

HABILITATION THESIS REVIEWER'S REPORT

Masaryk University

Applicant

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Habilitation thesis

Legal Dissonance Of Strengthening Harmonisation In Eu Public Construction Law

Reviewer

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The Thesis addresses a topic of high relevance within the realm of EU Administrative and Environmental Law. The complexity related to spatial planning requirements has been addressed systematically within Environmental Law scholarship. However, less attention has been devoted to the comprehensive analysis of the requirements included in Environmental and Spatial Planning law to appraise their interplays and potentially related loopholes. In my opinion, the Thesis contributes to fill this gap in knowledge. The added value of this work is to combine a diachronic and synchronic analysis of EU's policies and legislation relevant to the development of a comprehensive regime for the development of infrastructures in the EU. In this connection, the methodology and scope of the Thesis are clearly outlined and applied throughout the work. Likewise, the sector-specific analysis of both EU legislation and case law in each section are carefully carried out and denote the mastery of the topic, as also certified by the author's previous work on the subject. The conclusions of the Thesis are as well certainly meaningful to support an appraisal of the current state of play of the EU law and policy and to provide a grounded depiction of the problematic aspects entailed in the EU policy and law-making on spatial planning and infrastructure development. Moreover, they hint at a reasoned analysis of certain underpinnings of EU law on environmental protection and spatial planning, which are key insights to explain and understand certain – indeed, increasingly underscored – deficiencies of the EU's environmental law-making in the current context of the European Green Deal. In this respect, the Thesis will certainly contribute to the ongoing debate in European Environmental Law scholarship.

Overall, the structure of the Thesis is well-outlined and reflects both its main objectives and its methodological approach. I particularly praise the choice to put a conclusion section at the end of each Chapter. This enables to better distil the main takeaways throughout the text thus further disentangling the complexity of the topic at hand.

Chapter one effectively summarises the main questions behind the Thesis and the methodology deployed in the work.

Chapter two presents a proper vertical, historical analysis of the EU's approaches to public construction law. This Chapter clearly achieves its asserted goal of describing the evolution of EU's policies on land planning and the different harmonisation techniques deployed by the EU legislator.

Chapter three then delves into the Aarhus Convention as an asserted turning point for both public participation in environmental matters in EU law. The legal framework is carefully described analysed and also critically appraised.

Chapter four then turns into the relevant environmental legislation and its requirements for construction law in the EU. The sectoral analysis undertaken there is clearly relevant and carefully calibrated, and usefully complemented with tables summarising the role of different legislation within the broader umbrella of construction law.

Chapter five then widens out the scope towards other relevant policies beyond the environmental realm, which are relevant for infrastructure planning. Similar to Chapter four, the legal analysis in this section is pertinent, whereas any material limitation is acknowledged and justified in Chapter one.

Chapter six then concludes effectively summarising the main arguments and contributions of the work, although the analytical structure of the main research questions enlisted in Chapter one is not fully reflected therein. However, such answers can be also found in the interim conclusions at the end of the previous Chapters.

The Thesis is written at a proficient level, thus denoting a full mastery of the relevant terminology and language, which is rendered even more complex by the vast array of legislation analysed in the work.

However, some shortcomings must be underscored, which in my view ultimately curtail the full potential of the research work. The potential width and complexity of the topic is apparent also in terms of relevant materials to analyse. At the same time, the author already acknowledges the limitation of his work in the first place, which is clearly laudable. Yet I can identify at least two main shortcomings. The main shortcoming relates to the lack of connection of the work with the current EU Environmental and Spatial Planning policies. Whilst one of the asserted objectives of the work is to track and assess the temporal evolution of EU's relevant legislation and approaches throughout the last decades, it seems a limitation that it does not fully embody the – spectacular – developments occurred since the mid 2010s', especially with the adoption of the European Green Deal. In effect, many of the problems highlighted in the Thesis ought to be overcome under the European Green Deal objectives and related strategic documents (e.g., the Biodiversity Strategy for 2030) and legislation (e.g., the Nature Restoration Law). On the one hand, it is clear that an accurate and detailed analysis of such developments would have gone beyond the scope of the Thesis; on the other, as I understand the aim of the Thesis is not to carry out a fully retrospective analysis of EU's primary and secondary law. In this respect, additional research that would place the main findings of the Thesis against the asserted objectives and ambition of the European Green Deal and related legislation – for example, in terms of mainstreaming of environmental protection in sectoral policies, planning requirements, etc. – would have been beneficial to better place the work in the current context. The second main limitation relates to the potential further scope for analysis and original contribution based, foremost but not exclusively, on EU environmental law principles. As the author denotes, many problems identified in the existing legislation have been or could be overcome by embracing elaborations devised by the Court of Justice. Such elaborations are often centred around key principles (e.g., the principle of effectiveness of EU law) or general objectives of EU environmental law (e.g., the objective of achieving a high level of protection of the environment). The Thesis seems not to appraise what role could these principles/objectives play to devise line of interpretations that could provide a theoretical framework of analysis for the prospective developments of EU law in the field of construction and infrastructure planning.

These quarrels aside, I firmly assert that the work is laudable and fulfils the requirements expected for an habilitation thesis in the field of Environmental Law.

Reviewer's questions for the habilitation thesis defence (number of questions up to the reviewer)

1. The Thesis addresses both the general requirements for infrastructure planning, including permitting, environmental protection standards, etc., while devoting a specific role to public participation. However, what is exactly the role foreseen for public participation for the specific purposes of the Thesis? Is public participation seen as instrumental to overcome the asserted dissonant harmonisation, or is it just analysed as a self-standing part of spatial planning/construction law?
2. The author elaborates at length on potential unintended consequences of EU policies on spatial planning in terms of their implementation at the Member States' national level. To this end, the author mostly relies on scholarship to build this argument. However, some evidence drawn from analysis of current implementation practices could have been useful to stress those elements. Is there specific evidence you wish to highlight from domestic implementation of key EU legislation for construction law that back some assumptions as to the difficulties in the current EU approach to the matter?
3. As a result of the work, the author stresses that EU laws and policies on spatial planning have an increasingly prominent role in domestic decision-making, although in a fragmented and often conflicting manner. What is then the ideal or minimum level of harmonisation that the author sees necessary and effective to deliver on the EU's environmental objectives while not encroaching on Member States prerogatives?

Conclusion

The habilitation thesis entitled "Legal Dissonance Of Strengthening Harmonisation In Eu Public Construction Law" by Vojtěch Vomáčka **fulfils** requirements expected of a habilitation thesis in the field of Administrative Law and Environmental Law.

Date:
29/04/2024

Signature:

