IDSL 2020

INTERNATIONAL DOCTORAL SEMINAR IN LAW *LJUBLJANA*

Univerza v Ljubljani

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10 SEPTEMBER 2020 (ONLINE)

International seminar for PhD candidates in Law

Faculty of Law, University of Ljubljana

BOOK OF ABSTRACTS

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Ljubljana, 10 September 2020

IDSL 2020 – International Doctoral Seminar in Law, Ljubljana. International seminar for PhD candidates in Law.
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CONTENTS

A FOREWORD FROM THE HEAD OF THE ORGANISING COMMITTEE OF IDSL 2020

Esteemed Readers,

The International Doctoral Seminar in Law (IDSL 2020) is an international doctoral seminar organised by the Faculty of Law of the University of Ljubljana. The seminar provides PhD candidates from Slovenian and other universities with the possibility to engage in academic discussion with distinguished experts in legal theory and practice. In addition, the seminar is an opportunity for PhD candidates to present their research findings before distinguished legal experts and receive direct feedback for their work. The objective of the seminar is to provide PhD candidates with the opportunity to obtain an assessment of their research work during the course of their studies, and, above all, to further improve their scientific and research work. IDSL 2020 aims to demonstrate the role and importance of international cooperation in doctoral studies. The International Doctoral Seminar in Law, which the Faculty of Law in Ljubljana is organising for the first time this year, will focus on the fields of administrative and constitutional law.

We are extremely glad to have received no fewer than twelve applications from PhD candidates from different European countries in what is just the first year. Despite their heterogeneity, the topics covered by PhD candidates all address extremely difficult issues from the fields of administrative and constitutional law that have so far lacked comprehensive consideration. We wished to provide PhD candidates with the highest possible level of discussion on the presented topics. Each PhD candidate was assigned two distinguished experts from the given field, who will comment on the presentation. We are truly honoured that prominent legal experts in the fields of administrative and constitutional law from Slovenia and other countries have accepted our invitation, and would like to express our sincere gratitude to them. We would like to thank Prof. Dr. Andrea Crismani from the University of Trieste, a remarkable professor working in the field of administrative law in Italy, and a valued friend and associate of the Ljubljana Faculty of Law. Our thanks also go to our valued colleagues from the University of Rijeka—Prof. Dr. Dario Đerđa, Prof. Dr. Ivana Kunda, and Assist. Prof. Dr. Sandra Winkler—for their contribution to the Seminar. We are convinced that IDSL 2020 will contribute towards further strengthening our splendid cooperation with the University of Rijeka. We would also like to thank Assoc. Prof. Dr. Michal Radvan from the Masaryk University and research fellow Dr. Matija Žgur from the Roma Tre University for their contribution. Last but not least, this doctoral seminar could have never been organised at such a high scientific level without our respected colleagues from the University of Ljubljana. It is thanks to prominent Slovenian legal experts that IDSL 2020 is not merely an international seminar, but also an event bringing together members of the academic community from the University of Ljubljana. In addition, we would like to express our gratitude to the management of the Faculty of Law of the University of Ljubljana for offering support in organising and conducting the event.

We would like to see IDSL 2020 meeting the expectations of both PhD candidates and distinguished legal experts providing feedback for their work. It is our aim that the Seminar offers an opportunity for legal experts from Slovenian and other countries to exchange views on current societal challenges in the fields of administrative and constitutional law, and thus contribute towards the future development of legal science in these fields.

Assist. Prof. Dr. Bruna Žuber
Head of the Organising Committee of IDSL 2020

PROGRAMME

OPENING ADDRESSES

8:15 – 8:30 Assist. Prof. Dr. **Bruna Žuber**, Head of the Organizing Committee of IDSL 2020
Representative of the Faculty of Law, University of Ljubljana (**TBD**)

MORNING PANEL I

Panel Members Assist. Prof. Dr. **Samo Bardutzky** (University of Ljubljana), Prof. Dr. **Dario Đerđa** (University of Rijeka), Assist. Prof. Dr. **Aleš Novak** (University of Ljubljana), Prof. Dr. **Saša Zagorc** (University of Ljubljana), Dr. **Matija Žgur** (Roma Tre University)

8:30 – 9:05 **Lidia Bonifati** (University of Bologna and University of Antwerp)
Comparative Constitutional Design for Divided Societies: A Model to Explain Asymmetric Federalism.

9:05 – 9:40 **Giammaria Gotti** (Sant'Anna School of Advanced Studies, Pisa)
The Desirability of Democracy for A Sustainable Legality

9:40 – 10:15 **Leposava Ognjanoska** (Ss Cyril and Methodius University, Skopje)
Mechanisms for Protecting the Rule of Law in the European Union as Instruments for Further Integration

MORNING PANEL II

Panel Members Assist. Prof. Dr. **Samo Bardutzky** (University of Ljubljana), Assist. Prof. Dr. **Mitja Horvat** (University of Ljubljana), Prof. Dr. **Rajko Pirnat** (University of Ljubljana), Prof. Dr. **Saša Zagorc** (University of Ljubljana), Dr. **Matija Žgur** (Roma Tre University)

10:25 – 11:00 **Angelika Ciżyńska-Pałosz** (Jagiellonian University, Kraków)
Participation of National Parliaments in the Implementation of Judgments of the European Court of Human Rights. Comparative Analysis of Legal Regulations and Constitutional Practice in Poland, Germany, and Great Britain

11:00 – 11:35 **Alenka Antloga** (University of Ljubljana)
The Judicial Review of the Autonomy of Parliament in Slovenia in the System of Checks and Balances.

11:35 – 12:10 **Išerić Harun** (University of Sarajevo)
Foreign Judges at Bosnia and Herzegovina's Constitutional Court: Perspective of Post-Conflict Society

AFTERNOON PANEL I

Panel Members Prof. Dr. **Andrea Crismani** (University of Trieste), Prof. Dr. **Dario Đerđa** (University of Rijeka), Prof. Dr. **Ivana Kunda** (University of Rijeka), Assist. Prof. Dr. **Sandra Winkler** (University of Rijeka), Assist. Prof. Dr. **Bruna Žuber** (University of Ljubljana)

14:00 – 14:35 **Giovanni Chiapponi** (Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law)
Harmonization of Time Limits in European Procedural Law: Which Legal Basis?

14:35 – 15:10 **Federico Nassuato** (University of Trieste)
Non-binding Sources of Italian Administrative Law and COVID-19 Pandemic: Legal Regime and Judicial Remedies

15:10 – 15:45 **Špela Lovšin** (University of Ljubljana),
The Limits of Finality of the Administrative Decision

AFTERNOON PANEL II

Panel Members Prof. Dr. **Andrea Crismani** (University of Trieste), Assist. Prof. Dr. **Matija Damjan** (University of Ljubljana), Assist. Prof. Dr. **Mitja Horvat** (University of Ljubljana), Assist. Prof. Dr. **Bruno Nikolić** (University of Ljubljana), Assist. Prof. Dr. **Jernej Podlipnik** (University of Ljubljana), Assoc. Prof. Dr. **Michal Radvan** (Masaryk University)

16:00 – 16:35 **Robert Müller** (University of Vienna)
A New Automated VAT Collection Mechanism - Combating VAT Fraud in Digital Supplied Services in B2C Cross-Border Situations with Blockchain-technology

16:35 – 17:10 **Romana Buzková** (Masaryk University)
Multilevel Governance in the European Union: The Role of Regions and Cities

17:10 – 17:45 **Gianluigi Delle Cave** (University of Brescia – UNIBS),
Smart City: A Multi-Level Urban Agenda and A New Administrative Citizenship. How Inclusive Is the So Called "Shared Administration"?

CLOSING REMARKS

17:45 – 17:50 Assist. Prof. Dr. **Bruna Žuber**, Head of the Organizing Committee of IDSL 2020

ABSTRACTS

THE JUDICIAL REVIEW OF THE AUTONOMY OF PARLIAMENT IN SLOVENIA IN THE SYSTEM OF CHECKS AND BALANCES

Alenka Antloga

Throughout history the development of parliamentarism has meant a limitation of the absolute power of the monarch. In today's time and in parliamentary republics, the autonomy of the Parliament derives from the (constitutional) principle of the separation of powers. With that in mind, it is also necessary to take into account that the autonomy of Parliament is limited by that very same principles, namely the separation of powers and the system of checks and balances. These constitutional principles ensure a functioning parliamentary system in a democratic society.

The autonomy of the Parliament can be divided into procedural, financial, administrative autonomy, and autonomy in the field of security. The jurisdictions of the Parliament, as a representative of the people's sovereignty, are strongest in its legislative and electoral function. Due to direct elections, at least for the members of the lower house of Parliament, it is also necessary to ensure the legitimacy of the elected representatives of the people by respecting the general principles of Electoral Law in practice.

In Slovenia, in the system of (incomplete) bicameralism of the Parliament, the restrictions on the autonomy of the lower and upper house of Parliament, that is the National Assembly of the Republic of Slovenia (Državni zbor Republike Slovenije) and the National Council of the Republic of Slovenia (Državni svet Republike Slovenije), have different consequences in the system of checks and balances. In 2019, the National Assembly of the Republic of Slovenia had additionally regulated it's rules of jurisdiction by adopting the National Assembly Act,[1] with which it has for the first time explicitly defined the autonomy of the lower house of Parliament.[2]

Decisions of the executive branch, which limit the autonomy of Parliament are often reviewed by the judicial branch, as well as the Constitutional Court of the Republic of Slovenia. Namely, in order to ensure that the principle of separation of powers is effective in practice, and that the restrictions of the autonomy of Parliament are legitimate, thus providing a functioning system of checks and balances in the parliamentary system.[3] In this regard the (Constitutional) Review of the autonomy of Parliament is also strengthening the position of the legislature in relation to the executive and also the judicial branch of power.

[1] The Official Gazette of the Republic of Slovenia No. 66/19.

[2] Avtonomnost Državnega zbora Republike Slovenije, Pravna praksa: PP, 21. 11. 2019, Year 38, No. 45, pages 11-13., Alenka Antloga.

[3] Ustavnosodna presoja avtonomnosti parlamenta, Pravnik, Ljubljana 2018, Vol. 73 (135), No. 7-8., Alenka Antloga.

COMPARATIVE CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: A MODEL TO EXPLAIN ASYMMETRIC FEDERALISM

Lidia Bonifati

The research deals with the following question: *What are the legal factors at the basis of constitutional design that can provide determinant conditions to explain the different intensity of constitutional asymmetries in multinational federal systems?*

Societies divided along ethnic, religious, linguistic, or cultural lines give rise to challenges of highly practical importance. In fact, the tension between ethnocultural groups may either result in violence (permanent discrimination, civil conflict, ethnic cleansing, genocide) or, even in the absence of violence, have a corrosive effect on the political dynamics of the State, creating stalemate in political institutions or even constitutional crisis. The solutions proposed by academics to address these challenges revolve around two main approaches: integration and accommodation. My first hypothesis is that asymmetric federalism provides an effective synthesis of the two main approaches, since it presents features of both, and it provides the flexibility that a multinational State requires. My second hypothesis is that asymmetric federal systems have different intensity of constitutional asymmetries, each having different impacts on the political system. Therefore, the aim of research is to understand whether it is possible to explain the different intensity of constitutional asymmetries. This will be achieved through a model based on a series of legal factors which are distinctive elements of constitutional design for divided societies, and that may lead to constitutional asymmetries. To do so, the research will adopt an unusual methodology for the legal field, namely Qualitative Comparative Analysis (QCA).

The ultimate objective of the research would be to provide a flexible model of constitutional engineering. According to the model, it would be possible to determine the intensity of constitutional asymmetries to apply in different multinational States, thanks to the legal analysis of the results emerged by the QCA. Exploring alternative solutions for divided societies could be of shared interest for academic scholars and policymakers for two reasons. The first is that many of these multinational States are in the European Union, which itself may be considered a multinational “entity”, therefore European scholars and policymakers may need a new perspective to deal effectively with these issues. The second is that many others are situated in deeply unstable areas of the world, namely in the Middle East (e.g. Iraq), and it is crucial to understand what model of constitutional design and what degree of asymmetries to apply in a post-conflict environment.

Therefore, my presentation would be divided into three parts. First, I would briefly tackle the theoretical framework of the research, focusing on constitutional design for divided societies and asymmetric federalism. Then, I would explain the choice of the QCA as the methodology adopted to address the research question. Lastly, I would present the future perspective of the research and its possible applications.

MULTILEVEL GOVERNANCE IN THE EUROPEAN UNION: THE ROLE OF REGIONS AND CITIES

Romana Buzková

This contribution focuses on multilevel governance in the European Union and the involvement of regions and cities. Multilevel governance (MLG) does not have a universal definition. According to Schmitter (2004), it is defined as *"an arrangement for making binding decisions which engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels."*

The European Committee of the Regions (CoR) understands multilevel governance as *"coordinated action by the European Union, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies"* (White Paper on multilevel governance, 2009). The CoR is an advisory body of the European Union composed of local and regional representatives from all Member States. The institution stresses the importance of multilevel governance in the creation and implementation of public policies in its opinions and other actions. In July 2020, the CoR adopted its five-year political priorities:

1. Democracy and the future of the European Union;
2. Building resilient local and regional communities;
3. Place-based EU policies.

These priorities state that EU and national decisions should be taken as close to citizens as possible, in line with the principle of subsidiarity and with cohesion as a fundamental value. A perfect example is the EU cohesion policy, where the partnership principle applies, and funds are subject to shared management. The contribution also aims to present practical examples of cooperation among different stakeholders, such as macro-regional strategies, European Grouping of Territorial Cooperation (EGTC), and community-led development.

HARMONIZATION OF TIME LIMITS IN EUROPEAN PROCEDURAL LAW: WHICH LEGAL BASIS?

Giovanni Chiapponi

My presentation aims at exploring possible legal solutions to the vastly diverging rules on time limits which schedule civil proceedings across the Member States. I will examine whether autonomous and uniform European time limits could help mitigate the problems that usually arise in cross-border civil litigation. Harmonized rules may solve several problems connected with the current fragmented scenario in which each Member State lays down its own procedural rules on time limits. Their diversity risks indeed making the exercise of a judicial right unequal in the context of cross-border civil litigation and this jeopardizes the achievement of EU's law objectives.

I will argue that the basis for a stronger cooperation may be found in the mutual trust that Member States have in the common administration of justice. The legal basis may be either Art. 81 TFEU or Art. 114 TFEU. I will show that Art. 81 TFEU seems to be the most feasible legal option for procedural harmonization in European procedural law. Art. 81 TFEU, as it empowers the EU to enact legislation to improve and guarantee effective access to justice and to remove obstacles to the proper functioning of civil proceedings, perfectly fits the purpose of harmonizing (even if only in cross-border cases) time limits in civil proceedings within the EU.

I will, then, address three possible solutions:

1. the creation of an autonomous EU instrument on time limits, which provides for harmonized rules that will, subsequently, apply to other EU instruments (e.g. the Service Regulation or the Regulation determining the rules applicable to periods, dates and time limits);
2. the introduction of a specific provision harmonizing particular time limits laid down in different Regulations (e.g. art. 32 of the Brussels I bis regulation or art. 4 (4), art. 5 (3), and art. 7 of the Small Claims Regulation);
3. a solution where the most favorable time limit, provided either by the law of the State of origin of the decision or by the law of the State addressed, will apply (e.g. art. 32(5) of the Hague Convention on the international recovery of child support and other forms of family maintenance).

The harmonization of time limits may simplify aspects that could have a negative impact on mutual trust between Member States and/or prevent judgments from circulating across borders. It would allow citizens of the EU to litigate abroad in a manner that would be comparable from the perspective, on the one hand, of speed, efficiency and proportionality and, on the other hand, of fairness and equality. The adoption of one of these solutions would increase legal certainty eliminating, as such, the deterrent effect of the cross-border nature of a litigation. The effectiveness of EU law would be strengthened and enhanced, so that its application and enforcement would be improved.

PARTICIPATION OF NATIONAL PARLIAMENTS INTHEIMPLEMENTATION OF JUDGMENTS OFTHEEUROPEAN COURT OF HUMAN RIGHTS.COMPARATIVE ANALYSIS OF LEGAL REGULATIONS ANDCONSTITUTIONAL PRACTICE IN POLAND, GERMANY, ANDGREAT BRITAIN

Angelika Ciżyńska Pałosz

The presentation will begin with an outline of the main purpose and plan of the research conducted by the Author. The Parliamentary Assembly of the Council of Europe (PACE) in Resolution 1787 (2011) underlined the role of parliaments in the process of implementing the rulings of the European Court of Human Rights (ECtHR). The conducted research is to determine the importance of the implementation of ECtHR judgments by national parliaments and the supervision of the latter over the implementation of ECtHR judgments by other national authorities. The research covers legal regulations and parliamentary practice of selected member states of the Council of Europe (CoE), in particular Poland, the United Kingdom and Germany. The aim of the research is to reconstruct the model of parliamentary oversight over the implementation of ECtHR judgments in each of these states, then compare these models and construct an optimal model, taking into account the recommendations included in PACE resolution 1787 (2011) to the greatest extent.

Then the source of financing the Author's research will be mentioned and the methodology used will be discussed. In the next part of the presentation, the Author will explain reasons for conducting the research and the selection of the particular member states of the Council of Europe. It is important because despite numerous incentives from the bodies within the Council of Europe to increase the involvement of national parliaments in the implementation of ECtHR judgments, in many countries there are no proper parliamentary structures dealing with the implementation of ECtHR judgments or their activity in this area is negligible. Taking into account the recommendations of the internal structure of the Council of Europe would reduce the number of pending cases before the ECtHR and also reduce the number of non-enforced ECtHR judgments.

In PACE resolution 1787 (2011), Poland was included in the group of countries having problems with the enforcement of ECtHR judgments. Since then, Polish authorities have taken various actions to improve the executive mechanism, but they were mainly concerned with the competences of the executive and judicial. Meanwhile, according to CoE documents, solutions adopted in the United Kingdom and Germany regarding the implementation of ECtHR judgments by the national parliament, in particular parliamentary committees, were indicated as exemplary for other countries. The comparison of the Polish model with German and British models, done as part of the research, also allows the Author to develop proposals for the Polish model for the participation of parliament in the implementation of ECtHR judgments.

In the last part of the presentation, the Author will describe her observations on her ongoing doctoral project, concerned with implementation of ECtHR rulings. A preliminary list of good practices present in the analyzed states in the scope of the participation of national parliaments in the implementation of the ECtHR judgments will be discussed. In Author’s opinion these solutions could be implemented by other member states of Council of Europe. Moreover, challenges to an optimal model as proposed by the Author to develop will be characterized.

SMART CITY: A MULTI-LEVEL URBAN AGENDA AND A NEW ADMINISTRATIVE CITIZENSHIP. HOW INCLUSIVE IS THE SO CALLED "SHARED ADMINISTRATION"?

Gianluigi Delle Cave

The "Smart City" is a **kaleidoscopic and multilevel concept**, which can be interpreted in a composite and versatile way. However, it is in this composite framework that falls the difficulty of providing a univocal definition of Smart City, which proposes indicators of *smartness* that are in line with shared, cohesive, and coherent goals. Indeed, if **technological interoperability and the interconnection of systems** undoubtedly play a role of absolute centrality, also according to the well-known paradigm of the "*Internet of Things*", in the evolution of the urban context, it is of primary importance to recognize and implement a cohesive value framework that supports **urban regeneration** in terms of **inclusiveness and diversity**. In other words, city's development in the "smart sense" cannot ignore system evaluations that place at the centre of the urban context not only "the citizen", but "**every citizen**", in line with the profoundly humanist imperatives connected to **participatory development**, aimed at fighting, rather than perpetrating, the social inequalities already found in urban contexts.

So firstly, it is clear that a Smart City that does not set as its explicit and primary objective the fight against "*digital skills poverty*" can only create a context of exclusion, against which large groups of citizens find themselves unable to enjoy the services provided. In fact, it has been observed by socio-economic doctrine that the digital divide is not a monolithic concept, but a *spectrum* of exclusion that can assume different grades. Therefore, it is of absolute importance the search for a **substantial equality** - in accordance with Article no. 3 of the Italian Constitution - to make the citizens digitization **fair and inclusive**.

Secondly, the Smart City is generally considered as the new paradigm of **urban development**, in which particular emphasis is placed on collaborative **public-private governance**. As a matter of fact, the perspective from which this new phenomenon is looked at is generally that of **horizontal subsidiarity** – a principle introduced in the Italian Constitution in 2001 (Article no. 118, paragraph 4) – and that of the so called "**shared administration**". Such an approach undoubtedly has an impact both on the organisation and functioning of public administration and, therefore, also on the pursuit of the public interest. The above assumes considerable importance if we consider that the public interest is less identified *a priori* by the laws, being, on the contrary, increasingly "**interpreted**" in the living body of the administrative procedure. It seems evident therefore that the perspective of shared administration must be relativized by virtue of the need to balance **horizontal subsidiarity** with other principles of constitutional importance, including that of **substantial equality**. So, if it is true that within the Smart City, instances, claims and, more generally, new subjective legal situations (interests, rights) – that go beyond the traditional boundaries of the administrative procedure – can be configured, it is equally true that the procedure, and in particular the **procedural participation**, could never be renounced, even if it becomes merely formal, *i.e.* a set of practices aimed at providing a barrier, even if partial, to the selective and elitist nature of the public decision-making process.

THE DESIRABILITY OF DEMOCRACY FOR A SUSTAINABLE LEGALITY

Giammaria Gotti

Since the ontology of democracy is strictly related to the notions of *demos*, nation and state, there is no conceptual international model provided by democratic theories one can easily employ to close the democratic gap in global or supranational governance.

The main democratic concern is that in many cases we have a *governance* without *government*, and *epistemic* authorities substantially behaving as *practical* ones: technocratic choices made by technical authorities often lead to significant *political* consequences.

In global institutions, the process of law-making is far removed from any processes analogous to democracy (Kingsbury, 2010). The same is true for the European Union, for cases in which the "Community Method" does not apply.

In this first part I will try to explain which are the *advantages* for global or supranational governance structures to be democratic polities.

It was suggested – with specific regard to European Union – to "experiment" democracy (Sabel – Zeitlin, 2010). Moreover, EU governance is often presented as a successful model (Majone, 1996). The Commission itself (White Paper, 2001) considered it as a "promise of participation", creating channels that can shorten the distance between citizens and institutions.

Is this kind of *experimental democracy* "enough" to stop concerns with the democratic provenance of supra/trans-national norms? Is the EU really a successful model?

I will explain the *deficit* of those experiments: they promote dialogue with the *stakeholders* searching for solutions in relation to concrete problems (*mutual learning-problem solving*). Although there have been significant steps in the direction of expanding the range of actors concerned in the formulation of international/supranational law, global and EU institutions provide full participation of *its* public, understood in a narrow sense as actors involved in a particular area of activity. This limited public is not the public *truly affected* by the decision.

Governance, in making *policies*, involves stakeholders with a specific interest on a specific issue; on the contrary, a *democratic governance*, which makes *politics*, should involve actors with a "general" vision on all issues pursuing general interests (e.g. political parties).

As an example, I will recall the implementation of the *European Pillar of Social rights* through social dialogue and participation of civil society (EC 2018; 2020). A process with great *participation*, but little space for *politic.*

I will recall habermassian deliberative discourse (Habermas, 1992), describing how it has been misused in some supranational governance programs (e.g. White Paper, 2001). The hoped changes for democracy at a supranational level should have a *deliberative* character? Should it be similar to the deliberative decisional procedure of Constitutional Courts (Hübner Mendes, 2013)?

In conclusion, I explain what I mean by sustainable legality and how democracy could help in achieving it. I argue that legal sustainability, as a constitutional concept, does not directly concern the *content* of the law. Rather, it is the result of a (political?) *process*. In fact, broad public law principles (rule of

law, fundamental rights) depend for their operationalization on the specific contextual features of *the way law is made*.

FOREIGN JUDGES AT BOSNIA AND HERZEGOVINA'S CONSTITUTIONAL COURT: PERSPECTIVE OF POST- CONFLICT SOCIETY

Harun Išerić

New Bosnian Constitution from 1995 brought a number of changes in Bosnian constitutional system, including a new composition of the constitutional court. Although a foreign constitutional court judges were not an innovation in the constitutional judiciary, for the first time they were placed in one constitutional court as part of one peace agreement and in a post-conflict society.

The Court has nine members. Six of them are domestic, while three are foreign judges. Domestic judges are not chosen by federal government authorities, but by entity's (state's) parliaments. Four judges are chosen by Parliament of Federation of Bosnia and Herzegovina and two by Parliament of Republika Srpska. Although the Constitution is silent on judges ethnicity (in contrast to the composition of other federal institutions), the constitutional practice has shown that judges chosen by Parliament of Federation of Bosnia and Herzegovina are always Bosniaks and Croats (two per each ethnic group) and that judges chosen by Parliament of Republika Srpska are always Serbs. As claimed by Joseph Marko, former foreign judge, entity parliaments have appointed representatives of their ethnic groups to defend their interests in the Court. Constitution makers had a vision that this could happen, and thus they integrated three foreign judges, whom cannot be citizens of Bosnia neighbouring countries and are appointed by president of the European Court for Human Rights.

One claims that foreign judges in post-conflict society such is Bosnian should not take sides of any ethnic group in the Court and should wait for the consensus among domestic judges on certain questions (like Alex Schwartz), while others insist that foreign judges have to participate in decision making process and finally give a vote on legal question raised, whether there is or there is not a consensus among domestic judges (like Joseph Marko).

The existence of foreign judges in Constitutional court has raised a question of sovereignty of Bosnia. The procedure of their appointment has been criticized for lack of transparency as well as choices that were made by president of the European court for human rights since it has been claimed that the quality of judges appointed has decreased.

The existence of foreign judges has been hardly criticised by some Bosnian politicians and they even introduced the legislation with aim of removing them from the Court. For that to happen the Constitution has to be changed, for which political majority does not exist yet. That happened because they were unsatisfied by the way judges' vote, stating that they vote on the same way as Bosniak judges and that they are not impartial.

In addition to that, European Union does not have a uniformed view on this matter. The European Commission insists that they should be removed, while the rules of law experts are of different opinion.

Foreign judges' first and foremost role was to spread a knowledge and share experiences in human rights protection. All domestic judges were educated in socialist regime, which did not care much for human rights law. Secondly, judges had to prevent a deadlock in the work of the court.

More than 25 years of the Court's work provide a solid platform for checking their contributions and answering following research questions:

1. How did constitution makers (USA diplomats) understand the role and position of the foreign judges?
2. Up on which criteria's foreign judges where chosen by president of European court for human rights and whether there has been a declining in their quality?
3. What kind of role judges has played in the work of the constitutional court, especially in constitutional review cases and human rights cases? How the conflicts between foreign and domestic judges were solved?
4. What is the future of the foreign judges in Bosnian Constitutional Court? In case that they get replaced by domestic judges, how should new domestic judges be chosen? If not, whether there should be change in the process of choosing foreign judges and if so, what kind of?

THE LIMITS OF FINALITY OF THE ADMINISTRATIVE DECISION

Špela Lovšin

The respect of legal certainty demands that the legal relationship, which derives from the issued administrative decision, remains unchanged. Hence, such decision must be granted with a characteristic that excludes the possibility of the decision being set aside, annulled or amended. The legal institute of (administrative) finality is therefore of great importance. The legal effect of finality is that the issued administrative decision can no longer be set aside, annulled or amended by a new decision. In the administrative procedure, administrative finality has same effects as finality, although it does not pose an obstacle for challenging the decision in administrative dispute.

Article 158 of the Constitution of the Republic of Slovenia provides that legal regulations regulated by the final decision of a state authority may be set aside, annulled, or amended only in such cases and by such procedures as are provided by law. In accordance with the General Administrative Procedure Act (hereinafter referred to as »ZUP«), the finality of the administrative decision can only be interfered with extraordinary legal remedies, although a special law can set other conditions, under which a (materially) final administrative decision can be set aside, annulled or amended.

While examining some of the more prominent decisions of the Supreme and Constitutional Court of the Republic of Slovenia it is possible to conclude that the legal institutes of administrative finality and finality raise complex issues, the majority of which have not yet obtained their solution in the legal theory and practice.

In my presentation, I will primarily focus on two issues. The first one is the power of administrative authorities to interfere with final administrative decision *ex officio*. In accordance with ZUP, the administrative authority has such power in the case of the reopening of the procedure, through its supervisory right and through the extraordinary annulment. On the basis of the comparative law analysis, I will turn to the question of respect of principle of protection of legitimate expectations and examine whether the interferences *ex officio* can always be justified with the principle of legality of administrative actions, especially in cases where the addressee of the decision exercised the conferred rights in good faith.

The second issue, which will be discussed during my presentation, is the effect of the judgments of the European Court on Human Rights (hereinafter referred to as »the ECtHR«) on the finality of the national administrative decisions. The main focus will be put on the legal possibilities of the party to the final administrative decision which – by the judgment of the ECtHR – violates the rights and freedoms of the European Convention on Human Rights.

The abovementioned issues constitute only a handful of questions, which arise in relation to the legal institute of the finality of the administrative decision. In my presentation, I will introduce several proposals on possible solutions for the described issues and consider the possible approaches on how to transfer the suggested solutions in the Slovene legal system.

A NEW AUTOMATED VAT COLLECTION MECHANISM - COMBATING VAT FRAUD IN DIGITAL SUPPLIED SERVICES IN B2C CROSS-BORDER SITUATIONS WITH BLOCKCHAIN-TECHNOLOGY

Robert Müller

The taxation of the digital economy has been a major challenge for governments and tax administrations for two decades. As the business models of the digital economy continue to evolve and are not identical to analogue business models, the tax and enforcement laws developed at analogue times must also be judged against these. Every year more goods and services are being processed via the internet.

The correct VAT collection of e-commerce businesses in B2C cross-border situations is difficult for tax authorities, because consumers are not bound by declaration procedures. It is hard for tax authorities to investigate the VAT relevant transaction by cross-checking when the supplying entrepreneur does not declare the output VAT, the supplying entrepreneur is resident in a non-EU country or has not registered for VAT purposes. The European Court of Auditors has recently highlighted the lack of VAT investigation tools for European tax authorities in e-commerce. And expressly recommends that the commission 'explore the use of suitable "technology-based" collection systems, including the use of digital currencies, to tackle VAT fraud on ecommerce'.

The answer to the digitalisation of business relationships can only be found in the digitisation of tax administrations. This includes the strengthening of electronic investigation and tax collection mechanisms. Beside other initiatives the EU Commission currently plans to extend possible investigation methods based on data to be collected and reported by payment service providers. However, even if investigations have returned results and a tax liability was identified, there is still a problem of the enforcement of tax claims in cross-border situations.

For this reason, the article proposes a mechanism to collect VAT directly during the payment process. As a possible solution, an automated tax collection by attaching blockchain elements on regular payment data is discussed. The proposed model is based on split-payment mechanisms.

This self-designed mechanism will collect the correct VAT duties for electronic supplied services to consumers during the electronic payment procedure in real-time. A crucial point in this context is to build up a reliable network that is sustainable and efficient. Parallel to this process, the European electronic payment structure must be adapted to meet the requirements of such a system. Generally, for the automated VAT collection to materialise, a system is necessary that connects the supplying entrepreneur with the payment service providers of the customer. In the current European payment system necessary information to collect VAT during the payment process is not stored and submitted by banks and payment service providers. The supplying entrepreneur holds the relevant information to collect the correct amount of VAT. To connect these two parties the blockchain technology is used.

NON-BINDING COURCES OF ITALIAN ADMINISTRATIVE AND COVID-19 PANDEMIC: LEGAL REGIME AND JUDICIAL REMEDIES

Federico Nassuato

The COVID-19 pandemic has produced outstanding effects on the sources of Italian administrative law, revealing several critical issues and outlining some interesting legal trends. In particular, one of the most evident occurrences which have recently emerged is represented by the massive use of the so-called tertiary sources as an instrument for the regulation of economic activities and citizens' social behaviour in order to prevent the spread of contagion. By tertiary sources, part of the Italian administrative scholarship means a particular kind of administrative decisions of general applicability but unable to create legal rules in a strict sense, and which are produced on the basis of powers delegated by primary or secondary legislation and have non-binding or semi-binding effects (e.g. guidelines, circular letters and internal directives). As far as primary and secondary legislation enacted to face the pandemic was mostly uncertain, inaccurate and confusing, citizens often had to rely on these administrative measures, aimed at explaining and clarifying the relevant legal rules, in order to know how to lawfully behave. Therefore, the recent health crisis has caused two main changes in the scenario of tertiary sources: on one hand, the existing sources have increased their external effects towards private citizens, while before they were usually delimited just within administrative authorities; on the other hand, new tools have been widely arranged and improved, such as the Frequently Asked Questions on the Government, Ministries and other public bodies websites.

Moving from these considerations, the contribution aims at analysing four main topics related to the increasing relevance of tertiary sources in Italian administrative law. Firstly, the contribution will examine the legal regime of tertiary sources, by considering how the semi-binding effects could relate to citizens' right to claim for judicial review against unlawful sources or, on the contrary, against the unjustified violation of lawful sources by specific decisions taken by public bodies, in breach of citizens' legitimate expectation of sources' enforcement.

Secondly, taking into account the legal remedies for challenging the unjustified violation of tertiary sources, the contribution will analyse whether it is correct to use the concept of 'soft law' to describe this type of administrative measures.

Thirdly, the contribution will focus on the public availability and knowledge of tertiary sources, by questioning whether public authorities could always request compliance with these provisions and enforce them or, conversely, citizens could be excused by ignorance of the sources themselves. This solution could be driven by the fact that these instruments are not sources of law, that they are not subject to the publication provided for legislative instruments and, moreover, that they are often characterised by highly complex legal or scientific terms.

Finally, the contribution will discuss the relationship between the political and the technical sphere within the tertiary sources. As far as they represent a meeting point between legislative enforcement instruments (relating to the regulatory and political field) and scientific explanation sources, how far is their creation influenced by technical data? How much does science restrict political discretion and, consequently, how much does it affect political responsibility for these instruments?

MECHANISMS FOR PROTECTING THE RULE OF LAW IN THE EUROPEAN UNION AS INSTRUMENTS FOR FURTHER INTEGRATION

Leposava Ognjanoska

European Union was explicitly established not just to be a community based on common interests of its Member States, but also a community of values, reflected in the way how integration progresses (Closa, Kochenov & Weiler, 2014). In fact, it represents unification through a set of common values on the basis of which common policies are developed so as to achieve common goals and interests. As De Búrca (2013) notes EU's credibility and even its very raison d'être besides economic integration, is also related to values, thus requires development of mechanisms for their protection and facing the impending challenges. The next phase of the European integration seems to be the 'integration through the rule of law', as the further development of this process must be based on secure and solid basis (Lenaerts, 2020), in particular, respect for the rule of law, reaffirming the Union as a community of values.

Rule of Law in the European Union's legal system has gained considerable importance and has undergone through a gradual process of definition, affirmation and development, with reference to its internal and external dimension. Rule of Law is the pillar on which the Union is based and it upholds all other values and principles. As enshrined in Article 2 of the Treaty on European Union, rule of law is one of the founding values of the European Union, but also a reflection of the European identity and common constitutional traditions. Moreover, rule of law is a guiding principle of the European Union's external action and has become a necessary precondition for the admission of new Member States as stated in Article 49 TEU. A special Eurobarometer on the rule of law (April 2019) showed overwhelming popular support for this value among EU citizens. As the European Commission has recently highlighted (Commission Communication, 2019), if the rule of law is not properly protected in all Member States, the Union's foundation core of solidarity, cohesion and trust necessary for mutual recognition of national decisions and functioning of the internal market as a whole, is damaged. But at the same time, it is evident that today the respect for the Union's fundamental values, including the rule of law, is subject to serious scrutiny in the Member States and one of the greatest challenges to the unity and stability of the EU is posed by Member States violating the rule of law.

Given the importance of the rule of law for the development of European identity, the confidence of citizens in the Union and the effective implementation of policies, the initial premise on the basis of which this paper is further developed is that the rule of law is of central relevance to the future of Europe. Hence, the main aim is to examine the mechanisms for protecting the rule of law towards 'Union based on values' as next/final phase of the European integration process.

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