

STATE LIABILITY AND REMEDIES IN NATIONAL COURTS

Another way in which the ECJ has tried to mitigate the rejection of horizontal direct effect of directives is through the principle of State liability in damages for non-implementation of a directive. This third method of enforcement has become increasingly important and has been extended to cover breach of community law other than non-implementation of directives. Note that the question of damages against the State raised in this context is part of a much wider debate over the creation of remedies as part of the effective judicial protection obligation of national courts which we will explore later.

Take a look at

Article 340 TFEU
(ex Article 288 TEC)

The contractual liability of the Union shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. [...]

But can you find in the TFEU—try as you might—a provision on state liability? – No. So, importantly, we are dealing here with a judicial creation.

When reading the following, ask yourselves: why would Member States accept the judge-made instrument of state liability?

1. STATE LIABILITY; DAMAGES AGAINST NATIONAL GOVERNMENTS

1.1 Failure to implement a Directive

Cases C-6&9/90 *Francoovich, Bonifazi & others v Italian Republic* [1991] ECR I-5357

[33] *It must be held that the full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain compensation when their rights are infringed by a breach of Community law for which a Member State can be held responsible.*

[35] *It follows that the principle of State Liability for harm caused to individuals by breaches of community law for which the State can be held responsible is inherent in the system of the Treaty.*

Consider:

What do you think the reaction of Member States was to this judgment?

Does State Liability now fully mitigate for the lack of horizontal direct effect of directives?

The Court had previously indicated (as we will explore in session7) that the Treaty did not intend to create new remedies. Is this judgment consistent with this?

1.2 State liability for legislative action in breach of Treaty provisions (Lawscast 6.1)

*Cases C-46/93 and C-48/93 *Factortame (No.2)* and *Brasserie du Pêcheur* [1996] ECR I-1029

Noncompliance Of National Courts Remedies In European Community Law And Beyond

Assimakis Komninos



Noncompliance Of National Courts Remedies In European Community Law And Beyond:

Non-Compliance of National Courts Bernhard Hofstötter, 2005 National courts take a pivotal role in making European Community law a living truth for citizens Individuals may turn to the courts in order to invoke rights derived from Community law However the capacity of individuals to effectively enforce their Community law rights depends crucially on the correct application of Community law by national courts In line with developments in international law and in particular with the jurisprudence of the European Court of Human Rights the ECJ has recently stepped up its level of scrutiny with regard to national courts incorrectly applying Community law As a consequence of a sequence of strong rulings there is now a clear trend towards holding states accountable for their courts By contrast national laws traditionally tend to shield states from accountability for judicial conduct This book is the first to deal with possible legal responses in the Community legal order and beyond when national courts incorrectly apply Community law Rooted in a rigorous contextual analysis of recent jurisprudence this work discusses various alternatives for future developments in the Court s case law The author explains the often uneasy nature of the relationship between national courts and the ECJ He explores common concerns voiced against an excessive degree of accountability for judicial conduct This work is based on extensive research on European Community law and adjacent areas of public international law It is highly recommended to academics and advanced law students as well as practitioners in the field of Community law including national judges policy makers and government officials Bernhard Hofstötter studied law at the Universities of Vienna Oslo Leuven magna cum laude and St Gallen magna cum laude He is presently an Assistant Professor of European Law at the University of Fribourg and a visiting lecturer at the Academia Istituzionale Nova in Bratislava

Non-Compliance of National Courts Bernhard Hofstötter, 2005-10-27 National courts play a pivotal role in making EC law a living truth for citizens Individuals may turn to the courts in order to invoke rights derived from Community law However the capacity of individuals to effectively enforce their Community law rights depends crucially on the correct application of Community law by national courts This book is the first to deal with possible legal responses in the Community legal order and beyond when national courts incorrectly apply Community law Rooted in a rigorous contextual analysis of recent jurisprudence this work discusses various alternatives for future developments in the Court s case law The author explains the often uneasy nature of the relationship between national courts and the ECJ He explores common concerns voiced against an excessive degree of accountability for judicial conduct EU and EEA Law Litigation Before National Courts Zsófia Varga, 2024-03-07 This book provides practical and comprehensive guidance for national practising lawyers judges and litigation attorneys on the application of EU EEA law before national courts It describes the essential rules regarding the application of EU EEA law before national judicial instances and structures them systematically in order to enable national judges and litigation attorneys to comprehend the main standards In short the book is about legal norms that would fall under the category of civil and administrative procedural law in a

national legal order These rules developed by the ECJ and the EFTA Court govern when and how national judges should apply EU EEA law in national proceedings The book is divided into six chapters each dealing with a specific topic For pragmatic purposes the structure of the chapters is uniform and each chapter can be read individually As the norms have been developed by the ECJ EFTA court and consist mainly of case law principles the topics are presented based on thorough analysis of the judgments rendered by those courts The book s unique practical focus makes a great addition to the library of any national lawyer and EU law expert

Remedies and Procedures Before the EU Courts René Barents, 2020-01-09 The ongoing reform in the organisation of the European Union courts makes an updated edition of this indispensable resource essential Following the book established easy to use structure the second edition offers a reliable thorough guide to the renewed rules of procedure of the Court of Justice and the General Court as well as updated provisions and practice directions including the relevant case law together with a focus on the extensive treatment of remedies available in these courts and how to secure them With the expert guidance of one of Europe foremost jurists the book clearly explains which rules apply and how to proceed in the course of any kind of case and any situation likely to arise From foundations and principles to specific issues regarding the assignment of cases preliminary rulings rules on evidence annulment illegality failure to act pleas judgments and orders appeal and much more the book covers all essential elements of Court of Justice of the European Union procedure including the following division of competences between the Union courts admissibility rules regarding anonymity service of documents setting and extension of time limits hearings witnesses and experts deposit and recovery of sums application of competition rules rules on state aid and rules on trade protection rules in cases concerning intellectual property rights rules in actions brought on the basis of an arbitration agreement rules governing access to documents languages legal aid interim measures damages expedited procedures and scope of the rules on costs Any lawyer seeking appropriate remedies in any case before the European Union courts will benefit enormously from this book whether used as a hands on manual in particular cases or absorbed over time It is sure to serve as an essential resource for many years to come

The Effectiveness of the Köbler Liability in National Courts Zsófia Varga, 2020-10-15 Over the last 15 years Köbler liability has resulted in the allocation of damages on only five occasions Why is that And what are the practical implications of the Köbler judgment in the Member States This book offers a unique analysis of the principle not from the usual EU focused point of view but from the view of the practical Member State and thus follows the track set by earlier books in the EU Law in the Member States series It thoroughly examines the national jurisprudential and legislative acceptance of the state liability principle and explores the existence of alternative remedies available in the Member States in case of such breaches The conclusions based on a systematic assessment of 300 national judgments from the 28 Member States lead to a reconsideration of the role of the Köbler doctrine in the system of judicial remedies against violation of EU law by national supreme courts After the pronouncement of the ECJ judgment in Köbler legal scholars and practitioners have

forecast the eradication of the principle of res judicata and the endangering of judicial independence The judgment caused a lot of ink to flow according to the ECJ's records at least 100 studies are directly devoted to the analysis of this decision This book is however the first to offer a comprehensive analysis on the genuine life of the Kbler liability in the Member States

The Enforcement of EU Competition Rules by Civil Law Nina Bucan Gutta, 2014-11-04 Private enforcement of competition law in particular through damages actions is recently one of the highly debated topics in European competition law Arguments for private enforcement are based on the EU principle of effectiveness while existing national substantive and procedural regimes applicable to damages may be ill suited for the effective enforcement of EU competition law However the risk that the introduction of enforcement oriented measures into national law is incompatible with private civil law is often underestimated or neglected This book aims to reconcile both EU enforcement and private law perspectives through a detailed study of the English and Slovenian private law systems Research on the compatibility of EU competition enforcement oriented measures with the private law regimes in England and Slovenia is used to argue that some changes to private law based on proposals for effective enforcement go too far and risk undermining the integrity of the legal systems This book already takes into account the 2014 Directive on antitrust damages actions

The Outer Limits of European Union Law Catherine Barnard, Okeoghene Odudu, 2009-03-05 A commonly expressed view is that the citizens and the Member States are destined to be overcome by the European Union There is a sense that the Union of today is not what was intended to be created or acceded to by the Member States or its citizens The Outer Limits of European Union Law brings together a diverse group of legal scholars to consider aspects of EU substantive constitutional and procedural law in a manner highlighting the many senses in which the European Union is or can be limited and so demonstrating that the fear of being overcome is largely a false fear By exploring the mechanisms and devices used to limit the European Union the contributors also reveal not only the strengths of the various limits but also and more crucially the weakness of the limits thereby demonstrating that the prospect of being overcome may be a genuine risk to be guarded against By considering general themes eg legitimacy and core subject areas eg policing free movement of goods remedies the book reveals the various techniques used by the Court of Justice Community institutions and Member States to define and modify the outer limits of the European Union and European Union Law

European Private Law After the Common Frame of Reference Hans W. Micklitz, Fabrizio Cafaggi, 2010-01-01 The book is a must read for anybody interested in the future development of European private law European Private Law News This volume contains a valuable collection of essays by a group of reputable academics each dealing with a particular aspect of the development of a substantive law of contract at European level The contributors have a variety of interests and perspectives The topic is clearly of great current interest throughout the European Union and beyond Peter Stone University of Essex UK European Private Law after the Common Frame of Reference brings together several interesting contributions from a distinguished group of scholars and sheds light on the

important issue of legal harmonization from an interdisciplinary and comparative perspective Francesco Parisi University of Minnesota US and University of Bologna Italy The Common Frame of Reference has several potential functions some reconcilable others mutually exclusive Its size its shape its true legal nature and its content all remain contested Modest or ambitious toolbox or code in waiting Its chameleon character is its strength and simultaneously its weakness and equally the reason why it has attracted such attention In this book the editors have assembled a veritable who's who in the field and it is a terrific read Stephen Weatherill University of Oxford UK This book paves the way for and initiates the second generation of research in European private law subsequent to the Draft Common Frame of Reference DCFR needed for the 21st century The book gives a voice to the growing dissatisfaction in academic discourse that the DCFR as it stands in 2009 does not actually represent the condensed available knowledge on the possible future of European private law The contributions in this book focus on the legitimacy of law making through academics both now and in the future and on the possible conceptual choices which will affect the future of European private law Drawing on experience gained from the DCFR the authors advocate the competition of ideas and concepts This fascinating book will be a must read for European lawyers private lawyers in the Member States and academics dealing with conceptual issues of the future of the national and the European private law Advanced students in both law and international business will also find this book invaluable as will US scholars interested in the US EU comparison of different legal orders *European Union Law* Alina

Kaczorowska-Ireland, 2012-09-10 Now in its second edition *European Union Law* has been fully revised and updated following the entry into force of the Lisbon Treaty in December 2009 The book contains entirely new chapters on the Protection of Human Rights in the EU the Area of Freedom Security and Justice and the Common Foreign and Security Policy Specifically written to give law students detailed up to date knowledge of all main areas of EU law the book provides an in depth and detailed examination of and commentary on the areas of institutional and of substantive EU law forming the syllabus of standard academic courses on EU law Unlike other texts this book successfully combines authoritative text with case summaries and judgments these being highlighted in colour tinted boxes for easy identification The author identifies the relevant points and key facts of the leading cases and discusses the judgments in detail often in the light of subsequent developments Student friendly features include short summaries at the beginning of each chapter outlining the topics and concepts covered an aide memoire at the end of each chapter to highlight and reflect the main points a recommended reading list at the end of each chapter to facilitate further research a map identifying EU Member States with accession dates and candidate states a Companion Website featuring updates twice yearly annotated links to online sources of interest and essay style self test questions with suggested answers This book is an essential resource for those studying EU law on both undergraduate and postgraduate courses and will be of interest to students of political science social science and business studies *European Union Law* , **Direct Effect in EU Law** Daniele Gallo, 2024-12-18 *Direct Effect in EU Law*

is the first book in English to thoroughly examine this revolutionary legal principle tracing direct effect's evolution throughout the multiform process of European integration A founding doctrine of EU constitutional law and the driving force of the EU legal system direct effect enables individuals and companies to invoke their rights before domestic authorities and the Court of Justice of the EU CJEU Yet while the doctrine of direct effect remains the backbone of the EU legal system it lacks clear legal framing by the CJEU Emphasizing the need for the CJEU to fully articulate and systematize direct effect as to its core components and consequences the book advocates for an innovative understanding of such principle that acknowledges its transformative impact on EU law It bridges theory and practice drawing upon the CJEU rulings dating from the 1950s up to 2024 The book reconstructs direct effect beyond the doctrine originating from Van Gend Loos and ultimately puts forward solutions for its principled comprehension and enforcement

European Union Law Alina Kaczorowska, Alina Kaczorowska-Ireland, 2013 Fully revised and updated the third edition of EU Law provides an exhaustive yet easily readable account of the complex and ever changing subject of EU law The author gives thorough authoritative and up to the minute treatment to the institutional constitutional and substantive elements of EU Law The book is unique in that it successfully combines depth of coverage with an excellent selection of supporting case law making this challenging subject accessible and easy to follow Case summaries and judgments are highlighted in colour tinted boxes for ease of reference and are accompanied by key facts and analysis often in the light of subsequent developments The student friendly approach is enhanced by market driven pedagogical features including Concise outlines at the beginning of each chapter describing its content An aide mmoire often presented in diagrammatic form at the end of each chapter to highlight and reinforce key points End of chapter recommended reading lists to facilitate further research End of chapter problem and essay questions testing the students ability to apply what they have learnt and A map identifying EU Member States and their accession dates acceding States candidate States and potential candidate States The book's companion website offers a range of teaching and learning resources including an interactive timeline of the EU useful web links self test questions and much more This book is essential reading for those studying EU law on both undergraduate and postgraduate courses and will be of interest to students of political science social science and business studies It also provides comprehensive coverage of substantive and procedural EU competition law and thus has its place as a textbook for introductory courses on EU competition law

European Patent Law Duncan Matthews, Paul Torremans, 2023-10-04 This book provides a comprehensive overview of European Patent Law It presents a critical analysis of the European patent law system and the proposed changes to it The book explores the strengths and weaknesses of the European Patent Convention and the interaction between the national and the European level as well as across borders

The Oxford Handbook of International Adjudication Cesare Romano, Karen Alter, Yuval Shany, 2014 This Oxford Handbook provides interdisciplinary perspectives on international adjudication analysing the proliferation of international courts and tribunals from the perspective of both international law

and political science It presents the different theoretical approaches to these courts their main functions and the issues confronting them

EU Constitutional Law Allan Rosas, Lorna Armati, 2018-05-17 The third edition of this acclaimed book continues the story of the EU's constitutional journey The EU's constitution composed of myriad legal texts case law and practice is no less of a moving target than before and the pace of change has if anything increased since the publication of the second edition In a constantly challenging geopolitical context the EU faces unprecedented political economic and cultural trials all of which impact upon the evolution of its constitution In particular the migration crisis has given rise to the need for substantial revision of the chapter dealing with the area of freedom security and justice and the institutional reforms embarked upon in the quest to restore financial order have taken a more structured form following the inception of a European banking union Fully updated to include the ramifications of Brexit the book succeeds where others have struggled in making sense of the EU's complex constitutional order focusing on its essential features but taking into account the profound changes that have taken place over the past 20 years The EU has become much more than an internal economic market Recently it may even be argued that the focus of action has been in areas such as immigration and third country nationals security and defence policy and penal law and procedure and the work towards creating a European banking union underlines the continued need to monitor economic and fiscal policy Eschewing too much detail the authors underline the essential values principles and objectives of the integration regime as well as its basic normative structure and hierarchy In this context the decentralised nature of the EU is highlighted as an integral part of its constitutional make up Recurring themes include European citizenship fundamental rights and the rule of law The book also confronts head on the problems and challenges facing the Union and the gap which is often perceived between lofty ideals and harsh realities The book will be useful to students of EU law and European integration but will also appeal to a broader audience of researchers and practitioners including political scientists

EC Private Antitrust Enforcement Assimakis Komninos, 2008-02-22 This book written by an academic cum practitioner with substantial experience in the field of antitrust enforcement presents the rise of private enforcement of competition law in Europe especially in the context of the recent modernisation and decentralisation of EC competition law enforcement In particular the study examines the role of courts in the application of the EC competition rules and views that role in the broader system of antitrust enforcement The author starts from the premise of private enforcement's independence of public enforcement and after examining the new institutional position of national courts and their relationship with the Court of Justice the Commission and public enforcement in general proceeds to deal with the detailed substantive and procedural law framework of private antitrust actions in Europe The author describes the current post decentralisation state of affairs but also refers to the latest proposals to enhance private antitrust enforcement in Europe both at the Community level where reference is made to the December 2005 Commission Green Paper on Damages Actions and its aftermath and at the national level where reference is made to recent and forthcoming relevant initiatives

EC and EEA Law M. Elvira Méndez-Pinedo, 2009 The effectiveness of European Community EC law and the way it is enforced in order to assure the judicial protection of individuals penetrating into the national legal orders is probably the most distinguishing feature of this unique legal order in contrast with classic international law By now this principle and doctrine created by the European Court of Justice has become part of the European legal order with general acceptance in all EU countries By contrast the effectiveness of European Economic Area EEA law and the way this other even more sui generis legal system provides comparable rights for European Free Trade Association EFTA EEA citizens is a silent revolution brought by the EFTA Court that has not been properly researched and exposed in the field of European law This book summarizes and explains the basic principles governing the relationship between EEA law and the national legal systems while searching for similarities and differences with EC law The research questions explored in this collection include How does EEA law achieve supremacy over national laws Does EEA law have direct applicability Can we speak under some circumstances of a sort of direct effect of EEA law Can EEA law be defined as having quasi primacy and quasi direct effect What about the indirect effect of EEA law duty of consistent interpretation Last but not least does the doctrine of State liability for breaches of EC law apply to EEA law If so what are the differences between the two legal orders These questions are explored from a European perspective in order to help understand the effectiveness of European law the special relationship between the Community EEA legal orders with the national legal systems when the enforcement of European rights and that the judicial protection of individuals are at stake The EU Treaties and the Charter of Fundamental Rights Manuel Kellerbauer, Marcus Klamert, Jonathan Tomkin, 2019-05-16 This Commentary provides an article by article summary of the TEU the TFEU and the Charter of Fundamental Rights offering a quick reference to the provisions of the Treaties and how they are interpreted and applied in practice Written by a team of contributors drawn from the Legal Service of the European Commission and academia the Commentary offers expert guidance to practitioners and academics seeking fast access to the Treaties and current practice The Commentary follows a set structure offering a short overview of the Article the Article text itself a key references list including essential case law and legislation and a structured commentary on the Article itself The editors and contributors combine experience in practice with a strong academic background and have published widely on a variety of EU law subjects **The Yale Journal of International Law** , 2007 The Future of Remedies in Europe Claire Kilpatrick, Tonia Novitz, Paul Skidmore, 2000-12-05 Remedies lie at the heart of European legal systems They both reflect and shape the balance of power between states and individuals and between state and supranational institutions These profound political implications can be better understood by thinking about the functional roles and institutional histories of remedies These implications roles and histories are considered in this volume of challenging and original essays on remedial systems in Europe This book explores the lively and often controversial dialogues between courts national and supranational on remedies In so doing it addresses the adequacy of these dialogues in the light

of perceived systemic goals both in an overall institutional sense and as regards specific sectoral objectives or institutional actors aspirations In particular the book looks at the way in which remedies in the EC legal order interact with those in other legal orders such as the Council of Europe and private international law It also identifies problems of interaction between different Council of Europe mechanisms under the Convention on Human Rights and the Social Charter The book also examines the contribution of courts to remedial systems by considering other methods of formulating and redressing claims Contributors Claire Kilpatrick Takis Tridimas Leo Flynn Antonio Lo Faro Carol Harlow Steve Weatherill Bernard Ryan Miguel Poiars Maduro Henry G Schermers Angela Ward Paul Beaumont Robin White Phil Syrpis Tonia Novitz Richard Rawlings

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