

Scientific conference “The Rule of Law and Mechanisms of its Protection in the EU”, Prague, 31st October 2014

On 11th March 2014 the European Commission adopted a new framework for addressing systemic threats to the rule of law in any of the EU’s 28 Member States. The aim of this new EU Framework for the Rule of Law is to strengthen the capacity of the EU to ensure effective and equal protection of the rule of law in all Member States.

Responding to discussions encompassing the rule of law and efforts of the European Commission, on 31st October 2014 a conference organized by the Faculty of Law of the Charles University together with Office of the Government of the Czech Republic was held at the Faculty of Law. The aim of the conference was to stimulate academic debate on substance of the rule of law and its protection in the Czech Republic as well as in the EU.

The morning plenary session was opened by **Dr. P. Rychetský**, President of the Constitutional Court of the Czech Republic, who mainly focused on selected issues of Czech Constitution regarding the rule of law as well as relevant case law of the Constitutional Court of the Czech Republic. **Associate Professor P. Svoboda**, Chair of the Committee on Legal Affairs of the European Parliament, addressed issues of the rule of law and values of the EU. **Mr. J. Dientsbier**, Minister of the Czech Republic’s Government for Human Rights, Equal Opportunities and Legislation, spoke on practical approach to fundamental rights and the rule of law. **Mr. P. Jäger**, Deputy Minister of Ministry of Justice, analysed new framework adopted by the European Commission. The morning plenary session was followed by in parallel held specialized panels.

I. The first afternoon panel discussed the topic of Constitutional Law Guarantees of the Protection of the Rule of Law. It was chaired by **Professor A. Gerloch**, Head of the Department of Constitutional Law and Head of the Department of Legal Theory and Legal Doctrines, who delivered his opening speech. **Professor A. Brösl**, former judge of the Constitutional Court of the Slovak Republic, spoke on a topic “Mechanisms of Protection of the Rule of Law”. In his speech, he specifically addressed the issues of the so-called Böckenförde-paradoxon as well as case law of the Constitutional Court of the Slovak Republic. **Dr. O. Preuss**, member of the Department of Constitutional Law, delivered a paper called “Mechanisms of Protection of the Rule of Law in the Czech Republic – Recent State and Expectations”. **Associate Professor J. Wintr**, member of the Department of Legal Theory and Legal Doctrines, focused on a topic called “Legislative Process and Principles of the Rule of Law”. Besides other things, he discussed relevant case law of the Constitutional Court of the Czech Republic. **Dr. J. Zemánek**, member of the Department of European Law and judge of the Constitutional Court of the Czech Republic, spoke on a topic “The Rule of Law as a Standard of Constitutional Review as well as EU Law Review and International Conformity: a Question of Equivalence”. **Dr. J. Kudrna**, member of the Department of Constitutional Law, presented a paper called “A New Framework For Strengthening the Rule of Law and Some Questions Connected to This Issue”. He concentrated on the framework set out by the European Commission and he gave a thought on history of European integration as well as the future of the EU. **Mr. J. Grinc**, member of the Department of Constitutional Law, focused on “Guarantees of Fundamental Rights within the Legislative Process of the EU and its Impact on Czech Legal System”. **Dr. P. Mlsna**, member of the Department of Constitutional Law, delivered a paper called “Impacts of Application of the Charter of Fundamental Rights of the EU on Constitutional Laws of the Member states”. In his speech, he addressed several decisions of the Court of Justice of the EU as well as different interpretations of selected fundamental rights. **Associate Professor R. Král**, member of the Department of European Law, spoke on a topic “National Consequences of Invalidation of Directives for Inconsistency with the Charter of Fundamental Rights of the EU”. He mainly focused on the Data Retention Directive. **Mr. Petr Navrátil**, member of the Department of European Law, delivered a paper called “Application of the Charter of Fundamental Rights of the EU in Recent Case Law of the Court of Justice of the EU”. He analysed the approach of the Court of Justice to Article 51 of the Charter and its drawbacks. **Associate Professor J. Reschová**, member of the De-

partment of Constitutional Law, presented her paper "Legal Mechanisms of Protection Against Discrimination". The panel was concluded by **Dr. E. Ruffner**, director of the EU Law Department of Ministry of Foreign Affairs of the Czech Republic, with a contribution "Infringement Procedure Pursuant to Article 258 TFEU as an Effective Tool for Protection of the Rule of Law within the EU?". He focused on relevant case law of the Court of Justice of the EU regarding the infringement procedures against Hungary and expressed opinion that in those particular cases the infringement procedure appeared to be an effective tool in terms of protection of rule of law.

II. The second panel, chaired by **Professor J. Dvořák**, Head of the Department of Civil Law of the Charles University Faculty of Law, was concerned with private law and procedural guarantees of protection of the rule of law in Europe.

As far as the private law perspective is concerned, a number of speakers, mostly members of private law departments of the Charles University Faculty of Law, stressed out the relevance of the legal certainty and foreseeability principles in ensuring the protection of the rule of law. In this respect, the first speaker, **Professor M. Pauknerová**, member of the Department of Business Law, discussed the key role of mandatory conflict-of-laws rules in the process of determining of the law applicable to cross-border obligations. However, she noted as well there is a need to search for a balance between the legal certainty and flexibility, i. e. some leeway for party autonomy and judicial or arbitral discretion. **Dr. Jakub Morávek**, member of the Department of Labour Law and Social Security Law, then referred to difficulties in implementation of the principle of legal certainty in the area of labour law. Concretely, he pointed out the adverse impact of frequent legislative amendments on it and accordingly he expressed his doubts concerning the proper functioning of the rule of law in the respective sphere. The next speaker, **Dr. T. Dobřichovský**, member of the Institute of Copyright, Industrial Property and Competition Law, addressed the necessity of harmonization of intellectual property rights in the EU and its limitations as well, particularly with regard to the territorial nature of these rights. **Dr. M. Pfeiffer**, member of Department of Business Law, noted that the process of unification and harmonization of domestic laws is the essential precondition for ensuring legal certainty and foreseeability in cases with a cross-border element. She aimed at the area of succession law, concretely at the new EU regulation No. 650/2012 which is to ease cross-border successions.

Ms. Alena Srbová focused on the issue of ownership of the land and buildings standing on it and its European context, with particular emphasis on the principle of „superficies solo credit“. After that, **Mr. V. Lederer**, member of the Department of Civil Law, briefly elaborated on the need for development of European tort law in connection with strengthening of the EU internal market. Among others, he mentioned the significant role of non-legally binding academic projects, such as DCFR, PETL and Pel-Liab. Dam. **Ms. L. Kuncová** commented on the damages in the area of competition law. She dealt with the competitive requirements stipulated by the EU law, namely the prohibition of cartel agreements according to article 101 TFEU and the prohibition of abuse of a dominant position provided by 102 TFEU. In the course of her speech she presented several practical cases from the case law of the European Court of Justice (ECJ).

Associate Professor A. Macková, member of the Department of Civil Law, then started series of presentations concerning the procedural aspects of the protection of the rule of law. She discussed the constitutional, European and also the new Czech substantive law background of the modern civil procedure, as well as the requirement of foreseeability in connection with provision of judicial protection. Similarly, **Mr. M. Sedláček**, member of the Department of Civil Law, stressed out the necessity of providing for clear rules of the civil procedure and making judicial protection more effective in future, particularly quicker and cheaper. The next speaker, **Dr. Silvia Švehlová**, member of the Department of Civil Law, dealt with the issue of alternative, e.i. out-of-court dispute resolution for consumers giving to them greater protection in resolving problems with their purchases. In this regard, she mentioned the new EU legislation and its impact on the Czech law. **Associate Professor M. Hendrychová-Zuklínová**, member of the Department of Civil Law, then concentrated on protection of children's rights and its constitutional aspects as well as related international standards. Par-

ticularly, she referred to The Convention on the Rights of the Child and criticized its negligent implementation within the Czech legal order. She was followed by **Dr. A. Thöndel**, member of the Department of Civil Law, who gave an introduction to the new regulation of acquisitive prescription stipulated in the Czech Civil Code of 2012. The last speaker **Dr. Pavel Kolesár** dealt with the importance of case law for development of the rule of law in a civil law jurisdiction. Especially, he focused on the significance of the doctrine of *stare decisis* in the Czech Republic after recodification of its private law.

III. The third afternoon panel discussed the topic of Public Law Guarantees of the Protection of Rule of Law. **Professor M. Tomášek**, Head of the Department of European Law at Charles University and chair of the panel, delivered his opening speech and reminded the participants of the diversity of issues the topic of the third panel encompasses. The first contribution was brought by **Professor M. Damohorský**, Head of the Department of Environmental Law at Charles University. He spoke on “Protection of Rule of Law in the light of Environmental Issues in the Czech Republic and Europe”. He stressed that the healthy and sustainable environment is the very precondition of rule of law. **Associate Professor M. Boháč**, focused on “Rule of Law by lens of Tax Harmonisation in the European Union”. He analysed the approach to enactment of the tax collection mandate and its drawbacks from the comparative perspective. He further, suggested *de lege ferenda* amendments of such a mandate in the Czech constitutional law. **Professor R. Pomahač**, member of the Department of Administrative Law at Charles University, delivered a contribution called “European Dimension of Right to good administration”. He discussed the roots of such principle, its enactment in Article 41 of the Charter of Fundamental Rights and its practical implications. **Associate Professor T. Grívna**, member of the Department of Criminal Law at Charles University, presented his critical opinions on “European Public Prosecutor”. He concentrated on the problematic and broad definition of European Public Prosecutor competences. He warned that certain criminal offences and its investigation would be dealt with at the supranational level. Adversely, the actions of European Public Prosecutor could have a negative impact on the length of proceedings before domestic courts. **Associate Professor L. Pítrová**, member of the Department of European Law and Department of Administrative Law, presented a paper called “Damages Caused by the Unlawful Decision of the European Union”. She expressed her opinion that with regard to the previous judgments of the European Court of Justice, sanctions against Russia could fall within definition of unlawful decision. **Associate Professor V. Štangová**, member of the Department of Labour Law and Law of Social Securities, closed the panel with a contribution on the topic of “Social Protection of Persons in Situations Recognised by Law and its Principal Difficulties”. She thoroughly analysed the Czech system of social securities pointing out the fact that the often legislative changes seriously undermines its stability.

Finally, one can conclude that the aim of the conference to provide a venue to expert discussion was fulfilled, as the high-profile speakers delivered very interesting speeches before a wide professional audience. Furthermore, it is to be emphasized that speeches were always followed by a lively discussion. The conference identified several problems related to the rule of law in the EU and the Czech Republic and outlined visions of its protection. All papers delivered by participants are to be soon published. Last but not least, special thanks are due to the organizers of the conference. Without their hard work and commitment this high quality event wouldn't be possible.

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