
REVIEWS AND ANNOTATIONS

Ondřejková, Jana. Princip přednosti evropského práva v teorii a soudní praxi. Praha: Leges, 2012, 192 s. [Principle of primacy of EU law in the theory and judicial practice. Prague: Leges, 2012, 192 pp.]¹

Leges publishing has issued a *Jana Ondřejková's* book – *Principle of the primacy of EU law in theory and judicial practice*. The author is an assistant professor of *Department of Political Science and Sociology of Law School at Charles University* in Prague. The book is a shortened version of author's dissertation. The topic of the book – principle of primacy of EU law – is very actual and not properly discussed in current legal literature. Hence it is necessary to appreciate any book related to this issue.

The principle is often considered as something what simply is, as kind of an axiom – a rule which is not necessary to prove or where there is no need to ask for the origin of such a rule. It is therefore more than reasonable and necessary to look behind the scenes of how this principle was formed. In addition it is important to look on how it has been used and which theoretical resources it has or may have, than just settle with the fact that “it just is”, as it is unfortunately quite often with many lawyers. The author is very accurate and precise in managing the case law, laws and legal theories. Chapters are also very user-friendly divided from the formal but also from the material point of view. Possible technical admonition could be inaccurate usage of the word “chapter” and “sub-chapter” when certain units are sometimes called sub-chapters and then similar units as chapters.

The first chapter, entitled *Legal basis of the principle of primacy of European law*, is primarily a theoretical analysis of the investigated principle. Firstly the basis of the principle of primacy is looked for in the founding documents of the *European Communities*, secondly in the case law of the Court of Justice. Analysis of the most important decisions (such as *Van Gend en Loos*, *Costa*, *Simmenthal* etc.) and their influence on the principle of primacy of EU law are presented. In the next part of the chapter, the author tries to find the legal-theoretical basis of the principle of primacy. The concept of *H. L. Hart* and his *Rule of Recognition* is raised as well as the *H. Kelsen's Grundnorm* (or so called basic norm). Both concepts are presented as the possible bases for the principle of the primacy. An important part is a sociological concepts analysis; one of the most interesting parts of the chapter is devoted to consideration of other possible bases of the principle of the primacy. At the end of this chapter we find reflection in what sense it is possible to look at the principle concept, i.e. if it is possible to interpret the principle of the primacy as a principle of law.

The second chapter, entitled *Theoretical view on the principle of the primacy*, is based on the Court of Justice settled case. Not only it is shown what the Court ruled, but also it is presented how the Court dealt with the principle over the years. The principle is also discussed from the application point of view (*ratione materiae, loci, personae, and temporis*). Furthermore the author very clearly points out the possible advantages of looking at the principle of primacy by means of a rule of interpretation, a rule of conflict of laws, a derogation rule, a legal principle (in the concept of *R. Alexy*) or an essential characteristic of EU law. The principle which would fit the most into the Court of Justice interpretation is looked for. Each of the possible approaches is discussed and its pros and cons are pointed out. Possible deficiency to this chapter could be only that arguments could be more developed with more emphasis on the author's own opinion. The conclusion of this chapter leads to the claim that the principle of the primacy is to be seen as a legal principle. This claim is also proved properly.

¹ The review was created within the Program rozvoje vědních oblastí na Univerzitě Karlově (PRVOUK) 04 named “Institucionální a normativní proměny práva v evropském a globálním kontextu”.

The third chapter, named *The principle of supremacy of European law* in the decision-making of the constitutional courts of the Member States, is – in contrast to the previous two – mostly practical and focused on application. The first two sub-chapters are devoted to practice of constitutional and supreme courts in the Member States, the next section focuses on lower courts and their acceptance of the principle advantages and implications of that for their decision. The beginning of the chapter shows an analysis of the key arguments of the constitutional courts of the Member States. It must be said that this analysis is very engaging. The examples relating to the protection of fundamental rights show the evolution of how constitutional courts of the Member States were to gradually accept the principle of supremacy of Community law. The situation in the various countries of the *European Union* within the review of the *Maastricht Treaty* is analysed, i.e. issues related to the transfer of powers are discussed. A separate sub-chapter is dedicated to the case law of the *Constitutional Court of the Czech Republic*. The most important decisions connected to the principle of primacy are presented as well as the relation between the Czech and European law is pointed out. The last part of the whole chapter deals with the other factors which have or might have influence on the courts' decisions over the principle of primacy. The objective limitations are discussed, such as political and legal framework, institutional arrangement of the judiciary, the process of judge selection, but also subjective factors related to judges are shown, as well as other factors. This part of the book is one of the highlights.

Last, the fourth chapter, *Doctrinal problem solving of the relation of European and national law*, summarizes a variety of theories dealing with the issue, including their critical assessment. Readers are offered with quite challenging sample of different doctrinal approaches; these approaches are discussed individually. Models by *Neil MacCormick*, *Paul Kirchhof*, *Mattias Kumm* and many more are presented. The chapter is a nice culmination of the book when, after the presentation of practical matters, the author tries to find a theoretical grounds.

Finally, it fits to add, who should grab the book in a library or in a book shop. Given that the theme of the book is very specifically targeted, it is expected that readers will be particularly interested in the area of European law. Very informative reading is also presented for fans of constitutional law, legal theory or political science. Provided that the theme of European law is consciously or unconsciously connected to each and every citizen of the *European Union* it would be more than reasonable if the book found its way to all lawyers or political scientists who are interested in what is hidden behind the principle of primacy of the European Law.

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Wagner Gerhard. Das geht auf keine Kuhhaut, Redewendungen aus dem Mittelalter. WBG - Wissenschaftliche Buchgesellschaft, Darmstadt: 1. Auflage 2011, Stuttgart: Konrad Theiss Verlag, 2. Auflage 2012, 160 pp.

G. Wagner in his book, full of historical illustrations, explains the meaning and use of proverbs that survived until the present day and are still used by many without knowing their origins. An important group of proverbs are proverbs with legal theme.

The publication is an addition to a category of books with similar focus, such as *Co to je když se řekne...* [What does it mean when we say...] (Prague 1968). However, the author in this publication pays only very little attention to legal aspects of the proverbs it presents. Perhaps the only sayings from the book that touch the legal aspects of the lives of our ancestors are: "Za krále Holce

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