has done, that every court (whether constitutional or not) of last resort is under an obligation to refer questions of validity of EC law to the ECJ, Art. 177 (3)!

*Dr. Norbert Reich*
*University of Bremen*

Achermann, Alberto, Roland Bieber, Astrid Epiney, and Ruth Wehner (eds.). *Schengen und die Folgen*. Bern: Verlag Stämpfli + Cie AG, 1995. Pp. 263. sFr 64.

Schengen, a small town in Luxembourg, has become for some people the symbol of free movement in Europe. For others, it represents the '*Sündenfall*' of two-step integration by using 'mere' international law instruments. The Schengen II Agreement entered into force for seven countries on 26 March 1995. The authors of this volume, all well-known specialists in the intricate interplay of free movement, migration and asylum rules, tell somewhat different tales about Schengen, which is caught between Community, Member State and international law. Their reflections, discussed first in a seminar for Swiss officials in 1994, were published a year later. The information remains timely, as not a great deal has happened since.

In her first contribution, Astrid Epiney looks into the relation between Art. 7a and 5 EC Treaty, on the one hand, and the structure of 'Schengen II' under international law on the other. She perceives potential frictions, but is convinced that, by allowing for priority of Community law in Art. 134 of Schengen II and harmonization with later international law in Art. 142, those potential conflicts can be removed (pp. 43 ff.). Community law is not hostile to using international law instruments for closer cooperation between some countries, if the basic goals of the Treaty – free movement without border controls – cannot otherwise be realized. She regrets, with good reason, that Schengen, unlike the Judgment Convention and the Agreement of Social Policy, was not put under judicial scrutiny by the European Court (p. 48).

The contribution of Alberto Achermann offers a profound, yet critical, insight into the extremely delicate and politicized problem of asylum rules under the agreements of Schengen II and (not yet in force) Dublin. The most innovative part has been the exclusive competence of one country to rule – with extraterritorial effect – on asylum applications (in reality, rejections!), a principle which helped the German *Bundesverfassungsgericht* in its controversial three judgments of 14 May 1996 (with strong dissenting opinions) to justify the serious restrictions on grants of asylum introduced by German legislation of 1993. Achermann insists on the following political and legal defects of the agreements: unequal burden sharing, no free choice of applicants, no mutual recognition of positive decisions on application, no control over so-called 'safe third country' rejection practices, a very narrow concept of family in contradiction to Art. 8 ECHR, no mandatory judicial control. The author sees some positive signs under the initiating powers of the Commission under Art. K.3/9 Union Treaty and Art. 100c EC Treaty (with the possibility of qualified majority decision-making from 1 January 1996, which has not yet been used).

Ruth Wehner gives a very detailed overview of police cooperation under Schengen II, including collection, exchange and dissemination of information and data protection.

In his brief closing remarks, Roland Bieber is, in contrast to Epincy, quite sceptical as to the 'model character' of Schengen as a form of cooperation outside the Treaty. It uses, he claims, rather 'primitive' (p. 185 – why?) instruments under international law. This needs to be overcome by more integrative means of Union or Community law, with participation by the institutions of the EC and eventual submission to control by the ECJ. This, in his opinion, is required by Art. C EU Treaty (p. 186). But what is to be done if some Member States, such as the UK, simply reject any Community initiative in this area? Will the possibility of majority voting under Art. 100c be a realistic alternative, or will it

cause even more disintegration of the Union? What will be the chances of the Commission proposal of 17 November 1995 (OJ 1995 C 306/5)? This question needs to be answered by another publication, which could make use of the political and practical experiences with Schen gen II!

The Annex contains valuable documentation (only in German), with the entire text of the Schengen II and Dublin agreements.

*Norbert Reich*
*University of Bremen*

Rausch, Rolf. *Die Kontrolle von Tatsachenfeststellungen und -würdigungen durch den Gerichtshof der Europäischen Gemeinschaften.* Berlin: Duncker & Humblot, 1994. Pp. 329. DM 92; ÖS 718; sFr 92.

The author starts off from the assumption that no order of administrative law may be effective without judicial control of administrative acts. The European Community's legal order, to a large degree, consists of administrative law. The author examines the extension of judicial control of administrative acts by the European Court of Justice, as regards the inquiry into the facts as well as into the legal appreciation of the facts in proceedings to review decisions of the European Commission addressed to individuals. This topic is of particular importance for a supranational organization held together by legal bonds.

The author combines an analysis of European law with extensive reference to German and French law. In so doing, he not only draws a comparison of highly developed systems in two Member States but, at the same time, goes back to the roots of European administrative law. Both paths hold the promise of highly valuable research.

The author presents a thorough and clear description of the two national systems. Sixty-five pages are dedicated to German law (pp. 30–94), fifty-eight pages to French law (pp. 95–152). While this represents an enormous effort, there is no connection to European law. Readers, tempted by the main title of the book, wish to be informed about fact-finding in proceedings before the European Court of Justice. They will hardly be inclined to read through half a book in search of their field of interest. Even if they do, they will probably not remember each feature of national law when they get to Community law. It is true that when treating Community law, the author makes use of the insights previously gained in dealing with the national legal systems. He indicates where the item in question is treated in the relevant section on national law. But would it not have been better to refer to German and French law each time a problem may benefit from comparative analysis?

Among the fundamental conditions of judicial control in Community law, the author first mentions the restrictions on the control of legality of Community acts. As is the case in French law, standing in Community law is not an individual right as demanded by German law. An objective control represented a compensation to the lack of guarantee of judicial review in Community law. There is, however, no gap in Community law, for the European Court of Justice has incorporated such a guarantee into the European legal order, as the author himself concedes (p. 158). Contrary to German law, the extent of control in Community law was delimited by '*moyens*' (grounds of action), following the French example. The practical consequences, however, were minimal (p. 168).

The three orders of administrative law selected by the author exclude a control of the expediency of a Community measure. Rausch points out that the principle of proportionality blurs the limits of such a control (p. 169). The Court of Justice conceded, to a considerable extent, a higher expertise to other Community institutions, especially to the Commission. The author states a stricter control in Germany without evaluating this discrepancy (p. 171).

The European Court of Justice was empowered to inquire into the facts of a