

## PRÉFACE

In the pantheon of constitutional guarantees recognized by EU law, the right to judicial protection occupies a distinct position. Starting with its seminal judgment in *les Verts*, the Court of Justice has time and again declared that the Union is based on the rule of law, that neither the Member States nor the EU institutions can avoid judicial review, and that the Treaties establish a complete system of legal remedies. The right to judicial protection is universal, it is bifurcated, in that it is applied both by the Court of Justice and the national courts, and has reached an almost supra-constitutional status. In no other area has the Court been more active and persistent than in upholding and elaborating the requirements of that right. Judgments such *les Verts*, *Chernobyl*, and *Rosneft*, show that the right to judicial protection may even trump the letter of the Treaties.

This book, which is based on the author's excellent thesis defended in the Law Faculty of the University of Liège, provides a comprehensive, thoughtful, and original assessment of the right to effective judicial protection against EU acts. In scope and density, it is a considerable opus. In critiquing the case law and proposing solutions, it is daring. The book explores the concept of the rule of law, the disposition of Article 19(1) TEU as an emerging source of self-standing obligations, Article 47 of the Charter, and the network of provisions governing the control of legality of Union acts. Where does the ECJ derive its legitimacy? How is the rule of law to be understood in a supra-national polity such as the EU? The book engages with some theoretical issues and discusses the system of judicial protection provided in the Treaties from the prism of the right to an effective remedy.

The author skillfully navigates the reader through the complexities of the case law governing the standing of individuals under Article 263(4) TFEU in the post-Lisbon era. It explains the forms of incidental challenge to the validity of EU acts, including the plea of illegality which has attracted less attention than it deserves in the bibliography. It discusses selected aspects of EU liability and the preliminary reference procedure and proposes a remedy of declaratory relief to supplement the existing system of remedies.

The principle of effectiveness has become the normative expression of the *sui generis* form of federalism endorsed by the Court of Justice. The case law, however, is not always consistent. In fact, the emphasis on effectiveness and the Court's rights-centred approach may be liable to convey a false sense of security. The case law has shown a persistent unwillingness to control the expansion of EU competence, especially the internal market harmonization power provided by Article 114 TFEU. The prevailing judicial narrative appears to be that the creeping extension of EU regulatory competence in the internal market and even in the area of freedom, security and justice is permissible, provided that it is accompanied by strict standards of judicial protection. This competence – protection dynamic however is liable to reach an equilibrium to the disadvantage of the citizen since judicial review, even in its most powerful manifestations, cannot make up for the lack of other forms of effective political control. In this respect, the pious emphasis of the case law on effective judicial protection serves as a reminder not only of the potency but also the limits of judicial power.

The publication of the thesis is particularly timely. The Eurozone crisis and the plethora of EU measures that came in its aftermath give rise to some novel issues of judicial protection, such as the liability of the Euro Group. The migration crisis, Brexit, and the Commission's 'rule of law' juxtaposition with Poland and Hungary bring to the fore the interaction among EU values, the place of the citizen in the EU edifice, and the specific provisions of the Treaties that seek to guarantee judicial protection. This book provides a worthy, original, and contemporary analysis. It makes a very valuable contribution to the debate and its publication is very welcome.

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