BOOK REVIEW*

Judicial Review and the Rights of Private Parties in EC Law
by ANGELA WARD
(United Kingdom: Oxford University Press, 2000) pp 350.
Recommended retail price $A160.00 (ISBN 0 19 826822 X).

Based on the thesis for which Dr Ward was awarded her doctorate from the European University Institute in Florence, *Judicial Review and the Rights of Private Parties in EC Law* gives a comprehensive yet succinct account of the limits of judicial review and the extent to which the rights of private parties are adequately protected in European Community law. The author explains at the outset that the purpose of the book 'is to critically examine the concepts of "individual rights" and "effective judicial protection" in the European Community legal order'.[1] She then proceeds in a careful and thorough manner to show, through a detailed analysis of the case law of the European Court of Justice ('ECJ'), the way in which the protection of the rights of individuals afforded by the ECJ is more vigilantly exercised in relation to Member States' observance of and compliance with Community law than is the case in relation to the same observance and compliance by the Community institutions.

The thesis developed by the author is a technical one, requiring close consideration of a great many cases. There is a real danger, when writing on such a subject, of becoming mired in the minutiae of the case law and losing the reader at an early stage in the process. Dr Ward capably overcomes this risk in a number of ways. In terms of the overall book, she sets the scene in Chapters 1 and 2 for the detailed discussion in the ensuing chapters. At the beginning of a number of chapters – Chapters 3, 5, 7 and 8, for example – she sets the context for the ideas she will be developing in that chapter. She explains the purpose of the particular chapter itself and how the objects of that chapter are to be achieved. At the end of the chapter, she draws the threads of the discussion together and reiterates the objectives of the chapter, which she has now established. At appropriate points in the text, she explains the objectives of a particular section of the book, placing that section in the overall framework she is constructing. In Chapter 6, for example, the author explains that a major objective of Chapters 6, 7 and 8 'is to table evidence of the Court's failure to show "equal solicitude" when called on to ensure the effective protection of

* Anne McNaughton. BA (Newcastle), LLB (UNSW), LLM (Tübingen), LLM (UTS); Lecturer, School of Business Law and Taxation, University of New South Wales; as of July 2001, Lecturer, Faculty of Law, Australian National University.

1 Angela Ward, *Judicial Review and the Rights of Private Parties in EC Law* (2000) 1.

individual rights "when they are encroached upon by legislation emanating from Brussels"'.[2] Two chapters, Chapters 4 and 9, serve, respectively, to summarise the discussion in certain sections of the book and as a whole, and to draw together the salient arguments established in the individual chapters.

Chapters 1 and 2 set the background for the work: the former explaining the purpose of the book itself and why the subject requires examination, the latter, being historical in nature, explaining the ECJ's initial approach of minimal interference with Member States' remedies for breaches of relevant Community measures. The two largest chapters – 3 and 6 – set out the case law on which the author bases her arguments.

Chapter 3, entitled 'Current Issues in Court of Justice Case Law on Member State Remedies and Procedural Rules', deals with the impact on and implications for remedies and procedural rules at a domestic level of the ECJ's interpretations of Community law delivered pursuant to the preliminary ruling procedure under art 234 (formerly 177) of the *Treaty of the European Community* ('*EC Treaty*').[3] Chapter 6, entitled 'Private Parties and the Article 230 Action for Annulment', deals with the impact on and implications for remedies and procedural rules at a Community level of the ECJ's interpretation of Community law delivered pursuant to the review procedure under art 230 (formerly 173). The *EC Treaty* has only ever allowed private parties limited standing to bring matters directly before the Court on the basis that there exist sufficient mechanisms under Community law for the protection of the rights of private parties, thus making it unnecessary for them to be granted standing before the ECJ equal to that granted to Member States and Community institutions.

It is perhaps not surprising that Chapter 3, dealing with case law emanating from the Member States, is nearly twice as long as Chapter 6: the preliminary ruling mechanism has provided the ECJ with an opportunity to actively promote the creation of a sui generis legal system and the integration of the Member States' legal systems with that of the Community, in a way almost certainly *not* envisaged by the drafters of the original *EC Treaty*. In many respects, Chapter 3 is the core of the book. It is here that the author explains the evolution of Community law in a number of specific subject areas, using the seminal case of *R v Secretary of State for Transport, Ex parte Factortame Limited*[4] as her point of departure. Through an examination of the relevant case law, the author illuminates the important changes that have occurred in the areas of interim relief, national limitation periods, unjust enrichment, the '*Johnston* right to judicial review',[5] the liability of Member States to pay damages for breaches of Community law, and the operation of the 'effectiveness rule' and its impact on

2 Ibid 203.

3 The *Treaty of the European Economic Community*, opened for signature 25 March 1957, 298 UNTS 11 (entered into force 1 January 1958), as amended by the *Treaty on European Union*, opened for signature 7 February 1992, 31 ILM 247 (entered into force 1 November 1993) ('*TEU*'). The *TEU* made extensive amendments to the *EC Treaty*, including deleting the word 'Economic' from the title of the Community established by the *EC Treaty*, in order to, among other things, reflect the broadening of Community policy development beyond economic development.

4 (Case C 213/89) [1990] ECR I-2433.

5 Established in *Johnston v Chief Constable of the RUC* (Case 222/84) [1986] ECR 1651.

the autonomy of domestic legal systems to develop procedural rules for the enforcement of Community rights.[6] The chapter also considers the rise to prominence of the principle of non-discrimination, pursuant to which applicants argue that the national remedy for claims based on Community law is not substantively equal to the corresponding remedy for analogous claims based in national law.

The key policy issues arising from the expansion of the ECJ's jurisdiction in the area of Member States' remedies and procedures (considered in Chapter 3) are the subject of discussion in Chapter 4. While noting the ECJ's attempts to harmonise, at least in part, the judicial remedies and procedural rules available in the Member States 'in order to avert a perceived threat to the uniform application of Community law',[7] the author cautions that such considerations 'must be carefully balanced against the need to guard against "unnecessary incursions into the procedural autonomy of the Member States"'.[8] It is still too early, according to the author, to determine whether the regime being developed by the ECJ concerning Member State liability in damages will ultimately provide individuals with high standards of protection. She concludes the chapter with two important observations: first, that the ECJ is likely to find it increasingly difficult to persuade national courts and other relevant actors that the Community necessarily vests individuals with rights, which those courts have a duty to protect. Second, the ECJ and the Court of First Instance will inevitably come under pressure to ensure that the level of protection of individuals' rights that has developed in relation to Member States' compliance with Community law is extended to apply Community norms as well. It is this second point that is the subject of examination in Chapters 6, 7 and 8.

In Chapter 6, the author sets out the problems which have confronted private parties when seeking to challenge the legality of Community rules under art 230 (formerly 173) of the *EC Treaty*. Three areas in particular are chosen for consideration: EC legislative measures and joint administration by EC and Member State government authorities; relevant developments in EC administrative law; and the ECJ's approach to private parties' adherence to the two month time limit for bringing actions under art 230. These areas are selected to parallel the principles applicable to national courts that the author explored in Chapter 3 in relation to the decisions in *Emmott v Minister for Social Welfare*,[9] *Peterbroeck Van Campenhout & Cie SCS v Belgium*,[10] and *Johnston v Chief Constable of the RUC*.[11]

Chapters 7 and 8 deal respectively with the protection afforded private parties by review of the validity of Community measures under art 234 (formerly 177) of the *EC Treaty*, and the ability of such parties to obtain monetary compensation in respect of illegal conduct of Community institutions under art

6 The 'effectiveness' rule or principle is explained in Ward, above n 1, 8.
7 Ibid 146.
8 Ibid 147.
9 (Case C-208/90) [1991] ECR I-4269.
10 (Case 312/93) [1995] ECR I-4599.
11 (Case 222/84) [1986] ECR 1651.

288(2) (formerly 215(2)). The discussion in both these chapters, together with that in Chapter 6, reveals a shortfall in the level of protection enjoyed by private parties when challenging Community norms and the conduct of Community institutions, when compared with the corresponding level of protection demanded by the ECJ in respect of Member States' observance of Community law.

Finally, in Chapter 9, the author summarises the study undertaken in the preceding chapters and proposes a number of changes to address the discrepancy between the protection afforded individuals in relation to Member State infractions of Community law, and the protection afforded to such parties in relation to analogous infractions at a Community level. The author states that the findings of her book 'have highlighted an important fault-line in the constitutional design of the European Community'.[12] Dr Ward's review of the position of private parties in the EC and the role of the ECJ is certainly an ambitious undertaking, yet one that has been skilfully and successfully completed.

Legal practitioners within the European Union, and those who have cause to litigate at least occasionally in Europe, will find this an invaluable source through which to deepen their understanding of the relationship between Community law and the remedies and procedural rules of national courts. For practitioners who do not fall within this category, the book will provide a more intellectual than practical benefit. That said, in recent times, an increasing number of Australian law graduates have gone to Europe, particularly the United Kingdom, to work or pursue postgraduate studies. Indeed the author herself is an excellent example of such an expatriate. For students who wish to follow this path, Dr Ward's book will provide valuable insights into both the complexity of the relationship between national and Community law and the attendant practical challenges of working as a lawyer in the European Union today.

12 Ward, above n 1, 340.