

32 CONFERENCE ON THE EVALUATION OF LEGISLATION

Report on the 'Evaluation of Legislation' Conference Organized by Pázmány Péter Catholic University, 3 May 2019, Budapest

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The Pázmány Péter Catholic University (PPCU) hosted a conference with the title 'Evaluation of legislation' on 3 May 2019. The roundtable discussion organized by Petra Lea Láncoš (associate professor at PPCU) and the Ereky Public Law Research Center of PPCU as co-organizer focused on the issue surrounding the broad topic of evaluating legislation. The presenters of the workshop shared their experiences, ideas and research results on questions of national and EU law-making practices from Belgium, Hungary, Portugal and the United Kingdom to promote quality in legislation. The conference provided space for assessing the direction of the development of European legislation with special regard to scrutinizing the relevant role of the European Commission.

Following the opening thoughts of Petra Lea Láncoš, András Zs. Varga (justice of the Constitutional Court, professor of law at PPCU) held the first keynote presentation of the conference's plenary session with the title 'Constitution as a limitation of legislation'. Participants were given a brief overview of the codifications of procedural law in Hungary in recent years, the goals defining criminal and civil law-making, the methodological tools employed in support of these goals, and an evaluation of all the above. The report focused on three key issues: the role of the constitution in the hierarchy of norms (in the Kelsenian sense), the interpretation of the relationship of EU legal supremacy and the constitutions of Member States, as well as the methodological issues of the current form of legislation.

In her presentation entitled 'Legislative elements of post-legislative scrutiny', Helen Xanthaki (professor of law at University College London) focused on the measurability of the quality of legislations. In her starting argument she highlighted the institution of law as a tool for good legislation, and thus proceeded towards the specific criteria of quality legislation. In her view, good legislation means effective legislation; the type, extent and level of which is defined by the government. Xanthaki showed that measuring the quality of legislation requires a principled method capable of re-assessing the link between policy, legislative text, and regulatory results.

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The next presenter, Joao Silveira (associate professor at Universidade de Lisboa) delivered his speech on 'Cutting edge tools for legislative assessment'. The analytical assessment of the communication from the European Commission¹ on the Regulatory Fitness of EU legislation was the central theme of his presentation. Silveira demonstrated the advantages of the so-called REFIT program (Regulatory Fitness Platform) of the Commission through practical examples, but besides highlighting the toolbox of intelligent legislation, he also talked about the assessment of the inter-institutional agreement about the improvement of the quality of legislation between the European Parliament, the Council of the European Union and the European Commission. In his concluding thoughts, he pointed out that the scope, procedures and methods of impact assessment are still not standardized. Innovative, 'top-notch' tools, specific trends and approaches may further improve the quality of assessment. Nonetheless we still have to face challenges in terms of the use of IT innovations, and the integration tools used to scrutinize policies.

Following a coffee break Patricia Popelier (professor of law at Universiteit Antwerpen) continued the morning session of the conference with her talk on the 'Evaluation of legislation and judicial review'. Popelier was looking for the answer to the question of what role the courts play in the *ex ante* and *ex post* evaluation of legislation. After considering legitimacy and efficiency concerns, and dogmatically clarifying the so-called institutional isomorphism, the participants of the roundtable discussion lined up their arguments for why it is not advisable to ignore the role of courts in the evaluation of legislation by reviewing the issue from both the legislators' and the government's perspective.

Participants of the conference learned about measures taken by the EU in the last fifteen years to improve the quality of legislation from William Robinson (researcher at the Institute of Advanced Legal Studies). In his presentation entitled 'The European Commission's tools for better law-making, in particular consultation, impact assessment and evaluation', Robinson drew attention primarily to the fact that in the course of applying measures to improve legislative quality, it is vital not to ignore the basic principles of EU law such as the requirement of the rule of law, the principle of subsidiarity, the importance of dialogue and consultations and the preparation of reports on the financial position of the EU.

The morning session of the conference was concluded by Rui Lanceiro's (associate professor at Universidade de Lisboa) presentation on 'Administrative simplification assessment in legislative evaluation'. The presenter approached the applicability of administrative tools used to evaluate the quality of legislation from the point of view of costs. Lanceiro defined two categories of costs: so-called substantive, *i.e.* actual costs, and administrative costs. From the given cost factors the costs of impact assessment and the costs of communication between citizens and the government were compared. Based on

1 EU Smart Regulation Agenda, COM(2010) 543 and COM(2012) 746.

the analysis of OECD and EU reports in the field, he drew the conclusion that the applicability of certain tools depends a great deal on the economic performance of the given country, which is further complicated by globalization.

Presenters of the afternoon session of the ‘Evaluation of Legislation conference’ took stock of the application and experiences of the use of different tools to assess the quality of Hungarian legislation through unique case studies. The talk delivered by Lóránt Csink (counselor at the Constitutional Court, associate professor at PPCU) and entitled ‘Evaluation of legislation in Hungary: approach, system and methods’ set the tone for the debate by focusing on the importance of decision-making processes. Csink emphasized three necessary requirements for law-making: goal setting (defining long-term goals upon value choice), strategy/methodology (defining the tool to achieve long-term goals) and execution (the importance of administration). In his view, during the evaluation of legislation the following questions must be answered: (i) What is the impact of the legislation? (ii) What side-effects occur as its result (legal, political, social)? (iii) Is it applicable to the society from the point of view of comparative law? (iv) Where and how is it applicable?

Balázs Gerencsér (director of Ereký Public Law Research Center, associate professor at PPCU) held a presentation summarizing the major research projects conducted during the last 8 years in the Ereký Public Law Research Center, founded at the Department of Administrative Law of PPCU in 2011 and reorganized as a research center in 2014. His talk on ‘Pilot projects and evaluation’ primarily focused on the results of the research project carried out between 2011 and 2013 with regard to model experiments conducted to develop public administration. As a result of this research project the team examining model experiments defined the possibilities, methodology and standards of public administration modelling by analyzing pilot technologies of foreign states and international organizations based on a unified set of criteria.²

The closing presentation of the conference was delivered by Krisztina Rozsnyai (ministerial commissioner, Ministry of Justice, associate professor at ELTE Law School) with the title ‘Preliminary evaluation of the new Hungarian Law on Administrative Procedure’. Rozsnyai reported on the results of the codification processes in administrative procedures in progress since 2010. In her speech, she elaborated on the goals of renewing administrative procedures, the tools to reach these goals, the procedure of law-making and the work methods used during the codification. After a review of the background for establishing administrative procedures, participants were given detailed information about the role of administrative court proceedings in the Hungarian legislation with regard to administrative procedures, and the tools ensuring effective, fast and professional adjudication (the

2 See further at <https://jak.ppke.hu/kozigazgatasi-jogi-tanszek/en/research/research-on-pilot-projects-2011-2013>.

importance of autonomous decision-making mechanisms) in lawsuits in public administrative matters.

In conclusion, we can clearly state, that all three branches of power have significant responsibilities when it comes to assessing legislation and, ensuring the necessary quality thereof. The legislative power is responsible for adopting legislation conforming to the hierarchy of norms as well as the legal environment and suitable for triggering the appropriate political and social impact. The judicial branch exerts an impact on improving the quality of legislation through the application and interpretation of law. The government is tasked with defining the goals, levels and scope of legislation as well as facilitating the execution thereof. All the presenters agreed, that if we wish to define the requirements of high-quality legislation, it is largely dependent on the economic performance of the given country, in which the principle of efficiency, the applicability of administrative tools, and the practicability of IT innovations play a key role.