

ABSTRACT

‘Free movement of workers and services – social justice, public interests and false claims of neo-liberalism’

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Popular legal discourse overly presents the economic freedoms of EU law to be naked of, if not in direct conflict, with national public goods (access to health care, education, social benefits) and fundamental rights (right to strike, human dignity, family rights). This often results in false claims of the CJEU paving the path for a Darwinist-winner takes all free market (including exaggerated claims of permitting 'social dumping' and 'benefit tourism'). Such assertions undermine the humane considerations inherent in protecting the right to work (and the right to provide/ receive services) from disproportionate national policy interference. The real debate is not whether we should strongly label one right 'economic' and the competing right 'social' or 'fundamental' - as the label one gives to a certain right depends very much on one's perspective. Therefore, discussions on the underlying motives behind the relevant CJEU decisions which begin with an absolute, unrefuted distinction between the 'economic' and the 'social' will be largely foreclosed from the outset (with greater weight generally given to the social/fundamental side). This results in a failure to identify for many European citizens' the 'economic' right is merely a means/a tool to protect their social and fundamental interests (access to medical treatment abroad – *Watts*; family rights – *Carpenter*).

This paper presents four general case patterns from the Courts jurisprudence on workers and services [1. Access to health care; 2. Access to education; 3. Worker protection; 4. Human right considerations] to identify, that despite popular belief, the 'economic' freedoms are utilized as a repository of humane and social entitlements. The real debate is on justice and policy - not on the economic v the social. The latter and commonly made distinction simply fails to explain the rationale behind the decisions analyzed. The Court has not acted in a reckless manner at the expense of national public interests but rather as policy orientated legal realists. It is indeed aiming for a rational integrated social market economy, free of unjustifiable policies.