



ECJ steadily enlarging citizens' rights

Dick Leonard

When the European Constitutional treaty was effectively killed off by French and Dutch voters last year, it appeared to be a black day for the rights of EU citizens. Consigned to the rubbish bin were not only a whole raft of provisions designed to make the EU a more effective actor in the world, but also the Charter of Fundamental Rights which would have been incorporated into European law.

Even without the Charter, however, those rights are steadily being expanded, due to the case law of the European Court of Justice. Based on the wording of Article 12 of the Rome treaty, which states, “any discrimination on the grounds of nationality shall be prohibited”, and on the Maastricht treaty provisions on EU citizenship, the Court has reached a whole series of decisions which have confirmed the rights of individual plaintiffs, and thereby guaranteed that the rights of many others, in similar situations, will be recognized.

Speaking in a personal capacity, the Belgian judge at the Court, Koen Lenaerts, commented on a number of recent cases, in an address to a conference organised last month by the Euro-Citizens' Action Service (ECAS).

The first of these had been brought by the Commission against the Spanish government, which had passed a law granting all Spanish nationals, foreign residents of Spain, and EU citizens under 21 years of age, free admittance to museums. The Court ruled that EU citizens must be treated on the same basis as Spaniards, and they are now admitted free of charge, whatever their age.

The second concerned a British citizen who had been assaulted during a brief stay in Paris by an unidentified assailant, and had been refused compensation from a national fund, which was restricted to French citizens, lawful foreign residents and nationals of countries which had entered into reciprocal agreements with France. The Court ruled that to deny him compensation would amount to discrimination under Article 12 of the treaty.

The British government had itself been over-ruled in another case, where a German citizen, formerly working in Britain, had been refused a residence permit on the grounds that he was not pursuing an economic activity. The Court ruled that, whereas this would have been a legitimate interpretation of Articles 39, 43 and 49 of the Rome Treaty, it had been superseded by the Maastricht treaty which confers a right of every citizen to “move and reside freely within the territory of the Member States”.

Other cases cited by Judge Lenaerts concerned the right of a Spanish woman living in Germany, but not pursuing an economic activity, to receive family allowances, and two

The Foreign Policy Centre



Progressive Thinking for a Global Age

cases from Italy where German and Austrian citizens charged with offences were denied the right of having their cases heard in German, despite the fact that the Italian constitution guaranteed this to its own citizens from South Tyrol.

In the majority of cases, it has only been the enterprise and persistence of individuals in launching complicated and often lengthy judicial processes which has enabled their (and other people's) rights to be conceded.

Here I must make a rather embarrassing admission. I too could have been one of these intrepid individuals, but farked it because I just couldn't be bothered. There is a French law that people over 65 are excused paying for a television licence, the only requirement being an attestation from the income tax authority that one's income is not over a certain (large) amount.

I applied for a free licence on account of a small secondary residence, where we live for only a few weeks in the year, and, not paying income tax in France, submitted my Belgian tax declaration. This was blandly ignored by the French audio/visual authority, despite repeated correspondence. They eventually threatened to set the bailiffs on me if the fee was not paid.

I am not proud to written out a cheque on the spot, and I hope very much that other EU citizens in comparable situations will follow the example of the plaintiffs in the cases referred to by Judge Lenaerts rather than my own pathetic climb-down. The Court of Justice is doing an excellent job in enforcing the rights of EU citizens, but its hands are tied unless we stand up for ourselves.

Dick Leonard is author of The Economist Guide to the European Union.