Paolo Mengozzi

# The Taricco *Saga*: The Court of Justice, the Italian Judges and the Principle of Cooperation

This essay covers the so called "*Taricco* saga" with the purpose of denying that it gave rise to a real conflict between the Italian Constitutional Court and the Court of Justice. It re-reads a) the Court of Justice's *Taricco I* preliminary ruling in the light of the fact that there was not an adequate cooperation between the Italian different partecipants to the procedure that led to the Italian order requesting it and b) the reaction to that preliminary ruling by the Italian Constitutional Court determined by a temporary wrong reference to the Court of Justice's *Melki* and *Abdeli* ruling. The appearance of a conflict resulting from those two rulings was subsequently overcome by an appropriate communication between the two Courts determined by the Italian Constitutional Court's order no. 117/2019 where this latter informed the Luxembourg judges that, according to Article 25 of the Italian Constitution, criminal rules, like those susceptible of having been drawn up for the implementation of Article 325 TFEU by Articles 160 and 161 (of the Italian criminal code), cannot provide for the punishment of a person if they lack of a character sufficiently determined, also as far as its prescription is concerned.

The author concludes by stressing the importance of the respect of the principle of cooperation by all the participants in the preliminary ruling procedure.

Giuseppe Tesauro, Celeste Pesce

# Prohibition of Geographical Discrimination: Interactions and Prospects

The geographicblocks consist of practices that prevent consumers from accessing or purchasing goods or services on a site in a Member State. Such discrimination, based on the nationality of the consumer, on the place of residence and/or establishment, has been prohibited since December 2018. The discipline thus adopted comes into contact with the regulations governing the free market (including the digital market) of the EU, unfolding, in a peculiar manner, its effects in terms of free competition.

Gabriella Carella

# Inapplicability of the Dublin III Regulation to Specific Cases of Irregular Migratory Flows in the Mediterranean Sea

The paper is aimed at examining Article 13 of the Dublin III Regulation applicability to irregular migrants rescued at sea. After examining the provision and taking into due account the Court of Justice interpretation in the *Jafari* and *A.S.* cases, we come to identify the illegality of the entry and its traceability to an individual initiative or responsibility of a State as conditions for the applicability at hand. To check whether or not these conditions are met with respect to irregular migrants rescued at sea, the international regime of search-and-rescue and the extraterritorial applicability of *refoulement*, according to the jurisprudence of the European Court of Human Rights, are carefully examined. The outcome is that, in cases of rescues by private ships on the high seas, Article 13 shall not be applied to irregular migrants exactly because it is lacking on application conditions.

Simone Marinai

# Reflections on the New Legal Instruments to Respect the Rule of Law by EU Member States to Be Introduced without Changing the Treaties

The current rule of law crisis in Hungary and Poland has confirmed the shortcomings of Article 7 TEU procedure as an efficient tool to resolve systemic deficiencies of the rule of law in the Member States. This article aims at contributing to the ongoing debate on the opportunity and the feasibility of new legal tools concerning respect for the rule of law at the internal level. In particular, two proposals are discussed. The first proposal concerns the adoption of a legal instrument on the protection of the Union's budget in the case of generalised deficiencies as regards the rule of law in the Member State. The second proposal aims to create an independent body which should be entrusted with the permanent review and assessment in the fulfilment of rule of law standards by EU member States. Both these proposals are assessed taking into account that, in the current political context, any attempt to introduce new legal instruments to implement the compliance with the rule of law by EU Member States might only be introduced without changing the Treaties.

Pierre de Gioia Carabellese

# BRRD (or Bail-in Directive), ‘Second Act’

A recent piece of EU legislation, Directive 2019/879, has amended the Bank Recovery and Resolution Directive, the notorious BRRD or, in common parlance, the ‘bail-in directive’. This goal has been achieved by way of a few significant, yet not revolutionary, changes to the ‘normative architecture’ of the original statute. Among the most macroscopic alterations, there is the final implementation of a new typology of debt instrument, the TLAC, whose specific function is to beef up the regulatory capital of the bank in contemplation of the specific ‘resolution action’ risk, rather than the business risk. In the post 2007/2008 financial crisis period, ‘cushions’ or ‘buffers’, duly increased by scared politicians who were traumatised by costly public bail-outs, represent of the most remarkable symbols of the G20 policies.

Marco Evola

# Article 50 TEU between Self-integration and Hetero-integration of EU Law

Article 50 TEU is an incomplete provision which has been giving rise to several interpretative problems since the UK triggered the withdrawal procedures. The CJEU shaped a self-integration process of Article. 50 TEU in the judgements delivered in *RO*, *Wightman* and *M.A.* and *others* v. *The International Protection Appeals Tribunal* and *others*. The paper argues that this approach fails to solve all of the problems arising from the withdrawal and highlights the need to adopt an heterointegration approach. The paper contends that the *bona fide* principle as a genenal principle of international law has to be applied to the negotiations of the withdrawal agreement.

Sara De Vido

# The EU Single-Use Plastics Directive in Light of the Right to a Healthy Environment

The article aims at providing a first analysis of the European Strategy for Plastics, adopted by the European Commission in January 2018, and of Directive No. 2019/904 on the reduction of the impact of certain plastic products on the environment, also known as 'Single-Use Plastics Directive', which was adopted on 5 June 2019. The main argument of this article is that, despite the important achievements of this Directive, which will be summarised following the five "Rs" – reduction, restrictions, requirements, responsibility, recycling – this legal instrument does not grasp the complexity of the evolving debate on the human right to a healthy environment.

Giacomo Di Federico

# Free Movement of Lawyers in the European Union with Particular Regard to Italy: The Use of the IMI System and the Right to a Full and Effective Judicial Protection

This essay addresses some criticalities related to the application of Directive 98/5/EC in Italy, having due regard to the domestic practice and case law. Most notably, the Author argues that recourse to the IMI system for the purpose of avoiding abuses of law by those Italian citizens who decide to acquire their professional title abroad (i.e. Spain or Romania) and then return to their home country to provide legal services is capable of hindering the right to a full and effective judicial protection, in accordance with Article 47 of the Charter.

Alessandro Rosanò

# Once *Aranyosi*, Always *Aranyosi*? Thoughts on the Application of the *Aranyosi* and *Căldăraru* Test in the Framework of Some Instruments of Judicial Cooperation in Criminal Matters Different from the European Arrest Warrant

In recent years, the approach to mutual trust as the basis of judicial cooperation in criminal matters has changed. The relevant normative and jurisprudential paradigm has shifted from blind trust to the need to be sure that fundamental rights are adequately protected in the Member States of the European Union. For what concerns the CJEU's case law, this has led to the ruling given in *Aranyosi* and *Căldăraru*, where the Court developed a test related to the protection of fundamental rights in the framework of the European Arrest Warrant procedure. The issue that this article tries to tackle is whether that test might apply to other instruments of judicial cooperation in criminal matters, focusing on the framework decision on the transfer of sentenced persons, the framework decision on probation and alternative sanctions, and the framework decision on the European Supervision Order.

Claudia Cinnirella

# Some Thoughts about the Judicial Dialogue on the Double Track Sanctioning System: The 'new' *ne bis in idem* principle between Proportionality and the (Restored) Margin of Appreciation

Over the last few years, the *ne bis in idem* principle has been a particularly controversial issue at the interface of administrative and criminal law enforcement. Both the Court of Justice of the European Union (ECJ) and the European Court of Human Rights (ECtHR) have progressively assessed their positions about its rationale and its scope of application. More recently, the two Courts have also reached a common level of protection. In the meanwhile, the Italian Constitutional Court and the Italian Supreme Court have produced a flourishing case law in order to coordinate the national constitutional system with the evolving European case law. Within this framework, this contribution explores how the ECJ and ECtHR have restored the margin of appreciation in the application of the *ne bis in idem* principle at national level. Secondly, it aims to demonstrate to what extent this intertwined judicial dialogue has changed the rationale of the *ne bis in idem* principle. From restricting the possibility of a defendant being prosecuted repeatedly on the basis of the same offence, the new *ne bis in idem* principle appears to guarantee mostly the proportionality of the overall punishment.

Michele De Zio

# The Unbearable Lightness of Social Rights in the European Union: Some Considerations in Light of *Florescu* and *Associação Sindical dos Juízes Portugueses* Cases

The work analyses the dependency of social rights on public financial resources. Starting from this consideration, this paper looks over the recent jurisprudence of the ECJ and of ECHR, to understand the existing balancing between financial needs and the need for protection of social rights, which has been succumbing in the *Associação Sindical dos Juízes Portugueses* and *Florescu* cases. This approach seems to be a paradox, especially in the light of the 'Social Pillar of the EU' approved in Göteborg in 2017. To provide more effectivity to social rights, the present work suggests how a stronger dialogue between ECJ, ECHR and national constitutional courts could help to achieve this goal.