

PREFACE

Reading the present book reminded me of the sheer quality of the author's work as a student in my European law classes at the K.U. Leuven (Belgium) where he graduated as Master of Laws (LL.M.) magna cum laude.

Bernhard Hofstötter's work contributes substantively to the topic he deals with.

Although the principle of State liability for damage caused to individuals as a result of breaches of Community law has raised enormous interest amongst legal practitioners and theoreticians from the early years of the Community legal order, this principle was only, for the first time, formally recognised by the Court of Justice of the European Communities (ECJ) in its 1991 *Francovich* judgment. Five years later, in its *Brasserie du Pêcheur* judgment the ECJ added, in a case concerning an infringement of Community law by the legislature, that the principle of State liability applied in any case in which a Member State breaches Community law, whatever be the organ of the State whose act or omission was responsible for the breach. In 2003, in its *Köbler* judgment, the ECJ explicitly extended the principle of State liability to cover also judicial acts.

The *Köbler* case is the primary focus of Dr. Hofstötter's book. He explains that the extension of the principle of State liability to the judiciary finds its foundation not only in international law and in the case law of the European Court of Human Rights but also in the general principles common to the legal traditions of the Member States. He examines in great detail the objections raised against the inclusion of national judiciaries for the purpose of State liability for breaches of Community law, such as the independence and impartiality of national judges, and the doctrine of *res judicata*. According to the author, the danger of putting at risk the co-operation between the national courts and the ECJ, which results from the extension of the principle of State liability to the judiciary, was contained in *Köbler* by setting a new and a higher standard of liability.

Dr. Hofstötter also examines the existence of alternative remedies for sanctioning failures of the judiciary to comply with Community law. In this

respect he analyses the recent *Commission v. Italy* judgment (C-129/00) which seems to indicate that an action for infringement can serve as a means of sanctioning national courts' failures to comply with Community law.

Dr. Hofstätter's book is based on extensive research. Its approach is balanced and constructive. Criticism is either countered or balanced with practical suggestions. Since the extension of State liability to judicial acts has only recently been confirmed in the Community legal order, this book will undoubtedly contribute to the development of the law in this field. It is therefore highly recommended to anyone who is truly involved in contemporary developments in European law.

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