Editorial
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Editorial

Like previous issues of EJCL, also the present issue includes a selection of articles that mirrors the variety of comparative law and governance methods, topics, and geographical areas covered by our journal. The first article, focusing on traffic lights, offers a fresh, unconventional and ironical approach to law and regulation from a comparative lawyer's perspective. The second article compares the features, societal goals and potential effects of the laws of six European countries that prohibit anonymous sperm donation. The third article compares a European with a non-European system: it assesses the quality of protection against eviction under the European Convention on Human Rights (ECHR) and the South African Constitution. The fourth article compares a Western with an Eastern country: it evaluates the role of independent directors in US and Chinese corporate governance systems.

The first article, authored by the Italian comparative law professor Vincenzo Zeno Zencovich, intentionally plays jokes with the law (a ‘juridical scherzo’). With the help of the traffic light metaphor, it addresses general issues concerning uniform laws, legal enforcement and compliance from three perspectives: global administrative law, legal theory, and comparative law. “Comparative law, generally, is not about static legal situations but about processes in which rules interact and bring about a certain result.”1 This statement brings Zeno Zencovich close to a comparative law-and-governance approach. His article makes indeed clear that traffic lights are law and governance: they are “silent law”,2 and they are a means of societal governance, aimed at reconciling the competing private and public interests: one's freedom vs. the freedom of the other members of the community; freedom to circulate vs. public safety, paternalism vs. self-responsibility, etc.3

In the second article, the Dutch legal sociologist Heleen Weyers provides an overview of the six civil law systems in Europe that prohibit anonymous sperm donation.

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1 See V. Zeno Zencovich, ‘Lessons from a traffic light: a juridical scherzo’ (in this issue), section 4.2.
2 Ibid., section 1 and 3.2.
3 Ibid., section 2.1.
donation. While the majority of European jurisdictions allow anonymous sperm donation, seven countries have enacted systems of mandatory sperm donor registration: Austria, Finland, the Netherlands, Norway, Sweden, Switzerland, and the UK. Weyers’ study only focuses on the first six jurisdictions as civil law systems. The article has a governance orientation insofar it questions the suitability of these six laws to reach their purported societal policy goal: protecting fundamental interests of children by allowing donor offspring to obtain information about the donor's identity. Weyers and other scholars suggest that these laws might be merely symbolic (i.e. not really instrumental to societal change), because of the lack of rules requiring children to be informed that they are donor offspring.

The third article arises from a joint study of a South African private law scholar, Sarah Fick, and a Dutch professor of public order law, Michel Vols. The study is inspired by a clear policy goal: finding the best protection for vulnerable persons from eviction from their homes. It compares the quality of protection from eviction afforded under the South African Constitution and the ECHR. Differences in the level of protection seem to be justified by either the different nature of the instrument (the ECHR as an international treaty must leave a margin of appreciation for national policies) or the socio-economic condition of the evictees. Fick and Vols argue that the ECHR system should learn from the South African one for what concerns the requirement that a proportionality assessment be made by a court in all eviction matters. Vice versa, they suggest that South African courts should learn from the European Court of Human Rights (ECtHR) for what concerns the refraining from interfering in policy decisions of the executive power.

The fourth article, authored by Wenija Yan (a Chinese scholar affiliated to a German university), deals with comparative corporate governance. More than 10 years ago, China introduced an American-style system of independent directors for listed companies. Yan argues that this system, which works in the US, does not work in China: in this country, independent directors are not powerful decision-makers but powerless advisers. The article concludes with some recommendations to improve the role of independent directors in China. Firstly, their decisional power on some issues, such as takeover, on which shareholders lack the necessary knowledge, should be enhanced. Secondly, to promote the joint supervision of independent directors and the supervisory board, the powers of these two organs should not conflict but complement each other. Finally, independent directors need to be supported by the management of corporations.

We would warmly welcome further comparative studies on these and other topics!

Aurelia Colombi Ciacchi and Sjef van Erp
Editors