Tatjana Evas, Judicial Application of European Union Law in Post-Communist Countries: The Cases of Estonia and Latvia, Ashgate Publishing, Farnham, 2012, ISBN 978-1-4094-4369-8 (hardback), 230+xxii pages.

The judicial reception of EU law in the new Member States presents itself as a rather attractive topic for academic research. It covers an exciting, and sometimes controversial, period of legal transformation, it has direct practical relevance for domestic law and governance, there are always plenty of legal developments and other new information available, and it allows EU lawyers to shine in matters which at times dominate domestic legal and political debates. The trouble with this topic is that it has been stubbornly resistant to comprehensive theory-making. Also, its analysis in a coherent framework, on account of the diversity of developments even in a single jurisdiction and as a result of the variety of potential factors explaining those developments, presents a challenge even to the most seasoned researcher. There is always the danger that analytical accounts of the relevant domestic jurisprudence turn into lengthy reports of what happened in different judgments in different cases and leave authors struggling with juggling theory, analysis and empirical evidence.

Tatjana Evas' book has a lot to offer to both laic readers and experts in post-accession legal developments in the new Member States. It contains a comprehensive overview of the case law of Estonian and Latvian courts in which questions of EU law were raised and addressed. This was carried out following a threefold conceptual and theoretical framework which includes general legal theory, Europeanization theories and the theoretical instruments used in the EU enlargement literature. From this background, the book developed a unique and elaborate analytical framework which looked at the national jurisprudence from the perspective of the principle and systemic requirement of coherence. Coherence was understood in substantive, institutional and argumentative terms, and it was examined in its different manifestations as norms, institutions, and values/discursive-argumentative perspectives. In the author's intentions, this framework should enable the characterisation of the performance of Estonian and Latvian courts as demonstrating ability or inability in the application of EU law, as being slow-starters, and as resisting the application of EU law.

Placing coherence at the centre of the discussion on the reception of EU law by Estonian and Latvian courts does, however, have its drawbacks for analysis and debate. It has led to the book focusing predominantly on national courts in the application of EU law resolving conflicts between national and EU law and side-lining, although not entirely, other, equally relevant issues relating to the design and quality of the process of judicial reception. Even though the ability of national courts to observe the commands following from the principles of supremacy and direct effect are crucial to the actual application of EU law on the domestic level, exploring matters which may only indirectly influence the coherence of the EU legal order, such as complacency in judicial reasoning, the tendency of courts ignoring legal complexities, judges lacking detailed and current knowledge, or the unwillingness to set up robust structures for continuing judicial training, could result in a more profound, and perhaps contextual, understanding of the adjustment required from national courts. Also, the theoretical and analytical framework proposed in the book focusing on coherence assumed competent institutional actors, which on both sides seem to pursue more or less corresponding agendas and adhere to corresponding institutional biases. This, unfortunately, left only limited room in the examination of the relevant case law for discussions on institutional factors which may debilitate the process of judicial reception and which are responsible for its quality and its prospects. Theory should not prevent recognizing that institutions may be unprepared and individuals may be incompetent and that systemic coherence may depend on such factors. Taking a more realistic view, when constructing the

analytical framework for the book, on the capabilities of national courts (and on the fallibility of individual judges) would have introduced the later parts of the book more suitably where, the author having identified abundant positive and some negative practices in the judicial application of EU law in Estonia and Latvia, the mistakes committed and the gaps and the faults of judicial reasoning presented the main analytical findings.

Despite the necessity of constructing theories for the judicial reception of EU law in the new Member States, the commonality of applying EU law in domestic cases and the contingency of the reception process on the availability of suitable cases must not be overlooked. In the majority of cases before domestic courts, there should not be major issues threatening the coherence of the EU legal order, and there are only limited opportunities for national courts where they have to act as managers or coordinators of the national reception of EU law. Despite the occasional instances where national courts may be pressured to adopt what the book named as 'analytical-persuasive' interpretative approaches when applying EU law and where they need to reach out to the broader context of legal norms, the everyday application of EU law requires national courts to follow the straightforward practices of acknowledging rules and their authority and applying them to the facts of the case before them. Indeed, the book revealed only very few instances in which the performance of Estonian and Latvian courts raised the necessity of fundamental adjustments on account of practices which threatened to undermine the coherence and effective application of EU law. The reception of EU law by the judiciaries of the new Member States is, on the whole, devoid of great revelations and surprises, and the most significant problems in that process simply require that national courts, in Lord Denning's words, 'get down to it.'

Disputably, the book selected rather general assumptions concerning the institutional culture and operating practices of Estonian and Latvian courts as a point of departure for its analysis. The author made clear commitments to reveal national specialities and post-Communist flavours in the jurisprudence examined which, however, was not followed by convincing discussion and evidence that administrative and civil/commercial/other litigation in the two countries, or anywhere else in the ex-Socialist states of Central and Eastern Europe, would demonstrate such characteristics. It was not made particularly clear whether the alleged local specialities of judicial power in Estonia and Latvia follow from constitutional/legal, institutional, political, cultural, educational etc. factors and in what way those specialities would influence, assumedly to the detriment of the requirement of coherence, the application of EU regulations, directives, Treaty provisions and the case law. Generally, positivist approaches and textualism, and unreceptiveness towards systemic and teleological considerations are identified as indicators of a locally rooted judicial attitude and as remnants of Soviet legal culture. While this, as a generalization capable of enhancing the narrative of the book, could hold true, readers are not given assurance that similar approaches would not be standard practice elsewhere in the EU and that this, in fact, would be at odds with the tasks expected from national courts in the application of EU law having regard to the coherence of the EU legal order.

Discussions on the judicial reception of EU law in the new Member States must be particularly careful when they suggest a link between the success and effectiveness of the reception process and the ability of national courts to reproduce in their own jurisprudence the teleological and systemic rationales of the relevant doctrines of EU law as stated by the EU Court. Emphasis on domestic (and international) legal provisions and their primary meaning when national courts define in the domestic jurisprudence their role and obligations in the EU legal order does not necessarily indicate a lack of understanding from national courts of systemic considerations and should not in itself jeopardize the effective enforcement of EU law in the Member States. Textualism qualifies as prudent judicial practice when the direct applicability and enforceability of EU law follow from binding EU and national legal

texts, and national courts should not be subjected to unqualified criticisms when they exploit that comfortable interpretative position. The book, nevertheless, rightly pointed out the legal and constitutional pitfalls of textualism and its potential negative impact on coherence in the application of EU law in the Member States. Interestingly, textualism and the other common mistake of domestic courts over-interpreting EU law doctrines can be regarded as presenting a more acute problem from the perspective of the coherence of national legal orders. While as a result of such interpretative practices EU doctrines may be distanced from their original rationales and their domestic reception could lead to potential conceptual distortions, overly generous, textually driven interpretations of far-reaching doctrines, such as the requirement of effectiveness of EU law, without considering their limitations as they follow from EU law could unnecessarily, and unlawfully, upset the structure, internal balances and fundamental doctrines of national legal orders. Experience shows that this is less a systemic problem, but more a matter of competence of individual judges.

The book rightly identified the limited discursiveness and persuasiveness of judgments from Estonian and Latvian courts as the central, essentially negative characteristic of the reception process. Although the book offered evidence to the contrary, especially concerning the active involvement of the respective national supreme courts in guiding and coordinating the application of EU law by lower national courts, the restricted language and narrative of judicial reasoning do seem to impact the quality and design of the reception of EU law in the two states and indicate a particular institutional attitude towards the judicial function. It is unlikely that the institutional adjustment necessitated by the application of EU law before national courts would be adequately facilitated by a reserved style and scope of judicial reasoning. The book, nevertheless, left the questions open whether judicial reticence would be a Central and Eastern European speciality and whether it could be explained by judicial complacency or by distorted institutional considerations rather than being characterized as the consequence of post-Communist socialization and institutional attitudes.

The fact that the book reported an overall undisturbed reception of the relevant EU principles and that the dominant problems identified related to the clarity and correctness of national court rulings, a more robust account of the softer, predominantly institutional factors influencing the judicial reception of EU law in the new Member States could have adequately supplemented the discussions of the book on the hard law. As revealed in Allan Tatham's recent article on the experience of the Hungarian judiciary with EU law, training, individual expertise and language-skills have a significant impact on the application of EU law before national courts. The focus on the preparedness and competences of individual judges thus makes the coherence of the EU legal order a micro-level issue. Coherence could also be regarded as a matter for mid-level institutional decisions. The channelling of EU law cases, using rather conventional procedural and management instruments, to expert chambers in specialized courts, the hiring of EU law experts and researchers to support courts exposed to EU related litigation, or the flexible training and preparation of judges and courts when because of faulty regulation an influx of EU law driven litigation is expected could enable quality judicial performances in the application of EU law. The coherence of the EU legal order thus seems to depend on factors which the relevant EU law doctrines struggle to express.

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