

HET BEGINSEL VAN EFFECTIEVE RECHTSBESCHERMING : EEN TOOL OM DE RECHTSSTAAT IN DE EU TE BESCHERMEN?

Het rechtsstaatsbeginsel is één van de fundamentele waarden waarop de Europese Unie rust. Het naleven van dit beginsel door de lidstaten is niet meer zo vanzelfsprekend. Er worden steeds vaker maatregelen getroffen die de werking en de organisatie van de rechterlijke macht hervormen en tasten de rechterlijke onafhankelijkheid aan (welke cruciaal is voor het rechtstaatsbeginsel).

RECHTSTAATSBEGINSEL : BELANG

Het rechtstaatsbeginsel ligt vervat in artikel 2 van het VEU. Dit is een fundamentele waarde waarop de Europese Unie rust. Het artikel geeft aan dat het een waarde is, maar geeft verder niets weer over wat het precies inhoudt. Er bestaat geen vaste definitie van wat de rechtsstaat precies is.

De essentiële kenmerken van het rechtsstaatsbeginsel (de Commissie beschrijft het rechtsstaatsbeginsel aan de hand van verschillende rechtsbeginselen) :

- Het legaliteitsbeginsel
- Het rechtszekerheidsbeginsel
- Het verbod van willekeur voor de uitvoerende macht
- Het beginsel van onafhankelijke en doeltreffende rechterlijke toetsing
- Het recht op een eerlijk proces en de scheiding der machten
- Het beginsel van gelijkheid voor de wet

Omdat het onvoldoende gedefinieerd is in de wet, zal men naar de rechtspraak van het Hof van Justitie kijken. Het Hof heeft in het arrest *Ruslanas Kovalkovas* gezegd dat de scheiding der machten een belangrijk kenmerkend beginsel is voor het rechtsstaatsbeginsel. Het Hof heeft ook bevestigd dat de doeltreffende toepassing van het Unierecht inherent deel uitmaakt van het rechtsstaatsbeginsel.

Het beginsel dat de laatste jaren op de voorgrond verschijnt, is het beginsel van de onafhankelijke en doeltreffende rechterlijke toetsing. Ze wordt gezien als de kern van de rechtsgemeenschap en ze benadrukt het belang van het toezicht op de verenigbaarheid van de handelingen van de instellingen en de lidstaten met de geldende Verdragen om als dusdanig de doeltreffende werking van het EU-recht te verzekeren aan de hand van een volledig stelsel van rechtsmiddelen.

De onafhankelijkheid van de nationale rechters is cruciaal voor de Europese Unie en het EU-recht. Maar waarom is dit nu zo cruciaal en wat is het belang ervan?

Het belang van het rechtsstaatsbeginsel kan opgesplitst worden in twee afzonderlijke delen :

- Respect voor het rechtsstaatsbeginsel is van essentieel belang, want het EU-recht is gebaseerd op de premisse dat de EU-lidstaten een reeks gemeenschappelijke waarden delen, zoals het rechtsstaatsbeginsel. Er is wederzijds vertrouwen tussen de EU-lidstaten en dit betekent dat alle lidstaten het EU-recht en de hiermee verbonden grondrechten respecteren. Een voorbeeld is het Europees aanhoudingsbevel en dit steunt op het beginsel van wederzijds vertrouwen tussen de EU-lidstaten en hun rechterlijke autoriteiten. Dit kan onder druk staan door een rechtstaatchteruitgang en dit is een gevaar voor het wederzijds vertrouwen. De uitvoering van een Europees aanhoudingsbevel kan geschorst worden wanneer er geen wederzijds vertrouwen ten gevolge van het niet naleven van het rechtsstaatsbeginsel.
- Anderzijds is het naleven van het rechtsstaatsbeginsel ook van belang voor de doeltreffende werking van de prejudiciële procedure (art. 267 VWEU). Het dialoog tussen de nationale rechter en het Hof kan slechts tot stand komen indien de nationale instantie (die een prejudiciële vraag stelt) kan worden gekwalificeerd als een rechterlijke instantie in de zin van het EU-recht. Opdat een instantie een rechterlijke instantie is, moet er rekening gehouden worden met een aantal criteria (wettelijke grondslag van orgaan, permanente karakter, de verplichte rechtsmacht, de procedure op

De Rechtsbescherming Van Nationale Overheden In Het Europees Recht

**Elke Cloots, Geert De Baere, Stefan
Sottiaux**



De Rechtsbescherming Van Nationale Overheden In Het Europees Recht:

The National Courts' Mandate in the European Constitution Monica Claes, 2006-03-31 The reform of the European Constitution continues to dominate news headlines and has provoked a massive debate unprecedented in the history of EU law Against this backdrop Monica Claes book offers a bottom up view of how the Constitution might work taking the viewpoint of the national courts as her starting point and at the same time returning to fundamental principles in order to interrogate the myths of Community law Adopting a broad comparative approach she analyses the basic doctrines of Community law from both national constitutional perspectives as well as the more usual European perspective It is only by combining the perspectives of the EU and national constitutions she argues that a complete picture can be obtained and a solid theoretical base constitutional pluralism developed Her comparative analysis encompasses the law in France Belgium Denmark the Netherlands Germany Ireland Italy and the United Kingdom and in the course of her inquiry discusses a wide variety of prominent problems The book is structured around three main themes coinciding with three periods in the development of the judicial dialogue between the ECJ and the national courts The first focuses on the ordinary non constitutional national courts and how they have successfully adapted to the mandates developed by the ECJ in Simmenthal and Francovich The second examines the constitutional and other review courts and discusses the gradual transformation of the ECJ into a constitutional court and its relationship to the national constitutional courts The contrast is marked these courts are not specifically empowered by the case law of the ECJ and have reacted quite differently to the message from Luxembourg leaving them apparently on collision course with the ECJ in the areas of judicial Kompetenz Kompetenz and fundamental rights The third theme reprises the first two and places them in the context of the current debate on the Constitution for Europe and the Convention taking the perspective of the national courts as the starting point for a wide ranging examination of EU s constitutional fundamentals In so doing it argues that the new Constitution must accommodate the national perspective if it is to prove effective

The Many Faces of Differentiation in EU Law Bruno de Witte, Dominik Hanf, Ellen Vos, 2001 The introduction by the Amsterdam Treaty of the flexibility clauses authorising a majority of Member States to cooperate more closely in areas covered by the Treaties has been received with mixed feelings Flexibility is by no means a new phenomenon in the EU s development It has been on the Community s agenda already since the 1970s The Single European Act introduced several provisions allowing for flexible approaches to the single market whilst the Maastricht Treaty launched a differentiated approach to the EMU and social policy In addition to these forms of differentiation in primary Community law for many years there has also been a number of quite important though less visible forms of differentiation in secondary Community law This book aims to link both levels of differentiation and seeks to unveil the many faces of differentiation in EU law It analyses whether and to which extent there is a shift in European integration from a system of unity and uniformity to one of flexibility and differentiation A first series of contributions to the book analyse a

number of exemplary policy fields EMU social policy environment free movement of persons justice and home affairs in order to identify their degree of differentiation A second set of contributions examine various horizontal institutional matters of cross sectoral importance These two main parts are framed by introductory articles on the development of flexibility and by contributions drawing on the constitutional limits to differentiation The contributions are made by Dominik Hanf Jos M de Areilza Jean Victor Louis Sean Van Raepenbusch Ludwig Kramer Georgia Papagianni Grainne de Burca Ellen Vos Linda Senden Sacha Prechal Wouter Devroe Deirdre Curtin Bruno De Witte Eddy De Smijter en Jan Wouters

EC Law and the Sovereignty of the Member States in Direct Taxation Mathieu Isenbaert, 2010 In order to develop a suitable framework for the analysis of the European Court of Justice ECJ case law it is first analysed what significance if any the concept of sovereignty has in the contemporary supranational environment of the European Union All too often tax scholars equate sovereignty with the concepts of competence or jurisdiction It will be established in this thesis that a much more specific and higher level meaning is to be attributed to the sovereignty concept which goes beyond the strictly legal concepts of competence or jurisdiction The cornerstone of this thesis however is an extensive analysis of the case law of the ECJ in direct tax matters including a comparison with its non tax case law A new kind of methodology is used in discussing the cases they are categorized according to whether a discrimination or a restriction based analysis was applied by the ECJ

The Role of the Regions in EU Governance Carlo Panara, Alexander De Becker, 2010-11-17 This publication compares for the first time how the regions in seven different countries Austria Belgium France Germany Italy Spain and the UK are involved in EU governance It is also the first book which tackles this matter from two different perspectives that of EU law and that of comparative law It includes contributions both from well established scholars in the field of EU law and from younger scholars

Federalism in the European Union Elke Cloots, Geert De Baere, Stefan Sottiaux, 2012-09-03 This edited volume aims to reveal the Janus faced character of federalism in the European Union Federalism appears in two main forms in the EU On the one hand numerous formerly unitary Member States have embarked on a path towards a quasi federal governance structure On the other hand the EU itself is sometimes qualified as a federal system Significantly the concept of federalism has a very different even opposite connotation in both contexts When associated with Member State reform federalism is regarded as a technique for accommodating autonomy claims of sub state nations By contrast when federalism is used as a label for the EU itself it is conceived as a far reaching way of integrating the nations of Europe This dual appearance of federalism in the EU context is central to the structure of the book The first collection of essays addresses the question whether the EU may be described as a federal system and whether it can learn from existing federations In the second set of contributions the attention shifts to domestic federalisation processes more particularly to the impact of these processes on EU law and vice versa

EU Constitutional Law Koenraad Lenaerts, Piet Van Nuffel, Tim Corthaut, 2021 A major international textbook on EU constitutional law it covers the structure values procedures and policies of the EU It deals with

institutional issues but also with substantive issues of major importance including citizenship free movement fundamental rights and the EU as an external actor *Europees recht* Koenraad Lenaerts (jurist),2007 Europees recht : in hoofdlijnen Koenraad Lenaerts,Piet Van Nuffel,2003 *Rechtsbescherming tegen de overheid (drieluik)* , **Onderlinge overheidsaansprakelijkheid voor schendingen van Europees recht** ,2012

The book delves into De Rechtsbescherming Van Nationale Overheden In Het Europees Recht. De Rechtsbescherming Van Nationale Overheden In Het Europees Recht is a vital topic that must be grasped by everyone, ranging from students and scholars to the general public. The book will furnish comprehensive and in-depth insights into De Rechtsbescherming Van Nationale Overheden In Het Europees Recht, encompassing both the fundamentals and more intricate discussions.

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 - Chapter 4: De Rechtsbescherming Van Nationale Overheden In Het Europees Recht in Specific Contexts
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Table of Contents De Rechtsbescherming Van Nationale Overheden In Het Europees Recht

1. Understanding the eBook De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - The Rise of Digital Reading De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Advantages of eBooks Over Traditional Books
2. Identifying De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - User-Friendly Interface
4. Exploring eBook Recommendations from De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Personalized Recommendations
 - De Rechtsbescherming Van Nationale Overheden In Het Europees Recht User Reviews and Ratings
 - De Rechtsbescherming Van Nationale Overheden In Het Europees Recht and Bestseller Lists
5. Accessing De Rechtsbescherming Van Nationale Overheden In Het Europees Recht Free and Paid eBooks
 - De Rechtsbescherming Van Nationale Overheden In Het Europees Recht Public Domain eBooks
 - De Rechtsbescherming Van Nationale Overheden In Het Europees Recht eBook Subscription Services
 - De Rechtsbescherming Van Nationale Overheden In Het Europees Recht Budget-Friendly Options
6. Navigating De Rechtsbescherming Van Nationale Overheden In Het Europees Recht eBook Formats
 - ePub, PDF, MOBI, and More
 - De Rechtsbescherming Van Nationale Overheden In Het Europees Recht Compatibility with Devices
 - De Rechtsbescherming Van Nationale Overheden In Het Europees Recht Enhanced eBook Features
7. Enhancing Your Reading Experience

- Adjustable Fonts and Text Sizes of De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
- Highlighting and Note-Taking De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
- Interactive Elements De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
- 8. Staying Engaged with De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
- 9. Balancing eBooks and Physical Books De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Setting Reading Goals De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Fact-Checking eBook Content of De Rechtsbescherming Van Nationale Overheden In Het Europees Recht
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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