

THE EC FUNDAMENTAL FREEDOMS IN THE EC CONSTITUTIONAL TREATY

Dr. Pavelas Ravluševičius

Europos teisės departamentas prie Lietuvos Respublikos Vyriausybės
Vilniaus g. 23–7a; LT–01119 Vilnius
Tel. 264 90 40
Elektroninis paštas pravls@www.euro.lt

*Pateikta 2004 m. rugsėjo 14 d.
Parengta spausdinti 2004 m. spalio 21 d.*

Keywords: EU Constitutional treaty, EU fundamental freedoms, EU substantive law.

A b s t r a c t:

The topic of research deals with the questions of enforcing of the EC fundamental freedoms in the legal text of the European Constitution. So is oriented the analysis at the written requirements of the European Constitution. The requirements of the EC fundamental freedoms belong to the obligatory conditions of any European and international transaction.

Therefore, it is necessary to analyse the new rules in the European Constitution, but only textual analysis is not enough. The attention must be paid to the examples of application of the EC fundamental freedoms. The final conclusions about the new dimension of the EC fundamental freedoms are, in the author's opinion, early to make.

1. Introduction

The EC fundamental freedoms are based on the legal requirements of the European Union. This creates the conditions for business activities in the European Union [1].

The actual situation is a result of the development in the European Union. The dynamics of the developing in the Treaties has become exciting. Between the 1987 Single European Act, Maastricht 1992, Amsterdam 1997, Nice 2001 and the project of the Treaty for European Constitution 2003, there were only few years in each period [2].

For understanding of the matter of research it is necessary to know, that the freedom of movement means according the legal text of the EC Treaty to the Treaty for establishing the Constitution, freedom of movement for persons, freedom of establishment, freedom to provide services, free movement of goods and freedom of capital movement. It is the guarantee of decision making for businessmen, for workers freedom to choose their place of work and in particular for consumers the freedom of choosing the best and cheapest possibilities of products. Afterwards, the freedom of competition permits businessmen to offer their goods and services to an incomparably wider circle of potential consumers [3].

The final edition of the European Constitution said, that the free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of the Constitution [4].

The purpose of this topic of research is to give a comprehensive account of EC legislation and case law in the field of the fundamental freedoms in the European Union. Accordingly, will be discussed in this work in some detail the relevant EC Treaty provisions and their application in the domestic legal order. I wish to present for your detailed and systematic analysis of the EC Treaties law provisions, clear exposition of the legislation; developing impact of the Treaty's fundamental freedoms. The examples of application are given in the text of this short presentation. The research begins with the explanation of rules for the free movement of goods (Customs union, Customs cooperation, Prohibition of quantitative restrictions, Requirements for restrictions). The next chapter deals with the free movement of persons. The questions about position of workers recognition of qualification and establishment rules play an outstanding role in this chapter. The third chapter of the presentation is focused on the principles of freedom to provide the services. The free movement of capital is presented in the fourth chapter of the research. These are the questions about freedom of capital, payment and applicable restriction. The last chapter gives the comparative analysis between the legal requirement of EC fundamental freedom and the Lithuanian Constitution. The final part presents the conclusions of this research. The research is concerned with the rules of the EC Treaty and the rules of the European Constitution. The rules of national legal order are partly the matter of following research.

2. Free movement of goods

2.1 Customs union

The Articles of the European Constitution stipulate the new requirements for free movement of goods. The legal structure has the following points. Subsections 1 of the Constitution give legal requirements for customs union and include three Articles (Article III 36, Article III 37, Article III 38 of the Constitution). The union shall accord with the Article III 36 of the Constitution comprising the customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries. After that, the legal requirements shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States [5].

According Article III 37 of the Constitution products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with, and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges. The legal requirement of the Article III 38 said for the customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature [6].

2.2 Customs cooperation

The legal requirements of the Constitution stipulate in the Subsection 2 (Article III 41) that, within the scope of application of the Constitution, European law or framework laws shall establish measures in order to strengthen customs cooperation between Member States and between the latter and the Commission. These aren't new requirements of the primary law in the European Union. The previous EC Treaty law has some kind of requirements [7].

2.3 Prohibition of quantitative restrictions

The Constitution of the European Union gives in the Article III 42 the following statement: quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between Member States. It means, that the rules from the *Dassonville* case „all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra – Community trade are to be considered as measures having an effect equivalent to quantitative restrictions“ are valid [8]. The changes from the previous Article of the Treaty exist only in the numeration of the Article.

2.4 Requirements for restrictions

According to Article III 43 of the Constitution it shouldn't preclude the prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historical or archaeological value, or the protection of industrial and commercial property. The part 3 of this Article requires such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States [9].

The analysis of the Treaty law lets make some conclusions. The EC Treaty provision corresponds to the rules of the European Constitution. It is possible to fix some changes, but the principles of regulation are identical. The articles 28 and 29 of the EC Treaty have common articles about export and import restrictions. The place for regulation is the same (ECT and EC). The articles about applicable restrictions correspond absolutely. The free movement of goods is transferred with identical concept of regulation. What kind of violation of the free movement of goods is possible to give? The rapport of EU Commission has some examples. The violation of the free movement of goods looks following: for example Sweden, Austria and the Netherlands to remove obstacles; „in the opinion of the Commission where national rules hinder the free movement of goods within the European Union (one of the fundamental principles of the Internal Market and provided for by Article 28 of the EC Treaty), companies are deprived of their right to sell a product throughout the Union. Competition on national markets is thus liable to be reduced. In the result is the bottom line that consumers have in the consumption less choice and risk having to pay more.“ [10]. The European Commission requests Germany and Spain to remove obstacles in the next case of free movement of goods: „where national rules hinder the free movement of goods within the European Union (one of the principles of the Internal Market and provided for by Article 28 of the EC Treaty), enterprises are deprived of their right to sell a product throughout the Union on the basis of legally manufacturing and/or marketing their product in another Member State. Competition on national markets is thus liable to be reduced. The bottom line is that consumers have less choice and risk having to pay more“ [11].

3. Free movement of persons

According Article III-18 of the Constitution workers shall have the right to move freely within the Union. Any discrimination based on nationality between workers of the Member States regarding employment, remuneration and other conditions of work and employment shall be prohibited. Under requirements of EC primary law the workers shall have the right, subject to limitations justified on grounds of public policy, public security or public health. It means in details: (a) to accept offers of employment actually made; (b) to move freely within

the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in European regulations adopted by the Commission. As exception, this Article shall not apply to employment in the public service [12]. Article III-19 of the Constitution stipulates that European laws or framework laws shall establish the measures needed to bring about freedom of movement for workers. As one of the latest examples from praxis it is possible to give the opinion of European Commission and Italian government. According to the position of European Commission „Italian authorities cannot refuse enrollment in the register of „praticanti“ to the holder of a „maitrise en droit“ issued in another Member State. The host Member State must compare the diplomas, taking into account the differences between the national legal systems and, in appropriate cases, require the person concerned to show that he or she has acquired the learning and skills that are lacking“ [13].

4. Freedom of establishment

According to Article III-22 of the Constitution restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Nationals of a Member State shall have the right, in the territory of another Member State, to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular, companies or firms within the meaning of the second paragraph of Article III-27, under the conditions laid down for its own nationals by the law of the Member State, where such establishment is effected, subject to the provisions of the Section relating to capital. These rules result from ECJ cases, specially Case 63/86, Commission v. Italy [1988] ECR 29, [1989] 2 CMLR 601; Case 3/88, Commission v. Italy [1989] ECR 4035, [1991] 2 CMRL 115; Case 81/87, R.v.H.M. Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc [1988] ECR 5483, [1988] 3 CMLR 713.

The requirements of the Article III – 24 of the Constitution shall not apply, so far as any given Member State is concerned, to activities which are connected in that State, even occasionally, with the exercise of official authority. It is possible that the EU secondary legal acts (European laws or framework laws) may exempt certain activities from application of this Subsection. Companies or firms formed (Article III-27 of the Constitution) in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Subsection, be treated in the same way as natural persons who are nationals of Member States. „Companies or firms“ means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making [14].

The structure of regulation has some changes in the terminology (company, firm, corporation). The new articles of the Constitution correspond functionally with the articles of the EC Treaty. In my opinion, the new Articles of the Constitution have the same function of the regulation as the previous Articles of the EC Treaty. The regulation is repeated. As an example from praxis, it is possible to give the rapport of EC Commission. The European Commission has decided „to remind Italy of its obligation to comply with a Court of Justice judgment of January requiring it to amend its national and regional legislation on the organization of trade fairs and exhibitions. The Court considered this legislation to be

incompatible with the principles of the freedom of establishment and the freedom to provide services laid down in the Treaty on the European Union. A new framework law since passed in Italy does not eliminate all the barriers that the Court condemned. The effect of these barriers is to interfere with the right of non-Italian operators to provide their services in Italy, to restrict the choices available to Italian exhibitors who wish to promote their products or services by means of trade fairs or exhibitions and, potentially, to increase the costs of such promotion and, thus, the final prices paid by the purchasers of the products and services concerned“ [15].

5. Freedom to provide services

According to the Article III – 29 of the Constitution restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State, other than that of the person for whom the services are intended. According to the article III-30 of the Constitution Services it shall be considered to be „services“ within the meaning of the Constitution where they are normally provided for remuneration, insofar as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. „Services“ shall in particular include: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; (d) activities of the professions. The right of establishment, the person providing a service may, in order to do so, temporarily pursue his or her activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals [16].

The definition of services in provisions of the Constitution is to be compared with the definition in the EC Treaty. The applicable rules to the subject must be interpreted. There exists praxis of European Institutions in this area. The latest examples are following. The European Commission has adopted Communication in which it states, that private individuals should be free to use satellite dishes without undue technical, administrative, urban planning or tax obstacles. The right to do so flows from the free movement of goods and services, which are both fundamental Internal Market freedoms. The Commission's intention is that the Communication will respond to the numerous requests for information and clarification, which it has received on the subject in recent months from private individuals and the European Parliament. This Communication is the first initiative under the new Strategy for Services, launched in January 2001 [17].

Internal Market Commissioner **Frits Bolkestein** said: „this Communication explains the right to use a satellite dish - one of the many concrete benefits for European consumers of the free movement of goods and services within the Internal Market. Satellite dishes are an increasingly popular tool for receiving multiple services via satellite: they facilitate mutual exchanges between our various cultures by overcoming national borders, and familiarize the general public with the new remote communications technologies. Their use must, therefore, be free from any unjustified obstacle.“ As a result, the Commission sets out the right to use a satellite dish in the Internal Market [18].

6. Free movement of capital

Within the framework of this Section, The article III – 45 of the Constitution requires that the restrictions both on the movement of capital and on payments between Member States and between Member States and third countries shall be prohibited. The requirements of the Article III-45 of the Constitution shall be without prejudice to the right of Member States: (a) to apply the relevant provisions of their tax law which distinguish

between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested; (b) to take all requisite steps to prevent infringements of national provisions laid down by law or regulation, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take steps which are justified on grounds of public policy or public security. It shall be without prejudice to the applicability of restrictions on the right of establishment, which are compatible with the Constitution. The steps and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments [19]. The separate Article III-48 of the Constitution requires where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council of Ministers, on a proposal from the Commission, may adopt European regulations or decisions introducing safeguard measures with regard to third countries for a period not exceeding six months, if such measures are strictly necessary. It shall act after consulting the European Central Bank [20]. The prevention of and fight against organized crime, terrorism and trafficking in human beings, European laws may define a framework for measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non - state entities. This provisions stay in the Article III – 49 of the Constitution. The provisions about the capital and payment are in text of the Constitution in the common Article III 45. The rules in the Constitution are shorter and have, in my opinion, a better statement. The Section about freedom of capital doesn't have the separate legal provision about discrimination. The estimation of the legal requirements is different. The Law Enforcement covers the category of free movement of capital at the following positions: capital movements and payments, money laundering, payment and settlements systems [21].

In these situations, the Lithuanian Republic has the obligation to implement all the provisions and requirements of EC Treaty law by the date of accession to the European Union. In the official position, Lithuania doesn't need any transitional periods or derogation in the EC treaty chapter about freedom of capital movements. Any capital movement's restrictions should be designated by the end of 2003. The European Accession negotiation with Lithuania was closed at this point in the year of 2001. The Lithuania forgets the facts, that some restrictions are a part of the EC law and other restrictions exist indirectly in the domestic legal order of Lithuania. Actually, we have a difficult situation because the rules of the financial market have many differences in their basic positions and stay in the conflict with the conformity to the European Financial Law guaranties and International Financial Law guaranties. The national and European legislation must in this situation make their decision. The point of the conflict has concentrated my opinion in the following fields of different regulations: the principle of full freedom of capital movements and payments, both between Member States and between Member States and third countries; the possibility of maintaining certain existing restrictions vis-a-vis third countries; setting out the fields in which Member States can maintain information, prudential supervision and taxation requirements without capital movements, is being hindered; providing for the possibility of taking safeguard measures if movements of capital to or from third countries cause serious difficulties for the operation of economic and monetary union; allowing the Community or a Member State to take measures on movements of capital to or from third countries for security or foreign policy reasons [22].

The measure needed to be taken in the tax field, in particular is: limiting harmful tax competition between financial centers; removing tax obstacles to cross-border membership of pension funds, thereby encouraging labour mobility; eliminating differences in the tax treatment of debt and equity. The situation in Lithuania is to be compared according to the

official reports of Central Banks, Financial Ministries in these countries, opinions of the European Commissions and national Constitutional Courts. The following restrictions exist: For transfer of capital into Immobilien; discrimination by the system of taxation; wrong competition; discrimination in the investment activities; closed investment activities; preferences for subjects of national law (Lithuanian nationality). Exception for tax regulation and the issue of discrimination by the transfer of capital to Lithuania [23].

The latest judgment of ECC deals with free movement of capital - direct foreign investments - prior authorization - public policy and public security (14 March 2000) in Case C-54/99. The conflict was between Conseil d'État, Association Église de Scientologie de Paris, Scientology International Reserves Trust and the Prime Minister of France on the interpretation of Article 73d(1)(b) of the EC Treaty (now Article 58(1)(b) EC). According to the French law the direct foreign investments made in France shall be free. When they are being made, these investments shall be the subject of an administrative declaration. In the present case, however, the essence of the system in question is that prior authorization is required for every direct foreign investment which is 'such as to represent a threat to public policy [and] public security, without any more detailed definition. According to the Court ruling the investors concerned are given no indication whatever as to the specific circumstances in which prior authorization is required. Such lack of precision does not enable individuals to be apprised of the extent of their rights and obligations deriving from Article 73b of the Treaty. That being so, the system established is contrary to the principle of legal certainty. The result of judgment saw following that the court, in answer to the question referred to it by the Conseil d'État by decision of 6 January 1999, hereby rules: „article 73d(1)(b) of the EC Treaty (now Article 58(1) (b) EC) must be interpreted as precluding a system of prior authorization for direct foreign investments which confines itself to defining in general terms the affected investments as being investments that are such as to represent a threat to public policy and public security, with the result that the persons concerned are unable to ascertain the specific circumstances, in which prior authorization is required“ [24].

7. The Constitution of the Lithuanian Republic and the European requirements

The Lithuanian Constitution regulates the economical relation in the separate Section of the Lithuanian Constitution. The European Legal requirement of freedom of movement are presented in the following articles of national constitution. The national rules give a requirement for enforcement of the EC freedoms [25].

According to the Article 46 of the Lithuanian Constitution Lithuania's economy shall be based on the right to private ownership, freedom of individual economic activity, and initiative. The State shall support economic efforts and initiative, which are useful to the community. Afterward shall the State regulate economic activity, so that it serves the general welfare of the people. The law shall prohibit monopolization of production and the market, and shall protect freedom of fair competition. The State shall defend the interests of the consumers [26].

Article 47 of the Constitution said, that Land, internal waters, forests, and parks may only belong to the citizens and the State of the Republic of Lithuania by the right of ownership. Plots of land may belong to a foreign state by the right of ownership for the establishment of its diplomatic and consular missions in accordance with the procedure and conditions established by law. The right of ownership of entrails of the earth, as well as nationally significant internal waters, forests, parks, roads, and historical, archaeological and cultural facilities shall exclusively belong to the Republic of Lithuania. The Republic of Lithuania shall have the exclusive ownership right to the airspace over its territory, its continental shelf, and the economic zone in the Baltic Sea. Article 48 of the Constitution has following regulation. Every person may freely choose an occupation or business, and shall

have the right to adequate, safe and healthy working conditions, adequate compensation for work, and social security in the event of unemployment. The employment of foreigners in the Republic of Lithuania shall be regulated by law. Forced labour shall be prohibited. Military service or alternative service, as well as labour which is executed during war, natural calamity, epidemic, or other urgent circumstances, shall not be deemed as forced labour. Labour which is performed by convicts in places of confinement and which is regulated by law shall not be deemed as forced labor either. Article 51 of the Constitution regulates the conditions for work. Employees shall have the right to strike in order to protect their economic and social interests. The restrictions of this right, and the conditions and procedures for the implementation thereof shall be established by law [27].

The guarantee of the freedom of movement is implicitly present in the text of the Constitution. This function is present in the guaranties of the property and work, freedom of the competition, requirement for the consumer protection. The four freedoms are part of the Constitutional law at the level of the national legal order. The cross border character by the applying of the freedoms must be underlined. The free movement of the capital has exceptions in the legal order of the Lithuanian Republic (seven ears of period of transition. It is related only to the owning of the land estate purposed for the agricultural functions and foresting) [28].

9. End

The concept of the EC basic freedoms has been given and institutionalized and has changed in some points. The Treaty has now to realize some kind „of the body politique“ of Europe, that constitutionalise the European policy. It is possible to use the characteristic expression „of the federal interweatment“ [29].

The question about the nature of the Constitution for Europe is open. It should be, according to German philosophy, „some kind of paper of reason“ [30].

The final result of process of constitutionalisation of European primary law is difficult to predict. The definition of „legal integration from above“ is useful in functions of the European Court of Justice. Ipsen has spoken in the correct terminology about „purposive associations for functional integration“ [31].

The Article 4 of the Constitution of Europe summarized the legal requirement for EC fundamental freedoms: „the free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of the Constitution. In the field of application of the Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited“ [32].

The freedoms guaranteed in the EC Treaty are methodology for the opening up of national economies, the bans on discrimination and the competition rules. Every international transaction shall work under the legal requirements of the EC fundamental freedoms. The legal nature of the freedoms has a character of the universal principles. The aspects of the customary law are present, as an example the principle of non – discrimination to know is.



LITERATŪRA

1. Snell J. Goods and Services in EC Law – A Study of the Relationship Between the Freedoms. – Oxford, 2002; Preston P. Enlargement & Integration in the European Union. – London and New

- York, 1997; Borchardt K. – D. Die rechtlichen Grundlagen der Europäischen Union, C. F. – Müller, 1996.
2. Weatherill S., Beaumont P. EC Law – The essential guide to the legal workings of the European Community. – Penguin Books, 1993.
 3. Weatherill S., Beaumont P. EC Law – The essential guide to the legal workings of the European Community. – Penguin Books, 1993.
 4. Article 4 of the draft Treaty establishing a Constitution for Europe (2003/C 169/01) submitted to the President of the European Council in Rome.
 5. Oliver P. Free movement of goods in the European Community. – London, 2003. Graig P., de Burga S. EU Law – Text, Cases and Materials. – Oxford University Press, 1998.
 6. Green N., Hartley T. C., Usher J. A. The Legal Foundations of the Single European Market. – Oxford University Press, 1991; Weatherill S., Beaumont P. EC Law – The essential guide to the legal workings of the European Community. – Penguin Books, 1993.
 7. Green N., Hartley T. C., Usher J. A. The Legal Foundations of the Single European Market. – Oxford University Press, 1991.
 8. Case 8/747, Procureur du Roi v. Dassonville (1974) ECR 837, (1974) 2 CMLR 436.
 9. Snell J. Goods and Services in EC Law – A Study of the Relationship Between the Freedoms. – Oxford University Press, 2002.
 10. DN: IP/03/1417 Date: 20/10/2003 IP/03/1417 Brussels, 20th October 2003.
 11. DN: IP/03/1299 Date: 29/09/2003.
 12. Free movement of workers and public administration / Revue européenne de droit public, 1999; Borchardt K. – D. Die rechtlichen Grundlagen der Europäischen Union, C. F. – Müller, 1996.
 13. DN: CJE/03/99 Date: 13/11/2003; Rudden B. Basic Community Laws. – Oxford, 1996.
 14. Graig P., de Burga S. EU Law – Text, Cases and Materials. – Oxford University Press, 1998.
 15. DN: IP/03/668 Date: 13/05/2003.
 16. Woods L. Free movement of goods and services with the European Community. – Aldershot, 2004; Snell J. Goods and Services in EC Law – A Study of the Relationship Between the Freedoms. – Oxford University Press, 2002.
 17. IP/01/31; Weatherill S., Beaumont P. EC Law – The essential guide to the legal workings of the European Community. – Penguin Books, 1993.
 18. IP/01/31; Kallmayer A. The freedom to provide services under EC law and the General Agreement on Trade in Services, 1994.
 19. Farmer P., Lyal R. EC Tax Law. – Clarendon Press, 1994; Weber M. Der Kapital – und Zahlungsverkehr in der Europäischen Gemeinschaft. 1994.
 20. Dixon R. Banking in Europe – The Single Market. – London and New York, 1991.
 21. Lenz C. O. (Hrsg.). EG – Vertrag - Kommentar, Der Kapital – und Zahlungsverkehr – Vorbemerkung zu Art. 67 – 73 h, 1994.
 22. Sideek S. M. European community law and free movement of capital and EMU //: Stockholm studies in law. 1999.
 23. Farmer P., Lyal R. EC Tax Law. – Oxford: Clarendon Press, 1994.
 24. ECJ in Case C-54/99; Flynn L. Coming of age: the free movement of capital case law 1993 – 2002 // Common market law review. 2002. B. 39.
 25. Harding Ch. Enforcing European Community Rules. – Dartmouth, 1996.
 26. Lietuvos Respublikos Konstitucinio Teismo nutarimas. 2003 m. kovo 17 d. byla Nr. 39/01-21/02; Lietuvos Respublikos Konstitucinio Teismo nutarimas. 2002 m. balandžio 9 d.
 27. Lietuvos Respublikos Konstitucinio Teismo nutarimas. 2002 m. kovo 14 d.; Lietuvos Respublikos Konstitucinio Teismo nutarimas. 2000 m. spalio 18 d.
 28. Stojimo sutarties 4. Laisvas kapitalo judėjimas; Europos Sąjungos sutarties 24 str.; Europos bendrijos steigimo sutartis; AA2003/ACT/IX priedas/lt 76.
 29. Giegerich T. Europäische Verfassung und deutsche Verfassung im transnationalen Konstitutionsprozess: Wechselseitige Rezeption, konstitutionelle Evolution und föderale Verflechtung. – Heidelberg, 2002.
 30. Radbruch G. Rechtsphilosophie, C. F. – Müller, 2003; Schwaiger C. Ein „missing link“ auf dem Weg der Ethik von Wolff zu Kant // Jahrbuch für Recht und Ethik. B. 8.
 31. Ipsen H. - P. Europäisches Gemeinschaftsrecht. – Mohr – Verlag, 1972.
 32. Article 4 of the draft Treaty establishing a Constitution for Europe (2003/C 169/01) submitted to the President of the European Council in Rome.



Europos Sąjungos pagrindinės laisvės pagal Europos Sąjungos konstitucinę sutartį

Dr. Pavelas Ravluševičius

Europos teisės departamentas prie Lietuvos Respublikos Vyriausybės

Pagrindinės sąvokos: Europos Sąjungos konstitucinė sutartis, Europos Sąjungos pagrindinės laisvės, Europos Sąjungos materialinė teisė.

SANTRAUKA

Straipsnyje nagrinėjamos problemos sietinos su Europos Sąjungos pagrindinių laisvių funkcionavimo užtikrinimu. Europos Konstitucijoje pateikiamas patikslintas ES pagrindinių laisvių katalogas. Europos Konstitucijos ketvirto straipsnio nuostatoje teigiama, kad Sąjunga garantuoja savo viduje laisvą asmenų, prekių, paslaugų ir kapitalo judėjimą, taip pat steigimosi laisvę pagal Konstitucijos nuostatas. Be to, taikant Konstituciją, nepažeidžiant joje numatytų konkrečių nuostatų, draudžiamas bet koks diskriminavimas dėl pilietybės. Diskriminavimo draudimas pilietybės pagrindu – pagrindinis straipsnyje nagrinėjamas klausimas.

Europos Sąjungos pagrindinių laisvių veikimo „body politique“ sąlygomis problematika labai sudėtinga. Manytina, jog siekis nustatyti politiškai ir ne tik ekonomiškai atsakingus, priverstų spręsti pateiktus uždavinius ES suvalstybinimo linkme. Tam tikslui vis dažniau vartojamas „federal interweatment“ terminas.

Straipsnyje nesiekama pateikti galutinį atsakymą, kaip spręsti minėtą problemą, nors ir bandoma ES pagrindinių laisvių sistemą palyginti su nacionalinės Konstitucijos reikalavimais. Straipsnyje pabrėžti skirtumai tarp LR Konstitucijos ir ES Konstitucijos norminių reikalavimų.

