

“TAILOR-MADE LAWS” IN PUBLIC LAW – INTRODUCTORY NOTE

The theory of public law has traditionally provided for a rather clear distinction between the functions of the *legislative* and the *executive* power. Under this traditional understanding, the main task of the legislative power was issuing binding norms (laws), which are abstract in their nature (*legis latio*). In parallel, the executive power must apply these norms by issuing administrative acts, which are characteristic by their individual nature (*legis executio*).

It is a matter of fact, that the *legislative* power is not considered to represent the only source of *abstract norms* – certain powers to issue such norms have been traditionally transferred to the executive. This special issue of “The Lawyer Quarterly” will be dealing with the opposite form of transferring of powers, i.e. with the “tailor-made laws”.

In the past, the “tailor-made laws” had been frequently subject of academic interest in the German scholarship of public law. In this respect, Hans Schneider provided¹ in his textbook on “Law-Making” (*Gesetzgebung*) for classification of “tailor-made acts” into several categories. Here, Schneider distinguished those laws, being enacted only for one specific case (*Einzelfallgesetze*) and those, addressing only one particular subject (*Individualgesetze*). Further, he also distinguished those “tailor-made laws”, addressing certain *individually* specified issued by using *general* terms (*Massnahmegesetze*) and those, providing for *individually* specified plans (*Plangesetze*).

The legislation of the Czech Republic has also some experience with the “tailor-made laws”. The “tailor-made laws” were referred already by Jiří Hoetzel in his textbook on administrative law.² Some of them (e.g. laws proclaiming merits of certain statesmen³ and the laws, providing for the state budget) do have certain tradition in the national legislation. At the same time, several other laws addressed *individually* specified issues in the past. The *lex Šejna* (Act No. 39/1968 Coll.) represents a very classical example of an “tailor-made law”. However, we can find “tailor-made laws” also in our more recent legislation. This is the case of the restitution legislation (Act No. 298/1990 Coll.) and also the case of the laws, addressing certain strategic projects (inland navigation – Act No. 114/1995 Coll., runway at the airport Prague-Ruzyně – Act No. 544/2005 Coll.). Most recently, the Act No. 416/2009 Coll. provides for accelerated proceedings with respect to *individually* specified strategic projects of highways, railways and waterways. The Act No. 428/2012 Coll. provides for individually specified financial amount of compensation to 17 various churches and religious entities.

In Italy, legal scholars started to analyse “tailor-made laws” since the birth of Italian public law doctrine, suggesting nomenclatures and, above all, eligibility limits: we can find the first mention of «*leggi-provvedimento*» in the series “Primo trattato completo di diritto amministrativo italiano” (First Italian comprehensive Treatise of administrative law), edited Vittorio E. Orlando in 1907.⁴ At the middle of the twentieth century, the birth of the Italian Republic in

¹ SCHNEIDER, H. *Gesetzgebung. Ein Lehr- und Handbuch*. 3rd edition. Heidelberg: C.F. Müller Verlag, 2002, pp. 22–23.

² HOETZEL, J. *Československé správní právo. Část všeobecná*. 2nd edition. Praha: Melantrich, a.s., 1937, pp. 50–51.

³ *Lex Masaryk, Lex Štefánik, Lex Beneš, Lex Havel*.

⁴ CAMMEO F. Della manifestazione di volontà dello Stato nel campo del diritto amministrativo. In: ORLANDO V.E. (Ed.). *Primo Trattato completo di diritto amministrativo italiano*. Milano: *Società Editrice Libreria*, Vol. III, 1907, p. 94.

1946 and the enactment of a democratic constitution in 1948 started to transform the Italian legal system. The need to establish the new legal order of democratic welfare State led to an increase of "tailor-made laws" (by both Parliament and new Italian Regions with special status of autonomy). In the early years, "tailor-made laws" have been provided for goals and tasks of State intervention in addressing economy, providing nationalisations of corporations in strategic sectors and specific measures of State-aids (Act No. 1643/1962 on nationalisation of electrical companies). In other cases, "tailor-made laws" involved urban planning and "agrarian reform" tasks and replaced administrative proceedings (e.g. Act No. 23/1950, on territorial planning of "Altopiano Silano"). Several "tailor-made laws" have been provided to define specific measures of administrative organisation of public management and civil service, to avoid the constitutional principle of open tender for public recruitment (Regional Act (Lombardia) No. 60/84; Regional Act (Marche) No. 10/2004 etc.). In recent years, "tailor-made laws" have been adopted in areas of environmental law and policies, like rehabilitation of polluted sites, urban regeneration, strategic infrastructures (e.g. Act No. 166/2002 on "TAV spa" and the high-speed rail line; Act No. 133/2014, on "Bagnoli" site rehabilitation; Act No. 109/2018, on the bridge "Morandi" of Genova). Frequently, *ad hoc* measures of industrial restructuring and redevelopment have been provided, to prevent the application of common statutory rules on bankruptcy and divestiture of great industrial sites or the governance of banking system (Act No. 207/2012, on "Ilva" of Taranto case; Act No. 1/2019, on "Carige" Bank).

There is a number of both practical and theoretical issues, arising with respect of these administrative acts, distinguished as laws. The question of legal defence of the addresses of the "tailor-made laws" ranks to the most urgent. However, there also several very important theoretical issues, which attract academic attention: Are the "tailor-made laws" a reflection of democratic decision-making on certain strategic issues? Or do they merely represent a product of an *agony* of the classical State?

These legislative developments in the Czech Republic and in Italy were subject of a round table, organised jointly by the Faculty of Law, Charles University and the Department of Law, University of Naples "Federico II". The round table was held at the Faculty of Law, Charles University, on 7th May 2019, under the umbrella of the research project "Progress Q2 – Publicization of Law in European and International Perspectives".

This special issue of "The Lawyer Quarterly" presents written version of the papers, presented at this round table. We want to express thanks to all participants for their speeches and consequent fine academic discussion. Also, the organisers want to thank Professor Michal Tomášek for his support with publishing of the papers in this issue of "The Lawyer Quarterly".

Further, we want to also thank Gabriela Göttelová and Vladimir Sharapaev for their kind support by organising the seminar and reviewing the presented papers. Gabriela is also author of the conference report, describing the discussion following each of the presentation.

We hope, this special issue will not only contribute to the legal scholarship of public law in both countries, but also to further co-operation between the Czech and Italian legal academies.

Jakub Handrlica, * Luigi Ferrara**

* Associate Professor JUDr. Jakub Handrlica, Ph.D., Faculty of Law, Charles University, Prague, Czech Republic

** Associate Professor Luigi Ferrara, Department of Law, University of Naples "Federico II", Naples, Italy