

W.H. Roobol\*

LUCAS PRAKKE, CONSTANTIJN KORTMANN (eds.), *Constitutional Law of 15 EU Member States* (Deventer, Kluwer 2004) 1004 p, ISBN 9013012558

People slowly dance a minuet  
 In old clothing of antique distinction,  
 The blood of the heart admits the strict law  
 And bows, dancing, in elegant grace.<sup>1</sup>

Martinus Nijhoff

While I am reading the monumental *Constitutional Law of 15 EU Member States*, the above quoted lines come to my mind. It is devoutly wished that the statesmen, politicians and scholars, with all their emotions and niggling, dance elegantly to the tune of strict constitutional laws. But alas, poetry and reality are worlds apart. Although constitutional law is generally considered to be more venerable than day-to-day politics – the foam on the broad stream of history – it is nevertheless a product thereof and thus susceptible to the very same emotions and niggling. Matters are complicated, moreover, by the discrepancy between formal language and material content, between the *paese legale* and the *paese reale* as the Italians call it. This becomes perfectly clear from this excellent work. Formally, for instance, France as a republic with elements of both a parliamentary and a presidential system seems to be rather dissimilar from the United Kingdom, but, in terms of real power, the position of the Prime Minister is not unlike that of the French President.

The idea to compose a book on the constitutional law of the member states of the European Communities had been thought of in 1977 by Lucas Prakke. According to his co-editor, Constantijn Kortmann, many a good story could be told

\* The author is a member of the EuConst Board.

<sup>1</sup> [Menschen dansen langzaam een menuet / In oude kleding van antieke statie, / Het bloed van 't hart erkent de strenge wet / En buigt zich, dansend, in voorname gratie.]

about the realization and continuation of this ambitious project. Happily enough, writes Kortmann, Prakke was already grey-haired when the first edition appeared in 1981.<sup>2</sup>

The first edition, which covered the then 9 member states of the European Communities, is called *Het staatsrecht van de landen der Europese Gemeenschappen*. After an unchanged second edition in 1982, the book has been revised and successively supplemented with chapters on the new member states in 1988, 1993, 1998 and 2004. From the fifth edition of 1998 and there on, the title was changed into *Het staatsrecht van de landen van de Europese Unie*.

As one can see from this short editorial history, the editors succeeded in keeping step with the history of the European unification. With the publication of the first edition in English, however, based as it is on the updated sixth edition of 2004, which covered the then 15 member states of the Union, the tempo of the history of the unification has overtaken them. This appears from the title. The definite article 'the' preceding '15 EU Member States' has been dropped. It would of course be futile to blame the editors for not including the 10 new member states, but the fact refutes the complaints about the slow pace of European unification. Sometimes it takes more time to create a book than to create an international union with constitutional elements.

This reviewer has been informed that Kortmann took the initiative to fill the gap with a new team of editors and authors by composing a new book with articles about the constitutional law of the 10 member states that joined the European Union on 1 May 2004. As the production of such a book takes time, the editors would be well advised, if possible, to include the candidates for membership as well. And this reviewer, who is well aware of the fact that it is much more easy to ask than to deliver, should like to have close at hand a work in two or three volumes that covers the constitutional law of all European countries, including Russia, whether they are members of the Union or not.

The 15 contributions of the present book each run from about 40 to 70 densely printed pages. The size of the articles is not directly related to the number of the inhabitants of the given country or to its size. Austria (8 m., 83.855 km<sup>2</sup>) and Portugal (10,8 m., 88.940 km<sup>2</sup>), for instance, get about 70 pages each, while Italy (57,2 m., 301.245 km<sup>2</sup>) has to do with 58 pages.

The unifying directives of the editors are more easily discernable in the general scheme of the contributions. After a short introduction in which attention is paid to the territory, the people, the form of the state and its constitutional history, several sections are devoted to the sources of constitutional law with emphasis on

<sup>2</sup> C.A.J.M. Kortmann, 'Soevereiniteit: on s'amuse', in: *Op het snijvlak van recht en politiek. Opstellen aangeboden aan prof. mr. L. Prakke*, red. mr. J.L. de Reede, mr. J.H. Reestman (Deventer, Kluwer 2003) p. 155-168, p. 156, note 4.

the current constitution, the central institutions in their mutual relationship (head of state, government, parliament), local government and the legal system. As the articles are mainly analytical and descriptive, there is very little theory to be found in the book. The meaning of notions as unitary state, decentralized unitary state, decentralized state, semi-federation and federation is taken for granted, while not all authors seem to use exactly the same criteria to define these notions. Although a high degree of objectivity is maintained throughout the book, from time to time an author allows her (only the chapter on Belgium is written by a woman) or himself to express some appreciation or disapproval of the constitutional structure of a given state.

The information about the constitutional law of the 15 states presented in this way is impressive and accessible. In some articles, comparisons have been made with the constitutional law of other countries, but this is not done in a systematic way. Most of the articles pay at least some attention to the changes in the constitutional law of the countries described as a consequence of the joining of the European Union, but the position of the European Monetary system, the European Central Bank and the central banks of the member states are mentioned only by a few authors. Each article is supplemented with tables about election results, names of elected heads of state, the composition of governments, generally since the Second World War, and an index and a selective bibliography. The indexes are somewhat a strange mixed bag with, in some cases, most of the terms in the language of the country concerned, while in others most of the terms are in English. With some exceptions (i.e., Greece, Sweden) most of the books mentioned in the lists are in the language of the country described. This is perhaps not of great help to readers with English as first or second language. Obviously not much literature in English is available. This makes the book, which is completed by a map, a short chronology of European unification and lists of contributors and translators (who to all intents and purposes have done a good job), all the more welcome.

Within the rather broad margins of the scheme, the authors have taken their freedom to write as they thought fit and thus a variegated book has been created. The differences between the contributions partly depend on substance and partly on style and interpretation. It appears that despite the similarities and an implicit European constitutional tradition, which is not elaborated in the book, there still exists a remarkable variety in constitutional law between the European states. The United Kingdom is at the same time the inspiration, as the source of the separation of powers, and the odd man out as it does not have a written constitution. While it is beyond doubt that the politicians specialized in constitutional law in the various countries look attentively at each other, it does not become entirely clear whether the constitutional and legal systems have moved much closer to

each other since the founding of the European Union. To be sure, all the constitutional systems tend in the direction of decentralization which is somewhat paradoxical in a Union that, as such, is often accused of centralizing too much and too quickly.

Purely descriptive articles without value judgments, with only a minimum of constitutional history, without any names of politicians or anecdotes are to be found next to more personal and exuberant ones. In particular Prakke, who contributed three articles (on Austria, Spain and the United Kingdom), clearly enjoys writing about history, politics and people. He is the only author who endeavours to include some colourful anecdotes.

The question arises about the best way to use this rich book. Because of the differences between the articles it is not altogether easy to use it as a work of reference in a comparative way, nor are the indexes always helpful in this respect. It is not difficult to find out which state is a monarchy and which a republic (7 and 8 states respectively), neither is it hard to discover which states are full-blown federations (Austria, Belgium and Germany), but it takes more trouble, without reading the whole book, to trace which states are unitary, decentralized unitary or semi-federal. It also takes some time before one can locate the constitutional position of the mayor or of whether and in what way constitutional review is organized in a given country. The conclusion must be that, because of the differences between the contributions, the most rewarding way seems to be to study the articles as individual essays. No scholar will be disappointed and we can be grateful to the editors, authors, translators and publisher for their courage and perseverance.

