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Aspects of juridification and deregulation in Public Law

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Abstract

Government legislation is currently experiencing an identity crisis. Complaints about the inflation, some would say hyperinflation, of rules are not exceptional. Many people fear what is sometimes called the ‘imperialism of law’; they fear the colonization of their ‘life-world’ – as J. HABERMAS expressed it – by rules, regulations and procedures. There is also a certain anxiety about the spreading of a ‘claim culture’ or rather the growing tendency to bring conflicts in front of a judge to obtain compensation for alleged damages.

Usually these two phenomena – juridification and judicialisation – are brought into connection with the changed role of the state. Nowadays the modern welfare state is considered to have a *duty* to intervene, mainly to protect the weakest ‘players’, in social relationships. The most effective *instrument* available for a state is ‘legislation’ which of course strengthens the overall feeling of ‘overregulation’.

Therefore the main question in many countries as well as in Flanders is how to achieve a successful ‘dejuridification’ process without harming the achievements of the welfare state. The usual answer to this problem is that of ‘deregulation’; however this has sometimes taken on the form of a ‘magic formula’: good for any problem regarding the relationship between state and society. Deregulation operations such as those in the 1980’s were mainly focused on a decrease of government interventions and a reduction in the quantity of rules; in the 1990’s, however, the focus shifted from quantity to quality, with the underlying assumption that more efficient and effective regulation would automatically result in less regulation. In a third – current – phase there is again a shift in focus, this time to alternatives for regulation in response to social issues.

This paper explores certain aspects of juridification and deregulation processes in public law, more precisely in the field of education law and in the field of the law on local government. First of all, the dynamic relationships between students and education institutions – and between citizens and municipalities – will be highlighted in an attempt to define more clearly the so-called ‘juridification’ process. Secondly, causes of juridification and overregulation of the above-mentioned relationships will be examined in order to develop in the third part of the paper certain guidelines to less and/or better regulation. Finally, this paper concludes with a reflection on a more flexible legal framework which permits both private and public institutions more autonomy in defining the relationship between the institution and the citizen.

Keywords: Juridification, quality of regulation, deregulation, self-regulatory autonomy

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