

POLICY WITHIN AND THROUGH LAW

“Policy within and through Law” is the topic of the upcoming ACCA Conference. “Policy within and through Law” is a topical issue as the following statement recently made by US Supreme Court Chief Justice Roberts shows: “Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments. Those decisions are entrusted to our Nation’s elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices”.¹

This and many other similar or opposite statements make one ponder about which policies can be distinguished, who actually makes those policy decisions and especially the reasons and considerations therefore. As Van Gerven² teaches us, practising law, whether as a politician, a judge, a lawyer or an academic, is to a certain degree creating or influencing policy. Doctoral researchers often struggle or have struggled with questions such as:

- What are the underlying policies for my research? How do I make them explicit? Which policy arguments are in favour of my ideas? Which are at their disadvantage? (on a descriptive level)
- Are those policies actually achieved by the rules involved and, if not, what risks does that entail? (on an evaluative level)
- Are the current policies sufficient, and, if not, how can academic ideas influence this current (deviating) policy? (on a normative level)
- Finally, what insights can be gained from law comparison? Are these policy concerns also under discussion in other jurisdictions? (on a comparative level)

Several examples clarify and illustrate the importance of policy considerations in and through law.

- Labour law scholars may struggle to conciliate social rights with the fundamental freedoms of the EU internal market. Carrying too much weight to national singularity might enable Member States to preserve protective measures, while attaching too much value to the internal market could endanger employment conditions and social security schemes.
- Company lawyers nowadays struggle with the question whether company law should have (solely) regard to shareholder interests or should (also) take on a wider, stakeholder perspective.
- As to administrative law, to what extent can the autonomy of decision-making be reconciled with the necessity of legal controls (judicial review)? Procedural review is increasingly supplemented by substantive review (e.g. proportionality).

What is possible within the framework of the separation of powers, without creating some kind of “gouvernement des juges”?

- Another example can be found in health law where policymakers are increasingly confronted with the question whether patients should be allowed to choose (e.g. to smoke) or whether the policymaker should make the choice instead (e.g. by prohibiting smoking), or even whether the policymaker should nudge the patient/consumer into a certain direction (e.g. by hindering tobacco sales).
- A final example concerns the question whether certain “certifiers”, such as rating agencies or classification societies, should be able to cap their liability. Limitation of liability prevents such actors to be sued as “deep pocket” defendants and ensures that they can properly perform their services. In contrast, the aggrieved party cannot fully recover its losses from the certifier. What is the most appropriate, feasible and desirable option?

This interesting theme will be addressed at the 2014 ACCA Conference hosted by the Ghent School of Law on Friday 23 May 2014. The conference will start with a tri-lingual introductory plenary session in which keynote speakers with experience in the field of policy and law will discuss their view on the matter. Subsequently, each participant will attend one or more thematic sessions for which he or she has registered on beforehand via the UGent ACCA-website. In these thematic sessions Ph.D. researchers from all Belgian Law Schools will present their thoughts on policy arguments with regard to their own research as well as on possible ways in which their research can influence current policy and vice versa. Apart from the academic exchange of ideas, the conference offers speakers and participants an opportunity to network and to get to know each other during the breaks and the closing reception.

The organising committee has the great pleasure to invite Ph.D. researchers to submit abstracts that deal with any aspect of the conference theme “Policy within and through Law”. When preparing their abstract and subsequent paper possible speakers should be aware that each presentation maximally lasts 20 minutes.

Abstracts, papers and presentations can be in Dutch, French or English.

Abstracts should be mailed by Friday 28 February 2014 to the following email address: acca@ugent.be.

Please note that abstracts will be made available online prior to the ACCA Conference on the ACCA-website: www.law.ugent.be/ACCA.

¹National Federation of Independent Business v Sebelius, 567 US 2012.

²W. Van Gerven, Het beleid van de rechter, Antwerpen, Standaard, 1973, 167 p.