

Case Law Guide. European Constitutionalism and Fundamental Rights

1. Judgment of the ECtHR, *E.B. v. France*, 22 January 2008

Summary of facts

The applicant (E.B.) was a French nursery teacher and also a lesbian. The applicant had been living with other women since 1990. In February 1998 the applicant applied to the Jura Social Services Department for authorisation to adopt a child. In her application she mentioned that she was in a stable lesbian relationship with her partner. In November 1998 the adoption board made a recommendation that E.B.'s application be rejected. The applicant lodged a successful appeal against the decision in the Besançon Administrative Court. This decision was overturned by the Nancy Administrative Court of Appeal who opined that the rejection by the adoption board had not been based on the applicant's choice of lifestyle and therefore did not violate Article 8 or Article 14 of the European Convention on Human Rights. In June 2002 the Conseil d'Etat dismissed her appeal. On 2 December 2002 an application was made to the Strasbourg Court. On 19 September 2006 a Chamber composed of 7 judges relinquished jurisdiction in favour of the Grand Chamber. Neither of the parties objected to the relinquishment. The case was heard before a Grand Chamber of 17 judges.

Questions

1. What distinguishes *E.B.* from *Frette*? Is the margin of appreciation determinant in both cases?
2. What do you think about the "living instrument" doctrine? Do you think that is relevant in the case of children adoption by homosexuals?
3. Is the Court using other international instruments rather than the Convention and its Protocols? In which way are used these instruments?

2. Judgment of the CJEU, *Pfleger and others*, C-390/12, 30 April 2014

Summary of facts

In accordance with Austrian legislation, the finance police carried out several inspections of gaming establishments and proceeded to seize several gaming machines that were operated without authorization. The national authorities imposed several administrative fines and the applicants lodged judicial proceedings. The Independent Administrative Tribunal of the Province of Upper Austria decided to stay the proceedings and to refer several questions to the CJEU. *Inter alia*, the referring court asked the CJEU whether the Austrian legislation, which obliged to obtain an authorization for gambling machines, was compatible with the freedom to provide services guaranteed by EU treaties (article 54 TFEU). Moreover, the referring Court asked for the role of the Charter, specially articles 15 to 17 to the Charter, and requested whether these provisions were applicable to the case.

Questions

1. Explain the typology/classification of cases in which the Charter is applicable when Member States “implement EU law”. What triggers the application of the Charter in *Pfleger*? In which typology/classification would you include *Pfleger*?
2. Compare *Pfleger* with *ERT* (case C-260/89, 18 June 1991). Are they included in the same typology/classification of cases in which Member States “implement EU law”? What is the difference between the two cases in relation to the Charter? In *ERT*, how were fundamental rights applicable to the case?
3. What do you think about the assessment of the Court regarding the Charter? Is the Charter an added value? Or maybe the Court focused more on the analysis of Article 54 TFEU?