

## *Review*

# Márton Varju – Ernő Várnay (Eds.): The law of the European Union in Hungary: Institutions, processes and the law<sup>1</sup>

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With its eastern expansion the European Union required the newly joined, post-communist Member States to enhance their democratization. Although Hungary complied well and rapidly with the formal criteria of accession, further effective and quick implementation regarding the rule of law and good practises in public administration was also demanded by the Union, which is in progress ever since then.<sup>2</sup> The institutional transformations, as consequences of the implementation, required not only the adjustment of the legal regime, but the adjustment of the attitude of civil servants and law makers as well. Obviously, this aim could be reached over a relatively long period of time. The reviewed book aims to analyse this process: “This book examines the impact of European Union law on the state and law in Hungary. [...] It looks at the institutional responses in government to the direct adaptational pressures following from various areas of EU law and governance, in particular, the mechanisms and practises adopted for the harmonization of national law with EU law, including the external *acquis*, the application and enforcement of EU law in Hungary and the protection of by the Hungarian government of rights and Hungarian interests before EU courts.”<sup>3</sup>

One would think the 10 years which have passed since 2004 would have been enough time for domestic legal literature to fully process the changes of governmental structures, and of substantive and procedural law and other impacts arising from EU accession. Even though several books, studies, publications, monographs and textbooks exist, these are mainly sectoral in scope. Comprehensive literature on the advantages and difficulties of harmonization and governance, jurisdiction, and law-making from pre-accession up until today is not easily found, and even less so in foreign languages. The book by editors Márton Varju<sup>4</sup> and Ernő Várnay<sup>5</sup> succeeds in filling the gap in this field of science.

Flóra Fazekas (University of Debrecen) is the author of a chapter concerning the role of Hungarian Constitutional Court. She gives an overview of the constitutional context and effects of EU membership and of the constitutional disputes which have arisen since 2004 in this regard. The practice of the Polish and Czech constitutional courts is compared with the Hungarian practice starting with the pre-accession period. The chapter sets out a transparent and understandable structure. Although some aspects of

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<sup>1</sup> Márton Varju Ernő Várnay (Eds.): The law of the European Union in Hungary: Institutions, processes and the law, HVG-ORAC Publishing Ltd., 2014.

<sup>2</sup> *Ibid.* p. 21.

<sup>3</sup> *Ibid.* p. 21.

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fundamental rights protection at EU level are discussed here on a case by case basis, and later in Chapter Six, the issue is unfortunately not dealt with elsewhere in the book. The interpretation and effect of EU accession to European Convention on Human Rights<sup>6</sup> could perhaps also have been made part of the analysis (as far as it is relevant for Hungary).

The following chapters by Angéla Juhász-Tóth,<sup>7</sup> Réka Somssich<sup>8</sup> and Ernő Várnay strengthen the comprehensive nature of the book by fitting their chapters perfectly into the methodology described. Angéla Juhász-Tóth raises an important question: did the Hungarian Parliament waste the opportunities that it had had regarding the implementation of EU law? She aims to give a comprehensive overview of the legal background of the operation of the Parliament and the practices regarding EU affairs, and assesses the EU related activities of Hungary.<sup>9</sup> This goal of the chapter is indeed realized; and it is, in my view, one of the most interesting sections of the book. Réka Somssich and Ernő Várnay focus on other aspects of the transposition of EU law in chapters regarding the methods and procedures of approximation and the role of the Hungarian government and governance. Réka Somssich introduces the context and the historical background of pre- and post-accession coordination procedures and the alignments needed to fulfil the criteria of the European Union from a novel point of view. Ernő Várnay evaluates harmonization on a different level as he describes the results of and the rationales behind cases concerning Hungary before the European Court of Justice.

The following two chapters deal with the judicial effects of the accession. One of the main challenges of the harmonization of EU law was the adoption of measures regarding judicial cooperation between EU Member States; but also being subject to the supremacy of EU law and the power of authentic interpretation by the Court of Justice made national courts face new types of challenges, also regarding the interpretation of judicial independence. Márton Varjú underlines the main objectives and realized measures in the field of judicial cooperation well. András Osztoivits<sup>10</sup> and Katalin Gombos<sup>11</sup> analyses the trends and quality of preliminary ruling procedures from Hungarian national courts. The use of statistics made the chapter even more unique.

The last chapters concern three different fields of EU policies. The study by Tihamér Tóth<sup>12</sup> discusses the probably most important field of integration, the provisions regarding the functioning of the internal market. The reception and application of competition law of the European Union still poses challenges for the Member States' administrations monitoring authorities. The chapter incorporates also the case law of the Hungarian Competition Authority, although without a precise general definition of the national legal background (which might have been useful to include). Mónika Papp<sup>13</sup> gives account of Hungarian developments regarding a similarly important field of European Union law: the rules on state aid. Compared with other publications concerning this topic, the chapter provides novel insight into the issue

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<sup>9</sup> Angéla Juhász-Tóth: *European Union law and the Hungarian Parliament: wasted opportunities?* Ibid. p. 79.

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by summarizing more than 250 individual decisions of the Commission concerning Hungary in this field. Chapter Ten from Ildikó Bartha<sup>14</sup> discusses Hungary's international agreements affected by EU membership and also examines the treaty-making practice from pre-accession times to the Treaty of Lisbon.

One of the main advantages of the book is that it examines not only the realized EU-related provisions, but pre-accession procedures. It also focuses on levels of professional background behind the transformation, and the effects of trainings organized for judicial and administrative staff. Furthermore, it tries to identify and elaborate upon the constitutional problems that arose in the accession period. Instead of dealing only with European Union law in general, it focuses on related domestic measures. It employs a sectoral approach, but with broader analyses, thus the book provides a complex overview of the condition of the Hungarian legal system before and after accession. It is indeed unique to summarize subjects like reception of competition law measures, international agreements of the Hungarian State and the role of national courts in preliminary ruling procedures together in one comprehensive book. It would not be wise for anyone to say that the domestic law (or the law of any Member State, for that matter) is perfectly harmonized with EU law, and the reviewed book emphasizes this statement correctly. Different actors at different stages of implementation are advised to consider the findings of the book, as these may prove useful in speeding up the fine-tuning of the Hungarian legal system in light of the EU *acquis*. The authors are all practicing legal professionals as well, increasing the practical relevance and reliability of the reviewed book.

Even scientific works and textbooks sometimes cannot avoid showing political preferences, but that is not the case here. The political neutrality of the writers can be assessed positively. It is crucial to remain neutral in criticising and evaluating the governmental regimes, instead of only just stating the facts. Such an approach can highlight and detail the problems and deficiencies experienced during the legislative 'reception procedures' in an impartial way.

*De lege ferenda* elements are not too common in the book, thus it can be described more as statements on and evaluation of past and present. At first glance, it is thus perhaps less relevant for legal and administrative practice, however, lessons learned from the past may serve as a roadmap of good implementation for the future – or on the contrary, as a list of practices to be avoided. The editors expressly state in Chapter One that the examination of deeper, less visible impacts of the Europeanization of the domestic legal order are not part of the book: the aim of the reviewed book is defined as exploring the motivations and interests of the Hungarian institutional system regarding EU membership.<sup>15</sup>

All chapters are written in compliance with the methodology described in Chapter One, and with great professionalism. The authors also cite foreign literature, which ensures a thorough analysis with some comparative aspects. Foreign language works of Hungarian authors are sometimes said to neglect the proper legal terminology, but not in the case of this book, which uses a fluent and professional style. It can be stated that the book fully achieves its aim. It was published in 2014, and gives up to date, factual, and experience-based information. The book provides extensive information about the full spectrum of the EU-oriented accession and harmonization procedure in Hungary, and the lessons learned from this process may serve as useful guidelines going forward – for Hungary and for other states (pre- or post-accession) as well.

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<sup>15</sup> *Ibid.* p. 25.