

Editorial Note

Special Issue “Law Research Network of the Council of European Studies”

The Council for European Studies (CES) held on June 27-29 of 2023 the 29th International Conference of Europeanists on the theme of *Europe’s Past, Present, and Future: Utopias and Dystopias* at the University of Iceland in Reykjavik, Iceland. As an active part of the Council for European Studies, the Law Research Network participated in the Conference with many significant contributions regarding several legal issues. The present special issue consists of some of the most interesting contributions presented at the above-mentioned conference. The Law Research Network is thankful for the opportunity to publish them in *The Nordic Journal of European Law*, an open-access and peer reviewed journal of European law with a Nordic perspective. The Journal was launched by Lund University in cooperation with other Nordic universities. The articles in this special issue cover many different yet very interesting legal aspects as it is described in the following.

Firstly, Nuno Albuquerque Matos explores the issue of balancing an economic union through the market process. The article focuses on how to achieve balance between the Union and Member States through the market process, namely by creating a legal framework for sovereign debt restructuring. After a brief comparative institutional analysis, it highlights the importance of the market process, in particular of sovereign debt restructuring in general. The study then deals with the main challenges usually associated with a debt restructuring framework, such as regarding collective action, Member States’ autonomy, moral hazard and financial issues. The author further reflects on the admissibility of such a procedure from a constitutional perspective, namely the EU Treaties and, lastly, on its democratic necessity.

Secondly, Danuta Kabat-Rudnicka deals with the operationalization of the rule of law. The study starts with some remarks on the rule of law, followed by an analysis of the judgment in the case *Associação Sindical dos Juizes Portugueses*, ways to protect the rule of law, its implications and concluding remarks. The research area is circumscribed to the EU and its Member States. The research question comes down to the issue of how the rule of law can be operationalised in a non-state, i.e. a supranational context. In turn, the article also deals with the role of institutions in the operationalisation of the rule of law, the ways to protect this very value and especially the role of the Court of Justice (hereinafter: CJEU/Court) in this process. It is highlighted that Article 2 TEU not only contains values the EU is based on, including the rule of law, but also underlines the importance of upholding them within the EU itself and its Member States. Operationalisation of the rule of law consists not only in translating this abstract concept into principles and rules but also into practical measures that can be used to assess compliance with the rule of law in a given legal system, either EU or national. Importantly, compliance with the said value is also indispensable for ensuring the EU's legitimacy, effectiveness, and protection of fundamental rights. Hence, the Member States must abide by EU law, even within areas of their reserved competence. Member States must therefore respect the rule of law which has been elevated to the rank of ‘value’, i.e. the leading axiological category underlying the Union – an element of the European constitutional identity.

Thirdly, Victoria Koutsoupiá addresses some of the issues posed by modern technology in the sphere of money laundering and terrorist financing (ML/TF), in particular concerning confiscation of proceeds of crime. After briefly describing the development of digital currencies and their role in the growing importance of blockchain technology, the author explores the use of digital currencies for these criminal purposes. Interestingly, mixed views exist in this regard, as the potential for exploring this new technology for ML/TF is not horizontally accepted yet. The described framework is then used to focus on confiscation, where the author exposes some of the legal challenges, for instance the acceptance of digital currencies as ‘currency’ or ‘money’. Moreover, features such as anonymity, difficulty of traceability and possibility of cross-border transactions further add to the burdensomeness to detect, investigate, prosecute and confiscate. This explains the relatively few court cases on the topic. However, when they occur, the author argues, the main challenge is related to the removal of criminal proceeds or assets when they are digital currencies stored with a private key known only to the owner. Thus, regulatory intervention is needed, according to the author, namely at EU level.

Fourthly, Hana Kováčiková addresses the issue of the rule of law in the EU from a non-court perspective. Acknowledging that the judicial process and the political sanctions envisaged in Article 7 of the TEU are not an effective tool, the author explores whether other ways are better to achieve compliance of the rule of law principle. The author starts from the observation that limiting or suspending financial streams proved to be an effective tool in the past. For instance, conditional grants became more visible during the 2014-2020 EU multi-annual financial framework. In the aftermath of the adoption of NGEU, however, a number of Regulations were adopted, such as the Conditionality Regulation (European Parliament and Council Regulation (EU, EURATOM) 2020/2092) the Common Provision Regulation (European Parliament and Council Regulation (EU) 2021/1060) and Recovery and Resilience Regulation (European Parliament and Council Regulation (EU) 2021/241). From a financial perspective, the author argues that, under the Conditionality Regulation, rule of law backsliding might entail suspension, reduction or interruption of payments or budgetary commitments. The obligation to fulfil financial commitments towards final beneficiaries remain preserved. However, in the case of Hungary, a decision took very long to be taken and proved not to be effective afterwards. Further, the Common Provision Regulation builds on the Conditionality Regulation, namely regarding respect for fundamental rights. Though firm conclusions are not possible to be drawn yet, the author presents a skeptical outlook and fears the Commission is not using every tool in the kit. In contrast, the Recovery and Resilience Facility show signs of positive outcomes. In fact, it is argued that the RRF’s performance-based features, such as conditioning the disbursement of funds on compliance with qualitative and quantitative targets have shown promising results.

Finally, Andreas Corcaci addresses the topic of implementation of decisions on environmental conflicts beyond the nation state. He does this by theorizing the national implementation of European and international decisions on environmental conflicts, integrating both judgments from courts and so-called managerial decisions from (non-)compliance mechanisms in multilateral environmental agreements. In addition, the author argues that implementing legal obligations is crucial to protecting the environment, especially in the absence of specialized courts and political resistance from populist governments. To

do this, the author outlines a concept of structural methodology based on two hypotheses: one based on the mechanisms used to solve conflicts, and another relating to the legitimacy of relevant institutions and processes of conflict resolution. According to the author, the framework proposed enhances research on comparative implementation by enabling empirical comparisons across different types of court and non-compliance mechanisms. In addition, it assesses the role that legitimacy and informal cooperation mechanisms play in this realm.

The Law Research Network