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Jill Wakefield

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Through the Use of Article 288(2)EC (European Monographs Series Set):

The last decade has seen an evisceration of the once-dominant democratic legal concept of "public interest". Its place is being steadily usurped by a problematic "compensation culture" which, in an ostensible effort to protect the individual, is wreaking havoc with the principles of responsibility and liability that underlie the rule of law, especially in the commercial context. Nowhere is this troubling development more evident than in the jurisprudence surrounding Article 288(2)EC, which has grown from a measure of sanction against the Community Institutions for maladministration into a remedy for infraction or injury through the fault of those Institutions or, by extension, as a result of Member State breach of Community law. Judicial Protection in the EC is the first in-depth analysis of this "hot spot" in EC law. With prodigious scholarship and persuasiveness, the author investigates the relevant case law of the Court of Justice from the standpoint of the fundamental legal principles involved. She finds that the distinct problem of the accountability of the Community Institutions, so important where democratic controls are weak, has been subsumed to the responsibility to compensate. In her penetrating commentary she identifies an erosion of basic democratic principles and points the way to ensuring that policies claimed to be in the public interest actually serve that public interest. Cases examined in detail include the "Isoglucose" cases, Brasserie, Factortame, Schpenstedt, Bergaderm, Ltticke, and Eurocoton. The author refers extensively to the ECSC Treaty which, although it expires in July 2002, continues to provide significant authority for the interpretation of Article 288(2)EC.