

Workshop Judicial Protection and Law Enforcement

Ius Commune Conference 2015

Thursday, 26 November (14.00 – 18.00)

Building: Maria Theresiacollege

Room: Romerozaal

Participants

Theme **The Modernisation of the Rules of Administrative Judicial Procedure under European and International Scrutiny. Does More Efficiency Lead to a Violation of EU and International Law?**

Coordinators: Dr. Mariolina Eliantonio and Dr. Sander Jansen (Maastricht University)

1. Background to the workshop

In recent years, in the Netherlands, the legislator as well as the administrative courts took measures to modernize the rules applicable to administrative judicial procedures. Final dispute resolution (i.e. the possibility to close a case and solve a dispute between a citizen and the administration in a final way) is of an increasing importance. This resulted in additional tools for the administrative courts to satisfy the need for more suitable, efficient and expedient rules of administrative judicial procedure. Application of these novel instruments could however be criticised from the perspective of the rule of law and fundamental procedural rights. In the Netherlands, before and during the introduction of measures with the aim to increase suitability, efficiency and expediency of administrative judicial procedures, some fundamental rule of law-related objections have been raised. However, they did not play a manifest and prominent role.

In Belgium, these fundamental objections resulted in a version of a new instrument, the so-called “administrative loop”, with only very limited scope. With its judgment of 8 May 2014, the Belgium Constitutional Court censored the Belgian administrative loop. This ruling is important because it sheds new light on the relationship between the right to fair trial (in particular the right to adversarial proceedings, the right to a fair hearing and the right of access to court, in particular for third parties), the Aarhus Convention and the courts’ final dispute resolution instruments.¹

This ruling, although strictly speaking only applicable to the Belgian context, deserves attention in a comparative perspective. In particular, because many legal systems contain provisions concerning final dispute resolutions mechanisms, which could, therefore, come under fire for violation of the ECHR, the EU Charter of Fundamental Rights and the Aarhus Convention. These guarantees possibly relate to other (more traditional) features of administrative procedural law as well. Hence, there are lots of reasons to analyse the system of administrative procedural law in relation to fundamental (procedural) rights.

¹ On 16 July 2015 the Belgium Constitutional Court gave judgment (again an annulment) on a similar administrative loop in the Council of State Code.

2. Aim of the workshop

The workshop will introduce the rulings and their implications for the Belgian legal system and, after having sketched the legal problems at stake, it will discuss them in a comparative perspective.

The primary frame of reference is to be found in international and EU law (Articles 6 and 13 of the ECHR, the Aarhus Convention and Article 47 of the EU Charter of Fundamental Rights). The workshop will, firstly, discuss what the requirements for administrative judicial procedures are according to these sources, and what conclusions can theoretically be drawn concerning the relationship between these guarantees and 'modernizing' procedural instruments.

Secondly, the workshop will discuss the Belgian situation and the actual and potential consequences of the judgments of the Constitutional Court. It also will discuss whether the rulings will bring about consequences outside the scope of the administrative loop.

Finally, the workshop will contextualize the issue in a comparative perspective, by examining what the possible implications of the highlighted tensions can be in several other legal systems (the Netherlands, the UK, Sweden, Italy).

Chair:	Prof. Adrienne de Moor-van Vugt (University of Amsterdam)
14.00 – 14.15	Prof. Adrienne de Moor-van Vugt (University of Amsterdam) <i>Introduction</i>
14.15 – 15.05	Dr. Heidi Bortels (Belgian Council of State) <i>The Belgian Rulings: An In-Depth Analysis</i>
15.05 – 15.25	Coffee Break
15.25 – 15.55	Dr. Sander Jansen (Maastricht University) <i>Possible Implications of the Belgian Rulings in the Dutch Legal System?</i>
15.55 – 16.25	Prof. Patrick Birkinshaw/Dr. Mike Varney (Hull University) <i>The Current Debate in the UK Legal System</i>
16.25 – 16.40	Coffee Break
16.40 – 17.10	Dr. Monica Delsignore (University of Milano-Bicocca) <i>The Italian Legal System and Possible Implications of the Belgian Rulings?</i>
17.10 – 17.40	Mr. Anders Bengtsson (Växjö Environmental Court) <i>The Swedish Legal System and Possible Implications of the Belgian Rulings?</i>
17.40 – 18.00	Dr. Sander Jansen and Dr. Mariolina Elia Antonio Discussion and Closing Remarks