

COMMON MARKET LAW REVIEW

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Aims

The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Ryan Goss, *Criminal Fair Trial Rights, Article 6 of the European Convention on Human Rights*. Oxford: Hart Publishers, 2014. 248 pages. ISBN: 9781849465502. GBP 60.

The title of the book might be slightly misleading: it is not just another book on the criminal fair trial rights enshrined in Article 6 ECHR, but rather an exhaustive and highly critical assessment of the European Court of Human Rights (ECtHR) case law on those rights from multiple transversal viewpoints, thus providing a more global and generalizing perspective on the Court's interpretation and application of Article 6. Hence, it can be said that this book is more about judicial method than about the rights themselves, in their substantive dimension.

Central to the book is the critique of both the coherence and clarity of the Court's decisions in the context of trials concerning criminal matters. Indeed, the author presents his own thought in a most clear way: the criteria used as a "measuring stick" are thoroughly specified – transparency, clarity, predictability, stability, coherence and the ability of the case law to guide practitioners and the Parties to the ECHR – as well as the aims and the results of the research (the general incoherence and inconsistency of ECtHR case law regarding Art. 6).

The structure of the book is original. Although the sub-sections are given traditional, "neutral" titles (e.g., "A. Interpreting Article 6"), they are split in a number of chapters which are presented, for the most part, as straightforward theses such as, e.g., "A.4. The European Court inconsistently cites the need for 'practical and effective interpretation'". Each sub-section ends with a conclusion, which, apart from being quite helpful to the reader, purports to "build the foundations for a new approach to . . ." the specific topic dealt with therein (viz., the interpretation of Art. 6, the way in which the ECtHR sees its own role, the internal structure of Art. 6, the implied rights and the assessment of violations of Art. 6).

One of the most impressive features of this work is the vast survey of the Court's case law, which is minutely analysed and systematized along the chosen thematic strands. The reader will certainly not miss the main argument presented in the book (the need to overcome the incoherence inherent to some of the tools used by the Court and the inconsistency between those tools), as it is announced in the Introduction, vigorously developed in the several chapters and stressed again in the Conclusion, in a sort of mantra that some might deem overly critical of the Court's work. Nevertheless, being the central idea of the book, it might have been difficult to put it in a different manner.

In some cases, the author's criticism is not directed against what the Court does when interpreting and applying Article 6, but rather against the lack of explanation of why it should be done that way. For instance, it might well be that material "extrinsic" to the Convention (such as, e.g., reports to the Commission on Human Rights) is useful in a particular case, but the Court does not set out the criteria, if any, that justify resorting to such materials. In the same vein, a "flexible" approach to the cases might be warranted, as long as such flexibility is not unreasoned ("irrational"), which, in the author's view, happens often. Also, the criteria for the recognition of implied rights are deemed unclear and unpredictable.

In other cases, the author criticizes the sort of "cognitive dissonance" affecting the Court, while conducting, e.g., "appellate-style" reviews of the factual and legal analysis performed by domestic courts in criminal cases, thus running counter to its own proclamation that the ECtHR is not a "fourth instance" of appeal; or when the Court purports to apply the "proceedings as a whole test", without actually applying it.

In spite of focusing mainly on the Court's method, and as one might in any case expect, the book also raises interesting questions at a normative level proper, regarding some of the topics central to Article 6. Take, for instance, the internal nature and structure of Article 6: does it amount to a single guarantee only (of a fair trial, with all its implications), or to a conglomerate of individual guarantees? And, in the latter case, what is the relationship between them, or between them and an "overarching" right to a fair trial?

After carrying out an extensive analysis of the ECtHR case law, in search of a certain coherence that might help to build a stable image of the architecture of Article 6, the author finds little. This leads him to aptly suggest that the guarantees (and the violations thereof) should be considered separately, without however preventing the ECtHR from conducting, if need be, a subsidiary assessment of a violation of the broader guarantee of a fair trial. Again, the reasons underpinning the enhanced formal accuracy of this method are the clarity and predictability of the Court's decisions.

Surprisingly, the book does not seem to explore the inconsistency of the ECtHR's jurisprudence on the "autonomous" concept of "criminal charge" – which is vital for determining the ambit of applicability of criminal fair trial rights –, namely in what concerns the concrete application by the Court of the requirement that the norm applied by the national courts be of a "generally binding nature" (compare, e.g., *Öztürk v. Germany* and *Inocêncio v. Portugal*).

In some cases, contradictions found in the Court's case law are arguably more apparent than real. That might be the case of the "tension" between the "never fair" criterion and the analysis of the "proceedings as a whole" in order to determine whether a violation has actually taken place. When there is no impartiality or independence, a trial cannot be fair, and the violation can only be cured through the staging of a new trial. However, a "new trial", carried out by independent judges in an impartial manner, does not necessarily have to take place in the first instance, as long as the courts of appeal are endowed with the necessary powers for a full review of the factual and legal matter of the issue at hand. Therefore, if such a situation should arise, if the new court appraising the issue is truly independent and impartial and if the proceedings really amount to a new trial, then the guarantees provided by Article 6 can be considered to be actually safeguarded, and the "proceedings as a whole" test will not be at odds with the "never fair" rule.

In sum, this book offers innovative ideas, an original approach to the subject, a thorough analysis of the topics and extensive materials for academics and practitioners. The arguments put forward are clear, generally well-grounded and easily understood. In spite of its highly critical tone, it is also an inspiring source for the improvement of the method followed by the ECtHR while applying Article 6 of the ECHR – and, to some extent, the Convention as a whole.

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