

MODERN STUDIES IN EUROPEAN LAW



PUBLIC LIABILITY IN EU LAW

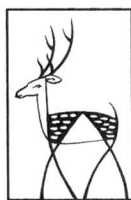
*BRASSERIE, BERGADERM
AND BEYOND*

PEKKA AALTO

Public Liability in EU Law

Brasserie, Bergaderm and Beyond

Pekka Aalto



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PUBLIC LIABILITY IN EU LAW

Over the last two decades public law liability for breach of European Union law has been subject to remarkable developments. This book examines the convergence between its two constituent systems: the damages liability of the EU and that of its Member States for failing to comply with EU rules. Member State liability, based as it is on the *Francovich* case (1991) and *Brasserie du Pêcheur and Factortame* (1996) judgments of the European Court of Justice (ECJ) is well established. But it is yet to be closely scrutinised by reference to the detailed rules on the liability of the European Union.

The focus of the book is on the two key legal criteria that are common to both systems, namely the grant of rights to individuals by EU law and the notion of sufficiently serious breach of such rights. The analysis concentrates on developments in the case law of the ECJ and the General Court since the *Bergaderm* judgment (2000), which consolidated the convergence of the two liability systems that was first indicated in *Brasserie du Pêcheur and Factortame*. These two criteria are set side by side to evaluate the extent, in real terms, of the convergence of Member State and EU institutional damages liability, and to determine the extent to which one has influenced the other.

This book shows that although full convergence between the two liability systems is not likely, each stream of case law should look to the other more actively as this important element of EU remedial law develops. Convergence in EU law public liability is supported by developments in adjacent areas, most notably European tort law and European administrative law. This study also illustrates how convergence in the EU liability systems to date has had spill-over effects into national public liability law.

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Acknowledgements

Twelve years ago, when I published my previous book on EU public liability, it was appropriate to discuss the liability of the Member States as a stand-alone subject. However, things have changed since then and the liability of the European Union now plays an ever increasing role in Member State liability. Therefore, providing a complete picture of the systems meant covering both areas. The new approach has also made writing more challenging this time round.

This dissertation project, which was started with the late Professor Kari Joutsamo, has not been pursued under a single-hand. Several individuals have contributed to it, directly or indirectly. I would like to thank some of them here; those not mentioned I will thank personally.

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Over the years, it has been very useful to see EU law from different vantage points. My experiences in the Ministry of Justice, the Parliament of Finland, the European Commission, and the ECJ have been essential. I feel that I have learnt a lot working with Niilo Jääskinen, Sten Palmgren, the late Heikki Karapuu, Tiina Astola, Kirsti Rissanen, Leif Sevón, and Allan Rosas. Needless to say this book presents my own views, and not necessarily those of the institutions themselves, or of the persons mentioned.

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Incidentally, the publication of this book coincides with an anniversary of the *Francovich* judgment, which in 1991 consolidated the foundations of EU damages liability law. It remains to be seen whether the years to come will prove as interesting as those to date. I think they will.

Luxembourg September 2011
Pekka Aalto

Abbreviations

CFI	Court of First Instance (of the European Union)
CDE	Cahiers de droit européen
ch	Chapter
CST	Civil Service Tribunal (of the European Union)
EC	(Treaty establishing the) European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECR	European Court Reports
ECSC	(Treaty establishing the) European Coal and Steel Community
ECtHR	European Court of Human Rights
EEA	European Economic Area
EEC	(Treaty establishing the) European Economic Community
EFTA	European Free Trade Association
EU	European Union
GC	General Court (of the European Union)
OJ	Official Journal
s	Section
TEU	Treaty on the European Union (as amended by the Lisbon Treaty)
TFEU	Treaty on the Functioning of the European Union (as amended by the Lisbon Treaty)
WTO	World Trade Organisation

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