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There has been a shift in the ECJ's judicial reasoning "from a pre-enlargement majoritarian activist approach to a post-enlargement reference to the needed protection, at least in the most sensitive cases, of the fundamental rights peculiar even to a single Member State's constitutional identity" (p. 190). Thus Pollicino thinks that the primacy principle was transfigured by the ECJ from an "uncompromising version" to a "compromising one" (p. 194). He sees a confirmation of this in Article 4(2) TEU. He also suggests that after the enlargement the ECJ should finally have broader recourse to comparative law arguments (instead of just referring to common constitutional traditions). In this way, the ECJ could take the ECtHR standard of evaluation of margin of appreciation (p. 230).

At the end of the book the authors draw conclusions that the two courts, possibly involuntarily, started to converge the ideas of the domestic effects of EU law and ECHR in legal orders of Member States. They presume that this convergence resulted paradoxically from a very different perception by the two courts of the process of enlargement. The ECtHR took the path of judicial activism, multiplying the examples of judgments where direct or indirect effect of the Convention was exercised in the national legal orders (p. 239). The ECJ since 2004 took the path of a growing reconsideration for national constitutional values, thus putting in question the primacy of EU law and developing "constitutional tolerance" (p. 240).

The book by Martinico and Pollicino is an interesting example of looking at judicial activism through the prism of historical circumstances. The authors seem to suggest that the "newcomers" from the East (unconsciously) caused a transformation in the judicial practice of ECJ and ECtHR, leading to the growing (unconscious again) convergence of the effects of their judgments in the domestic systems of Member States. The main actors of this change are national judges.

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Irene Karper, *Reformen des Europäischen Gerichts- und Rechtsschutzsystems*. Baden-Baden: Nomos, 2011. 278 pages. ISBN: 978-3-8329-6357-6. EUR 68.

This book discusses three main aspects of reforming the system of European courts and judicial protection: (1) potential reforms of the EU judicial system, (2) potential reforms of the judicial system created by the ECHR, and (3) potential reforms of the cooperation between the two systems and their main actors, the ECJ in Luxembourg and the ECtHR in Strasbourg. While these topics are widely discussed, they remain on the agenda: a somewhat smaller reform of the EU judicial system is currently in the making, the overloaded judicial system of the Convention is – even after the latest round of reforms – in urgent need of a more substantial reform and the relationship of the two systems is still awaiting the problems (and solutions) that will arrive when the EU will sign the Convention.

Karper starts with the assumption that the judicial systems of the EU and the Convention suffer from "nearly identical problems of efficiency". Even a short glance at the two systems proves this assumption to be problematic. While the EU system is actually confronted with rather minor problems, the judicial protection provided by the ECHR is in much greater trouble. At the end of 2011, the number of pending applications at the ECtHR was still above 150,000, compared to the some 2,000 at the Court of Justice of the EU (ECJ and General Court combined). While the time-span of the proceedings before the ECJ is nowadays a rather short one, an ECtHR proceeding may take an unduly long time (Karper herself, at p. 196, speaks of an average of 5–6 years with some proceedings taking more than 10 years).

With respect to the EU judicial system, Karper's analysis and her proposals form a somewhat irritating mixture of right and wrong. Karper reiterates a number of false assumptions concerning the workload of the ECJ. The statistics and their interpretations to which she refers are not really up to date. Especially the situation in the area of the preliminary ruling procedure under Article 267 TFEU is much better than its somewhat out-dated

perception by Karper suggests. The time-span of the procedure has been reduced considerably over the last years and nowadays it only takes an average time of some 16 months. A shorter time-span is hard to imagine, given the needs for translations the Court has to deal with. In the years Karper discusses, the number of pending preliminary ruling cases hardly increased. Only in the last two years has there been some increase. Overall however, the accession of the new Eastern and Southern Member States has not changed the situation substantially. True, the number of new preliminary rulings has risen considerably (from 251 new cases in 1995 to 423 in 2011, setting a new all-time high). But to give a reasonable picture, these figures have to be put into relation to the higher number of judges working at the ECJ which was 15 in 1995 and is now 27. The ratio of new preliminary rulings per judge thereby even slightly declined (from 16.73 to 15.67).

Against this background, the dramatizing words of Karper show a typical German fun with a little "Angst". Karper rather ignores the facts than to give in to non-drama. Even when she has to admit falling numbers of pending cases at the ECJ (from 896 in 1999 to 767 in 2008, Karper's year of reference; the number in 2011 was back to 849), she does not hesitate to speak dramatically of "a new dimension of pending cases" (at p. 91). And even with respect to the annulment procedure in Article 263(4) TFEU initiated by individual claimants, Karper rightly reflects the nowadays limited importance of the procedure for the ECJ but speaks nevertheless of an "ernsthafte Überlastung" (a serious overload) of the ECJ. Because in first instance those claims are dealt with by the General Court, they reach the ECJ only in the form of appeals. In 2008 (Karper's year of reference) however, out of 593 new cases reaching the ECJ only 78 were appeals, hardly all of which were initiated by individual plaintiffs. A serious overload is something else.

Incomplete data and sometimes false data perception lead to sometimes false analysis and recommendations. Karper rightly recommends – as many others have done before – a revision of the old *CILFIT* doctrine of the ECJ which gives the national courts a too limited margin of discretion when deciding on the necessity of referring a case to the ECJ. This recommendation is right, but it is neither new nor of much practical value. In the last years, national courts have paid lip-service to the rather strict wording of *CILFIT* and have nevertheless been pretty flexible – sometimes even too much at ease – in its actual application. In this situation, a formal revision of the *CILFIT* doctrine by the ECJ might bring some clarifications but not much practical change. Karper also rightly rejects the many calls for a revision of the *Plaumann* doctrine. Instead, she rightly calls for effective judicial protection before Member State courts. More astonishing – and more problematic – is Karper's recommendation to refer the preliminary ruling cases to the General Court (formerly called the Court of First Instance). True, this transfer of preliminary ruling cases is foreseen in Article 256(3) TFEU. So far however, it has not taken place. Some of the good and many reasons for that are discussed by Karper. She nevertheless recommends a transfer of preliminary rulings to the General Court in spite of the fact that the ECJ is actually very efficiently dealing with these cases and the caseload of the General Court is much higher than that of the ECJ. As well as lack of precision in the data and its interpretation, the legal analysis is also sometimes flawed. For example: Karper analyses the new wording of Article 263(4) TFEU. Her brief discussion (pp. 68 et seq.) hardly gives any indication of the real meaning of the new text. It misleads the reader and ignores nearly all the problems of legal interpretation of the new norm, which have been discussed in the literature at some length.

With respect to potential reforms of the ECtHR, Karper's analysis is more convincing. She describes the situation and the history of limited reform in some detail. Confronted with the massive problems and the generally discussed ideas for further reform, Karper takes a rather cautious stance. She rightly regards the high number of applications as a result of deficits in the national legal orders mainly of the relatively new Member States in Eastern Europe. Reforms must therefore tackle these national problems. In the meantime, however, the ECtHR should – according to Karper – not embark on a too radical reform. For this reason, Karper rejects the proposal to enable the ECtHR to concentrate on important cases and to develop a system that would allow a rejection of applications without further reasoning. Indeed, there are many good reasons not to follow that path even further. The whole system, which nowadays creates at least

the illusion that every case is carefully considered and dealt with according to the law alone, would change its character. The ECtHR's case law would probably become more political and would therefore – even more than today already – become the object of political discussion and political counterpressure. Nevertheless it seems doubtful whether the ECtHR will be able to handle the still growing number of new applications without some reform of such a fundamental nature.

In the third part of her book, Karper discusses the cooperation between the ECtHR and the ECJ. Rightly, she describes the current state of affairs as unproblematic. Since its *Bosphorus* judgment, the ECtHR considers the case law of the ECJ to be of such a quality that it allows for a doctrine of practical acceptance and non-interference. While at a theoretical level this doctrine is rather questionable, its practical application reduces the workload of the ECtHR. When the EU accedes to the Convention, the *Bosphorus* doctrine will have to be replaced by a more nuanced approach that might well be more difficult to handle. The rest are mere technical questions.

With a final look at Karper's comparative goals, the book offers limited insights. Although it is well written, mostly correct, and definitely above average standards of dissertations, it only partly answers its main questions: why is the EU judicial system functioning so much more smoothly than that of the ECtHR, what could be done to reform the latter and how will things develop with respect to the future accession of the EU to the ECtHR? Of course, these are very difficult questions and maybe it would be unfair to expect clearer answers. But as *Bertolt Brecht* famously wrote: "Wir stehen selbst enttäuscht und sehn betroffen / Den Vorhang zu und alle Fragen offen. . . . Verehrtes Publikum, los, such dir selbst den Schluss! Es muss ein guter da sein, muss, muss, muss!" (In the translation of John Willett: "Ladies and gentlemen, don't feel let down: We know this ending makes some people frown; . . . Ladies and gentlemen, in you we trust: There must be happy endings, must, must, must!").

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Reiner Schulze (Ed.), *Compensation of Private Losses. The Evolution of Torts in European Business Law*. München: Sellier – European Law Publishers, 2011. 245 pages. ISBN: 978-3-86653-175-8. EUR 69.

One of the key challenges for modern legal scholarship in Europe is the Europeanization of private law. A considerable number of EC directives and regulations have been enacted, whose implementation or application in the Member States' legal systems has already brought far-reaching consequences for the structure and integrity of the domestic private law. Within the traditional areas of private law attention has so far focused on contract law. However, one of the consequences of a developing EU legislative policy is the need to undertake research in the area of business (economic) torts.

In November 2010, Schulze brought private law academics and experts in Münster for the Round Table "New Challenges in European Private Law". That debate revolved around the questions of compensation of private losses based upon new European legislation and jurisprudence in tort law, as well as in competition law, capital market law and company law. This book contains the essays presented and the results of the discussion that took place during the Round Table. The topic of the book is highly important as well as innovative.

Whilst the book limits the scope of research to tort law of the EU, it must be stressed that the areas under investigation are usually contained in statutory acts outside civil codes (with the exception of product liability in some countries): intellectual property, competition law, unfair commercial practices, capital market law, transport law. The relations between the individual regimes of liability (such as e.g. product liability) on the one hand, and the liability of Member States and of the Union for breach of EU law, on the other hand, are tackled only briefly (see the contribution by Wurmnest and Heinze).