

Part II: The Fundamental Freedoms

§ 4 General theory

I. The legal nature and the special features of the fundamental freedoms

- 1) **The terminology**
- 2) **The direct applicability and the character as subjective rights of the fundamental freedoms**
 - ECJ, case 26/62, van Gend & Loos
- 3) **The primacy of the fundamental freedoms**
- 4) **The convergence of the fundamental freedoms**

II. In particular: fundamental freedoms and fundamental rights

- 1) **General aspects**
 - parallelism of fundamental freedoms and fundamental rights
- 2) **The fundamental freedoms as a medium to achieve the application of the Union's fundamental rights on persons who are not Union citizens in matters not related to the Union?**
 - ECJ, case C-60/00, Carpenter

III. The functions of the fundamental freedoms

- attention: protection of *cross-border mobility* only!
- 1) **The fundamental freedoms as prohibitions of discrimination (equality rights)**
 - problem of discriminations against one's own citizens
 - 2) **The fundamental freedoms as prohibitions of restrictions (liberty rights)**
 - ECJ, case 8/74, Dassonville; case Rs. C-415/93, Bosman; case C-55/94, Gebhard
 - 3) **The fundamental freedoms as rights to provisions, in particular as basis of (state) duties of protection ["grundfreiheitliche Schutzpflichten"]**
 - ECJ, case C-265/95, French blockades
 - 4) **The fundamental freedoms as objective elements of the Union's legal order**
 - secondary law and national law have to be interpreted in the light of the fundamental freedoms

IV. The holders (entitled subjects) and the addressees (obliged subjects) of the fundamental freedoms

1) The holders of the fundamental freedoms (the personal sphere of protection)

- a) **Citizens of the member states**
- b) **Legal persons in the member states**
(→ cf. art. 48, 55 EC Treaty)
- c) **In some cases citizens and legal persons from non-member states**

2) The addressees of the fundamental freedoms

- a) **The member states**
- b) **The institutions of the Union**
- c) **In some cases private organisations with regulative power or private enterprises**
 - ECJ, case 36/74, *Walrave and Koch*; case C-415/93, *Bosman*; case C-281/98, *Angonese*

V. The concepts of sphere of protection ["Schutzbereich"], encroachment ["Eingriff"] and limits ["Schranken"] of the fundamental freedoms

1) General aspects

- *three step examination* as known from fundamental rights (see *diagram 2*)

2) The sphere of protection

3) Encroachments

4) Limits ["Schranken"] and limits of limits ["Schranken-Schranken"]

VI. The concurrence of fundamental freedoms

VII. The complementation of the fundamental freedoms by the prohibition of discrimination (art. 12 EC Treaty)

1) General aspects

- **no discrimination on grounds of nationality**
- **direct applicability**

2) The addressees

- **also private organisations with regulative power**

2) Illicit discriminations

- **problem of application of national fundamental rights reserved to national citizens in favour of Union citizens from other member states**