



## **NEWSLETTER 8 - NOVEMBER 2022**

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### **STUDY VISIT OF ACADEMIC RESEARCH IN THE FRAMEWORK OF THE JEAN MONNET PROJECT EU VADIS IN NEW YORK (USA), MONTREAL AND KINGSTON (CANADA)**



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A study visit of academic research took place to leading Universities in the United States and in Canada from 12 November 2022 to 20 November 2022 within the framework of the **Jean Monnet Project EUVadis “Intercultural Dialogue, EU Values and Diversity” of the University of Macedonia, Department of International and European Studies**. The study visit included structured conversations/interviews with prominent academics. It was funded by the Jean Monnet Action of the EU Program Erasmus+.

The research team consisted of the Associate Professor and Academic Coordinator of the project [Despina Anagnostopoulou](#), Dr. [Nikolaos Gaitenidis](#) and PhD Researcher [Dionysia Tsolaki](#).

In New York City, the research team visited:



A) the **Law School of New York University (NYU)** where they initially had a discussion with Professor [Gráinne de Búrca](#) and then attended a lecture by the former Prime Minister of Italy and now a Judge at the Supreme Constitutional Court of that country, [Giuliano Amato](#).

B) **Columbia University Law School**, where a meeting with Professor [George Bermann](#) was held.

Access to the libraries of both universities was provided to the research team in order to conduct research relevant to the academic interests of the Jean Monnet Project EUVadis “Intercultural Dialogue, EU Values and Diversity”.

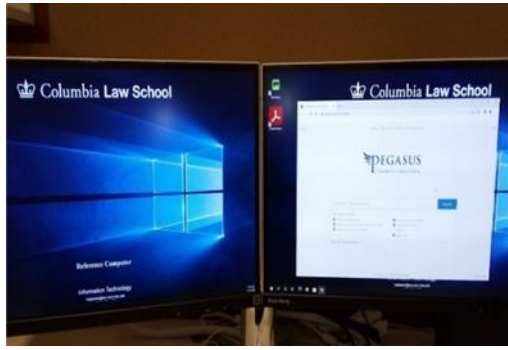


In Montreal, the research team met with:

A) Professor [François Crépeau](#) **Law School of McGill University** and former UN Special Rapporteur on the Human Rights of Migrants and

B) Professors [Maria Popova](#) (**McGill University**) and [Christine Rothmayr Allison](#) (**University of Montreal/Université de Montreal**).

The study visit concluded at **Queen’s University in Kingston-Canada** where the researchers had the opportunity to discuss with Associate Professor [Stephen Larin](#), Associate Director of the Centre for the Study of Democracy and Diversity. During the researchers’ visit a pre-scheduled guided tour of the University’s particularly interesting library and respective inquiry based on the project aims took place.



## Summaries of the discussions held during the academic study and research visit



**Gráinne de Búrca** (Florence Ellinwood Allen Professor of Law, New York University and a leading expert in European Union law) elaborating on her [recent article](#) on Poland and Hungary cases in terms of rule of law, human rights and democracy backsliding phenomena, reiterated her firm belief that the main problem pertinent to the EU insufficient

response to the growing authoritarianism observed and documented in the above member states is much more about the necessary political will and far less about the suitable legal tools. Considering the last election results in Italy she also commented on the relevant unpredictability regarding possible repercussions on rule of law and fundamental rights protection standards at the national and European level as these developments could be seen as another manifestation of the already widespread rise of political parties or movements which openly challenge the foundational values of liberal democracy.

As far as the necessary coherent strategy against this surging illiberalism is concerned, this could include certain red lines regarding the respect of EU fundamental values while at the same time respecting and accommodating people's various fears and needs.

Moreover, Professor De Búrca on the issue of certain terminology ambiguity in the field argued that the process of "developing law around the rule of law" has been crucial and effective in producing practical meaning, concrete content and enforceability options associated with EU principles and values especially thanks to the ECJ interpretation efforts but still more democratic debate and clarification are needed. On the issue of the potential legal binding effect of Article 2 TEU 2<sup>nd</sup> alinea, the professor supported its primarily aspirational and symbolic nature which however positively ascertains EU identity as committing itself to Liberal Democracy and invites its further enforcement utilization based on concrete legal content.



Regarding the EU policy responses to the Euro-crisis and the Refugee crisis of 2015-16 as EU fundamental values challenges and focusing on the aspects which involve partially exiting the EU rule of law based legal order in favor of international

agreements (e.g., European Stability Mechanism & the ‘EU-Turkey Statement of 2016’) she expressed the view that in both cases there were “clear violations of legal



principals and their constitutional framework” but the emergency circumstances could justify the application of the established approach of “international law first and later integration into EU law”. However, as regards the EU agencies Europol and Frontex role in undermining the rule of law under the relevant operational scheme of administrative cooperation in the EU external border control, migration, and asylum policies, their functions are constant and ongoing, thus the “urgency” argument could not apply in their case.

Additionally, Professor de Búrca proposed certain legal solutions for these challenges which include the EU accession to the ECHR or related UN special procedures (reports by Special rapporteurs or Independent Experts) as effective external systems of accountability and the ECJ’s change of approach in scrutinizing and not shielding EU institutions and agencies in terms of possible rule of law violations.

Finally, commenting on the minority protection legal framework at the EU level and taking into consideration the French State’s policy which rejects any references to national, race or ethnic minorities and clear EU competence limitations (Article 4 TEU: EU respect for ‘national identities’, internal ‘fundamental structures’ and member state ‘territorial integrity’) she highlighted the minimal impact and the numerous significant gaps in the EU anti-Discrimination group-based legislation resulting in its respective restrictive interpretation by the ECJ.

**Professor George Bermann** (Columbia University Law School), referred to the relation between the American and the EU law (then EEC). Professor Bermann has written a handbook on European Union law in which he stresses the importance of the above comparison. He also referred to the book [Integration Through Law](#), and his [respective review](#) in which a systematic approach between the similarities and the differences in various areas of both was presented. When asked to compare EU values with the American values, he stressed the differences between them and the great emphasis that the US Constitution places on the freedom of expression. As regards the comparison between the principle of “Due Process” and the Rule of Law, he replied that the EU value of the Rule of Law is broader compared with the corresponding one of the American Constitution.



**François Crépeau**, (Full Professor and the Hans & Tamar Oppenheimer Chair in Public International Law, at the Faculty of Law of McGill University. Former Director of the McGill Centre for Human Rights and Legal Pluralism from 2015 to 2020 and former UN Special Rapporteur on the human rights of migrants from 2011 to 2017) analyzed his compelling point of view regarding the problematic management of migration crises in Europe which is mainly attributed to political ostrichism (denying the permanence of migration phenomena), to applying double standards and the consequent lack of a common understanding in terms of data and the conceptions of migration, migrant integration and its respective policies despite certain progress in the pertinent area mainly in Germany and France and at the EU level with the recent activation of the Temporary Protection Directive 2001/55 for 6 million Ukrainian refugees.



However, explaining his short-term pessimism but long-term optimism, he argued that States already know that the facilitation of mobility combined with investment in migrant integration is the right way forward although the necessary change of mindset will take some more time to become a reality in European societies (maybe next generation will accept, celebrate and defend diversity).

The Global Compact on Migration which incorporates certain social rights for all migrants regardless of status, he emphasized, could provide a consistent strategic and long-term conceptual framework for *facilitating mobility* (term mentioned 62 times in its text) despite its declaratory and non-binding nature if the suitable political discourse is developed enough to convince people to follow the direction of its gradual effective implementation. He also added that immigrants can actually help increase employment opportunities instead of taking people's jobs.

Thus, this good governance practice in spite of some possible complex problems and the need to secure the necessary funding is beneficial for both the host country economies and refugees in terms of skills and the potential financial growth. Professor Crépeau also identified the key areas of migrant integration investment in language courses, daycare and accommodation facilities while he also stressed the major role of cities and municipalities in implementing these integration policies based on the example of Australia. As regards the nationalist critiques of these integration policies as largely unsuccessful, he commented that the root cause of their failure is associated with the deterrence and crime-control discourse/mythology and practices which dominate current approaches to irregular migration especially against Muslim female populations.

He also elaborated on his opinion that all social rights should be detached from citizenship and be linked instead with permanent residence (including voting rights).

On the activation of the Temporary Protection Directive in February 2022 and the solidarity shown between member states, he claimed that the whole positive experience would represent a great and essential opportunity for a change of paradigm in EU respective policies in the near future despite the currently under consideration New Pact legislative proposals and the EUCO political reservations.

As far as human rights protection relativism in integration processes (assimilation) and the respective recent jurisprudence are concerned, Professor Crépeau emphasized the need for an open and continuing debate in societies on diversity, the mix of cultures and human rights. Finally, he criticized the pertinent French legal approach (Laïcité principle is contrary to human rights: focusing on indirect discrimination vis-à-vis free choice) which excessively restricts freedom of religion for all the wrong reasons and also by patronizing people and dictating their way of life.

**Stephen Larin**, (Assistant Professor of Political Studies, Queen's University at Kingston Canada, Coordinator of the Internship in Political Studies, and the Associate Director of the Centre for the Study of Democracy and Diversity) commenting on relevant terminology, clarified the relation between biculturalism, multiculturalism, interculturalism and civic integration taking into account Canada's approach, and more specifically the gradual development of the respective immigration integration policies, the potential desired creation of a common identity as well as Professor Kymlicka's theoretical framing of the above terms.



As for the European versions of multiculturalism, he argued that they lack basic typical characteristics of authentic integration programs which could successfully accommodate diversity, thus its proclaimed failure is not surprising nor accurate.

He also mentioned the lack of a specific policy framework in Canada dealing with inter-group conflicts while on the issue of the protection of fundamental rights in autonomous regions he highlighted the pertinent Treaties between the Canadian State and the indigenous people, as well as the Canadian Constitution guarantees as the defining factors utilized in addressing respective controversial practices.

Regarding Article 2 TEU values and the 2nd alinea political commitments, professor Larin acknowledged its primarily symbolic and declaratory function, their compatibility with multi and inter culturalism principles but also stressed the need for the further strengthening of their practical effect in terms of policy mechanisms. Finally, he argued that these common values should not be used as migration deterrence tools and on the basis of the due respect for the freedom of thought,

their enforcement utilization should also be focused on the citizen's practical behaviour and not on their theoretical or philosophical inner core of beliefs.

**Christine Rothmayr Allison** (Professor in the Faculty of Arts and Science, Department of Political Science at the Université de Montréal. Her areas of scholarly expertise, include among others, comparative public policy focusing on the impact of court decisions on public policy making in North America and Europe) made a brief comparative analysis between the Canadian Charter



of Rights and Freedoms and the European Convention on Human Rights (ECHR) as well as the Charter of Fundamental Rights of the European Union (CFREU) in terms of regional constitutional architecture at the federal and provincial levels, in particular, on the basis of the available legal tools for the protection of fundamental rights and values in cases of serious infringements or implementation gaps. In addition to numerous financial incentives and fund transfers punitive mechanisms, she highlighted two basic characteristics of the Canadian protection system which consist in:

- The “Notwithstanding Clause” which can be invoked from federal or provincial governments to pass controversial laws that override or suspend the rights of citizens for a maximum period of five years e.g., the right to strike, wearing religious symbols while at work or disproportionately strengthening French language protections
- and the “Reference Procedure” a procedure via which federal or provincial governments can submit questions to the Supreme or Provincial Highest Court respectively concerning legal conflicts on serious fundamental rights protection issues with broad political implications e.g., same sex marriage.

**Maria Popova** (PhD Harvard 2006, Jean Monnet Chair and Associate Professor of Political Science at McGill University and Scientific Co-Director of the Jean Monnet Centre Montreal) elaborated on her assessment regarding the necessity to propose a variety of alternatives associated with the longer-term regular status of protection for Ukrainian refugees by claiming that the already established rights based on the related Association Agreement and the activation of the Temporary Protection Directive constitute an adequate protection and integration platform which could be further expanded and strengthened taking into account the ongoing Ukraine accession process and the desire of most Ukrainians to return to their homeland as it



is so indicated from the significant number of the recorded border crossings towards Ukraine.

As for the most crucial remaining challenges in the above accession process in terms of the relevant political and economic factors, Professor Popova maintained that despite the sometimes observed political reluctance to implement the necessary reforms and the concession that more of these reforms are needed, Ukraine has already significantly curtailed corruption and has adequately strengthened the rule of law, social and gender equality as well as independent judiciary since 2014 through new high-quality legislation thanks mainly to an active civil society, local government institutions and the EU assistance and financial support. During the post-war rebuilding stage, as she proposed, an EU accession monitoring mechanism could effectively prevent liberal democracy backsliding phenomena and efficiently safeguard the democratic governance framework in case the government's pertinent political will decreases.



Both Professors commented on the rise of far-right parties and right-wing populism in the EU, in particular that its external dimension seems surprisingly mild (Melloni's support to Ukraine) but regarding its internal dimension there are fears for a potential blocking effect in the legislative plans of EU level progressive policies e.g., the parenthood of LGBTQ couples.

*The proposal of the Associate Professor and Academic Coordinator of the program Despoina Anaqnostopoulou regarding the possibility of cooperation between the above Universities and the University of Macedonia including the perspective participation in conferences within the framework of the Jean Monnet programs was met with a positive response.*



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