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SPIS TREŚCI

Wyniki III edycji konkursu „Przeglądu Prawa Konstytucyjnego" na najlepszą pracę magisterską z zakresu prawa konstytucyjnego i systemów politycznych w roku akademickim 2012/2013 9

IV edycja konkursu „Przeglądu Prawa Konstytucyjnego" na najlepszą pracę magisterską z zakresu prawa konstytucyjnego i systemów politycznych w roku akademickim 2013/2014 11

Część I

ARTYKUŁY

Godlewski Tomasz
Uniwersytet Łódzki
Udział prezydenta Republiki Litewskiej w ustawodawstwie 19

Elżbieta Kuzborska
Prawa językowe mniejszości narodowych na Litwie – sytuacja faktyczna mniejszości polskiej (w kontekście międzynarodowych standardów ochrony praw mniejszości narodowych) 41

Artur Ławniczak
Uniwersytet Wrocławski
Oryginalne rozwiązania systemów rządów na przykładzie Zakonu Maltańskiego 73

Joanna Uliasz
Uniwersytet Rzeszowski
Oryginalne rozwiązania systemów rządów na przykładzie Sułtanatu Omanu 97

Jacek Wojnicki
Uniwersytet Warszawski
Oryginalne rozwiązania systemów rządów na przykładzie Wietnamu 115

Maciej Serowaniec
Wojciech Włoch
Uniwersytet Mikołaja Kopernika w Toruniu
Obywatelstwo Unii Europejskiej w świetle koncepcji dzielonej suwerenności ludu J. Habermasa 137

Adriano Ciancio
University of Catania
How we might recover from the economic and social crisis through European integration deepening? 161

Anna Pazura
Uniwersytet Szczeciński
Uwagi na temat przesłanek skargi indywidualnej do Europejskiego Trybunału Praw Człowieka w Strasburgu 175

Halina Zięba-Załucka
Uniwersytet Rzeszowski
Prokuratura a Rada Ministrów (na marginesie oceny sprawozdania prokuratora generalnego przez prezesa Rady Ministrów) 195

Marek Woźnicki
Uniwersytet Marii Curie-Skłodowskiej w Lublinie
Prawnoustrojowy status ministra w projektach Konstytucji Rzeczypospolitej Polskiej wniesionych do Komisji Konstytucyjnej Zgromadzenia Narodowego 213

Antoni Dral
Beata Bury
Wyższa Szkoła Prawa i Administracji Rzeszów–Przemyśl
Zasada ochrony pracy w Konstytucji RP 233

Grzegorz Maroń
Uniwersytet Rzeszowski
Uchwały okolicznościowe Senatu w polskim porządku prawnym 253

Część II

KOMUNIKATY, RECENZJE, SPRAWOZDANIA

Rights and services for a new Europe of the citizens, (komunikat), Emilio Castorina 277

Demokracja elektroniczna. Kontrowersje i dylematy, red. Maria Marczewska-Rytko, Wydawnictwo UMCS, Lublin 2013, ss. 319, (recenzja), Przemysław Maj 285

International Conference *Unconditionally Paid Basic Income or Entitlement to Workplace: A Constitutional Question*, Vienna, Austria, 16–17 December 2013, (sprawozdanie), Richard Pereira 291

Konferencja naukowa *Prawa człowieka w Europie Środkowej i Wschodniej oraz Azji Środkowej na tle standardów międzynarodowych*, Warszawa, 16 grudnia 2013 r., (sprawozdanie), Anna Młynarska-Sobaczewska 295

Debata *Cisza wyborcza – za i przeciw*, Toruń, 22 listopada 2013, (sprawozdanie), Radosław Zych 301

Część III

KRONIKA NAUKOWA

Informacja o postępowaniu w sprawie o nadanie tytułu profesora 307

Informacja w sprawie zakończenia postępowania habilitacyjnego 308

INFORMACJE DLA AUTORÓW 309

CONTENTS

Results of the 3rd edition of „Przegląd Prawa Konstytucyjnego" competition for the best MA thesis in constitutional law and political systems of the academic year 2012/2013 9

4th edition of „Przegląd Prawa Konstytucyjnego" competition for the best MA thesis in constitutional law and political systems of the academic year 2013/2014 11

Part I

ARTICLES

Godlewski Tomasz
University of Lodz
Participation of the President of the Republic of Lithuania in the legislation ... 19

Elżbieta Kuzborska
Linguistic rights of national minorities in Lithuania – aspects of the situation of Polish national minority (in the context of international national minorities rights protection standards) 41

Artur Ławniczak
University of Wrocław
Original solutions of government systems on the example of the Order of Malta ... 73

Joanna Uliasz
University of Rzeszów
Original solutions of government systems in the example of the Sultanate of Oman 97

Jacek Wojnicki
University of Warsaw
Original solutions of government systems on the example of Vietnam 115

Maciej Serowaniec
Wojciech Włoch
Nicolaus Copernicus University in Toruń
The model of EU citizenship in the light of the Habermas' concept of shared sovereignty 137

Adriano Ciancio
University of Catania
How we might recover from the economic and social crisis through European integration deepening? 161

Anna Pazura
University of Szczecin
Comments on the requirements for an individual application to the European Court of Human Rights in Strasbourg 175

Halina Zięba-Załucka
University of Rzeszów
Prosecutor's Office and the Council of Ministers (remarks aside the evaluation of the report of Public Prosecutor General by the President of the Council of Ministers) 195

Marek Woźnicki
Maria Curie-Skłodowska University in Lublin
The Constitutional regulations placing a minister in projects of Constitution of the Republic of Poland introduced to Constitutional Commission of National Assembly 213

Antoni Dral
Beata Bury
School of Law and Public Administration Rzeszów–Przemyśl
The principle of work protection under the Constitution of the Republic of Poland 233

Grzegorz Maroń
University of Rzeszów
Commemorative resolutions of the Senat in the Polish legal order 253

Part II

STATEMENTS, REVIEWS, REPORTS

Rights and services for a new Europe of the citizens, (statement), Emilio Castorina 277

Demokracja elektroniczna. Kontrowersje i dylematy, ed. Maria Marczewska-Rytko, Wydawnictwo UMCS, Lublin 2013, pp. 319, (review), Przemysław Maj 285

International Conference *Unconditionally Paid Basic Income or Entitlement to Workplace: A Constitutional Question*, Vienna, Austria, 16–17 December 2013, (report), Richard Pereira 291

Scientific conference *Prawa człowieka w Europie Środkowej i Wschodniej oraz Azji Środkowej na tle standardów międzynarodowych*, Warszawa, 16 December 2013, (report), Anna Młynarska-Sobaczewska 295

Cisza wyborcza – za i przeciw debate, Toruń, 22 November 2013, (report), Radosław Zych 301

Part III

SCIENTIFIC CHRONICLE

Information on the granting of the title of professor 307

Information on the completion of the habilitation procedure 308

GUIDELINESS FOR AUTHORS 309

Wyniki III edycji konkursu „Przeglądu Prawa Konstytucyjnego" na najlepszą pracę magisterską z zakresu prawa konstytucyjnego i systemów politycznych w roku akademickim 2012/2013

Dnia 8 kwietnia br. rozstrzygnięty został konkurs „Przeglądu Prawa Konstytucyjnego" na najlepszą pracę magisterską z zakresu prawa konstytucyjnego i systemów politycznych. Konkurs ogłoszony w 2012 r. spotkał się z dużym zainteresowaniem, nadesłano bowiem kilkanaście prac z uniwersytetów z całego kraju. Organizatorzy, zgodnie z przyjętym przez PPK regulaminem konkursu, powierzyli rozstrzygnięcie konkursu jury złożonemu z redaktorów „Przeglądu"; w pierwszym etapie redaktorzy oceniali prace z zachowaniem anonimowości zarówno autorów, jak i promotorów. Każda praca została oceniona dwukrotnie, przez dwóch członków jury, przy czym nie znali oni nawzajem swoich ocen. Po podsumowaniu punktów otrzymanych przez dwóch jurorów powstał ranking, a następnie jury – podczas swojego posiedzenia w dniu 8 kwietnia i po przeprowadzeniu dyskusji nad wszystkimi ocenianymi pracami – podjęło decyzję o przyznaniu dwóch pierwszych nagród i wyróżnienia.

Zwycięzcami Konkursu są:

Paulina Dudzik, autorka pracy *Prawnoustrojowa pozycja rządu w Królestwie Hiszpanii na gruncie Konstytucji z dnia 27 grudnia 1978 r.*, której promotorem jest dr hab. Sławomir Patyra, Uniwersytet Marii Curie-Skłodowskiej w Lublinie;

oraz

Maria Anna Kulikowska, autorka pracy *Podstawy regulacji stosunków pomiędzy państwem a kościołami i innymi związkami wyznaniowymi w Rzeczypospolitej Polskiej i w Republice Włoskiej*, której promotorem jest prof. zw. dr hab. Zbigniew Witkowski, Uniwersytet Mikołaja Kopernika w Toruniu.

prawa i demokratycznego państwa prawnego, przeł. A. Romaniuk i R. Marszałek, Warszawa 2005.

Habermas J., *Wie demokratisch ist die EU? Die Krise der Europäischen Union im lichte einer Konstitutionalisierung des Völkerrechts*, „Blätter für deutsche und internationale Politik" 2011, nr 8.

Isensee J., *Europa narodów czy naród europejski – o podstawie i celu organizacji kontynentu*, przeł. M. Kurkowska, „Nowa Europa. Przegląd Natoliński" 2012, nr 1 (12).

Jellinek G., *System der subjektiven öffentlichen Rechte*, Tübingen 1905.

Kadelbach S., *Unionsbürgerschaft*, [w:] *Europäisches Verfassungsrechts. Theoretische und dogmatische Grundzüge*, red. A. von Bogandy, J. Bast, Berlin–Heilderberg 2009.

Kant I., *O porzekadle: To może być słuszne w teorii, ale nic nie jest warte w praktyce*, [w:] *O porzekadle: To może być słuszne w teorii, ale nic nie jest warte w praktyce. Do wiecznego pokoju. Projekt filozoficzny*, przeł. M. Żelazny, Toruń 1995.

Kelsen H., *Reine Rechtslehre*, Wien 1967.

Kowalik-Bańczyk K., *Komentarz do art. 20 TfUE*, [w:] *Traktat o funkcjonowaniu Unii Europejskiej*. t. 1 (Art. 1–89), red. A. Wróbel, Warszawa 2012.

Krastev I., *Dezintegracja europejska?*, „Krytyka Polityczna" 2013, nr 34.

Krastew I., *Paradoks demokratyczny europy*, „Przegląd Polityczny" 2012, nr 112.

Łazowski A., *Obywatelstwo Unii Europejskiej – uwagi teoretyczne i praktyczne w dziesięć lat po wejściu w życie Traktatu z Maastricht*, [w:] *Szkice z prawa Unii Europejskiej*, t. I, red. E. Piontek, A. Zawidzka, Kraków 2003.

Mielnik B., *Obywatelstwo Unii Europejskiej*, Wrocław 2000.

Müller J.W., *Patriotyzm konstytucyjny*, przeł. I. Szymaniak, „Res Publica Nowa" 2008, nr 192/rok XXI.

Preuß U.K., *Transformacja europejskiego państwa narodowego szansą na powstanie europejskiej opinii publicznej?*, przeł. M. Kurkowska, „Nowa Europa. Przegląd Natoliński" 2007, nr 1 (5).

Rawls J., *Liberalizm polityczny*, przeł. A. Romaniuk, Warszawa 1998.

Wąsiewski G.J., *Koncepcja „patriotyzmu konstytucyjnego" Jürgena Habermasa. W kręgu poszukiwań modelu ustrojowego Unii Europejskiej*, Toruń 2010.

„Przegląd Prawa Konstytucyjnego"
------- Nr 3 (19)/2014 -------

Adriana Ciancio[1]

How we might recover from the economic and social crisis through European integration deepening?[2]

Słowa kluczowe: kryzys, integracja europejska
Keywords: crisis in EU, European integration

Streszczenie

Jak możemy wyjść z kryzysu gospodarczego i społecznego poprzez pogłębienie integracji europejskiej?

Artykuł przedstawia wyzwania, jakie w trakcie politycznej i ekonomicznej integracji w ramach Unii Europejskiej pojawiły się w związku z kryzysem ekonomicznym. Autorka przedstawia kwestie podejmowane w tym zakresie w orzecznictwie sądów konstytucyjnych państw członkowskich oraz Trybunał Sprawiedliwości Unii Europejskiej oraz polityczne i prawne uwarunkowania decyzji tych organów.

Summary

The article regards the challenges which was brought by economic and social crisis durin European integration within EU. Author concerns questions taken up in this scope by ETJ and constitutional courts in European states as well as political and legal cicrcumstances of them.

[1] Associate Professor of Constitutional Law at University of Catania – Italy (Scientific Coordinator of the Project „New strategies for democratic development and political integration in Europe" – funded by EU in 2013 for the Jean Monnet Action – Lifelong Learning Programme – Keyactivity 1 – „Information and Research").

[2] The starting point of these considerations is the question posed by the President of European Commission J.M. Barroso to the Jean Monnet Professors participating to the „Jean Monnet Conference" 2013 „The political implication of European economic integration. Towards a political union" (Brussels, 14–15 Nov 2013).

*

Providing a response to the question posed in the title is particularly urgent at this delicate time. With less then 3 months left until the European elections, there is a widespread view that the new Parliament will be the most anti-European in history since 1979, date of the first direct election of this institution[3]. The reference context is well known and does not need to be presented, other than in summary form: the deep-seated difference between the current socio-economic circumstances between southern Europe and the northern European countries operates in addition to the complex relationship between Eurozone members and other Member States. Whilst the former have benefited from bailout mechanisms adopted in the face of the initial prohibition[4], out of the latter, some have never intended to participate (including first and foremost the United Kingdom, which moreover now calls for a repatriation of sovereignty), whilst others are still within a growth phase (such as Poland, in the financial slipstream of Germany). These countries thus consider the prospect of joining the „single currency" with some degree of apprehension, due to the serious economic and financial suffering of the countries that are already members.

Against this backdrop, the Union is endeavouring to make progress in its transformation from an originally purely economic Community into a full-blown political Union, thereby completing the path started at Maastricht with the introduction of Community citizenship[5]. This process has not yet been completed, also due to the widespread difficulty which Europeans have in understanding, and hence living to the full, their own status as European citizens, alongside their traditional citizenship of their respective countries of origin. This comes in addition to the recent increase in mutual distrust between citizens of countries that are still economically stable and those of countries running large budget deficits, along with that which has arisen in both groups of country (although for opposite reasons) towards the „technocrat" choices adopted by Brussels.

Moreover, it is a known fact that European integration has always thrived on crisis situations, as was the case at the time the original Treaty of Rome was signed, having been drafted against the backdrop against the serious recession affecting Europe after the end of the Second World War. A similar dynamic operated in the wake of the fall of the Berlin Wall and the end of tensions between East and West with the conclusion of the Maastricht Treaty, so it does not appear all that strange that the goal of political integration has found renewed vigour at the present time.

A significant step in the desired direction has been offered by the opportunity to overcome the broad scepticism with which the peoples of Europe view integration, due in part to the anti-European propaganda often pursued on national level by political elites, at times also with the support of the media. This is because it is easy for governments to offload onto third parties (and in particular the EU) responsibility for economic and financial restructuring measures and the containment of public debt levels which, even though they are not always adequate, are nonetheless oppressive for national electorates.

However, it is certain that the scepticism referred to is also a result of the notorious „democratic deficit" of the European Union[6], which has only been partially resolved with the entry into force of the Lisbon Treaty and the new rules on the functioning of the Union.

It is certain that major progress has been made on this score compared to the previous Treaties, fundamentally as a result of the of the expansion of the essentially legislative powers of Parliament, as the only European institu-

[3] Resolution CECA/CE/ Euratom n. 787/1976. Before – as it's well known – the EuParliament was elected by national Parliaments among their members, see U. Villani, *Istituzioni di Diritto dell'Unione europea*, 2 ed., Bari 2010, p. 119 ss.

[4] See, among others, E.C. Raffiotta, *Il governo multilivello dell'economia*, Bologna 2013, p. 58 ss.

[5] See, *ex multis*, V. Lippolis, *La cittadinanza europea*, Bologna, 1994; M. Cartabia, *Cittadinanza europea*, [in:] *Enc. Giur.*, VI, Roma 1995; E. Castorina, *Introduzione allo studio della cittadinanza*, Milano 1997, p. 258 ss.; S. Bartole, *La cittadinanza e l'identità europea*, [in:] *La Costituzione europea*, Padova 2000, p. 445 ss.; E. Castorina, *Diritto costituzionale comune e diritto costituzionale europeo: il problema dell'identità dell'Unione*, [in:] *Profili attuali e prospettive di diritto costituzionale europeo*, Torino 2007, p. 44 ss.; idem, *Cittadinanza europea come fattore d'integrazione sociale nell'Unione multiculturale*, [in:] *Multiculturalismo e Unione europea*, Torino 2008, p. 9 ss.

[6] See J. Habermas, *Una Costituzione per l'Europa? Osservazioni su Dieter Grimm*, [in:] *Il futuro della Costituzione*, Torino 1996, p. 369 ss.; and, more recently, idem, *La nuova Europa in quattro mosse*, „La Repubblica" (7.02.2014).

tion with direct democratic legitimation, which is thus effectively representative of the electorate[7].

However, it is this very same notion of political representation and the concept of representativity which, when transposed onto European level, shows some signs of tension, due to the presence of certain problem issues which have yet to be resolved.

The first concerns the failure to consolidate a structured and stable system of genuinely European political parties[8], thereby definitively removing election campaigns – and more radically the entire management of European elections – from the national political parties, to which they have been entrusted to date[9]. In spite of the fact that recent years have seen considerable progress in this direction with the rules on the status and financing of European political parties[10], European politics still lack that „interface" between voters and institutions that is essentially offered by parties[11], conveying the political will of the electorate into decision making bodies according to a particular view of the general interest[12], and thereby operating as a political platform for the formation of groups within the Parliament[13]. Were this process to be concluded[14], these groups would become (as usually occurs within the organisation of national Parliaments) the *„longa manus"* of parliamentary parties[15], so much so that Rule 30 of the Rules of Procedure of the

[7] Art. 14, par. 2 TUE.

[8] See V. Lippolis, *I partiti politici europei,* [in:] *Rass. Parl.*, 2002, p. 943 ss.; G. Grasso, *Partiti politici europei,* [in:] *Dig. Disc. Pubbl.*, Agg., Torino 2008, p. 609 ss.

[9] See M.R. Allegri, *I partiti politici a livello europeo fra autonomia politica e dipendenza dai partiti nazionali, [in:]* Federalismi.it, 2013, p. 29 ss. (10.03.2014).

[10] See A. Ciancio, *I partiti politici europei e il processo di democratizzazione dell'Unione,* [in:] Federalismi.it, 2009 (10.03.2014), now in A. Ciancio, *Persona e „demos". Studi sull'integrazione politica in Italia e in Europa,* Torino 2010, p. 255 ss.

[11] J. Habermas, *La nuova Europa in quattro mosse...*

[12] On this topic, recently, P. Marsocci, *Sulla funzione costituzionale dei partiti e delle altre formazioni politiche,* Napoli 2012, p. 7 ss.

[13] S. Baroncelli, *I gruppi parlamentari nell'esperienza del Parlamento europeo,* [in:] *Rappresentanza politica, gruppi parlamentari, partiti: il contesto europeo,* I, Torino 2001, p. 11 ss.

[14] Skeptical on this possibility S. Staiano, *I partiti europei fuori tempo,* Federalismi.it, 2012, n. 15, p. 1 ss. (10.03.2014).

[15] For more details see A. Ciancio, *I gruppi parlamentari. Studio intorno ad una manifestazione del pluralismo politico,* Milano 2008, passim.

European Parliament stipulates as one of the prerequisites for the formation of groups the sharing of „political affinities", which should then represent the transposition into institutional bodies of the programmes developed by (European) political parties during election campaigns. Accordingly, groups represent the privileged loci for the adoption of shared policies with a genuinely European tone, in opposition to specific local interests which MEPs are still tempted to represent, and in doing so are facilitated by the fact that they have until now been proposed for election by national parties, thereby acting as a brake on the process of effective European integration, often due to the predominance of the interests of individual Member States over the general interests of the Union.

In this sense, the recent changes to the Rules of Procedure of the European Parliament, which appear to favour the status of „non-attached" members, through the provision for them of a secretariat, staff and a budget (not available in the past) do not seem to have the desired effect. This, it would appear, is because European political parties will emerge from the groupings in Parliament of MEPs from the major European political families[16] which, acting in accordance with political viewpoints that are broadly shared, will thereby be able to more beyond strategies focused on individual national requirements with a view to constructing the „shared European house".

Conversely, positive signs indicating a decisive enhancement in the quality of the process leading to the creation of a European political system arrive from developments in another institutional forum, in the form of candidacies for the office of President of the Commission proposed jointly by national political parties with similar affinities, which have also been emerging over recent months as a symptom of shared transnational policies[17].

The second major unresolved issue relating to the essence of the representational relationship (and which is closely related to the first) concerns the persistent lack of a uniform electoral system for the European Parliament, despite the long-standing calls from the European institutions[18].

[16] See A. Ciancio, *Partiti politici e gruppi parlamentari nell'ordinamento europeo,* Pol. Dir., 2007, p. 153 ss.

[17] See A. Manzella, *Quei segnali per l'Unione,* „La Repubblica" (10.02.2014).

[18] See G.E. Vigevani, *Parlamento europeo: una nuova procedura elettorale uniforme,* Quad. cost., 2003, p. 175 ss.

Whilst these calls have subsequently been expressed in legislation[19], their actual implementation has not progressed beyond the formulation of certain highly general shared principles which have been embraced by individual acts of national legislation, including the principle of a proportional electoral system[20].

However, it would be necessary eventually to present individual lists of candidates for all European voters, which were identified on the basis of shared political programmes and could be elected on the basis of a uniform electoral procedure throughout the Union. This eventuality appears to be unlikely if considered from the perspective of the overall allocation of seats within any given constituency, above all following enlargement to 28 Member States. It becomes a more realistic prospect if an „experimental" stage is hypothesised involving such a distribution only of seats allocated within the smaller Eurozone. This would then operate, within a federative process open to gradual expansion, as a precursor to the creation of the United States of Europe[21], in a manner not dissimilar to the formation of the United States of America, which grew from the original 13 signatories of the Declaration of Independence to the current 50 States.

A crucial stage within this process (which will certainly not be achieved within the short term) involving the construction of a genuinely federal European order, operating as a unitary interlocutor with non-Member States, involves the enhancement of the decision making role of the European Parliament (after being made substantially representative) along with dialogue between it and national Parliaments[22]. This would engender numerous positive effects. First of all the reduction of the traditional inter-governmental method, which has recently intensified due to the institutionalisation of Euro summits[23], in favour of inter-parliamentary procedures, the decisions of which (such as wage restraints, the

[19] Art. 223, par. 1 TFUE.

[20] Decisions CE n. 772/ 2002 and Euratom 25 June and 23 September 2002.

[21] This is the opinion of the Vicepresident of the European Commission Viviane Reding, as reports N. Watt, *Eurozone countries should form United States of Europe, says EC vice-president*, „The Guardian" (17.02.2014).

[22] See again A. Manzella, op.cit.

[23] EUCO 52/11 par. 1.7 and TSCG, art. 12.

reduction of social services and/or tax rises) would be more likely to be accepted by voters, whereas they are certainly regarded as less palatable when they are imposed in accordance with the instructions of institutions with no democratic legitimation. This would enable „common (democratic) constitutional traditions" to be respected, placing representative assemblies at the heart of political processes. In addition, in systems in which the upper House of Parliament is geographically representative, the participation of local government within the European decision making process[24], the origins of which date back to the Single European Act, would be reinvigorated.

This process will find even greater favour once the inadequacy of the single economic policy imposed to date has been recognised, a taste of which is offered by the proposal recently made by the European Council for allowing different budgetary recovery measures for different countries, albeit within the context of the general guidelines on deficit reduction and public spending cuts. As mentioned above, this should end up stressing the central role of the European Parliament and its operation as a motor for institutional change, operating an ongoing dialogue with national Parliaments with a federalist impetus originating from the Eurozone, in the wake of the principal economic and financial initiatives adopted on supra-national level (EFSM, EFSF, ESM, SIX-PACK, TWO-PACK, and also TSCG, better known as Fiscal Compact[25], even if in some rules it involves Member States out of Eurozone).

Moreover, the need to intensify the dialogue between European institutions and their national counterparts within the process of constructing a European political union is confirmed by recent developments in rela-

[24] See A. D'Atena, *Le regioni italiane e la Comunità economica europea*, Milano 1981. Recently A. D'Atena, *Costituzionalismo multilivello e dinamiche istituzionali*, Torino 2007, p. 16 ss.; M. Belletti, *Disamina di talune tendenze striscianti volte a rallentare il processo integrativo europeo. Per una lettura del rapporto Regioni-Diritto comunitario*, [in:] *Profili attuali e prospettive...*, p. 133 ss.; A. D'Atena, *Regioni e sovranazionalità*, [in:] *Regionalismo e sovranazionalità*, Milano 2009, p. 1 ss.; P. Costanzo, A. Ruggeri, *Unione europea ed autonomie territoriali*, [in:] P. Costanzo, L. Mezzetti, A. Ruggeri, *Lineamenti di diritto costituzionale dell'Unione europea*, Torino 2010, p. 425 ss.

[25] See G. Bizioli, *La disciplina europea della finanza pubblica. Origine, evoluzione e crisi del patto europeo di stabilità e crescita*, Riv. dir. fin. e sc. finanze, 2012, I, p. 121 ss.

tions between the Court of Justice and Constitutional Courts, following the preliminary references requesting interpretations by the Italian Constitutional Court[26] and the German Bundesverfassungsgericht[27], in both cases with questions concerning *latu sensu* the delicate problem of maintaining the financial equilibrium of governments. However, the decision by the Karlsruhe Court points to an initial ceding of ground by Germany on the drastic measures to contain government deficit levels[28], which had previously essentially been imposed by Germany on the other Member States on intergovernmental level. This represents a further cession of sovereignty to the Union, although subject to a strong reference – by the German court – to the democratic principle[29], which has always been regarded by Germany as a limit on the cession of sovereignty[30], and hence on the process of European integration[31]. Indeed, the objection to the ECB's initiati-

[26] Ord. n. 207/2013. See U. Adamo, *Nel dialogo con la Corte di Giustizia la Corte costituzionale è un organo giurisdizionale nazionale anche nel giudizio in via incidentale. Note a caldo sull'ord. n.207/2013*, www.forumcostituzionale.it (24.07.2013); B. Guastaferro, *La Corte costituzionale e il primo rinvio pregiudiziale in un giudizio di legittimità costituzionale in via incidentale: riflessioni sull'ordinanza n. 207 del 2013*, Forum di quad. cost. (21.10.2013); G. Repetto, *La Corte costituzionale effettua il rinvio pregiudiziale UE anche in sede di giudizio incidentale: non c'è mai fine ai nuovi inizi*, www.dirittocomparati.it (28.10.2013); A. Adinolfi, *Una „rivoluzione silenziosa": il primo rinvio pregiudiziale della Core costituzionale italiana in un procedimento incidentale di legittimità costituzionale*, Riv. Dir. Intern., 2013, p. 1249 ss.; M. Losana, *La Corte costituzionale e il rinvio pregiudiziale nei giudizi in via incidentale: il diritto costituzionale (processuale) si piega al dialogo tra le Corti*, Riv. dell'AIC, (24.01.2014).

[27] BVerfG, 2 BvR 2728/13 of 14 Jan 2014. See E. Olivito, *Atto primo: il Bundesverfassungsgericht rinvia alla Corte di Giustizia su OMT e poteri della BCE. Un'occasione per il futuro dell'Unione europea?*, Costituzionalismo.it, 2013, n. 3 (10.03.2014); A. di Martino, *Le Outright Monetary Transactions tra Francoforte, Karlsruhe e Lussemburgo. Il primo rinvio pregiudiziale del BVerfG*, Federalismi.it, 2014 (10.03.2014); G. Delledonne, *La „prima volta" di Karlsruhe: il rinvio pregiudiziale reativo alle Outright Monetary Transactions*, www.csfederalismo.it, Commenti, 2014, n. 25 (10.03.2014); A. de Petris, *Un rinvio pregiudiziale sotto condizione? L'ordinanza del Tribunale Costituzionale Federale sulle Outright Monetary Transactions*, Federalismi.it, 2014 (10.03.2014).

[28] M. Schieritz, *Karlsruhe drückt sich*, „Zeitonline" (7.02.2014).

[29] A. di Martino, *Le Outright Monetary Transactions...*, p. 4 ss.

[30] BVerfG, 2 BvR 1390/12.

[31] See BVerfG, 2 BvE 2/08, 30 Jun 2008, *Lissabon* par. 175. For an analysis of German jurisprudence on the topic of European integration see A. di Martino, *La sentenza del Bundesverfassungsgericht sul Meccanismo europeo di stabilità e sul Fiscal Compact: una lettura alla luce della giurisprudenza precedente*, [in:] Federalismi.it., 2012 (10.03.2014).

ves concerning OMT (Outright Monetary Transactions) may be viewed in this light[32]. It is moreover clear that, whilst the Court of Justice will accept the arguments of the ECB[33], it will in a certain sense give backing to an enhancement of the position and scope for decision making far beyond the official institutional powers, thereby endorsing the prospective of a European federal political Union powered by the Eurozone, which uses a common economic and financial policy as its fuel.

More generally, the preliminary references from the constitutional Courts[34] in any case represent a further step forwards in the predominance of European law over national law, which is fundamental within the process of integration, as this is inevitably conditioned by the possibility for harmonising national legislation, which can only be guaranteed by the predominance of European law[35].

Therefore, the opinion expressed in these few pages is focused on the construction of a rough cast of a federal system that uses the Eurozone as a model of governance for the entire Union, along with the assumption by it of specific decision making powers in relation to economic policy. Parliament should act as the cornerstone within this legal framework, after being made genuinely representative of European peoples through the completion of the European party system and the introduction of uniform electoral procedures, at least within the Eurozone and the seats allocated to its members. In this way, the Parliament would be able to enter into an effective dialogue with national Parliaments[36], and thereby to establish budgetary recovery measu-

[32] A. de Petris, op.cit., p. 11 ss.

[33] See A. Alesina, *E ora le banche non hanno scuse*, „Corriere della sera" (9.02.2014); A. di Martino, *Le Outright Monetary Transactions...*, p. 13 ss.

[34] Recently also in Italy Corte cost., ord. 108/2008; in Spain TCE, ATC n.86/2011; in France Cons. Const. déc. 2013–314P QPC. See more in A. Alen, *Le relazioni tra la Corte di giustizia delle Comunità europee e le Corti costituzionali degli Stati membri*, [in:] *Profili attuali e prospettive...*, p. 209 ss.

[35] Among others, in this way, recently, R. Miccu', *Proteggere la democrazia, rinnovare il contratto sociale europeo*, Federalismi.it, 2014, p. 2 (10.03.2014).

[36] P. Bilancia, *The role and power of European and National Parliaments in the dynamics of integration*, Riv. It. Dir. Pubbl. Com., 2009, n. 2, p. 273 ss.

res tailored to each individual Member State. Within the context of a general European economic policy, voters (who are at the same time also consumers and the end users of social services) would be more likely to digest such policies. This presupposes that effective European governance of the economy is achieved on the basis of a rebalancing of relations between the Parliament on the one hand and the Council and the Commission on the other. One must also not disregard the need to redefine the role, powers and even forms of responsibility of the ECB[37] in the determination of European economic policy through the monetary and financial instruments, with which it appears to be equipped in any case, going beyond the position under current legislation[38].

Within the institutional panorama, it is important to stress the significance of the ECJ and of dialogue between it and national constitutional Courts[39], with the goal of favouring as far as possible the circulation of values and principles, which has as its ultimate goal the consolidation and implementation of a genuine common constitutional heritage, as a prerequisites for the resumption of the constituent European process[40].

Indeed, the development of a legislative platform which is essentially constitutional in nature appears to be indispensable at this stage within the perspective referred to above.

The purpose of this new constitutional construct – to be achieved through a further treaty amendment – will involve the vesting of common institutions with effective economic and financial powers along with a redefinition of reciprocal relations which – as reiterated on various occasions – has at its heart the political policy choices adopted on European level by the Parliament.

However, this must also avoid giving up the achievements of Nice in the area of fundamental principles and rights, thereby avoiding a return to an era in which the protection of fundamental rights on a European level was

[37] L. Chieffi, *Banca centrale e sviluppi della* governance *europea*, Rass. Parl., 2005, n. 1, p. 117 ss.

[38] See A. Quadrio Curzio, *The Greek crisis and the European Crisis. How to face them*, [in:] Ec. Pol., 2010, n. 1, p. 3 ss.; and M. Fortis, *A different tale on Eurozone Debts*, Ec. Pol., 2012, n. 2, p. 161 ss.

[39] Among others, A. Alen, op.cit., p. 185 ss.

[40] See R. Miccu', op.cit., p. 2 ss.

assured by Community case law subject to the limits of the goals of the single market[41].

On the other hand, the efficacy of values, fundamental rights and common principles, which has in the meantime been achieved within national legal systems through case law, may favour the consolidation of a sense of collective identity, which constitutes the premise for the formation of a „European people"[42] that is more than the sum of the individual citizens of the Union, as a social prerequisite for the completion of the process of political integration[43], through to the construction of the United States of Europe.

An important step in this process towards the creation of a collective European awareness is also offered by the possibility of democratic control over European choices and policies, which on the one hand confirms (moreover from a different viewpoint) the need to place the European Parliament at the heart of the Union's political decision making circuits and of dialogue between state and supra-national institutions. On the other hand, it will stress the importance of communication and the exchange of information, which must occur as widely as possible and in as clear and complete a manner as possible.

This puts major responsibilities on European and national institutions, which will be called upon to open up and render their own decision making processes intelligible to voters, as well as on the media and journalists (and more generally on all providers of information services[44]) in order to promo-

[41] See, *ex multis*, M. Cartabia, *Principi inviolabili e* integrazione *europea*, Milano 1995, p. 33 ss.; and, more recently, A. Ciancio, *Quale modello di tutela dei diritti fondamentali nella prospettiva della Costituzione europea?*, [in:] *Annali del Seminario giuridico dell'Università di Catania*, II serie, Milano 2004, p. 380 ss. (now in A. Ciancio, *Persona e „demos"...*, p. 154 ss.); M. Cartabia, *L'ora dei diritti fondamentali nell'Unione europea*, [in:] *I diritti in azione*, Bologna 2007, p. 13 ss.; F. Donati, *La tutela dei diritti fondamentali nel sistema comunitario*, [in:] *Profili attuali e prospettive...*, p. 248 ss.; A. Ciancio, *A margine dell'evoluzione della tutela dei diritti fondamentali in ambito europeo, tra luci ed ombre*, Federalismi.it., 2012, n. 21, p. 1 ss. (10.03.2014).

[42] D. Grimm, *Una Costituzione per l'Europa?*, [in:] *Il futuro della Costituzione...*, p. 356 ss.

[43] L. Azzena, *L'integrazione attraverso i diritti*, Torino, 1998.

[44] See O. Pollicino, *Tutela del pluralismo nell'era digitale: ruolo e responsabilità degli* Internet service provider, [in:] *Consultaonline*, 2014.

te a public debate that is genuinely pluralist in nature[45] and transnational in scope.

Literatura

Adamo U., *Nel dialogo con la Corte di Giustizia la Corte costituzionale è un organo giurisdizionale nazionale anche nel giudizio in via incidentale. Note a caldo sull'ord. n.207/2013*, [in:] www.forumcostituzionale.it (24.07.2014).

Adinolfi A., *Una „rivoluzione silenziosa": il primo rinvio pregiudiziale della Core costituzionale italiana in un procedimento incidentale di legittimità costituzionale*, Riv. Dir. Intern., 2013.

Alen A., *Le relazioni tra la Corte di giustizia delle Comunità europee e le Corti costituzionali degli Stati membri*, [in:] *Profili attuali e prospettive di diritto costituzionale europeo*, Torino 2007.

Alesina A., *E ora le banche non hanno scuse*, [in:] „Corriere della sera" (9.02.2014).

Allegri M.R., *I partiti politici a livello europeo fra autonomia politica e dipendenza dai partiti nazionali*, Federalismi.it, 2013 (10.03.2014).

Azzena L., *L'integrazione attraverso i diritti*, Torino 1998.

Baroncelli S., *I gruppi parlamentari nell'esperienza del Parlamento europeo*, [in:] *Rappresentanza politica, gruppi parlamentari, partiti: il contesto europeo*, I, Torino 2001.

Bartole S., *La cittadinanza e l'identità europea*, [in:] *La Costituzione europea*, Padova 2000.

Belletti M., *Disamina di talune tendenze striscianti volte a rallentare il processo integrativo europeo. Per una lettura del rapporto Regioni-Diritto comunitario*, [in:] *Profili attuali e prospettive di diritto costituzionale europeo*, Torino 2007.

Bilancia P., *The role and power of European and National Parliaments in the dynamics of integration*, Riv. It. Dir. Pubbl. Com., 2009, n. 2.

Bizioli G., *La disciplina europea della finanza pubblica. Origine, evoluzione e crisi del patto europeo di stabilità e crescita*, Riv. dir. fin. e sc. finanze, 2012, I.

Cartabia M., *Cittadinanza europea*, Enc. Giur., Roma, VI, 1995.

Cartabia M., *L'ora dei diritti fondamentali nell'Unione europea*, [in:] *I diritti in azione*, Bologna 2007.

Cartabia M., *Principi inviolabili e integrazione europea*, Milano 1995.

Castorina E., *Cittadinanza europea come fattore d'integrazione sociale nell'Unione multiculturale*, [in:] *Multiculturalismo e Unione europea*, Torino 2008.

[45] This issue is widely discussed in A. Ciancio, *Il pluralismo alla prova dei nuovi mezzi di comunicazione*, [in:] *Il pluralismo alla prova dei nuovi mezzi di comunicazione*, Torino 2012, p. 9 ss.

Castorina E., *Diritto costituzionale comune e diritto costituzionale europeo: il problema dell'identità dell'Unione*, [in:] *Profili attuali e prospettive di diritto costituzionale europeo*, Torino 2007.

Castorina E., *Introduzione allo studio della cittadinanza*, Milano 1997.

Chieffi L., *Banca centrale e sviluppi della* governance *europea*, Rass. Parl., 2005, n. 1.

Ciancio A., *A margine dell'evoluzione della tutela dei diritti fondamentali in ambito europeo, tra luci ed ombre*, Federalismi.it., 2012, n. 21 (10.03.2014).

Ciancio A., *I gruppi parlamentari. Studio intorno ad una manifestazione del pluralismo politico*, Milano 2008.

Ciancio A., *I partiti politici europei e il processo di democratizzazione dell'Unione*, Federalismi.it, 2009.

Ciancio A., *Il pluralismo alla prova dei nuovi mezzi di comunicazione*, [in:] *Il pluralismo alla prova dei nuovi mezzi di comunicazione*, Torino 2012.

Ciancio A., *Partiti politici e gruppi parlamentari nell'ordinamento europeo*, Pol. Dir., 2007.

Ciancio A., *Persona e „demos". Studi sull'integrazione politica in Italia e in Europa*, Torino 2010.

Ciancio A., *Quale modello di tutela dei diritti fondamentali nella prospettiva della Costituzione europea?*, [in:] *Annali del Seminario giuridico dell'Università di Catania*, II serie, Milano 2004.

Costanzo P., Ruggeri A., *Unione europea ed autonomie territoriali*, [in:] P. Costanzo, L. Mezzetti, A. Ruggeri, *Lineamenti di diritto costituzionale dell'Unione europea*, Torino 2010.

D'Atena A., *Costituzionalismo multilivello e dinamiche istituzionali*, Torino 2007.

D'Atena A., *Le regioni italiane e la Comunità economica europea*, Milano 1981.

D'Atena A., *Regioni e sovranazionalità*, in *Regionalismo e sovranazionalità*, Milano 2009.

de Petris A., *Un rinvio pregiudiziale sotto condizione? L'ordinanza del Tribunale Costituzionale Federale sulle* Outright Monetary Transactions, Federalismi.it, 2014 (10.03.2014).

Delledonne G., *La „prima volta" di Karlsruhe: il rinvio pregiudiziale reativo alle Outright Monetary Transactions*, www.csfederalismo.it, Commenti, 2014, n. 25 (10.03.2014).

di Martino A., *La sentenza del Bundesverfassungsgericht sul Meccanismo europeo di stabilità e sul Fiscal Compact: una lettura alla luce della giurisprudenza precedente*, Federalismi.it, 2012 (10.03.2014).

di Martino A., *Le Outright Monetary Transactions tra Francoforte, Karlsruhe e Lussemburgo. Il primo rinvio pregiudiziale del BVerfG*, Federalismi.it., 2014 (10.03.2014).

Donati F., *La tutela dei diritti fondamentali nel sistema comunitario*, [in:] *Profili attuali e prospettive di diritto costituzionale europeo*, Torino 2007.

Fortis M., *A different tale on Eurozone Debts*, Ec. Pol., 2012, n. 2.

Grasso G., *Partiti politici europei*, Dig. Disc. Pubbl., Agg., Torino 2008.
Grimm D., *Una Costituzione per l'Europa?*, [in:] *Il futuro della Costituzione*, Torino 1996.
Guastaferro B., *La Corte costituzionale e il primo rinvio pregiudiziale in un giudizio di legittimità costituzionale in via incidentale: riflessioni sull'ordinanza n. 207 del 2013*, Forum di quad. cost., 21.10.2013.
Habermas J., *La nuova Europa in quattro mosse*, „La Repubblica" (7.02.2014).
Habermas J., *Una Costituzione per l'Europa? Osservazioni su Dieter Grimm*, [in:] *Il futuro della Costituzione*, Torino 1996.
Lippolis V., *I partiti politici europei*, Rass. Parl., 2002.
Lippolis V., *La cittadinanza europea*, Bologna 1994.
Losana M., *La Corte costituzionale e il rinvio pregiudiziale nei giudizi in via incidentale: il diritto costituzionale (processuale) si piega al dialogo tra le Corti*, Riv. dell'AIC (24.01.2014).
Manzella A., *Quei segnali per l'Unione*, „La Repubblica" (10.02.2014).
Marsocci P., *Sulla funzione costituzionale dei partiti e delle altre formazioni politiche*, Napoli 2012.
Miccu' R., *Proteggere la democrazia, rinnovare il contratto sociale europeo*, Federalismi.it, 2014, p. 2 (10.03.2014).
Olivito E., *Atto primo: il Bundesverfassungsgericht rinvia alla Corte di Giustizia su OMT e poteri della BCE. Un'occasione per il futuro dell'Unione europea?*, Costituzionalismo.it, 2013, n. 3 (10.03.2014).
Pollicino O., *Tutela del pluralismo nell'era digitale: ruolo e responsabilità degli Internet service provider*, Consultaonline, 2014.
Quadrio Curzio A., *The Greek crisis and the European Crisis. How to face them*, Ec. Pol., 2010, n. 1.
Raffiotta E.C., *Il governo multilivello dell'economia*, Bologna 2013.
Repetto G., *La Corte costituzionale effettua il rinvio pregiudiziale UE anche in sede di giudizio incidentale: non c'è mai fine ai nuovi inizi*, www.diritticomparati.it (28.10.2013).
Schieritz M., *Karlsruhe drückt sich*, „Zeitonline" (7.02.2014).
Staiano S., *I partiti europei fuori tempo*, Federalismi.it, 2012, n. 15 (10.03.2014).
Vigevani G.E., *Parlamento europeo: una nuova procedura elettorale uniforme*, Quad. cost., 2003.
Villani U., *Istituzioni di Diritto dell'Unione europea*, 2 ed., Bari 2010, 119.
Watt N., *Eurozone countries should form United States of Europe, says EC vice-president*, „The Guardian" (17.02.2014).

„Przegląd Prawa Konstytucyjnego"
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Anna Pazura[1]

Uwagi na temat przesłanek skargi indywidualnej do Europejskiego Trybunału Praw Człowieka w Strasburgu

Słowa kluczowe: skarga indywidualna, dopuszczalność skargi, nadużycie prawa do skargi indywidualnej, Europejski Trybunał Praw Człowieka, Konwencja o ochronie praw człowieka i podstawowych wolności
Keywords: an individual application, admissibility of an application, an abuse of the right of individual application, European Court of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms

Streszczenie

Przedmiotem artykułu jest prezentacja przesłanek formalnych i materialnych, które musi spełniać skarga indywidualna, aby nie była uznana za niedopuszczalną, oraz aby była rozpoznana przez Europejski Trybunał Praw Człowieka. Przesłankami tymi są przede wszystkim przesłanka *ratione personae, ratione materiae, ratione temporis, ratione loci*, dochowanie sześciomiesięcznego terminu na wniesienie skargi, wyczerpanie wszystkich dostępnych środków odwoławczych przewidzianych prawem wewnętrznym, a ponadto – od momentu wejścia w życie Protokołu nr 14 do EKPCz – doznanie tzw. znaczącego uszczerbku.

Treść niektórych z wymienionych przesłanek ulegnie jednak pewnej weryfikacji, jeśli wejdzie w życie Protokół nr 15 do EKPCz. Protokół ten przewiduje: (1) skrócenie z 6 do 4 miesięcy terminu na złożenie skargi do Trybunału po wykorzystaniu krajowych środków odwoławczych, o którym mowa w art. 35 ust. 1 Konwencji, oraz (2) usunięcie obecnego wymogu dopuszczalności wskazanego w art. 35 ust. 3 Konwencji, a wskazującego, że żadna skarga nie może być odrzucona na mocy tego przepisu, jeśli sprawa nie została należycie rozpoznana przez sąd krajowy.

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