Introduction

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The articles in this volume address challenges for several dimensions of the Rule of Law. Such dimensions are inter alia respect for human rights – in particular the right to privacy – and the quality and the prospectivity of the law.

Two key themes emerged from the contributions – written by public lawyers, an Archival scientist and a researcher on Information, Education and IT:

1. The challenges for the Rule of Law due to the need to balance the right to privacy with conflicting interests

2. The challenges for the Rule of Law generated by the digitalization of the society

Among the articles related to the first theme, the challenges for the Rule of Law due to the need to balance the right to privacy with conflicting interests, two of them examine a conflict between the right to privacy and the need of protection. In the first article titled ‘The Right to Privacy vs Protection of the Public: Criminal Record Certificates in UK Law’, Gordon Anthony, Professor of Public Law, examines case law on the powers of the police when individuals have been acquitted of offences and subsequently require a certificate (a so-called “Enhanced Criminal Records Certificates” (ECRCs), for certain lines of employment (for instance, with children or vulnerable adults). Examining, among other cases, the recent decision of the UK Supreme Court in R v Chief Constable of Greater Manchester, the article explains how the right to a private life can be limited in the public interest, as long as the police

adhere to the minimum requirements of legality and proportionality. It also notes how UK law has absorbed a range of European influences, as much of the case law of the UK courts focuses on the procedural and substantive dimensions of Article 8 ECHR.

In ‘Fight Against Terrorism and Protection of Privacy in Algerian Law’, Nasreddine Bousmaha, Professor of International Law, provides another illustration of a conflict between the right to privacy and the necessity to protect. The right to privacy in this case is to be balanced with the necessity of protecting society against terrorism. The author shows how the Algerian Government, which at the beginning used a military response for fighting terrorism and paid less attention to Human Rights, has gradually adopted a legal framework allowing the fight against terrorism in accordance with the law and inter alia with rules aiming at protecting privacy. The author takes the example of the countering of the financing of terrorism, where a new public body, the Financial Intelligence Processing Unit (FIPU), was endorsed with the task of protecting the privacy of individuals who were to be the subject to suspicious transactions or operations. When it concerns the fight against cybercrime, compliance with the principle of criminal legality comes into question.

The next two papers focus on another sort of conflict of interests involving privacy, i.e. a conflict between right to privacy on the one hand and transparency/open government on the other hand. In ‘The Right to Privacy and the Right to Open Government: Two Antagonist Constitutional Rights’, William Gilles, Professor in Public Law, investigates the contours of the rights at stake and their importance and value. The author, focusing then more specifically on the French example, goes on into the balancing the French legislator does in order to limit the infringements of the right to privacy towards the traditional access to information and towards the more recent right to open data. The author concludes that the French legislator gives precedence to the right to privacy. The technology, however, sometimes generates difficulty in protecting privacy. Moreover, the generalization of the anonymization process used for protecting privacy may conflict with the right to memory of future generations. Finally, the author tackles the delicate question of the privacy of political public figures.

The next paper, written by Patricia Jonason, Associate professor in Public Law, deals with a similar theme but with the focus on civil servants. In ‘The Privacy of Public Officials in The Digital Age: A Democratic Issue’ the author assesses the need, for both legal and ethical reasons, to guarantee the right to privacy of public officials. A balancing of interests between transparency and
privacy of civil servants has to be carried out bearing in mind that the respect of the right to privacy does not only serve the personal privacy interest of the civil servant concerned but even the interest of having a functioning democracy. With a Swedish example as the point of departure of – the publication on the Swedish Ombudsman’s website of decisions containing the name of the public servant criticized in the decisions in question – Jonason examines the implications in terms of infringements of the privacy of the individual civil servant and for the democracy that such a release of personal information may have and incur. These deterrent impacts are undeniably exacerbated by the use of new technologies.

Under the second theme, the challenges for the Rule of Law generated by the digitalization of the society, the following papers fall. The first, ‘Digitally Ready Legislation as a new Concept in Danish Law – An Erosion of the Rule of Law?’ by Michael Gøtze, Professor of Administrative Law, questions the current phenomenon in Denmark according to which new legislation is designed to be digitally compatible from the very beginning in order to pave the way for use of digital solutions in the Danish administration. The author focuses on three main questions raised by this new concept: the challenge of striking a fair balance at a legislative level between discretionary and objective regulation, the inherent preference in digitally ready legislation for binary regulation and the question of the normative impact that technology has in the design of regulation and the choice of structure of rules.

In ‘Paving the Way for Google Legal Certainty Implications for Legitimising Public Cloud Services in Swedish Schools’, Maria Lindh, Senior Lecturer in Library and Information Science, discusses the tensions between surveillance of pupils, their right to privacy and their right to the use of free public cloud services. The author examines, by looking at formative documents, how the implementation and use of ICTs has been legitimated within the Swedish educational sector. Her aim is to unveil power structures that have shaped discourses about the implementation and use of ICTs within the Swedish educational system. According to Lindh there is a need for a critical discussion of the complexities that free cloud services’ back end affordances involve and how these affordances structure pupils’ personal data privacy.

In his article, ‘Discussions in social media regarding the implementation of the General Data Protection Regulation’, Rikard Friberg von Sydow, Senior Lecturer in Archival Science, shares his findings regarding the discourse on the new data protection legislation carried out on social media by
groups of professionals before the GDPR entered into force. Analysing the discussions which took place in three Facebook groups of professionals particularly impacted by this new legislation (archivists, IT-professionals and communicators in the public sector), the author concludes that the discussions witness confusion and very varying levels of insight in the new legislation. The difficulties encountered by the groups of professionals studied in understanding the content and the impact of the new legal framework raise even the crucial question of the practicability and efficiency of the European data protection legislation, and furthermore, the question of the respect for the Rule of Law.