ARTICLES

Legislative, Judicial, Soft Law, and Cooperative Approaches to Harmonizing Corporate Income Taxes in the US and the EU

Charles E. McLure Jr.

The Treaty of Lisbon and Its Impact on the European Union’s Democratic Deficit

Stephen C. Siebersen

A “Switch in Time” for the European Community? Lochner Discourse and the Recalibration of Economic and Social Rights in Europe

Ian H. Eliasoph

The Two Europes of Human Rights: The Emerging Division of Tasks Between the Council of Europe and the European Union in Promoting Human Rights in Europe

Olivier De Schutter

Comparative Cause and Effect: Consumer Insolvency and the Eroding Social Safety Net

Jason J. Kilborn

STUDENT NOTE

Suppressing Dissent: The Pivotal Role of the Prosecutor in Criminal Defamation Proceedings in Countries Subject to the European Court of Human Rights

Dean Chapman

CASE LAW

Case C-432/05 Unibet- Some Practical Remarks on Effective Judicial Protection

LEGISLATIVE DEVELOPMENT

THE TWO EUROPEES OF HUMAN RIGHTS: THE EMERGING DIVISION OF TASKS BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN UNION IN PROMOTING HUMAN RIGHTS IN EUROPE

Olivier De Schutter*

This article addresses the division of tasks between the Council of Europe and the European Union in the protection of fundamental rights in Europe. As part of its project to establish an area of freedom, security, and justice, the EU has recently sought to develop a more proactive fundamental rights policy. However, in the debate on the shape of the EU’s fundamental rights policy, one issue that has repeatedly surfaced is the EU’s relationship with the Council of Europe, the leading regional organization for standard-setting and monitoring in the field of human rights. In particular, some have questioned whether the principles of subsidiarity and proportionality which should guide the Union’s exercise of the powers it shares with the member states should take into account either the fact that the Council of Europe has already defined standards in the area of fundamental rights for the EU member states, or the fact that the forum of the Council of Europe might be better suited than the EU for the development of new standards where new problems emerge. This study is an attempt to answer this question in a rapidly changing political environment.

I. INTRODUCTION ........................................................................................................510
II. THE CONTEXT .........................................................................................................512
III. THE DEBATE SURROUNDING THE EU FUNDAMENTAL RIGHTS AGENCY.....517
   A. Reactions within the Council of Europe to the Proposal for an EU
      Fundamental Rights Agency ..............................................................................517
   B. The Reality of the Duplication of Tasks between the EU
      Fundamental Rights Agency and the Council of Europe Bodies .................522
      1. Two meanings of monitoring ...................................................................523
      2. The EU Member States implementing Community law .......................524
      3. Third countries .........................................................................................526
   C. An Evaluation .....................................................................................................529
      1. The risk of “dividing lines in Europe” .......................................................529
      2. Economizing resources .............................................................................530
      3. The risk of weakening the European system of human rights
         protection ......................................................................................................532

* Olivier De Schutter is Professor at the Catholic University of Louvain (UCL) and at the
  College of Europe (Natolin), and a Member of the Global Law School Faculty at New York University.
  He is a visiting professor at Columbia University (2007–08).