

Prof. Dr. Mahulena Hofmann (Hrsg.)

Europarecht und die Gerichte der Transformationsstaaten

European Law and the Courts of the Transition Countries



Nomos

Inhaltsverzeichnis

<i>Thilo Marauhn: Opening of the Conference</i>	11
<i>Mahulena Hofmann: Europarecht und die Gerichte der Transformationsstaaten:</i>	
Die Fragestellung	14
European Law and the Courts of the Transition Countries: Main Questions	17
<i>Gabriele Britz: Wege des Europarechts zu den nationalen Gerichten</i>	
I. Einführung	19
II. Europarecht als Entscheidungsmaßstab	19
III. Europarecht als Entscheidungsgegenstand	26
IV. Praktische Aspekte	28
V. Effektivierung durch Sanktionierung der Nichtberücksichtigung von Europarecht?	30
<i>Jiri Malenovsky: The Relations between Constitutional Law, Community Law and International Law according to the Czech Constitution: Still Ambiguities to be Resolved</i>	
I. The Czech Constitution and the Reception Model	31
II. The Doctrinal Views	32
III. Relevant Case [^] law of the Czech Constitutional Court	34
IV. Conclusion	39
<i>Arne Marjan Mavcic: Some Issues Concerning the Relation between the National Constitutional Law and the European Law in Slovenia</i>	
I. Constitutional Transition in General	40
II. The International Aspect of the Transition	41
III. Process of Adaptation to the European Legal Order and the Role of the Constitutional Court	43
IV. The Treaty on the Constitution for Europe	47
V. Conclusion: The Lisbon Treaty	- 53

Mirjam Skrk: European Law and the Constitutional Court of the Republic of Slovenia

I. Introduction	54
II. The Constitutional Court of the Republic of Slovenia	55
III. Some Legal Issues Concerning the Position of the Constitutional Court of the Republic of Slovenia Following the Accession to the EU	60
IV. Concluding Remarks	75

Anneli Albi: CEE Constitutional Courts and Application of EU Law: Constitutional Rights versus Supremacy?

I. Introduction: CEE Constitutional Courts as Vanguarders of Human Rights Protection	77
II. Bitter Sugar and Troubled Legitimate Expectations: An Overview of Post-accession Cases and Direct Actions	81
III. Between a Rock and a Hard Place: Comparative Remarks in the Light of the <i>Banana</i> Saga and the ECtHR's <i>Bosphorus</i> Judgment	88
IV. Concluding Remarks: New Perspectives to the 'Common Constitutional Traditions'	94

Dawid Miqsik: European Law and the General Courts of the Transition Countries

I. Introduction	97
II. EC Law and Polish Courts before the Accession of 2004	97
III. Application of EC Law "during the Accession"	100
IV. The Constitutional Background	102
V. Application of EC Law by Supreme Court and Courts of General Jurisdiction	107
VI. Conclusions	124

Pal Sonnevend: Europarecht und die allgemeinen Gerichte in Ungarn

I. Einführung	126
II. Der verfahrensrechtliche Rahmen	126
III. Die Vorlagepraxis	129
IV. Schlussbemerkung	131

Petr Ondrusek: The Beginning of a Dialogue: The Experience of the First Four Years with Preliminary Rulings from New Member States

I. Introduction	133
II. Pre-Accession Matters	134
III. The Evolving "Conversation" between the National Courts and the ECJ	136
IV. Conclusion	137

Erind Pirani: Albanien aus der Perspektive des Europarechts

I. Einführung	138
II. Die Periode zwischen 1992-2003	139
III. Die Verhandlungen über ein Stabilisierung- und Assoziierungsabkommen	" -141
IV. Bericht der Kommission über die Fortschritte Albanien	143
V. Die innerstaatlichen Entwicklungen	145
VI. Der Umweltschutz	146
VII. Schlussbemerkung	147

Brun-Oüo Bryde: Previous Member States: Same Problems, Same Approaches?

I. Introduction	148
II. The Influence of the Relative Age of Constitutions on their Relationship to European Law	• 149
III. Post-Communist Constitutionalism	150
IV. Degree of Harmonization of European and National Human Rights Law	151
V. Founding Members and Accession Countries	151
VI. Common Problems	152
VII. Concluding Remarks	152

Joakim Nergelius: "Old" Member States: Same Problems, Same Approaches? The Case of Sweden

I. The Notion "Old Member States"	154
II. Constitutionalizing Former Treaties	154
III. The EU 1995 Enlargement	- 155
IV. The Case of Sweden	" 156
V. Concluding Remark	162

*Pedro Cruz Villalón: European Law and the Courts of the Transition Countries:
A Note on the Spanish Case*

I. Introduction	163
II. The Constitution <i>vis a vis</i> European Law	164
III. The Approach of the Constitutional Court towards European Law	165
IV. Concluding Remark	169

Franz Merli: EC Law and the Austrian Constitutional Court

I. Introduction	170
II. The Role of EC Law in Standard Procedures of the Constitutional Court	171
III. Functional Analysis of the Court's Practice	173
IV. Conclusion	175

*Pavel Sturma: The Relationship "European Law - Domestic Courts": More
than Mere Legal Relevance?*

I. Introduction	176
II. The EU Law as the Gentle Civilizer or the Bureaucratic Harmonizer of the Transition Countries?	176
III. Must the European Justice be Seen?	179
IV. The Comity between Courts or another Problem: Nowhere to Go?	181
V. Can be a Certain Resistance of the Domestic Courts Considered only as Bad News?	184

*Necla Agdag-Güney: Der Einfluss und die Auswirkungen des Europarechts auf
das juristische Denken in der Türkei*

I. Einführung	186
II. Ein Überblick über das Rechtssystem der Türkei	187
III. Die Geltung des Gemeinschaftsrechts in der Türkei	190
IV. Unmittelbare Anwendbarkeit assoziierungsrechtlicher Vorschriften	191
V. Die Rechtsangleichung: Eine Vorleistung im Hinblick auf den EU-Beitritt	193
VI. Die Stellung des EuGH nach dem Assoziierungsabkommen EU/Türkei	195
VII. Die Auswirkung des Europarechts auf die türkischen Nationalgerichte	196
VIII. Schlußbemerkung	199