

---

**SEHNÁLEK, David. *Specifika výkladu práva Evropské unie a jeho vnitrostátní důsledky* (Specifics of the Interpretation of EU Law and Its National Implications). Prague: C.H.Beck, 2019, 208 p. ISBN 978-80-7400-741-5**

Reviewer: Naděžda Šišková\*

---

The new monograph of the experienced researcher David Sehnálek focuses on the issues and particularities that go hand in hand with European Union law interpretation, comparing it to interpretation of national and international law. The main focus lies in the manner in which EU law is interpreted by the Court of Justice, but attention is also brought to the role of national courts in this respect.

The author's point of departure is that even if there might be differences in the way EU law is interpreted, they are often excessively emphasised, in particular in the Czech Republic. In his analysis, the author poses the following questions: What are the causes of the possible particularities of interpretation of European Union law? Could it be the systemic set up of the judiciary in the European Union and the powers exercised by the Court of Justice? Could the reason be the multilingual nature of written EU law? What implications can the potential particularities of EU law interpretation have for the Member States?

In foreign (especially English-language) academic literature, interpretation of European Union law is a topic that has been given due attention and is fairly well researched. However, the situation is somewhat different in Czech publications. So far, academic literature have only focused on isolated matters, such as the multilingual nature of EU law interpretation and preliminary ruling proceedings. Despite this, the issue is still topical and worth researching. This is evidenced e.g. by the current vehement efforts of the United Kingdom to rid itself of the influence of the Court of Justice. While the United Kingdom is interested in a partnership with the EU even after its withdrawal from the Union,

---

\* Assoc. Prof. et Assoc. Prof. JUDr. Naděžda Šišková, Ph.D, Head of Jean Monnet Centre of Excellence in EU Law at Palacky University, President of the Czech Association for European Studies (Czech ECSA), Coordinator of Jean Monnet Network (Consortium of 5 European Universities), Chief Editor of the journal European Studies. The Review of European Law, Economics and Politics, email: nadezda.siskova@upol.cz.

it is simultaneously attempting to avoid being bound by the rulings of the Court and its interpretation of European Union law. This attests to the extraordinary position of the Court. It also speaks to the distinct manner in which the Court approaches EU law interpretation.

From the viewpoint of the Czech Republic and Czech jurisprudence, the importance of this publication lies in the way it challenges the dominant view of European Union law as a distinct matter standing apart from other legal systems and following different principles. Czech courts and authorities still, even after 16 years of membership in this supranational organisation, consider European Union law to be something foreign, unfamiliar and distant, sometimes even “suspicious”.

The book is divided into six parts. The first part deals with institutional factors to the extent they influence European Union law interpretation. Specifically, the author notes the extraordinary position of the Court of Justice in the interpretation of EU law and the autonomous character of EU law interpretation in relation to international and national law. This, of course, is hardly ground-breaking. However, this chapter manifests the author’s conviction that the way the Court of Justice interprets EU law is inevitably intertwined with the way the position of the Court is defined in the founding treaties. This is a consequence of the Member States’ express will. The Court of Justice was given room for its creative decision-making by the Member States and has been making full use of it. However, institutional factors say nothing of the way EU law should be interpreted. Therefore, on the contrary, a restrictive or a moderate approach to interpretation of EU law might be conceivable. What is important is the fact that since its inception, the Court of Justice has essentially been acting in concert with the Member States and their courts. The Member States were the ones that gave the Court the opportunity for its creative interpretation of EU law. It was also the Member States that made decisions of the Court of Justice legitimate by accepting those decisions in everyday practice.

The second part follows up on the first, assessing the position of the Court of Justice and comparing it to its “competitors” as the Court’s decisions are subject to review by national highest courts (in particular, constitutional courts) as well as international courts (the role of the European Court of Human Rights and the EFTA Court is especially important here). The viewpoints and priorities of these different courts may vary and it is inevitable that disputes may arise. These courts mutually influence and shape each other’s positions. It can be seen that the Court of Justice takes these internal and external influences seriously and reflects them in its decisions. However, primarily for political reasons, the Court only makes limited use of comparative interpretation and scarcely declares its sources of inspiration, especially in cases where it comes from national courts.

In the third part, the author focuses on the first of the examined methods of interpretation, namely linguistic interpretation. The publication focuses here primarily on the way the EU law is interpreted given its multilingual written form. Individual options for such interpretation are laid out, also in the context of interpreting public international law. The author also analyses with meticulous precision the procedures that are available for solving problems inevitably occurring in “translations” of EU law and he points out certain significant shortcomings of the current situation. However, this chapter does not deal merely with comparative linguistic interpretation. It also examines the position of the linguistic interpretation method within the host of methods utilised by the Court of Justice. Comparisons are drawn with other courts in positions similar to that of the Court of Justice (constitutional courts) and, in broader context, also with Anglo-American courts and their approaches to the linguistic method of law interpretation.

The fourth part of the publication deals with functional interpretation of EU law. The author analyses the possibilities and the limitations of reflecting the objectives of the legislators (i.e. Member States with respect to primary law and EU bodies for secondary law) and the purpose sought by EU law, describing a significant difference between the legislator’s objective in the case of interpretation of primary law in contrast to secondary law. On the other hand, the Court of Justice is largely inclined to widely consider the purpose of legal regulations, even if it is often impossible to determine, based on its decisions, how the individual purposes were balanced and taken into consideration. In this part, attention is also paid to the *effet utile* principle and both its maximalist and minimalist conceptions. It follows from the author’s evaluation that he considers purpose-driven interpretation to be rather problematic as it often functions as a tool for enforcing of the European Union’s political goals.

The fifth part of the publication focuses on the consequences of the European Union law interpretation for the Member States and European integration. Extensive interpretation may lead to reverse discrimination. However, it is also worth mentioning here that the Court of Justice simultaneously eliminates this possibility through its extensive interpretation, by limiting the space reserved for national law. In its second half, the fifth part focuses on the consequences of extensive interpretation of EU law for the evolution of national law. Here, the author applies the evolutionary theory to law. He concludes that EU law, as interpreted by the Court of Justice, significantly helps shape and improve national law. This is due to the fact that EU law places the laws of various Member States in direct competition in many areas. It is up to individuals to choose and favour through their actions the better suiting legislation.

By way of conclusion, the author summarises his findings stating that the interpretation of the EU law indeed does not materially differ from the interpretation

of national law. This conclusion is undoubtedly true. Further, the author meticulously summarises specific steps national courts should take for achieving correct EU law interpretation.

The book is definitely worth reading and can be strongly recommended especially for its comprehensive take on the issue at hand and for reflecting a number of connections and insights from national and international law. The publication can be valuable not only for legal theorists, but also for attorneys who apply EU law on an everyday basis.