

## Transformation of the welfare state and impact on private law

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Macao April 2011

## What I want to show

- (1) The transformation of the welfare state through liberalisation and privatisation of public services
- (2) The emergence of hybrid forms of public-private law relationships
- (3) The development of universal services as a new type of constitutionalised contract law

## *First*. completion of the Internal Market as trigger for change

- Liberalisation and privatisation of *state monopolies* in the aftermath of the Single European Act, 1986
- Art. 106 (2) TFEU, Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

## Infringement procedures against Member States

- The EU Commission putting pressure on Member States' monopolies via competition law
- The political response: different waves of EU directives/regulations to liberalise market sectors
- Telecommunication, postal services, electricity, gas, transport

## Conceptual uncertainties on the reach of EU law

- What are public services? The French heritage, Germany Daseinsvorsorge
- Competition law approach (Treaty): Services of general economic interests
- Social policy approach (Protocol): Services of general interest (social services)
- The current EU Commission policy: promoting universal services

## The legal-technical side: establishing markets via regulation

- One network provider
- different service providers competing for the best price
- One universal service provider as last resort
- A (national) regulatory agencies monitoring and supervising the market
- A European regulatory agency for co-ordinating regulatory action

### *Second:* hybridisation of public-private divide in triangular relations

- Contract law = bilateral private law relationship
- Privatisation and liberalisation of public services should ideally produce a bilateral customer-service provider relationship
- In reality a triangular relationship as the service provider is subject to heavy regulation (universal service provider)

### Interactions in the triangle

- Consumerisation leads to individualisation of former collective interaction
- Marginalisation – from government citizen to government consumer relationship
- Substitutionalisation – regulatory agencies as intermediaries between the individual and the state
- Economisation – of the relationship between the service provider and the state

### Constitutionalisation of the public/private relationships

- The triangular relation as a mixture of private (contract) law and public (constitutional law)
- Pressure from the economic rights (fundamental freedoms = competition and state aids)
- Pressure from social rights (the Charter on Fundamental Rights)

### *Third:* constitutionalisation of contractual relations

- A new type of ,social' contract law
- The changing role of suppliers and consumers in a hybrid market environment
- Supplier bears social responsibilities – universal service providers
- Consumers bear economic and societal responsibilities = citizen consumer

### Constitutionalised contract law I: ,average' customer/consumer

- Constitutionalised contract law (emphasis on economic freedoms)
- Access to services at *reasonable* prices
- Choice and transparency – the right to switch without costs in three weeks
- Quality – minimum standards depending on the service provided
- Continuity – without interruption

### What about those consumers who are unable to pay the market price?

- ,Member States shall ..ensure that there are adequate safeguards to protect **vulnerable** customers. In this context, each Member State shall define the concept of **vulnerable** customers which may refer to **energy poverty** and, inter alia, to the **prohibition of disconnection** of electricity to such customers in critical times'.

### Constitutionalised contract law II: vulnerable' customer/consumer

- Constitutionalised contract law (emphasis on social rights)
- The universal service provider obliged:
  - to conclude a contract
  - to offer affordable prices (social aid)
  - to protect the vulneral consumer against disconnection in critical times

### Generalisations

- Beyond SGEIS- universal services in health care and education
- Universal services in established markets – financial services and internet services
- A ,new' European law on universal services and its relationship to the ,old' consumer law