Book Review


In this 500-page-plus volume, 21 scholars from almost every Member State of the European Union (EU) systematically examine how EU law and European Convention of Human Rights (ECHR) laws are treated in their domestic systems. The book also tries to answer the overarching question whether the domestic judiciaries of the EU Member States tend to cope with these two external sources in a more and more similar way.

The enterprise is ambitious: whereas others have extensively studied the question of the effects of either EU or ECHR law and case-law in domestic legal orders, and have compared the different national experiences, so far nobody has embarked in such a twofold comparative effort. Not only are domestic experiences juxtaposed, but each State report compares the internal influence and effects of the two European supra-national orders.

Since the analysis focuses on EU States, the overall picture of ECHR effects in domestic orders is truncated, but with respect to EU law, the book could serve perfectly as a stand-alone reference manual; portraying the current status of phenomena such as supremacy, direct effect, jurisdictional integration, and other factors that play a role in the interplay between the EU and the domestic legal system.

A first introductory chapter, in which Martinico lays down the framework of this research, is followed by two non State-specific chapters by Ferrari and Harmsen. The main remark of Ferrari’s short note is that the essential differences between the two legal systems (the EU and that of the Council of Europe), and the mandates of their respective judicial bodies, make it difficult to hypothesise or to predict a definitive approximation of their domestic operations. Harmsen’s chapter is concerned with the effects of the enlargement of the ECHR’s

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membership, and studies how the Convention operates differently in different group of countries, at the risk of some inconsistency across all Member countries, with respect to its internal effects and its use by national judges.

The core section of the book, and by far the most voluminous one (pp. 55–497), is comprised of the 18 reports on single States, or small groups thereof.

One of the recurrent problems affecting collections of State reports is that single reports often fail to comply with a uniform standard model, and their respective unevenness (e.g., with regard to the choice of the subjects analysed or the tone of the analysis) frustrates the very purpose of the comparison which should animate the whole endeavour.

Instead, the concern for uniformity played a major role in the phases of preparation of this book: every author was provided with the same questionnaire, listing numerous topics his or her contribution would have to address. The array of questions ranged from an analysis of the constitutional provisions regulating the domestic effects of EU and international law, to the assessment of the role of ECJ’s and European Court of Human Rights’ decisions in national courts’ caselaw; from the description of disapplication practices (whereby judges set aside national norms conflicting with EU or ECHR law) to the review of the relevant national scholarships.2

This structure may have resulted in repetitiveness: chapters tackle the same issues and often provide an identical analysis thereof. For once, however, repetition is not due to sloppiness but to rigor: it guarantees that all contributions were actually serving a unifying purpose, besides making each of them usable on its own.

All the authors have committed to follow the structure conceived by the editors, and reading the chapters in succession (a task for uncompromising completists) a clear perception emerges of how much the application of EU and ECHR law heavily depends on the particular societies and legal orders they are supposed to regulate.

The book is praiseworthy for two reasons. The State-by-State appraisal, besides witnessing a titanic effort of coordination and research, is a welcome and useful rarity, which scholars will appreciate, all the more so since in this field few authors are well-versed in the legal orders of all Member States, and far too often general statements are, in fact, based on anecdotal or incomplete evidence.

Next to this quantitative value (it is a mine of knowledge, with Malta being the only case-study left out), the book advances an original claim, that is, there is a recognisable trend, whereby EU law and ECHR law are treated in an increasingly similar way in each Member State.3

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2) These questions are reported at pp. 9–10.
3) This theory has already been formulated with respect to single States. In France and in the Netherlands, for instance, “there is no fundamental divide between the application of public