



Public Liability in EU Law: Brasserie, Bergaderm and Beyond: 27 (Modern Studies in European Law)

Pekka Aalto

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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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