

Procedural Autonomy of EU Member States: Paradise Lost?

Diana-Urania Galetta

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A Study on the “Functionalized Procedural
Competence” of EU Member States

 Springer

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*À Jacques Philippe Emmanuel,
mon mari,
avec tout mon amour*

.....
*Amants, heureux amants, voulez-vous voyager ?
Que ce soit aux rives prochaines;
Soyez-vous l'un à l'autre un monde toujours beau,
Toujours divers, toujours nouveau;
Tenez-vous lieu de tout, comptez pour rien le reste.
J'ai quelquefois aimé; je n'aurais pas alors
Contre le Louvre et ses trésors,
Contre le firmament et sa voûte céleste,
Changé le bois, changé les lieux*

.....
(« Les deux pigeons », Jean de la Fontaine, Fables, Livre IX)

Foreword

This volume deals with a fundamental dichotomy which governs the existing system of European Union Law. On the one hand, it is a precondition of a functioning Union that its substantive law should be guaranteed in a uniform manner throughout the Union and it should prevail over the law of the Member States. On the other hand, European Union law is not only executed and interpreted by EU institutions. On the contrary, it is in principle left to national authorities and jurisdictions to handle it in accordance with the procedural rules of the respective Member States.

The latter phenomenon is referred to as the principle of procedural autonomy of the Member States of the European Union. Naturally, this principle may come into conflict with the demands of uniformity of European Union law not only in theory. The numerous case law of the European Court of Justice demonstrates that it has been up to the European Courts to reconcile the two conflicting principles in practice. This has been done by the judges more or less in a pragmatic way without any deep and thorough theoretic reflection.

Therefore, the topic of procedural autonomy of the Member States still presents a blank spot on the map of legal theory and dogmatic argumentation.

This excellent book devoted to the title of John Milton's famous book "Paradise Lost" is shedding clear light upon this unclear matter. Diana-Urania Galetta, distinguished law professor of the University of Milan, well-known in particular for her fundamental books and articles in the field of administrative law and comparative public law (among others Diana-Urania Galetta, *Principio di proporzionalità e sindacato giurisdizionale nel diritto amministrativo*, Giuffrè, Milano, 1998, pp. XVII–273; *idem*, *Violazione di norme sul procedimento amministrativo e annullabilità del provvedimento*, Giuffrè, Milano, 2003, pp. XVIII–301) now offers a thorough and convincing legal study of a major issue of European Union law in its relation with the national legal orders of the Member States. Prof. Galetta comes to an European Union minded solution regarding the national judges also as a sort of "agents" in a functional sense of the European Union's interest. I find her

argumentation which cannot be summarized here in detail well-founded and convincing. The book is full of inspiring ideas.

In the end, national procedural autonomy might be nowadays an “unsafe haven” as the author remarks in her last chapter. These two words cannot be used, however, to adequately characterise her study as a whole. On the contrary, the book provides us with a deep analysis of the term “procedural autonomy” and the legal problems connected with it. Thus, to rephrase the comparison, which the author draws, it is a safe harbour of dogmatic reasoning and a brilliant masterpiece of European Union Law.

University of Freiburg

Professor Dr. Jürgen Schwarze

Preface to the English Edition

This volume is the translation of the book I published with Giappichelli Editore, in Italy, in 2009. In terms of content it differs from the original version only in as far as it was necessary to make reference to important ECJ judgements issued in the mean time (as for the *Olimpiclub* case I refer to in para. 3.4.) and I had to take into account the entry into force on 1st December 2009 of the Lisbon Treaty. In order to do this, each time I have added the reference to the articles of the consolidated version of the Treaty on European Union (TEU) and of the Treaty on the Functioning of the European Union (TFEU) and to the new wording when changes in the text have occurred.

In as far as terminology is concerned, I have used the terminology adopted in the Lisbon Treaty, even when it differed from the one used by the English speaking doctrine so far (it is the case, for example, for the word “supremacy”, to which I have preferred the word “primacy” used in “Declaration n° 17 concerning primacy” annexed to the Lisbon Treaty. Or for the expression “sincere cooperation” which is now used in Art. 4, third paragraph, TEU instead of that of “loyal cooperation”).

The idea of having my book translated into English was, first of all, a natural consequence of the considerable positive feedback I had received from Italian and foreign colleagues (and on this occasion I would like to thank them all!), most of them stressing the need to let the book circulate in a much wider circle than that of the scholars who are able to read Italian.

The second reason is related to the growing centrality of the topic of “procedural autonomy” and to the existing literature on this topic. As a matter of fact I wished to open a debate with English language scholars and especially with the UK doctrine which seems somewhat auto-referential, as only contributions in the English language are quoted by authors of papers dealing with the subject of procedural autonomy – as happens with so many topics of EU law.

Even if the translation work has cost a considerable amount of time and energy, we are still dealing here with a translation from Italian. So if, on the one hand, I have tried to always use the English language EU terminology, but I’m not sure whether I have always found the right one, on the other hand, the style is not always

the one English native speaker academics would use. The sentences are sometimes a bit long and the style itself is somewhat different. Anyway I took the decision (and I'm therefore the only one responsible for that) that the "poor style" had to be corrected only if it hindered comprehension of my reasoning.

That's why I would like to thank, first of all, Anke Seyfried, Associate Editor at Springer, who shared this point of view and decided to publish the book without asking for too much (superfluous) editing work. I thank her also for the enthusiastic reaction to my publishing proposal and for the continuous support.

Many thanks also to Ana Aliverti (for the help in the first draft translation) and to my colleague at the "Università degli Studi di Milano" Mary Rubick, who helped me in revising and refining the text.

Università degli Studi di Milano

Professor Diana-Urania Galetta

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I also want to thank Prof. Guido Greco and Prof. Vittorio Italia.

Finally, I want to express my gratitude to Prof. Jürgen Schwarze to whom I am indebted in many ways, not least for his foreword to this volume.

A honourable mention goes, though, once again, to my daughter Daphne Yael who, after asking me the title of my new book, at her seven and a half years old had exclaimed: Oh, that sounds interesting!

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