



Re-evaluated or Just Old-New? The Fundamental Social Rights Dimension of the Right to Work under Article 15 CFREU and in the Case-Law of the CJEU¹

Zsófia PAPP

PhD student, University of Miskolc,
Ferenc Deák Doctoral School of the Faculty of Law (Miskolc, Hungary)
Intern, Central European Academy (Budapest, Hungary)
e-mail: zsofia.papp@centraleuropeanacademy.hu
ORCID iD: 0009-0008-0414-9036

Abstract. The right to work, widely regarded as a cornerstone of fundamental labour rights and arguably the most universal among social rights, may be examined across diverse national and international frameworks. Moreover, the analysis lends itself to multiple perspectives and approaches. Yet, owing to its social rights character, the right to work suffers from conceptual ambiguity: there is no settled consensus on its scope, normative content, or legal consequences. Its economic and political embeddedness further challenges the efforts of both legislators and courts that grapple with ascribing a coherent and uniform meaning to this right. This paper focuses on Article 15 of the Charter of Fundamental Rights of the European Union, which enshrines the freedom to choose an occupation and the right to engage in work. As a pioneering instrument in bridging the gap between first- and second-generation human rights, the Charter not only placed social rights firmly on the European integration agenda but also elevated them to the status of fundamental freedoms and human rights within the EU legal framework. The analysis proceeds along two axes. First, it examines the content and the background of formulation of Article 15, both on its own terms and in parallel with other international social rights instruments. Second, it assesses how the Court of Justice of the European Union has interpreted the right to work since the Treaty of Lisbon, when the CFREU acquired binding legal force. Through this dual lens, the study seeks to assess and understand differences in articulation, examine evolving case-law, and highlight broader trends regarding the development, scope, and limitations of labour rights protection within the European Union.

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1. Introduction

Much has been written about the often conflictual relationship between national or EU-level social policy and internal market law, particularly regarding the tension between fundamental social rights and the fundamental freedoms of the internal market.² These dynamics³ have posed challenges for the European integration project since its inception, challenges that have not been eased by the Charter of Fundamental Rights of the European Union (hereinafter: CFREU)⁴ acquiring binding legal force. On the contrary, this development has conferred a constitutional, rights-based dimension to the debate.⁵ The strengthening of market freedoms at the expense of the welfare state – often referred to as ‘Americanization’ – and the evolving concept of a ‘highly competitive social market economy’,⁶ which aims to reconcile economic interests and development with social regulation and labour protection, thereby shaping and sustaining a European Social Model (ESM), have long attracted scholarly interest and have remained topical over the years.

According to Mark Freedland – as formulated by Catherine Barnard –, ‘the evolution of EU employment law has always depended on the possibility of legitimating employment law in economic policy terms as well as social policy terms’.⁷ In other words, EU employment law advances more easily when it can be anchored in both social considerations and economic rationales. At the same time, the tendency of economic policymakers to seek social legitimation for their initiatives creates further space for employment law to grow and frame itself as aligned with economic objectives.⁸

When it comes to Article 15 CFREU, which enshrines the freedom to choose an occupation and the right to engage in work, it is perhaps stating the obvious to note that the delineation and delimitation of these rights within EU law – in parallel with the EU’s (limited) competences in the field of social policy⁹ – also occur

2 See, for instance, Deakin, 2019a, pp. 53–80.

3 For a thorough analysis of the evolution of EU social policy, see Barnard, 2011, pp. 641–686.

4 European Union, 2012a.

5 O’Connor, 2020, p. 287.

6 European Union, 2012b, Art. 3, para. 3.

7 Barnard, 2021, p. 647.

8 *Idem*, pp. 647–648.

9 The scope of these competences can also be seen as shaped by the legal and cultural foundations upon which the EU legal system is built.

in the context of their interaction with the Union's market freedoms.¹⁰ Though fundamental, the right to work is not a subjective right when considered in the light of its scope and potential limitations – a characterization that is also reflected in the EU's legal and economic approach to this right.¹¹ Therefore, the deliberate limitation of the fundamental social right aspects of Article 15 – shaped to strike a balance with the overall objectives of the EU¹² – is an important factor to bear in mind when evaluating the meaning and the scope of this provision. This holds true both when analysing Article 15 in isolation or in comparison with other international instruments on fundamental labour rights and in the interpretation developed by the Court of Justice of the European Union (hereinafter: CJEU) in its case-law, which has played a vital role in 'fleshing out the substance of the bare bones'¹³ of the CFREU. These are the two axes along which this paper will unfold in the following sections.

2. How and Why Does the CFREU's Right to Work Differ from Its Counterparts?

In order to answer the question posed in the title of this section, it is necessary to examine both the background of formulation – sources – and the content of Article 15, considered individually as well as in parallel with other international social rights instruments.

2.1. Sources of Article 15 CFREU

The substance and formulation of Article 15 have been shaped by a rich tapestry of legal sources of varying nature and scope, including instruments of the Council of Europe, international treaties, EU-level documents, as well as the domestic laws and constitutional traditions of the Member States.¹⁴ According to the Explanation on Article 15,¹⁵ '[f]reedom to choose an occupation, as enshrined in Article 15(1),

¹⁰ Mantouvalou and Frantziou, 2021, p. 450.

¹¹ Zaccaria, 2017, p. 335.

¹² Mantouvalou and Frantziou, 2021, p. 450.

¹³ Barnard, 2021, p. 662.

¹⁴ According to Article 6(3) TEU, fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, constitute general principles of EU law. European Union, 2012b. These general principles – through which, initially, the right to work was also recognized – are the source from which many provisions of the CFREU derive. Accordingly, there is also an indirect connection between ECHR rights, constitutional traditions on the one hand and CFREU rights on the other. For a discussion on the relationship between the parallel systems of unwritten and written fundamental rights, taking the form of general principles and the CFREU, see O'Connor, 2020, pp. 305–306.

¹⁵ European Union, 2007.

is recognised in Court of Justice case-law'; it 'also draws upon Article 1(2) of the European Social Charter¹⁶ [...] signed on 18 October 1961 and [...] ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989'.¹⁷ Moreover, the right to work is recognized as a fundamental right¹⁸ in several UN legal instruments, occupying a particularly prominent place in Article 23(1) of the Universal Declaration of Human Rights (UDHR)¹⁹ and in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁰ The interpretative framework provided by the General Comment No. 18 on the right to work,²¹ issued by the UN Committee on Economic, Social and Cultural Rights, offers further guidance on the scope and meaning of this right as enshrined in the latter.

Though the European Convention on Human Rights (hereinafter: ECHR) does not explicitly recognize the right to work as such among the fundamental rights it protects – unsurprising, given its original focus on safeguarding civil and political rights against state interference²² –, it remains relevant to this discussion. Its indirect connection to the right to work – and by extension to Article 15 CFREU²³ – primarily stems from the interpretative evolution²⁴ of the European Court of Human Rights (hereinafter: ECtHR). Guided by the principles of teleological

16 According to Article 1(2) of the ESC, the Contracting Parties, with a view to ensuring the effective exercise of the right to work, undertake to effectively protect the right of the worker to earn a living in an occupation freely entered upon. Council of Europe, 1961.

17 Point 4 of the Community Charter stipulates that every individual shall be free to choose and engage in an occupation, in accordance with the regulations applicable to each occupation. European Community, 1989.

18 Mantouvalou and Frantziou, 2021, p. 454.

19 Article 23(1) of the UDHR guarantees that everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment. United Nations General Assembly, 1948. United Nations General Assembly, 1948.

20 Article 6(1) of the ICESCR provides that the States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain their living by work that they freely choose or accept, and undertake to take appropriate steps to safeguard this right. United Nations General Assembly, 1966.

21 United Nations Committee on Economic, Social and Cultural Rights, 2006.

22 Mantouvalou, 2015, pp. 54–55.

23 In its decades-long development of fundamental rights through case-law – initially incorporated into EU law in the form of general principles that later served as sources of CFREU rights –, the CJEU has also primarily drawn upon the ECHR and the case-law of the ECtHR. See Szalayné Sándor, 2013, p. 19.

24 In its judgment in *Airey v Ireland*, the ECtHR, together with the European Commission of Human Rights, endorsed the view that no watertight division can be drawn between economic and social rights and the ECHR (para. 26). Prior to this shift in perspective, however, the Court had followed what has been referred to as the *exclusive approach*, adopting a restrictive interpretation of the ECHR that excluded from its scope social and labour rights protected under instruments such as the ESC and ILO conventions. For a detailed discussion of this interpretive shift, see Mantouvalou, 2013, pp. 532–545.

and dynamic (evolutive) interpretation,²⁵ and applying the so-called *integrated approach*,²⁶ the Court has progressively extended the Convention's scope to cover certain rights traditionally seen as socio-economic.²⁷ This method amounts to nothing other than a contemporary reading of the ECHR as a 'living instrument',²⁸ adapting to evolving political and social contexts, under which aspects of the right to work have gradually come within its protective ambit.

Notably, the ECtHR has interpreted Article 8 ECHR – specifically, its right to respect for private life component – as encompassing the right to freely choose one's occupation. It has held that severe restrictions on employment may interfere with an individual's private life in the broader sense,²⁹ extending beyond the inner circle of private life to include personal development, as well as the establishment of social, professional, and business relationships.³⁰ In this context, work is recognized as a key sphere for engagement with the outside world.³¹ Over time, the Court has also found that the unlawful termination of employment, when it significantly affects rights protected by the Convention, may constitute a violation of Article 8.³²

Secondly, while the ECHR contains few explicit provisions on social rights, given its historical origins and theoretical foundations, it does include Article 4, which prohibits slavery, servitude, and forced or compulsory labour. It is therefore clear that Article 15 CFREU must be interpreted in a manner consistent with Article 4 ECHR.

The right not to be excluded from work (Article 8 ECHR), the freedom from coercion (Article 4 ECHR) – that is, the right not to be forced to work –, and the right to freely choose one's work (Article 4 ECHR) are all grounded in the value of human dignity.³³ Recognized directly or indirectly under the ECHR and

25 *Demir and Baykara v Turkey*, no. 34503/97, Judgment of 12 November 2008, paras. 65, 67, 78, and 85–86.

26 When applying this approach, the ECtHR draws not only on its own previous judgments but also on the materials, documents, and interpretative guidance of other international organizations concerning social rights. On this method, see Mantouvalou, 2013, pp. 536–545. This interpretative practice fosters the broader convergence of human rights protection – in this context, the protection of social rights. On this convergence, see Nagy, 2024, pp. 59–74; Wayne, 2020, pp. 543–551.

27 Bogg *et al.*, 2024, pp. 18–19; Mantouvalou, 2012, p. 159.

28 *Demir and Baykara v. Turkey*, para. 68. See also: Sychenko and Perulli, 2023, p. 8.

29 *Sidabras and Džiautas v Lithuania*, nos. 55480/00 and 59330/00, Judgment of 27 July 2004, paras. 47–48.

30 *Niemietz v Germany*, no. 13710/88, Judgment of 16 December 1992, para. 29; *Pretty v. the United Kingdom*, no. 2346/02, Judgment of 29 April 2002, para. 61. For a more detailed discussion on the social dimension of private life, see Sajó, 2017, pp. 92–105.

31 *Ibid.*

32 *Kyriakides v Cyprus*, no. 39058/05, Judgment of 16 October 2008, para. 50.

33 Mantouvalou and Frantziou, 2021, p. 451; Opinion of Advocate General Bobek, *Fries*, C-190/16, EU:C:2017:225, para 66.

more broadly in international human rights law,³⁴ these rights can be seen as minimum standards for interpreting Article 15 CFREU.³⁵ This connection is all the more relevant in the light of Article 52(3) CFREU, which provides that where the Charter contains rights corresponding to those guaranteed by the ECHR, their meaning and scope shall be the same as under the Convention, while allowing Union law to provide more extensive protection. According to some scholars, when interpreting the scope of corresponding CFREU provisions, ECtHR case-law should be regarded not merely as a point of reference but as a *floor of standards* upon which the CJEU case-law can only build and improve.³⁶

The question arises as to whether the abovementioned provision of the CFREU may also apply to rights that are derived from – and thus indirectly protected by – the text of the Convention through the ECtHR's integrated approach. The answer is presumably affirmative. If so, and given that the ECtHR has primarily conceptualized the right to work as a negative right, those bound by Article 15 CFREU are, on the one hand, under a negative obligation to respect it by refraining from unjustified interference. At the same time, however, the ECHR also imposes a positive obligation on Contracting States to take appropriate measures – whether investigative,³⁷ legislative, or enforcement-related – to ensure the effective enjoyment of Convention rights, including, to some extent, the right to work, even in relationships between private individuals.³⁸ In this way, employment relationships may become scenes for the indirect horizontal application of Convention.

This second category of obligations deriving from Article 4 and 8 ECHR – the latter interpreted through the integrated approach and the dynamic, evolutive interpretation of Convention rights –, when combined with Article 52(3) CFREU, may support a broader reading of Article 15 and thus a different kind and level of protection. Whether such an extended interpretation from a social rights perspective is tenable – or even intended – must be assessed in the light of the EU's limited competences in the field of social policy.³⁹ These limitations are reflected not only in the Treaties but also in certain provisions of the CFREU itself. In addition, the evolving interplay between social and economic development must be taken into account. Even Article 52 itself, while opening the door to a potentially broader reading through paragraph 3, restricts the exercise of CFREU rights in its second paragraph. It does so by subjecting rights based on the Treaties

34 Deakin, 2019b, p. 334.

35 Mantouvalou and Frantziou, 2021, p. 453.

36 Koukiadaki, 2019, p. 124.

37 Van der Velde, 2024, p. 75.

38 Mantouvalou, 2015, pp. 54–55.

39 The elaboration on how the idea that labour law and social security regulation are matters best left to the Member States has been rewritten – and national labour laws reshaped in a deregulatory direction – by the EU's commitment to a highly competitive social market economy lies beyond the scope of this paper. On this matter, see Deakin, 2019a, p. 58.

establishing the European Union and the European Community – including some of the rights enshrined in Article 15 – to the conditions and boundaries defined therein. These considerations will be addressed in the following subsections.

2.2. Meaning and Scope of Article 15 CFREU

Given the strong embeddedness of the right to work in international human rights law – which also served as an inspirational background for the drafting of Article 15 –, the impetus for its stipulation could not merely have been to reiterate this right within the EU legal order. In the CFREU, ‘rights of a different character are formulated’,⁴⁰ not least because it departs from the traditional approach of separating civil and political rights from social rights in distinct legal instruments.⁴¹ Therefore, to establish the effective parameters of Article 15 – albeit in a non-exhaustive manner –, the key questions indicated in the headings of the following subsections should be raised and addressed.

2.2.1. *Material and Personal Scope: What Can Be Read Into the Wording of Article 15, and What Is It Capable of Achieving?*

Article 15 CFREU, titled ‘Freedom to choose an occupation and right to engage in work’, is structured into three distinct paragraphs. Through their wording, substance, and individual focus, these paragraphs collectively shed light on both the content of this freedom and right and the categories of beneficiaries to whom they apply.

Article 15(1) ensures the right of every person to engage in work and to pursue a freely chosen or accepted occupation. Two key connotations of this formulation are particularly apparent and noteworthy in the context of this analysis.

First, the overall structure and language of Article 15(1), together with its title, its placement in Chapter II of the Charter (‘Freedom’), and the Explanations to the CFREU – which explicitly link this provision to Article 1(2) of the ESC, under which the Contracting Parties undertake to effectively protect the right of the worker to earn a living in an occupation freely entered upon⁴² –, point to a clear emphasis on the *freedom* to choose, enter, and pursue an occupation.⁴³ It is therefore best characterized as a liberty right or a classical civil right, grounded in individual freedom and the right to self-determination.⁴⁴ Accordingly, the

⁴⁰ Van der Velde, 2024, p. 68.

⁴¹ *Ibid.*

⁴² This is the only paragraph of Article 1 ESC that, instead of dealing with the social dimension of the right to work, puts the accent on the free choice of occupation. See Cafiero, 2023, p. 212.

⁴³ Ashiagbor, 2014, p. 428.

⁴⁴ Robin-Olivier, 2015, p. 196. See also Opinion of Advocate General Emiliou in *T.A.C.*, C-40/21, EU:C:2023:367, para. 85.

core purpose of Article 15(1) appears to be the protection of individuals against arbitrary restrictions on, or exclusion from, the exercise of the freedom to work.⁴⁵ In this context – and, in this respect, in line with Article 1(2) ESC and Article 6(1) ICESCR –, work is understood as an economic activity that allows individuals to earn a living, enhances personal autonomy, supports self-fulfilment, and facilitates the realization of one's potential.⁴⁶

If we distinguish this liberal conception of the freedom to work – which emphasizes non-interference and free personal choice – from the more socialist notion of a right to be provided with work by the state,⁴⁷ it becomes apparent that the drafters of Article 15(1) not only refrained from establishing the right to work as a subjective right but also avoided imposing a positive obligation on the state to secure employment.⁴⁸ Such a responsibility is, for instance, reflected in Article 1(1) ESC,⁴⁹ which commits Contracting Parties to achieve and maintain a high and stable level of employment. However, the Explanations to Article 15 do not reference this provision as an inspirational source.

Second, the use of the phrase 'right to engage in work' – rather than the more commonly used 'right to work' – gives rise to two further observations. First, this choice of wording, instead of reflecting a commitment to ensuring the effective exercise of the right to work – as expressly stated in Article 1 ESC –, carries a narrower connotation: a right to access to employment and to offer one's labour. Consequently, the 'right to engage in work' is not conceived as an entitlement to obtain employment with the support of the state.⁵⁰ Rather, it reflects an orientation towards increasing labour market participation, which is closely linked to the promotion of employability, a declared objective of the EU.⁵¹ Second, most likely owing to the absence of a human-rights-based approach, the provision remains silent on the content and conditions of the work. In doing so, it shifts the focus away from the potential alignment of Article 15 with the growing international convergence around the concept of a 'right to decent work'⁵² – a notion which, like the effective exercise of the right to work, requires positive state action.⁵³

45 *Ibid.*

46 In this regard, see Opinion of Advocate General Poiares Maduro in *Coleman*, C-303/06, EU:C:2008:61, para. 11; Opinion of Advocate General Bobek in *Fries* (n 33), para. 66, and in *Lidl* C-134/15, EU:C:2016:169, para. 26.

47 Vigneau, 2002, p. 30.

48 Kardos, 2004, p. 97.

49 Article 1 of the Revised European Social Charter (1996) essentially retains the substantive content of Article 1 of the 1961 ESC. Council of Europe, 1996.

50 Bojarski, Schindlauer, and Wladasch, 2014, p. 45.

51 *Ibid.*

52 Mantouvalou and Frantziou, 2021, p. 451; Deakin, 2019b, p. 338; O'Connor, 2020, p. 310.

53 According to the CESCR General Comment No. 18, para. 7, the notion of *decent work* encompasses respect for the fundamental rights of the human person, as well as for the rights of workers in terms of conditions of work safety and remuneration. It presupposes an income that allows workers to support themselves and their families while safeguarding the physical and mental

As regards its personal scope, Article 15 expresses the right to work most expansively in paragraph 1,⁵⁴ affirming that *everyone* has the general right to engage in work and to pursue a freely chosen or accepted occupation.⁵⁵ This wording suggests universal applicability, which should not, however, be understood in terms of citizenship – as will become clear in the analysis of Article 15(2) – but rather as an indication that the provision is not limited to individuals with employee or worker status; it also extends to the self-employed and to job seekers.⁵⁶ Such a broad personal scope, viewed from this latter perspective, can be explained by the Charter's character as a catalogue of fundamental human rights – a purpose best fulfilled when the widest possible group of persons engaged in remunerated work falls within its ambit. Finally, the fact that the right enshrined in Article 15(1) applies to all individuals engaged in work, together with its inclusion in the CFREU, signifies the constitutionalization of this right in EU law.⁵⁷

The seemingly limited social rights dimension of Article 15 becomes even more apparent in its second paragraph, which grants every citizen of the Union the freedom to seek employment, to work, to exercise the right of establishment, and to provide services in any Member State. As noted in the Explanations, what emerges here is nothing less than the explicit linking of the content of Article 15(2) to three of the fundamental freedoms of the EU internal market⁵⁸ – namely, the free movement of persons, the freedom of establishment, and the freedom to provide services – as guaranteed by Articles 26, 45, 49, and 56 TFEU.⁵⁹ Beyond confirming the predominantly economic nature of Article 15(2), the added value of their reinforcement lies in the human rights character of the CFREU, which thereby elevates these 'freedoms of eminent economic scope aimed towards the implementation of the [...] internal market'⁶⁰ to the level of fundamental rights,⁶¹ with a broader spectrum of subjects responsible for their respect. Moreover, if

integrity of the worker in the exercise of his or her employment. Read in conjunction with the three 'interdependent and essential' elements of the right to work identified in paragraph 12 of the same document – *availability*, *accessibility*, and *acceptability* and quality –, the concept of decent work finds its expression in the third element.

54 Mantouvalou and Frantziou, 2021, p. 451.

55 The fact that Article 15 CFREU is worded broadly with regard to the terms 'everyone', 'work', and 'occupation' has also been acknowledged by the CJEU in its Judgment of 4 May 2023, *T.A.C.*, C-40/21, EU:C:2023:367, paras. 76–77, with the clarification, however, that – broad as it may be – it does not cover the right to exercise an electoral mandate obtained through a democratic electoral process such as that of mayor.

56 Deakin, 2019b, pp. 341–342.

57 Costello, 2016, pp. 315–316. On the constitutionalization of labour law, see also Nagy and Papp, 2025, pp. 121–140.

58 Judgment of 4 July 2013, *Gardella*, C-233/12, EU:C:2013:449, para. 39. See also Deakin, 2019b, pp. 332–333, 336.

59 European Union, 2012c.

60 García Coso, 2024, p. 168.

61 Deakin, 2019b, pp. 334–337.

we interpret the CJEU's position *a contrario* – specifically its treatment of market freedoms as *lex specialis* for Article 15 in cases where the right to work is invoked against Member State restrictions on the single market⁶² –, then this provision of the CFREU can be characterized as *lex generalis* relative to those freedoms.

Following the structure used for Article 15(1), and thus concluding the discussion of paragraph 2 with its personal scope, it becomes clear – as previously suggested – that the universal applicability and broad personal scope set out in Article 15(1) are qualified by paragraphs 2 and 3. Paragraph 2 reflects the personal scope of the internal market freedoms under EU law by linking – and thereby limiting – the more specific rights enshrined therein to EU citizens. European citizenship therefore confers a privileged status in the enjoyment of these freedoms compared with nationals of third countries.⁶³

Paragraph 3 – whose material and personal scope will be examined jointly – grants third-country nationals authorized to work the right to working conditions equivalent to those of EU citizens. A first salient aspect of this provision is that it does not guarantee access to the labour market or to the free movement between Member States. What it enshrines is a right to equal treatment for third-country nationals, conditional upon a previously acquired authorization to work. A clear distinction must therefore be drawn between the right to obtain such authorization – which grants access to the labour market – and the entitlement to non-discrimination with regard to working conditions. Since paragraph 3 is silent as to the former, the CFREU cannot be construed as creating such right.⁶⁴

Regarding the subjects bound to respect the freedom to choose an occupation and the right to engage in work, this feature also contributes to making Article 15 more than a merely reiterative provision, giving it a scope distinct from that of general human rights instruments. What sets it apart from other sources mentioned earlier is that, pursuant to Article 51 CFREU, the obligations it creates apply not only to Member States but also to the institutions and bodies of the Union. These, too, must comply with Article 15 and are precluded from adopting legislation or engaging in conduct that would violate or unduly restrict these rights.⁶⁵ In other words, Article 15, functioning as a touchstone for EU legislation, confers rights on individuals that are enforceable against EU institutions.⁶⁶

62 Mantouvalou and Frantziou, 2021, p. 451.

63 García Coso, 2024, p. 168.

64 See in this regard the Opinion of AG Szpunar in *Fahimian*, C-544/15, EU:C:2016:908, para. 29.

65 García Coso, 2024, pp. 171–172.

66 Mantouvalou and Frantziou, 2021, p. 450.

2.2.2. *Field of Application: Under What Conditions Does Article 15 Guarantee the Freedom to Choose an Occupation and Right to Engage in Work?*

As noted at the conclusion of the foregoing subsection, the obligations under the CFREU apply to the Member States. This serves as an appropriate context in which to commence an examination of the field of application of Article 15.

In the case of Member States, the field of application of – or the so-called ‘door opener’⁶⁷ for – the CFREU is limited to situations in which Union law is being implemented. It is broadly accepted that this covers all instances in which Member States fulfil their obligations under the Treaties or secondary EU law.⁶⁸ However, whether their liability under Article 15 can be invoked for actions indirectly interfering with it depends above all on how the CJEU interprets the phrase ‘implementation of Union law’. Patterns in the jurisprudence related to EU internal market suggest a tendency towards a broad interpretation, encompassing ‘all situations governed by EU law’⁶⁹ or actions of Member States ‘in the scope of Union law’, as phrased in the Explanations. In other words, Member States’ actions affecting the internal market may more easily trigger obligations under CFREU rights, the breach of which may be more readily established. By contrast, in cases concerning social policy, the CJEU has been reluctant to demand Charter compliance by extending the reach of EU fundamental social rights. Reasoning that Member States were not implementing EU rules when they acted, the Court has departed from its broader interpretation and instead applied a restrictive reading of Article 51(1).⁷⁰ Consequently, only measures directly tied to EU law implementation may trigger Article 15.

Since the inclusion of EU institutions among the duty-bearers under Article 15 raises the issue of Union competences in the field of social policy, it stands to reason that Article 51 refers to the principle of subsidiarity (Article 5(3) TEU) and, in line with the principle of conferral (Article 5(1) and (2) TEU), explicitly states that the CFREU neither establishes any new power or task for the Union nor modifies those conferred by the Treaties. In other words, the obligations of EU institutions under Article 15 CFREU are strictly limited to their conferred competences. Accordingly, if a legal situation falls outside the scope of EU law – which may, to some extent, depend on the Court’s interpretation –, the CJEU lacks jurisdiction to adjudicate, and the Charter’s provisions alone cannot

67 Lörcher *et al.*, 2019, p. 4.

68 Aristea Koukiadaki, 2019, p. 110.

69 See Judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, para. 19.

70 Koukiadaki (2019), pp. 110–111.

provide a basis for such jurisdiction.⁷¹ ‘It is the scope of EU law that determines EU jurisdiction on fundamental rights and not the reverse.’⁷²

At the same time, Article 51(1) CFREU itself requires that the addressees of the Charter’s provisions respect the rights, observe the principles, and promote their application in accordance with their respective powers. This may be interpreted as requiring proactive engagement rather than mere passive compliance⁷³ – an approach fully compatible with the principles of conferral and subsidiarity.⁷⁴ Taken together, the highlighted aspects make it incorrect to conclude that limiting the obligations of EU institutions to their conferred competences reduces Article 15 to a provision that merely requires respect for the right of individuals to freely pursue a chosen occupation, confined to prohibitions and incapable of generating positive obligations.⁷⁵ What is precluded is solely the possibility of extending their *de jure* powers or tasks to achieve the objectives of Article 15.

With this clarification in place, it is appropriate to return briefly to Article 52(3) CFREU, which provides that the meaning and scope of CFREU rights corresponding to rights guaranteed by the ECHR shall be the same as those laid down by the latter. As noted, positive obligations derived from ECHR rights – understood within the framework of the integrated approach and shaped by the dynamic and evolutive interpretation – may, when combined with Article 52(3) CFREU, support a broader reading of Article 15 CFREU and a different kind or level of protection. The question left open in the subsection 2.1 was whether such an extended interpretation from a social rights perspective is tenable, or even intended, at the level of the Charter and, by extension, in relation to Article 15.

In the light of the foregoing analysis, even if it is accepted that CFREU rights are intended and capable of generating positive obligations, they remain subject to a tension between two principles: the dynamic approach of the ECtHR on the one hand and the principle of conferral on the other. The former can shape the scope and meaning of CFREU rights at the EU level only within the competences conferred upon the Union.⁷⁶ This competence-based approach⁷⁷ implies that the right to work, as recognized in the ECtHR’s case-law and integrated into Article 8 ECHR, may impose obligations on Member States with a scope that depends on and varies according to the legal basis of those obligations: broader when acting as Contracting Parties to the ECHR and narrower when bound by Article 15 CFREU in conjunction with Articles 51(2), 52(2), and 52(3) CFREU while implementing EU law.

71 Åkerberg Fransson (n 66), para. 22.

72 Koukiadaki, 2019, p. 105.

73 *Ibid.*

74 De Schutter, 2019, p. 28.

75 *Idem*, pp. 28–29.

76 Van der Velde, 2024, p. 78.

77 *Ibid.*

3. Article 15 in the Case-Law of the CJEU

Andrew Clapham and Joanna Bourke Martignoni observed in 2006, '[it] is [...] likely that the Court will become the venue for various claims suggesting violations of labour rights as EU fundamental rights under the new Charter. In this way, the Court could become a central cog in the development of the EU's human rights policy'.⁷⁸ Later in the same work, they added, '[t]he Court will sometimes be in a position to decide whether interference with Community economic freedoms [...] should be trumped by other rights and freedoms'⁷⁹ and that it 'will ultimately determine whether the fundamental rights [...] will be given priority in the face of economic actors relying on Community freedoms'.⁸⁰ This subsection examines CJEU case-law on Article 15 over the past fifteen years in order to assess how far the role envisaged for the Court by Clapham and Martignoni has materialized.

Before, and, indeed, in order to identify patterns in the CJEU's interpretation of Article 15, it is first necessary to introduce another, hitherto unaddressed provision of the CFREU. Although Article 15 contains no explicit limitations on the right to work, it must be read in the light of Article 52(1). This provision permits restrictions on Charter rights provided that they are laid down by law, respect the essence of those rights and freedoms, and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognized by the EU or the need to protect the rights and freedoms of others.

Against this backdrop, the CJEU has held that national legislation prohibiting the participation of pilots above a certain age in civil aviation, on aviation safety grounds, is compatible with Article 15(1). The Court reasoned that such a measure does not undermine the actual substance of the freedom to choose an occupation, as it merely sets an age limit (65 years) for the exercise of the professional activity of pilots.⁸¹ One might, however, legitimately contend this assertion. Since the judgment falls short of providing a substantive analysis of the content of Article 15, it remains unclear what is meant by the 'actual substance' of its provisions.

If approached from a labour market perspective – accepting a definition of Article 15 that, reflective of Article 45 TFEU on the freedom of movement of workers, mirrors the economic dimension of this right –, the extent to which the contested regulation restricts the labour market opportunities of the individuals concerned could be considered proportionate to the objective pursued. However, the broader protective scope of Article 15, stemming from its nature as a fundamental social right, remains unaddressed. This omission not only renders the right vague and

⁷⁸ Clapham and Martignoni, 2005, p. 241.

⁷⁹ *Idem*, p. 243.

⁸⁰ *Ibid.*

⁸¹ Judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, para. 75. For the same reasoning, see Judgment of 6 September 2012, *Deutsches Weintor*, C-544/10, EU:C:2012:526, paras. 54–60 and Judgment of 7 July 2016, *Muladi*, C-447/15, EU:C:2016:533, para. 51.

indeterminate but also obscures the boundaries and nature of the obligation to guarantee it. What emerges unequivocally, however, is the CJEU's deliberate reluctance to embrace an expansive interpretation of Article 15(1) that would effectively promote the social interests of workers.⁸² Were Article 15 interpreted in such a manner, the compatibility of the contested national legislation with its provisions would most likely be called into serious question.

When it comes to Article 15(2), as highlighted in subsection 2.2.1, the CJEU has treated it as reaffirming the right of free movement derived from articles 21(1), 45, 49, and 56 TFEU,⁸³ construing the relationship between Article 15(2) and the market freedoms as one of *lex generalis* to *lex specialis*. A further noteworthy pattern emerges from the jurisprudence in this context. The CJEU has emphasized that, given this relationship, Article 15(2) must be read in conjunction with Article 52(2), 'which provides that rights recognised by the Charter for which provision is made in the treaties are to be exercised under the conditions and within the limits defined therein'.⁸⁴ Building on this, in cases concerning Article 15(2) among others, the CJEU has consistently confined its reasoning to the TFEU basis of the right in question, considering such an approach sufficient.⁸⁵ As noted by Advocate General Wahl in his Opinion in *Haralambidis* – where the CJEU found a national regulation excluding nationals of other Member States from eligibility for the post of president of a port authority incompatible with Article 45(4) TFEU –, Article 15 CFREU 'does not seem to add any further aspect of incompatibility, in addition to that which may derive from the application of the rules on free movement of workers'.⁸⁶ Accordingly, where CJEU concludes that restrictive national legislation is contrary to Article 45 TFEU, it may be inferred that such legislation likewise infringes Article 15 CFREU.

Going further, in *Office national de l'emploi (ONEm)*, the CJEU found that the refusal to aggregate periods of employment necessary to qualify for unemployment benefits supplementing income from part-time employment – where such employment was not preceded by any period of insurance or of employment in that Member State – was compatible with Article 45 TFEU. In doing so, the Court reaffirmed the aforementioned causal relationship in a positive sense: if EU secondary law or a legal act emanating from the Member States – falling within the CFREU's field of application – complies with the relevant TFEU provision underlying the right enshrined in Article 15(2), it is likewise deemed to comply

82 Zaccaria, 2019, p. 96.

83 Opinion of Advocate General Kokott in *McCarthy*, C-434/09, ECLI:EU:C:2010:718, para. 22.

84 *Gardella* (n 56), para. 39; Judgment of 19 December 2019, *AV and BU*, C-465/18, EU:C:2019:1125, para. 29; Judgment of 7 April 2016, *Office national de l'emploi (ONEm)*, C-284/15, EU:C:2016:220, para. 33.

85 *Gardella* (n 56), para. 41; *AV and BU* (n 80), para. 31.

86 Opinion of Advocate General Wahl in *Haralambidis*, C-270/13, EU:C:2014:1358, para. 36.

with Article 15(2) itself.⁸⁷ It becomes manifestly evident that the CJEU has neither attributed autonomous significance to Article 15(2) in this context nor considered it in need of further interpretation.⁸⁸ Consequently, the obligation to pay unemployment benefits to part-time workers was held to fall outside the ambit of this provision.⁸⁹

Up to this point, in its case-law, the CJEU appears to treat Article 15 CFREU primarily through its straightforward correspondence with the free movement of workers. Nonetheless, before bringing the analysis to a close, one final perspective warrants inquiry: the freedom to choose an occupation and the right to engage in work under the Charter could potentially be endowed with the broader social dimension emphasized in other international instruments recognizing these rights, by linking Article 15 to additional provisions of the CFREU.

If the elements of the right to work outlined in paragraph 12 of CESCR General Comment No. 18 are taken as reference points, the *availability* dimension – or the right *to have work* – can be derived by reading Article 15 together with Article 29 CFREU, which guarantees the right of access to placement services. The *acceptability* and *quality* element of the right to work is where the concept of decent work is most closely reflected. A link between Article 15, the value of human dignity, and the prohibition of slavery and forced labour – codified in articles 1 and 5 CFREU – has already been recognized in both the literature and CJEU jurisprudence.⁹⁰ However, to effectively ensure that work is genuinely decent, it must go beyond respecting human dignity and also guarantee rights *at work* in the form of fair and just working conditions, as provided by Article 31 CFREU. Finally, the *accessibility* component of the right to work finds its expression when Article 15 is read in conjunction with Article 21 CFREU, which enshrines the principle of non-discrimination.

According to Advocate General Emiliou in the case *T.A.C.*, ‘although special emphasis is placed on the right to self-determination of individuals, the scope of Article 15(1) of the Charter goes far beyond that aspect. Indeed, its wording appears to cover the various dimensions of the right to work: availability, accessibility, acceptability and quality’.⁹¹ The question, however, is whether the case-law reflects this interpretation.

Starting with *availability*, the consulted cases show that Article 29 CFREU has neither been invoked on its own nor linked to Article 15 in a way that would confer upon the latter real protective substance by imposing a positive obligation on Member States to assist job seekers and secure employment. As

87 *Office national de l'emploi (ONEm)* (n 80), para. 34.

88 Rasnača, 2019, p. 185.

89 *Office national de l'emploi (ONEm)* (n 80), paras. 33–34.

90 Deakin, 2019b, pp. 334–335; Opinion of Advocate General Bobek in *Fries* (n 33), para. 66.

91 Opinion of Advocate General Emiliou in *T.A.C.* (n 44), para. 85.

regards *accessibility*, one can identify cases addressing exclusions from the labour market on grounds such as age or disability, where the CJEU tends to connect Article 15 with non-discrimination.⁹² Yet, in cases where the Court limits its reasoning to the corresponding TFEU provision underlying Article 15 CFREU, it avoids engaging with the possibility of reading Article 15 together with Article 21⁹³ – even when explicitly invoked by the referring Court.⁹⁴ With respect to *acceptability* and *quality*, while the CJEU has addressed the interpretation of Article 31 in its case-law,⁹⁵ these discussions did not involve references to Article 15. Taken together, these patterns suggest that the dimensions of the right to work outlined by Advocate General Emiliou are not entirely absent from the Court's reasoning. Nonetheless, they remain far from being clearly or consistently reflected in its interpretation of Article 15.

4. Concluding Remarks

It has now been more than fifteen years since the CFREU became legally binding through its constitutionalization by the Treaty of Lisbon in 2009. This period invites reflection – reflection that this paper undertakes through a two-pronged analysis of a CFREU provision situated at the intersection of fundamental market freedoms and fundamental labour rights protection. Without fully reiterating the partial conclusions drawn in the subsections, it is worth highlighting the most striking aspects of the content of Article 15 and its interpretation in the CJEU case-law.

As evidenced by the foregoing analysis, the right to work enshrined in Article 15 is primarily regarded as a fundamental right of economic nature. This manifests in the content, wording, and placement of Article 15 within the CFREU, which frames it as a liberty right – devoid of any positive obligation on the Union or Member States to secure employment – and explicitly links it to the fundamental freedoms of the internal market. The case-law of the CJEU reflects the same approach. The Court has engaged with Article 15 only infrequently, and in the cases where national legislation has been challenged, including on the basis of this provision, it has largely limited its reasoning to the corresponding TFEU provision underlying Article 15 CFREU. In doing so, the Court has hesitated to attribute autonomous significance to Article 15, to consider it in need of further interpretation, or to give it effect as a fundamental social right.

92 See, for example, Judgment of 21 July 2011, *Fuchs and Köhler*, C-159/10, EU:C:2011:508, paras. 62–63; Judgment of 5 July 2012, *Hörnfeldt*, C-141/11, EU:C:2012:421, para. 37; Opinion of Advocate General Sharpston in *Bedi*, C-312/17, EU:C:2018:336, para. 51.

93 See *Office national de l'emploi (ONEm)* (n 80), paras. 33–34.

94 See Opinion of Advocate General Wahl in *Haralambidis* (n 82), para. 36.

95 Mantouvalou and Frantziou, 2021, p. 453.

Any reading of Article 15 in the light of Article 52(3) CFREU – and thus of the ECtHR’s integrated approach – remains circumscribed by the EU’s limited competences in the field of social policy and by the principle of conferral, which delimit the scope of obligations deriving from Article 15. Consequently, it is difficult to argue that the right to work under Article 15 has been developed to encompass dimensions such as availability, accessibility, as well as acceptability and quality. In principle, the Charter could support such a reading by linking Article 15 to other CFREU provisions, yet this approach is largely absent from the jurisprudence.

Taken together, although constitutionalized in EU law, the right to work enshrined in Article 15 remains of uncertain reach, with its social and human rights dimensions still taking shape beyond its primarily economic perspective. Based on the balancing methodology it applies, the CJEU has not yet assumed the role of a human rights court with respect to the interpretation of Article 15. This, however, does not undermine the Charter’s potential to function as more than a mere codifying instrument, nor does it preclude the Court from moving beyond endowing Article 15 with a merely reiterative and programmatic role. The extent to which the Court chooses to do so will ultimately determine the future significance of Article 15 as a vehicle for strengthening the social dimension of the Union.

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