
Book Review

E. Psychogiopoulou and S. de la Sierra (eds.), *Digital Media Governance and Supranational Courts*, Edward Elgar Publishing, Cheltenham, 2022

This timely book collects and analyses relevant digital media cases at the supranational level in Europe, focusing on the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). The book's overarching argument is that both supranational courts can significantly impact the applicable normative standards of digital media cases in a moment when the law regulating digital spaces remains uncertain. While the book includes an ambitious number of topics in the galaxy of digital media cases, the piece was able to deliver an understandable and comprehensive overview of how supranational courts can respond to challenges posed by digitalization. I believe the book should be on the shelves and laptops of scholars, lawyers, and policymakers considering that digitalization is and will transform all areas of our lives.

The book has 11 chapters that belong to two main parts. The first part is an analysis of cases from the CJEU, found in chapters 3 to 6. The second part is from chapters 7 to 10, in which the cases analyzed are from the ECtHR. The following lines are a summary of the findings of each chapter.

Chapters 1 and 2 serve as an introduction to the book. In the first chapter, both editors Evangelia Psychogiopoulou and Susana de la Sierra reflect on how new technologies are impacting our lives in unprecedented ways and how crucial legal questions and tensions between innovation and the protection of fundamental rights do not currently have a satisfactory regulatory response. As such, the editors and authors of the chapters base their arguments on the premise that European supranational courts have the potential to interpret norms to accommodate the novelties of the new digital ecosystem. In the second chapter, Susana de la Sierra makes the readers consider supranational courts as potential contributors to the process of regulating digital media to then introduce an issue regarding the very definition of digital media. Since there is a lack of a legal definition of digital media, courts are taking decisions without a clear background discerning

between digital and traditional media. Despite this, however, De La Sierra argues that we should consider European courts and judges as valuable actors in the process of identifying and enforcing rights, freedoms, and obligations in the digital age. In addition to courts, the author argues in favor of a collaboration with independent authorities regarding digital media cases, considering that they have in-house experts that can deal with such technically challenging cases with the accuracy that is often needed to rule on these cases.

The following four chapters include an analysis of CJEU cases. Chapter 3 is about taxes in the digital space. In response to requests for the fair taxation of digital platforms and services, Begoña Pérez Bernabeu examines CJEU case law that deals with the taxation of the digital economy in light of worldwide and EU efforts to modernize the taxing system to reach intangible assets. She highlights the inadequacy of traditional tax policies for digital business models and the EU institutions' incapacity to pass legislation that is appropriate for the digital world. The compliance of the CJEU's progressive turnover-based company taxes imposed on digital intermediaries with EU legislation is then examined. The key conclusion made by Bernabeu is that the CJEU case law appears to have provided a remedy for the lack of EU legislation in the area of taxes by providing guidance on how to create national tax policies that are compliant with EU law. In Chapter 4, Valentina Golunova focuses on the duties that digital intermediaries have toward illicit content and explores the case law from the CJEU that clarifies them. The EU's intermediary liability scheme prohibits Member States from requiring digital intermediaries to continuously monitor user-generated content or aggressively look into allegations of criminal behavior. It appears that procedures that examine and revisit the boundaries of the prohibition on general monitoring have been sparked by technical solutions for automatic content filtering. According to the CJEU, online service providers may be required to execute a comprehensive removal of any content that is identical to or substantially similar to a particular piece of information that is deemed illegal. In order to evaluate the long-standing ban on widespread moni-

toring, Golunova investigates the interpretive actions taken by the EU judiciary. In Chapter 5, Federica Casarosa explores the CJEU's role in interpretation when working with national courts. She assesses the extent to which CJEU case law has impacted national data protection law, specifically the right to be forgotten. Casarosa finds that the CJEU introduces a novel interpretation in its landmark Google Spain case. Additionally, national courts employed unique interpretations and addressed the right to be forgotten from perspectives that the CJEU had not (yet) considered. The national courts respond to CJEU guidance in a variety of ways and can actually build on it, filling any gaps left by the EU judiciary, says Casarosa, demonstrating both the CJEU's potential to influence digital standards and its limitations. In Chapter 6, Evangelia Psychogiopoulou adds a different viewpoint to the discussion by examining the CJEU's role in interpretation, particularly with regard to fundamental rights in digital cases. This raises issues with how to interpret EU law, which itself aims to strengthen the protection of fundamental rights. In order to strike a fair balance between the fundamental rights and interests of creators and users, the EU copyright harmonization is known to have been built on two main pillars, one focusing on exclusive rights for authors and other creators and the other on exceptions and limitations to these rights. In light of the internalization of fundamental rights norms into EU copyright legislation by the EU institutions when establishing the appropriate rules, Psychogiopoulou examines the growing importance of fundamental rights analysis in the CJEU's interpretation of EU copyright law. The research by Psychogiopoulou demonstrates that the CJEU has occasionally creatively shaped and developed the legal norms specified in EU legislation by using fundamental rights.

The next four chapters deal with cases from the ECtHR. In his analysis of the ECtHR's rulings in an increasing number of cases involving digital media, Dirk Voorhoof in Chapter 7 makes a distinction between situations in which the ECtHR found that there had been a violation of Article 10 of the ECHR regarding freedom of expression and situations in which interference with online free speech was thought to be justified. The latter category addresses issues like the blocking of websites and social networking accounts, the identification of radical, extremist, or offensive content online, the integration of Internet archives, the (limited) liability of online plat-

forms for user-generated content and hyperlinks, and the safety of journalists' sources in cyberspace. In his analysis of the ECtHR's rulings in an increasing number of cases involving digital media, Dirk Voorhoof makes a distinction between situations in which the ECtHR found that there had been a violation of Article 10 of the ECHR regarding freedom of expression and situations in which interference with online free speech was thought to be justified. The latter category addresses issues like the blocking of websites and social networking accounts, the identification of radical, extremist, or offensive content online, the integration of Internet archives, the (limited) liability of online platforms for user-generated content and hyperlinks, and the safety of journalists' sources in cyberspace. Through Chapter 8, Kristina Cendic and Gergely Gosztonyi show how the ECtHR's jurisprudence has undergone new dynamics as a result of the changes brought about by new technologies and the Internet to the concept of "public watchdogs." By focusing on the fuzziness of the definition of media, they examine the rising number of applications filed with the ECtHR by a wider spectrum of actors who aim to hold authority accountable and analyze pertinent ECtHR case law. They concentrate on cases that deal with specific facets of the right to information, particularly the right to receive information, considering, for example, situations when state interference takes the form of banning or limiting Internet access. Additionally, they look at cases that explore the obligations that states parties to the ECHR have in terms of access to information and data held by public authorities. These are important issues because they affect how (digital) media and other information agents operate and how a democracy's public discourse is facilitated. They emphasize the importance of new players, such as bloggers or non-governmental organizations, as well as new technology, like mobile applications, for this goal, which creates a new environment for basic rights discussion. In Chapter 9, Gloria González Fuster focuses on the ECtHR's capacity to provide fresh perspectives to the interpretation of earlier legal precedents in order to address particular issues posed by the digital revolution. The focus is on how the ECtHR addresses the issue of online gender-based violence, a significant social issue that is still barely handled by law and policy. The ECtHR has taken a helpful approach to the problem by drawing parallels between domestic violence and cybercrime, acknowledging that cybercrime can

take many different forms, such as the collection, sharing, and manipulation of data and images, as well as digital invasions of privacy and access to the victim's computer. The ECtHR has also reaffirmed that states subject to the ECHR have a positive obligation to set up and rigorously enforce a system that criminalizes all types of domestic violence, whether it takes place offline or online, and to adequately protect the victims. However, the ECtHR has made decisions in circumstances of gender-based online violence unrelated to domestic violence when it has neglected to take the "gender" dimension into account. This, according to Fuster, emphasizes the necessity of adopting a broader perspective on online gender-based violence and addressing the subject in all of its complexity. Disinformation is not a new phenomenon, according to Iva Nenadic and Verza Sofia in Chapter 10, but it has taken on a new dimension as a result of the growing usage of digital media. The authors emphasize how spreading false information about illnesses and treatments may have an adverse effect on a variety of rights, including the freedom of information, and how it may even endanger people's health. In light of this, nations and supranational organizations, such as the EU, have adopted a variety of disinformation-fighting tactics, and in certain cases, courts have been asked to rule on whether particular rules are compatible with fundamental rights. The ECtHR and the CJEU are both in a position to evaluate this compatibility, and by doing so, they contribute to defining the legal framework in which nations may act in response to disinformation. Nenadic and Verza demonstrate the active role of courts as participants in the process of digital media governance from this specific perspective by providing a thorough assessment of the ECtHR's case law in this area.

The last Chapter serves as a conclusion. In Chapter 11, the CJEU and the ECtHR's contributions to the creation of legal norms governing digital media and the Internet are summarized by Domenico Rosani and Clara Rauchegger. They not only summarize the main findings but also offer an analysis that helps frame the constitutional issues with digital media in Europe from the standpoint of fundamental rights. They emphasize the conflicts that exist between rights and liberties and talk about how European supranational courts are handling these conflicts and determining the legislation that will apply. They highlight the advantages of digitization in this context, particularly in terms of freedom of

speech and information, but they also discuss how harm can be done to people and how courts are providing protection in this regard. In opposition to this paradigm, they advocate for states to have a more active role in explicitly defining both rights and obligations. Additionally, they argue against changing the essence of the judiciary by giving it a particularly wide range of appreciation, which would in practice turn it into a legislator, while highlighting the importance of judicial adjudication.

Digital Media Governance and Supranational Courts is an important read not only because he way in which digital media cases are approached is a comprehensive one, but also because the findings of the book allow it to become a crucial piece of the puzzle of literature on digitalization (reviewed by INÉS JIMÉNEZ MARTÍNEZ).

E.M^a Menéndez Sebastián and J. Ballina Díaz, *Sostenibilidad social y ciudadanía administrativa digital*, Reus, Madrid, 2022

This In recent years, we have witnessed a deep change in the relationship between public authorities and society. This book shapes it from a new, dual, perspective: citizenship and social sustainability.

Social sustainability, as defined by the European Economic and Social Committee, is the capacity to guarantee the conditions necessary for human well-being (security, health, education, democracy, participation and justice) equally distributed between classes and genders, and its ultimate objective is to reduce inequalities. 2030 Agenda for Sustainable Development and its seventeen goals represent the horizon within which to make innovation and sustainable development compatible by linking global and national initiatives.

The book is divided in two sections. The first one is aimed at answering the question of what citizenship is today; the second part carries out an in-depth study of the new public governance and its effects in the way Administration and citizens relate to each other, as this study focuses on the relationship between citizens and public authorities, in one of them, the Public Administration.

The authors begin by reflecting on what it means to be a citizen today, unpacking those elements that are essential, such as the idea of a common project, commitment and equality. This last aspect connects the subject again with sustainable development, in the sense of achieving

the goal of reducing inequalities, an idea that is also present in the analysis of the new public governance.

Then, the authors analyse the change from democratic administration to administrative democracy and how this has transformed the relationship between Public Administration and citizens, who are no more administered or users, but citizens *of* and *in* the Administration. To do so, they import the French notion of administrative citizenship, which the authors also connect with the idea of good administration.

Going a step further, they offer as well a perspective on digital citizenship, given that another fundamental aspect in this relationship is technological disruption, which offers great opportunities for the realisation of this renewed citizenship, but also conceals potential risks, such as digital divide or algorithmic discrimination, which could attack equality head-on, an essential element of the very notion of citizenship. Nor do they forget to mention some new forms of guaranteeing these new rights that the notions of administrative citizenship and good administration protect, such as the figure of the Ombudsman.

Once this new relationship between the Public Administration and citizens has been set out, the second part of the book moves on to study another current concept: public governance. The authors examine how all the new notions introduced in the first chapter should be reflected in the day-to-day workings of Administration. They consider seven key points in order to achieve what they believe should be the objective of Public Administration, i.e. comprehensive, innovative, effective, efficient and inclusive public management.

In this way, the book offers not only a theoretical study but also a roadmap for Public Administrations and citizens, to understand both the reasons for the new situation and the consequences it entails. Thus, it emphasises the multiplicity of aspects involved in public decision-making.

The authors study public ethics as a basic prerequisite for regaining the trust of citizens, devoting specific attention to codes of conduct, as a *tertium genus* between the ethical and the legal, transparency and open data. Another essential element of this new governance is undoubtedly participation, as it contributes to a greater legitimisation of administrative power, which facilitates the acceptance of decisions and contributes to greater efficiency. Particular importance is attached to accountability and, espe-

cially, to evaluation in the improvement of decisions. While these principles are common to both good governance and good administration, the authors point out the differences that exist among those areas, as political decisions are not the same as, for instance, public services management. Different essential aspects of public management are also considered, such as effectiveness and efficiency, which are vital to achieve good administration; innovation, especially people-based design or the co-creation of public services; and, of course, equality, the backbone of the system.

As the authors conclude in their book, inspired in quality, reflection and the spirit of improving things, we are witnessing a real disruption in our society, mainly derived from two different but converging fronts: new relationship between citizens and public authorities, in particular the Administration, and digital transformation.

Within the first aspect, the French idea of administrative citizenship stands out, together with that of political citizenship. It reflects very accurately the parameters of what could be called the right of all to participate not only in political life, but also in administrative life and in the decision-making processes implemented at this level. This connects unfailingly with the notion of good administration, which contributes to better decision-making. By implementing the notion of administrative citizenship, Public Administration will be able to answer to social demands more properly and with greater legitimacy. Therefore, a better acceptance of the administrative decisions themselves will be achieved.

The new public management model of public governance, which hinges on key principles such as public ethics, transparency, participation, accountability, effectiveness and efficiency, innovation and, above all, equality, also responds to this. Equality is also the ultimate goal of social sustainability.

Finally, the digital revolution contributes to the effective realisation of this renewed citizenship, offering new tools that ease its exercise, although not without significant risks, such as the digital divide or algorithmic discrimination. Hence the need to integrate the principle of equality in a transversal way, to implement the new instruments and tools of public governance with all the guarantees and in favour of making the aforementioned sustainable development effective, while complying with several of the goals set by 2030 Agenda.

In short, we are facing a time of change that need to be faced correctly. Public Administration and Government cannot lag behind in order to achieve sustainable social development, essential in a society that seeks a common project. Prof. Menéndez Sebastián and Ballina Díaz contribute to this objective by doing their bit through their study. A perfect starting point for further steps on scholar academia. (reviewed by ALEJANDRA BOTO ÁLVAREZ).