

EDITORIAL COMMENTS

Education in European Community law

The closer we get to 1992 the more important it is for lawyers to be reasonably familiar with Community law. Not all lawyers need to know every detail but they should be able to recognize the problems. It has happened in the past that lawyers have lost cases because they did not know that decisive arguments existed in their favour under Community law. If they are able, however, just to sense a Community dimension to a dispute, they can then consult a specialist to find their way. What is needed, therefore, is the provision of some general knowledge on the Communities for all lawyers as well as the teaching of specialists in the different fields of Community law. In the Netherlands' universities this has long been understood and for some time a compulsory introductory course in European Community law has been taught in all the Dutch law schools. Some British universities also teach a compulsory introduction to all law students. Other universities reach the same result by discussing the aspects any lawyer should know in other courses, *e.g.*, Article 177 in the courses on the law of procedure and Article 85 together with national competition law. For prospective specialists there are usually optional courses in Community law but their intensity varies. They may be limited to one general course, or they may be expanded with special courses on European social law, external relations of the Communities, competition, judicial protection, *etc.* They may extend from one hour a week to a full-time course of a whole year.

The approach and, to some extent the content, of teaching also varies.

When the Communities were established they were seen as new, though very special, international organisations. Therefore, it seemed logical that in the original Member States Community law was taught by public international lawyers. To some extent that is still the case and in the Netherlands the general introductory course for all students usually also contains some general aspects of international law, such as the force of treaties within the domestic legal order, the law of aliens and an outline of the United Nations and the Council of Europe. In Britain, on the other hand, Community law was first picked up by comparative lawyers. They found in the (foreign) system of Community law excellent items for legal comparison. English was not a Community language, which meant that many English lawyers had no easy access to it. Community law started as foreign law. That did not change overnight when the UK entered the Common Market.

A divergence also exists as to what extent Community law is, and should remain, a separate field of study. Should the structure of the Community and its functioning be taught as part of constitutional law together with the municipality, the province, the county and the State? Is the preliminary procedure before the Court of Justice part of the law of procedure like the preliminary proceedings which exist in some States between the civil and administrative courts? Clearer still are the questions concerning substantive Community law. Does it make sense to separate Community law on competition, agriculture, social security or sex-discrimination from the national laws in the same fields? Normally we do not distinguish between fields of law on the basis of the legislator from which they stem. Municipal and provincial environment law are not taught by teachers other than those who teach national environment classes. Even subjects such as the free movement of goods (Articles 30 and 36) are not necessarily so special that they need to be taught separately as part of Community law. They could also be dealt with together with other regulations concerning trade, such as government-imposed rules for price-fixing, prohibitions on Sunday trading, compulsory closing hours, *etc.* In the early years of the Community the University of Leuven in particular opted to integrate the different branches of Community law into the existing fields of teaching rather than to accept Community law as a separate area of study. There are good reasons to

integrate European Community law into the different fields of law, allowing it to disappear as a separate subject. The initial objection against such a disappearance was the fear that Community law would not be integrated into the other fields of law because of a lack of knowledge of many law teachers. A separate subject of teaching receives greater attention. This objection is no longer valid. Any good scholar will nowadays know the European aspects of his particular field of law. He may present them in a way different from that of a specialist on Community law but he will no longer ignore them. Many arguments can be put forward for the submission that each field of Community law can be better dealt with by a specialist in the particular field than by a specialist in the Community. But there is another reason why it is desirable to keep Community law as a field of studies separate from the different branches of national law.

European integration is not really possible when the peoples of Europe do not learn to look beyond their national borders. Rightly, the Commission has submitted that in academic education, in every case, a part of the study should be taken in a Member State other than that of the student. The aim of the Erasmus project is to promote study abroad. This aim is important for all students and in particular for law students who in their future career will have to understand clients and opposing parties from other Member States, or, if they become legislators, who have to understand the problems of other Member States. But for lawyers exchanges are often more difficult than for other students. A law student cannot study civil law in another country in the same way as a medical student can study the eye or the ear elsewhere. An Italian eye may function in the same way as a Danish one, the civil law in Italy is another civil law than that of Denmark. A lawyer must know his own national legal system. That leaves only a limited number of subjects for possible study abroad, such as Roman law, philosophy of laws, international law and European Community law and the student interested in moving to other European countries may be especially interested in European Community law. This is a strong argument for keeping European Community law as a separate field of teaching as well as for keeping some divergence in how that teaching is done: in this way we will promote for our law students the opportunity to study in another Member

State and in doing so broaden mutual understanding between our peoples. In the long term such exchanges will prove to be of great importance to European integration.

Recently the Court of Justice underlined that the free movement of students is part of Community law. In the *Blaizot* case (24/86) of 2 February 1988 it ruled that Article 7 of the EEC Treaty has direct effect with regard to university studies. With respect to access to university courses and to enrolment fees Member States may not discriminate between nationals of the Community. The Court read this prohibition in Article 7, but at the same time accepted that this application of Article 7 represented a new development. By ruling that the need for legal certainty excludes any retroactive application of the *Blaizot* decision (as in the case of *Defrenne*) the Court accepted that the judgment could not be reasonably expected by those concerned. As in the case of *Defrenne* acts of Community institutions had strongly suggested another interpretation.

For the sake of the Erasmus programme and therefore in the long-term interest of the Community the *Blaizot* decision should be welcomed.

Announcement

Earlier this year Professor Fried J.W. Löwensteyn retired from his Chair at the University of Leiden. As is the custom of the *Common Market Law Review*, he accordingly stands down from the Editorial Board.

We would like to take this opportunity to thank Professor Löwensteyn for his contribution to the Review and we are happy to announce that he will become a Member of our Advisory Board.

The Editors