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Jurisdiction and Pluralisms: Judicial Functions and Organisation in Federal Systems

by

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The thematic focus of this issue of *Perspectives on Federalism* shall analyse phenomena of pluralism in the judiciary of federal systems: 'Jurisdiction and Pluralisms: Judicial Functions and Organisation in Federal Systems'.¹

It will focus on the degree to which legal and judicial pluralism is possible within the general legal system of the State. Particular attention will be paid to autonomous judicial powers and the organisation of the judiciary. An important question regards the interrelation with the principle of uniformity of the jurisdiction and the general legal system of the State.

According to the main hypothesis to be tested in the case studies, the underlying rationale of the respective federal systems will determine the concrete ways in which the judiciary is organised. Geographically, the case studies cover six federal systems from all around the world, in North and South America, Europe and Africa. And they show that it actually makes a considerable difference, whether the federal system is of dual or integrated nature in the organisation of federal and State functions, whether it has to cope with a huge geographic extension, or whether the challenge for the federal system is linguistic or ethnic diversity in a multinational or multiethnic federation. Of course, these essential features of the federal system in question also determine the room which exists at sub-national level for differences in judicial organisation and functions.

Thus, the authors have been asked to briefly introduce the respective federal system at the beginning of their contributions with a brief overview of the characteristic systemic features, in particular the organization and competencies of the federal and sub-national levels. This shall provide some basic information about the underlying rationale, before focusing on the functions of the judiciary and on the impact, the federal structure has on those functions. The main interest is, of course, whether and which judicial functions can be exercised autonomously by sub-national entities, and, in case that such powers do exist, which are the constitutional and legislative limits to the autonomous exercise of those functions.

An important issue regards the organisation of the judiciary in the sub-national sphere. Do particular guarantees for its independence from political actors exist, how is its autonomy protected and which limits do exist for the exercise of that autonomy? Is there any specialisation of judicial services and organisation or a differentiation in functions? And



who is responsible for selection and appointments of judges and other judicial official holders at the sub-national level? Do specific guarantees for the independence and impartiality of judges at sub-national level exist? Are there specific institutions guaranteeing the (administrative) self-management of the judiciary at sub-national and at federal level?

The analysis of the single cases includes an examination of the relations between the judicial institutions at sub-national and at federal levels. In some cases, there is a parallel organisation of the judicial functions, based upon the separation of the two levels which follows the general model of dual federalism. In other cases, the opposite is the case with the integration of sub-national judicial institutions, which are responsible for the lower instances, into a comprehensive judicial system with supreme judicial authorities at the top. In both cases, dual or integrated judiciary, manifold questions of coordination arise, the nature and scope of regulations for the judiciary needs to be examined as well as the existence of effective guarantees.

Another interesting question is to which extent sub-national entities are represented in the federal judiciary. This may be relevant for the coordination within a composite system as well as for the representation of diversity.

In the constitutional sphere, the guarantee of federal constitutional values and fundamental rights as well as instruments of judicial review need to be examined. How is conformity with the Constitution guaranteed at sub-national and at federal level?

Finally, in a number of federal systems, differentiated language regulations exist in judicial proceedings at federal and/or sub-national levels. These specific language regimes have consequences for the parties' right to information, as well as for the obligations regarding transparency and publicity. If a trial is conducted at sub-national level where such a differentiated regime exists, does this also determine or influence the language in case of appeal or in front of a Supreme Court?

The six case studies in this volume will provide answers to these and other questions.

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¹ This publication is part of the results of the PRIN project (2010-2011) on 'Jurisdiction and Pluralisms' (JPs), coordinated by prof. Roberto Toniatti, University of Trento. A summary of the research project is available at the project website: (<http://www.jupls.eu/>). Special thanks are due to Dr Vincenzo Tudisco, currently Postdoctoral Researcher in Comparative Constitutional Law at the University of Trento.