

Allan F. Tatham: EC Law in Practice: A Case-Study Approach¹

- presented by Ernő Várnay² -

Allan F Tatham, or ‘Allan’, as he is known by everyone in European Law circles in Hungary, has not been able to tear himself away from Hungary for nearly a decade and a half now. He has been an official at the Budapest Representation of the Commission, has taught at nearly all the law schools, and elsewhere, around the country, edited books³, written articles⁴, and proof-read for almost everybody, helped prepare for European Moot Courts, was a member of the Moot Court jury, and now here is another Allan, the book author. In a bold undertaking by publisher HVG-ORAC, he has written his own monograph on the law of the European Community. It is a bold undertaking because it has been written in English, a language in which numerous formidable works⁵ are already available, and with which therefore competition is unavoidable.

One of the prerequisites of successful competition is that a book is able to distinguish itself from the others by showing unique, or at least uncommon, attributes.

So, can we find such attributes?

The subject matter of the book

The subject matter of the book can itself be viewed as such an attribute: as its title (‘EC Law’) makes it clear, the book’s content does not encompass the law of the European Union in its entirety: Common Foreign and Security Policy, or Police and Judicial Co-operation in Criminal Matters does not feature at all. With this it has succeeded in distinguishing itself from the ever

¹ HVG-ORAC, Budapest, 2006. 705 p.+ XCVI

² Ernő Várnay is professor at the Department of European Law and International Private Law of the Faculty of Law of the University of Debrecen

³ András Jakab, Péter Takács, Allan F. Tatham (edited by), *The Transformation of the Hungarian Legal Order 1985-2005*. Kluwer Law International, 2007, 673 p. + XVIII

⁴ For example, Tatham, A., *The Effect of European Community Directives in France* (1991) *International and Comparative Law Quarterly* 907, A. Tatham, *European Community Law Harmonization in Hungary*. *Maastricht Journal of European and Comparative Law*. 4 (1997) 249.

⁵ T.C. Hartley, *The Foundations of European Community Law*. Fifth Edition Oxford University Press, 2003, Josephine Steiner, *Textbook on EEC Law*. 3rd Edition Blackstone Press, 1988, Paolo Mengozzi, *European Community Law from Common Market to European Union*, Graham and Trotman/Martinus Nijhoff, London, Dordrecht/Boston, 1992, Bermann, G.A., Goebel, R.J., Davey, W.J., Fox, E.M., *Cases and Materials on European Community Law*. West Publishing Co. St Paul, Minnesota, 1993.

more frequent volumes on 'EU Law'⁶. It may well turn out to be the last notable work under this title, considering that the European Community will cease to exist upon the Reform Treaty coming into force.

The singularity of the book's subject matter does not stop here. Unlike its competitors, this book does not include important chapters of the so-called 'Institutional Law of the EC (EU)'; neither the institutions nor the legislative procedures feature, and the reader cannot find anything on the preliminary ruling procedures, the action for annulment, or the enforcement procedures against Member States being in breach of their obligations under Community law. Nevertheless, we would be mistaken to expect the author to join the camp of authors focusing on the so-called 'substantive law' of the EC, as the book pays close attention not only to the foundations of the Community's law, including the list of basic rights, but also deals in detail with the founding principles of EC law, the questions of direct effect and supremacy, as well as the principles of subsidiarity and proportionality. Through this, and especially through introducing the principle of the primacy of EC law over its member states' law from the perspective of three large Member States (France, Germany and the UK), the author provides us with an insight into important aspects behind the formation of the EC (EU) constitution.

The 'lion's share' of the book is taken up by the substantive law of the EC. Here we come across the 'classic themes' (although not in their entirety): the law of the Internal Market (chapters five to ten), the competition law applying to companies (chapters eleven to thirteen), and the legislation against sex discrimination (chapter fourteen).

The book's approach

The subtitle refers to the primary method employed by the author, namely a case-study approach. Such a study, putting great emphasis on the case law of the European Court of Justice, or rather, the text of its decisions, is not unique among English language versions.

Tatham conscientiously works through the core body of the case law, and in many instances goes beyond this. For the uninitiated reader of EC law it becomes evident that these shaping, and changing, interpretations of the European Court of Justice have played a crucial role in determining the content of EC law.

In order not to leave the discussion of the chosen legal areas unfleshed out, the author also introduces the most important pieces of secondary legislation. In doing so, he remains faithful to his method, and subsequently reviews the case law pertaining to this material. It is a great virtue of the book that on several occasions it illuminates how the decisions of the European Court of

⁶ Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials*, Fourth Edition, Oxford University Press, Oxford, (2008), E. Deards and S. Hardgraeves, *European Union Law: Textbook*, Oxford University Press, Oxford (2004), S. Weatherill and P. Beaumont, *EU Law*, 3rd Edition, Penguin Books, London (1999). Penelope Kent, *Law of the European Union*, Third Edition, Longman, 2001, Jo Shaw, *Law of the European Union*. Second Edition, MacMillan, 1996.

Justice have directly influenced the primary legislation (basic treaty), and even more so the secondary legislation of EC institutions.

A by-product of the case-study approach is that the delineation of the decisions of the European Court of Justice has not been limited to the citation and analysis of the relevant passages, but very often case summaries have been included too. The reader is thus also given the down-to-earth details, illustrating how EC law has become a part of our daily lives: 'it is all about us'.

By enclosing an (exclusively English-language) bibliography with each chapter, the book also points to the existence of a body of legal scholarship regarding particular questions that is on occasions highly critical of the decisions of the Court, as well as of the weaknesses of legislation. The book has not therefore taken it upon itself to extend into the academic literature, thus making the reader's job considerably easier, perhaps too much so.

Some critical observations

Having read the book it is not self-evident what the expression 'in practice' denoted in the title refers to. The meaning of the word 'practice' cannot be easily conceptualised in relation to the law. If we wish to do this on the basis of Tatham's book, we have the following pointers to assist us: 'practice' first of all means the case law of the European Court of Justice and the practice of the Member States' constitutional courts. We can then add the 'regular' courts of Member States insofar as they apply to the European Court of Justice for a preliminary decision in cases before them, and as they themselves are applied to for remedy in instances of breach of EC law. (The latter is detailed in the third chapter of the book.) The cases that come before the courts arise from everyday life, and in this respect they undeniably are part of 'practice'. Legislative practice however has an altogether different nature (here we mean the harmonisation of law within the EC, with the participation of the EC institutions and the legislative bodies of the Member States). This is discussed in the fifth chapter of the book in connection with the Internal Market. It is possible that a further interpretation of 'practice' could incorporate a practice-oriented approach to the law related to the procedures of the European Courts, which has not been incorporated into the book.

In reviewing the freedoms of the Internal Market the free movement of capital is not dealt with (EC Treaty, Chapter Four, Capital and Payments). Leaving this freedom out is not without precedent, as it was not included in Craig and de Burca's 'EC Law' either (although a later edition has corrected this), yet we do not think this should go unnoted. It is difficult to understand why the decision that established the foundation of the legal harmonisation related to the Internal Market and clarified its limits (the Tobacco Advertising case⁷) does not feature in the book. Further, we believe that the rules relating to state aid limiting free competition would also have merited at least a mention.

⁷ Case C-376/98 Germany v. European Parliament and Council [2000] ECR I-8419

It is unusual that in the course of citing passages from European Court of Justice decisions the book does not adhere to the original breakdown of decisions into points, which makes it more difficult in later references to pinpoint the exact source.

Perhaps motivated by the wish to avoid creating an overly weighty volume, the decisions unfortunately have been quoted in such small print that it hinders their readability.

True to its type, the book complies with the requirement of including chronological and alphabetical indexes of cases that is expected of a work of its field.

In summary: 'EC Law' by Allan Tatham is a work of high quality which well satisfies the demands of its field in its discussion of a number of core areas of the European Community's legal system, and which can be used very effectively both as a textbook and a handbook.