Reverse Discrimination in EC Law

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Alina Tryfonidou

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For my Family

Table of Contents

Dedication **v**

Acknowledgements **xiii**

List of Abbreviations **xv**

Chapter 1
Introduction **1**

I Introduction 1
II Reverse Discrimination and the Purely Internal Rule 3
A The Origins of the Purely Internal Rule 3
B The Purely Internal Rule 7
C The Linking Factor Test 10
D Reverse Discrimination 13
E Is Reverse Discrimination Prohibited under EC Law? 18
III The Main Aim and Question of the Book 21
IV Structure of the Book 22
V Methodology 24

Part I
The Court's Traditional and New Approaches to Purely Internal Situations **27**

Chapter 2
The Traditional Approach of the Court **29**

I Introduction 29
II Purely Internal Rule, Reverse Discrimination and the Fundamental Freedoms: The Court's Traditional Approach 29

A Free Movement of Goods 31
1 Reverse Discrimination Exercised by a Member State against its Own Goods 33
2 Reverse Discrimination Arising as a Result of the ECJ Confining the Application of its Judgments to Imported Goods 34
3 Reverse Discrimination Arising as a Result of the Implementation of EC Minimum Harmonization Legislation 35
4 Reverse Discrimination as a Difference in Treatment between Domestic Goods in a Purely Internal Situation and Re-imported Domestic Goods 37
5 Article 29 EC and the Application of the Linking Factor Test: The Traditional Approach 38
6 Articles 23-25 and the Application of the Linking Factor Test: The Traditional Approach 39
B Free Movement of Workers 40
1 Article 39 EC and Purely Internal Situations 42
2 Article 39 EC and Reverse Discrimination 42
3 Establishing a Link with EC Law: Export Restrictions 44
4 Establishing a Link with EC law: Obstacles to the Free Movement of a Person Back to his or her Member State of Origin in Order to Work 45
C Freedom of Establishment 46
1 Article 43 EC and Purely Internal Situations 47
2 Article 43 EC and Reverse Discrimination 48
3 Establishing a Link with EC Law: Export Restrictions 49
4 Establishing a Link with EC Law: Obstacles to the Free Movement of a Person Back to his or her Member State of Origin in Order to Work in a Self-employed Capacity 49
D Free Movement of Services 50
1 Article 49 EC and Purely Internal Situations 52
2 Article 49 EC and Reverse Discrimination 52
3 Establishing a Link with EC Law: Export Restrictions 54
4 Establishing a Link with EC Law: Obstacles to the Freedom of a Person to Provide Services to Persons Established in his or her Member State of Origin 54
E Free Movement of Capital 55
III The Problems with the Traditional Approach of the Court 56

Chapter 3
The Court's New Approaches to a Link with EC Law: Responding to the Problems of the Traditional Approach **63**

I Introduction 63
II Some General Comments on the Court's Case-Law Where the Traditional Approach Towards Finding a Link with EC Law was not Followed 64
III The Court's New Approach Towards Finding a Link With EC Law in some of Its Case-Law in the Area of the Free Movement of Goods and Services 67
A The Approach Followed by the Court in Finding a Link with EC Law in Competition Law Cases 67
B The New Approach Followed by the Court when Delimiting the Scope of the Customs Duties and Free Movement of Goods Provisions 71
1 The Application of the New Approach of the Court when Delimiting the Scope of the Customs Duties Provisions 72
2 The Application of the New Approach of the Court when Delimiting the Scope of Article 28 EC 76
3 The Application of the New Approach of the Court when Delimiting the Scope of Article 29 EC 84
C The New Approach Followed by the Court when Delimiting the Scope of the Free Movement of Services Provisions 85
D Some General Comments on the Court's New Approach to the Application of the Linking Factor Test 88
E Conclusion 94
IV Free Movement of (Economically Active) Persons: The Court Tweaks its Traditional Approach to Prevent the Emergence of Reverse Discrimination 95
A Case-law in the Area of Family Reunification Rights 96
B Case-law in the Area of Educational Qualifications 106
C Case-law in the Area of Freedom of Establishment and the Free Movement of Workers 108
D Problems caused by the Approach Followed by the Court in the above Case-law 114
1 Inordinate Extension of the Scope of EC Law 114
2 Instead of Removing the Harsh Consequences of the Strict Application of the Purely Internal Rule, the Injustice of the Situation is Enhanced 116
3 Abuse of EC Law 117
E Conclusion 118

V The New Approach Followed by the Court When Delimiting the Scope of its Jurisdiction in Preliminary Rulings Proceedings 119
A The New Approach Followed by the Court when Delimiting the Scope of its Jurisdiction in Instances where National Law Prohibits the Emergence of Reverse Discrimination 121
B The new Approach Followed by the Court when Delimiting the Scope of its Jurisdiction in Instances Involving '*renvoi*' 123
VI Conclusion 126

Part II
Reverse Discrimination as an Incongruity in the Contemporary EC **127**

Chapter 4
Reverse Discrimination and the Free Movement of Persons: An Incongruity in a Citizens' Europe **129**

I Introduction 129
II Definition of the Terms to be used Throughout the Chapter 131
III Market Citizenship and Reverse Discrimination 131
A The Market Citizenship Case-law 132
1 Rights under Article 7(2) of Regulation 1612/68 132
2 Students 134
3 Service Recipients and Consumers 135
B A General Right of Residence for Economically Inactive (but Economically Self-sufficient) Persons 135
C Market Citizenship and Reverse Discrimination 137
IV Reverse Discrimination and the New Status of Union Citizenship: The First Reactions 139
V Broadening the Scope of Application of Community Law: The Court's New Aim of Developing a Meaningful Notion of Union Citizenship 142
A The Court's Case-law where Rights have been Granted to Union Citizens who have not Contributed, even Indirectly, to the Process of Establishing an Internal Market 144
VI Is Reverse Discrimination, Now, a Form of a Difference in Treatment Prohibited by EC Law? 154
A Reverse Discrimination as a Difference in Treatment based on Whether a Person has Contributed to the Establishment of the Internal Market 154

B Are Persons who can Show a Contribution to the Internal Market and Persons who are Unable to Show such a Contribution, similarly Situated for the Purposes of Community Law? 155
C Is Reverse Discrimination a Justified difference in Treatment between Persons Similarly Situated? 161
D Is Reverse Discrimination a form of Discrimination Prohibited by EC Law? 162
1 The Development of the Scope of the Community Principles of Equality and Non-discrimination on the Grounds of Nationality 162
2 Is Reverse Discrimination a Violation of the Community Principle of Equality? 166

Chapter 5
Reverse Discrimination and EC Trade: An Incongruity in a Genuine Internal Market **173**

I Introduction 173
II Reverse Discrimination as an Indispensable Feature in the Process of Establishing an Internal Market 175
III The Scope of Application of the Internal Market Provisions of the Treaty 180
IV From the Construction of the Common Market to the Functioning of the Internal Market: Reappraising the Priorities of Community Trade 180
V The Use of Article 95 EC in the Process of Ensuring that the Internal Market is Functioning Properly 184
VI The Use of Treaty Provisions for Prohibiting National Measures that Jeopardize the Proper Functioning of the Internal Market 194
VII Reverse Discrimination and the Principle of Undistorted Competition in a Properly-Functioning Market 195
VIII Preventing the Emergence of Reverse Discrimination in a Properly-Functioning Market 199
A Delimiting the Scope of Application of EC Legislation in Accordance with the Aim of Preventing the Emergence of Reverse Discrimination 200
B Avoiding the Emergence of Reverse Discrimination in the Area of Customs Duties 205
IX 'Spontaneous Harmonization': An Alternative Solution to the Problem of Reverse Discrimination 208
X Conclusion 215

Chapter 6
Conclusion **217**

I Conclusions 218
II Which Instances of Reverse Discrimination must be Remedied? 220
III Possible Solutions to the Reverse Discrimination Conundrum: The Way Forward 225
A National Level 225
1 Spontaneous Harmonization 225
2 The (national) Constitutional Principle of Equality 227
B EC Level 227
1 Positive Harmonization 227
2 Negative Harmonization 229

List of References **233**

Table of Cases and Secondary Legislation **249**

Table of Treaty Articles **267**

Index **269**

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Alina Tryfonidou
Leicester, September 2008

List of Abbreviations

All E R	All England Law Reports
AJCL	American Journal of Comparative Law
ARIEL	Austrian Review of International and European Law
CEE(s)	Charge(s) having equivalent effect to customs duties
CEPS	Centre for European Policy Studies
CJEL	Columbia Journal of European Law
CLJ	Cambridge Law Journal
CLP	Common Legal Problems
CMLR	Common Market Law Reports
CMLRev	Common Market Law Review
CYELS	Cambridge Yearbook of European Legal Studies
EBLRev	European Business Law Review
EC	European Community
ECJ	European Court of Justice
ECR	European Court Reports
ECSC	European Coal and Steel Community
EEC	European *Economic* Community
EIPA	European Institute of Public Administration
EIoP	European Integration Online Papers
EJML	European Journal of Migration and Law
ELJ	European Law Journal
ELRev	European Law Review
EPL	European Public Law
ERPL	European Review of Private Law
EU	European Union
Fordham Int'l LJ	Fordham International Law Journal
GLJ	German Law Journal

ICEL	Irish Centre for European Law
ICLQ	International and Comparative Law Quarterly
IJCLLIR	International Journal of Comparative Labour Law and Industrial Relations
IJEL	Irish Journal of European Law
ILJ	Industrial Law Journal
IR	Irish Reports
JCMS	Journal of Common Market Studies
JEPP	Journal of European Public Policy
JSSL	Journal of Social Security Law
JSWFL	Journal of Social Welfare and Family Law
KCLJ	King's College Law Journal
LIEI	Legal Issues of European Integration/Legal Issues of Economic Integration
LS	Legal Studies
MEP	Member of the European Parliament
MEQR(s)	Measure(s) having equivalent effect to quantitative restrictions
MJ	Maastricht Journal of European and Comparative Law
MLR	Modern Law Review
OJ	Official Journal of the European Communities
OJLS	Oxford Journal of Legal Studies
OUP	Oxford University Press
Riv dir Internaz	Rivista di Diritto Internazionale
SEA	Single European Act
TEU	Treaty on European Union ('Maastricht Treaty')
TFEU	Treaty on the Functioning of the European Union
YEL	Yearbook of European Law

Chapter 1
Introduction

I INTRODUCTION

This work is a study of the problem of reverse discrimination in EC law. In particular, the question that this book aims to answer is whether reverse discrimination emerging in the context of the Community's internal market policy, is still a permissible form of differential treatment in the Community.

The term 'discrimination' always has a negative connotation. Discrimination is not, merely, differential treatment. It is differential treatment of similar situations that is not justified. It is the use of the term in the context of anti-discrimination law and, in particular, that of sex and racial equality, that is mostly known amongst laymen. In the twentieth century, as a result of the action of various political and human rights movements, it became generally acknowledged that it is inherently bad to differentiate between groups of persons, if the *only* ground on which the differential treatment is based is an immutable characteristic such as sex, colour or race. It is considered to be blatantly wrong to treat a group of persons more harshly than others, just because they possess a characteristic which cannot be changed and for which they cannot be held responsible. It is only if the differentiation is grounded on some other (acceptable) criterion and merely happens to disadvantage a particular group of persons who share a certain characteristic, that is considered to be justified and thus can escape the characterization of 'discrimination'.

Certain characteristics are the 'usual suspects' for turning instances of differential treatment into discrimination; in other words, persons who carry those characteristics usually form a group which is 'expected' to be discriminated against, even though this is totally wrong. In the context of EC anti-discrimination law, apart from sex which has, since the genesis of this Community policy, been