

Freedom to Conduct a Business Before the CJEU: Implications for the Housing Crisis

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1. Introduction

- Housing is business
- Article 16 provides robust protection for property owners in housing regulation
- Asymmetry?



2. Article 16: Scope and Essence

- Article 16: „*The freedom to conduct a business in accordance with Union law and national laws and practices is recognized*“
- Elements:
 - the freedom to exercise an economic or commercial activity,
 - freedom of contract and
 - free competition.
- Essence:
 - Advocate General Cruz Villalón in Case C-426/11, Alemo-Herron, ¶ 51
 - BB construct, C-534/16

3. Category 1: Deference

- Air passenger rights (McDonagh, C-12/11; Airhelp, C-28/20)
- Public health (Pillbox 38, C-477/14)
- Gambling (Robert Pfleger, C-390/12)
- Advertising (Deutsches Weintor, C-544/10; Société Neptune Distribution, C-157/14)
- Limits:
 - Unsupportable burden (Amazon EU, C-649/17)
 - Legal certainty (AGET Iraklis, C-201/15)
 - Judicial review (Skeyes, C-353/20)

3. Category 2: Strict Proportionality

- Alemo-Herron, C-426/1
- AEON NEPREMIČNINE, C-674/23
 - Targeted focus on vulnerable groups and consumers
 - Feasibility and economic effects
 - Suitability of less restrictive alternatives (social spending)
 - Whether price enables „reasonable profit“ and „price competition“

4. Essence Revisited

Two kinds of „essence“

- Freedom to pursue an economic activity: continuation, opportunity to make profits
- Freedom of contract: being represented in the national body for collective bargaining?

Category 1: formal existence

Category 2: expanding notion?

5. Horizontal Conflicts

- Samira Achbita, C-157/15
- IX v WABE eV and MH Müller, C-804/18 & C-341/19
- J.K. v TP S.A., C-356/21



6. Implications for the Housing Crisis

- Breach of „essence“ unlikely
- High costs of regulation
- Safer: fiscal measures?
- Right to housing?



Thank you for your attention!
