

44 VARJU-VÁRNAY (EDITORS), *THE LAW OF THE EUROPEAN UNION IN HUNGARY (HVG-ORAC, 2014)*

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Our knowledge and perception of EU law has always been somewhat unbalanced. We have ample knowledge about the founding treaties, secondary legislation or CJEU rulings but we often forget to mention that all these merely make up about half of the Union law. Due to its “executive federalist” architecture, the EU is basically a supranational law-making organization relying on its Member States to carry out the decisions taken by the EU institutions. Regulations have to be carried out, directives to be implemented, and CJEU decisions to be followed by national institutions, and we often do not know too much how EU law is actually observed in the different member states, and it remains often unnoticed how national administration and judiciary handles it. The “usual suspects” like Germany, France or the UK are properly documented for foreign lawyers as well, but there are less information available concerning other states. Therefore, it is always an invaluable help to get access to the legal reality of some “exotic” member states, like e.g. Hungary. This assistance is provided by the book edited by Dr. Varju and Prof. Várnay.

The volume itself is divided into an introduction and nine further chapters setting out different aspects of the application of EU law in Hungary: seven of them are dedicated to general topics (judiciary and EU law or Parliament and EU law) and two of them to specific issues, competition and state aid law.

The second chapter is dedicated to problem how the Hungarian Constitutional Court deals with European Union Law. As Fazekas points out, the sad and controversial story goes back to pre-accession period as the direct applicability of the European Agreement was at stake. The Constitutional Court, as it is well-known, borrowed the core idea of the *Solange* case-law from the German *Bundesverfassungsgericht* and applied it under quite different constitutional conditions, and this decision haunts us during the last two decades as the ghost of Hamlet’s father. The chapter sums up the inaptitude of the Hungarian Constitutional Court to decide basic questions, what is the role and rank of European Union law in Hungary, as to whether an infringement of the EU law is a constitutional issue, and as to whether the Constitutional Court is ready to submit a preliminary question

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to the CJEU. The Constitutional Court shows signs of autism: impaired social interaction, repetitive behaviour and communicative inaptitude, it refuses to change anything in its case-law, and repeats its own old and self-contradictory sentences irrespectively of the opinions of legal doctrine or the evolution of the case-law in other member states. The chapter of *Fazekas* sums up this case-law accurately.

The Lisbon Treaty intended to improve the role of national parliaments, nonetheless their actual influence is much more a question of national law and practice investigated by the insightful and rich in detail third chapter of *Juhász-Tóth*. There are several procedures how to articulate and discuss policy questions in the Parliament however as the data show these are quite underemployed. On the one hand, the Government criticizes the European legislation and claims sovereignty back from Brussels, on the other, it does seem to discuss European matters in its own legislation, and does not want incline it into policy framing. This chapter, and especially the data gathered, show the hypocrisy of some national governments: complaining about lost influences of national policy making without showing any intention to incline national parliaments.

The quite technical nonetheless very precise fourth chapter of *Somssich* analyses the transposition of EU law in Hungary, not only dealing with general questions of imposition but also encompasses case studies reflecting on legislative consequences of concrete CJEU rulings.

Ermő Várnay focuses in the fifth chapter on the attitudes of Hungarian Government before the courts of the Union. Besides the basic roles as claimant or defendant, a national government may have various interests to intervene in different procedures in order to shape interpretation and application of EU law. An intervention, however, presupposes a problem awareness, the capability to assess which pending procedures may affect important policy areas. Reading the chapter, I am under the impression that the Hungarian government not only belongs to the rather active players but also acts rationally, and intervenes in cases which might influence its financial or budgetary interests.

As it was mentioned introductory, European Union law is basically carried out by the member states, and hence, the national judiciary is a key player how Union law is actually applied in a member state, and as to whether EU citizen may make full use of their rights. In this respect is the immensely insightful sixth chapter by *Varju* of fundamental interest. How is supremacy understood, how are EU human rights observed, how national remedies work, as to whether EU law *ex officio* applied are all central questions of Union law, and all are answered in an extremely well-documented and comprehensive study. The chapter is enormously instructive in comparison with the case-law of the Constitutional Court: on the one hand, the Constitutional Court seems to be rather inapt to apply consequently EU law, on the other, the ordinary courts make an impression of well-prepared judiciary ready to apply union law making however occasionally some mistakes. This impression is basically confirmed in the next chapter written by two judges, *Osztovits* and *Gombos* on

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the preliminary references who not only provide us with statistical data but also with explanations of factors influencing preliminary references.

The next two chapters are dedicated to two special areas of EU law, competition (*Tóth*) and state aid (*Papp*), providing an in depth analysis of the application of Union law in Hungary. The last chapter of *Bartha* analyses the international obligations of Hungary under EU law.

The book obviously targets the foreign audience, and it offers a solid basis for understanding the effects and application of Union law in Hungary: it contains statistical data and cases studies covering the most important aspects of Union law. One might however wonder what justified the selection of some case studies: why competition and state aid are more indicative than e.g. public procurement and environmental law, and why air transport treaties more important than energy among international obligations. Case studies always help to make a closer look, however, the methodological question always remains why these and why not other policy areas, why are they representative. The reader may miss a further point: the Government in the Council. The role of the Parliament and the implementation of EU law are very well documented, however, one of the major players, the Government as legislator and policy-maker in the Council has been somehow neglected. The Council is rather a “black-box”, and we indeed do not know too much about the political horse-trading functions, nonetheless it would be useful to see how the government could achieve its policy agenda in the Council, how effective the governmental bureaucracy is.

All in all, the book is a carefully prepared snapshot of current trends and source of priceless information for the foreign audience. Hence, I do hope it will be regularly updated, and it will report on the evolution of European law in Hungary.