
A Series of Events on Challenges of Modern Society in Olomouc

Report prepared by
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At the end of 2020, the Jean Monnet Centre of Excellence in EU Law at the Palacky University Olomouc (hereinafter referred to as “JMCE”) organised a series of workshops, seminars and lectures, focused on the relevance of modern technologies in legal theory and practice. This formed a part of its research under the Jean Monnet Networks project *European Union and the Challenges of Modern Society: legal issues of digitalization, robotization, cyber security and prevention of hybrid threats* (hereinafter referred to as the “Project”), bringing together, next to the Palacky University in Olomouc (Czech Republic), the researchers from the Heidelberg University (Germany), the Tallinn University of Technology (Estonia), the Comenius University in Bratislava (Slovakia) and the Taras Shevchenko National University of Kyiv (Ukraine), the first project of this kind to be implemented in the Central and Eastern Europe.

Among other activities of the JMCE, the attention should be drawn to a round table on consumer protection, a round table on robotization and cybersecurity and a lecture on the right to be forgotten. All these seemingly different topics were interconnected by the idea, expressed by associate professor Naděžda Šišková, head of the JMC and the lead coordinator of the Project, that in our times, technology brings new challenges that are unfortunately not matched by the regulation, that is either inadequate or missing.

Digital Future for European Consumers

On the 13th November 2020, the JMCE hosted an on-line round table *Digital Future for European Consumers*, which attracted the attention of more than 60 participants. The discussion, chaired by associate professor Blanka Vítová (Palacký University, Olomouc) turned around the presentations of professor Matkéta Selucká (Masaryk University, Czech Republic), Dr. Věra Knoblochová (Ministry of Industry and Trade of the Czech Republic), Dr. Mária T. Patakyová

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(Comenius University, Slovakia), Svatava Veverková (Masaryk University, Czech Republic) and Marcel Ivánek (NGO, Czech Republic).

After the introductory remarks of Naděžda Šišková, putting the event into the context of the Project, Blanka Vítová introduced the topic, underlying the fact that the year 2020 witnessed a huge increase in digitalization, especially for consumers.

Markéta Selucká discussed the “Lex Voucher”, Czech legislation addressing the situation when due to the COVID pandemic, numerous holiday travels booked with travel agencies were cancelled by the consumers. According to the EU Package Travel Directive and its implementation in the Czech Civil Code, the consumers are entitled to full refund in case of unavoidable and extraordinary circumstances, such as the pandemic. However, in addition to this “standard” procedure, the Commission recommended in May 2020 that the consumers may be also allowed to accept vouchers for a future package holiday in order to protect the travel agencies from bankruptcy. The Czech legislation nonetheless only allowed the vouchers to be issued, not the refund. Markéta Selucká persuasively agreed that this legislation is contrary not only to the EU law, but also to basic principles of law, including the prohibition of retroactivity, and as a result, the consumers are entitled to claim damages and ask the courts not to apply the Lex Voucher. In the following discussion, the participants were informed that there already is one such a court proceedings pending.

Věra Knoblochová tackled the issue of consumer protection from the legislator’s point of view. She introduced the “Modernization Directive” concerning consumer protection (Directive 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules) and new directives on the supply of digital content and digital services (Directive 2019/770) and contracts (Directive 2019/771), as well as their implementation and topics to be discussed in the following years, including the extension of requirements on product safety to platforms or artificial intelligence, the extent of obligation to inform consumers or new specifically “on-line” unfair practices, including the publishing of fake “consumer” reviews. She discussed also the issue of “personalised pricing” by e-shops, i.e. the practice of setting different prices for individual consumers, and preparations legislation addressing it; even though some of the participant expressed the view that such a practice ought to be outright illegal, the legislator currently only expects the information requirements attached.

Mária Patakyová focused on consumer protection through the means of antitrust law. She remembered the consumer welfare standard, the benchmark for assessing whether certain conduct is anticompetitive, and discussed several abuse of dominance cases in IT, in particular the controversial Facebook case recently decided by the German Competition Authority, which raised the issue

whether the concept of abuse of dominance was not stretched beyond its original meaning.

Svatava Veverková concentrated on a specific topic of unfair practices of agents arranging energy-supply contracts through energy auctions, in particular vis-à-vis elderly persons. As she cooperated with the consumer protection organization dTest, she was able to present numerous concrete examples and statistics, documenting how widespread these practices are. She pointed out to the shortcomings of current regulation, including the unrealistically short terms to cancel the agreement with the agent and the fact that the final contract with the provider of energy, concluded by the agent, is very difficult to cancel. She also introduced the proposed amendment of the Civil Code and in particular the comprehensive regulation of the role of agents in energy auctions, envisaged by the new Energy Act.

Finally, Marcel Ivánek considered the future of e-commerce. He emphasised the surge of e-commerce. In his opinion, the problem is not the legislation itself but the practice, which is very difficult to check given the number of e-shops and their limited capacity to implement all the legal requirements; not only the regulation, but also the advocacy and education towards consumers and an effective oversight is necessary.

This is a common theme for all the issues discussed – new technologies are often difficult to understand and an increased consumer awareness is crucial in order to guarantee their rights.

Robotization, Digitalization and Cyber Security

On the 8th December 2020, the JMCE hosted another round table, this time on the *Future of Robotization, Digitalization and Cyber Security – a View from Inside the European Parliament*. These topics were discussed by Dita Charanzová, the Vice-president of the European Parliament, and Pavel Svoboda, former Chair of the European Parliament's Committee on Legal Affairs (JURI), chaired by Naděžda Šišková, the head of JMCE. The discussion covered several topics, including a separate legal personality of artificial intelligence (hereinafter referred to as "AI"), the impact of robotization on fundamental rights and the cyber security.

The debate started with the European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL), hereinafter referred to as "Resolution 2017"). According to Dita Charanzová, it is important to note that the recommendations addressed the three elementary issues connected with AI: the questions of ethics, liability and trustworthiness; still, this document was a little bit "scary", emphasizing the

potential negative effects of robotization, describing a “sci-fi” world of future. Pavel Svoboda lauded the comprehensiveness of the document and its value for future regulation, not only in the EU but worldwide, including the USA.

Next, the question whether the AI should be awarded legal personality was discussed. As noted Naděžda Šišková, the Resolution 2017 worked with such a possibility. Pavel Svoboda replied that even though in principle, such a scenario would be imaginable (similarly to the fact the legal personality is granted to corporations), he would be contrary to it, as after all, the AI is a machine, not a human being. Dita Charanzová concurred, adding that the White Paper on Artificial Intelligence, issued by the Commission in June 2020, does not include any such possibility and this issue should be tackled by the regulation of liability. Similarly, both the speakers refused the introduction of “personal” rights for AI or the necessity to modify the Charter of Fundamental Rights.

Concerning the “new” report with the recommendations to the Commission on a civil liability regime for artificial intelligence of 5 October 2020 (2020/2014(INL), hereinafter referred to as „Resolution 2020“), Dita Charanzová stressed the unlike the Resolution 2017, this document includes concrete requirements, including the strict liability for the actions of AI. This was welcomed by Pavel Svoboda, who also noted that perhaps, this could form a basis for a common regulation of liability throughout the EU.

The issue of cyber security was also discussed, in particular with relation to the Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union. According to Dita Charanzová, this directive is only a first step towards a comprehensive regulation, which shall be discussed in 2021; out of the concrete challenges ahead, she mentioned the security of the new 5G networks. Pavel Svoboda linked the topic of cyber security to AI and its role in the spread of fake news; he also reiterated the need of regulatory cooperation with the USA.

Finally, Dita Charanzová introduced the Programme “Digital Europe”, including numerous centres and programmes promoting “digital skills”; however, the primary responsibility for it will stay with the Member States.

As is obvious from the above, new regulation concerning the deployment of AI is to be expected in the near future, as well as a revision of the cyber security directive.

The Right to be Forgotten

Finally, on 15th December 2020, the JMCE presented a lecture by Dr. Jan M. Passer, the judge of the Court of Justice of the European Union (hereinafter

referred to as “CJ EU”) on the right to be forgotten in the case-law of the European Court of Justice.

Mr. Passer not only commented on the cases based on the landmark CJ EU judgement *Google Spain*, but also, more widely, on the evolution of approach to protection of privacy in the judiciary practice.

In case of the right to be forgotten, the technology itself does not create new issues, the existing legal framework and jurisprudence should be sufficient to address them.

A Look into the Future

The discussion steered by all of these events showed that even though some of the problems brought about by digitalisation can be solved using the current regulation and case-law, complex new legislation will be needed in many cases, including AI or internet platforms.

As Naděžda Šišková expressed with regard to the Project, academia should be part of these projects and the outcomes of these events should be used by the legislator.