EUROPEAN JUDICIAL SYSTEMS AS A CHALLENGE FOR DEMOCRACY

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intersentia
Cambridge – Antwerp – Portland
European Judicial Systems as a Challenge for Democracy
Elżbieta Kużelewska, Dariusz Kloza, Izabela Kraśnicka and Franciszek Strzyczkowski (eds.)

Review: Prof. Dr. Paul De Hert, Vrije Universiteit Brussel and Tilburg University

Cover illustration: General Illustration of the Court of Justice of the European Union © Court of Justice of the European Union

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Cambridge – Antwerp – Portland
www.intersentia.com | www.intersentia.co.uk

ISBN 978-1-78068-316-4
D/2015/7849/90
NUR 828


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FOREWORD

BY PROF. MACIEJ SZPUNAR,
ADVOCATE GENERAL AT THE COURT
OF JUSTICE OF THE EUROPEAN UNION

The role of European Judiciary in the process of European integration cannot be overestimated. The achievements of European integration after the second world war are usually analysed from the perspective of political decisions that were made, initially, by the Founding Fathers and, subsequently, by the political leaders of the European countries. However, in the public debate we very often forget how much we owe to the two supreme jurisdictions of Europe, that is the Court of Justice of the European Union and the European Court of Human Rights.

One cannot deny that without some “revolutionary” decisions of the Court of Justice, the process of European integration would never come to the place where we are now. We would have never achieved the level of integration that, despite some shortcomings, still remains unique in comparison to all other initiatives of economic and political integration in the rest of the world. The Court of Justice takes the mission of ensuring that “law is observed” seriously and continues to assure that it is the rule of law which is at the heart of the European Union. The strength of the European Union comes essentially from the fact that it constitutes an autonomous legal order which rests on the concepts of direct effect and supremacy. These latter concepts were not only developed by, but – and this must be emphasized – originated in the case law of the Court of Justice. The landmark decisions of the Court of Justice gave life to and strengthened the internal market that still remains the cornerstone and the main achievement of the European integration. One would not exaggerate by saying that political initiatives would remain “wishful thinking” if they were not supported by the historic decisions of the Court of Justice.

The contribution of the European Court of Human Rights is equally significant. It assured that the protection of human rights on our continent became effective and universal. The limits of human rights are no longer restricted to national boundaries nor exposed to the danger of national authorities abusing their discretionary competences.
I am very happy that the group of young scholars, under the auspices of Elżbieta Kuźlewska and Dariusz Kloza, has taken the initiative to explore the challenges for the European Judiciary that have emerged in recent years. It seems clear that despite its evident achievements, the process of European integration is, if not at a crossroads, at least at a moment where important choices have to be made. It is impossible to enumerate all these challenges. They stem not only from internal changes and developments of the European Union, but also from external threats.

The authors of the contributions to the book decided to concentrate their research on the response of the European Judiciary to the problems of modern democracy. The problem of the so-called democratic deficit has been present in the academic debate for many years. It has been discussed by political scientists, lawyers and economists. The continuing extension of the competences of the European Union, especially in the field economic and monetary policy, calls for the new assessment of the nature of the decision making process at the European level. Is this process sufficiently democratic? If not, what are alternative solutions? To what extent can one accept a possible shift from the traditional model of a democratic decision making process towards new models? These kinds of questions will have to be dealt with by the Court of Justice of the European Union as well as by the European Court of Human Rights. Clearly, the mere existence of judicial review does not make a decision making process democratic. It does, however, strengthen the accountability of decision making bodies. Moreover, it is for the European judiciary to shape the democratic framework of the decision making process. Will the response of the European judiciary to the new challenges be as brave and effective as in the past?

Maciej Szpunar
Luxembourg, March 2015
The process of European integration is “evolving and the form it finally takes still cannot be predicted.” The European judiciary – i.e. the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR) and national courts interpreting and applying European law *sensu largo* – have shaped this process actively, alongside the Founding Fathers, European nations, European states and their citizens. The involvement of judiciary raises its own wide range of questions concerning the very nature of democracy. Much ink has been already spilled over issues such as democratic legitimacy, subsidiarity and accountability, the rule of law or judicial activism. But it was the recently celebrated 50th anniversaries of *Van Gend en Loos* (1963) and *Costa v ENEL* (1964) judgements that gave us further impetus to ponder about the place of the European judiciary in the democratic life in the Old Continent and their role in the process of its integration.

Therefore, under the auspices of the Centre for Direct Democracy Studies (CDDS) at the Faculty of Law, University of Białystok, in March 2014 we issued a call for papers and seventeen scholars from across Europe, predominantly young researchers, have kindly responded thereto and shared their views on the European judiciary as a challenge for democracy.

The present book constitutes the third fruit of our academic interest in the questions posed by European integration and democracy. In 2012 the Centre established a dedicated, peer-reviewed book series that produced, up-to-date, two volumes. It is edifying that from this volume onwards, the reputable

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5 The two previous books were: E. Kuzlewska and D. Kloza (eds.), *The Challenges of Modern Democracy and European Integration*, European Integration and Democracy Series, Vol. 1,
Belgian-based international publishing house *Intersentia* has decided to publish this series.

The various contributions to the present volume have been split into two parts. The first provides ten chapters on the judicial systems of the European Union (EU), discussing, *inter alia*, recognition of democratic principles in the case law of the CJEU, contribution thereof to the democratisation of the Union and reception of EU law in the Member States. The second part discusses the judicial means to protect human rights in Europe, consisting of three chapters devoted to the promise of advisory opinions of ECtHR as well as to democratic standards for voting and for fair trial.

The authors of this collection of papers have done an excellent and outstanding job illuminating – as Advocate General Maciej Szupnar, who kindly provided this book with a foreword, puts it – “the response of the European judiciary to the problems of modern democracy”. The series editors, the reviewers and the peer-reviewers helped us ensuring academic quality of this volume. We have been fortunate to work with *Intersentia* and our editor Tom Scheirs. Further invaluable assistance was received from Michał Czerniawski, Valentin Gros, Władysław Jóźwicki and Monika Kokštaitė. We thank them all. Finally, each of us, editors, undersigned, thank each other for this piece of teamwork.

We gratefully acknowledge financial and intellectual support of the Faculty of Law, University of Białystok, the Faculty of Law and Administration, University of Łódź as well as of the Institute for European Studies, Vrije Universiteit Brussel.

The corresponding editors welcome any comments and suggestions at ekuzelewska@gmail.com and dariusz.kloza@interia.pl, respectively.

Elżbieta Kużelewska
Dariusz Kloza
Izabela Kraśnicka
Franciszek Strzyczkowski
Białystok – Łódź – Brussels, March 2015

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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>AG</td>
<td>Advocate General</td>
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<td>AO</td>
<td>Advisory Opinion [ECtHR]</td>
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<td>BVerfG, FCCG</td>
<td>Federal Constitutional Court [Germany] (Bundesverfassungsgericht)</td>
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<tr>
<td>CC</td>
<td>Constitutional Court</td>
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<td>CCP</td>
<td>Code of Criminal Procedure [Poland]</td>
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<td>CE</td>
<td>Central Europe</td>
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<td>CFR</td>
<td>Charter of Fundamental Rights of the European Union</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<tr>
<td>CoE</td>
<td>Council of Europe</td>
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<tr>
<td>CoM</td>
<td>Committee of Ministers [CoE]</td>
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<td>EAW</td>
<td>European Arrest Warrant</td>
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<td>EC</td>
<td>European Community</td>
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<td>EC, Commission</td>
<td>European Commission</td>
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<td>ECB</td>
<td>European Central Bank</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECJ</td>
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<td>European Court of Human Rights</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EFSD</td>
<td>European Financial Stability Facility</td>
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<td>European Fiscal Stabilisation Mechanism</td>
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<td>Emergency Liquidity Assistance</td>
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<td>EP, Parliament</td>
<td>European Parliament</td>
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<td>ESM</td>
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<td>EU</td>
<td>European Union</td>
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<td>Grand Chamber [ECtHR]</td>
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<td>Gross Domestic Product</td>
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<td>ISDS</td>
<td>Investor-State Dispute Settlement</td>
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<td>MEP</td>
<td>Member of European Parliament</td>
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<td>MS</td>
<td>Member State</td>
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<td>National Court</td>
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<td>Outright Monetary Transactions</td>
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<td>Securities Markets Programme</td>
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<td>SRM</td>
<td>Single Resolution Mechanism</td>
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<td>TEAEC, TAEC</td>
<td>Euratom Treaty, Treaty establishing the European Atomic Energy Community</td>
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