

THE ELI RESEARCH ON 'COMMON CONSTITUTIONAL TRADITIONS IN EUROPE': RESEARCH IN PROGRESS

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The IJPL is pleased to publish the reports elaborated in the framework of the research produced in the framework of the European Law Institute on a key topic such as the 'common constitutional traditions'.

It can be helpful to say one or two words about the choice made by ELI and its path. One of ELI's objectives is the elaboration and facilitation of research about European law. Thus far, it has accomplished this task mainly in the field of private law. The research initially proposed by Sabino Cassese and Mario Comba with a focus on common constitutional traditions is, therefore, innovative. When the research was approved, other members of ELI, including Piotr Bogdanowicz, Iain Cameron, Riccardo De Caria, Jörg Fedtke, Michele Graziadei, Francis Jacobs, Jeffrey Jowell, Andras Sajó, Guy Scoffoni and Takis Tridimas, have joined the proponents. Still others, including Daria De Pretis and Jacques Ziller, have been involved during the research and have taken part in various meetings and workshops. The research has thus been a truly transnational enterprise.

Few hints suffice to show why the new research is important both practically and theoretically. Practically, common constitutional traditions are included, together with the European Convention on Human Rights, between the sources of fundamental rights, which "shall constitute general principles of EU law", according to Article 6 (3) TEU. Moreover, although the Court of Justice of the EU is entrusted with the power to establish whether a certain tradition can be said to be common to national legal systems, this does not prevent national courts from taking the first step, through the preliminary reference procedure. The *Taricco II* saga (Case C-42/17) is instructive in this respect, as is the more recent case (Case C-481/97, *DB v Consob*) that is discussed in this issue of the *Journal*. Theoretically, an inquiry into common constitutional traditions cannot be concerned only with the study of legal norms, but must also be concerned with facts and, more broadly, with legal culture. Moreover, this inquiry not only shows that legal systems cannot be regarded as being self-contained, but it also raises the question whether the comparative approaches that must be used

within the European legal space can be the same that are applied, for example, in the study of the legal institutions that exist in the US and in Ethiopia. Last but not least, an inquiry into common constitutional traditions is also helpful for a better understanding of the meaning and significance of national identities, a recurring theme in recent legal literature, but not always treated in a perspicuous manner.

It remains to be said that, along the road, the research has taken more than one path. This is not surprising, because the advancement of knowledge normally implies the elaboration of new insight and the exploration of other areas, thus opening up the field for further innovation. There have been, first, various attempts to delineate the contours of common constitutional traditions, in the light of judicial decisions and existing scholarship. Some of these essays, elaborated at the beginning of the research, have been published on the *Rivista trimestrale di diritto pubblico*, n. 4/2017, while others are included in this issue of the IJPL. There is, second, a line of research focusing on freedom of expression, viewed as an exemplary common constitutional tradition. The final product of this line of research - a report - has been published by the ELI on its website ⁽¹⁾, while some of the national reports are published in this issue of the IJPL. There is still another line of research that focuses on judicial independence. This is, by all means, an important topic, to which the IJPL has constantly devoted attention, in particular in the issue n. 2/2020, which focused on the rule of law.

This issue of the *Journal* thus includes both articles concerning the concept and nature of common constitutional traditions and national reports testing the conjecture that freedom of expression is a common tradition. Of course, several ramifications follow from this. Other contributions, hopefully, will follow on this and related subjects.

¹ The report is available at:
https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Freedom_of_Expression.pdf.