Introduction

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Although private law has had a long history, the relationship between fundamental rights[1] and private law has only recently become an issue in legal science. The origins of this relationship go back to the breakthrough of European modernity and the rise of civil society and the nation State between the end of the eighteenth and the beginning of the nineteenth century. In their modern understanding as defensive rights of citizens against the State, human rights only came to the fore with the development of the State as a *puissance absolue et perpétuelle*.[2] These human rights, which claimed universal validity, stem from seventeenth- and eighteenth-century classic natural law.[3] However, the relationship between fundamental rights and private law only became a legal issue in the second half of the twentieth century. With the democratic re-foundation of most continental Western European States after the Second World War (and later, comparably, of the Eastern European States after the fall of the Soviet Union), the *old* nineteenth-century civil codes were rendered compatible with human rights, as well as the social and economic fundamental rights of the *new* Constitutions, which claim to be legally more than just neutral systems of values.

The rapid process of European integration led to an increase in the complexity of the issue of fundamental rights and private law. Out of

[1] Fundamental rights are used here as an overarching term, encompassing the classical civil or human rights of first generation and the constitutional social and economic rights of second and third generation. The first use of the 'three generations' terminology goes back to K. Vasak, 'A 30-Year Struggle', *The UNESCO Courier* (November 1977) 29. For extensive discussion on, and examples of, human rights of first, second and third generations, see C. Tomuschat, *Human Rights Between Idealism and Realism* (Oxford University Press, 2003) 24.

[2] J. Bodin, *Les six livres de la République* (Lyon, 1576).

[3] F. Wieacker, *Privatrechtsgeschichte der Neuzeit* (2nd edn, Göttingen: Vanderhoeck & Ruprecht, 1967) paras. 15–18 with further references (in English: *id.*, *A History of Private Law in Europe* (Oxford: Clarendon Press, 1996) Translation by T. Weir).

the particular fields of cooperation encompassing the European Coal and Steel Community (1951), the European Atomic Energy Community and the European Economic Community (1957), the European Communities were developed in 1965 as a collective independent legal entity with its own 'constitution' (the EC Treaty and its four fundamental economic freedoms) and organs (such as the Council, Parliament, Commission and Court of Justice). Following the signing of the Maastricht Treaty in 1992, these Communities were transformed into a single European Community, one of the three policy pillars of the newly inaugurated European Union which now embraces twenty-seven Member States. With the introduction of Article 6 (2) EU Treaty and the long-standing jurisprudence of the European Court of Justice (ECJ), fundamental rights as guaranteed by the European Convention on Human Rights (ECHR) and enshrined in the constitutional traditions common to the Member States have become 'general principles of European Union law'. They are now regarded as an integral part of EU law[4] and have a role to play in the supremacy of European law *vis-à-vis* the national law of Member States.

In this respect, European fundamental rights can nowadays be considered in a twofold sense: as international law, binding on the Contracting States of the Council of Europe, subject to the jurisdiction of the European Court of Human Rights (ECtHR) in Strasbourg; and as general principles of EU law, subject to the jurisdiction of the ECJ in Luxembourg.

Within the legal landscape of the EU and the EC single market, diversity between the private law systems of the Member States exists and will also continue to exist in the future. This diversity of private laws will be maintained regardless of the destiny of the so-called Common Frame of Reference (CFR), initiated by the European Commission's Action Plan of 2003.[5] The work on the CFR is carried out by a 'Joint Network on European Private Law', consisting of a network of stakeholders and an academic research group (Study Group on a European Civil Code). An academic draft of the CFR was completed in 2009.[6] The future CFR

[4] See e.g. ECJ, 27 June 2006, Case C-540/03, *Parliament* v. *Council* [2006] ECR I-5769.

[5] *Cf.* the communication 'A More Coherent European Contract Law: An Action Plan', COM (2003) 68 final. On this process, see M.W. Hesselink (ed.), *The Politics of a European Civil Code* (The Hague: Kluwer Law International, 2006); K.-H. Lehne and S. Scholemann-Lehne, *Auf dem Weg zum Europäischen Zivilgesetzbuch* (Baden-Baden: Nomos, 2006); proceedings of the Fourth European Lawyers' Convention, 'Europäisches Vertragsrecht' (2007), forthcoming.

[6] See C. von Bar, E. Clive and H. Schulte-Nölke (eds.), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference. Outline Edition* (Munich:

rules – in substance a veritable EU Civil Code[7], independent of its future title – will most likely appear as an additional optional European private law system, alongside other optional canons of legal rules – like the 'Principles of European Contract Law',[8] for example. In particular, as far as actions for damages in tort are concerned, the possibility to opt for the CFR liability rules will have hardly any substantial effect at all.[9]

Through this Europeanisation process, the issue of fundamental rights has thus even reached the United Kingdom. Here, originally in 1791, Jeremy Bentham described the French Human Rights Declaration of 1789 as 'nonsense on stilts'.[10] Fundamental rights without binding force, rights without remedies, seemed absurd to him. Written fundamental rights have been alien to UK law up until very recent times.[11] However, with the incorporation of the ECHR through the Human Rights Act (HRA) 1998, the relationship between fundamental rights and private law has also become a highly disputed issue in the UK. The unavoidable question arises as to whether, to what extent, and in which form English common law has to be further developed in order to meet the requirements of fundamental rights protection set by the HRA. This may justifiably be seen as one of the central challenges in contemporary English law.[12]

Sellier, 2009). The Study Group on a European Civil Code will publish the results in six volumes on 'Principles of European Law', some of which have already been published. On the work of the Study Group see www.sgecc.net.

[7] See European Parliament resolution, 26 May 1989, OJ 1989, C158, p. 400, para. 14 h–j. Some scholars argue that legislative competence is found in Art. III-172 (1) Treaty on a Constitution for Europe (Draft 2004). OJ 2004 C310, 1. However, this is questionable.

[8] O. Lando and H. Beale (eds.), *Principles of European Contract Law Parts I and II* (The Hague: Kluwer Law International, 2000); O. Lando, E. Clive, A. Prüm and R. Zimmermann (eds.), *Principles of European Contract Law Part III* (The Hague/London/Boston: Kluwer Law International, 2003).

[9] On the EC harmonisation of the conflict of laws rules in tort, the so-called 'Rome II' process, see www.europarl.europa.eu/code/dossier/2007/rome_ii/default_en.htm with further references.

[10] J. Bentham, 'Anarchical fallacies', in J. Bowring (ed.), *The Works of Jeremy Bentham* vol. II (Edinburgh: W. Tait, 1843).

[11] The famous Magna Carta Libertatum of 1215 was not a charter of the fundamental rights of citizens but a treaty between the king and his barons.

[12] The academic literature on this topic is immense. See, *inter alia*, P. Craig, *Administrative Law* (5th edn, London: Sweet & Maxwell, 2003) 599; S. Whittaker, 'The Human Rights Act 1998 and Contracts', in H. Beale (ed.), *Chitty on Contracts* (29th edn, London: Sweet & Maxwell, 2004) 1–029 *et seq.*; J. Wright, *Tort Law and Human Rights – The Impact of the ECHR on English Law* (Oxford: Hart Publishing, 2001); W. V. H. Rogers, 'Tort Law and Human Rights: A New Experience', in H. Koziol and B. Steininger (eds.), *European*

1. The historical development

In more than 200 years of history surrounding the relationship between fundamental rights and private law, three phases may be distinguished.

A. The nineteenth century

The relationship between fundamental rights and private law in the nineteenth century is mainly determined by the French model, independent of the respective political constitution of the French State. It begins with the Déclaration des droits de l'homme et du citoyen of 1789. In reality, this declaration contains non-binding legal principles to be implemented by the legislator through binding Acts. The Code Civil (Code Napoléon) of 1804 is a paradigmatic example of the perfect transformation of liberal constitutional principles and natural rights into a Code.[13] Thus, the Code Civil has been regarded for a long time as 'the' binding constitution of French civil society.[14] No conflict in the relationship between fundamental rights and private law seemed to exist: both appeared to coincide.

The German development, although different in many respects, resembles French development in a certain manner. Until the end of the nineteenth century, Germany lacked both a nation State and a common constitution incorporating human rights. The so-called Frankfurt Paulskirchen Constitution of 1848–9, which enshrined binding political freedoms and fundamental rights protecting the privacy of citizens,[15] ended up as ineffective as the 1848 Revolution, aimed at implementing this Constitution in a German Republic. After the unification of Germany as an Empire in 1871, the Bismarckian Constitution was drawn up without fundamental rights. It was left up to the development of private law and to the (delayed) civil codification to implement the liberal fundamental ideals

Tort Law 2002 (Vienna: Springer, 2003) 35. For comparative accounts, see D. Friedmann and D. Barak-Erez (eds.), *Human Rights in Private Law* (Oxford: Hart Publishing, 2002); T. Barkhuysen and S. Lindenbergh (eds.), *Constitutionalisation of Private Law* (Leiden/Boston: Martinus Nijhoff, 2006); and K. S. Ziegler (ed.), *Human Rights and Private Law. Privacy as Autonomy* (Oxford: Hart Publishing, 2007).

[13] On the codification in the French revolutionary era, see P. A. J. van den Berg, *The Politics of European Codification* (Groningen: Europa Law Publishing, 2007) 183–211.

[14] See, for references, B. Fauvarque-Cosson, 'Faut-il un Code civil européen?' (2002) 3 RTDciv 463.

[15] See H. Scholler, *Die Grundrechtsdiskussion in der Paulskirche: eine Dokumentation* (2nd edn, Darmstadt: Wissenschaftliche Buchgesellschaft, 1982); K. Kröger, *Grundrechtsentwicklung in Deutschland* (Tübingen: Mohr Siebeck, 1998) 19–27.

of the time – freedom of contract, private property – into German law. Thus, the Bürgerliches Gesetzbuch (BGB) of 1896–1900, like the French Code Civil, became the 'constitution' of the German Empire, but without any counterpart in political constitutional law: 'liberal law in a non-liberal State'.[16] This did not change during the Weimar Republic. The Weimar Constitution of 1919 contained a catalogue of fundamental rights and economic rights. However, these rights were conceived as political programmatic statements which empowered the democratically legitimised legislator to implement them. They remained largely without effect.

Although different in form, classical *English* private law has much in common with continental civil law. The human rights impact is undoubtedly missing. However, the body of English common law in the nineteenth century was shaped in the wake of the industrial revolution. It was strongly determined by economic and philosophical liberalism. Fault became the founding element of the new tort of 'negligence'. Contract law in England was based on freedom of contract, on the centrality of the individual and the creative power of his/her will.[17] The interventionist and regulatory role of State and courts was restricted. Thus, like the Civil Code in France and imperial Germany, the common law was the 'constitution' of English Victorian society. At the height of the British Empire, when England was dominating world trade, this liberal concept of contract was exported all over the world just like British products.

B. The post-war period

The second phase begins with the post-war period in the second half of the twentieth century. This time, Germany provides the model for the future relationship between fundamental rights and private law. The break from tradition cannot be more emphatic and decisive; the new German Constitution, the 1949 Grundgesetz (GG), encompasses a catalogue of fundamental rights (Articles 1–19) and State policy directives. At the very beginning, the Grundgesetz makes it unequivocally clear that fundamental rights *are directly binding on all State power* (Article 1 (3)). They are not at political disposal, i.e. their very essence cannot be touched

[16] K. Hesse, *Verfassungsrecht und Privatrecht* (Heidelberg: C. F. Müller, 1988) 10: 'freiheitliches Recht in einem nicht-freiheitlichen Staat'.

[17] See on this concept and its further development P. S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford/New York: Clarendon, 1979).

(Article (2) GG).[18] Moreover, in 1951, a Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) was established,[19] which can adjudicate the constitutionality of federal statutes upon application. Above all, however, individual constitutional complaints have been rendered possible. Every citizen can file a complaint before the Federal Constitutional Court alleging that his or her fundamental rights were violated by an act of State power (of the executive, legislative or judiciary).[20] The wisdom of these decisions by the 'Constitution's drafters' cannot be praised enough. In the democratic Germany of the Grundgesetz, *constitutional law* superseded *State law* as the 'crown' of public law. Furthermore, constitutional law primarily became the *case law* of the Constitutional Court.[21]

Nevertheless, as the German saying goes, 'where there is light, there is also shadow'.[22] The vexed *Drittwirkung*[23] doctrine belongs to the realm of shadow. Both constitutional rulings – the direct binding force of fundamental rights on the one hand, and their simultaneous explicit limitation on the State on the other hand – led right into a doctrinal impasse. Especially in employment contract law, family law, and the protection of personality interests in tort law, the influence of fundamental rights in the 1950s triggered radical changes through the jurisprudence of both civil and labour courts.[24] With regard to this initial position, the terminology '(direkte) Drittwirkung' or (direct) horizontal effect seemed most

[18] Among the countless literary contributions, see especially the following three monumental works: K. Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (Munich: Beck, 1977–), seven vols., especially vol. III/1 (1988) and vol. III/3 (1994); J. Isensee and P. Kirchhoff (eds.), *Handbuch des Staatsrechts* (3rd edn, Heidelberg: Müller, 2003–), four vols.; D. Merten and H. J. Papier (eds.), *Handbuch der Grundrechte in Deutschland und Europa*, (Heidelberg: C. F. Müller, 2004–), ten volumes, some of which are forthcoming.

[19] Articles 93, 94 of the GG. The model on which this court was based is the US Supreme Court. The very same reasons why a Constitutional Court was not established by the 1919 Weimar Constitution (especially the limitation of the legislator's competence) determined the introduction of such a Supreme Court and constitutional organ in turn by the drafters in 1949. See D. P. Kommers, *Judicial Politics in West Germany: A Study of the Federal Constitutional Court* (Beverly Hills: Sage, 1976).

[20] Article 93 (1) no. 4a of the GG. A constitutional complaint of this kind was already provided for by the Frankfurt Paulskirchen Constitution of 1848–9.

[21] *Cf.* B. Schlink, 'Die Entthronung der Staatsrechtswissenschaft durch die Verfassungsgerichtsbarkeit' (1989) 28 *Der Staat* 161.

[22] 'Wo es viel Licht gibt, gibt es auch Schatten.'

[23] *Drittwirkung* literally means 'third party effect'. However, its English counterpart in academic discourse is 'horizontal effect'.

[24] See the German report in vol. I of this publication. On family law, see S. Simitis, 'Familienrecht', in D. Simon (ed.), *Rechtswissenschaft in der Bonner Republik* (Frankfurt: Suhrkamp, 1994), 390 at 416 *et seq.*

appropriate.[25] This approach opened the door to challenging the old, well-established supremacy and autonomy of private law, as well as its scientific primacy, which resulted in alarmed reactions within civil law academia. These reactions intended to limit the influence of constitutional law.[26] The contribution of the BVerfG to this debate in its famous *Lüth* judgment of 1958[27] led to a major breakthrough in this area. However, the court was rather ambivalent. On the one hand, it confirmed the supremacy of constitutional law over other national law, and it stated that constitutional law had a broad comprehensive 'radiating effect' (*Ausstrahlungswirkung*) on the whole legal system. On the other hand, as far as private law is concerned, this radiating effect should be directed by the 'general clauses' (*Generalklauseln*) of the Code, i.e. open norms such as good faith or public policy. These serve as gateways for the influence of fundamental rights and constitutional principles on private law. Thus, the *Lüth* judgment became the basis of the so-called *indirekte Drittwirkungslehre* (indirect horizontal effect doctrine). This solution fitted perfectly the case at hand,[28] and served to settle the dispute between private and constitutional lawyers, but was not a sound basis on which to develop a general solution for the relationship between fundamental rights and private law.

The disputes on the *Drittwirkung* doctrine, which have been vexing legal academia throughout Europe in the meantime,[29] are still ongoing.[30]

[25] This term was coined by H. P. Ipsen 'Gleichheit', in F. L. Neumann, H. C. Nipperdey and U. Scheuner (eds.), *Die Grundrechte*, vol. II (Berlin: Duncker & Humblot, 1954), 111 at 143. A prominent representative of the *Drittwirkung* doctrine in the 1950s was H. C. Nipperdey, a law professor in Cologne and president of the Federal Labour Court in Kassel. *Cf.* T. Hollstein, *Die Verfassung als "Allgemeiner Teil". Privatrechtsmethode und Privatrechtskonzeption bei H. C. Nipperdey* (Tübingen: Mohr Siebeck, 2005).

[26] Particularly harsh in this regard is the criticism by U. Diederichsen, 'Das Bundesverfassungsgericht als oberstes Zivilgericht' (1998) 198 AcP 171.

[27] BVerfG, 15 January 1958, BVerfGE 7, 198; NJW 1958, 257; JZ 1958, 125 with case note by B. Wolff (available in English at www.ucl.ac.uk/laws/global_law/german-cases/cases_bverg.shtml?15jan1958).

[28] This case concerned a call for boycott by one of the parties, which was deemed an intentional and *anti bonos mores* interference with the business of the other parties (BGB, § 826). *Cf.* H. C. Nipperdey, 'Boykott und freie Meinungsäußerung' (1958) DVBl. 445.

[29] For a comparative account, see I. v. Münch (ed.), *Die Drittwirkung der Grundrechte* (Frankfurt: Lang, 1998).

[30] See e.g. M. Ruffert, *Vorrang der Verfassung und Eigenständigkeit des Privatrechts* (Tübingen: Mohr Siebeck, 2001); R. Poscher, *Grundrechte als Abwehrrechte. Reflexive Regelung rechtlich geordneter Freiheit* (Tübingen: Mohr Siebeck, 2003); for a critical commentary see M. Kumm, 'Who is Afraid of the German Constitution? Constitutional Rights and Principles and the Constitutionalization of Private Law' (2004) 7 *German Law Journal* 341.

Nonetheless, they are rather superfluous. Meanwhile, a diffuse consensus exists that the distinction between direct and indirect *Drittwirkung* is not appropriate, nor is this term itself helpful to clarify the relationship between fundamental rights and private law.[31] What remains true is the BVerfG's decision that fundamental rights have an objective normative effect on all other legal fields. In private law, the *way in which* this effect works depends on the particular fundamental right and the single type of case in question. There cannot be just one unique concept. Nowadays, it is undisputed that fundamental rights assign a duty of protection to the State, which, especially through its legislation, also ought to provide for the sufficient protection of citizens against interference by other private actors.[32] What also holds true is that fundamental rights can affect the legal relationships between private parties, for example, through general clauses of private law. This is especially true for contract law, where legal concepts open to value judgements such as equity (*Billigkeit*) or good faith (*Treu und Glauben*) serve as boundaries to private autonomy and the freedom to shape the content of contracts. Although private law refers to extra-legal norms through clauses such as *boni mores* (good morals, *gute Sitten*), in today's secular, differentiated and multicultural societies, one can no longer revert to a religious understanding of good morals or to fictitious role models such as 'right thinking members of society'. The ultimate binding values became the 'constitutional order' with fundamental rights (dignity, freedom, equality) at the fore. Finally, constitutional law can also affect private law in another, direct way. Prominent examples of this in German legal development are the case law acknowledgment of the protection of personality rights under § 823 (1) of the BGB, and the granting of the remedy of non-economic damages ('equitable compensation', *billige Entschädigung*) in cases of personality rights violation.[33]

[31] Nipperdey himself later gave up on this terminology; see H. C. Nipperdey, *Grundrechte und Privatrecht* (Krefeld: Scherpe, 1961) 15.

[32] J. Dietlein, *Die Lehre von den grundrechtlichen Schutzpflichten* (2nd edn, Berlin: Duncker & Humblot, 2005). However, the radiating effect in private law cannot be reduced to this single aspect. (But see C. W. Canaris, *Grundrechte und Privatrecht – Eine Zwischenbilanz* (Berlin: de Gruyter, 1999). *Cf.* also T. Langner, *Die Problematik der Geltung der Grundrechte zwischen Privaten* (Frankfurt: Lang, 1998) and T. Gutmann, *Iustitia Contrahentium. Zu den gerechtigkeitstheoretischen Grundlagen des deutschen Schuldvertragsrechts* (Tübingen: Siebeck Mohr, 2008).) For a critical commentary, see G. Brüggemeier, 'Constitutionalisation of private law – the German perspective', in T. Barkhuysen and S. Lindenbergh (eds.), n. 12 above at 59.

[33] See BGH, 14 February 1958, BGHZ 26, 349 – *Herrenreiter*; BGH, 15 November 1994, BGHZ 128, 1 – *Caroline von Monaco* (no. 1).

The direct normative effect of fundamental rights on private law is decisive in the relationship between fundamental rights and private law. The Constitution is no longer a neutral system of values,[34] fundamental rights are no longer limited in their function as defensive rights against the State.[35] The way this 'radiating effect' operates is diverse and by no means reducible to one unitary concept.

C. *The present times: harmonisation of approaches*

The third phase brings the different national development strands together and intertwines them with the Europeanisation dimension. Even where the fundamental rights enshrined in the national Constitutions were considered not binding (such as the traditional French approach since the 1789 Déclaration, or the prevalent opinion in Italy during the first decades after the enactment of the 1948 Constitution), case law development has stepped back from this position and has recognised their binding force in the meantime. In France, this was achieved through the decisions of the Conseil constitutionnel, established under the Constitution of the Fifth Republic in 1958. Since 1971, a binding '*bloc de constitutionalité*' is acknowledged embracing, in particular, the Constitution of the Fifth Republic, the 1789 Déclaration, and the economic and social fundamental rights enshrined in the Preamble to the 1946 Constitution.[36] The Conseil constitutionnel itself claimed the right to review the constitutionality of laws. In Italy, a comparable process has taken place from the 1970s onwards through the jurisprudence of the Constitutional Court (Corte Costituzionale) and the Supreme Court (Corte di Cassazione).[37] This development came to an exemplary end with the 1976 Portuguese Constitution, where both the vertical and the horizontal effect of fundamental rights are expressly acknowledged.[38] Binding fundamental

[34] Nevertheless, this position is still held by U. Diederichsen, 'Das Rangverhältnis zwischen den Grundrechten und dem Privatrecht', in C. Starck (ed.), *Rangordnung der Gesetze* (Göttingen: Vandenhoeck & Ruprecht, 1995), 39; *ibid.*, U. Diederichsen, n. 26 above.

[35] See, however, R. Poscher, n. 30 above; earlier already, see J. Schwabe, *Die sogenannte Drittwirkung der Grundrechte* (Munich: Goldmann, 1971).

[36] Code Civil, 16 July 1971, decision 71–44 DC ('Liberté d'association').

[37] See especially C. Cost., 26 July 1979 no. 88, Foro it. 1979, I, 2543; Corte Cost. 14 July 1986, no. 184, Foro it. 1986, I, 2053; Corte Cost. 27 October 1994, no. 372, Foro it. 1994, I, 3297; Cass. Civ. 31 May 2003, nos. 8827, 8828, Danno e resp. 2003, 816; Corte Cost. 11 July 2003, no. 233, Foro it. 2003, I, 2201.

[38] Article 18 (1): 'The constitutional provisions relating to rights, freedoms and guarantees shall be directly applicable to, and binding on, both public and private bodies.'

rights characterise most contemporary constitutions of the EU Member States.

In addition to these national constitutional laws, the European fundamental rights of the ECHR have gained significant importance. As is stated at the beginning of this Introduction, the legal basis of their applicability in all EU Member States is twofold. First, they are a binding constitutive element of the national legal systems of the Contracting States, independent of the place the Convention rights occupy in the national hierarchy of norms.[39] Second, they are an integral part of EU law (EU Treaty, Article 6(2)),[40] insofar as they prevail over all Member States' laws, including constitutional laws. They have direct normative effect on the twenty-eight private law systems of the EU. The Member States' civil courts may have a large margin of discretion on how to incorporate and implement this binding effect, but there is no alternative whatsoever to compliance with these fundamental rights and to coherence regarding the outcomes.

The following contributions by the young researchers of the EU Research Training Network 'Fundamental Rights and Private Law in the European Union' evaluate this influence of national and European fundamental rights in private law, dealing with selected topics in a comparative perspective.

2. The comparative analyses: an overview

A. Contract

The liberal principle of contractual freedom determined the codifications of the nineteenth century, whether mediated through the natural political law, as in France, or through 'natural private law', as in Germany. Liberties such as freedom of contract and private ownership turned the civil codes of the nineteenth century into a sort of civil constitution of the industrial market society. They marked the breakthrough into civic modernity – 'from status to contract' (Maine). Pursuant to its origins in the Enlightenment and natural law, there were nevertheless intrinsic boundaries in this type of freedom of action, i.e. limitations in respect

[39] See A. Z. Drzemczewski, *European Human Rights in Domestic Law: A Comparative Study* (Oxford University Press, 2004).

[40] ECJ, 27 June 2006, Case C-540/03, *Parliament* v. *Council* [2006] ECR I-5769: 'Fundamental rights form an integral part of the general principles of law, the observance of which the ECJ ensures. The ECHR has special significance in that respect.'