

Book Review

Behnam Balalimood, University of Reading, United Kingdom

IMPACT OF UNION CITIZENSHIP ON THE EU'S MARKET FREEDOMS

Author: Alina Tryfonidou

The impact of the establishment of EU citizenship on economic, social and political rights of Member State nationals has been the subject of various articles and a few books, see for example, De Cecco (2014); Spaventa (2008); O'Leary (2008). However, the overall impact which the status of EU citizenship has had on *all* the market freedoms, *and* the implication of such an impact had remained unfolded. The book under review has as its aim the consideration of 'the impact that the introduction and development of the status of Union citizenship has had on the interpretation of the EU's market freedoms' by the ECJ (page i). According to the author, the monograph is 'the first study which sets to comprehensively analyse the impact that the development of the status of Union citizenship has had, may have had, and should have, on the interpretation of the market freedoms and to consider the overall implications of this for the development of EU law in this area' (page 18).

The main argument of the book is that, 'as a result of the move towards the creation of a meaningful status of Union citizenship, the market freedoms have been reconceptualised as fundamental Union citizenship rights and their interpretation has adapted accordingly' (page i); the scope of application of these provisions seems to have been affected by the fact that their beneficiaries are also Union citizens. Tryfonidou argues that as a result of the introduction of Union citizenship, the Court has departed from its (what she calls) instrumental-based approach and has adopted a fundamental rights-based approach to the personal market freedoms. The Court does not view the market freedoms as merely sources of instrumental freedoms and rights which are granted to Union citizens solely in order to enable and encourage them to contribute to the economic aims of the Treaty. Rather, the Court sees these provisions 'as sources of fundamental rights that are granted to Union citizens for their own sake, simply because they are Union citizens and, as such, should have the right to take-up and/or pursue an economic activity in another Member State/in a cross-border context' (page 62). In order to illustrate the impact of the introduction of the status of Union citizenship on the market freedoms, and support the main argument of the book, Tryfonidou starts the book by examining the approach of the Court to the cases in which a market freedom has been at issue. The book is divided into four parts: Part I, 'Introductory Chapters'; Part II, 'Impact of Union Citizenship on the EU's Market Freedoms'; Part III, 'the Future?'; and Part IV, 'Conclusions'.

In Part I, the author traces the development of the status of Union citizenship from its introduction to the present day, through the Court's case-law, and suggests that 'EU citizenship was not an empty promise' as many anticipated when the status was introduced. She argues that the Court has not seen Member State nationals as mere factors of production whose movement can contribute to he

economic aims of the EU. Tryfonidou supports this argument by analysing the Court's jurisprudence since the introduction of EU citizenship. The Court has made it clear that Member State nationals enjoy certain fundamental rights even when they do not contribute, in any way, to the EU's economic aims. This approach by the Court, as Tryfonidou illustrates, has only been adopted following the introduction of the status of EU citizenship.

Part II of the book aims to examine the impact of the status of EU citizenship on the interpretation of 'market freedoms' – Articles 34, 35, 45, 49, 56 and 63 TFEU. In this part, Tryfonidou separates the personal market freedoms – Article 45, 49 and 56 TFEU – which govern the rights of mobile economically-active Member State nationals (e.g. workers), from the free movement of goods provisions – Articles 34 and 45 TFEU. She deals with the former in chapter 3 and the latter in chapter 4. This division of the market is viewed as a logical approach to examining the impact of EU citizenship on the market freedoms as the impact of the establishment of EU citizenship may be not equal – and as it is shown in the book, the impact is, in fact, significantly different.

In chapter 3, Tryfonidou seeks to illustrate that the personal market freedoms are, no longer, serving as, merely, instruments for achieving the economic aims of the Treaty, but *also* as sources of fundamental economic rights for Member State nationals, just because they are citizens of the Union. By comparing the Court's pre-Maastricht interpretation of the market freedoms with the Court's interpretation of these provisions after Union citizenship was established by the Maastricht Treaty, she shows that the transformation in the Court's approach to the EU's personal market freedoms from an instrumental to a fundamental rights-based approach to the personal market freedoms has occurred, mainly, as a result of interpretation of these provisions in the light of the status of EU citizenship. Chapter 4 examines whether the status of Union citizenship has had any impact on the free movement of goods provisions, especially their interpretation by the Court. An analysis of the Court's case-law in this chapter shows that although the reasoning of the Court in some of its recent judgments may not be justified under a purely market-building rationale for the free movement of goods provisions, it is still not possible to say with certainty whether the aim of Article 34 TFEU has been redefined, in the way that the aim of free movement of persons provisions has been redefined (i.e. a source of fundamental rights for individuals rather than a source of instrumental rights for economic actors).

Part III of the book is entitled 'the future?' and deals with the questions which arise after reviewing the Court's post-Maastricht judgments in the market-freedoms-related cases. In this part, the author seeks to answer the important question of competence: whether the Court *can* interpret the market freedoms in a way that these provisions (at least the personal market freedoms) are now – as Tryfonidou illustrates in her book – a source of fundamental rights for Union citizens? Or, whether the Court has exceeded its powers and engaged in judicial activism. To answer this question, Tryfonidou refers to a number of definitions and analysis existing in the literature on judicial activism, in particular the ECJ's judicial activism, and draws two points from these analyses: firstly, the Court would not have gone beyond its competence and function if a judgment does not fall within the text of the relevant Treaty provision, but the judgment is in line with the aims of such a provision; secondly, 'the constituent EU Treaties are dynamic and, hence, their interpretation has to be constantly adapted in order to reflect their revised priorities and aims' (page 157). In other words, if the current aims of a Treaty provision require an expansion of Union citizens' rights, even beyond what the literal interpretation of the provision suggests, the Court may not be accused of judicial activism by adopting a teleological interpretation and expanding the scope of the provisions in the light of their current aims. Tryfonidou then analyses the 'current' aims of the market freedoms and concludes that the Court's post-Maastricht judgments on the interpretation of the market freedoms may not seem to be justified if a purely literal approach to the interpretation of these

provisions is taken. Nonetheless, they can be considered to be compliant with a teleological approach to their interpretation.

The rest of chapter 4 is devoted to the normative analysis of the Court's approach to the market freedoms in the light of the reconceptualization of these provisions as, now, sources of fundamental freedoms for Union citizens. For instance, how the Court should draw the balance between the fundamental rights which Union citizens derive from these market freedoms, and national measures that limit the exercise of such fundamental rights by Union citizens. Tryfonidou suggests that a national measure which neutrally limits the exercise by Union citizens of the fundamental rights stemming from the market freedoms may be justified if it is necessary for maintaining the internal market 'regulated'.

The next chapter in 'the future?' part of the book is '(Re-)Interpreting the Market freedoms in the light of Union Citizenship: Persisting Conundrums'. The chapter considers the difficulties/questions/uncertainties which emerge (or remain in the future) after the reconceptualization of the market freedoms as a result of the Union citizenship. In fact, the author in this chapter seeks to take the analysis further, beyond the actual and normative interpretations of the market freedoms.

The book provides an in-depth and up-to-date analysis of the ECJ's jurisprudence on the market freedoms and the impact of the status of the claimants (Union citizens) has had on the jurisprudence. The impact of the introduction of Union citizenship has been examined on *all* the market freedoms, rather than focusing on the personal market freedoms. In addition to that, those Court's judgments which do not completely fit within the pattern of the court's approach to the interpretation of the market freedoms have not been ignored and left out. Thus, the analysis of the Court's jurisprudence in this book is genuinely comprehensive.

The monograph portrays the impact that the Union citizenship has had/may have on the EU's market freedoms, in the past, present, and future. The book firstly, by scrutinising the ECJ's post-Maastricht case-law, illustrates how the introduction and development of the status of Union citizenship has affected, and may have affected, the interpretation of the market freedoms; secondly, it examines whether the way that market freedoms are now interpreted is justified, taking into account the aims literal interpretation of these provisions; thirdly, it identifies any issues that are likely to emerge in the future as a result of the re-interpretation of the market freedoms in the light of Union citizenship. Moreover, the book offers practical solutions for the Court to minimise the 'interminable' tensions between the EU and the Member States when the fundamental rights of Union citizens under the market freedoms are at issue, on one side, and regulations necessary for the smooth running of the internal market on the other side.

REFERENCES

De Cecco, F. (2014). 'Fundamental Freedoms, Fundamental Rights and the Scope of Free Movement Law' *German Law Journal* (15) 383.

O'Leary, S. (2008). 'Developing an Ever Closer Union between the Peoples of Europe? A Reappraisal

of the Case Law of the Court of Justice on the Free Movement of Persons and EU Citizenship' *Yearbook of European Law* (27) 167.

Spaventa, E. (2008). 'Seeing the Wood Despite the Trees? On the Scope of Union Citizenship and its Constitutional Effects' *Common Market Law Review* (45) 13.

BIBLIOGRAPHIC INFORMATION

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Author: Alina Tryfonidou

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