

PUBLIC INTEREST IN LAW

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PREFACE

The book analyses the phenomenon of ‘public interest’ in a comprehensive manner in different areas of law, both public and private. The term ‘public interest’ can be found in a wide range of legislation and it is used extensively in judicial practice and public administration. Yet, it has received surprisingly little attention from academia. As a result, it is used for various, often contradictory purposes. Justifications of its application are rarely convincing and the concept is often confused with similar legal institutions, which, however, serve quite different purposes. Sometimes, it is considered to be a common denominator of a number of different categories and consequently mixed up with terms like state interest, society’s interest, public welfare, etc.

The book’s objectives are therefore manifold. Above all, it aims to provide a definition of the notion of public interest, flesh out its structure and determine its main attributes, particularly against the background of the notion of private interest. Achieving this goal requires an analysis of the concept’s philosophical underpinnings, historical developments and its application in different times and socio-economic conditions. Therefore, the book begins with theoretical contributions to the concept of public interest, stating their general positions and importance in law and in legal interpretation. However, the book’s purpose is first and foremost to help practitioners to apply the concept of public interest with an understanding of its substance and normative function as well as its relationship to other relevant legal institutions. The individual contributions focus on the concept’s application in a vast spectrum of legal disciplines, ranging from constitutional and administrative law to corporate and insolvency law, from criminal law to environmental law, and from competition law to labour law. To provide concrete examples of legislative and judicial practice, the book focuses on three jurisdictions – Austria, the Czech Republic and the European Union.

Even when analysing concrete areas of law, the individual contributions are guided by a common framework for analysis: Can public interest as a legal notion be understood as a unified concept, or does it have a relatively separate position and fulfils different functions in different

legal disciplines? Is it necessary, when applying the concept, to define the scope of administrative and judicial consideration and to emphasise its individual aspects in different factual situations? Do those areas of law, which do not explicitly provide for the concept, find its relevance through other legal institutions? Is there a difference between ‘public interest’ and ‘public interests’? What is the position of public interest in the dynamic of the relationship between the European Union and its individual Member States?

The book is the result of a joint project of the Centre for Comparative Law of the Faculty of Law of the Charles University in Prague and the Department of Constitutional and Administrative Law of the Faculty of Law of the University of Vienna. The project was supported by the Ministry of Education, Youth and Physical Education of the Czech Republic and the Austrian Federal Ministry of Education, Science and Research. Its structure reflects the subject matter of the individual contributions which were in substance firstly presented at the conference held on 17–18 October 2019 in Prague. The editors wish to thank all participants in the project for their outstanding commitment to it, which is reflected in the results published in this book. They also wish to extend their gratitude to Ludmila Nováčková from the Centre of Comparative Law of the Charles University and Martina Pütz from the Department of Constitutional and Administrative Law of the University of Vienna for their organisational and technical help. Last but not least, we want to thank the University of Vienna which generously funded the publication of this book.

Luboš Tichý and Michael Potacs
Prague and Vienna
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