THE RELATIONSHIP BETWEEN EUROPEAN COMMUNITY LAW AND NATIONAL LAW: THE CASES

VOLUME 2

This is the second volume of the only comprehensive collection of court decisions dealing exclusively with the “constitutional” relationship between European Community law and the national laws of the Member States. The first volume covered the period 1962 to 1993 and contained ninety decisions. This volume contains a further fifty-five decisions given between 1994 and 2001 by both the Community’s Court of Justice (ten cases) and the courts of the fifteen Member States (forty-five cases). Major recurring topics of the decisions are the supremacy and direct effect of Community law, its impact on national sovereignty and constitutional rights, and the remedies available before national courts for its enforcement. All the texts are presented in English, having been translated wherever necessary. Each decision is preceded by a concise summary and key-word headings. The volume also includes a systematic introduction, digest of key-word headings, table of cases and detailed index.

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THE RELATIONSHIP BETWEEN EUROPEAN COMMUNITY LAW AND NATIONAL LAW: THE CASES

VOLUME 2

Edited with an Introduction by

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To Sir Elihu Lauterpacht CBE QC

Mentor and friend for many years
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This is a companion volume to the first volume with the same title, which was published in 1994. It contains fifty-five cases devoted to the relationship between European Community law and the national laws of the Member States. As with the first volume, the decisions fall into two categories: those emanating from the national courts and reflecting the relationship as perceived from the standpoint of the individual Member States with their respective legal traditions; and those decided by the Court of Justice of the European Community in the course of its development of the principles governing the Community legal order.

The forty-five national cases in this volume represent most of the leading decisions rendered by the courts of all fifteen of the Member States on the subject, between 1994 and 2001. Forty-one of the decisions are printed with full-length texts, translated into English wherever necessary, with a further four decisions being covered in notes. The first volume contained some seventy national cases and covered the period from the inception of the Community until 1993.

The volume also contains ten of the leading decisions of the Court of Justice of the European Community rendered between 1994 and 2001, six of which have been reproduced in full, with a further four being covered in notes. One decision of the European Court of Human Rights is also included because of its bearing on Community law. The first volume contained some twenty leading decisions of the Court of Justice of the Community rendered between 1962 and 1993. Once again, due to limitations of space, only a small number of decisions of the Court of Justice could be included. Those selected have been chosen either because they are clearly of fundamental importance or because they contribute most to a proper understanding of the national decisions contained in the volume.

The decisions of the Court of Justice and the European Court of Human Rights are printed first, in chronological order. The decisions of the courts of the Member States follow, arranged according to countries, in chronological order within each country. The only exceptions are the decision of the Court of Justice in Factortame and the decision of the German Supreme Court in Brasserie du Pêcheur which, for ease of reference, are printed together with the Factortame proceedings before the courts of the United Kingdom.

With regard to editorial policy, reference should be made to the section on Editorial Points contained in the Preface to the first volume.
Three people in particular have, as with the first volume, given considerable assistance to this project for which I am deeply grateful. Sir Elihu Lauterpacht CBE QC, Honorary Professor of International Law, University of Cambridge, and Christopher Greenwood QC, Professor of International Law, London School of Economics and Political Science, who are the joint editors of the International Law Reports, have both given much encouragement and also allowed me to take time off from my responsibilities, as Associate Editor of those Reports, in order to complete this project. Jean-Victor Louis, Professor at the Free University of Brussels, has again given much valuable advice, particularly in drawing my attention to additional cases. Professors Rosa Greaves and Colin Warbrick have also helped by providing a stimulating environment for research and teaching at the University of Durham.

The English translations of the decisions of the Danish Supreme Court in Carlsen v. Rasmussen were provided by the Danish Foreign Ministry. The English translation of the Adria-Wien Pipeline decision of the Austrian Constitutional Court is based upon a text printed in the Human Rights Law Journal published by N. P. Engel. The English translation of the Brasserie du Pêcheur decision of the German Supreme Court is reproduced from the Common Market Law Reports, published by Sweet & Maxwell.

The remaining translations and summaries are mainly my own responsibility, but I have received much valuable assistance from the following: Mr Tim Johnston translated most of the German and Italian decisions; Mr Emmanuel Maganaris translated the Greek decisions; Mr Andrew Muttitt translated most of the Spanish and Portuguese decisions; Justice Goran Schader translated the Swedish decision; and Mr Geoffrey Thomas translated some of the Austrian and German decisions.

Advice, clarifications or references to additional cases have been provided by: Professor Bruno De Witte, Mr Niilo Jääskinen, Professor Henry Schermers, Professor David Vaughan QC, Professor Joe Verhoeven, Counsellors at the Embassies of Austria and Germany, staff at the Research and Documentation Department and the Information Office of the Court of Justice in Luxembourg, and staff at the libraries of the Institute of Advanced Legal Studies of the University of London and the University of Durham.

The index was compiled by Mr John Jeffries. Mrs Diane Ilott checked the copy; Mr Adrian Lee read the proofs. I would like to thank the publishers, Cambridge University Press, for the care with which they have produced this volume and, in particular, Ms Finola O’Sullivan and Dr Jennie Rubio, for all their help.
PREFACE

To all those who have thus contributed to this truly European and therefore, at times, somewhat daunting undertaking(!), I offer my warmest thanks.

Finally, I would like to thank my wife Judy and our children for their love, understanding and support.

Law Department
University of Durham

October 2002

ANDREW OPPENHEIMER
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