

**Eleanor Spaventa, *Free Movement of Persons in the European Union: Barriers to Movement in Their Constitutional Context***, Alphen aan den Rijn, Kluwer European Law Collection, 2008, 204 pages, ISBN: 978 9041124708

### Book Review by Irina Pescărașu\*

As of 1970, the European Court of Justice has played a very important role in extending the scope of the principle of free movement, progressively heading from free movement of workers to other people as well, people without a specific economic activity. Thus it has gradually rendered evident the role of social and individual dimension of cross-border circulation, which was no longer seen as an instrument used for building the internal market.

Eleanor Spaventa develops in this work the ideas regarding the human rights within the European Union and regarding the way in which the provisions of the Treaty establishing the European Community with respect to the free movement of people have been interpreted.

In addition to the foreword of the community law professor, Derrick Wyatt, the work also includes an introduction; it comprises an appraisal of this analysis, which structures 7 independent chapters which are connected to each other, but which are in accordance with the title of the paper, and an explanation for this is the complexity of the issue raised by the free movement of people; and it also has a list of bibliographical references.

The work analyses the evolution of the principle of free movement and places a special emphasis on the notion of boundaries that limit such freedom. The primary purpose of the investigation is to assess whether a satisfying concept and legal explanation may be provided for the broad interpretation given by the European Court of Justice in matters of free movement with respect to the provisions of the Treaty establishing the European Community.

Free movement of workers and the right to establish themselves, along with the right to provide services on the territory of the Member States and with the free movement of goods and capitals make up the corner stone of the internal market.

It is worth mentioning the fact that the right to provide services and the free circulation of goods and capital are aspects that this analysis aims at only tangentially. The focus is thus constituted by the interpretations given over time by the European Court of Justice to the principle of free circulation. Therefore, the original teleological approach aimed at maximising the useful effect of the provisions of the Treaty from the perspective of the above-mentioned

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principle. Consequently, the treaty comprised a legal basis to support the derogations that the Member States were able to resort to in order to limit the right to cross-border movement for all those activities without an economic justification.

But gradually, the European Court of Justice has begun offering other interpretations of the principle of free movement, as the purely economic perspective of the internal market has begun taking on new meanings and aspects. The jurisprudence of the Court has begun tackling those national measures with restrictive effect on the cross-border movement and has tried to control, requesting States that were imposing such limitations to justify them. Moreover, the Court also provided a broad interpretation of the notion of discrimination, including here the direct discrimination, which could only be justified from the point of view of the reasons for restricting the free circulation mentioned in the Treaty and the indirect discrimination, which was interpretable since the reasons thereof could be related to various public interests.

This subject is thus exciting and it is on everyone's minds, but the author's discourse seems slightly rough at times. The analysis concentrated solely on the limits of this principle is exaggerated since it gives the feeling that this indisputable progress of the right to free movement occupies a second, less important place. But this does not make this approach less interesting. After reading the book we have a clear image of the evolution of the principle of free circulation of people

and a complex explanation of the way in which the interpretation of the provisions of the Treaty establishing the European Community regarding the free movement has evolved and the grasping of what this principle means today is achieved.

The author insists on the emergence of a new constitutional dimension in which Member States have considerable responsibilities to the citizens of the Union, as citizens rather than mere economic actors. But such responsibilities must not be confused with the individual rights, which must be observed and more important, must be protected. Among the relevant aspects carefully analysed in her approach the following are also included: the processing of the term of discrimination, the notion of non-discriminatory barrier, non-discriminatory barriers to the right of residence and free circulation of workers, the shortcomings of the access to the market, the notion of European citizenship and its impact on the economic provisions of free circulation and the barriers to the performance of an economic activity as a result of the disproportionate regulations of the market. All these are tackled from the point of view of the relevant jurisprudence for the right to free circulation.

Thus the documented approach of Mrs. Eleanor Spaventa with reference to the conceptual determinations and to the legal possibilities of the right to free movement within the European Union make up valuable guidelines for all those interested in the process of European integration.