggested. The author even proposes to create specific limitation clauses for the different fundamental rights. This suggestion runs counter to the current tendencies in modern State constitutions (see, e.g., the general limitations clause Art. 36 of the Swiss constitution).

In the final part, the author raises questions such as the relationship between the Charter and the Constitutional Treaty, reform of the Charter, accession of the Community to the ECHR, the introduction of a European constitutional complaint, and the Charter’s potential impact on domestic fundamental rights protection. She discusses these questions succinctly

and makes very clear statements of her own or submits proposals for revisions. One slight shortcoming might be the sometimes surprising choice of references in the footnotes and the strictly legal discussion of issues with wide philosophical and political underpinnings which are however, quite completely blended out in this book.

Ms Bühler is perfectly aware of the fact that fundamental rights protection in general, and protection against infringement by Community action in particular, is a major concern in German quarters and a pet subject in German constitutional law scholarship (cf. p. 451). Of course, the crucial aspect in this field is the legal limits which are placed on the exercise of fundamental rights. One could even say that the legal construction of those limits is decisive for making fundamental rights real. In domestic constitutional law, German courts and academics have elaborated an extremely nuanced scheme of limitations to the fundamental rights of the German Basic Law. Only very rudimentary elements of this scheme have been received in EU law, in the Strasbourg case law on the ECHR, and via those supranational regimes, even in other Member States' constitutional orders. As a whole and with all its refinements, however, the German doctrines of limitations to fundamental rights are probably *incommunicando* in Europe. The author relies on the established German terminology concerning limitations to fundamental rights ("Schranken-Schranken", "Wesensgehalt" and so on). This is inevitable to the extent that other legal systems simply do not possess the relevant vocabulary. On the one hand, the usefulness of pressing European fundamental rights protection into the national scheme of one particular Member State (cf. pp. 452 et seq.) may be questioned. On the other hand, why should not EU law benefit from a more refined legal thinking which happens to be elaborated in one Member State only?

In a way, the sober, well-ordered, straightforward and admirable piece of legal scholarship presented by Margit Bühler illustrates the problems of legal translation, understood not only in a linguistic sense, but as a translation of concepts. As it is, this book is "untranslatable" to English, French and probably even to Spanish (despite the intense reception of German constitutional doctrine in Spain). So we can only hope that some lawyers throughout the European Union will read the book, although it is written in German, will possibly get a glimpse of the fundamental rights universe built up here, and maybe even pick out some vulgarized bits and pieces of it to use them transnationally.

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