

26 A WHOLE IMAGE OR A FEW PIECES OF MOSAIC?

*A Comment on the Monograph of Miklós Király: Unity and Diversity – The Cultural Effects of the Law of the European Union**

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26.1 INTRODUCTION

As originally conceived, the European Union might be considered as an organization whose existence is based first and foremost on economic grounds. Consequently, the influence of EU law on culture has been traced in the adoption and application of legal rules implementing the economic goals of the EU. However, the preservation of national cultures and the common European cultural heritage has appeared as an aim transcending economic interests, to be achieved by means of the cultural policy introduced by the Treaty of Maastricht. Additionally, other new policies have been established whose content is inseparable from culture.¹

26.2 THE AIM AND DIRECTION OF THE INVESTIGATION

The book was originally published in Hungarian in 2007 as one of the first monographs in Hungary to discuss the interactions between European Law and culture.² As the title itself – *Unity and Diversity: The Cultural Effects of the Law of the European Union*³ – indicates, culture as a phenomenon has two dimensions in Europe: the cultural unity of

* *Unity and Diversity: The Cultural Effects of the Law of the European Union*, Eötvös University Press, Budapest, 2011.

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1 See e.g., the education policy of the EU.

2 Beyond the present study, only a few works written by Hungarian authors dealt with the issue. It is worth mentioning the monograph of A. Zongor, *Kultúra és az Európai Unió* [Culture and the European Union], Budapest, Kultúrpoint Iroda 2005 and that of G. Andrassy, *Nyelvi jogok. A modern állam nyelvi jogának alapvető kérdései, különös tekintettel Európára és az európai integrációra* [Basic Questions Relating to Language Rights, with Special Reference to Europe and European Integration], Pécs, Studia Europaea, Janus Pannonius Tudományegyetem, Európa Központ, 1998.

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Europe based on common roots on the one side, and national cultural traditions of individual member states on the other. However, despite the suggestion implicit in the title, after reading the book the conclusion should be drawn that it is not only the law of the EU that can have an impact on cultural evolution but that the cultural characteristics of the member states may also influence the legislative activity of EU institutions.

The author has the preconception that “Europe is first and foremost a cultural community which [...] cannot exist without the cohesive values of its culture”.³ Although the aims of the Treaties establishing the European Communities were initially economic in scope and the prevailing option was that integration would not directly affect culture,⁴ economic integration was from the beginning also justified on grounds beyond economics, particularly the preservation of peace on the continent and the political unification of Europe.⁵ However, it is a necessary precondition for the proper functioning of a political unity that groups within it with different cultural traditions should mutually respect each other’s customs and values and exercise the rights which stem from their membership of the political unity in this way. In this sense, integration can also be interpreted as a cultural phenomenon or at least a process affecting culture.⁶

Recent events in Europe make an investigation of the nature of the integration particularly timely. Attempts to solve the crisis of the common currency justify the belief that the EU itself is more than a merely economic cooperation, since the “Masters of the Treaties” are clearly taking steps to save the political and cultural unity of Europe, despite current difficulties concerning economic cooperation. However, it should be pointed out that the author applies a legal approach; philosophical, sociological and political analyses in the book are only so detailed as is necessary to understand the legal problems and their examination.⁷ At the same time – having regard for the subject matter of the book – it is necessary to use sources beyond legal rules and legal literature, as is the case in the present work.

The work basically seeks to investigate how the instruments of European Law can contribute to the preservation and further enhancement of member states’ cultural diversity on the one side, and those of Europe’s cultural heritage on the other. All the chapters focus in particular on two aspects within the key issue: 1. the legality of a member state’s legislation, taking into account the interest in preserving Europe’s cultural diversity; 2. the contribution of the EU institutions to this interest.⁸

3 The author cites the study and inaugural lecture of F. Mádl, ‘A kultúra jövője az európai integrációban’ [The future of culture in European integration], in: Ferenc Mádl, *Az európai örökség útjain* [On the Roads to the European Heritage], Atheneum, Budapest, 1995, pp. 82-105.

4 Király 2011, p. 31.

5 *Ibid.*, p. 19.

6 *Ibid.*

7 For a contrary view, see M. Wintle, *Culture and Identity in Europe*, Ashgate, Aldershot, 1996.

8 Despite the institute-centred approach, the author does not devote a separate chapter to the role of institutions in the development of the cultural dimension of EU law.

As regards the law of the European Union, the investigation focuses particularly on the law of the internal market. As the author himself explains, he noticed as he was working on his book – on the prohibition of discrimination on the basis of nationality and the jurisprudence of the European Court of Justice – published in 1998,⁹ that in certain “sensitive” cases, what was involved was not simply discrimination based on nationality, or the limitation of an economic freedom, but also a collision of deeply differing cultures and their underlying values.¹⁰ The present work also suggests that the author sees the objectives of the internal market on the one hand and the preservation of Europe’s cultural diversity on the other as opposing interests.

It is necessary to clarify the notion of “culture” as it is applied in the book. The word “culture” is commonly used in many senses; this is the reason why culture and EU law interfere in so many areas. The author also uses the term in a broad sense: culture denotes High Culture (outstanding works of fine arts, science and individual intellectual creativity) as well as the common judgments, ways of thinking and values of the society, activities customarily based on these, and styles and modes of living.¹¹ The author regards the law itself as a cultural phenomenon as well; a repository of important elements of tradition and the legal system of a member state as a mean to express the cultural identity of a nation.¹²

The broad interpretation of the concept of “culture” described above has defined the structure of the work, as well. The book is divided into 13 chapters; II–XII discuss the special areas where European Law can have an effect on different manifestations of culture, such as language policy, education, protection of family life and national minorities, as well as difficulties in the relationship of the internal market and culture (bookselling, competition policy and culture, etc.). The opening chapter “European Union and Culture” determines the objective of the book, the methods and sources of the investigation, and the reasons why the book took on the structure it did; the last summarises the results.

Shaping the structure also mirrors the author’s attitude to the question of balancing unity and diversity. Although he acknowledges the relevance of both factors in all the particular fields presented in the book, he focuses rather on problems raised by the cultural diversity of the member states in the application of EU law and attaches less importance to the question of common European cultural cooperation: only the penultimate chapter, chapter XII, deals with the cultural policy of the European Union, suggesting that European culture really does have common roots but culture as a phenomenon basically exists as something that belongs to a national state. Viewed from this angle, Miklós Király’s book differs from other works discussing the relationship between culture and European

9 M. Király, *Diszkrimináció tilalma az Európai Bíróság joggyakorlatában* [The Prohibition on Discrimination in the Jurisprudence of the European Court of Justice], Akadémiai Kiadó, Budapest, 1998.

10 Király 2011, p. 20.

11 *Ibid.*, p. 25.

12 *Ibid.*, p. 30.

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integration. Thus, for example, the volume edited by Rachael Craufurd Smith, *Culture and European Union Law*, includes two studies dealing with the common culture policy of the EU – one of them being the first chapter which thus determines the structure of the book. Moreover, Evangelia Psychogiopoulou dedicates half of her two-part monograph, *The Integration of Cultural Considerations in EU Law and Policies*, to European cultural policy. The way the book is structured also mirrors the general worldview and ideological approach of the author, which he himself admits is value-preserving and conservative.¹³ This approach especially manifests itself in the attitude to the Christian religion and the way in which the author appreciates the results of the integration which placed an emphasis on the preservation of the traditional cultural values of the nations involved. As the author himself recognizes, one of the reasons for writing this book was the accession of Hungary to the European Union, which necessarily addresses the question of whether the characteristic values of our national culture can be preserved.¹⁴ Accordingly, almost all of the chapters deal with Hungary's relationship to the main topic.

As we have seen, the directions of the investigation can be thematically separated, although the author himself has not divided the chapters into categories (such as the law of the internal market or communities which provide a framework for the preservation of culture). Regardless of this, the content of the chapters will be discussed below under these headings.

26.3 THE IMPACT OF THE LAW OF THE INTERNAL MARKET ON THE DIVERSITY OF MEMBER STATES' CULTURE

Chapter IX considers the relationship between the law of the internal market and culture in a broader perspective. It could very well have been the first chapter of the book (or at least the first chapter of the part dealing with the law of the internal market). The comprehensive analysis in this chapter clearly indicates that the effect of EU law on culture, especially that of the rules regulating the internal market and competition, is far deeper and wider than the scope of the book; the previous chapters were able to map only a few particular areas as will be discussed below.

Books "as cultural objects constitute in a particular way the expression of, and support for, a cultural identity", however, they can also become objects of commerce. Chapter X discusses book price fixing in the member states, which can hinder intra-Community trade or distort competition within the internal market. At the same time, this method of regulation used by the member states may also contribute to the preservation of cultural

¹³ *Ibid.*, p. 32.

¹⁴ *Ibid.*, pp. 19-20.

diversity in Europe. The author concludes that the approaches of the institutions significantly diverge at this point: the European Parliament and the Council hold the view that an exclusively economic approach was not permissible in matters of the book trade; whereas the European Commission and the Court of Justice are wary of taking a non-economic view.¹⁵

Chapters VIII and IX discuss two sensitive areas of private law: contract law and company law. The reason for choosing contract law as a subject for investigation must be the (still) basically divergent regulations of the member states in this field, which may also affect trade in the internal market. The author expresses his conviction that fundamental divergences in cultural values determining the contract law regulations of the member states make total unification of legal orders impossible and unreasonable. Even the legislative institutions of the EU (for all the Commission in drafting its proposals) exercise considerable self-restraint as evidence of their recognition of “the need to respect different legal and administrative cultures in the Member States”.¹⁶

Chapter IX “From the Daily Mail to Inspire Art” – beyond examination of the most important rulings of the ECJ concerning companies’ freedom of establishment within the EU – explores reasons for the divergence of the company laws of the member states, the main difficulties resulting from this divergence and objections to the unification of company laws. The author comes to the conclusion that the formerly homogenous approach and social value choices can now be superseded by a sort of legal “multiculturalism” even within one member state, due to the reception of foreign companies and the coexistence of company formations rooted in different laws.¹⁷ The open competition between company laws represents a competition between value systems, in which traditional values and established social consent can be lost.¹⁸

26.4 THE LAW OF THE EUROPEAN UNION AND LANGUAGE DIVERSITY

Chapter II deals with languages, to be more precise with the effect of European Law on the language diversity of Europe. The author discusses three main questions within the chapter: the effect of multilingualism on the work of the EU institutions and that of multilingual work on the evolution of member states’ languages; the language policy of the Union; and the relationship between languages and the internal market. Regarding the latter, the author clearly points out that although the Union seeks to ensure the equality of

¹⁵ *Ibid.*, p. 227.

¹⁶ The author cites at this point the Communication of the Commission [COM (2004) 651 final, points 2.3 and 3.1.2], see *ibid.*, p. 195.

¹⁷ *Ibid.*, p. 210.

¹⁸ *Ibid.*, p. 210.

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languages, the need to run EU institutions efficiently and economically and the requirement for proper functioning of the internal market has led to the use of a few major languages and therefore to the practical limitation of linguistic equality.¹⁹ This is because in order to attain the main objectives of the internal market it is necessary to ensure, as far as possible, homogeneous regulation within the Union, and the multilingualism of European Law – as a non-trade barrier – is able to break the unity of internal market regulation.

26.5 THE LAW OF THE EUROPEAN UNION AND RELIGION

There is an interesting discussion in chapter V on the position of Christianity in Europe which is, in the words of the author, “the soul of Europe”. The chapter addresses the question of the representation of the Christian tradition in member states’ constitutions, in international law sources and in the primary legal norms of the European Union. The author holds the view that, although divorced from their Christian roots, the fundamental aims of the European Union laid down in its founding documents echo the social teaching of the church, derived as they are from the idea of the rule of law and human rights – such as the right to dignity and the right to social security.²⁰ The author also criticises the case law of the ECJ because of its economic-centred approach to fundamental social questions and values.²¹ He also remarks from a critical point of view that the ECJ applies a broad, lenient interpretation, in which both Christian churches on the one hand, and any other newly established religious community on the other, enjoy the same status.²²

26.6 THE LAW OF THE EUROPEAN UNION AND EDUCATION

Chapters VI and VII treat the relationship between culture and education, regarding the latter as one of the main instruments of cultural transmission. The author argues that although the European Union has no comprehensive higher-education policy on the basis of the founding Treaties (which leave this field basically within member states’ competence) nor binding secondary legal sources of the EU, soft-law sources (such as communications) might be able to lay down the fundamentals for approximation towards member states’ regulations.²³ This is especially true for areas which may have an influence on the functioning of the internal market, such as the recognition of diplomas and qualifications. The decisions of the ECJ also contributed to the mobility of education within the Union,

19 *Ibid.*, p. 64.

20 *Ibid.*, p. 132.

21 *Ibid.*, p. 132.

22 *Ibid.*, p. 135.

23 *Ibid.*, p. 141.

however, there are a few professions, such as the Legal Profession (the subject matter of chapter VII), which the member states are reluctant to open up to practitioners from other member states, referring among other things to cultural traditions and characteristic features manifest in the national legal systems of the member states.²⁴

26.7 THE FAMILY AND NATIONAL MINORITIES AS FRAMEWORKS FOR TRANSMITTING CULTURE

Chapters III and IV deal with communities as frameworks for transmitting culture: specifically, the family and national minorities. Chapter III discusses the relationship between the internal market regulation of the EU which influences the interpretation of the concept of the family and has an impact on the unity of family on the one hand, and divergent national legislation on the other. Following this, chapter IV focuses on the attitude of the law of the European Union and that of the ECJ to issues of life and the protection of national minorities.

The analysis shows that the ECJ gives priority in its case law to the interests of “the unity of the family” over the interest of “the unity of the nation”; this choice of value may be derived from the economic aim of ensuring the free movement of individuals. The author also points out that EU law – in particular, EU legislation to implement the principle of the free movement of individuals – influences the concept of the family and the family law of the member states in several areas.²⁵ The legal approach to family life is one of the most obvious examples of the conflict between EU law and national legislation determined by the characteristics of cultural traditions, since the legal systems of the member states differ significantly in their interpretation of the notion of family, unmarried partnerships or attitudes to the cohabitation of same-sex partners.

Chapter IV scrutinizes the scope for the protection of national minorities under the law of the EU. Particular attention is paid to the possibilities and means of protecting minority rights of Hungarians living outside the borders of Hungary. The author holds the critical view that the European Union has at its disposal only very limited means for promoting minority protection.²⁶ However, he also states that the accession of Hungary may be beneficial for the Hungarian minority, as well, because Hungarian as an official language of the European Union is not only the language of the people of a member state but also that of Hungarians living in neighbouring countries. Thus, acquiring the rank of an official language might increase the standing and the chances of survival of the Hungarian minority.²⁷

²⁴ *Ibid.*, p. 169.

²⁵ *Ibid.*, p. 93.

²⁶ *Ibid.*, p. 118.

²⁷ *Ibid.*, p. 65.

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26.8 THE CULTURAL POLICY OF THE EUROPEAN UNION

Chapter XII presents the cultural policy of the European Union on the basis of Article 167 TFEU. As the author rightly points out, the provision was conceived of with a duality of aims. “The EU aspired to contribute to the promotion of the cultures of the Member States, respecting their [...] diversity”, at the same time, it also has the aim of protecting “the common European cultural heritage”.²⁸ Actually, this duality of aims is clearly expressed in the title of the book. As a further manifestation of duality in the cultural policy, the author refers to the attribution of powers in Article 167, which, in the words of the author “simultaneously provided for and limited the exercise of scope”.²⁹ The member states recognised that they had to create an explicit competence for the cultural activity of the European Union, however, it is restricted in scope, allowing the Council to adopt only incentive measures which may only provide a framework for regulation and do not replace the legislative acts of the member states.

26.9 SUMMARY

In summary, it can be stated that the cultural policy of the EU should be seen as a means of further (economic) integration. Incentive measures and programmes in the framework of cultural policy follow the regulatory principles and patterns of the internal market (*see*, especially the free movement of goods and the free movement of individuals).

Concerning the cultural traditions of member states as elements of European cultural diversity, they seldom have the opportunity of being granted Union support in their own right, unless they appear in a more comprehensive framework,³⁰ as part of foundations for a common European area of culture. The survival of national regulations based on local traditions and cultural values has little chance in the hard-core areas of integration (*see e.g.*, the book trade); at the same time, the opposition of member states may be more successful in more peripheral areas (which are less concerned with the functioning of the internal market) such as proposals for a single contract law or a single European Civil Code.³¹ As far as the jurisprudence of the ECJ – which served as the basis for the investigation undertaken in the book – is concerned, the author draws the general conclusion that it has preferred, in the majority of cases, interpretations beneficial to economic integration.³² The principle of mutual recognition is one of the most useful products of the ECJ which is

28 Cited according to the text of Art. 167 TFEU.

29 Király 2011, p. 249.

30 *Ibid.*, p. 260.

31 *Ibid.*, p. 267.

32 *Ibid.*, p. 264.

applied to overcome obstacles to the proper functioning of the internal market created by the diversity of cultural traditions of the member states.

Miklós Király's book should be of interest to anyone wishing to read a problem-focused analysis, rather than a descriptive presentation of the subject matter. As the author himself points out, the work did not aim to provide a text book like description of the issue; the principle behind the systematization is to trace the influences EU legal norms have had on culture.³³

As we have seen, many fields of interaction between culture and EU law are discussed in the book. As the author explains – excusing himself in the introduction – he had to exclude from the scope of the investigation “several closely and loosely related fields”, because “all would have surely fractured the framework of this work”.³⁴ While fully accepting the argumentation of the author, a single observation might be made: it would be worth dealing with, even if within one chapter, the cultural dimension to those external policies of the EU which are capable of influencing the functioning of the internal market indirectly (*see in particular*, CCP or immigration policy).³⁵ Considering the main basis for investigation (*i.e.* the internal market law), in this way the analysis could have been even more complete.

To sum up, it is a pleasure to read the English version of Miklós Király's book, in the hope it will be able to influence academic debate worldwide.

33 *Ibid.*, p. 21.

34 *Ibid.*, pp. 23-24.

35 For examples of investigation of these areas, *see* J.A. McMahon, 'Culture and the European Union's External Relations: Trade and Aid', *in*: Smith, *Culture and European Union Law*, pp. 327-352; T. Kostakopoulou, 'Long-term Resident Third Country Nationals in the European Union: Institutional Legacies and Evolving Norms', *in*: Smith, *Culture and European Union Law*, pp. 299-326.