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BOOK REVIEWS

Norbert Reich, *General Principles of EU Civil Law*. Antwerp: Intersentia, 2014. 216 pages. ISBN: 978 1 78068 176 4. EUR 69.

Reich's book on legal principles in EU civil law has made a timely appearance on the stage of the ongoing academic debate on the nature and development of the law governing private legal relationships in Europe. It explores seven principles that have emerged in the case law of the Court of Justice of the EU and in the EU Charter of Fundamental Rights, which obtained binding force in December 2009. Reich's study, thus, on the one hand charts the impact of principle-based reasoning on EU civil law or EU private law, understood as the rules of Union law that govern private legal relations, i.e. the *acquis communautaire* in the field of private law – or, with a reference to Micklitz's work, "European regulatory private law". On the other hand, it provides a critical and fresh account of the advantages and disadvantages of relying on principles to shape a more coherent EU private law.

Questions concerning the role of principles in EU civil law arise in light of at least three interrelated developments. Firstly, general principles of EU law have an ever-increasing impact on questions of private law, in particular insofar as they have offered a means to partly circumvent the lacking direct horizontal effect of directives (most famously, *Mangold*, followed by *Kücükdeveci*). Given the "constitutional relevance" of these principles in Union law, i.e. their having been recognized to be on equal footing with provisions of primary law, it may be asked to what extent a constitutionalization of EU civil law is taking place and, if so, what will and should be its implications. Secondly, the codification of a catalogue of fundamental rights and principles in the EU Charter, which partly overlap with national constitutional rights but also contain EU-specific principles such as consumer protection, raises a new set of questions regarding the scope and meaning of fundamental rights protection in Europe. In this context, a debate has started regarding the extent to which such EU fundamental rights and principles may affect not only the relationships between public authorities and citizens, but also those between citizens. Thirdly, while the ECJ has recognized a number of "principles of civil law" (*Hamilton*, *Messner*, *Friz*), it remains unclear what the status of these principles is and what their implications are for the further harmonization of private law.

Reich has selected seven principles from the *acquis communautaire*, which are analysed and discussed in seven chapters, preceded by an introduction and followed by a concluding set of seven theses. The selected principles comprise: (1) the principle of "framed" autonomy, referring to the freedom to conduct a business and protection of property (Arts. 16 and 17 of the EU Charter) as countervailed by the principles of protection of weaker parties and of good faith; (2) the principle of protection of weaker parties in consumer and employment law (Arts. 31 and 38 Charter); (3) the principles of non-discrimination and equality between men and women (Arts. 21 and 23 Charter); (4) the principle of effective legal protection (Art. 47 Charter, Arts. 6 and 13 ECHR); (5) the principle of balancing opposing interests in private legal relations (Arts. 51, 52 and 54 Charter); (6) the principle of proportionality (in conjunction with Art. 5(4) TEU and Art. 52(1) Charter); and (7) the principle of good faith (Art. 54 Charter).

While these principles all are certainly of relevance to the European private law debate, the reasons for the selection of these – rather than other – principles remain somewhat opaque. The introductory chapter of the book does not provide much explicit guidance as to how the selection has been made. Reich observes (on p. 9) that "when arguing for a concept of general principles which can be based on the Charter, one can go back to earlier EU legislation and ECJ case law in which these principles are already recognized". This seems to suggest that the recognition of a principle in the Charter and its occurrence in earlier legislative measures and case law have been decisive factors for its inclusion in the book. If that is the case, one may still wonder why other general principles of EU law that have had an impact on private law and

relate to Charter provisions have not been included, e.g. principles regarding compensation of damages (Art. 340 TFEU), procedural principles, such as the procedural autonomy of Member States (related to Art. 47 Charter), and private legal principles other than “good faith”, for instance the principle that contracts must be performed (*Société Thermale*, related to the protection of freedom of contract under Art. 16 Charter).

Still, the selection of principles made can without a doubt be considered to be broad enough to sustain the more general aim of the book to explain the current state of the art on the possibilities for a codification, consolidation or restatement of EU civil law (p. v). Insofar as the analysis of the seven principles is meant to give “examples of the horizontal approach to finding general principles in EU civil law” (p. v), the selected principles all live up to that expectation. They provide clear insights into the broad range of cross-cutting questions underlying private law that have slowly but steadily been drawn away from national legal orders and into the sphere of EU competence.

In fact, one of the most striking features resulting from the analyses of the selected principles concerns their functioning in EU law as compared to the national context. As Reich observes, the study of the seven principles underlines the instrumental, functional nature of Union law as opposed to a system (codification) or commercial (common law) nature of national private laws. EU civil law “has developed principles of its own, based on the Charter, which guide interpretation, gap-filling, and legality analysis of EU law” (p. 214). This perspective guides Reich’s elaboration of the potential of such principles to contribute to consolidation or constitutionalization of EU private law. A beautiful example figures in Chapter 4, on the principle of effectiveness, where Reich proposes a model for the development and fine-tuning of effective remedies in private law through the circular process of providing remedies under national law, assessing their effectiveness under Article 47 of the Charter, and “upgrading” them via the principle of consistent interpretation (Art. 19(1) TEU; “hybridization approach”).

Reich’s study, moreover, contributes to the debate on pluralism in European private law, which is, *inter alia*, concerned with the question of conceptualizing either a monist or (moderately) pluralist European private legal order. From a monist perspective, Reich’s account of the evolution of EU private law on the basis of principles promotes a coherent picture: in line with Dworkin’s definition of principles (acknowledged by Reich on pp. 4–5), the field of EU civil law or private law could be understood as one legal order, which complies with a principle of integrity of the law. In line with this view, the enactment of a Common European Sales Law could add to the coherence of the field without unduly stretching the principle of proportionality (p. 162). From a pluralist perspective, on the other hand, Reich’s study may be taken as a point of departure for a deeper assessment of the underlying tensions among EU private law and national private laws. While, indeed, it does not seem unfeasible to conceive of an EU private law (or European regulatory private law) that is consistent in itself, a dilemma is posed by the fact that Union law is not a self-standing body of law, and is not likely to become so in the near future. As Reich rightly points out, EU law does not “replace Member State civil law, but supplements it in certain selected areas” (p. 214). This means that rules of EU private law interact and sometimes clash with rules of national private law. Further work on (coordinating) principles may be needed in order to accommodate European and national rules that together determine the outcomes of private legal disputes in the internal market.

If a reviewer may express a wish for a follow-up to the present study, a suggestion would be to cast the net wider and to go beyond European regulatory private law so as to include, to a greater extent, the rules of national laws that interact with EU law. It would be interesting to see whether general principles of EU civil law spill over into national private laws and whether principles of national private law inform the interpretation and application of European principles. Reich’s book on general principles of EU civil law would be indispensable in such an exercise, as it provides an extensive, insightful and thought-provoking overview and analysis of the principles that ground and inspire the rules of Union law governing private legal relations.

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