Giandonato Caggiano

The Court of Justice on the Protection of the Judicial Independence against Disciplinary Measures Damaging the Rule of Law

The article explores the recent case law of the Court of Justice of the EU on the rule law crisis, with specific attention to the disciplinary measures affecting the judicial independence in Poland. The adoption by the executive and legislative power of initiatives to control the judicial activity also concerns the activity of judges when they are called to ensure the application and interpretation of the EU law through the preliminary ruling. The essay focuses on the scope and content of the obligations incumbent on the Member States under Articles 2, 19 TEU and 47 of the Charter in ensuring the independence of the national judge. The unbreakable link between compliance with the rule of law and the principle of effective judicial protection requires that disciplinary measures should not to impair the independence of the judges.

The analysis of the Court judgments in the cases *A.K* and *Miasto Łowicz* shows the pros and cons of the preliminary ruling in protecting the rule of law from disciplinary measures affecting judicial independence: on the one hand, it provides an opportunity for the Court to clarify the general criteria on the basis of which national measures are assessed. On the other hand, unlike the infringement procedure, does not allow to ascertain in the specific case, at the national level, the violation of the independence of the judge as an essential element of the rule of law in the EU law.

Bruno Nascimbene

The ‘Internal’ and ‘External’ Dimensions of Immigration and Asylum Policy. Principles and Values

The analysis concerns the European immigration and asylum policy, considered both from its ‘internal’ dimension, which regards conditions and treatment of third country nationals within the European judicial framework, and from its ‘external’ dimension, which involves the cooperation with migrants’ third countries of origin. The aim of the article is to lead a comprehensive evaluation of these two perspectives, in order to emphasize the crucial role of the Union’s values in the implementation of this policy. On the one hand, the paper highlights the relevance of the principle of solidarity, which, together with the principle of loyal cooperation between Member States, should guide immigration and asylum policy and ensure their effectiveness, both in their internal and external dimensions. On the other hand, it underlines the importance that the instruments implemented by the Union in the context of its external action comply with the fundamental rights protected by European law. Only then, the international volet of immigration and asylum policy will be harmonized with the internal one, in view of the creation of a coherent and comprehensive.

Matteo Ortino

The EU Principle of Proportionality and the Allocation of Banking Regulatory and Supervisory Powers

This paper deals with the proportionality of the banking rule-making and financial supervisory powers in the EU system. In particular, the focus will be on the proportionality assessment of: a) the legislative division between EU harmonization and national regulatory autonomy; b) the establishment and attribution by the EU legislator of the tasks of financial regulation to the European Banking Authority and of banking supervision to the ECB within the framework of the Single Supervisory Mechanism; and finally c) the administrative allocation of supervisory tasks to the competent national authorities by the ECB, within the framework of the SSM. The cost/benefit analysis will concern the vertical relation between the EU and the Member States (given the increasing degree of centralization of powers at EU level to the detriment of the powers of the individual Member States, both legislative and regulatory), and horizontally the EU institutional level (in which the Commission sees itself deprived of margins of decision-making freedom to the benefit of the EBA).

Giovanni Luchena, Stefania Cavaliere

New Issues Related to State Aid in EU Law

In recent years, control action on state aid has been stepped up by broadening the Commission's scope. The aim of this work is to examine certain areas affected by this modus operandi in order to verify the latitude of the Commission's power in a key area of state economic policy, in close connection with budgetary policies. With particular reference to tax aid, it will be highlighted that the contrast of aggressive practices by certain states is not only in terms of protecting competition but also as an instrument to combat tax evasion and avoidance.

Pieralberto Mengozzi

The Court of Justice Opinion 1/17 on the CETA Agreement and the Autonomy of the European Union Law

The essay deals with the relevance given in the CETA opinion by the Court of Justice to the principle of autonomy of EU law with reference to the attribution to an arbitral body, external to the EU juridical order, to express itself on EU law. The analysis starts by recalling the importance given by the Court to that principle until the *Achmea* ruling in function of its monopoly to give a definitive interpretation to EU law. The CETA agreement appears inconsistent with that position because, contradictorily, it gives its international tribunal, in one hand, only a power to apply CETA rules and international law principles and, on the other hand, the power to consider the law of the contracting parties as a matter of fact. Two studies have tried to overcome this contradiction: a first one assumes the necessity to attribute to the CETA tribunal the power to promote a previous involvement of the Court of Justice, a second opts for neglecting that contradiction in a pragmatic way. The author highlights that opinion 1/17 is characterized by a very different stand: the Court has abandoned the idea according to which, with reference to cases concerning international relations disputes, it has a monopoly in the interpretation of EU law.

Angela Maria Romito

Directive (EU) 2019/1: The Evolution of Public Enforcement in the EU Antitrust System

This article aims to illustrate the evolution of the EU public antitrust enforcement after Directive (EU) 2019/1 to empower the national competition authorities to be more effective enforcers (also called ECN+) and focuses of some critical aspects related to the Italian legal system.

In the first part it illustrates the preparatory work and the framework of the Directive. The purpose of the new law is to ensure that when applying the same legal basis – the EU antitrust rules – national competition authorities (NCAs) have the appropriate enforcement tools in order to bring about a genuine common competition enforcement area. To that end, the directive provides for minimum guarantees and standards to empower national competition authorities to reach their full potential.

The second part of the research focuses on the provision concerning independence, prioritization and resources contained in Chapter III of the directive. The research sets out an analysis on the issue of prioritization by national authorities highlightening the specific risk of a selective protection of the interests of the parties. According to the new rules, the NCAs have the power to set positive priorities (in that they can initiate investigations and proceedings) and negative priorities (they can reject complaints on the ground that are not a priority). Referring to the latter, the article questions about the hypothetical contrast between the EU priorities and the national priorities set out in the national constitutions. In order to guarantee the judicial review of decision rejecting complaints, a Commission-style system should be applied.

Federica Falconi

Some Remarks on the Abuse of Freedom of Expression According to the Case-law of the Strasbourg Court

Notwithstanding ECtHR's commitment to freedom of expression, an extensive body of case-law reflects a growing awareness on the part of the Strasbourg Court of the need to combat hate speech in order to guarantee to all individuals the full enjoyment of their fundamental rights and to safeguard the underlying values of the Convention. To this goal, the prohibition of abuse of right laid down in Article 17 ECHR still plays a significant role. As a rule, however, the Court will follow a different decision path, based on the ordinary triple test envisaged by Article 10, para. 2, ECHR, in order to scrutinize according to the factual circumstances of the case whether a fair balance has been achieved between the competing interests at stake and whether the penalties imposed are proportionate to the legitimate aim pursued.

Micaela Falcone

The ‘European Green Deal’ for Climate Neutrality: The New European Strategy for Growth between Challenges, Responsibilities and Opportunities

This essay examines the ‘European Green Deal’, the new EU’s growth strategy presented by the Commission in December 2019 to achieve climate neutrality by 2050 through a better coordination among environmental, economic and social policies. The sectors of intervention, the financial instruments and the social perspectives of this strategy are illustrated, with particular reference to the recent proposal for the European climate law and its critical issues. The position of the Member States, including Italy, towards the Green Deal is then examined. Finally, the European initiative is discussed in the international context of the fight against climate change.

Emmanuel Pagano

The Incidence of Fundamental Rights on Habitual Residence Notion and on the Exercise of Jurisdiction in Matters of Parental Responsibility in the ECJ Ruling in the *UD* Case

In Regulation (EC) 2201/2003 the habitual residence of the child plays a central role on jurisdictional competence in matters of parental responsibility. The EU legislature considered that the court geographically close to the child's habitual residence is the court best placed to assess the measures to be adopted in the interests of the child.

In the decision of 17 October 2018, case C-393/18 PPU, *UD*, ECJ states that it cannot be considered habitual residence without the physical presence of the child and that respect for fundamental rights of the child does not imply a wider interpretation of this notion.

In the EU law the fundamental rights do not play an independent role. They are subordinated to the aims and purposes of the rules. That is also the reason why the Court does not make use of the fundamental rights of the Charter to admit jurisdictional competence as forum of necessity.

Luca Lionello

The Role of the European Parliament in the Development of the Institutional Balance of the European Union. Some Considerations in the Light of the most Recent Practice

The essay studies the development of the institutional balance in the European Union in the light of the political role played by the European Parliament (EP). The first part of the work recalls a number of preliminary concepts, which help clarify the analysis, such as the principle of institutional balance, the 'democratic deficit' of the Union and the transformations of the European legal order. The second part considers the most important proposals of Treaty amendment put forward by the EP over the last decades and verifies how they have been implemented. The third part focuses on the evolution of the institutional balance triggered by some recent political initiatives of the EP, in particular the *Spitzenkandidaten* procedure and the use of parliamentary hearings. The conclusions try to draw on general considerations on the strengthening of the EP in the institutional framework of the Union.

Anna Pau

'Made in Settlements'! The European Consumer Must Know if Goods Are Produced in a Palestinian Territory Occupied by Israel

In the case discussed in this comment (Case C-363/18, *Organisation juive européenne* e *Vignoble Psagot Ltd* c. *Ministre de l'Économie et des Finances*) the Court of Justice rules that goods originating from an Israeli settlement situated in a Palestinian occupied territory must contain that specific provenance in their label. In the judgment, the Court has the opportunity to deal with the people's right to self-determination and ensures that the Union respects it, in line with the principle that the Union contributes to the strict observance and development of international law. At the heart of the Court's conclusions is the protection of the European consumer, who is potentially sensitive to various issues, including the violation of international law by Israel in the settlements of the occupied territories. The Court thus had the opportunity to reaffirm that the Union respects international law. However, this time, it has made a more clear and convincing statement than in the past, taking a stand, in the context of the unresolved Israeli-Palestinian conflict, against the recognition of the legitimacy of the settlements.

Cinzia Peraro

The Exchange of Information between Companies in the Internet Era: Comments on the Existing Rules

The article addresses the problems created in terms of competition between companies by the so-called digital revolution and the increasing use of algorithms to determine the behaviour of companies. In particular, it examines the question of the lawfulness of the exchange of information between competitors through the use of platforms, in order to verify whether the current rules laid down in Article 101 TFEU are still suitable to regulate the new forms of collusion also between the algorithms themselves. After examining both national and European case-law and practice, the author argues that the need to introduce new rules which meet the needs of the digital economy has not yet emerged, but that at the same time a mere analogical extension of the current criteria, as transposed in the Commission's Guidelines, to innovations produced by new technologies is not at all straightforward.

Lorenzo Cecchetti

The Principle of Non-discrimination on the Basis of Religion or Belief in Horizontal Disputes: The *IR* Case

The article examines the first ECJ's ruling on Article 4(2)(2) of Directive 2000/78, which implements, *inter alia*, the general principle of EU law relating to the prohibition of discrimination on the basis of religion and personal beliefs, with specific regard to the interplay between primary and secondary law as well as their effects in horizontal disputes. The comment focuses on two major issues. First, the personal scope of application of Article 4(2)(2) and its specific features vis-à-vis the judicial review developed by the ECJ in equal treatment cases. Second, the normative yardstick used by the ECJ in evaluating the compatibility of national provisions with EU law and the interplay between the latter and the general principle of EU prohibiting discrimination on the basis of religion or belief. The most significant open legal issues are briefly mentioned in the concluding remarks.

Francesco Lucianò

Reflections on the Effects of the Interpretative Rulings of the ECJ, after the Judgement on the Taxability of Vehicle Driving Tuition for VAT Purposes

In case C-449/17, the ECJ ruled that the concept of 'school or university education', within the meaning of Article 132(1)(i) and (j) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as not covering motor vehicle driving tuition provided by a driving school. Therefore, vehicle driving tuition is to be considered taxable for VAT purposes. The Italian Revenue Agency recognized *ex tunc* effects to the aforementioned interpretative ruling of the ECJ, pursuant to Article 264 TFEU, demanding VAT not collected theretofore.

The case taken into account brings to the attention the question of the effects of the interpretative judgments of the Court of Justice, in the case of (potential) conflict with the internal law of a Member State.