Editorial

When viewed in retrospect, Spring 1986 was a remarkable time. In April, the Court of Justice of the EU handed down the *Les Verts* judgment, where it pointed out that the – then – Community is a Community based on the rule of law. This means that 'neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty'.[1] Less than a month later, in the seminal judgment of *Marguerite Johnston*, the Court found that 'the requirement of judicial control [...] reflects a general principle of law which underlies the constitutional traditions common to the Member States'[2] and which is also laid down in Articles 6 and 13 of the ECHR.[3] The principle implies that individuals have the right to an effective judicial remedy. In later case law, this principle is usually referred to as effective judicial protection. The finding in *Les Verts* has also evolved, in the sense that the review may take place against general principles of law and fundamental rights.[4]

In these judgments, the Court formulated two quintessential principles of the Union legal order, which have however been linked to each other only incidentally. The relationship between the two was, for instance, present in the *Kadi I* judgment.[5] Yet, an explicit statement about this relationship, namely that the very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law, is relatively recent.[6] The *ASJP* judgment[7] is central in two contributions to the present issue, and is appreciated differently by the respective authors. While Bonelli labels the judgment as groundbreaking, Menzione argues it is not surprising and that it fits perfectly well in the already existing line of case law.

However this might be, the fact remains that the *ASJP* judgment gives rise to a series of new questions, one of the most important being the relationship between Article 19 TFEU and Article 47 CFR. Furthermore, due to the variety of existing standards and sources, the picture of effective judicial protection in EU law is much more complex. In fact, a great deal has changed since 1986: the principle of effective judicial protection has been elaborated and developed in a long line of cases; in addition to – and often already before – the adoption of the Articles mentioned above as primary EU law, provisions on judicial protection had been inserted and increasingly elaborated, in quite some detail, in secondary law. One may add to this the influence of international law standards

1 Case C-294/83 *Les Verts* [1986] EU:C:1986:166, para. 23.
2 Case C-222/84 *Johnston* [1986] EU:C:1986:206, para. 18.
3 Ibid.
4 Case C-583/11 P *Inuit* [2013] EU:C:2013:625, para. 91.
5 Joined Cases C-402/05 P and C-415/05 P Kadi [2008] EU:C:2008:461.
6 See for instance Case C-362/14 *Schrems* [2015] EU:C:2015:650, para. 95; Case C-72/15 *Rosneft* [2017] EU:C:2017:236, para. 73 and Case C-64/16 *Associação Sindical dos Juízes Portugueses* [2018] EU:C:2018:117, para. 36.
7 Case C-64/16 *Associação Sindical dos Juízes Portugueses* [2018] EU:C:2018:117.

(such as the ECHR and the Aarhus convention) and the tensions that exist in relation to national constitutional standards. Finally, there is another strand of case law which complicates the picture: the principles of equivalence and (minimum) effectiveness from the '*Rewe* case law'.[8] The interplay between these different sources and standards is discussed in the present volume either in more general terms (Widdershoven, Bonelli) or in a number of specific areas, namely public procurement (Caranta) – the oldest field in which the EU started to legislate in detail on remedies, asylum law (Tsourdi, Favilli), environmental law (Eliantonio) and the EU area of criminal justice (Mitsilegas). One aspect which all these rich contributions seem to agree upon is that the scope of national procedural autonomy is considerably reduced.

Turning back to the *ASJP* judgment, it would seem that now there is another *genie out of the bottle*, just like in 1986, this time regarding the question of independence of courts and tribunals – an essential question for the task of adjudication and, in principle, also for the effectiveness of the judicial protection provided. In the wake of this judgment, a whole line of new cases concerning judicial independence have been decided or are pending, cases which concern not only Poland, but also Rumania, Germany, Spain, Hungary, Malta, and in a way also the EU itself.[9] While the story is not an entirely new one,[10] it can be said that – currently – there is definitely a new chapter in making.

Sacha Prechal

8 Case C-33/76 *Rewe* [1976] EU:C:1976:188.

9 See for instance Case C-619/18 *Commission v Poland* [2019] EU:C:2019:531; Case C-192/18 *Commission v Poland* [2019] EU:C:2019:924; Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. et al* [2019] ECLI:EU:C:2019:982; Case C-127/19 *Forumul Judecătorilor Din România*(pending); Case C-291/19 *SO* (pending); Case C-272/19 *VQ v Land Hesse* (pending); Case C-274/14 *Banco de Santander* (pending), Opinion of AG Hogan; Case C-564/19 *IS* (pending, a Maltese case to be referred according to The Malta Independent of 5 November 2019) and Cases C-542/18 RX-II and C-543/18 RX-II *Simpson* (pending), Opinion of AG Sharpston.

10 Cf. already Case C-506/04 *Wilson* [2006] EU:C:2006:587 and various cases concerning the notion of 'court or tribunal of a Member State' in Article 267 TFEU, like Case C-222/13 *TDC* [2014] EU:C:2014:2265.