27 The Latest Hungarian Textbook: A Successful Introduction to EU Law

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There can be no clearer evidence of the keenness of Hungarian universities to teach EU law than the fact that courses on the legal system of the European Union were offered well before Hungary actually joined the EU. Probably there is no need to emphasise the importance of this here. The one and a half decades of these courses offered many lessons and allowed many conclusions. One of the most important of these is that after being unsure about its place in the curriculum in the first few years, all Hungarian law schools now afford to EU law the importance that it deserves. However, there are significant differences in what the individual institutions choose to emphasise. Some of the reasons for these differences are formal and some are substantial. The majority of formal differences primarily stem from the different ways law schools are structured: some have chosen to set up dedicated departments to teach EU law, while others choose to offer the courses under the auspices of a department that is also responsible for other areas of law, typically international law and private international law. Structural differences, however, should not lead to far-reaching conclusions (pertaining possibly even to the curriculum).

On the other hand, the name of the various programmes under which legal studies of the European Union are offered might be more instructive in this regard. The list of the names is rather varied and includes 'EU Law', 'Union Law' (formerly: 'Community Law'), 'European Law' and even 'Europe Law'. Unfortunately, this variety often causes terminological problems. Therefore, it is important that publications that deal with this field should first clarify and unify the relevant terms and terminology. The overlapping terms are perhaps the most important manifestations of the differences in emphasis discussed above. Although these differences in themselves can have legitimate reasons, practical considerations should drive law schools to agree on an EU law 'minimum'. Naturally, this should be positive 'minimum': the determination of core studies that should be taught to all law students so that they can enter the legal profession with a reliable knowledge of these issues.

The authors of the latest textbook on EU law, under the leadership of András Osztovits, the editor, set out to write the material for these core studies.[1] The authors[2] have a

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1 András Osztovits (Ed.), *EU-jog*, Budapest, HVG-ORAC 2012.

2 Z.oltán Angyal, Zsófia Asztalos, Judit Fazekas, Laura Gyeney, Péter Metzinger, László Milassin, András Osztovits, Marcel Szabó.

background of teaching in four Hungarian law schools (Károli Gáspár University, University of Miskolc, Pázmány Péter Catholic University, Széchenyi István University). Therefore, it can be rightly said that the textbook on European integration is itself a represents a form of integration: it is a collaboration of eight authors from four universities.

Before discussing the contents of the book in detail, however, it should be praised for one particular attribute. Specifically, that it is indeed a *textbook* rather than scientific work in a monographic style. This is clear just by looking at the format of the book: the language is easy to understand with a style that is clear and concise and a structure that is easy to follow. At the end of each chapter, there is a brief list of further reading for those who are interested in a more in-depth look at a particular issue. The learning experience is also enhanced by charts and tables, and there is a helpful alphabetical index and an index of court cases at the end of the book. In other words, the format and the structure of the book serve its purpose of being a learning aid very well.

As for the basic concept of the book: it discusses the law of the European Union in two didactically distinct parts. The first part deals with the institutions and legal system of the EU, while the second is devoted to certain aspects of the internal market. The first part starts with a chapter on the history of integration. One could say that such histories are almost mandatory parts of any book on the EU, and in that sense, this chapter is just par for the course. It is important to note, however, that it is included in the book for more than just the sake of tradition. The history of integration is basically the 'past imperfect continuous tense' of the European Union, a flow of events that sweeps right up to the present. This continuity is reflected by the rather brief section entitled 'Treaty of Lisbon' (Part A, Chapter I, Section 14). This discusses the Treaty of Lisbon as the last act in the history of integration, but ultimately it only states that while the Treaty is formally a part of the history of integration, its content is not analysed here because it serves as the constitutional framework for the Community, and therefore it is discussed in greater detail in later chapters of the book. This approach means that the book does not treat the discussion of the history of integration as an introduction to legal history; rather, it sees integration as the engine that drives the evolution of the *acquis communautaire* and treats it as the essential constituent of the social and economic environment in which the regulations exist.

The first ('A') part of the book then describes the institutions of the Community and key structural and terminological characteristics of EU law. The chapter entitled 'The Institutions of the EU', has a certain (probably unintended) whiff of old textbooks on Hungarian constitutional law and public administration law. An undisputed virtue of this chapter is its conciseness and its structure that will greatly help students in their studies. The description of EU institutions is followed by a discussion of the key attributes of the *acquis*. Undoubtedly, this has been one of the most fashionable areas of legal research recently. Studying the genesis of any legal system always promises a very exciting journey, but it is even more exciting when one lives in times when a new legal system is being created. There are many

events in the history of the creation of the *acquis* that deserve special attention. The book enumerates and examines these from the perspective of the EU's legal personality, discussing the hierarchy of legislation and explaining the mechanism of law-making. Of the unique characteristics that stem from the *sui generis* nature of EU law as a system of laws, special attention should be paid to those that can be construed as fundamentally new legal phenomena typical of integration law rather than modifications of national law. Such new phenomena can be observed for example in connection with the distribution of legislative powers and the harmonization of law. In these matters, the dogmas that have evolved in the various national legal systems cannot be automatically transposed into Community legislation because they do not provide a sufficiently sound theoretical or dogmatic foundation. Therefore, it was and still is necessary for the Community to develop its own set of rules and legal mechanisms that are unlike the rules and mechanism of any of its member states. The European Commission has had the lion's share of this grand but at the same time rather difficult task. For this reason, it makes perfect sense that there is a reprise of the discussion of the European Court of Justice (hereinafter 'ECJ'), which is first described in connection with the EU's institutions: the book devotes a separate chapter to the various procedures before the ECJ. These procedures are the primary driving forces behind the evolution of the *acquis*, as the ECJ has not been shy about creating new EU law dogmas or transforming the meaning of existing ones. Nothing illustrates this better than the issues of direct effect and the member states' liability for damages in connection with violations of Community law. In addition to the creation of new dogmas, however, the case law of the ECJ also holds the possibility of convergence between different European systems of law and between different legal traditions. The issue of precedents merits special attention in this respect. Common law courts are known to have commented sarcastically on the 'changing judicial practice' of Europe, but it now appears that even on the continent, which rejects the use of precedents, there is a sound balance between the approach that accepts the binding force of earlier judgments (which strengthens legal certainty) and that rejects it (which serves the purpose of justice and fairness better).[3] The ECJ ostensibly takes care to maintain this judicial balance: it does not formally profess to be bound by its earlier judgments, but in reality it tries to create a more or less consistent body of case law.

The second ('B') part of the textbook addresses the law of the internal market. The internal market is the cornerstone of the EU's economic system, in which labour, goods, services and capital can move freely. The efficiency of the internal market can be increased by removing some (and ultimately, all) the factors that restrict commerce. From the definition of the internal market automatically follows the question: what does the law of the internal market mean?

3 F. Galgano, *Globalizáció a jog tükrében. A gazdasági jog elemzése*, HVG-ORAC, Budapest, 2006, p. 123 (La globalizzazione nello specchio del diritto).

In a broad sense, the law of the internal market includes any regulation that is designed to promote commerce between entities in the internal market thereby supporting its efficiency. This comprehensive interpretation can cover civil law regulations in the broadest sense just as the rules that define the administrative framework of commerce in the internal market. The question then arises whether the law of the internal market encompasses European contract law and private international law regulated at the Community/Union level.

Attempts at unifying contract law at the European level have been an ongoing process of varying intensity for a fairly long time. Such efforts were made outside the EU (primarily under the auspices of UNIDROIT) and within the EU alike. However, the harmonization of laws at the level of Community legislation faces significant obstacles in the form of the varied legal traditions of the member states and, mainly, of the Continental law – common law dichotomy. The central issues of classic private law have yet to be regulated at the Community level. Proposals and blueprints are published from time to time (Draft Common Frame of Reference, Common European Sales Law), but to date none could fulfil the role of the unified contract law of the European Union. Therefore, Community rules on contract law remain fragmented. While Brussels has been highly active in many areas of private law (such as consumer protection, copyright and industrial property protection and corporate law), in respect of the central concepts of private law, EU legislation remains secondary and disjointed.[4] This statement holds true even if visions of a uniform European Civil Code are presented from time to time.[5] However, at present it appears that the driving force behind the unification of contract law is the *lex mercatoria* rather than Community legislation. In other words, what is happening right now is the *convergence* rather than the *unification* of contract law. However, this convergence largely remains in the realm of commercial law, and this probably explains why Community legislation mainly focuses, quasi as a correction of the *lex mercatoria*, on consumer protection considerations. At the same time, consumer protection is an essential part of the idea of the internal market, since the European Union does not promote the internal market for its own sake but for the benefit of citizens of the Community, *i.e.* the *consumers*. Therefore, theoretically there can be arguments in favour of the approach that Community consumer protection regulations should be part of the law of the internal market. However, this approach would require that the matter of regulating private international law at the Community level is also addressed. It is easy to see that uniform Community rules on jurisdiction, common rules on the acceptance and enforcement of foreign regulatory or judicial decisions and the regulation of the conflict of laws at the Community level would

4 L. Vékás, *Parerga. Dolgozatok az új Polgári Törvénykönyv tervezetéhez*, HVG-ORAC, Budapest, 2008, p. 79.
5 H. Collins, *The European Civil Code. The Way Forward*, Cambridge University Press, 2008.

ultimately serve the interests of the citizens of the EU and would indirectly increase the efficiency of the internal market. On the other hand, this approach would make the teaching of EU law very unwieldy and result in considerable overlaps between courses. Consequently, from an educational perspective it appears much more sensible not to include these areas of law in EU law as an academic subject. EU law as an academic course does not have to include every source of Community law, because various pieces of legislation should be assigned to a specific part of the curriculum on the basis of their subject matter rather on the basis of the institution that adopted them. For this reason, it would not be advisable for example if EU regulations on private international law were arbitrarily removed from the general study of private international law and were taught as part of EU law simply on the grounds that they are part of the *acquis*. In light of these arguments, the authors' choice to limit the discussion of the law of the internal market to its commercial and administrative aspects (in line with the public law-based approach to teaching EU law) appears correct. This ensures that other sources of EU law associated with the internal market can be taught in their own context (civil law, civil procedural law and private international law).

Consequently, the chapter on 'The Law of the Internal Market' in the textbook mainly focuses on the public law framework of commercial activities[6] in the internal market. On the other hand, this naturally does not mean that private law considerations are completely ignored, as the discussion of fundamental freedoms includes many civil law and private international law aspects. The latter, particularly the issue of primary and secondary establishment, has received prominent emphasis in the case law of the ECJ. In this connection, the textbook should be praised for its special attention to cases with Hungarian aspects, although when it comes to the right of establishment, it would have been difficult to resist the temptation to include the *Cartesio* case[7] and the more recent *VALE* case.[8]

In addition to the fundamental freedoms, the book also discusses the basics of EU competition law as part of the law of the internal market. Since the very beginning of the integration process, Brussels has been very active in this unique field that straddles the line between private and public law; and rightly so, because any distortions of competition in the internal market would undermine the basic objectives of economic integration. Therefore, the competition law chapter is an indispensable part of the textbook and fits well with the overall structure of the book – even though law schools tend to teach competition law in the framework of other academic courses.

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6 For a discussion of aspects of foreign and international trade in commerce in the internal market, *see* G. Bánrévy, 'Nemzetközi kereskedelem az Unión belül?', *in:* M. Király & P. Gyertyánfy (Eds.), *Liber Amicorum. Studia Gy. Boytha Dedicata*, ELTE–ÁJK, Budapest, 2004, p. 7.

7 C-210/06 *[*2008] ECR I-9641.

8 C-378/10 *[*2012] ECR I-0000.

Free and fair competition is an attribute of the European integration that also has a meaning outside the realm of competition law in the traditional sense, as not only entities in the private sector but also the member states compete against each other. The drivers of this competition are the citizens who consciously exercise their fundamental freedoms. Member states that create a favourable environment for commercial activities will obviously enjoy a better position than others. Lawmakers in competing member states operate under the pressure of creating 'better law', which will ultimately benefit the citizens.[9]

The benefits of the pressure to perform are hardly disputable. This recently published textbook, which more than meets the standards of the strong field of academic books that deal with the EU, is a testament to that notion. It can be confidently recommended to anyone who wants learn about the fundamentals of EU law.

9 *See* the consequences of the Case C-212/97, *Centros* [1999] ECR I-1459.