University of Novi Sad
Faculty of Law Novi Sad

LEGAL TRADITION AND NEW LEGAL CHALLENGES

8th International Scientific Conference



Book of Abstracts

Novi Sad, 29-31 October 2026



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PREFACE

The theme of *Legal Tradition and New Legal Challenges* has proven to be an inexhaustible source of questions, dilemmas, and reflection. This is amply confirmed by the International Conference bearing the same title, which will be held in Novi Sad on 29–31 October 2026, organised by the University of Novi Sad Faculty of Law. This Book of Abstracts is dedicated to that conference.

First and foremost, the number of participants, the range of jurisdictions they represent, and the topics of their presentations all testify to the continued relevance of the issues under consideration. Although the tension between tradition and innovation might, at first glance, appear to be driven primarily by rapid technological advancement, the topics that will be addressed at the conference demonstrate that there remains considerable scope for legal inquiry in areas untouched by technological progress, yet still of enduring interest to legal scholarship. Law is under constant pressure to respond to changing needs arising from a variety of legal, economic, and social factors.

Furthermore, the continuing need to reassess traditional concepts is itself reflected in the emergence of a new tradition. The conference *Legal Tradition and New Legal Challenges*, to which the Book of Abstracts you hold in your hands is dedicated, is the eighth conference of this title organised by the University of Novi Sad Faculty of Law. The considerable interest shown by the academic community in these issues has thus given rise to a new tradition: once a year, Novi Sad provides an established forum for the exchange of questions, dilemmas, and ideas, serving the interests of all relevant stakeholders.

Organising a conference of this scale would not have been possible without the invaluable support of all those who coordinated communication with authors and reviewers, prepared the abstracts for publication, and took care of the organisation of both the academic programme and the accompanying social activities. We would like to express our sincere gratitude to the teaching assistants at the University of Novi Sad Faculty of Law: Ms. Olivera Jokić, Ms. Milica Kovačević, Ms. Andrea Širkočka, and Mr. Nemanja Krčmar. Last but by no means least, we owe a debt of gratitude to the numerous reviewers from Serbia and abroad, whose valuable contributions have undoubtedly helped ensure the high academic quality of the conference and, at the same time, made it worthy of the designation "international".

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Doc. Dr. Luka Baturan
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KEYNOTE SPEAKERS

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Dr. Wolfgang Wurmnest, LL.M.[*]

COMPENSATION FOR BREACHES OF DATA PROTECTION LAW – HOW TO KEEP THE FLOODGATES SHUT?

With the Europeanization of data protection law, a European right to damages has been established to remedy breaches of the General Data Protection Regulation (GDPR). The Regulation is enforced not only through public bodies but also by private parties. According to Article 82 of the GDPR, any person who has suffered pecuniary or non-pecuniary (or, as the GDPR calls it, material or non-material) damage as a result of an infringement of the Regulation shall have the right to receive compensation from the data controller or processor for the damage suffered. Thus, compensation is conditioned upon three requirements. The claimant has to establish (i) an infringement of the GDPR, (ii) damage, and (iii) a causal link between the infringement of the GDPR and the damage suffered. My talk will focus on the second requirement (damage) and the quantum of damages awarded to remedy the loss. It will, in particular, focus on non-pecuniary losses, given their prevalence in practice.

Prior to the entry into force of the GDPR in May 2018, the right to claim damages for breaches of data protection law was governed by the rules of the different EU Member States, and different thresholds for compensation applied in each jurisdiction. This was particularly the case with regard to non-pecuniary damages. Unlike pecuniary loss, non-pecuniary loss cannot be calculated with precision, as non-monetary interests can hardly be measured and often depend on the specific circumstances of the victim. Since some states, such as Austria and Germany, took a rather restrictive stance towards compensation for non-pecuniary losses resulting from violations of data protection rules, compensation could only be claimed where such damage exceeded a certain "threshold of seriousness". Minor impairments could therefore be remedied by other means, but not by monetary compensation.

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This restrictive approach was, however, rejected by the Court of Justice of the European Union (CJEU). In *Österreichische Post* (Case C-300/21), the CJEU held that Article 82 GDPR "must be interpreted as precluding a national rule or practice which makes compensation for non-material damage, within the meaning of that provision, subject to the condition that the damage suffered by the data subject has reached a certain degree of seriousness". Courts must therefore compensate the claimant in full for the damage suffered, although the right to claim damages has neither a punitive nor a deterrent function according to the CJEU (Case C-667/21; Joined Cases C-182/22 and C-189/22).

In practice, many cases deal with non-pecuniary losses, which are difficult to assess. The CJEU has clarified that not every breach of the GDPR gives rise to compensable damage, but that compensation is available only where the claimant can demonstrate the existence of actual damage. Fear of a possible future misuse of personal data by unauthorized parties may constitute non-pecuniary damage if "that fear can be regarded as well founded, in the specific circumstances at issue and with regard to the data subject" (Case C-340/21). A purely hypothetical risk of the data being misused, however, cannot give rise to compensation (Case C-687/21). However, it remains difficult to draw the line between a "purely hypothetical risk" and compensable damage, and the amount of compensation awarded for such breaches also varies considerably across Europe. Against this background, I will first give a general introduction to the right to claim damages before then explaining the general trends in the courts' assessment of damages.

Keywords: GDPR; Non-pecuniary damage; Right to compensation; CJEU case law; Data protection.

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Dr. István Sándor, PhD, DSc, TEP[*]

THE GLOBALIZATION OF LEGAL CULTURES: TRUSTS AND FAMILY WEALTH PLANNING IN COMPARATIVE PERSPECTIVE

The globalization of legal cultures has changed the legal environment of family wealth planning. Families, entrepreneurs and private clients increasingly hold assets, businesses and personal interests across several jurisdictions. Lawyers are therefore required to work not only with domestic categories, but also with institutions shaped by different legal traditions. Among these, the trust has become one of the most influential models. Rooted in English equity, it is now a global reference point for asset management, succession planning, family governance, philanthropy and the preservation of family businesses.

The lecture examines trusts and family wealth planning structures from a comparative private law perspective. It does not present the trust as a universal model to be transplanted into every legal system, but analyses how different jurisdictions respond to the same problem: how to separate ownership, control, benefit and risk in a legally coherent and economically useful manner. In this sense, the globalization of the trust is also the globalization of a legal technique, received, transformed, resisted or functionally replaced by domestic institutions.

The first part introduces the traditional Anglo-American trust. Its classical structure is based on the relationship between settlor, trustee and beneficiary, the segregation of trust assets, the trustee's fiduciary duties and the beneficiary's equitable position. In family wealth planning, this structure may serve intergenerational wealth transfer, the protection of vulnerable or prodigal beneficiaries, the management of family businesses, privacy, charitable or mixed purposes and, in some jurisdictions, asset protection. Living trusts, discretionary trusts, spendthrift trusts, purpose trusts, private trust companies and VISTA-type structures illustrate its adaptability.

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The second part turns to the comparative reception of trust-like structures outside the common law. Civil law jurisdictions have traditionally faced doctrinal difficulties, especially because of the unity of ownership, the *numerus clausus* of rights in rem and the publicity of property rights. Nevertheless, several models have emerged. In Germany, Austria and Switzerland, the *Treuhand* is based on ownership vested in the fiduciary, combined with contractual obligations. In France and Romania, the *fiducie* provides a statutory fiduciary transfer with a separate patrimony. In Québec and the Czech Republic, the managed assets are conceptualised as an autonomous patrimony or as property without an owner. The Dutch *bewind* keeps ownership with the beneficiary while entrusting administration to a manager. Mixed legal systems and offshore jurisdictions show that similar functions may be achieved through different doctrinal constructions.

Foundations constitute another important response to the needs of family wealth planning. In Liechtenstein and Austria, private foundations have long been used for the preservation, administration and transmission of family wealth, especially where the founder wishes to separate assets from personal ownership while maintaining a durable governance structure. The foundation model differs from the trust because it is based on a legal person or institutional patrimony rather than a fiduciary relationship. Hungarian law has followed this line through the asset management foundation, which combines foundation law with long-term asset management functions and may serve family wealth planning, business succession, philanthropy and the preservation of family enterprises.

The Hague Convention on the Law Applicable to Trusts and on their Recognition has contributed to the globalization of trust law. Its importance lies not in creating a uniform substantive law of trusts, but in providing a private international law framework for identifying the applicable law and ensuring the recognition of trusts in jurisdictions without a domestic trust institution. It has facilitated cross-border wealth planning and helped civil law lawyers, courts and authorities deal with trusts created under foreign law.

The third part focuses on Hungary as a civil law jurisdiction that has adopted its own functional solution. The Hungarian Civil Code introduced the fiduciary asset management contract, under which the settlor transfers assets to the fiduciary asset manager, who manages them in his or her own name for the benefit of the beneficiary. Hungarian law also distinguishes between ad hoc and professional fiduciary asset management and has developed the asset management foundation as a further model for long-term family and business wealth planning. These institutions are not copies of the Anglo-American trust, but civil law responses to modern private wealth structuring, combining ownership transfer, patrimonial segregation, fiduciary obligations, beneficiary protection and regulatory safeguards.

The lecture argues that family wealth planning is one of the most visible areas in which legal cultures interact. The comparative development of trusts, *fiducie*, *Treuhand*, autonomous patrimonies, foundations and other fiduciary structures shows that globalization often produces functional convergence together with doctrinal diversity. The essential question is not whether a legal system has adopted the trust in its original common law form, but whether it can provide effective mechanisms for long-term asset management, family governance, creditor protection, beneficiary protection and cross-border recognition.

Keywords: globalization of legal cultures; trust; family wealth planning; fiduciary asset management; comparative private law; legal transplants; fiducie; Treuhand; foundation; asset management foundation; patrimonial segregation; beneficiary protection; Hungarian law.

343.1:061.1EU
341.411
341.44

Dr. h.c. Krisztina Karsai[*]

BEYOND EXTRATERRITORIALITY: EU CRIMINAL JUSTICE COOPERATION AND THE LEGACY OF CLASSICAL JURISDICTIONAL RULES

The keynote speech examines the historical continuity and contemporary transformation of criminal jurisdiction through the lens of the Hungarian Csemegi Code and present-day European Union criminal justice cooperation. Its starting point is that jurisdictional rules are often treated as technical provisions of criminal law, whereas they in fact express one of the most fundamental questions of criminal justice: how far may the punitive power of the state extend in a legal space marked by mobility, multiple legal affiliations and overlapping sovereign interests?

The Csemegi Code of 1878, adopted in the context of the Austro-Hungarian Monarchy, offers an especially valuable historical point of comparison. The Kingdom of Hungary formed part of a multi-national and legally complex imperial space in which the movement of persons was a normal social, economic and administrative reality. Subjects travelled, worked, served, traded and litigated across internal and external borders. The Code therefore had to regulate not only crimes committed within the territory of the Hungarian state, but also offences committed abroad by Hungarian nationals, offences committed by foreigners, cases implicating state interests, questions of double criminality, the effects of foreign punishment and the limits of extradition. In this sense, the jurisdictional provisions of the Csemegi Code were not marginal technical rules, but a legal response to mobility in a plural legal environment.

Prof. Karsai argues that many of the basic connecting factors found in the Csemegi Code remain recognisable in contemporary criminal law. Territoriality, nationality, protection of state interests, double criminality, the relevance of foreign proceedings and the special treatment of nationals continue to structure criminal jurisdiction. The remarkable continuity of these concepts, however,

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should not obscure the profound change in the legal environment in which they operate. The Austro-Hungarian Monarchy and the European Union cannot be equated institutionally: the former was a dynastic and dualist imperial formation, while the latter is a supranational legal order based on the cooperation of Member States. Nevertheless, a functional comparison is fruitful. Both legal spaces confront a similar structural difficulty: persons move across borders with increasing ease, while criminal law remains largely tied to state territory, state authority and national legal systems.

The central claim is that EU criminal justice cooperation does not simply replace national criminal jurisdiction with a supranational criminal jurisdiction, nor does it merely encourage broader extraterritorial claims. On the contrary, one of its distinctive functions is to coordinate, limit and rationalise the exercise of overlapping national jurisdictions. Mobility in the EU is not primarily answered by unlimited extraterritoriality. Instead, EU law has developed new cooperative mechanisms designed to ensure that criminal proceedings, surrender and sentence enforcement take place in the most appropriate legal forum.

Three developments illustrate this transformation. First, the European Arrest Warrant has altered the classical tradition according to which a state does not extradite its own nationals. The traditional prohibition of extraditing nationals, clearly visible in nineteenth-century jurisdictional thinking, is not simply abolished but reconfigured. Within the EU, surrender operates on the basis of mutual recognition and mutual trust, while safeguards may still protect the social and legal ties of the requested person, particularly through return guarantees or the execution of sentences in the state of nationality or residence.

Second, the transfer of prisoners and the mutual recognition of custodial sentences show that mobility affects not only prosecution but also punishment. In a mobile legal space, the place where a person is convicted may differ from the place where reintegration is most realistically possible. EU law therefore allows the execution of custodial sentences to be transferred to another Member State, especially where this better serves the sentenced person's social rehabilitation. This represents a significant shift from a purely jurisdictional question — which state may punish? — to a functional question — where should the sentence be enforced?

Third, the transfer of criminal proceedings represents an even more explicit move beyond classical extraterritorial thinking. The recent EU framework on the transfer of proceedings seeks to prevent fragmented or parallel prosecutions and to direct cases to the Member State best placed to conduct the proceedings. Relevant factors include the place of commission, the place where the main effects occurred, the nationality or residence of the suspect, the location of evidence and witnesses, the interests of victims and the existence of related proceedings. The

question thus becomes not only whether a state has jurisdiction, but whether it is the most appropriate state to exercise it.

By comparing these EU mechanisms with the jurisdictional architecture of the Csemegi Code, Prof. Karsai seeks to show that legal tradition is not merely the survival of old rules, but the persistence of fundamental legal problems in changing institutional settings. The nineteenth-century code responded to mobility through territoriality, nationality, extradition rules and ministerial control over foreign-related cases. Contemporary EU law responds through mutual recognition, surrender, transfer of prisoners, transfer of proceedings and mechanisms for preventing conflicts of jurisdiction. The vocabulary and institutional techniques have changed, but the underlying tension remains: how can criminal law reconcile the mobility of persons with the territorial and sovereign foundations of punitive authority?

Prof. Karsai concludes that the study of historical jurisdictional rules is valuable for contemporary European criminal law because it reveals both continuity and transformation. It shows that current EU challenges are not entirely new, but neither are they merely repetitions of the past. The legacy of classical jurisdictional rules lies in the continuing relevance of their connecting factors; the novelty of EU criminal justice cooperation lies in its attempt to move beyond unilateral extraterritoriality towards a coordinated, cooperative and forum-sensitive model of criminal justice.

Keywords: Criminal jurisdiction; EU criminal justice cooperation; European Arrest Warrant; Mutual recognition; Transfer of criminal proceedings.

341.981
341.645:061.1EU

Dr. Vesna Lazić[*]

CHARACTERISATION AND UNIFORM INTERPRETATION IN THE CJEU CASE LAW: UNITY OR DIVERSITY?

The principle of uniform or autonomous interpretation is to be adhered to when EU private international law instruments are applied by the national courts of the EU Member States. Indeed, this applies in equal measure with respect to the Brussels Ibis Regulation, which is a key instrument of private international law unified at the European Union level. According to the CJEU case law, in order to ensure a uniform application of the Regulation, its provisions are to be interpreted in accordance with its terms, objectives and scheme, as well as general principles that stem from the corpus of national legal systems and decisions of the CJEU. Although the purpose of autonomous interpretation is to ensure uniform application of the Regulation, the manner in which it is applied is neither clear nor consistent.

Inconsistency in characterisation results in dichotomy of application of legal instruments dealing with different private international law issues, such as Brussels Ibis Regulation and the Rome I and or Rome II Regulations. In Case C25/18 the same legal transaction has been characterised as a contract for providing services under the Rome I Regulation, but not for the purposes of determining jurisdiction. In a similar vein, according to CJEU judgment C-242/20, an action for unjust enrichment does not qualify as 'tort, delict of quasi-delict' as a criterion to attribute jurisdiction under Article 7(2) of the Brussels Ibis Regulation, although it is specifically dealt with in the Rome II Regulation. Also, the CJEU-case law points to problems with characterisation in delineating the substantive scope of application between the Brussels Ibis and Insolvency Regulations. CJEU judgments in C-337/17 and C498/20 illustrate an apparent paradox – *actio pauliana* was regrettably qualified as a 'contract' within the meaning of Article 7(1) in the former, whereas in the latter it was characterised as an action in tort within the meaning of Article 7(2) of the Brussels Ibis Regulation. This consequential dis-

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crepancy may be resolved by the EU legislator when revising the Brussels Ibis Regulation. However, the problems encountered in delineating the substantive scope of application between the two Regulations is likely to be dealt with in a future revision of the Insolvency Regulation, considering that the true source of the difficulties lies in its current Article 6. Hopefully, a future revision will address the current dichotomy in characterisation within the Insolvency Regulation for the purposes of jurisdiction on the one hand and for determining the applicable law on the other.

Last but not least, the definition of a 'judgment' needs to be revisited in the view of the CJEU case law in C-700/20 and C-568/20*,* as well as the pending request for a preliminary ruling in Advocate General Emiliou's Opinion in C-799/24.

It is expected that uniform interpretation will be observed when interpreting the concepts which are defined or referred to, but not where the Regulations expressly point to national laws of EU Member States in the Brussels Ibis Regulation. One example of such occasional reference can be found in Article 25(1) which refers to a national law of the law of the Member State of the chosen court to assess the substantive validity of a prorogation clause. Presumably, such a reference to national law in itself excludes an 'autonomous' interpretation and implies the interpretation according to a national law of the particular Member State. However, there is a number of the CJEU judgments which deviate from this line of reasoning. Thus, the CJEU qualifies an issue of complaints alleging the imprecision or asymmetry of an agreement conferring jurisdiction as not pertaining to the substantive validity within the meaning of Article 25(1). Consequently, it is not 'covered' by a national law referred to in Article 25(1), but instead it qualifies as a concept subjected to the autonomous criteria which are derived from that provision, i.e., uniform interpretation (C-537/23). Moreover, even when a resort to a national law of a Member State is envisaged under the Regulation, the CJEU case law seems to extend the application of 'uniform interpretation' to limit certain effects of national law (e.g., C-398/24; Joined Cases C-345/22 to C-347/22; C682/23).

This contribution addresses the inconsistency in applying the principle of uniform interpretation, especially in the context of characterisation of the subject matter of an action, examines its purpose and reach according to the CJEU case law and explores the possibilities of resolving them by the EU legislator in a future revision of the Regulation.

Keywords: Characterisation, uniform interpretation, Brussels Ibis Regulation, prorogation of jurisdiction.

Dr. Giuseppe Puma[*]

COMPLICITY IN SERIOUS BREACHES OF INTERNATIONAL LAW: WHEN STATES COOPERATE "CONTRA LEGEM"

The lecture focuses on complicity of States in serious violations of International Law committed by other States, which, as well known, is regulated by Article 16 of the ILC Draft Articles on State Responsibility (ARSIWA). While practice was, until the adoption of the ARSIWA, relatively rare, after 2001 States started cooperating "*contra legem*", that is to say for purposes inconsistent with existing international obligations: the arms transfer to the Saudi-led coalition operating in Yemen, the support rendered to the grave breaches committed by Israel in the Occupied Palestinian Territories, are the most prominent examples of that practice.

As well known, complicity consists of the participation by a State in the internationally wrongful act committed by another State. My analysis focuses only on the assistance in the realization of grave breaches of international law, namely the violation of an obligation arising under a peremptory norm of general international law. According to the ILC Draft Conclusion n. 2 on *Jus Cogens*, "Peremptory norms of general international law (*jus cogens*) reflect and protect fundamental values of the international community. They are universally applicable and are hierarchically superior to other rules of international law". Conclusion 17 reads as follows: "Peremptory norms of general international law (jus cogens) give rise to obligations owed to the international community as a whole (obligations *erga omnes*) (…)". In Yemen and in the Gaza Strip violations of this kind have been committed, as suggested by a number of documents and a significant amount of evidence and by judicial proceeding before International Courts. Many States export arms to Saudi Arabia and the United Arab Emirates, including the United Kingdom, France, Germany and Belgium. The same hold true for the supply of armaments to Israel by the United States and a number of European Countries. In the opinion of the present author, this acts amount to the aid or assistance in serious violations of jus cogens regulated by article 16 AR-

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SIWA. The conditions set by this provision are fulfilled: as regards the *material* element – namely an action or an omission by the complicit State which is able to facilitate the principal wrongful act – the transfer of arms and the logistical and military support offered by certain States constitute the 'typical' objective element of complicity, given that it surely facilitates the commission of the principal wrongful act. As for the subjective element, article 16 requires that the assisting State acts "with knowledge of the circumstances of the internationally wrongful act". In the cases under consideration, international law scholars contend that knowledge, by the complicit States, of the circumstances of the main wrongful act can be considered as established and that and, in any case, where the wrongful act committed by the assisted State consists in a grave breach of a jus cogens rule, the "subjective" requirement is to be presumed. In the opinion of the author, there is no doubt as regards the applicability of article 16 to the States transferred arms to the Saudi-led coalition in Yemen. As regard the situation in the Gaza Strip, as well known there is a case pending before the International Court of Justice: *Alleged breaches of Certain international obligations in respect of the Occupied Palestinian Territory* (Nicaragua v. Germany). According to the applicant State, Germany has violated international law providing Israel with assistance, including military equipment. There is room for complicity to be legally and authoritatively assessed by the International Court of Justice, even though the proceedings seem far to be concluded in the near future.

Keywords: State responsibility; Complicity; Jus cogens; Aid or assistance; International law.

004.8:342.7(4)

Dr. Šejla Imamović, LL.M.[*]

ARTIFICIAL INTELLIGENCE AND THE FUTURE OF HUMAN RIGHTS PROTECTION IN EUROPE

Artificial intelligence (AI) is rapidly transforming the way individuals interact with public authorities, private companies, and society more generally. While offering significant opportunities for innovation, it also poses profound challenges for the protection of human rights. This contribution examines whether the European human rights system remains capable of responding effectively to the structural changes created by AI.

The keynote starts from the premise that AI does not necessarily create entirely new human rights challenges. Instead, it changes the manner in which existing rights are exercised, restricted, and protected. This is particularly evident in the fields of privacy and personal data protection. Traditionally, the right to privacy sought to protect individuals against unjustified collection, storage, or disclosure of personal information. AI alters this paradigm. Through the processing of vast quantities of data, algorithmic profiling, predictive analytics, and increasingly sophisticated inferential techniques, AI systems are capable of generating new knowledge about individuals that they have never voluntarily disclosed. As a result, the distinction between personal and non-personal data becomes increasingly blurred, while traditional concepts of consent, foreseeability, transparency, and individual control over personal information become progressively more difficult to maintain.

At the same time, AI challenges a number of assumptions on which the European human rights system has traditionally been built. The European Convention on Human Rights (ECHR or Convention) was developed around a model of identifiable public authorities, clearly attributable state action, and judicial review of concrete interferences with individual rights. AI, by contrast, frequently operates through complex interactions between public authorities and private actors, opaque decision-making processes, continuous data processing, and forms of algorithmic reasoning that are often difficult to explain or challenge. Questions concerning accountability, causation, victim status, and effective remedies

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become considerably more complex than in traditional human rights litigation. These developments raise broader questions regarding the ability of existing human rights institutions to respond to technological developments that evolve considerably faster than legislative reform or judicial protection.

Against this background, the contribution critically reflects on European regulatory responses, focusing primarily on the Council of Europe framework. It first examines the continued relevance of the ECHR as the principal human rights instrument within this framework, exploring whether existing Convention rights and the evolving case law of the European Court of Human Rights (ECtHR or Court) provide a normative basis for addressing the risks posed by AI technologies. Particular attention is devoted to the interpretative techniques that have enabled the ECHR system to respond to technological and societal change, including the Court's understanding of the Convention as a living instrument and the role of human dignity as an underlying value capable of guiding the dynamic interpretation of existing rights in response to the novel challenges posed by AI.

The lecture then turns to the Council of Europe's Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (AI Convention). As the first international legally binding treaty dedicated specifically to AI governance, the AI Convention establishes a common framework to ensure that AI systems are developed and used in a manner consistent with the Council of Europe's fundamental values. Rather than creating new substantive rights, it formulates broad principles designed to guide the implementation and interpretation of existing human rights obligations. This approach mirrors the AI Convention's character as a framework treaty, facilitating broad international participation in an area characterised by rapid technological change. At the same time, it necessarily leaves considerable discretion to Contracting States and provides only limited guidance on how ECHR rights or human rights generally should be applied to increasingly complex AI technologies. As a result, much will ultimately depend on national implementation and the gradual development of the Strasbourg case law.

Ultimately, the lecture explores whether this combination of broad regulatory principles and evolving ECHR jurisprudence provides a sufficiently robust response to the challenges posed by AI or whether the pace of technological innovation risks outstripping the gradual development of human rights protection at both the national and European levels. It argues that the future of human rights protection in the age of AI will depend less on the recognition of new rights than on the capacity of existing institutions to reinterpret and effectively enforce established human rights guarantees in an increasingly complex technological environment. The ECtHR is unlikely to develop an entirely new body of AI-specific human rights principles. Rather, its jurisprudence is expected to emerge in-

crementally through the application of existing Convention guarantees to novel technological contexts. Whether this gradual process will prove capable of keeping pace with the rapid development and deployment of AI technologies remains an open question.

Keywords: Artificial Intelligence (AI), Human Rights, Privacy and Data Protection, European Convention on Human Rights (ECHR), Council of Europe AI Framework Convention.

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343.144(498)

Dr. habil. Flaviu Ciopec[*]

NON-TRIAL RESOLUTIONS IN CRIMINAL PROCEEDINGS IN ROMANIA

The traditional criminal trial, designed for a single defendant and focusing all procedural attention and energy on that individual, has clearly outgrown its limits. New-generation offences, committed particularly within the context of organized crime, require a rethinking of the architecture of the criminal justice system, as managing a group of defendants raises significantly more issues than a criminal trial involving a single defendant. These problems stem not only from the need for additional logistical resources, but also from the need for a coherent judicial strategy that takes into account the potential diversity of positions held by co-defendants in the same trial, as well as the evidential difficulties inherent in a deliberately clandestine modus operandi such as that employed by organized crime. In response to these issues, we are witnessing the emergence of judicial solutions that bypass the traditional course of a full trial, with alternative solutions being preferred. This study explores and catalogues the instruments adopted within Romanian procedural law concerning the resolution of criminal cases without going through the trial phase.

In this regard, this study will examine the institution of the plea agreement as the principal instrument ensuring an agreement between the prosecution and the defense with the aim of resolving the criminal dispute. This institution is specific to the preliminary stage of the criminal investigation; it is initiated by the prosecutor or the defendant and is subject to judicial review regarding compliance with certain formal requirements, and sometimes also with certain substantive requirements. Another instrument is the procedure for the admission of guilt, specific to the trial phase, which significantly shortens the proceedings (that explains why it is labelled as a summary judicial procedure). Essentially, this procedure is unilateral (it depends exclusively on the defendant's will) and is also subject to judicial review. If the judges consider that the legal conditions are met, they grant the defendant's application and proceed directly to sentencing,

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without conducting their own judicial inquiry. The study will also examine the relationship between these two institutions, from the perspective of the risk of cannibalizing one another.

Another distinct summary trial procedure is one in which the defendant, whilst not pleading guilty, does not contest the evidence gathered during the pre-trial investigation. Also known as the 'nolo contendere' procedure, this is of interest to defendants who do not wish to take part in a traditional court hearing, but who, at the same time, do not explicitly admit the charges, as they wish to ensure that the resolution of other matters (e.g. the payment of damages) is not undermined by a formal admission of guilt.

The study also analyses the current status and future of the institution of mediation in criminal matters, which has a long history in national law, but is not currently operational. Finally, the study will also examine the institution of waiver of criminal investigation, a decision of the case prosecutor that allows an investigation to be closed if there is no longer a public interest in prosecuting the offence. The prosecutor's decision is subject to formal judicial review, but this does not detract from the discretionary nature of the judicial decision adopted.

In conclusion, this study aims to review the consistency of national legislation regarding the non-trial resolutions in criminal cases, an initiative intended to serve as a starting point for similar comparative studies.

Keywords: plea agreement – guilt admission application – `nolo contendere` procedure – mediation in criminal matters – waiver of criminal investigation.

343.1:340.5

Dr. Milan Škulić[*]

NORMATIVE CONSTRUCTION OF CRIMINAL PROCEDURE AND LEGAL TRADITION

The normative construction of criminal procedure is based in a conceptual point of view on the affiliation of a specific positive criminal procedural law to the corresponding basic comparative law model. There are two major positive law criminal procedural systems These are: 1) the continental-European criminal procedural system and 2) the Anglo-Saxon. or adversarial criminal procedural system. The affiliation of a particular state's criminal procedure to one or the other of these two major comparative criminal procedure systems, predominantly arises from legal tradition.

Continental-European criminal procedures are characterized by the dominance of inquisitorial elements in the investigation, but with respect for the right to defense even at that stage of the criminal procedure. In this type of procedure, the basic criminal procedural functions are strictly separated at the trial stage, but the public (state) prosecutor is still not a real, or typical, party, because he, as a state body, is obliged to protect, in addition to party interests based on the function of the accuser, also general interests, and above all the interest arising from the principle of truth. In addition to the evidence that incriminates the defendant, the public prosecutor during the investigation is also obliged to collect evidence in support of the defense. The court is during the main hearing extremely active in terms of evidence and is not limited by the evidentiary proposals of the parties, but has the right and duty to take its own evidentiary initiative, in order to establish the complete and accurate factual situation (truth in the evidentiary point of view), but also with the respect of the principle in dubio pro reo.

It is characteristic of Anglo-Saxon, or adversarial (party) types of proceedings that the court is very passive in terms of evidence, so that the presentation of evidence is basically left to the parties, while the court mainly focuses on assessing which party in the "evidentiary duel" before it, was more successful. This is the main feature of the classic jury trial, which in practice, such as in the USA, is becoming an exception, due to the expansion of the plea barging

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process mechanism. The trial begins with the presentation of the prosecution's evidence, to which the defense responds in certain procedural forms, and then the defense's evidence is presented. This criminal procedure system is very similar to the classic litigation in European legal systems. The hearing during the trial is of a party nature. A particular witness is first heard by the party that called him (examination-in-chief), then by the opposing party (cross-examination), and then the witness is heard again by the party that called him (re-examination).

In a world that has long since become a "global village", in most European criminal procedure systems, elements from two major comparative law criminal procedure models are mixed, which is the essence of the European-continental mixed model of criminal procedure. This is a conceptual feature of the current Criminal Procedure Code of Serbia too, which is characterized by significant not only legal-technical, but also conceptual shortcomings. It is of a hybrid nature, and represents a normative combination of a whole series of inquisitorial and some limited adversarial elements. The current criminal procedure in Serbia largely deviates from the Serbian legal tradition in the domain of criminal procedural law, and this fundamental conceptual anomaly, along with the need to correct a number of significant law- technical shortcomings it contains, is an important reason for the need to modify or replace it with a completely new Criminal Procedure Code.

Keywords: Criminal Procedure, Criminal Procedural Law, Comparative Law, Legal, Tradition, Basic Criminal Procedural Models.

343.1
343.137.3
343.137.2

Dr. Snežana Brkić[*]

TRIAL OF AN ABSCONDED ACCUSED AND OF AN ACCUSED WHO FAILS TO APPEAR – PARALLELS

The 2011 Criminal Procedure Code (CPC) of Serbia provides for several exceptions to the rule on the mandatory presence of the accused at the main trial. Only two of them rest on the accused's wilful non-appearance: trial of an absconded or unavailable accused (Article 381) and holding the main trial in the case of a so-called accused who fails to appear (Article 507/2). There are numerous differences between these two institutions:

1. place in the Code: Article 381 is in Chapter XVIII, governing general criminal proceedings, and Article 507/2 in Chapter XX, governing summary proceedings;

2. conditions of application: the accused who fails to appear must have been previously questioned and his presence must not be necessary, whereas the absconded accused may be tried for particularly justified reasons, without prior questioning;

3. scope of application: Article 507/2 is limited to offences punishable by a fine as the principal penalty or imprisonment of up to three years, whereas Article 381 is not limited by the gravity of the offence;

4. initiative and functional competence: under Article 507/2 the judge decides after obtaining the prosecutor's statement and may decide contrary to it, whereas under Article 381 the panel decides solely on the prosecutor's motion;

5. subject of proof: under Article 507/2 it is primarily the proper service of the summons for the specific hearing, under Article 381 the fact of absconding or unavailability, which also requires efforts by the court to locate the accused (e.g. a wanted notice);

6. effect of the decision: a decision under Article 507/2 concerns the specific main trial session, one under Article 381 the entire proceedings until the accused appears;

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7. legal remedy: a separate appeal lies against a ruling under Article 381, whereas a decision under Article 507/2 may be challenged only in an appeal against the judgment;

8. additional safeguards: only the absconded accused has mandatory defence counsel and the right to reopening of proceedings without new facts or evidence.

These parallels raise the long-standing question whether Article 381 also applies mutatis mutandis in summary proceedings under Article 495, i.e. whether an absconded accused who has not previously been questioned may be tried in those proceedings. The answer requires a logical analysis of the content and extension of these two concepts.

The first essential feature of the accused who fails to appear is proper summons, the second a wilful, unjustified absence. The latter is not expressly stated in Article 507/2, but follows from a linguistic interpretation of the wording "if the accused… fails to appear at the main trial, although duly summoned". The concessive conjunction "although" (iako) expresses the opposition between the summons and the non-appearance: despite the summons, the accused chose not to appear. Had the legislator had objective obstacles in mind, it would have used a causal conjunction ("because"), as it does whenever it takes into account the inability of participants to appear (e.g. Articles 192/2, 404/1 and 406/1/1). This distinguishes him from the accused absent with justification, but not from the absconded accused. Proper summons may exist for an absconded accused as well, owing to the special rules on service (fictitious service, service abroad), while the unjustified absence is precisely their common element. At first sight, therefore, they would appear to be intersecting concepts. However, since the essential feature of the absconded accused is absconding, i.e. unavailability to state authorities, the basic criterion distinguishing them is the accused's (un)availability to measures of procedural coercion, as indicated by Articles 13/1 and 380. Only with this feature do the absconded accused and the accused who fails to appear become coordinate concepts, subordinated to the genus "absent accused", with no common extension. Article 507/2 is therefore not an alternative regime for absconded persons, but a *lex specialis* in relation to compelled appearance (Article 380) – exclusively for available, unjustifiably absent persons who have already been questioned. Thus, the two provisions are not in logical competition but cover different procedural situations, so Article 507/2 does not preclude the application of Article 381 mutatis mutandis in summary proceedings: nothing is "specifically provided otherwise" in Chapter XX with regard to unavailable persons.

Criminal policy considerations – preventing the expiry of the statute of limitations and the abuse of procedural rights – also support the permissibility of trying an absconded accused in summary proceedings, under the conditions of Article 381 and in line with the fair trial standards of Article 6 ECHR.

Keywords: absconded accused, accused who fails to appear, absent accused, trial in absentia, summary proceedings.

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502/504:341.24

Dr. Sanja Đajić[*]

PROTECTION OF ENVIRONMENTAL DEFENDERS UNDER THE AARHUS CONVENTION: THE RELEVANCE OF THE SPECIAL RAPPORTEUR'S MEASURES FOR NATIONAL COURTS IN LIGHT OF A RECENT CASE FROM SERBIA

The Aarhus Convention (the 1998 UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, hereinafter: AC) is a landmark international agreement that seeks to protect the environment through a set of specifically designed procedural rights, referred to as a 'procedural trinity' (Weaver, The Aarhus Convention: Towards Environmental Solidarisation, 2023, 105), comprising the rights of access to information, public participation in decision-making, and access to justice. It has been hailed as a driving force for environmental democracy and environmental rule of law precisely because of its institutional architecture: it primarily relies on empowering public to engage in environmental matters through procedural mechanisms that provide individuals with distinctive environmental agency and standing.

Central to this design is the concept of 'environmental defenders' defined in Article 3(8) of the AC as 'persons exercising their rights in conformity with the provisions of this Convention' who 'shall not be penalized, persecuted or harassed in any way for their involvement'. Subsequent interpretations have understood the concept of an 'environmental defender' to encompass persons exercising not only the rights granted under the AC, but also any other rights, including human rights and rights guaranteed by domestic law, where those rights are exercised with the aim of furthering the objective of the AC. Its relevance was further recognized by the Parties to the AC when, in 2021, they established the Special Rapporteur on Environmental Defenders (Decision VII/9, ECE/MP.PP/2021/2/Add.1) in response to the increasing risks faced by environmental defenders. The

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mandate of the SR, complementary to the Compliance Committee, is primarily to provide a rapid response to urgent cases in which environmental defenders are subjected to, or are at risk of penalization, persecution, or harassment by either governmental authorities or private entities. The SR is entitled to issue protection measures to any governmental body or public authority with the list of actions required. Although the mandate did not originally encompass recourse to national courts, the subsequent practice of the Compliance Committee and of the SR has expanded its scope to include the power of the SR to address both national courts and public prosecutors. From June 2022 to September 2025, the SR received 95 complaints, of which 79 were found admissible and proceeded to the complaints procedure.

In 2024 a complaint was lodged against the Republic of Serbia concerning criminal proceedings brought against an environmental activist who, together with others, had peacefully protested against construction works in the protected area (ACSR/C/2024/71 (Serbia)). Charged with obstructing the police, which is a criminal offence punishable by imprisonment, the activist claimed environmental defender status, denied the allegations, submitted video evidence, and argued that the proceedings amounted to prohibited penalization, persecution and harassment under Article 3(8) of the AC. After the Government of Serbia failed to respond to the SR's letter of allegation, the SR communicated 'immediate measures' directly to the Novi Sad court (ACSR/C/2024/71 (Serbia), Letter to the Basic Court in Novi Sad, 8 May 2026), stating that the accused had the status of an environmental defender and clarifying the scope of Serbia's obligations under the AC. The SR's statement was not merely advisory. Not only did the SR unequivocally call for the dismissal of the criminal charges ('In sum, given the clear disproportionality of the present criminal prosecution of …, the criminal charges against him should be dismissed)' but he also addressed the presiding judge directly:

'As a judge, you have the responsibility to ensure that any prosecution or sanction of … complies with Serbia's obligations under article 3 (8) of the Aarhus Convention. This requires to ensure that the steps taken by the State against … are reasonable, proportional and in pursuit of a legitimate public purpose and therefore do not amount to penalization, persecution or harassment of … for the exercise of his rights under the Convention. A failure to ensure that this obligation is met may amount to a breach of article 3 (8) of the Aarhus Convention, and thus Serbia's own constitutional principles.'

Yet it remains to be seen what effect the local court will give to this position. The Serbian Constitution provides for the supremacy and direct effect of treaties and, under Article 18, requires that provisions concerning human and minority rights be interpreted in accordance with international standards and the practice of international supervisory bodies.

Keywords: Environmental defenders, Aarhus Convention, Relationship between international and national law.

343.24:614.47
616.98:578.827
174:61

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WHEN HEALTH POLICY BECOMES PUNITIVE (ONCE AGAIN): LEGAL-POLICY AND MEDICAL-ETHICAL CONSIDERATIONS ON THE MANDATORY HPV VACCINE

Since the adoption of the Law on Protection of the Population from Infectious Diseases in 2016, vaccination for a whole range of childhood diseases in Serbia has become mandatory under the threat of misdemeanor sanctions. Now, through proposed amendments to the Law, another one is being added to this list: the HPV vaccine. Both the adoption of the Law in 2016 and subsequent legislative initiatives to refine it have met with more or less sharp public condemnation in Serbia. It is entirely reasonable, then, to ask what legal-policy and ethical arguments guided the legislator when—without public debate, in a rush, and fully aware that this proposal for mandatory vaccination would once again cause social turmoil—it decided to take the same, wrong step. The legal framework for discussion in this case is already established. It consists primarily of the Oviedo Convention and the requirements it places on any legislator wishing to turn a health measure into a mandate. Therefore, this mandatory vaccination, like every previous one, must pass the proportionality test and then the subsidiarity test due to the conditions set in the Convention, while taking into account the cultural and social conditions of the country in question. As already highlighted in previous papers, this analysis requires examining the characteristics of the disease in question and its current status in the relevant society, the characteristics of the vaccine intended to suppress it, and the characteristics of alternative health measures that could be undertaken to achieve the same goal. As the most flexible criterion provided by the Oviedo Convention, the cultural and social conditions of the society where the health authorities intend to implement this punitive measure must also be considered. Given that, as in previous cases,

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children are once again the target of this coercive measure, the nature of parenting in our society must also be examined. As always when dealing with rights that fall under constitutional categories, balancing them should provide the final answer regarding the justification of both measures.

Even a preliminary consideration of legal-policy and ethical arguments supports the criticism of this proposed amendment to the Law. The strongest argument is certainly the nature of the virus: it is exclusively sexually transmitted. This means there is no risk of accidental infection in public spaces by third parties who have nothing to do with the risk factor. This is the strongest argument eliminating the need to restrict personal autonomy through mandatory vaccination. Like other sexually transmitted viruses, this one is eliminated in about 70% of cases through condom use. Furthermore, only high-risk strains (less then 30%) are dangerous enough to cause cancer. It is a very important fact that the body successfully fights off 90% of all infections within 6 to 24 months. The remaining 10% of infections become chronic, and only these have the potential to turn into cancer over an exceptionally long period - from 15 to even 20 years, (this period may be shorter in immunocompromised individuals). This is the second characteristic of the disease that strongly argues against mandatory vaccination. Within a timeframe of 15 to 20 years, there is ample time to react with other measures, which is already being done (so-called screening). The incidence rate is low, and in Serbia, thanks to alternative measures already being taken (so-called screening), it is falling over time, leaving it an open question as to what would even be gained by mandatory vaccination that is not already being achieved. The long-term effects of the vaccine (the first was developed in 2006) are not fully examined because it has only been in circulation for about 20 years.

Regarding the cultural and social conditions of the country in question, we will mention only one here. The low level of citizen trust in health authorities, and authorities in general, is by no means an encouraging environment for such an aggressive and invasive health policy measure. All the texts published by the author on this project—which have already explained the errors and misconceptions of Serbian health authorities in handling various disease epidemics (starting with the avian flu epidemic in 2009) provide an overview of the genesis of this public distrust. Mistrust certainly cannot be rebuilt using the very measure through which trust was lost: punitive repression. It can already be predicted that the outcome of this measure, if introduced into the Law, will be devastating; it will only reduce the scope of the already low HPV vaccination rate. Coercive healthcare measures will not result in an increased HPV vaccination rate, but will instead lead to an accumulation of citizen dissatisfaction and contribute to the development of the “culture of rejection” of vaccination in general, a phenomenon already described in epidemiological psychology.

Keywords: HPV Vaccine, Mandatory Nature, Misdemeanor, Punishment, Oviedo Convention, Medical Ethics.

343:502/504
341.24

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ENVIRONMENTAL CRIME AND CRIMINAL JUSTICE: ETHICAL PERSPECTIVES, PROCEDURAL CHALLENGES, AND THE IMPACT OF DIRECTIVE (EU) 2024/1203

Environmental crime has emerged as one of the most serious contemporary threats to sustainable development, biodiversity, ecosystem integrity, human rights, and human well-being. Beyond its legal significance, it raises fundamental ethical questions concerning the object of environmental protection and the values that criminal law ought to safeguard. Contemporary approaches increasingly move beyond exclusively anthropocentric conceptions of environmental protection, recognizing the intrinsic value of nature and attributing independent moral significance to ecosystems, biodiversity, and non-human living beings. This development has gradually found expression in constitutional and legislative frameworks that extend protection beyond exclusively human interests. At the same time, the concept of intergenerational justice has reinforced the view that future generations should also be regarded as beneficiaries of environmental protection. These different ethical perspectives shape the conceptualization of environmental crime and influence decisions regarding what should be protected through criminal law and what forms of environmentally harmful conduct should be subject to criminalization.

From a criminal justice perspective, environmental crime presents distinctive procedural and evidentiary challenges. Environmental offences frequently produce complex and long-term consequences that are difficult to detect, investigate, and prove. Moreover, many serious forms of environmental crime increasingly exhibit the characteristics of organized crime. Offences such as the illegal exploitation of natural resources, unlawful waste management, illegal logging,

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and trafficking in protected species are often closely connected with corruption, money laundering, document fraud, and other forms of organized transnational criminal activity. Corruption further undermines the effectiveness of environmental protection where competent inspection and regulatory authorities fail to enforce environmental legislation or deliberately refrain from reporting unlawful conduct. Consequently, the effective investigation and prosecution of environmental crime require specialized investigative capacities, extensive reliance on scientific and technical evidence, including toxicological, hydrological, biological, veterinary, and other expert examinations, and close cooperation among judicial authorities, law enforcement agencies, environmental inspectorates, and other competent authorities.

Against this background, Directive (EU) 2024/1203 on the protection of the environment through criminal law represents a significant step towards strengthening criminal law as an instrument of environmental protection. By broadening the catalogue of environmental offences, enhancing the sanctions regime, promoting corporate liability, and reinforcing enforcement mechanisms, the Directive strengthens the capacity to combat serious environmental crime. It also has important implications for criminal procedure by emphasizing the need for specialized investigative capacities, scientific and technical expertise, and enhanced national and cross-border institutional cooperation.

Combining axiological inquiry with legal-dogmatic analysis, the study examines the values underlying the criminal-law protection of the environment and assesses the relevant European and national legal frameworks. Particular attention is devoted to the principal innovations introduced by Directive (EU) 2024/1203 and their implications for criminal justice and criminal procedure. The study further explores the challenges of detecting, investigating, and proving environmental offences, including the role of expert evidence in establishing environmental harm and causation and the relationship between environmental crime, corruption, and organized crime. It also considers the evolving boundaries of criminalization, including whether certain forms of environmentally harmful conduct that do not currently constitute criminal offences should be brought within the scope of criminal law. Finally, it assesses the extent to which the criminal legislation and criminal procedure legislation applicable in Bosnia and Herzegovina provide an adequate framework for the effective investigation and prosecution of environmental crime, while identifying the principal legislative and practical challenges in this field.

Keywords: environmental crime, environmental ethics, anthropocentrism, criminal procedure, Directive (EU) 2024/1203, organized crime, Bosnia and Herzegovina.

343.431(497.11)
343.435(497.11)
342.7

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ASSISTANCE, SUPPORT AND PROTECTION OF VICTIMS OF HUMAN TRAFFICKING

One of the fundamental priorities in the combat against human trafficking is ensuring the provision of comprehensive assistance, support and protection to victims, both during criminal proceedings and beyond the confines of the judicial process. Such assistance, support and protection should be made available from the very moment an individual is identified as a victim of human trafficking. In the broadest sense, human trafficking encompasses any conduct carried out by means and for purposes that constitute trafficking in human beings, as defined by ratified international treaties and national legislation.

Victims' rights to assistance, support, and protection constitute an essential component of the broader framework of victims' rights that must be guaranteed in contemporary legal systems. These rights are inherently complex, as they encompass a wide range of measures and activities that fall within the competence not only of law enforcement and judicial authorities but also of numerous other state bodies, public institutions, and organizations. In this context, non-governmental organizations involved in combating human trafficking and providing assistance to victims have emerged as indispensable strategic partners in the provision of victim support services and protective measures, thereby underscoring the importance of public–private cooperation in this field.

A prerequisite for the effective and adequate protection of victims of human trafficking is the existence of a coherent legal framework capable of establishing an efficient national mechanism—that is, a coordinated system of actors entrusted, either directly or indirectly, with responsibilities related to the provision of assistance, support, and protection to victims. The establishment and functioning of such mechanisms should be aligned with the standards and recommendations developed by GRETA (the Group of Experts on Action against Trafficking in Human Beings), an independent monitoring body of the Council of Europe respon-

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sible for supervising the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005. GRETA's standards and recommendations are intended to guide states in aligning their domestic legal frameworks with international obligations and ensuring the effective protection of victims of human trafficking. Such harmonization is particularly important given the predominantly transnational nature of human trafficking, which frequently transcends national borders and therefore necessitates coordinated institutional responses.

In 2026, the Republic of Serbia enacted its first specialized Law on the Prevention and Suppression of Human Trafficking and the Protection of Victims (*Official Gazette of the Republic of Serbia*, No. 35/2026), thereby establishing the National Institutional Mechanism for the Prevention and Suppression of Human Trafficking and the Protection of Victims. This mechanism encompasses all relevant stakeholders involved in combating human trafficking and protecting victims, as provided for in Article 10. These include the Council for Combating Human Trafficking; the National Coordinator for Combating Human Trafficking; the Protector of Citizens, acting in the capacity of the National Rapporteur on Human Trafficking; the police; public prosecution offices; courts; the Centre for the Protection of Victims of Human Trafficking; and the ministries responsible for labour, employment, veterans' affairs, social issues, family protection, education, healthcare, justice, information, telecommunications, and foreign affairs. The mechanism also includes the Labour Inspectorate; representative trade unions; the Commissariat for Refugees and Migration; centres for social work and other social welfare institutions; healthcare providers; educational institutions; associations engaged in preventing human trafficking and providing assistance and protection to victims; the Red Cross of Serbia; and local anti-trafficking teams.

The Law comprehensively regulates the competencies and responsibilities of the entities constituting the National Institutional Mechanism. It also establishes preventive measures aimed at combating human trafficking, defines victims' rights, regulates victim identification procedures, and addresses other issues relevant to strengthening and improving the criminal justice response to human trafficking. In this respect, the Law complements the existing criminal legislation governing the offence of human trafficking and the criminal law protection afforded to victims of this offence.

The adoption of a specialized legislative framework enabling the organized, coordinated, and institutionalized provision of assistance, support, and protection to victims of human trafficking, both in the context of criminal proceedings and independently of such proceedings, represents a significant advancement in the development of Serbia's anti-trafficking policy. By establishing a comprehensive legal framework in this area, the Republic of Serbia has introduced an innovative

normative model of significance not only in the region but also in a broader comparative context.

Keywords: human trafficking; victim protection; victims' rights; National Institutional Mechanism; anti-trafficking legislation; GRETA standards; victim identification; Republic of Serbia.

343.1
343.14:004
351.74:351.759

Dr. Veljko Turanjanin[*]

FROM SURVEILLANCE TO CONVICTION: DIGITAL EVIDENCE AND HARMFUL POLICING IN CRIMINAL PROCEEDINGS

The rapid digitalisation of criminal investigations has profoundly transformed contemporary policing. Digital surveillance technologies—including closed-circuit television (CCTV), body-worn cameras, drones, automatic number plate recognition systems, mobile phone extraction, and increasingly artificial intelligence-assisted analytical tools—have become integral to criminal investigations and judicial decision-making. While these developments have enhanced the capacity of law enforcement agencies to detect and prosecute crime, they have simultaneously generated new forms of procedural risk that remain insufficiently addressed within existing legal frameworks.

Current scholarship on harmful policing has predominantly concentrated on excessive use of force, discriminatory practices, racial profiling, unlawful surveillance, and violations of privacy. Comparatively little attention has been devoted to the evidentiary dimension of harmful policing, namely the ways in which digital evidence itself may become a source of procedural injustice. This paper argues that harmful policing should also encompass practices through which the production, selection, interpretation, and presentation of digital evidence adversely affect the fairness of criminal proceedings. Such harms do not necessarily arise from unlawful police conduct, but may instead emerge from technological limitations, institutional practices, or legal assumptions regarding the reliability and neutrality of digital evidence.

The paper starts from the premise that digital evidence is not merely discovered but actively constructed through a series of technological and human decisions. Choices concerning camera placement, recording parameters, activation of body-worn cameras, data retention, image enhancement, algorithmic processing, and evidentiary selection inevitably influence the factual narrative presented be-

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fore the court. Although digital recordings are frequently perceived as objective representations of reality, they remain partial and context-dependent products of technological mediation. The increasing use of artificial intelligence for image enhancement, facial recognition, object detection, and video reconstruction further complicates traditional concepts of authenticity, integrity, and evidential reliability.

The analysis proceeds in three stages. First, it examines the collection and production of digital evidence in contemporary policing, demonstrating how discretionary decisions embedded within technological systems influence evidentiary outcomes. Particular attention is paid to selective recording, surveillance concentration in socio-economically disadvantaged communities, and the risk that digital policing may reproduce or amplify existing structural inequalities.

Second, the paper analyses the principal evidentiary challenges associated with digital material. These include questions concerning authenticity, integrity, chain of custody, algorithmically processed evidence, AI-assisted enhancement, metadata interpretation, and the increasing complexity of establishing evidential reliability in criminal proceedings. The discussion also considers the growing risk posed by synthetic media and deepfake technologies, which challenge traditional evidentiary assumptions and increase the burden placed upon courts when assessing the probative value of digital material.

Third, the paper evaluates the implications of these developments for the right to a fair trial under Article 6 of the European Convention on Human Rights. Particular emphasis is placed upon the principles of equality of arms, adversarial proceedings, effective defence, disclosure obligations, and judicial assessment of technologically generated evidence. It is argued that existing procedural safeguards were largely developed for traditional forms of evidence and are therefore only partially capable of addressing the complexities introduced by contemporary digital policing.

Methodologically, the paper employs doctrinal legal analysis complemented by an examination of relevant European Court of Human Rights jurisprudence, comparative legal developments, and recent scholarly literature on digital evidence, criminal procedure, and policing technologies.

The paper concludes that harmful policing should no longer be understood exclusively through the lens of physical coercion or discriminatory enforcement. In the digital era, evidentiary practices themselves may generate significant forms of procedural harm capable of undermining public confidence in criminal justice and the effective protection of fundamental rights. To address these challenges, the paper proposes strengthening procedural safeguards through enhanced transparency regarding technological processes, stricter admissibility standards for digitally processed evidence, improved disclosure obligations, independent

verification of AI-assisted evidence, and more rigorous judicial scrutiny of technologically mediated proof. By reconceptualising harmful policing through the perspective of digital evidence, the paper seeks to contribute to contemporary debates on criminal procedure, digital justice, and human rights in increasingly technology-driven systems of law enforcement.

Keywords: Surveillance; Digital Evidence; Harmful Policing; AI-assisted footage.

327:316.4]:341

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Almir Beridan[**]

FROM COLLECTIVE SECURITY TO SOCIETAL RESILIENCE: THE TRANSFORMATION OF INTERNATIONAL LAW AND EUROPEAN UNION LAW IN RESPONSE TO GLOBAL CRISES AND EMERGING SECURITY CHALLENGES

The concept of collective security constitutes one of the foundational pillars of the contemporary international legal order. Developed in the aftermath of the Second World War with the aim of preserving international peace and security, it rests on the premise that a threat to one state constitutes a threat to the international community as a whole and that collective action by states and international organizations can prevent or effectively address threats to peace. While this model has long served as the dominant framework for international security governance, contemporary developments in international relations increasingly challenge its capacity to respond independently to new and complex forms of insecurity.

The contemporary security environment is characterized by the emergence of transnational and interconnected risks that transcend the traditional categories of international law. Hybrid threats, cyberattacks, disinformation campaigns, pandemics, climate change, energy crises, and disruptions to global supply chains increasingly affect societal stability, institutional effectiveness, and the continuity of essential public services. At the same time, intensifying geopolitical competition, shifts in the distribution of global power, and the challenges confronting contemporary multilateralism further complicate the effective functioning of traditional collective security mechanisms.

Against this backdrop, international law and European Union law have progressively developed new approaches centred on prevention, risk management, and the strengthening of societal resilience in the face of diverse forms of crisis. Within this evolving framework, the concept of societal resilience has assumed

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growing prominence in both international and European strategic and normative instruments. Unlike the traditional state-centred approach, which primarily focuses on the protection of sovereignty and territorial integrity, the resilience paradigm emphasizes the capacity of societies, institutions, and critical infrastructure to anticipate, absorb, adapt to, and recover from disruptions caused by a broad range of security threats.

This paper is based on the premise that the increasing prominence of societal resilience constitutes one of the most significant indicators of the ongoing evolution of international and European security law. In this context, it examines whether the strengthening of normative and institutional resilience mechanisms points towards a possible redefinition of the referent object of security within contemporary international law and European Union law, namely a gradual shift from the exclusive protection of the state towards the protection of societal functions, critical infrastructure, and democratic institutions.

Particular attention is devoted to the analysis of legal and institutional instruments designed to protect critical infrastructure, enhance digital and energy security, counter hybrid threats, and safeguard democratic processes in times of crisis. In doing so, the paper explores the relationship between traditional principles of international law, including sovereignty, international cooperation, and collective security, and more recent approaches grounded in resilience, prevention, and risk management.

The research is based on a normative and comparative analysis of relevant sources of international law, the acquis of the European Union, strategic policy documents, and contemporary scholarly literature. Its objective is to determine whether the existing international legal framework provides adequate responses to contemporary security challenges or whether the development of the resilience paradigm requires further normative adaptation and the emergence of new models of protection. In this regard, the paper investigates whether societal resilience primarily complements existing security mechanisms or signals a broader transformation in the ways international law and European Union law conceptualize and operationalize security.

The paper's contribution lies in its critical examination of the relationship between the traditional concept of collective security and contemporary resilience-based approaches, as well as in its attempt to identify possible trajectories for the future development of international and European security law in the context of global crises, emerging security challenges, and shifting power relations within the international community.

Keywords: collective security, societal resilience, international law, European Union law, global crises, hybrid threats, critical infrastructure, security law.

351.78:621.311]:004

Dr. Nenad Radivojević[*]

INTERDEPENDENCE OF CRITICAL ELECTRICAL POWER AND INFORMATION INFRASTRUCTURE – SECURITY AND LEGAL CHALLENGES

One of the approaches to determining the criticality of certain infrastructures is the sectoral approach. The most common sectors in which critical infrastructure (CI) is identified and designated include: energy, transport, food and water supply, information technology, finance, and others. The energy sector (particularly the electrical power sector) and the information technology sector are the ones upon which the functioning of modern society rests. What sets them apart from other CI sectors is their immediate and direct impact on the functioning of those other sectors—or rather, the dependence of other CI sectors on electrical power and information CI. It is particularly significant that these two sectors exist in a relationship of interdependence, which is why they must be prioritized when considering CI protection.

A key attribute of CI and a criterion of criticality within the sectoral approach to designating CI is interdependence, both within a single sector and between different sectors. Interdependence is a consequence of CI connectivity, on a national as well as regional and international level. By interdependence, we mean a state or situation in which the functioning of one CI directly or indirectly affects the operation and functioning of another CI, and vice versa. In practical terms, this means that a disruption or damage in one CI sector automatically has a negative impact on the functioning of another CI sector. This interdependence can manifest in several forms, namely as: physical, cyber, geographic, or logical. In order to mitigate harmful consequences, special attention must be paid to assessing CI interdependence—specifically, to determining the scope and intensity of that interdependence. This is primarily because the effects, or rather the consequences of interdependence, can vary (e.g., a disruption in the functioning of one CI can cause a total or partial disruption in the functioning of another). The CI protection plan directly depends on the scope of dependency and the assessment of consequences (risks).

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Interdependence makes these CI systems particularly vulnerable. Electrical power represents the baseline upon which (almost) all other CI sectors function, including information infrastructure. Likewise, due to innovation and the ever-growing development of information technologies, as well as their widespread application in society, it is impossible today to imagine the functioning of electrical power CI. The electrical power CI can hardly function today without information technologies, but the reverse is also true—the information and communication technologies sector (primarily large data centers, servers, cloud providers, etc.) cannot function without continuous and stable access to electrical power. Therefore, their interdependence presents a distinct, above all, security and legal challenge in terms of regulating, establishing, and operating an adequate protection system.

The subject of this paper is the identification of key security and legal challenges within the context of the interdependence between critical electrical power and information infrastructure. Therefore, we will specifically focus on identifying the CI within these sectors and describing the nature of their interdependence. We will highlight the security aspects—namely, the harmful consequences that may arise due to this interdependence—as well as the methods through which these consequences can be minimized and mitigated. All of the above is essential for establishing an appropriate protection system. Furthermore, we will point out the responsibilities, measures, and activities of the competent state authorities, as well as those of the operators of these CI sectors, whose proactive role is vital for the uninterrupted functioning of these systems. All of the aforementioned aspects will be examined through the prism of relevant international, European, and national regulations and standards governing this matter. The aim of this research is to provide analytical and reasoned answers to several questions:

1. What are the security consequences of the interdependence between critical electrical power and information infrastructure, and what is their nature?

2. Is the issue of interdependence between critical electrical power and information infrastructure normatively regulated in the Republic of Serbia, and if so, in what manner?

3. To what extent are the regulations in the Republic of Serbia harmonized with the relevant regulations and standards at the European Union level?

Keywords: critical infrastructure, critical infrastructure protection, electrical power sector, information technologies, interdependence.

341.44
341.645:061.1EU

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ONE STEP FORWARD IN AVOIDING THE IMPUNITY OF THE OFFENDER IN THE EAW PROCEDURE

The judgment of the European Court of Justice in joined cases C-722/23 and C-91/24 further refines the interaction between the European Arrest Warrant (EAW) system under Framework Decision 2002/584/JHA and the mechanism of sentence enforcement transfer under Framework Decision 2008/909/JHA. The ruling addresses the delicate balance between mutual trust in EU criminal justice cooperation and the protection of fundamental rights. The question referred to the Court concerned whether the optional ground for non-execution based on reintegration considerations under Article 4(6) of Framework Decision 2002/584/JHA can be combined with the fundamental rights-based limitation contained in Article 1(3) of the same instrument in order to justify refusal of surrender, and if so, whether such a combined application may serve as a legal basis for avoiding the surrender of a sentenced person while still preventing impunity through alternative enforcement mechanisms.

The case arose from Belgian executing judicial authorities confronted with an EAW issued for the purpose of enforcing a custodial sentence. The executing courts expressed doubts as to detention conditions in the issuing Member States, raising concerns under Article 4 of the Charter of Fundamental Rights of the European Union. At the same time, they considered whether, in light of the requested person's social ties in the executing Member State, Article 4(6) of the Framework Decision—allowing refusal of surrender in order to execute the sentence domestically—could be read in conjunction with Article 1(3), which preserves fundamental rights obligations, so as to justify refusal while simultaneously ensuring that the sentence would not remain unenforced.

The Court rejected the idea that Article 4(6) and Article 1(3) may operate cumulatively as combined legal grounds for refusing execution of an EAW. It held that the EAW system does not allow for the parallel application of two or more refusal grounds. However, the Court simultaneously refined the operational consequences of this

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limitation in a way that significantly strengthened the effectiveness and coherence of EU criminal justice cooperation. It stressed that, although the executing judicial authority cannot rely on a combined application of Article 4(6) and Article 1(3) to refuse surrender in order to avoid a situation of impunity, it is nevertheless under a duty to actively explore alternative legal pathways within the EU mutual recognition system to ensure that the custodial sentence is effectively enforced.

In this regard, the Court placed decisive emphasis on Framework Decision 2008/909/JHA on the mutual recognition of judgments imposing custodial sentences. It clarified that where surrender is problematic due to fundamental rights concerns, the executing and issuing authorities must, in the spirit of sincere cooperation, assess whether the execution of the sentence can be transferred to the executing Member State under the 2008/909 mechanism. The wording of the Court's judgment suggests that relying on the latter Framework Decision in such a situation is not optional in its practical function within the system's coherence: it serves as the corrective mechanism that prevents the emergence of enforcement gaps within the EAW architecture.

The judgment therefore draws a clear doctrinal boundary: Article 4(6) may be applied only within its own strict conditions and cannot be expanded through Article 1(3) into a generalised "double safeguard" permitting refusal of surrender on combined grounds. At the same time, the Court rejected any interpretation that would lead to a binary outcome between surrender and impunity. Instead, it constructed a third pathway grounded in systemic integration between mutual recognition instruments.

This approach reinforces the principle that the EAW system is designed not merely to facilitate extradition-like surrender, but to ensure the effective enforcement of criminal sanctions across the EU while respecting fundamental rights. The Court underscored that Member States are required to use the tools of EU criminal cooperation in a coordinated manner so that neither fundamental rights concerns nor social rehabilitation considerations result in a failure to execute a final custodial sentence.

Ultimately, the judgment constitutes an important clarification of the internal limits of Article 4(6). At the same time, it significantly strengthens the obligation of judicial authorities to prevent impunity by shifting the focus from refusal of surrender towards structured inter-state cooperation under Framework Decision 2008/909. In this sense, the decision marks another incremental but important step in the evolution of the EAW system towards a fully integrated enforcement regime in which surrender, execution, and transfer mechanisms operate as a coherent whole rather than as isolated procedural alternatives.

Keywords: impunity; EAW; Article 1(3); transfer of sentences; Framework Decision 2008/909.

341.23:343.3/.7(497.11)

Dr. Milana Pisarić[*]

PROTECTING EU'S FINANCIAL INTERESTS IN SERBIA

Real and effective suppression of financial crime requires a planned approach, the creation of an appropriate legal framework, with clearly defined jurisdiction and powers of relevant institutional actors, and persistent and consistent implementation of specific steps to detect and investigate criminal offenses and prosecute and try the perpetrators. Moreover, to combat financial crime with cross-border elements, international cooperation is imperative. In addition, as a candidate country in the process of joining EU, Serbia is obliged to continuously harmonise its domestic rules with the EU ones and to ensure their effective implementation, in order to protect the financial interests of the EU. Hereafter, since it is in this capacity, primarily within the framework of pre-accession assistance instruments, that Serbia uses the EU funds as a public revenue, the state is obliged to consistently implement planned and coordinated steps to combat activities that harm the financial interests of the EU.

In order to create a mechanism for effective protection of the EU funds to the same extent and under the same treatment as if they were its own budgetary funds, Serbia has adopted three strategic documents (2017, 2021 and 2024). In this regard, the special department (AFKOS) was established within the Ministry of Finance, as a central contact point for cooperation with the OLAF and other authorities and bodies of the European Commission. Nonetheless, harmonisation of law and cooperation with relevant EU stakeholders have been lacking so far.

The analysis of legal framework, the lastly adopted strategic document and the AFKOS reports, besides certain (negligible) and declarative progress towards achieving the set goals, shows that there are high risks in terms of conducting investigative actions related to the misuse of the EU funds (primarily due to the lack of necessary incriminations in the Criminal Code, and in this regard, the inability to apply general and special evidentiary actions from the Criminal Procedure Code), monitoring of court proceedings and the return of financial resources to the budget of Serbia.

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Still, the opportunity to define concrete and effective steps for handling these issues was missed. For instance, the strategic document only provided that in 2024 a Table of Compliance of Criminal Legislation with EU rules would be developed, but, if it has been developed, other activities towards harmonization are absent. Further, although some steps to overcome the above risks are foreseen (more or less, through training of employees of certain authorities and bodies), the document completely lacks the goal of creating normative and institutional conditions for the detection and investigation of crime to the detriment of the financial interests of the EU.

No less important, legal, operational and technical cooperation with OLAF and other competent bodies and services of the European Commission, primarily the EPPO, is insufficient or non-existent. Also, there are no adequate legal rules on proactive financial investigation for the purpose of determining and documenting the movement of money during criminal activities to the detriment of the financial interests of the EU. These significant issues were not addressed at all in the planning document from 2024.

In addition, the 2024 Anti-Corruption Strategy, foresees that it is necessary to conduct a detailed analysis of the compliance of national regulations with the *acquis communautaire*, including on the protection of EU financial interests, in order to enable harmonisation, and towards the achievement of interim benchmark 23. However, the 2026-2028 Action Plan only states that amendments to the Criminal Code are planned in order to prescribe criminal offences related to financial resources from the EU funds, while amendments to rules on criminal procedure are not envisaged. Also, although the measure of strengthening international cooperation in the detection and processing of cross-border fraud and embezzlement of the EU funds is set, the Action Plan does not foresee anything more specific than holding training and workshops for judges, public prosecutors and police officers.

It therefore remains unclear whether they have been defined at all, and if so, what specific steps are designed to create a normative and institutional framework for the protection of the EU's financial interests in Serbia, which would be the only correct approach in accordance with the explicit obligation in the process of joining the Union. This research maps the existing normative gaps, while proposing concrete steps towards harmonisation of law and cooperation with relevant EU stakeholders.

Keywords: protection of the EU's financial interests, EU funds, EPPO, Serbia.

343.2:343.294

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Dr. Ivan Milić[**]

REHABILITATION IN CRIMINAL AND MISDEMEANOUR LAW

By the imposition of a criminal sanction in criminal proceedings, the defendant acquires the status of a convicted person. Once the judicial decision has become final and enforceable, the enforcement of the imposed sanction follows, except for judicial admonition, which by its very nature does not entail enforcement in the conventional sense. However, a conviction is not always exhausted by the criminal sanction itself. Where a more severe criminal sanction has been imposed on the perpetrator of a criminal offence, the conviction may also produce certain legal consequences, reflected in the termination or loss of certain rights, or in the prohibition of acquiring particular rights.

The legal consequences of a conviction do not constitute criminal sanctions in the strict sense. This means that they are not imposed by the court in criminal proceedings, but arise by operation of law, often pursuant to another statute. Conversely, in the case of more lenient criminal sanctions, the legal consequences of conviction cannot arise. This is the case where the perpetrator has been sentenced to a fine, where a suspended sentence has been imposed and has not been revoked, where a judicial admonition has been issued, or where the perpetrator has been exempted from punishment.

Data concerning convicted perpetrators of criminal offences are entered into criminal records and, under conditions prescribed by law, may be made available to state authorities, as well as to other entities where a legal basis exists. In addition, prior convictions, particularly through the institution of recidivism, have special significance in the individualization of punishment. For precisely this reason, rehabilitation is of exceptional practical and legal importance for the convicted person. Upon rehabilitation, the conviction is expunged, all of its legal consequences cease, and the person is considered not to have been convicted. In

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the criminal law of the Republic of Serbia, rehabilitation appears in two basic forms: statutory rehabilitation and judicial rehabilitation.

Misdemeanour law, as part of the Serbian system of penal law, has in recent decades increasingly converged with criminal law, both in terms of its function and in respect of certain legal institutions. Some solutions contained in the Law on Misdemeanours are regulated in a manner that clearly resembles the solutions provided by the Criminal Code. In this context, particular importance attaches to misdemeanour records, into which persons sanctioned for misdemeanours are entered. This is a relatively recent institution in the domestic legal system, introduced by the currently applicable Law on Misdemeanours.

Although the Law on Misdemeanours does not regulate the legal consequences of misdemeanour sanctions in the manner in which such consequences are regulated in criminal law, certain special regulations nevertheless attach specific adverse legal effects to the fact of having been sanctioned for a misdemeanour.

For this reason, deletion from misdemeanour records has significance that exceeds a merely evidentiary function and, in practical terms, acquires the functional effect of rehabilitation of a person sanctioned in misdemeanour proceedings. Such "rehabilitation" of a person sanctioned for a misdemeanour enables, upon the expiry of the period prescribed by law and the fulfilment of certain conditions, the cessation of the adverse consequences arising from entry into misdemeanour records.

Rehabilitation, that is, the deletion of data from the relevant penal records, is of great importance both for convicted persons and for persons sanctioned for misdemeanours. Nevertheless, the existing legislative technique does not devote sufficient attention to these institutions. The presentation therefore examines their legal nature, conditions of application and practical consequences, and points to the inconsistencies present in the positive-law framework, particularly in the relationship between the Criminal Code, the Law on Misdemeanours and special regulations that attach adverse effects to a conviction or a misdemeanour sanction. It is argued that deletion from misdemeanour records should be recognized as a functional equivalent of rehabilitation and regulated accordingly. On this basis, de lege ferenda proposals are put forward, addressed both to the legislator and to the authorities competent to adopt legal acts of lower normative rank than statutes, with a view to achieving a more precise, equitable and functional normative regulation of these institutions.

Keywords: Criminal Sanctions, Criminal Records, Misdemeanour, Legal Consequences, Rehabilitation.

351.74/.78:004(497.11)
502:351(497.11)

Dr. Vladan Mirković[*]

STATE DATA CENTERS AS CRITICAL INFRASTRUCTURE OF DIGITAL TRANSFORMATION IN THE REPUBLIC OF SERBIA – CERTAIN SECURITY ASPECTS

Artificial intelligence enables a comprehensive digital transformation and the subsequent creation of a digital society. The driving forces behind this process are supercomputers, which are housed within specialized facilities known as data centers. Data centers have rapidly become the subject of criticism, with the most prevalent objections directed toward their high electricity consumption. Furthermore, because electricity production remains dominantly reliant on fossil fuels, the expansion of data center capacities is directly linked to a rise in fossil fuel combustion, thereby implying negative consequences for environmental sustainability. Additionally, data centers require extensive exploitation of water for cooling supercomputers. Nevertheless, data centers should be evaluated within a broader framework than electricity and water consumption.

Data centers constitute critical infrastructure of the new industrial revolution, which is globally transforming all social processes. By constructing two state data centers (SDCs), the Republic of Serbia has established its own infrastructure for digital transformation. Consequently, their uninterrupted functioning represents a vital national security interest. In the constellation of contemporary geopolitical tensions or open armed conflicts, SDCs will inevitably become primary targets for sabotage, diversion, or military attacks. The example of Estonia is highly instructive in this regard. In order to mitigate such risks, it leased data center infrastructure capacity from Luxembourg, thus creating a "digital embassy" designed to operate uninterrupted in the event of an attack on Estonian territory. Nevertheless, SDCs are founded upon technology monopolized by a select few highly developed nations. Furthermore, migrating data to foreign devices, or even to domestically owned devices locat-

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ed within foreign states, implies significant vulnerability due to the political, economic, or technological pressure that could be exerted by such host nations. Critiques regarding the high electricity consumption of SDCs must be carefully examined from the perspective of energy security. Drawing upon comparative legal frameworks from the European Union and Germany, the Republic of Serbia could condition the energy consumption of data centers by mandating a specific share of renewable energy within their total power intake, while simultaneously identifying the most rational mechanisms for utilizing the waste heat generated by their operations. Presently, a precedent for such practices has already been set, as the waste heat generated by the operations of the State Data Center in Kragujevac is recovered and supplied directly to the municipal heating system.

Furthermore, the electricity consumption of SDCs should not be viewed through absolute indicators, but rather through its relationship with the cumulative power consumption of the information systems of all state organs, independent bodies, agencies, and local self-government units whose data are intended to migrate to SDCs. The primary challenge lies in the fact that there are no precise data regarding the exact energy consumption of the individual "server rooms" of all potential public and private sector SDCs users. Without a comparative analysis establishing whether the total consumption of several hundred dispersed server rooms is greater than, less than, or equal to the consumption of the two centralized SDCs, the conclusion whether SDCs represent an (ir)rational economic and energy expense for technological progress cannot be drawn.

Data centers pose specific environmental risks given that they rely on technologies that become obsolete very rapidly, leading to the generation of large amounts of electronic waste. Regardless of the fact that a portion of this electronic waste can be recycled, it remains an inherent byproduct of modern technological processes generated by the operation of hundreds of server rooms throughout public and private sector entities. The aggregate volume of this dispersed waste cannot be easily or accurately determined, nor can it be readily compared to the waste generated within centralized SDCs. Moreover, it is far more efficient to establish and execute oversight over a centralized process of disposal, handling, and storage of electronic waste within SDCs than across hundreds of heterogeneous state organs, institutions, and private entities.

Finally, the digitalization of state functions introduces a positive external effect into the ecological equation by eliminating the need for citizens to physically travel to state institutions. This directly reduces the consumption of fossil fuels in road transport, which is recognized as one of the largest sources of CO2 emissions driving the greenhouse effect.

Keywords: Data Centers, Critical Infrastructure, National Security, Energy Security, Environmental Security.

343.143:004.773.5
343.1

Dr. Daniel Atasiei[*]

ASSESSING WITNESS CREDIBILITY VIA VIDEOCONFERENCE IN CRIMINAL PROCEEDINGS: CHALLENGES TO IMMEDIACY AND FAIR TRIAL GUARANTEES

Videoconferencing entered criminal proceedings chiefly as an exceptional means of hearing persons who could not safely or reasonably attend court. It is now used for witnesses abroad, protected or vulnerable witnesses, and as a response to cost, distance and delay. Its practical advantages do not answer the more difficult question raised when the outcome depends on oral evidence: can a court assess credibility fairly when the witness is present on a screen rather than in the courtroom?

European criminal procedure has traditionally associated immediacy with the judge's direct encounter with the source of evidence. The case law of the European Court of Human Rights likewise recognises that observations concerning a witness's demeanour and credibility may have important consequences for the accused. This proposition, however, should not be taken to mean that physical presence gives the fact-finder a reliable capacity to distinguish truth from deception. It is necessary to separate the procedural value of hearing a witness directly from the disputed epistemic value of behavioural cues. Nervousness, hesitation, changes in voice, reduced eye contact or an apparently defensive posture may result from fear, trauma, cultural conventions, the formality of the hearing or the technology itself. They do not provide a stable measure of truthfulness.

The paper examines remote witness testimony through a doctrinal analysis of Article 6(1) and Article 6(3)(d) of the European Convention on Human Rights, with particular reference to the Court's decisions on video-link participation, examination of witnesses and direct assessment of oral evidence. The analysis is informed by psychological research on demeanour-based credibility judgments and empirical studies of video-mediated testimony. These studies do not show that remote witnesses are invariably perceived as less credible, or that in-person observation pro-

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duces more accurate judgments. The effects vary with image quality, camera position, sound delay, the witness's vulnerability and the decision-maker's expectations.

To clarify the legal inquiry, the paper distinguishes three aspects of immediacy. Temporal immediacy concerns whether testimony is received live; interactional immediacy concerns whether the court and the parties can question the witness and react to the answers; sensory immediacy concerns the conditions in which the witness is seen and heard.

A live video link generally preserves the first two, while altering the third. Immediacy should therefore not be treated as a binary choice between physical presence and absence. The relevant issue is whether the arrangements secure functional immediacy sufficient for effective adversarial examination and responsible fact-finding.

Videoconferencing may both remove and create information. A close image may show facial reactions clearly, while framing excludes movements outside the camera's field. Misaligned gaze can appear evasive; transmission latency can be mistaken for hesitation; audio compression may affect tone and rhythm. The remote setting also raises concerns about identity, unseen persons, access to documents and off-camera prompting. Unless these matters are addressed, technical artefacts may enter the credibility assessment without being recognised as such.

The paper proposes a four-part test for courts deciding whether remote testimony is compatible with immediacy and fair trial guarantees. First, the use of videoconferencing should rest on an identified and proportionate reason, assessed in light of the importance of the testimony. Secondly, the technical and physical setting must ensure a stable transmission, verification of identity and control of external influence. Thirdly, the defence must have a genuine opportunity to observe, question and challenge the witness in real time, including the ability to draw attention to technical failures and to request renewed examination where necessary. Fourthly, courts should exercise epistemic restraint: credibility findings should be based primarily on the content, internal coherence and external corroboration of the account, rather than on demeanour as mediated by a screen.

Remote testimony is neither inherently inferior to courtroom testimony nor its automatic equivalent. Its fairness depends on the reason for its use, the quality of the connection, the position of the witness in the evidential structure of the case and the safeguards available to the defence. The more decisive the testimony, the more exacting the scrutiny must be. The central question is not whether the witness occupies the same physical room as the judge, but whether the proceedings provide a genuine opportunity to hear, test and evaluate the account under conditions that are technically reliable, adversarial and judicially transparent.

Keywords: witness credibility; videoconference testimony; principle of immediacy; criminal proceedings; fair trial guarantees; remote hearings; assessment of evidence.

004.8:343.85]:347.2

Dr. Jelena Kostić[*]

THE USE OF ARTIFICIAL INTELLIGENCE IN CRIME SUPPRESSION AND HUMAN RIGHTS PROTECTION

The use of artificial intelligence is of great importance for the development of society. However, its rapid development brings with it various risks. The application of artificial intelligence systems is also of great importance in the field of crime prevention. So far, its successful application has been recorded both in the field of predicting patterns of criminal activity and in the investigative procedure.

Bearing in mind the increasingly complex ways of committing criminal acts, as well as the fact that certain illegal activities very often take place in the digital environment, in some situations it is very difficult both to detect them and to collect evidence. Therefore, the use of artificial intelligence is of great importance precisely in those more complex situations, such as e.g. detection of crimes committed on the dark web. In addition, its use can be important for the detection of money laundering or illegal financial transactions that take place in the digital environment, as well as when collecting evidence from areas where access is difficult (e.g. in the case of criminal offenses against the environment).

However, the use of artificial intelligence in criminal proceedings can also represent a great challenge from an ethical and social aspect. Therefore, it is necessary to take into account the protection of human rights when collecting and processing data in the investigative procedure. In this context, the right to private life and the right to the protection of personal data are particularly meant. Bearing in mind the above, Regulation (EU) 2024/1689 was adopted at the level of the European Union, which introduced new rules on the use of artificial intelligence, and which provided for certain restrictions and prohibitions in order to protect human rights. The aforementioned act prescribes restrictions when using the system for remote biometric identification in real time and in public space. Accordingly, the mentioned system can only be used for pre-defined purposes in order to enforce the law, such as e.g. targeted searches for victims, prevention of terrorism or immediate threat to life and finding persons suspected of committing serious crimes or members of organized criminal groups.

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The implementation of the new rules requires additional adjustments in order for the artificial intelligence tools to comply with the new standards. Therefore, it is necessary to establish a balance between the effective use of artificial intelligence in the fight against crime and the protection of human rights and freedoms. This requires both additional financial resources and a new approach. This is precisely what indicates that data obtained using artificial intelligence tools cannot be used without human intervention in terms of interpretation and application of the obtained data. Only by knowing the regulations in the field of human rights is it possible to use the obtained data as valid evidence in court proceedings, which contributes above all to the preservation of the principle of fairness. The organization of frequent forums, round tables and conferences, which involve the inclusion of both the academic community and civil society organizations, is of particular importance for the fulfillment of the aforementioned standards.

Keywords: artificial intelligence, crime prevention, human rights protection.

343.431
343.545
343.1

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VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN CRIMINAL PROCEEDINGS: BETWEEN THE STATUS OF AN INJURED PARTY AND SPECIAL PROTECTION

The various forms of trafficking in human beings, including sexual exploitation, forced labour, forced criminality, and organ removal, result in serious violations of the victim's dignity and fundamental human rights and freedoms. Victims of trafficking in human beings constitute a particularly vulnerable category of victims, not only because of the gravity of the offence they have suffered, but also due to the severe psychological consequences of trafficking and the increased risk of secondary victimization during criminal proceedings.

In criminal proceedings, victims of trafficking in human beings are entitled to the rights granted to injured parties under Article 50 of the Criminal Procedure Code. These rights include participation in the proceedings, the submission of facts and evidence, the exercise of compensation claims, the right to legal representation, access to the case file and evidence under the conditions prescribed by law, the right to receive information on the progress and outcome of the proceedings, the use of legal remedies where provided by law, attendance at procedural actions where permitted, and the undertaking of other procedural measures necessary for the protection of their rights and legitimate interests.

In order to align domestic legislation with Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, the Draft Law on Amendments to the Criminal Procedure Code significantly expands the rights of injured parties. Of particular importance are the rights to free and confidential support services, information on available medical, psychological and other forms of assistance, the accompaniment of a trusted person during procedural actions, timely information on the progress of the proceedings and the status of the defendant, as well as the right to be interviewed without unnecessary delay, as few times as possible, and in a manner that prevents secondary victimization.

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With regard to victims of trafficking in human beings, an important question arises as to whether their protection should continue to be exercised solely through the procedural status of an injured party or whether they should be recognized as a separate category of particularly vulnerable victims. Relevant international instruments, as well as Directive 2012/29/EU, require special protection for victims of trafficking in human beings, terrorism, organized crime, sexual and gender-based violence, war crimes, children, and persons with disabilities. In this respect, certain comparative legal systems, such as the Croatian Criminal Procedure Act, explicitly recognize victims of trafficking in human beings as a distinct category and guarantee them additional procedural rights aimed at preventing secondary victimization.

Contemporary international standards are based on the premise that victims of trafficking in human beings must be afforded protection that goes beyond the procedural status of an injured party and is guaranteed irrespective of their willingness to participate in criminal proceedings. In accordance with the Council of Europe Convention on Action against Trafficking in Human Beings and other relevant international and European instruments, victims are guaranteed a wide range of rights, including the right to identification, recovery and reflection, temporary residence, voluntary return and reintegration, protection and safe accommodation, access to healthcare and psychological assistance, education, social and labour inclusion, as well as the principle of non-punishment in cases prescribed by international standards. The adoption of the Law on the Prevention and Suppression of Trafficking in Human Beings and the Protection of Victims in 2026 further strengthened the national legal framework by establishing an institutional mechanism for victim identification and the provision of assistance, support, and protection, while embracing a victim-centered approach.

This new legislative framework raises the question whether it merely expands the procedural rights of injured parties or establishes a distinct legal status for victims of trafficking in human beings that transcends the traditional concept of an injured party in criminal proceedings. The relationship between the concepts of the victim and the injured party reflects the gradual evolution of contemporary criminal justice—from a system primarily focused on the offender to one centered on the protection of victims. Accordingly, the effective protection of victims of trafficking in human beings requires the combined application of procedural guarantees under the Criminal Procedure Code, the specialized protection mechanisms introduced by the new legislation, and internationally recognized human rights standards.

Keywords: trafficking in human beings; victim; injured party; criminal proceedings; victims' rights; Criminal Procedure Code; Law on the Prevention and Suppression of Trafficking in Human Beings and the Protection of Victims.

004.8:[343.1:342.7

Bogdana Maksimović[*]

THE ROLE OF ARTIFICIAL INTELLIGENCE IN JUDICIAL DETERMINATION

The rapid development of artificial intelligence has brought about substantial changes in the functioning of judicial systems and has created a need to reconsider the traditional understanding of the judicial function. Although artificial intelligence-based algorithms can significantly enhance the efficiency of the judiciary through the analysis of large numbers of cases, risk assessment, prediction of case outcomes, and technical support in drafting judicial decisions, their application simultaneously raises the question of the permissible limits of the automation of judicial determination. In criminal proceedings, where the free judicial evaluation of evidence and the principle of immediacy constitute fundamental procedural guarantees, it is legitimate to ask whether a computer algorithm can serve as a reliable support tool for judges without jeopardizing the right to a fair trial. This paper proceeds from the thesis that the greatest legal challenge does not lie in the mere use of artificial intelligence, but rather in determining the boundary between technical assistance and the transfer of judicial determination to an algorithm. In this context, the analysis comparative experiences of states that have advanced furthest in the application of these technologies. In China, artificial intelligence systems are employed within the concept of "smart courts" to automate certain judicial procedures, while in the United States of America algorithms are used as tools for risk assessment in decisions concerning pre-trial detention, bail, and parole. Although these models have contributed to greater procedural efficiency, practice has simultaneously revealed potential risks related to algorithmic bias, the lack of transparency regarding the manner in which recommendations are generated, and the possibility that technological systems may indirectly influence judicial reasoning. Unlike the aforementioned legal systems, the legislation of the Republic of Serbia does not provide for the use of artificial intelligence in the process of judicial determination. The domestic criminal procedural framework is based on the principle of free evaluation of evidence and the personal conviction of the judge, implying that responsibility for determi-

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nation cannot be transferred to an automated system. Nevertheless, taking into account the intensive digitalisation of the judiciary and the development of the European regulatory framework, it is evident that the Republic of Serbia will have to define the normative boundaries of the application of these technologies. The analysis highlights the need to distinguish between the use of artificial intelligence as a tool for judicial assistance and the delegation of judicial functions to automated systems. In criminal proceedings, the application of such technologies must respect the principle of free evaluation of evidence, judicial independence, and the right to a fair trial. The central challenge is to define the legal limits of technological assistance while preserving the judge's responsibility for evaluating evidence, interpreting the law, and making judicial decisions. In the Serbian context, this requires an appropriate legal framework that enables the benefits of technological development to be harnessed without compromising the fundamental principles of criminal procedure.

Keywords: artificial intelligence; judicial determination; free evaluation of evidence; right to a fair trial; digitalisation of the judiciary.

341.4
341.645

Jelena Radmanović[*]

THE LEGITIMACY OF INTERNATIONAL CRIMINAL JUSTICE IN AN ERA OF GREAT-POWER DEFIANCE

International criminal justice was established on the premise that the prosecution of genocide, crimes against humanity, war crimes, and the crime of aggression constitutes a common concern of the international community. The establishment of the International Criminal Court marked the culmination of decades of efforts to create a permanent judicial institution capable of ensuring individual criminal accountability for the gravest violations of international law while complementing, rather than replacing, national jurisdictions. More than two decades after the entry into force of the Rome Statute, however, international criminal justice finds itself confronted with one of the most significant challenges to its authority and credibility since the Court's inception. Growing political rejection by major powers, accompanied by sanctions against international judicial officials, challenges to the Court's jurisdiction, and public campaigns questioning its legitimacy, has transformed the debate over international criminal justice from one primarily concerned with legal doctrine into one focused on the resilience of international legal institutions in an increasingly fragmented geopolitical environment.

The proposed research examines the concept of legitimacy as the central analytical framework for understanding the contemporary challenges facing international criminal justice. Whereas the legal legitimacy of the ICC derives from the Rome Statute, the sovereign consent of its States Parties, and its exercise of jurisdiction in accordance with international law, political legitimacy depends upon the willingness of States and other international actors to recognize and support the Court's authority in practice. The growing divergence between these forms of legitimacy raises important questions regarding the relationship between law, politics, and institutional authority within the international legal order.

Particular attention is devoted to the implications of defiance by influential Non-Party States for the functioning of the Rome Statute system. Rather than ap-

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proaching such defiance solely through the traditional debate concerning sovereignty, the research considers whether contemporary opposition reflects a broader contest over competing visions of international law, multilateralism, and the distribution of authority between domestic and international institutions. It further examines whether the effectiveness of international criminal justice should be assessed primarily through the lens of enforcement and political support or whether its normative contribution to the development of international law constitutes an independent source of legitimacy.

The research also considers whether the present period represents an exceptional crisis for international criminal justice or another stage in the historical evolution of international criminal law, characterized by recurring tensions between legal ideals and geopolitical realities. By situating recent developments within the broader trajectory of international criminal justice from the post-Second World War tribunals, through the ad hoc tribunals of the 1990s, to the establishment and contemporary practice of the ICC, the analysis seeks to evaluate the resilience of the Rome Statute system in the face of sustained political contestation.

By addressing these questions, the research contributes to the broader debate concerning the future of international criminal justice and the evolving role of international courts within the contemporary international legal order. It argues that the long-term legitimacy of international criminal justice cannot be measured exclusively by immediate political acceptance or enforcement outcomes, but must also be understood in light of the normative authority of international law, the institutional safeguards embedded in the Rome Statute, and the continued commitment of States Parties to combating impunity for the gravest crimes of concern to the international community.

Keywords: International Criminal Court, legitimacy, compliance, international justice, accountability, international legal order.

343.1
343.14:004.8

Stefan Maksimović[*]

DEEPFAKE AS AN EVIDENTIARY CHALLENGE IN CRIMINAL PROCEEDINGS

The rapid development of artificial intelligence - based technologies, particularly generative models capable of creating highly realistic audio, video, and visual content, has led to the emergence of *deepfake* technology. Although its application serves numerous legitimate purposes, its increasingly frequent misuse for criminal purposes requires a reassessment of the adequacy of existing procedural mechanisms for the detection, establishment, and judicial evaluation of such digital content. Contemporary criminal proceedings increasingly rely on digital evidence, while at the same time advances in artificial intelligence challenge the credibility and reliability of such evidence. *Deepfake* technology represents a form of synthetically generated digital content created through the use of artificial intelligence algorithms, which enable the replacement, alteration, or generation of audio-visual representations in a manner that creates the appearance of an authentic recording of an actual event. The possibility of creating such content, which may be almost indistinguishable from original recordings, significantly complicates the establishment of facts and increases the risk of misuse of digital evidence in criminal proceedings. Such content may be used as a means of committing various criminal offences, but also as evidence whose authenticity is disputed, thereby raising numerous questions concerning its admissibility, probative value, and manner of procedural assessment. At the same time, the increasing availability of tools for generating such content enhances the possibility of their misuse, both at the stage of committing a criminal offence and during criminal proceedings themselves. The central focus is the analysis of procedural challenges posed by *deepfake* technology within criminal proceedings. Particular attention is devoted to the evidentiary value of *deepfake* content, the role of expert examination in determining its authenticity, the burden of proof, the application of the principle of free evaluation of evidence, as well as procedural guarantees arising from the right to a fair trial. The analysis also examines issues related to

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preserving the integrity of digital evidence, the reliability of methods for detecting digital manipulation, and the significance of the chain of custody of digital evidence for its admissibility and evidentiary reliability. The aim of the research is to determine whether the existing provisions of the Criminal Procedure Code of the Republic of Serbia provide a sufficient normative framework for effective proceedings in cases where there is a suspicion that evidence has been created or modified through the use of artificial intelligence, as well as whether the development of these technologies requires amendments to certain procedural rules. The analysis is based on normative, doctrinal, and comparative legal methods, with consideration of relevant international standards, academic literature, and current trends in the fields of digital forensics and evidence law. The initial hypothesis is that traditional procedural mechanisms are not fully adapted to the rapidly emerging challenges brought by generative artificial intelligence and that it is necessary to develop clearer criteria for establishing the authenticity of digital evidence and its procedural evaluation. Particular attention is devoted to the question of whether existing procedural standards concerning the authenticity and admissibility of evidence can adequately respond to the challenges posed by generative artificial intelligence models, or whether the development of specific rules governing their procedural use is required. Based on the conducted analysis, possible directions for improving criminal procedural legislation and judicial practice will be proposed in order to establish a more reliable system for the identification, verification, and evaluation of digital evidence created or modified through the use of artificial intelligence, while preserving the principles of a fair trial, legal certainty, and the effectiveness of criminal proceedings.

Keywords: deepfake technology; artificial intelligence; criminal proceedings; digital evidence; authenticity of evidence.

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331
331.5:349.2

Dr. Senad Jašarević[*]

EMPLOYEE OUTSOURCING

Outsourcing as a way of doing business is a relative novelty in Serbia. It is expanding in the world today, and some believe that "we are living in the age of outsourcing" (Grossman et al., 2005).

Outsourcing means such a way of working where companies and other business entities hire external associates or other firms to perform certain business processes or jobs in the company - or jobs-projects are moved outside of it, instead of being done by the internal workforce.

One of the subtypes of outsourcing is the outsourcing of employees. Employee outsourcing is a business practice where organizations hire external agencies or contract professionals to handle specific tasks, operations, or entire departments (using freelancers, outsourcing agencies, large-scale firms).

"In arrangements like these, a company hires a third party to perform a specific task, manage a project, handle end-to-end operations, or otherwise fulfill functions that would normally require in-house staffing - all solutions that free the company to focus on its core business." (Jenkins, 2025) "At its core, employee outsourcing is the practice of hiring external professionals or agencies to handle certain tasks, projects, or even entire business functions -rather than hiring full-time employees in-house. Think of it as bringing in extra hands when you need them, without the long-term commitment of traditional hiring." (South, 2026).

The goal of outsourcing is cost reduction, more efficient use of resources (and reduction of internal labour force), and the ability of the company to focus on its core activities, while using external services for secondary and peripheral activities.

The essence of outsourcing is that secondary processes are outsourced, while the employer's basic tasks are left under control and within the company. However, in the case of more complex types of outsourcing, the most complex processes are sometimes outorced, that the user employer cannot carry out efficiently on its

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own. Some companies have gone so far as to become "virtual" manufacturers, owning designs for many products but producing almost nothing themselves.

Although it is a relative novelty in Serbia, outsourcing is not a new phenomenon in the world. In the modern era, its use begins in the seventies of the last century, first in the USA and Great Britain.

Outsourcing is also widespread in the public sector, where the aim is to reduce monopolies, bureaucratization and uncontrolled spending of state funds, as well as to increase productivity by involving private companies in certain work processes.

Outsourcing can be divided: by *function* (the type of task being handled) and by *location*.

Geographical division is into: *domestic outsourcing* (moving business functions to another firm within the home country) and *international outsourcing - offshoring* (in which business functions move abroad). The location category includes also: *onshoring outsourcing* (provider is located within the country), *nearshoring (*in a neighboring country), *offshoring* (partner is in distant country), and *onsite outsourcing* (the hired person is inside of your facility).

According to the function, outsourcing can be divided into: *Business Process Outsourcing, IT, Professional, Operational, Project, Manufacturing, Knowledge Process, Recruitment, Legal Process and Multisource Outsourcing.*

In Serbia, "internal" outsourcing is mostly used, namely: outsourcing of administration, outsourcing of processes, outsourcing of activities, outsourcing of departments, outsourcing of employees. Thanks to foreign companies, external outsourcing is also spreading, where certain parts of the process are outsourced outside the company.

Some of the most commonly outsourced jobs are: Customer Support Representative, IT Support Specialist, Human Resources Specialist, Payroll Clerk, Bookkeeper/Accountant, Tax Preparerer, Personal Assistant, Computer Programmer, Data Entry Clerk, Web Designer/Developer, Social Media Manager, Marketing Specialist, Writer, Proofreader, Medical Transcriptionist, Legal Advisor, Lead Generation Specialist, Drafter, Event Manager, Security guard.

The benefits that employers have from outsourcing are numerous: costs are reduced; customers' needs are met more easily and quickly; it is cheaper to get a quality product or service; user staff can concentrate on important projects and tasks; cheaper labour force of good quality is reached; the worker base is expanding; workers do not have to be employed if there is no need for their permanent work; supplies are running low; management is simplified.

The potential risks of outsourcing on the employer's side are: loss of control (less direct oversight over the daily processes and workflows of the outsourced staff); data security and quality control risk; legal and co-employment risks.

Although it can contribute to increasing medium-term employment and income generation, and to employing unemployed local or international worforce (e.g. women, youth, elderly), the consequences for employees are mostly negative. Offshoring involves job destruction, job satisfaction is reduced, the outsourced workforce is paid less, there is a surplus of employees, job insecurity increases, layoffs occur, employment decreases, the possibility of advancement decreases, exploitation increases, motivation, employee loyalty decreases. Also, often outsourced staff feel cheated and underappreciated, and are exposed to greater labor exploitation, unless they are highly skilled professionals.

Keywords: outsourcing, work organisation, employment.

336.14:336.2

Dr. Goran Milošević[*]

RESISTANCE TO TAX PAYMENT

The achievement of the objectives and legally prescribed competences of the legislative, executive, and judicial branches of government is impossible without adequate public financial activity. In this regard, all operations of the legislative, executive, administrative, and judicial authorities may be reflected in the budget through various items, namely public expenditures expressed in monetary terms. The size of the budget directly affects the capacity of the state to perform its functions and achieve its objectives. Consequently, every country naturally seeks to ensure a continuous inflow of budget revenues and to secure such revenues from stable sources.

However, no country and no economy can completely avoid resistance to tax payment. Human nature is characterized by a tendency among taxpayers to minimize their tax liabilities by taking advantage of ambiguities or insufficient precision in tax regulations, as well as by seeking the most favorable conditions for the application of tax laws. The payment of taxes reduces the taxpayer's economic capacity and worsens his or her material position, thereby generating resistance to taxation. Resistance to tax payment most commonly results from the following factors: (a) the level of the tax burden; (b) the purposes for which tax revenues are spent; (c) the form and characteristics of the tax; (d) public perceptions of whether the tax system is fair; and other related factors.

Resistance to tax payment invariably leads to an inadequate distribution of income in relation to the objectives that society seeks to achieve. Furthermore, this phenomenon creates difficulties in accurately defining the variables necessary for determining economic policy and implementing national objectives and policy instruments. In some cases, it significantly, and even drastically, reduces public revenues. Moreover, because it permeates the entire economy, it prevents policymakers from obtaining an accurate picture of developments affecting national economic and political interests. This creates a criminogenic environment within society, fostering various forms of deviant behavior that inevitably undermine the legal order and the overall strength of society.

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In addition to its negative fiscal effects, resistance to tax payment raises important issues of economic justice and equality, economic policy, and economic efficiency. The problem of economic justice and equality, or the issue of social disparities, is particularly significant in relation to the distribution of the tax burden. Situations in which some individuals earn income while others do not, or in which some individuals pay taxes while others evade them, generate considerable public dissatisfaction, create social tensions, and disrupt interpersonal relations. Such conditions within the economy and society may lead to public discontent and a decline in moral and other values that are essential to every society.

If an economy fails to achieve economic growth and development, and if economic activity does not generate new value, there will be no economic resources from which the state can perform its functions. The resources necessary for carrying out state functions are accumulated in the national budget. A stable source of budget revenues is always newly created value. When an economy enters a recession and experiences a decline in overall economic activity, there is no newly created value from which all state functions can be financed. In such circumstances, the state allocates the available resources in accordance with the most pressing public needs. Under conditions of scarce resources, significantly smaller amounts will be devoted to numerous public functions, including those related to the protection of vital state interests. A shortage of public funds inevitably creates an environment of weakening state economic power and, what may be even more dangerous from the perspective of the state, a deterioration of its international position and influence.

Keywords: state, budget, tax, tax payment, resistance to tax payment, fiscal developments, fiscal policy, public debt, budget deficit.

347.724:347.728.2-057.16

Dr. Vladimir Marjanski[*]

IMPLEMENTATION OF EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) IN THE REPUBLIC OF SERBIA THROUGH RESERVED TREASURY SHARES AND THE FINANCIAL INSTRUMENT – RIGHT TO ACQUIRE SHARES (FIPSU) WITH A FOCUS ON VESTING MODELS

An Employee Stock Ownership Plan (ESOP) is a modern mechanism for motivating and retaining key employees by granting them ownership stakes in a limited liability company under favorable conditions. In the Republic of Serbia, this institute was formally introduced through amendments to the Companies Act in April 2020. These changes aligned Serbian legislation with best practices in developed markets, particularly to support the growth of the startup ecosystem, the IT sector, and talent attraction.

The legal framework for ESOP implementation in Serbia is based on two key instruments: reserved treasury shares (reserved own shares) and the Financial Instrument – Right to Acquire Shares (FIPSU). A company may acquire its own shares free of charge from members who voted in favor of the decision (qualified majority of 2/3). The treasury shares are formed only from fully paid-up contributions, and the total reserved treasury shares cannot exceed 40% of the company's share capital. The decision is registered with the Serbian Business Registers Agency (APR), proportionally reducing the shareholdings of supporting members. This mechanism does not require a capital increase, making it efficient and flexible.

Reserved treasury shares serve as a "pool" for issuing FIPSU instruments and cannot be used as collateral or transferred. FIPSU is an innovative financial instrument issued based on a decision of the competent company body and registered with the Central Securities Depository and Clearing House (CRHOV). It is non-transferable, cannot be inherited or pledged, and is tied to a specific individual (employee, consultant, or partner). The issuance decision defines key

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elements: number of instruments, percentage of shares, acquisition price (which can be symbolic, e.g., 1 RSD), maturity date, payment deadline (15–30 days), and all conditions for acquiring the share. Upon maturity and payment, the FIPSU holder becomes a member of the company and the reserved treasury share is reduced accordingly. If the predefined conditions are not met, the instrument is canceled without any share acquisition.

Vesting plays a crucial role in ESOP structures. It is a mechanism for the gradual acquisition of ownership rights that aligns the interests of employees and the company. The following models are used in both comparative practice and Serbia (and can be combined): 1. Time-based vesting – the most common model. Rights are acquired gradually over a period (typically 4 years with a 1-year cliff). No vesting occurs during the first year, after which shares unlock monthly or quarterly. 2. Milestone-based vesting – tied to the achievement of individual goals (e.g., sales targets, project completion, product development). 3. Performance-based vesting – linked to overall company results (revenue, profitability, valuation), usually applied to top management. 4. Cliff vesting – a sharp waiting period after which a significant portion or the entire stake vests at once.

In Serbian companies, especially in the IT and tech sectors, hybrid models combining time-based and performance-based vesting are most common. These often include acceleration clauses in the event of an exit (company sale) or change of control. The flexibility of the FIPSU instrument allows full customization of vesting schedules within the legal framework.

The advantages of ESOP in Serbia are significant: increased employee motivation and loyalty, reduced staff turnover, tax benefits (treated as capital participation rather than salary), easier talent attraction, and the building of an ownership culture. The introduction of reserved treasury shares and FIPSU represents an important step in modernizing Serbian corporate law and enhancing the competitiveness of the domestic economy. Properly structured ESOPs with effective vesting models enable companies to transform employees into true partners, fostering long-term growth, innovation, and economic development in Serbia.

Keywords: ESOP, reserved treasury shares, FIPSU, Vesting, Right to Acquire Shares, Employee Motivation, Corporate Governance, Startup Serbia.

339.727.22:[341.63:341.985

Dr. Petar Đundić[*]

ANNULMENT OF ICSID JURISDICTIONAL DECISIONS DUE TO THE MANIFEST EXCESS OF POWERS: AN APPEAL IN DISGUISE?

Assuring finality of ICSID awards represents a fundamental goal of the ICSID system. It follows from the drafting history of the ICSID Convention, as well as from work of commentators and practice of various annulment committees, that a request for annulment cannot serve as an appeal against the award: an annulment committee cannot annul the award simply because it does not agree with the tribunal's interpretation of law. Review of the award is possible on limited grounds listed in Article 52 of the Convention. As stated by one ad hoc committee – annulment is concerned with the legitimacy of the process of decision rather than with the substantive correctness of the decision.

One of the grounds for annulment under the Convention is the manifest excess of powers. An ICSID tribunal manifestly exceeds its powers with regard to jurisdiction when it fails to observe the parties' arbitration agreement. An excess of powers ensues not only when a tribunal exercises jurisdiction that it does not possess but also when it erroneously refuses to entertain jurisdiction that exists. The arbitration agreement, i.e. the parties' consent to resolve their investment dispute through arbitration is today usually contained in an international treaty – Bilateral Investment Treaty (or BIT), limiting the tribunal's jurisdiction *ratione materiae*, *ratione personae* and *ratione temporis*. Consequently, an excess of powers occurs as a result of the tribunal's error in interpreting provisions of a relevant BIT. This is why a request for annulment based on the alleged manifest excess of powers is often tantamount to an appeal – a party basically requests the ad hoc committee to annul the tribunal's jurisdictional decision because it erred in interpretation of law.

Ad hoc committees have struggled in the past to deal with this inherent ambiguity of the review mechanism – a system which unequivocally rejects the possibility of an appeal but allows for annulment of decisions following from misinterpretation of law. They attempted to tackle the issue by raising the bar

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for possible annulment through interpretation of the term “manifest”. The requirement that an excess of powers must be “manifest” to warrant annulment of a decision was seen as a tool for delimiting the annulment on this ground from an appeal. However, decisions of some annulment committees only added to the confusion. For instance, the Viviendi I Committee famously annulled the tribunal’s decision to refuse jurisdiction over certain claims that the tribunal had considered contractual in their nature, holding that a “manifest” excess of powers occurs when it is capable of affecting the outcome of the case. This is hardly of any help for dealing with the appeal/annulment confusion since, by the Committees’ own admition, when it comes to the decision on jurisdiction any excess of powers is capable of affecting the outcome of the dispute.

On the other hand, most of the committees nowadays interpret the term “manifest” as an excess of powers that is “plain on its face”, “clear”, “obvious” or “easily recognizable”. In other words, in order to lead to the annulment, a defect in the tribunal’s jurisdictional decision must be so obvious or so evident on the first reading of the document that it does not warrant further investigation of inquiry. Such reading of the term “manifest” allowed annulment committees to introduce what is sometimes referred to as the tenable standard – misinterpretation of law can still lead to the annulment of the decision, but only if the tribunal’s decision is untenable or unreasonable. Thus, under this reading of the relevant ground for annulment, a tribunal’s interpretation of the jurisdictional instrument must be preserved, unless it is so erroneous that no reasonable person could accept it. This way of understanding the manifest excess of powers is aligned with the idea behind the ICSID review mechanism – to preserve finality of awards, while safeguarding the integrity of the system by protecting parties from unreasonable decisions.

Keywords: Foreign Investments, ICSID Awards, Annulment, Manifest Excess of Powers, Investment Arbitration.

339.5:347.44
347.451.92:338.5

Dr. Sandra Fišer Šobot[*]

THE TIME AND PLACE OF PAYMENT OF PURCHASE PRICE IN CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

According to Art. 53 of the United Nations Convention on Contracts for the International Sale of Goods (CISG), the buyer must pay the price for the goods and take delivery of them as required by the contract and the CISG. The buyer's obligation to pay the price is regulated in Articles 54 –59 CISG and encompasses preparatory steps for payment, determination of the price, and payment of the price at a certain place, at a certain time, and in a certain manner. The place and time of payment of the price are closely connected and are governed by Articles 57 and 58 of the CISG, respectively.

As provided in Article 57 CISG, if the buyer is not bound to pay the price at any other particular place, the buyer must pay it to the seller at the seller's place of business or, if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place. Formulation "if the buyer is not bound to pay the price at any other particular place" suggests that priority shall be given to the terms agreed upon by the parties. If there is any agreement between the parties, the place of payment may also be determined by practices established between the parties or by usages pursuant to Article 9 CISG. However, if the buyer is not bound to pay the price at any other particular place, the following rules are relevant. First, if the payment is to be made against the handing over of the goods or of documents, the buyer must pay the price at the place where the handing over takes place. In this situation, the place of payment is identical to the place of handing over of the goods or documents. Second, the buyer must pay the price at the seller's place of business. This rule reflects the general principle that monetary obligations should be performed at the creditor's place of business. Generally, this rule covers situations where the contract is not performed concurrently, but one party is required to perform its obligation in advance.

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Regarding the time of payment, Art. 58 CISG specifies that if the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and the CISG. On the other hand, if the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

As can be concluded, with regard to the time of payment, the agreement between the parties takes precedence in accordance with the principle of party autonomy. Furthermore, pursuant to Art. 9 CISG, usages and practices established between the parties may also be relevant. However, where the parties have not determined when the price is due, the time of payment depends on the manner in which delivery of the goods is effected. If the contract involves the carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price. Consequently, the buyer must pay the price before obtaining possession of the goods or documents.

On the other hand, the buyer must pay the price when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and the CISG. This implies that the placing of the goods or documents at the buyer's disposal, on the one hand, and the payment of the price, on the other hand, are to be performed simultaneously. In other words, the goods (or the documents) and the price should be exchanged at the same time. In this case the payment of price is due when the seller places the goods or documents on buyer's disposal.

Finally, Art. 58(3) CISG prescribes that the buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Keywords: contracts for the international sale of goods, CISG, obligations of the buyer, purchase price, time of payment, place of payment.

336.22:347.72(497.11)

Dr. Svetislav Kostić[*]

SERBIAN CORPORATE INCOME TAXATION AT A CROSS-ROAD: WHERE TO GO FROM HERE?

During the first 12 year's of the XXI century the primary focus of Serbian corporate income taxation policy was to attract foreign direct investment and even more importantly stimulate employment by offering taxpayers a very competitive i.e. a very low effective corporate income tax rate. These two goals were accomplished via a combination of a low nominal corporate income tax rate and the offering of a number of broadly available tax incentives. While the results of this approach were at best modest, a dogma is still present in our society that low effective corporate income tax rates are an important element for accelerating economic growth.

During the main period of fiscal consolidation from late 2012 until 2014 Serbia increased its effective corporate income tax rate threefold - from an effective rate of 5% to an effective rate of 15%. This was accomplished by the increase in the nominal rate from 10% to 15% and at the same time the abolishment of most tax incentives. Surprisingly to many, this step had no negative effect on the country's ability to attract foreign direct investment. Actually, foreign direct investment increased as the corporate income tax rate went up.

As of 2018 it became evident that high unemployment was no longer the country's main problem. Quite the opposite in an increasing number of fields Serbia is having to deal with the lack of available and qualified workforce. Furthermore, the Serbian economy was loosing one of the main attracting factors, namely its labor force cost was ceasing to be competitive. In other words, the Serbian economy has arrived at a very sensitive point in which it no longer qualifies as a developing country, but it is not yet strong enough to compete with the developed ones. Before it are two options: a) to fall from the cliff back to where it already was, i.e. to regress due to inability to overcome the obstacles whose mastering is a prerequisite for further development or b) to successfully advance to the next step of economic development.

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From 2018 until 2022 the Serbian legislator actively introduced amendments to the Serbian system of corporate income taxation (and more importantly personal income taxation) whose primary inspiration was based in the desire to help the Serbian economy overcome the problems of no longer being able to really on cheap labor force. Unfortunately, this policy drive was short-lived, it was not followed up and in the end was essentially abandoned.

Serbia is for the last 4 years in a complete limbo as regards corporate income tax policy, while at the same time globally this area of tax law, particularly in relation to its cross-border component, is seeing the most comprehensive transformation in many decades. The Serbian legislator has lost either inspiration or interest and is not providing anything in the ambit of corporate income tax policy to the economy which is facing increasing problems (i.e. in addition to loosing the cheap labor advantage, the Serbian economy can no longer rely on the supply of cheap energy, while foreign direct investment is rapidly falling).

This paper will try and outline the possible paths of future development of Serbian corporate income tax law. Namely, the introduction of Pillar 2 legislation all over the world and in particular the EU Minimum Corporate Income Tax Directive, enable Serbia, at essentially the expense of big multinational corporations, to find recourses to provide notable tax incentives to its own domestic economy, not only small and medium, but virtually 99% of domestic enterprises. Such incentives should be tailored to help the more than necessary modernization and technological development of the Serbian economy and could help convince (although legal certainty and the return of the rule of law which is sadly no longer present in Serbia in a degree comparable to its neighbors) domestic investors to choose Serbia as a destination for their capital.

One painful trait of the Serbian economic development saga over the last 10 years is that we have been the region's champion at attracting foreign direct investment, while at the same time our domestic investors were investing disproportionally less in their own country in comparison to domestic investors in neighboring jurisdictions. This paper will show that the current global corporate income tax environment does contain possibilities to remedy this problem, a goal of particular importance at a time when the foreign direct investment flows are rapidly drying out.

Keywords: Corporate income tax, incentives, Pillar 2, investment.

347.72(498)

Dr. Flaminia Stârc-Meclejan[*]

CORPORATE BOARDS IN THE ERA OF SUSTAINABILITY

The article analyses the evolving role of corporate boards in the context of the growing integration of sustainability considerations into corporate governance. It proceeds from the premise that the formulation, implementation, and supervision of corporate sustainability policies, together with compliance with ESG-related obligations, have become increasingly relevant components of directors' managerial and oversight functions.

The study first explores the legal foundations that justify the active involvement of corporate boards in sustainability governance. Particular attention is devoted to the interpretation of directors' fiduciary duties, especially the duty of loyalty, and to the manner in which these duties may accommodate sustainability-related objectives. The article argues that directors can no longer limit their decision-making exclusively to the pursuit of short-term financial performance. Instead, they are increasingly expected to consider factors that may affect the company's long-term resilience, competitiveness, and capacity to create sustainable value. In this regard, environmental and social risks are examined not as external considerations detached from the company's interests, but as elements capable of influencing its long-term success and stability.

From a company law perspective, the involvement of directors in the development and implementation of corporate social responsibility strategies may be grounded in their statutory powers and duties relating to the management of the company's affairs and the pursuit of its corporate purpose. Accordingly, the board of directors should assume a central role in defining strategic sustainability objectives, monitoring their implementation, and ensuring that the company's activities remain consistent with its long-term interests. Such involvement is compatible with the directors' statutory duty to undertake all actions necessary for achieving the company's corporate purpose, as provided by Articles 70 and 142 of Romanian Company Law no. 31/1990. The procedural aspects of this role may be further developed through corporate governance codes, which can clarify

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the allocation of responsibilities among board members, executive management, and the general meeting of shareholders, while also establishing rules regarding directors' duties, conflict-of-interest management, remuneration policies, and legal accountability.

A central focus of the analysis concerns the concept of corporate interest and its ability to accommodate sustainability considerations within the traditional framework of company law. The article investigates whether the incorporation of sustainability objectives into the corporate strategy requires a fundamental redefinition of corporate purpose or whether such objectives may be reconciled with existing legal principles. We argue that the notion of corporate interest has always possessed a degree of flexibility that enables it to evolve in response to changing economic and social realities. Consequently, sustainability-oriented decision-making should not be viewed as a departure from established company law principles, but rather as a contemporary manifestation of directors' responsibility to promote the long-term success of the company.

The study further explores the relationship between shareholder interests and stakeholder concerns. Rather than treating these interests as inherently conflicting, the article examines the possibility of their convergence through a long-term governance perspective. We suggest that directors may legitimately consider the interests of employees, consumers, creditors, local communities, and other stakeholders where such interests are connected to the sustainable creation and preservation of corporate value. This approach reflects an increasingly nuanced understanding of corporate governance, one that recognizes the interdependence between corporate success and the broader economic and social environment in which companies operate.

The research concludes that the incorporation of ESG and sustainability considerations into corporate governance does not require abandoning the traditional foundations of company law. On the contrary, it demonstrates the capacity of established legal concepts, particularly directors' fiduciary duties and the notion of corporate interest, to adapt to evolving economic conditions and societal expectations. By analysing the interaction between sustainability objectives and directors' responsibilities, the article contributes to the broader debate concerning the future development of corporate governance and the role of corporate boards in fostering long-term corporate sustainability.

Keywords: corporate boards, CSR, sustainability, duty of loyalty, corporate interest, Romanian company law, Law no. 31/1990.

364.3(497.2)
364.32(497.2)
316.628

Dr. Maria Radeva[*]

THE BALANCE BETWEEN SOLIDARITY AND EQUIVALENCE: CHALLENGES FACING THE BULGARIAN PUBLIC SOCIAL SECURITY AND STATUTORY HEALTH INSURANCE SYSTEMS

This study examines the normative manifestation of the principle of solidarity and the boundaries of applicability of the principle of individual equivalence within the public social security framework of the Republic of Bulgaria. The research addresses a fundamental, long-standing doctrinal question in contemporary social security law: namely, how the specific nature of the protected legal interest inherently dictates the structural relationship between the individual insurance contribution and the subsequent insurance benefit.

Within the scope of this scientific analysis, a comparative assessment is made between the two autonomous pillars of the Bulgarian public social security architecture—state social security (providing cash benefits and pensions) and statutory health insurance (providing benefits in kind). Although these subsystems remain organizationally and financially independent, they operate upon identical foundational values and within a highly similar constitutional framework. This study defends the thesis that despite their shared legal and value-based foundations, the twin principles of solidarity and equivalence manifest with significantly different intensities in these two distinct structures.

In the realm of state social security, the provided cash benefits or pensions directly replace lost employment income upon the occurrence of specified social risks. Since income allows for objective monetary and legal comparability, the legislative framework provides for a limited, highly regulated equivalence between the paid financial contribution and the ultimate size of the benefit. Conversely, in statutory health insurance, the object of protection is human health as a fundamental personal and public good. The very nature of this right pre-

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cludes any preliminary mathematical comparability between the size of the financial contribution and the actual clinical need for medical care. Access to the basic package of health services is determined solely on the basis of medical necessity, rendering individual mathematical equivalence inapplicable and giving absolute expression to the principle of social solidarity.
The original scholarly contribution of this paper lies in identifying the acute legal and practical challenges arising from this complete absence of individual equivalence in statutory health insurance, which objectively risks demotivating higher-income contributors and creates systemic vulnerabilities for abuse. As a dogmatic solution to this growing imbalance, the author explores the under-researched role of control proceedings within public insurance law. The study analyzes the thesis that in the absence of mathematical reciprocity, the long-term stability of the solidarity model depends entirely on public trust in its fairness. Therefore, the control mechanisms exercised by the National Health Insurance Fund (NHIF) against the unlawful expenditure of resources are examined not merely as administrative routines, but as critical legal instruments that structurally compensate for the deficit of individual reciprocity, thereby guaranteeing the financial sustainability and systemic integrity of the national statutory health insurance system.

Keywords: solidarity, individual equivalence, public social security, statutory health insurance, control proceedings, Bulgarian social security law.

347.5:004.8]:347.995(430)

Dr. Réka Pusztahelyi[*]

REFLECTIONS ON THE MUNICH REGIONAL COURT'S JUDGMENT IN CASE GOOGLE AI OVERVIEWS

In May 2026, the Regional Court of Munich (LG München I, Endurteil v. 28.05.2026 - 26 O 869/26) ruled against Google's AI-powered search engine feature, 'AI Overviews', for infringing the personality rights of two Munich publishers by generating false information. The court issued a preliminary injunction barring Google from repeating these statements (outputs). Meanwhile, Google's parent company, Alphabet Inc., declared that it would challenge the judgment. Building on this case, this paper will examine the civil liability implications of highly autonomous AI systems in relation to the following issues: (1) the interplay between the Digital Services Act (DSA, Regulation (EU) 2022/2065), the AI Act (Regulation (EU) 2024/1689), the PLD (Directive (EU) 2024/2853) and national tort law rules; (2) the risk-based categorisation of the AI Act and generative AI; (3) controllability of AI systems; (4) general expectations regarding the accuracy and reliability of AI outputs; and (5) attribution of AI-generated outputs.

Ad 1) The judgment highlighted that the limitation of liability of platform providers (and search engines) under Art. 6 DSA is not applicable in this case, since the AI system generates new content and articulates its own statements. Gradually stepping into force, most of the AI Act has not yet been applied (e.g. the obligations of AI system providers), with the exception of the important provisions on definitions and prohibited AI practices. The AI Act establishes product safety rules, serving as a basis for interpreting and applying the revised Product Liability Directive. Even though the case is beyond the scope of the product liability regime (the injured party is a business, the infringement triggered immaterial harms, etc.), it may provide insight into a possibly stringent application of the national liability rules in case of damage caused by highly autonomous AI systems, especially in case of recommendations or content system outputs.

Ad 2) On 19th May 2026, the Commission published the draft of the long-awaited Guidelines on high-risk AI systems. As the emergence of genera-

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tive AI has challenged the risk-based categorisation of AI systems and led to new definitions and categories on general-purpose AI models in the adopted text, so too the so-called agentic AI systems put the AI Act rules to another test.

Ad 3) and 4) The high level of AI autonomy means that effective human control will diminish. Therefore, if the core purpose of the system is to collect and present fast and accurate information according to the search question, thereby sparing the end user from thorough checking, it is important that the provider maintains the control.

Ad 5) The Google AI case also highlighted another important issue, namely the attribution of the AI output. If the control over the AI system is exercised exclusively by the provider, not the end user, and the system generates independent statements that go beyond the individual search results, the AI outputs must also be attributed to the provider, not the user. This approach to attribution should be aligned with the provisions governing the results of the autonomous functioning of AI systems, where not intention but control would be the primary factor, whether in autonomous driving or AI contracting. Finally, the question remains whether national law on contractual or extracontractual liability would provide adequate protection against material or immaterial harm caused by AI systems. Or are we already missing the repealed AILD rules?

Keywords: AI system, extracontractual liability, Google AI Overviews, fault-based liability, liability for false AI output, generative AI.

004.8:349.2
331.104:342.7-057.16

Dr. Septimiu Panainte[*]

MEET JOE BLACK: SOME VIEWPOINTS ON THE INFLUENCE OF AI ON EMPLOYMENT RELATIONSHIPS

The issue of AI contamination in the workplace is challenging, given the need to achieve high productivity and competitiveness while respecting workers' rights and dignity. Protecting workers requires an understanding of the effects of AI on employment.

AI-driven management is reshaping employment relations, moving from interpersonal governance, which implies negotiation, empathy and contextual understanding, to system-mediated governance based on surveillance, metric-driven optimisation and opaque decision-making. Paradoxically, AI-driven management means personalised decisions in more impersonal relationships. A phenomenon of depersonalisation of employment can be identified: mediation replaces interaction; communication is automated; people become legible as data; and standardisation increases. This coexists with hyper-personalisation, aimed at enabling better matching of tasks to skills, faster support and feedback, personalised learning pathways and less dependence on the "manager's mood". In reality, hyper-personalisation does not entail or lead to empathy, but rather to a kind of pragmatic, unidirectional intimacy resulting from continuous profiling through recording, reading, comparing and interpreting data and metadata to infer traits, moods, vulnerabilities or constraints. In this sense, the employee moves from being an authentic contractual party to becoming an object permanently measured through data. Furthermore, AI agents offer (at least for now) non-stop low-cost labour, with no sick days and minimal supervision. Therefore, the transactional value of human labour decreases.

Employers have always exercised a degree of supervision over employees' activities, as an expression of managerial authority and a practical condition for organisation, discipline and occupational safety. What is new in the digital era is

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not the existence of control, but its technical modalities, intensity and scale. A distinction may be drawn between the monitoring of work and the monitoring of workers, although the two categories overlap. This distinction is not absolute, and the same technology may serve multiple functions.

Digital labour platforms represent one of the most developed and visible forms of algorithmic management. Work is allocated, evaluated, priced and sometimes terminated through automated systems. Directive (EU) 2024/2831 on improving working conditions in platform work is particularly relevant because it lays down minimum rules to improve working conditions and ensure correct employment status. It creates a rebuttable presumption of employment based on facts indicating direction and control. It also requires transparency regarding automated monitoring and decision-making systems and provides rules on human oversight and review.

The EU AI Act, Regulation (EU) 2024/1689, is also important because it establishes a new model of technological governance in which innovation is not treated as an objective separate from human rights. In particular, it converts fundamental rights into operational requirements. For employment relations, it recognises that AI used in recruitment, promotion, task allocation, performance evaluation, monitoring and dismissal may seriously affect workers' careers, livelihoods and rights. Therefore, an employer must inform affected workers and their representatives before they become subject to a high-risk AI system. However, regulatory solutions are often neither simple nor clear-cut. It seems especially important that, for high-risk AI systems in employment, as defined in Annex III, point 4, deployers falling within the scope of Article 27 must assess potential impacts on fundamental rights (FRIA). Furthermore, it must be examined how a FRIA can be conducted in practice, including where the employer has previously carried out a data protection impact assessment (DPIA) under Article 35 GDPR. Several important issues must be addressed: if the FRIA is designed primarily to inform, as a prerequisite for protection, what level of comprehensiveness makes it useful; whether existing ISO standards and operational procedures are adequate; whether measuring the inputs and outputs of a "black box" can produce reliable conclusions; how important access to source code is; and how likely it is, from a legal perspective, that such access will be granted, not only to market-surveillance authorities but also to experts assessing the impact on workers' rights.

Additionally, the involvement of trade unions and workers' representatives should become a compulsory procedural step, with documented responses to their observations. Where an AI system is alleged to have affected workers' rights, burden-shifting mechanisms should also be considered.

Finally, employers, as deployers, generally cannot outsource their liability. However, where does the legal responsibility of AI system providers begin? Would joint and several liability be appropriate in certain circumstances?

Keywords: algorithmic management; workplace monitoring; workers' rights; AI high risk systems; fundamental rights impact assessment; employer liability.

331.5:349.2

Dr. Darko Božičić[*]

THE IMPACT OF JUST TRANSITION AND DUE DILIGENCE REGULATIONS ON LABOUR MARKETS: THE PERSPECTIVE OF COMPANIES FROM NON-EU COUNTRIES

The regulatory framework of the European Union in the field of "just transition" and corporate sustainability represents an attempt to strike a balance between the objectives of sustainable development, the protection of employees, and the preservation of the competitiveness of the internal market. These instruments impose significant obligations on companies operating within the EU, including enhanced standards of labour protection, environmental requirements, and due diligence obligations in global supply chains. However, their implementation raises complex questions regarding their impact on the EU labour market, particularly in relation to companies originating from non-EU countries which, directly or indirectly operate within the EU internal market.

In the capital market, stricter regulatory requirements for EU-based companies may lead to increased operating costs and a reduction in their price competitiveness compared to business entities from Non-EU countries, which often operate in less demanding regulatory environments. Such a situation may create asymmetric market conditions, in which companies outside the EU gain a competitive advantage not through greater efficiency, but through lower standards of worker protection and environmental compliance, which may potentially take on the characteristics of unfair competition, especially where it results in the systematic undermining of the standards that the EU seeks to establish.

In the labour market, the effects are equally multi-layered. On the one hand, "just transition" instruments contribute to the protection of employees within the EU through measures such as reskilling, employment support, and the mitigation of the adverse effects of restructuring. On the other hand, if EU companies, faced with increased regulatory costs, relocate production to third countries, this may lead to a reduction in employment or exert downward pressure on working condi-

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tions within the Union. This gives rise to a paradox: measures aimed at strengthening employee protection may indirectly contribute to their vulnerability in the global market.

At the same time, the due diligence regime in EU law introduces a certain corrective mechanism, particularly through its extraterritorial reach. This extraterritorial application is intended to encourage EU companies to require compliance with labour and environmental standards from their partners in third countries. Such an effect may contribute to the gradual convergence of standards and to the reduction of competitive disparities based on social dumping. However, its effectiveness depends on the scope of application, the capacity for supervision, and the willingness of companies to allocate additional resources in this regard.

Overall, it may be concluded that "just transition" and due diligence regulation simultaneously generate and mitigate the risks of unfair competition, both in the labour market and in the capital market. While higher standards within the EU create an initial competitive imbalance vis-à-vis third countries, accompanying mechanisms seek to establish more level playing conditions. The key question remains whether this balance is sustainable in the long term and whether the EU will be able to simultaneously preserve high standards of employee protection and the competitiveness of its economy in the global context.

Keywords: Just Transition Law, Due Diligence, Internal EU Market, Labour Market, Non-EU.

004.8:378:330

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ARTIFICIAL INTELLIGENCE AND ECONOMIC INEQUALITY IN HIGHER EDUCATION

The use of artificial intelligence (AI) has significant effects on the economy. The increasing application of AI contributes to social tensions because of the emergence of new circumstances that require adaptation. AI is becoming the strategic foundation of new economic systems, replacing the earlier digital transformation. The contemporary market is experiencing exponential growth, necessitating fundamental changes in economics and other social spheres.

The integration of AI systems into higher education introduces significant changes across the socio-economic system, influencing individual behavior, the labor market, and the broader economy. The initial adoption of AI in higher education has initiated a cycle of innovation, with each subsequent phase and step in cycle contributing to measurable improvement and progress. These structural changes in higher education shape the future of universities by providing competitive advantages, enhancing human capital, and creating potential that, if properly utilized, can reduce economic inequality.

The reliability and security of legal and economic systems depend on stable institutional frameworks, regulatory compliance, transparency, and the preservation of social trust. However, legal equality, even in the context of pervasive AI, does not equate to economic equality, so the manner in which AI is utilized becomes crucial. While AI itself does not cause economic inequality, its application can either intensify disparities or help mitigate the widening economic gap. The relationship between AI and economic inequality is complex and multifaceted.

This research analyzed theoretical literature, practical examples, and survey results from students and teachers regarding their knowledge, use, and perceptions of importance of AI investment in higher education. The findings indicate that the application of AI tools in higher education significantly influences economic inequality among students, teachers, and institutions. Notably, AI is not the root cause of economic inequality, but it can exacerbate existing disparities.

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The primary reason of increasing economic inequality is unequal access to technology, particularly between financially stable students and those from lower socioeconomic backgrounds. This disparity widens the gap and creates privileged groups. Universities with greater financial resources can invest more in AI infrastructure, resulting in long-term advantages for these institutions. The adoption of AI has also altered the labor market, favoring certain professions and providing advantages to students with greater economic means and access to higher-quality education.

AI enables individualized instruction, making personalized education a privilege and further widening the digital divide. Additionally, the commercialization of higher education and treating knowledge as a market commodity, not only as a resource, contribute to disparities among faculties, foster exclusive partnerships between financially stable universities and technology companies, and result in preferential employment opportunities for their students.

In higher education, numerous positive effects arise from AI use. However, to prevent the economic gap from deepening, the state and universities must actively work to ensure AI use in higher education yields numerous positive outcomes. However, to prevent the economic gap from widening, governments and universities must actively promote equitable access to technology and opportunities for all. Such efforts can reduce educational disparities, address digital imbalances, and promote greater equilibrium in the labor market. While AI is not the cause of economic inequality, the way it is implemented is a key factor driving disparities within and between universities. Unequal access to AI tools may become the most significant risk factor in intensifying existing economic differences in higher education.

Keywords: artificial intelligence, higher education, economic inequality.

339.137.2:615

Dr. Lazaros Grigoriadis[*]

EXCESSIVE PRICING IN THE PHARMACEUTICALS SECTOR: LESSONS FROM THE EUROPEAN COMMISSION'S ASPEN DECISION

Access to healthcare is a concern for individuals around the world. Concerns regarding affordability and access to pharmaceutical products are long-standing. In Europe and other jurisdictions, competition laws expressly prohibit charging an unfair price as a form of abuse of a dominant market position. However, the price of pharmaceutical products in Europe may be high or, even, "excessive."

Economists traditionally criticize the enforcement of EU competition policy vis-à-vis excessive pricing cases. They support mainly that, if the price of the product was indeed "too high", either consumers would stop buying the product or new firms would enter into the market, by thus forcing the dominant firm to lower its prices. Therefore, in normal competitive circumstances, the market would self-adjust and thus competition policy intervention would be unnecessary. Secondly, in technological markets (e.g. pharmaceutical market), firms develop new and innovative products if they can benefit from a monopoly price for a temporary period: by sanctioning excessive prices, a competition agency would thus discourage the dominant firm from investing in innovation.

At the EU level, Article 102(a) TFEU expressly includes in the non-exhaustive list of abuses of dominance: "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions". The EU Court of Justice observed that this provision could be invoked where a dominant undertaking charged "a price which is excessive because it had no reasonable relation to the economic value of the product supplied." Proving that a price is excessive requires meeting two cumulative conditions. First, there must be evidence of an excessive gap between the actual production costs and the retail price, taking into account production costs, selling price, and profit margins. Second, the imposed price must be either inherently unfair or unfair when compared to competing products (C-27/76, United Brands v Commission, 14 February 1978).

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Considering the significant intersection of intellectual property and competition law with public health policy, affordable healthcare, and pharmaceutical innovation, reflection is warranted on the role of competition law in securing fair pricing for medicines. Although historically characterized as a rarity within antitrust enforcement, cases concerning excessive pricing have recently surfaced in some Member States of the EU (e.g. in Italy, Denmark, the Netherlands), but also at EU level.

In the landmark Aspen Decision, the European Commission made it clear that it is ready to take action against excessive prices for off-patented medicines in the EU. According to that Decision, the excessive pricing prohibition under Article 102(a) TFEU can be applied in an effective way under the United Brands v. Commission framework of analysis, which has proven to work well in practice and provides for sufficient legal certainty. Moreover, that Decision shows that antitrust intervention may serve as an aid to regulators rather than acting in conflict with them, and there is no room for possible concerns about overlapping or trespassing by competition agencies in their area of competence. Cooperation between competition authorities and sector regulators would mitigate deficiencies in determining suitable benchmarks, which, under the settled case law of the Commission and the EU Court of Justice, may correspond to actual or hypothetical regulated prices. Furthermore, since competition rules are grounded in the TFEU, they take precedence over sector-specific regulations and can thus be invoked to rectify regulatory shortcomings.

Although the Aspen Decision did not concern patented medicines, some authors have suggested that the existence of patent protection should not be seen as a reason to absolutely exclude the enforcement of excessive pricing prohibition, which might take the incentives for innovation into account. According to this methodology, this assessment can be conducted by examining the ex-ante probability of success—a factor of paramount importance within the pharmaceutical context, given that only a limited fraction of developed products successfully attain market maturity. However, generally, antitrust intervention in situations where innovative efforts are at stake is excluded, based on the findings of economic analysis. In addition to the core argument relating to the likely detrimental effects on investments and the development of innovative products, it is asserted that evaluating the costs of researching and marketing a new pharmaceutical product represents a highly complex exercise, devoid of any consensus-based methodological standard. In general, given that excessive pricing cases are inherently intricate to establish and prosecute, litigation involving patented products is unlikely to prove successful.

Keywords: patented pharmaceuticals, off-patented pharmaceuticals, unfair/excessive pricing, legal certainty, competition enforcement, regulatory pricing, healthcare policy, Research & Development, pharmaceutical innovation.

336.227.2

Dr. Lidija Živković[*]

THE NEVERENDING GAAR CONUNDRUM: A MISSED OPPORTUNITY TO REFORM THE PRINCIPLE OF FACTICITY

With the aim of fully harmonizing Serbia's tax legislation with the EU acquis, Serbian Ministry of finance proposed several legislative acts amending the existing legal framework addressing different taxes (value added tax, excise duties, corporate income tax, personal income tax), as well as tax procedural matters (e.g. administrative cooperation in tax matters, mutual assistance in the collection of fiscal revenues, and dispute resolution mechanisms).

One piece of secondary EU law transposed as a result is the Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, commonly known as the Anti-Tax Avoidance Directive. The Anti-Tax Avoidance Directive seeks to protect EU Member States' tax bases by preventing tax avoidance through a set of anti-avoidance rules: four specific anti-avoidance rules (interest deduction limitation rule, exit tax, controlled foreign company rule, hybrid mismatch rule) and a general anti-avoidance rule (hereinafter: GAAR). Each of these measures establishes a minimum standard, allowing Member States to adopt rules that are more stringent vis-à-vis taxpayers.

The obligation to transpose into national tax legislation a GAAR compatible with the one contained in the Anti-Tax Avoidance Directive presented an opportunity to reform the principle of facticity contained in Article 9 of the Law on Tax Procedure and Tax Administration (hereinafter: LTPTA), particularly its first paragraph, which for decades has been applied by the Tax Administration to prevent tax avoidance. The manner in which this provision is applied in practice remains to date among the most problematic features of the Serbian tax system. Given that the Anti-Tax Avoidance Directive sets only the minimum standards for the Member States, domestic policymakers were free to devise a GAAR tailored to the needs and capabilities of the Serbian tax system, while at the same time satisfying the requirements contained in Article 6 of the Anti-Tax Avoidance

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Directive. Regrettably, this opportunity appears to have been missed. As it often happens with legislative reforms aimed at harmonizing national legislation with the legal framework of the EU, time constraints prevented a thorough appraisal of the GAAR's complex design issues.

This paper analyses the proposed GAAR and argues that it adds further ambiguity and uncertainty to Serbia's already chaotic approach to combating tax avoidance. First and foremost, the wording of the proposed GAAR conflates concepts – such as simulation and abuse – that legal theory and comparative practice treat as distinct concepts, not least because they trigger different legal consequences. Moreover, restricting the substantive scope of the transposed GAAR to corporate income tax will introduce more complexity and particularisation into the present tax legislation. Likewise, it is bound to establish differing standards of abusiveness for different (forms of) taxpayers, undermining thereby the principle of equality of taxpayers.

Keywords: General anti-avoidance rule (GAAR), tax avoidance, principle of facticity, Anti-Tax Avoidance Directive, simulation.

347.235:336.226.322

Dr. Luka Baturan[*]
Dr. Cvjetana Cvjetković Ivetić[**]

VAT REFUND FOR FIRST-TIME HOME BUYERS: THE CASE OF SERBIA AND BOSNIA AND HERZEGOVINA

In 2007, Serbia began applying the provisions of its Value Added Tax (VAT) Law, which introduced the right to a VAT refund for first-time home buyers. Following the Serbian example, Bosnia and Herzegovina introduced a similar VAT refund mechanism into its VAT system in 2025. The approach adopted in Bosnia and Herzegovina largely followed the Serbian model, although it was simplified to a certain extent.

The first condition for exercising the right to a VAT refund is that, at the time of purchase, the buyer must have registered residence in the country concerned. For domestic nationals, this requirement is relatively easy to satisfy, whereas foreign nationals would first need to obtain permanent residence status.

Both countries provide that foreign nationals are not entitled to a VAT refund. However, both Serbia and Bosnia and Herzegovina are formally candidates for accession to the European Union. Through their Stabilisation and Association Agreements, they have undertaken to harmonize their legislation governing the acquisition of ownership rights over real estate in order to ensure that nationals of EU Member States receive the same treatment as domestic nationals. Consequently, this restriction raises questions regarding its compatibility with the obligations assumed in the process of European integration.

In both countries, the right to a VAT refund is available only to adult buyers. There is no upper age limit, unlike the real estate transfer tax reliefs found in certain cantons of the Federation of Bosnia and Herzegovina.

In both jurisdictions, the basic requirement for obtaining a VAT refund is that the buyer acquires a first dwelling in the relevant country. In the VAT Law of Serbia, this provision has been specified (and restricted) by requiring that, from 1 July 2006 until the date of certification of the purchase agreement under which

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the first dwelling is acquired, the buyer must not have owned, jointly owned, or co-owned an apartment in the territory of Serbia.

The VAT Law of Bosnia and Herzegovina contains no such limitation. However, the Rulebook on the Application of the VAT Law provides that, during the seven-year period preceding the date on which the application for a certificate is submitted, a first-time home buyer must not have been liable for the payment of taxes related to real estate.

The most significant difference concerns the amount of the VAT refund. In Serbia, a VAT refund may be claimed for a dwelling of up to 40 m², with an additional 15 m² for each member of the buyer's household. If a first-time home buyer purchases a dwelling whose surface area exceeds the area in respect of which the buyer and household members are entitled to a VAT refund, VAT is payable on the excess area.

The VAT Law of Bosnia and Herzegovina contains no such limitation. However, the Rulebook on the Application of the VAT Law prescribes a limitation identical to that applicable in Serbia.

Nevertheless, the effects of this limitation differ, given that the VAT rate applicable to the sale of apartments and other buildings in Bosnia and Herzegovina is 17%, whereas Serbia applies a reduced VAT rate of 10% to such transactions.

The very concept of this tax relief is highly controversial. From the perspective of tax law, it is in itself debatable to grant relief to a person purchasing a dwelling solely because that person has not previously owned one, since this relief effectively constitutes a form of social assistance (subsidy) that, from a budgetary perspective, takes the form of tax expenditure. However, determining the amount of the social subsidy in proportion to the value of the property, so that purchasers of more expensive dwellings receive a larger subsidy while less affluent buyers purchasing much smaller dwellings receive less assistance, raises questions about the consistency of this approach with the social function of tax reliefs.

Another problematic aspect is that this VAT refund mechanism is not aligned with Council Directive 2006/112/EC on the common system of value added tax. During preparations for negotiations concerning the harmonization of tax legislation, the Serbian authorities explicitly acknowledged that this institution is not compatible with the EU acquis. Should the accession negotiations ultimately lead to full harmonization of VAT legislation with European Union law, the continued existence of these tax reliefs may be subject to reconsideration.

Keywords: VAT refund; first-time home buyer; tax relief; homeownership; housing policy.

347.4:[339:004.738.5

Dr. Giuseppina Di Gregorio[*]

WHO IS LIABLE? TRANSLATING DISCLAIMERS IN DIGITAL MARKETPLACES: LEGAL LOCALIZATION FROM ENGLISH INTO ITALIAN ON AMAZON AND EBAY

Disclaimers constitute a distinctive legal and commercial genre that plays a crucial role in limiting liability, defining contractual obligations, and managing consumer expectations in digital marketplaces. As legal genres, they are shaped by institutional practices, communicative purposes, and the legal systems in which they operate. Their cross-linguistic transfer therefore requires more than linguistic equivalence; it demands a functional and comparative legal approach capable of conveying legal meaning across different jurisdictions while preserving the legal effects of the source text. In the context of global e-commerce, where consumers routinely engage with multilingual interfaces and cross-border transactions, the localization of disclaimers has become increasingly important for ensuring legal certainty, transparency, and compliance with consumer protection regulations.

This study examines the localization of disclaimers from English into Italian on two major e-commerce platforms, Amazon and eBay, focusing on the challenges arising from the interaction between British and American commercial law and the Italian legal framework. English-language disclaimers frequently seek to exclude or limit liability through contractual clauses reflecting common-law traditions and a strong emphasis on freedom of contract. However, when adapted for the Italian market, such clauses must comply with the mandatory consumer protection provisions established by European Union legislation and the Italian *Codice del Consumo*, which impose limits on the enforceability of exclusion and limitation clauses.

The analysis adopts a genre-based and comparative legal approach to investigate how legal and commercial meanings are reformulated across languages and legal systems. Particular attention is paid to terminological choices, syntactic

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restructuring, mitigation strategies, and the adaptation of legal concepts that may not have direct equivalents in the target jurisdiction. The study also considers how localized disclaimers balance the commercial interests of online platforms with the legal rights of consumers, highlighting the role of language professionals as mediators between institutional requirements and regulatory constraints.

Examples drawn from Amazon's website illustrate the processes of legal and linguistic adaptation involved in cross-jurisdictional localization. Product policies may specify that "The product's language, country version, model, or edition must match the description on the page", which can be rendered in Italian as: "La lingua, la versione nazionale, il modello o l'edizione del prodotto devono corrispondere alla descrizione riportata nella pagina." In such cases, practitioners must ensure terminological precision while preserving legal effectiveness, textual clarity, and compliance with consumer legislation. Comparable challenges arise in the localization of liability clauses, return policies, and warranty disclaimers, where differences between common-law and civil-law traditions can significantly affect both interpretation and legal validity.

Drawing on genre theory and legal translation studies, this paper argues that disclaimers should be understood as a process of legal localization rather than mere textual transfer. Translators act as mediators between legal cultures, adapting commercial disclaimers to the expectations, norms, and legal requirements of the target jurisdiction. The findings highlight the importance of combining linguistic competence, genre awareness, and comparative legal knowledge to produce texts that are accurate, legally effective, and aligned with consumer protection standards in Italy. More broadly, the study contributes to current discussions on multilingual digital communication by demonstrating how legal localization reshapes contractual discourse to accommodate divergent legal traditions while maintaining commercial functionality, consumer trust, and regulatory compliance in global electronic commerce.

Keywords: disclaimers; genre; CDA; Amazon; commercial law.

347.776:339.138
347.77

Maciej Pleban[*]

BETWEEN LEGAL TRADITION AND SPECIAL EVENT LEGISLATION: AMBUSH MARKETING AS A CHALLENGE TO TRADITIONAL LEGAL CONCEPTS

Ambush marketing is a phenomenon accompanying virtually every event capable of attracting significant public attention and generating substantial commercial value. It is generally described as a set of marketing activities aimed at creating an association between a companies and/or their products or services and an event without bearing the costs associated with sponsorship. Due to its evolving nature, it constitutes to be a persistent challenge to legal tradition thanks to frequently operating outside the boundaries of established private law doctrines. This phenomenon becomes much harder to cope with, only with existing regulations. Despite a history of more than four decades, it remains one of the most controversial issues at the intersection of law, marketing, and commercial communication, challenging traditional legal concepts and the established boundaries of private and public law.

The presentation aims to examine ambush marketing as a challenge to traditional legal concepts, through an analysis of the evolution of legal mechanisms developed to address it. Particular attention will be paid to the shift from classical private law instruments – unfair competition law, trademark law, consumer protection, and the principles of freedom of economic activity – towards special statutory regulations enacted for major sporting and cultural events in various countries, both in Europe, and across the world.

Therefore one of the main goals of this talk is to answer the question whether ambush marketing has gradually evolved from a private law issue into a regulatory matter increasingly shaped by the expectations of global sporting organisations such as FIFA and the International Olympic Committee. Moreover, the evolution of ambush marketing raises the question whether this issue should become a matter of interest for existing national regulatory authorities and, potentially, some kind of international institution. It seeks to identify the limits of permissible legal

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protection afforded to event organisers and to assess whether the expansion of special event legislation justifies the development of minimum regulatory standards at the international level.

Particular attention is paid to selected national regulatory models, both those based on existing laws and those jurisdictions that have introduced specific provisions to counter ambush marketing. The case law of the Court of Justice of the European Union and national courts in this area will also be analyzed. The speech and paper shall be supplemented by case studies of both local and international marketing campaigns illustrating the changing nature of the phenomenon and the practical limitations of existing legal mechanisms. The analysed examples will cover both historically significant cases that shaped the understanding of ambush marketing and more recent campaigns demonstrating the growing complexity of contemporary promotional strategies, including those which occured during ongoing world cup. This approach will demonstrate the evolution of ambush marketing from disputes addressed through traditional private law doctrines to situations in which the protection of organisers and sponsors interests becomes the subject of specific legislative intervention. The paper concludes with de lege lata and de lege ferenda observations concerning the future of ambush marketing regulation.

Keywords: Ambush Marketing, Unfair Competition, Industrial Property, Between private and public law.

366.5
366:004.7

Andrea Labancz[*]

INFORMATION AS A CONSUMER PROTECTION TOOL IN THE REGULATION OF DIGITAL FINANCIAL SERVICES

Digital financial services of the 21st century pose significant challenges to traditional financial consumer protection regulation. Innovative financial solutions, particularly crypto-assets, decentralised finance (DeFi) systems and crowdfunding services, entail risks that require new regulatory responses.

One of the primary objectives of consumer protection is to mitigate the information asymmetry that characterises B2C relationships. This informational imbalance is an inherent feature of financial markets and has been addressed through, inter alia, extensive disclosure and transparency requirements in the field of traditional financial services. With the emergence of digital financial services, however, information asymmetry has acquired a new dimension: for the average financial consumer, understanding innovative financial services is further complicated by the underlying technological infrastructure, as well as the opacity of the business models on which such services are based. Consequently, financial consumers are often required to assess not only financial risks but also risks arising from technological design and operation.

In the field of digital financial services, information asymmetry is therefore no longer merely a quantitative issue but increasingly a qualitative one. The problem does not arise solely from the fact that service providers possess more information than consumers; it also stems from the technical and economic complexity of the information disclosed. As a result, consumers are often unable to effectively process and evaluate the information made available to them. Hence, information and disclosure obligations have assumed a prominent role in the regulation of innovative financial services. It can be observed that legislators frequently seek to facilitate informed consumer decision-making through various informational instruments, including mandatory disclosure documents, white

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papers, risk warnings, investor knowledge tests and key investment information sheets (KIISs).

These informational instruments constitute important tools of consumer protection; however, they may not be sufficient in themselves to address all risks associated with digital financial markets. While disclosure requirements may contribute to improving consumer awareness, they do not necessarily resolve the challenges arising from the complexity of digital financial services and the limited decision-making capacity of consumers.

In light of the above considerations, this research examines whether the informational instruments applied in the field of digital financial services are capable of ensuring a high level of consumer protection. Particular attention is paid to the role of disclosure obligations contained in recent EU regulatory frameworks governing digital financial services (including, among others, the MiCA, the ECSPR and the evolving payment services framework) and their ability to address information asymmetry in digital financial markets.

Finally, the research explores whether an information-based regulatory approach remains adequate in the digital financial environment or whether stronger, more paternalistic regulatory solutions may be required to ensure effective consumer protection.

Keywords: information asymmetry, consumer protection, digital finance, crowdfunding, crypto-assets.

339.54:061.1(100):341.6

Nemanja Krčmar[*]

PERSPECTIVES ON RESOLVING THE DISPUTE SETTLEMENT CRISIS IN THE WORLD TRADE ORGANIZATION IN LIGHT OF THE RECENT MINISTERIAL CONFERENCE IN CAMEROON

For nearly seven years, the World Trade Organization (WTO) has been facing an institutional crisis within its dispute settlement system. The WTO Dispute Settlement Body (hereinafter: DSB), based on the number of successfully resolved cases, has traditionally been considered one of the most effective mechanisms for resolving disputes within the multilateral global trading system.

The WTO dispute settlement system is based on the "Understanding on Rules and Procedures Governing the Settlement of Disputes" (hereinafter: DSU), which provides for a two-tier system of decision-making. When one member violates WTO rules, another Member may bring the matter before the Dispute Settlement Body. Following the publication of the Panel report, the dissatisfied party may appeal the decision to the Appellate Body, which provides the final decision of the dispute.

The blockage of the appointment of new Appellate Body members by the United States has gradually led to the paralysis of the Body, culminating in 2019. The Appellate Body no longer had the required quorum to operate, which made it unable to perform its functions. WTO Members may still bring disputes before the Dispute Settlement Body when they are dissatisfied with another Member's trade measures. However, when a dispute reaches the stage at which the Appellate Body should decide, the proceedings cannot be finally completed because the Appellate Body is currently unable to act. This situation is commonly referred to in the literature as "appealing into the void", which creates an opportunity for members to avoid a final ruling on compliance with WTO rules without facing the consequences that such a ruling could bring.

In an attempt to address the crisis, most WTO Members have turned to alternative dispute resolution mechanisms. Significant results were achieved in 2020

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with the adoption of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). This document created a temporary mechanism to resolve trade disputes among participating WTO Members until the conditions for unblocking and restoring the functioning of the Appellate Body are created. However, the MPIA has a limited reach because the United States and India, as major trading powers, choose not to join this arrangement.

From a legal perspective, the United States has valid legal arguments for expressing its dissatisfaction with the functioning of the WTO dispute settlement system. Without going into a deeper analysis these arguments are justified, this paper will focus on the legitimacy of the methods used by the United States to express its dissatisfaction and will consider how constructive such an approach is.

In light of the recently concluded Ministerial Conference in Cameroon, held from March 26 to 30, 2026, WTO Members made significant efforts to address certain key issues, including fisheries subsidies, challenges in e-commerce, and the integration of small economies into the multilateral trading system. However, the issue of dispute settlement remains unresolved. The paper will examine the legal and political consequences of the paralysis affecting one of the important pillars of the multilateral trading system, as well as the future perspectives of the WTO itself. To understand where the multilateral trade system headed, it is necessary to analyze the actual results and goals the WTO has achieved since its establishment. By comparing the results achieved by the WTO in terms of economic efficiency, legal certainty, and predictability with the possible consequences of its disappearance, the paper seeks to consider the future of multilateral cooperation among WTO Members.

Keywords: WTO, Appellate Body, Alternative Dispute Resolution, MPIA, Dispute Settlement Crisis.

342.727:[004.7:07

Bence András Auer[*]

CONCEPTUAL AND SYSTEMATIC ISSUES REGARDING THE RIGHT TO CUSTOMIZE MEDIA OFFERING

The social, economic, and democratic impacts of media consumption are widely acknowledged, with media serving as the primary instruments for orientation and access to information in modern societies. Technological advancement has not only strengthened this democratic function but has fundamentally transformed the traditional relationship between the media and the audience. The formerly dominant, unidirectional "provider–recipient" model has gradually been superseded by a structure predicated on active user participation. In this contemporary digital ecosystem, individual preferences exert an unprecedented influence on the availability, organization, and display of media content. Historically, within the realm of media services, active viewer participation remained heavily restricted, offering audiences merely symbolic opportunities for customization. However, with the rapid evolution of digital technologies, customizability has transitioned from a supplementary feature to the very core of media service delivery.

While user autonomy empowers individuals, this paradigm shift introduces novel challenges. A media ecosystem organized predominantly around personalized preferences risks distorting the objective flow of information, facilitating the rapid dissemination of disinformation, and inadvertently reinforcing the "echo chamber" effect. Consequently, media pluralism increasingly finds itself in direct conflict with regulatory and technological approaches rooted in individual user autonomy. Addressing this friction necessitates a rigorous examination of the legal frameworks governing the customizability of media offerings. It is within this context that the European Union adopted Regulation (EU) 2024/1083 on the European Media Freedom Act (EMFA) in April 2024. The primary overarching objective of the EMFA is to safeguard and strengthen media pluralism and media freedom across the internal market.

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As an innovative regulatory tool to achieve these objectives, Article 20 of the EMFA introduces the "right to customize media offering." This provision guarantees users the ability to actively and deliberately shape the content displayed to them in the digital media environment according to their personal preferences. This entitlement represents a profound conceptual leap: it formally acknowledges the user not merely as a passive consumer, but as a conscious architect of their own media environment, thereby utilizing user agency as an indirect mechanism to bolster media pluralism. Although the relevant provisions will only become applicable in May 2027, the conceptual nature, systemic placement, and practical exercise of this right already raise critical questions of legal interpretation.

The most pressing of these challenges stems from the conceptual limitations of the provision itself. Based on a strict textual interpretation, the obligation to provide customization options applies exclusively to media services that offer traditional "programs." By restricting the material scope primarily to linear and on-demand audiovisual media services, the current regulatory framework inadvertently excludes video-sharing platforms and other algorithmic content aggregators. This omission is highly problematic from a practical standpoint, as the overwhelming majority of contemporary media consumption—and the most sophisticated application of customization—occurs precisely on these digital platforms. The presentation argues that the narrow conceptual scope of Article 20 severely limits its potential effectiveness and necessitates a purposive, extensive interpretation.

To align the regulation with the realities of modern media consumption, the interpretation of the right to customize media offering must be contextualized within the broader EU media and digital platform regulatory environment (such as the Digital Services Act and the Digital Markets Act). Furthermore, a comprehensive understanding requires the integration of relevant consumer protection norms and accessibility standards. Accordingly, the primary objective of this presentation is to provide a critical, systematic analysis of Article 20 of the EMFA.

Keywords: European Media Freedom Act, media pluralism, user autonomy, right to customization, digital platform regulation.

004:[349.2:331.1-057.16

Berrin Bosna Ermiş[*]

THE RISE OF THE FRAGMENTED WORKFORCE: A NEW CHALLENGE FOR LABOR LAW

This study argues that the legal challenges posed by digitalization and globalization in labor relations cannot be resolved solely through the definition of "employee" in traditional labor law; instead, state regulation and collective participation mechanisms must be deployed. The widespread adoption of digital platforms has led to flexible work models in which the platform company, the customer, and the worker all operate simultaneously within entirely different national jurisdictions. In this borderless work environment, traditional labor law frameworks have proven inadequate; attempts to fit platform work into rigid legal categories have overlooked workers' real protection needs. Furthermore, the criteria developed to classify these workers as employees are highly susceptible to strategic circumvention by platform companies. Due to the inherent flexibility of this model, platforms can easily manipulate legal criteria to evade employer liability, making the legal protection of this geographically dispersed workforce a major challenge.

In response to this growing precarity, the EU Platform Work Directive 2024/2831 has embraced a more inclusive approach by establishing protective regulatory frameworks to broaden the scope of labor safeguards for platform workers. The main issue facing platform workers is that they constitute a dispersed, fragmented, and invisible workforce. This fragmentation is felt across all areas. Due to their irregular and fluctuating incomes, it is difficult for them to be included in the social security system. Because of flexible work locations and hours, their working time cannot be clearly defined; this makes it difficult to monitor wage and rest entitlements and prevents the implementation and enforcement of occupational health and safety standards.

Working remotely and in isolation prevents them from coming together and organizing, leading to a deprivation of collective rights. Since platform companies are exempt from many labor costs by not establishing a physical work organ-

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ization, and since workers may accept being deprived of their fundamental rights due to the illusion of flexibility, neither party can resolve this issue on its own. Therefore, states must play an active role and intervene in this problematic area. To provide legal safeguards for this modern form of work, which is growing day by day with technological advancements, fundamental standards must be established. In establishing these standards, concrete steps must be taken to mitigate this fragmentation and render the invisible workforce visible.

This process can be carried out through a two-stage strategy: In the first stage, platform companies could be required to design their algorithms in accordance with the principle of a human-centric approach during their incorporation phase, and the participation of workers in the relevant sector could be made a prerequisite for this process. For instance, critical parameters such as the maximum consecutive working minutes allowed by an algorithm can be collaboratively determined at this formative stage to ensure a fair balance between active work and rest periods. This initial stage fundamentally aligns with the algorithmic management provisions and information-consultation mechanisms of the Platform Work Directive.

In the second stage, a specific tax could be imposed on operating platform companies; the resources obtained could be used directly to support platform workers. Additionally, premium incentives provided to platform companies to increase transparency in social security could encourage them to be more transparent and willing regarding data sharing. Furthermore, since platform work is not specific to a single sector, the precise challenges faced by these workers can best be identified and addressed by stakeholders within the relevant sector. Therefore, each sector could be enabled to regulate the core working conditions of workers through union communities within themselves. In this field, where unionization is structurally difficult, innovative steps must be taken to facilitate and encourage organizing, contrary to rigid bureaucratic rules.

Keywords: platform work, employment status, digitalization, globalization, algorithmic management.

347.447.8:349.2
331.105:349.2

Jakub Hlavenka[*]

CONTRACTUAL PENALTY IN EMPLOYMENT RELATIONSHIPS: CONFLICT OF PRIVATE LAW PRINCIPLES

Autonomy of the will is a foundational principle of Czech private law. It reflects the general premise that individuals may arrange their legal affairs freely, provided that their conduct is not expressly prohibited by law. Within this framework, parties traditionally enjoy broad discretion in shaping their legal relations and obligations. Like other private-law relationships, employment relationships are based on the principle of autonomy of the will. Given the specific nature of these relationships, in particular the position of the employee as the weaker contracting party, they are also governed by the principle of special legal protection of the employee's position. This principle protects employees and aims to compensate for the imbalance of power between the parties, so that employees can effectively exercise their autonomy of the will.

My paper presents the current results of my year-long research on contractual penalties in Czech labour law. It focuses on the conflict between two normative poles: autonomy of the will, on the one hand, and the special legal protection of the employee, on the other. While contractual penalties are firmly established in general private law, their role in employment relations remains highly limited. The Czech Labour Code generally prohibits their use in labour-law relationships, with only one statutory exception: a contractual penalty may be agreed to secure an employee's obligation arising from a non-compete clause. The paper examines how Czech courts and legal scholarship interpret this restriction and how the prevailing emphasis on employee protection limits the operation of contractual freedom in employment relations.

Against this background, I offer my own interpretation of the prohibition on contractual penalties. I argue that, when interpreting provisions designed to protect the weaker contracting party, legal analysis often insufficiently accounts for the principle of contractual freedom, which tends to be extensively suppressed

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in this context. The admissibility of restrictions on contractual freedom should therefore be assessed not in isolation, but within the broader framework of the legal system as a whole, including provisions that protect not only the weaker party, but also other legitimate interests recognised by private law.

To situate the Czech debate within a broader comparative framework, the paper also examines selected foreign legal systems, with particular emphasis on Germany, Austria, Denmark, France, the Netherlands, and Estonia. The comparison explores how these jurisdictions reconcile autonomy of the will with the protection of employees and identifies both convergences and divergences in relation to the Czech approach. This comparative perspective raises a broader question: whether the current Czech model of interpretation achieves an appropriate balance between contractual freedom and employee protection, and whether the prevailing interpretation of the statutory prohibition may be overly restrictive.
Ultimately, the paper contributes to the wider theoretical discussion on conflicts of principles in private law. It demonstrates how certain provisions are often interpreted without broader argumentation and how systematic and teleological methods of interpretation are sometimes overlooked. The conclusions I present can then be used as inspiration when considering the interpretation of individual provisions that relate to the protection of the weaker contracting party, such as an employee, consumer, tenant, etc.

Keywords: interpretation of law; autonomy of the will; contractual freedom; contractual penalty; employee protection; weaker contracting party.

347.751:339.14

Jan Kadlec[*]

HOW AUTONOMOUS IS AUTONOMOUS INTERPRETATION? ARTICLE 7 OF THE CISG BETWEEN LEGAL TRADITION AND THE PURSUIT OF UNIFORMITY

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is among the most successful instruments of uniform private law. Adopted in 1980, it is today in force in some 97 States and potentially governs a large share of international sales between businesses. Its success, however, depends less on the text itself than on the way that text is read. Article 7 of the Convention, which calls for interpretation with regard to the international character of the Convention and to the need to promote uniformity in its application, is widely regarded as the centrepiece of the whole instrument, since the fate of the Convention rests in the hands of the courts and arbitral tribunals that apply it. Article 7 thus raises a broad but persistent question: how autonomous is the "autonomous interpretation" that the Convention demands, and where do its limits lie?

To address this question, the principal theoretical positions on the interpretation of the Convention are evaluated, and their changed over time is traced. It does so from three angles: the guidance offered by the preparatory works; the subsequent development and gradual shift of scholarly doctrine; and the understanding that prevails today. Read together, these perspectives reveal a movement away from a static and historically anchored reading of the Convention towards a more dynamic and purposive one, and they help to explain why several interpretive questions that once seemed settled have since been reopened.

Against this background, the forces that shape the autonomy of interpretation in practice must be considered and illustrated with examples drawn from the case law of courts and arbitral tribunals in a range of jurisdictions. On one side stands the persistent pull of the homeward trend, by which interpreters tend to read uniform terms through the categories of their own legal order. On the other stand the sources that, in a system without any supranational court, foster a

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more uniform reading, such as an increasingly weighty body of doctrine and the opinions of the CISG Advisory Council. Attention must also given to the wider horizons that the topic opens, in particular the role of soft law and of the UNIDROIT Principles of International Commercial Contracts as a possible means of interpreting and supplementing the Convention, and to the proper outer limits of an autonomous reading, which should neither collapse mechanically into national law nor be stretched beyond what the Convention can reasonably bear.

These questions are not definitively resolved. Instead, the field is mapped and it is suggested that a measured and institutionally supported autonomy, rather than an absolute one, may be what allows a Convention that can no longer realistically be revised to remain a living instrument of international trade.

Keywords: CISG, Article 7, autonomous interpretation, uniformity, homeward trend, outward trend.

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342.7:347.426.4
342.565.2(497.11)

Dr. Attila Dudás[*]
Nenad Petrov[**]

COMPENSATION FOR DAMAGE CAUSED BY VIOLATION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME IN THE PRACTICE OF THE SERBIAN CONSTITUTIONAL COURT

The right to a trial within a reasonable time constitutes an integral element of the right to a fair trial, guaranteed in Serbian law under Article 32(1) of the Constitution. Until May 2014, violations of this right were sanctioned on the basis of the aforementioned constitutional provision and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, exclusively through constitutional complaint proceedings before the Constitutional Court. Following that period, with the implementation of amendments to the 2008 Law on the Organization of Courts, jurisdiction to decide on violations of the right to a trial within a reasonable time in pending proceedings was transferred to the courts (courts of general and special jurisdiction). In 2015 the Law on the Protection of the Right to a Trial within a Reasonable Time was adopted, providing a more detailed regulation of mechanisms for the protection of this right. Therefore, in the vast majority of cases, the legal protection provided by the Constitutional Court in relation to violations of the right to a trial within a reasonable time is indirect in nature, since the Court may only decide on constitutional complaints lodged against court decisions concerning the alleged violation of this right. Amendments to the Law on the Protection of the Right to a Trial within a Reasonable Time adopted in 2023 (once again) granted the Constitutional Court direct jurisdiction in proceedings concerning claims asserted in enforcement and bankruptcy proceedings against enterprises with majority state-owned or socially owned capital.

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The most common form of just satisfaction awarded by the Constitutional Court for violations of the right to a trial within a reasonable time is compensation for non-pecuniary damage. The Constitutional Court awards this type of compensation when such a request is expressly articulated in the constitutional complaint, primarily taking into account the importance of the violated interest for the complainant. Consequently, in cases considered insignificant from a constitutional-law perspective, compensation may not be awarded. The type of proceedings involved (judicial, administrative) therefore does not affect whether the Constitutional Court will grant compensation for non-pecuniary damage once a violation of the right to a trial within a reasonable time has been established; only the constitutional significance of the subject matter of the proceedings is relevant.

In proceedings concerning the satisfaction of claims established by a final court decision, the Constitutional Court draws a clear distinction between complaints concerning the excessive length of proceedings and complaints concerning non-enforcement of a final judicial decision, the consequences of which may extend beyond a violation of the right to a trial within a reasonable time and amount to violations of other constitutionally guaranteed rights. Indirectly, therefore, the finding of a violation of the right to a trial within a reasonable time may support the conclusion that a complaint concerning non-enforcement of a final court decision is justified, which often also entails the violation of another constitutional guarantee.

Thus, in cases concerning the non-enforcement of final court decisions rendered against enterprises with majority state-owned or socially owned capital, according to the Constitutional Court's position, establishing a violation of the right to a trial within a reasonable time constitutes a prerequisite for establishing a violation of the right to property under Article 58 of the Constitution and granting compensation for pecuniary damage equal to the unpaid or unsatisfied claim. In other words, where a previously established violation of the right to a trial within a reasonable time results in a violation of the right to property, the Constitutional Court, in addition to compensation for non-pecuniary damage as a form of just satisfaction, grants the complainant compensation for pecuniary damage in the stated amount, thereby fully eliminating the consequences of the established violation.

Another example in which a violation of another right is inferred indirectly from a violation of the right to a trial within a reasonable time concerns constitutional complaints relating to civil enforcement proceedings involving the compulsory execution of decisions on child custody. Complaints in such cases most commonly concern the unreasonable length of enforcement proceedings and the allegation that non-enforcement of the decision leads to separation and alienation between parent and child, potentially causing irreparable harm to their relation-

ship. The Constitutional Court examines the first complaint from the perspective of the right to a trial within a reasonable time, and the second, as a rule, through the prism of parental rights and duties guaranteed under Article 65 of the Constitution. If it upholds the constitutional complaint, the Constitutional Court awards a single amount of compensation for non-pecuniary damage for the violation of both rights.

The issue of whether the amount of monetary compensation awarded is adequate has most frequently arisen in the Constitutional Court's case law in matters concerning the recovery of (individual or collective) monetary claims against debtors under state control, such as the aforementioned enterprises with majority of the capital in state or so-called societal ownership owned capital. For several years, in such cases, the Constitutional Court adhered to the "fourth instance doctrine," holding that the amounts awarded by ordinary courts represented reasonable compensation for the violation suffered, even though these amounts were often merely nominal. The European Court of Human Rights repeatedly emphasized that the socio-economic conditions in the Republic of Serbia cannot constitute sufficient grounds for awarding victims symbolic rather than fair compensation (Knežević and Others v. Serbia, applications no. 54787/16 and others, judgment of 9 October 2018; Stevanović and Others v. Serbia, applications no. 43815/17 and others, judgment of 27 August 2019).

Nevertheless, the Constitutional Court continued to decide in accordance with its existing practice until the European Court of Human Rights ultimately found that there remained a significant number of unenforced domestic judgments against socially/state-owned enterprises in Serbia and that, in the meantime, a mechanism had been established enabling the state to compensate victims materially by finally paying long-overdue claims, particularly employment-related claims (Stanković v. Serbia, application no. 41285/19, decision of 19 December 2019). In this regard, a kind of compromise was reached between the European Court of Human Rights and the Constitutional Court whereby an amount of EUR 800 may be regarded as sufficient and adequate satisfaction for the non-pecuniary damage suffered.

Keywords: right to a fair trial in reasonable time, compensation for non-material damage, Serbian Constitutional Court.

347.962:004.8(497.6)
347.61/.64(497.6)

Dr. Boris Krešić[*]
Jasmina Berbić[**]

WHEN JUDGES REASON LIKE MACHINES: ALGORITHMIC PREDICTABILITY OF FAMILY COURT DECISIONS IN BOSNIA AND HERZEGOVINA AND ITS LEGAL-PHILOSOPHICAL IMPLICATIONS

This paper examines the algorithmic predictability of family court decisions in Bosnia and Herzegovina and its legal-philosophical implications, advancing the thesis that judicial decision-making in family disputes within the Federation of Bosnia and Herzegovina has reached a level of routinization that renders it empirically indistinguishable from mechanical processing. The paper situates this inquiry within the classical debate on judicial cognition, contrasting Dworkin's ideal of principled, comprehensive reasoning with Gigerenzer's theory of adaptive heuristics, and follows Rachlinski's framing of the inherent paradox of a justice system whose humanity is simultaneously its greatest strength and its most persistent vulnerability. A comparative survey of AI deployment in judicial systems, including the COMPAS system in the United States, algorithmic dispute resolution in Estonia, and AI-assisted administration in China, establishes that algorithmic tools tend to amplify rather than correct existing adjudicatory pathologies when introduced into unreformed systems.

The normative analysis confirms that the FBiH legal framework is adequate. The best interests of the child, enshrined in Article 3 of the UN Convention on the Rights of the Child and incorporated throughout the FBiH Family Law, provides a sufficiently robust standard for individualized adjudication. What fails the child is not the norm but its application. The authors identify a systemic pattern whereby judicial decisions in child custody disputes are effectively determined by a comparative assessment of parents' socioeconomic parameters, to the exclusion of the child's expressed opinion and the specific circumstances of each case. The

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paper's central contribution is an original empirical experiment conducted on a sample of 77 judgments in disputes concerning the entrustment of a child to one parent, collected from four courts in Bosnia and Herzegovina for the period 2020 to 2023. A decision tree machine learning algorithm was trained on socioeconomic parameters extracted from those judgments, including parental income, employment status, education, housing conditions, and child's age. The model was trained on 80% of the sample (61 judgments) and tested on the remaining 20% (16 judgments), with tree depth limited to four levels to prevent overfitting. In the testing phase, the algorithm predicted the judicial outcome correctly in 90% of cases. This result demonstrates that a simple model, operating without any assessment of the child's emotional needs or relational circumstances, reproduces judicial decisions at a level of accuracy that calls into question the substantive content of judicial discretion. The neural map of decision-making constructed from the trained model reveals a *de facto* algorithmic structure in which the primary decision node is parental gender and the corrective factor is economic status, while the child's voice registers at the outermost and least weighted branch of the tree.

The authors conclude that the problem lies not with algorithms but with the manner in which judges form decisions. When a rudimentary model reproduces judicial outcomes in nine out of ten cases, the conditions enabling such reproducibility represent a systemic failure of adjudicatory method. The paper proposes reforms directed at reinstating principled judicial reasoning: mandatory individualized reasoning in family court judgments, systematic solicitation of the child's opinion, restoration of specialized family court departments, and investment in judicial training. Responsible AI integration is presented as conditional upon, rather than a substitute for, the recovery of genuine judicial discretion.

Keywords: artificial intelligence, judiciary, algorithmic judge, predictive justice, automation.

347.65:340.5(497.11)

Dr. Jelena Vidić[*]

THE NEED TO REDUCE THE CIRCLE OF FORCED HEIRS IN THE REPUBLIC OF SERBIA: MODERN TRENDS AND COMPARATIVE LAW PERSPECTIVE

Forced inheritance represents one of the most significant restrictions on the freedom of testation, since it provides certain persons by law with the right to a forced share regardless of the will of the testator. In the positive inheritance law of the Republic of Serbia, the circle of forced heirs is defined in a broad manner, because in addition to descendants, adopted children and their descendants, spouses, and parents, or adoptive parents from full and incomplete adoption, under the conditions prescribed by law it also includes brothers and sisters, half-brothers and half-sisters, as well as other ancestors of the testator. The subject of the paper is a critical analysis of the existing circle of forced heirs in the domestic law, with the aim of proving the hypothesis that the current normative framework in the Law on Inheritance of the Republic of Serbia is anachronistic and excessively restrictive for the freedom of testation. The starting point is that the existing legal solution does not fully correspond to modern social circumstances, nor to the function that the institute of the forced share should perform in modern inheritance law, and that it largely deviates from the dominant tendencies present in contemporary European legislation.

From a legal perspective, the violation of the balance between legal and testamentary inheritance is analyzed, where the institute of the forced share, instead of representing an exception, becomes a rule that greatly narrows the freedom of testation and charitable disposition in general. From a sociological perspective, the paper also examines changes in family structures, the weakening of kinship ties and economic solidarity among distant relatives, which factors undoubtedly contribute to the weakening of the reasons that historically justified a wide circle of legally protected heirs. Namely, the prevailing form of family is the nuclear family, which often deprives the biological connection with distant relatives of real affective content. The purpose of the forced share is primarily reflected in the protection of family members who were in close personal, family and economic

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community with the deceased. Therefore, the inclusion of brothers, sisters and distant ancestors in the circle of forced heirs is increasingly difficult to find a basis in modern social and family relations. Brothers and sisters in contemporary society usually lead independent economic lives, establish their own families and rarely depend financially on the deceased. Consequently, granting them entitlement to a forced share appears increasingly difficult to justify. The same applies to distant ancestors, where due to a developed system of social and pension protection, economic dependence on descendants loses its primary importance. Furthermore, by recognizing the right to a forced share for distant ancestors, our legislation has opted for a solution that is almost inapplicable in practice, due to the limited length of the human lifespan, which calls into question its practical justification. Finally, making the status of siblings and more remote ancestors as forced heirs conditional upon permanent incapacity for work and the lack of sufficient means of subsistence constitutes an anachronistic remnant of the socialist legal heritage and the traditional concept of extended family solidarity. This condition appears to have been introduced primarily as a legislative mechanism for mitigating the consequences of an excessively broad category of forced heirs. The comparative legal analysis focuses on the rigidity of the domestic system in comparison with modern European tendencies. Through a comparative analysis of modern European legal systems, primarily German, French, Austrian and Swiss law, the paper identifies a general trend of narrowing the circle of forced heirs exclusively to descendants and spouses as members of the nuclear family and possibly the testator's parents, and notes the fact that Serbian law is outside the contemporary trends in the regulation of the circle forced hairs. Based on the analysis conducted, it is concluded that there are valid social and legal reasons for appropriate reforms in the direction of narrowinag the circle of forced heirs in the inheritance law of Serbia. *De lege ferenda*, it seems justified to limit the right to the forced share to the closest family members – descendants, spouses and, under the conditions prescribed by law, parents, while excluding brothers, sisters, half-brothers and half-sisters and distant ancestors from the circle of forced heirs. Such a solution would be more in line with contemporary European tendencies in the development of inheritance law, the principle of autonomy of will and the basic social function of the institute of forced share.

Keywords: forced share, forced heirs, freedom of will, inheritance law, legislative reform.

502/504:342.7
342.7:341.6(4)

Dr. Maja Proso[*]

THE RIGHT TO A HEALTHY ENVIRONMENT IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS: LESSONS FROM CANNAVACCIUOLO V. ITALY CASE

The European Court of Human Rights (ECtHR) interprets human rights protected by The European Convention on Human Rights (ECHR) in a way that the circle of legally protected goods under the Convention articles includes those violated by negative human impact on the environment. This process is theoretically called the "greening" of explicitly established human rights. Instead of recognizing an independent right to live in a healthy environment, the "greening" of human rights process emphasizes the ecological dimension of already existing rights and protects the environment as a prerequisite for the enjoyment of human rights such as, for example, the right to life, health, the right to respect for private and family life. This approach reflects the concept of the Convention as a "living instrument," capable of adapting to contemporary challenges, including environmental degradation. In environmental cases, Article 8 (the right to respect for private and family life) is commonly invoked in cases involving noise, odors, or reduced quality of life. Article 2 of the ECHR applies when environmental hazards reach a level that directly threatens human life and the ECtHR key criterion is the existence of a "real and immediate risk" to life. A violation may be found where state authorities knew, or ought to have known, of such a risk and failed to take reasonable measures within their powers to prevent or mitigate it. The ECtHR's environmental case law concerns hazardous industrial and other human activities and natural disasters. Although states can't prevent natural events they are, still, according the ECtHR, required to establish effective preventive measures such as monitoring and warning systems if the risks were foreseeable. From the existing environmental case law, the ECtHR has derived several positive obligations for states. First of all, states must establish an adequate regulatory

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framework governing hazardous activities. Secondly, individuals have the right to receive information about environmental risks affecting them, particularly in the situations when they live or work near dangerous facilities or contaminated areas. Thirdly, where deaths or serious harm occur, states are required to conduct transparent investigations to identify responsibility. A major development in this field is the judgment in Cannavacciuolo and Others v. Italy case, from 2025. The case concerned the Italian Campania region where criminal organizations had illegally dumped and burned poisonous waste for years. This resulted in severe contamination of soil, water, and air and resulted in increased rates of serious illnesses among local residents. In this judgement, the ECtHR found, for the first time, a violation of Article 2 ECHR in connection to long-term environmental pollution that created a serious risk to human life. The ECtHR held that the Italian authorities knew of the problem for many years but responded in inadequate manner. Particularly significant is the ECtHR's approach to causation in this case. The applicants were not required to prove a direct causal link between pollution and a specific disease. It was sufficient to demonstrate the existence of a real and immediate risk to the lives of the affected residents. The existence of a real and immediate risk to the lives of the affected people of this region was based on epidemiological and scientific evidence used by the ECtHR. The main consequence of this approach is lowering of the evidentiary burden for victims of environmental harm. The judgment was, also, for the first time, issued as a pilot judgment under Article 46 of the ECHR. It required Italy to adopt comprehensive measures to address the environmental problem such as the establishment of an independent environmental and health monitoring system and the creation of a platform providing information about environmental risks. The evolution of the ECtHR's case law demonstrates that environmental protection is a matter of fundamental human rights. Cannavacciuolo and Others v. Italy judgement confirms that, according the ECtHR, states have an obligation to prevent environmental risks that represent a real and immediate risk to people's lives even when the precise health effects of the pollution remain scientifically uncertain.

Keywords: Cannavacciuolo v. Italy case, state positive obligations, The European Court of Human Rights, the right to a healthy environment, the right to life (Article 2 of the European Convention on human rights).

341.6
347.918(497.11)

Dr. Maja Stanivuković[*]

WHETHER AN ICC AWARD RENDERED IN SERBIA IS A FOREIGN OR DOMESTIC AWARD

Most jurisdictions nowadays adopt the territorial criterion for determining the scope of application of their domestic arbitration laws. This means that the procedural law to govern the arbitration will be the law of the seat of the arbitration. The territorial criterion is adopted for most provisions of the Model Law on International Commercial Arbitration.

Serbia is one of the few jurisdictions that expressly allow the parties who have agreed upon international arbitration in Serbia to choose another procedural law to govern the arbitration, provided there is no conflict with the few mandatory provisions of the Serbian Arbitration Act. Article 2(1) of the Serbian Arbitration Act sets forth that its provisions apply to arbitration and arbitral proceedings if the place of arbitration is in the territory of the Republic of Serbia. However, the parties may agree otherwise when arbitration is international (Article 2(2)), provided that the mandatory provisions of the Act must be complied with (Article 2(3)). There is also an express provision in Article 32(2) guaranteeing the parties' freedom of choice of the applicable *lex arbitri*: „If the arbitration is international, the parties may agree that a foreign law be applied to the arbitral proceedings, in accordance with the provisions of this Act."

This means that an arbitral award rendered in Serbia can, at least in theory, be the product of proceedings conducted under foreign arbitration law, and consequently considered to be a foreign award. Indeed, it is so provided in Article 64(3) of the Serbian Arbitration Act pursuant to which a foreign arbitral award is an award made by an arbitral tribunal in the Republic if a foreign law was applied to the arbitral proceedings. This is a theoretical possibility as the commentators agree that the parties seldom make use of the freedom to agree upon a *lex arbitri* different from the one prevailing in the seat of the arbitration. A further consequence is that such „foreign" award will first have to be recognized by a Serbian court before it can be enforced.

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However, the same award is also considered to be a domestic award pursuant to Article 57(2) of the Serbian Arbitration Act. Under Article 64(1), „a domestic arbitral award shall have the effect of a final judgment of the domestic court and shall be enforced in accordance with the provisions of the statute regulating enforcement procedure.“ A domestic award is also susceptible to annulment by domestic courts.

The inherent contradictions between the cited provisions have led to considerable confusion among domestic courts, in particular with regard to arbitral awards rendered in Serbia under ICC Rules as the chosen rules of procedure. In several judgments, Serbian courts have accepted the argument that ICC Rules are „foreign law applied to the arbitral proceedings“ and have therefore treated ICC awards rendered in Serbia as foreign awards, subjecting them to the recognition requirement.

The author argues that the interpretation of ICC Rules as „foreign law applied to the arbitral proceedings“ is wrong and that it should be reconsidered by Serbian courts. Institutional rules chosen by contract are conceptually distinct form a state's procedural law. Therefore, Article 32(2) which contemplates choosing another state's law should not be triggered by a choice of institutional rules.

The author explores the source of confusion and suggests that the best way forward is to amend the relevant provisions of the Serbian arbitration statute so that the pure territorial criterion defining a foreign arbitral award on the basis of the seat of arbitration is adopted, excluding the consideration of the *lex arbitri*. Until any such amendments are made, the author suggests the courts to change the course and treat ICC awards rendered in Serbia as domestic arbitral awards.

Keywords: Serbian Arbitration Act, lex arbitri, foreign arbitral award, domestic arbitral award.

347.426:347.77

Dr. Sanja Savčić[*]

THE RELATIONSHIP BETWEEN CLAIMS FOR DAMAGES AND CLAIMS FOR RESTITUTION OF UNJUST ENRICHMENT ARISING FROM TRADEMARK INFRINGEMENT

The subject of the research is the relationship between claims for damages and claims for restitution of unjust enrichment arising from trademark infringement, with particular emphasis on the legal nature of the claim provided for in Article 92(7) of the Serbian Trademark Act. The aim of the research is to examine whether the trademark proprietor's entitlement to recover the profits gained by the infringer is contingent upon the existence of damage, in accordance with the general rules of the law of obligations, or whether it arises solely from the infringement of the exclusive right. The research employs normative, doctrinal, and teleological methods, based on an analysis of the relevant domestic legislation and its relationship with the general principles of civil law.

The research hypothesis is that Article 92(7) of the Trademark Act constitutes a *lex specialis* in relation to the general rules governing damages. Accordingly, the trademark proprietor's right to recover the profits obtained by the infringer does not depend on proving the existence or extent of damage but arises from the infringement of the exclusive right itself. This hypothesis is grounded in the specific characteristics of intellectual property rights, since damage resulting from trademark infringement is often difficult to establish, whereas the economic benefit derived from the unauthorized use of the protected sign is reflected in the infringer's assets. Against this background, the research examines the legal nature of this claim and its relationship with the doctrine of unjust enrichment. Particular attention is devoted to the question whether the decisive criterion for distinguishing a claim for damages from a claim for restitution of unjust enrichment lies in the method of quantifying the monetary award or in the legal basis of the claim itself. In this context, the research explores whether the claim under Article 92(7) of the Trademark Act, which arises from the infringement of an

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exclusive right, exhibits the essential characteristics of a claim for restitution of unjust enrichment, given that its primary purpose is to restore the benefit that the infringer acquired without legal basis through the unauthorized use of the protected trademark.

The research further raises the question whether the Trademark Act regulates the relationship between claims for damages and claims for restitution of unjust enrichment in such a way that restitution is available only where the requirements for a claim for damages under the general rules of the law of obligations are not satisfied, or whether it instead establishes a *lex specialis* regime governing unjust enrichment arising from the unauthorized use of a subjective right whose object of protection is an intangible asset. In particular, the research examines whether Article 92(7) of the Trademark Act constitutes a special statutory regime governing unjust enrichment resulting from the unauthorized use of another person's subjective right, adapted to the specific nature of trademarks as intellectual property rights protecting intangible assets. Addressing these issues may contribute to a more precise understanding of the relationship between the general rules of the law of obligations and the specific rules of intellectual property law, as well as to a better understanding of the civil law protection of exclusive rights.

Keywords: trademark infringement; damages claim; unjust enrichment; restitution; intellectual property law.

347.233:004.78

Dr. Ágnes Juhász[*]

"DOES IT STILL EXIST, OR NOT?" – THE LEGAL PARADOX OF LOST DIGITAL ASSETS

The fast growth of digital assets, particularly cryptoassets based on blockchain technology and other tokenised assets, poses significant challenges to the traditional civil law system. The present study examines the issue of 'lost digital assets'. This is the point at which a digital asset, such as a cryptocurrency or a record on a blockchain, can still be located and traced in the relevant system (e.g. a distributed ledger). However, the key to access it is permanently lost for some reason. Consequently, the asset may possess a residual value; however, it is impracticable to exercise the associated rights in a manner that is both equitable and enduring. The primary question of the presentation and the study is how to treat those digital assets for which the exercise of quasi-ownership rights is permanently and irreparably prevented, and whether the right to dispose of a digital asset can remain valid in a purely normative, formal sense when its economic and functional content is made invalid. The analysis employs the conventional approach to property law, emphasising the prevailing concept that possession entails the capacity to utilise, appreciate, and dispose of the property. However, the digital environment does not conform readily to this three-part classification. The concept of 'possession' is thus reduced to the technical conditions of access rather than physical control. Also, when access is lost, it is not because the object has been physically destroyed or removed from its external environment. Instead, it is because control over the information has been permanently lost.

The present study examines the operation of the law in such circumstances. The analysis posits that none of the legal structures previously mentioned are sufficiently equipped to adequately capture this phenomenon. Digital property should not be considered as equivalent to lost property. It is not transferable to other individuals. The object is not misplaced. It is not possible to assert that it disappears. Conversely, the concept of 'existence' is rendered inaccessible, yet its reality persists.

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The study suggests that in the event of the loss of digital property, it creates a situation where the legal right to own it still exists, but its practical, economic, and functional aspects are meaningless. This creates a tension between the law and technology, and demonstrates that the traditional concept of property is predicated on the assumption that individuals can exercise control over and implement their rights. However, this is not invariably the case in the digital realm, thus necessitating a re-evaluation of the conventional concept of ownership.

The study also examines the fate of lost digital assets, with particular reference to inheritance law, enforcement, and the associated financial value. In instances where access is restricted, the determination of appropriate legal actions and the valuation of the assets in question becomes more challenging.

In conclusion, the study outlines possible responses, including technological solutions such as multi-signature (Multi-Sig) access systems or automated inheritance mechanisms, as well as potential directions for legal development, which may aim to establish categories that better reflect the specific characteristics of digital assets.

Keywords: digital asset, digital property, lost digital asset, private key, asset accessibility.

347.238.3:347.235(497.5+497.11)
347.242(497.5+497.11)

Dr. Davorin Pichler[*]
Dr. Ivana Stjelja[**]

CIVIL LAW ASPECTS OF BUILDING MANAGEMENT AND MAINTENANCE IN THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SERBIA

The first regulation by which the legislator in the Republic of Croatia sought to systematically and comprehensively regulate relations arising from housing in multi-apartment buildings is the Building Management and Maintenance Act (BMMA), which is in force since January 1, 2025. This Act attempted to regulate the management and maintenance of multi-apartment buildings and residential and commercial buildings, as well as relations between participants in the field of building management. Also, the law determines what the common parts of the building are, the minimum amounts and the method of payment of the common costs of management and maintenance of the building, as well as the rights, obligations and responsibilities of co-owners, co-owner representatives and building managers. The adoption of the BMMA represents a measure from the National Housing Policy Plan of the Republic of Croatia until 2030, which aims to ensure the improvement of the legal and institutional framework for housing security for all citizens, as well as to contribute to the provision of sustainable housing and encourage infrastructural and economic progress. The legal regulation of flat freehold management is continuously adapting to the demands of social changes caused by rapid technical development, digitalization, climate change, demands for greater environmental protection, energy saving and the use of renewable energy sources. Flat freehold management is becoming an important instrument for the sustainable development of housing and business. Therefore, the modern legal regulation of flat freehold management is no longer primarily focused on protecting the individual interests of tenant-owners within the condominium community, but also on ensuring the goals of sustainable development in the field of

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housing and business. As will be shown in this paper, the establishment of a new regulation of the community of co-owners has many potential advantages, mostly due to easier participation in legal transactions, but also numerous disadvantages, which are mainly the result of a superficial and unclear legislative approach. Thus, the paper highlights important issues related to the new regulation of the community of co-owners in the context of building management, the specifics of its legal personality, as well as the possibility of the creation of multiple communities of co-owners by separation on the same property. The newly established register of communities of co-owners is also considered, and the legal relations between members of the community of co-owners (tenant-owners) are discussed. Individual bodies (organs) of the community of co-owners are analyzed, namely the Meeting (community assembly) of co-owners, the representative of co-owners and the Council of co-owners. The concept of property of the community of co-owners is considered with special reference to the common reserve, and the paper also deals with the liability of the community of co-owners for damage. In the Republic of Serbia, the most common form of housing is housing in residential buildings. Therefore, the field of building management and maintenance is regulated by the Act on Housing and Building Maintenance (AHBM), which was adopted in 2016 and which has so far dealt with this field in the most detailed and comprehensive way in Serbia. The goal of legal regulation is, among other things, the realization of the principles of sustainable housing development, preservation and improvement of the value of the housing stock, regulation of the area of building maintenance and management, regulation of the decision-making process, and so on. The paper points out the problems and shortcomings that arise during the application of the AHBM, as well as the results achieved by its application. The guidelines for the regulation of building management issues, *de lege ferenda*, which would correspond to the needs of practice in the legal systems of the Republic of Croatia and the Republic of Serbia, will also be pointed out.

Keywords: building, co-ownership, maintenance, flat freehold, inter-ownership agreement.

347.918:347.95]:347.99(497.11)

Dr. Marko Knežević[*]

THE EFFICIENCY OF JUDICIAL REVIEW OF ARBITRAL AWARDS IN SERBIA: THE NEED TO CONCENTRATE JURISDICTION OVER SETTING-ASIDE PROCEEDINGS IN THE SUPREME COURT

Although arbitration constitutes an alternative to state adjudication, it cannot function independently of the state judiciary. Not only must courts provide supportive assistance to ensure the effective operation of arbitration—such as appointing arbitrators or granting judicial assistance in the taking of evidence—but, at least from the Serbian perspective, they must also exercise a supervisory function grounded in considerations of public authority and legal order. Arbitral awards are equated with final court judgments. Nevertheless, an action for setting aside may be brought against such awards.

The scope of judicial review of arbitral awards is not the only factor relevant to assessing the attractiveness of a jurisdiction as a seat of arbitration. The procedural framework governing judicial review of arbitral awards is itself a significant indicator of the functionality and efficiency of arbitration. Indeed, there is a substantial difference between a system in which proceedings for setting aside an arbitral award are designed to produce a final judicial determination within a relatively short period of time and one in which such proceedings take the form of a protracted, multi-tiered process.

Exactly two decades ago, Serbia undertook a comprehensive reform of its arbitration law, opting for an approach that had already proven successful in numerous jurisdictions. The new legislative framework was modelled on the 1985 UNCITRAL Model Law on International Commercial Arbitration (UML).

The reception of the UML was, with regard to the design of the judicial review mechanism for arbitral awards, essentially wholesale. As a result, no particular effort was made to regulate in greater detail the court proceedings initiated by an action for setting aside an arbitral award. Much as before the reform, such proceedings remained subject to the ordinary rules of civil procedure. More spe-

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cifically, all procedural rules designed for the adjudication of private-law disputes continue to apply, particularly those tailored to the resolution of contested factual issues, while subject-matter jurisdiction is determined according to the general jurisdictional framework. Moreover, and perhaps most importantly, the system of legal remedies has remained unchanged. An appeal against a first-instance decision is always available, and although the decision of the appellate court becomes final, an extraordinary appeal on points of law (revision) is available in a considerable number of cases, with the matter ultimately being decided by the Supreme Court. Consequently, Serbia belongs to the group of jurisdictions whose framework for judicial review of arbitral awards is markedly inefficient. Such a system not only discourages foreign parties from selecting Serbia as the seat of arbitration, but also disincentivises domestic commercial actors from opting for arbitration altogether. Judicial review of arbitral awards, notwithstanding the fact that such awards are immediately final and binding, prolongs the period of uncertainty, requiring parties to wait for years before obtaining a definitive answer as to the ultimate fate of the resolution of their dispute. In addition, multi-tier judicial proceedings inevitably generate higher costs. Finally, a system that lacks a concentration of jurisdiction necessarily provides fewer guarantees of consistent and accurate decision-making. Arbitration law remains a highly specialised field and, for the average judge, is more likely to be perceived as a legal niche than as an area of law that can be mastered with relative ease.

All of the foregoing points to a compelling need to redesign the system of judicial review of arbitral awards, specifically at the procedural level. Scholarly support for such reform is by no means lacking. It has long been persuasively argued that the current framework is counterproductive and that no constitutional obstacles stand in the way of reform. Nevertheless, the legislature has remained passive. Perhaps the twentieth anniversary of the Arbitration Act provides an appropriate occasion for the relevant stakeholders to reflect on the future of arbitration in Serbia. To that end, the most far-reaching solution appears to be the most appropriate one: following the example of Austria—which, like Serbia, adopted the UML and has traditionally served as a source of inspiration for Serbian procedural legislation—a single-instance system of judicial review of arbitral awards should be introduced, with the Supreme Court acting as both the court of first and final instance. Such a solution would ensure procedural efficiency while simultaneously promoting the uniformity of case law and the coherent development of arbitration law. These objectives could be further advanced, again following the Austrian model, through the establishment of a specialised chamber of the Supreme Court dedicated exclusively to arbitration matters.

Keywords: arbitration; judicial review of arbitral awards; setting-aside proceedings; efficiency of arbitration.

340.142(439)

Dr. Péter Gárdos[*]

EXPERIENCES OF THE HUNGARIAN PRECEDENT SYSTEM

The Hungarian legal system underwent a fundamental transformation in 2019 with the introduction of legislation establishing what has become known as a "limited precedent system". Under the new rules, if a panel of the Curia, the Hungarian supreme court, wishes to deviate on a matter of law from an earlier published decision of the Curia, it must initiate a special uniformity procedure. Lower courts, while not formally bound by Curia decisions in the same way as courts in a common law system, must explain any departure from published Curia decisions, and such departure may provide grounds for extraordinary review.

The reform responded to a genuine problem. Although the Curia has traditionally been constitutionally responsible for ensuring the uniform application of law, the increasing availability of court decisions through electronic databases revealed significant inconsistencies not only between lower courts but also between different panels of the Curia itself. The new system seeks to address these inconsistencies by substantially strengthening the role of individual Curia judgments.

My presentation will provide an overview of this new framework within the broader debate over the role of courts in shaping law in a civil law jurisdiction and will evaluate whether the reform has in fact enhanced legal certainty and predictability or has instead made it more difficult to determine what the applicable law is. To identify the structural problems of the Hungarian solution, I will compare it with the English system of precedent. The purpose of the comparison is not to suggest that common law rules can simply be transplanted into a civil law jurisdiction, but rather to examine what institutional conditions are necessary for a precedent system to function effectively.

The comparison reveals several important differences. First, while English precedent operates within a hierarchy of courts, the Hungarian system attributes special significance almost exclusively to published decisions of the Curia, although only a small proportion of civil cases ever reach that court. Second, unlike the UK Supreme Court, which may exceptionally depart from its own precedents,

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the Curia can do so only through a special uniformity procedure. Third, Hungarian law remains ambiguous as to the precise binding effect of Curia decisions on lower courts. Fourth, Hungarian law has no clear equivalent of the distinction between ratio decidendi and obiter dicta. The legislation merely refers to departure from a Curia decision "on a matter of law", making it difficult to identify precisely which propositions contained in a judgment have precedential force.

Finally, there is a fundamental problem of accessibility. The legislation retrospectively transformed tens of thousands of Curia decisions into precedents, although those judgments had not been drafted with such a function in mind. Unlike the English system, Hungary lacks an institutional infrastructure that reliably identifies the rule established by a judgment and indicates whether a precedent has subsequently been followed, distinguished or overruled. Consequently, even determining whether a particular Curia judgment remains "good law" may be difficult.

These problems raise a broader concern. The aim of enhancing uniformity in Hungarian judicial practice is undoubtedly legitimate, but predictability comes at a cost if the Curia's jurisprudence can no longer develop gradually through successive cases. A mechanical transplantation of elements of stare decisis cannot by itself produce a functioning precedent system. Hungary remains a distinctly civil law jurisdiction, predominantly shaped by the German legal tradition and operating within a legal and institutional culture fundamentally different from that in which English precedent developed. The success of the reform therefore depends not merely on formally binding earlier decisions, but on transparency, appropriate judicial infrastructure, a corresponding culture of judicial reasoning, and sustained engagement by judges, practitioners and legal scholarship. Without these conditions, the limited precedent system may ultimately undermine, rather than strengthen, the accessibility and predictability of law.

Keywords: precedent, legal system, courts, interpretation of law.

347.91/.95:004.8
347.919.3:34.04

Dr. Zvonimir Jelinić[*]

SMALL CLAIMS AS A LABORATORY FOR CIVIL PROCEDURE REFORM: BETWEEN PROCEDURAL ECONOMY, OPEN JUSTICE, AND DIGITALIZATION

Special rules governing small claims proceedings were introduced into Yugoslav civil procedure in 1972. At the time, Triva observed that this form of procedural simplification represented a compromise between the unacceptable application of the maxim *"de minimis non curat praetor"* and the need to preserve essential procedural safeguards in disputes of limited economic value. More importantly, he emphasized that the success of such a model depended not only on the quality of the statutory framework, but also on its interpretation, practical application, and the conscientious exercise of broad judicial powers. Half a century later, these concerns remain highly relevant.

The paper proceeds from the premise that small claims do not constitute a homogeneous category of simple and legally insignificant cases. The monetary value of a claim does not necessarily reflect the complexity of the factual and legal issues, the significance of the dispute for the parties, or the broader effects of the resulting decision. Small claims may include routine claims arising from the mass provision of services, proceedings initiated following an objection to an enforcement order based on an authentic document, as well as contractual, tenancy, tort, and other disputes that may require the examination of parties or witnesses. The justification for a streamlined procedural framework therefore cannot be assessed solely by reference to the amount in controversy.

Under the current Croatian model, introduced by the 2022 amendments to the Code of Civil Procedure, small claims proceedings are conducted primarily in writing. An oral hearing may be held when the court considers it necessary for the taking of evidence or the fair conduct of the proceedings, or when a party submits a reasoned request for a hearing. Does this model achieve a genuine balance between procedural economy and procedural fairness or it raises broader questions

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concerning the right to a fair trial and open justice principle is questioned in the paper.

The paper further examines how Croatian courts process and resolves small claims in practice and the extent to which the existing rules achieve their stated objectives. We must not forget that, from a comparative perspective, there are small claims models that are based on standardized forms, active judicial case management, informal and concentrated oral hearings, and the effective facilitation of self-representation. In a given sense, particular attention is paid to the relationship between legal representation, litigation costs, and the value at stake. In a loser-pays system, recoverable attorneys' fees and other litigation costs may substantially exceed the value of the claim.

The shift toward predominantly written proceedings also creates a potentially suitable environment for digital tools and AI assisted case processing. Such technologies may support the classification of claims, extraction of relevant dates and amounts, identification of legal issues, and preparation of cases for judicial review.

The final part proposes a more differentiated procedural model. Routine claims based on documentary evidence may be resolved efficiently through written proceedings, possibly with technological support. In factually contested cases, however, particularly where a party is self-represented and seeks direct access to the court, a short and concentrated oral hearing should be the rule. Therefore, reform should focus on clear and accessible forms and instructions, meaningful case classification, proportionate cost rules, effective judicial case management, and the cautious use of remote hearings and AI tools. In the end it is explained why small claims should not be treated as a peripheral procedural category, but as a laboratory for testing whether civil justice can remain timely, accessible, transparent, proportionate, and legally sound while adapting to digital transformation.

Keywords: small claims, written proceedings, oral hearing, self-representation, litigation costs, open justice, artificial intelligence, digital justice.

347.23:636.045]:340.5(497.11+439)

Dr. Borbála Lénárdné Maletics[*]

THE CIVIL LAW STATUS OF ANIMALS IN SERBIA AND HUNGARY: A COMPARATIVE STUDY

The social perception of animals is undergoing a significant transformation these days, especially with regard to pets, which are increasingly seen as sentient beings, companions capable of forming a close relationship with humans, rather than as things based on the traditional legal perception. It is inevitably important that this change in perspective is also reflected in legal regulation.

In addition to primarily public law instruments protecting animals, such as the criminal law status of animal cruelty and administrative law sanctions, it is also particularly important to adapt the civil law status of animals to this distinguished value. Significant changes can already be observed in this area, both internationally and in Europe: more and more countries are breaking with the property law status of animals based on classical Roman law and are expressing the nature of animals as sentient beings in civil law regulations as well.

It is important to emphasize that this distinction does not currently result in an independent legal status for animals, but merely makes a distinction in the property law assessment. The different rules therefore basically supplement the provisions of property law, or the animal that can be the object of property, with special rules that express in certain civil law legal relations that animals can no longer be classified under the category of general things.

In my presentation and study, I undertake to compare the civil law provisions of the country hosting the conference, Serbia, and my own country, Hungary. To show whether these two countries currently express the distinguished value of animals in civil law provisions and if so in what form. In my opinion, the study promises particularly topical and important results, given that these two countries currently represent different stages of the development of modern approaches to determining the property status of animals.

Regarding the extent of the deviation from the property law status, Hungarian legislation has basically applied an intermediate solution regarding the civil law status of animals since the entry into force of the new Hungarian Civil

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Code (March 15, 2014), declaring that property law rules can only be applied to animals by taking into account the legal provisions governing their nature. (Hungarian Civil Code 5:14.§(3) Hungarian legislation therefore does not explicitly state that animals are not things, but it does include a provision among the rules governing general things and stipulates that a rule appropriate to their nature must be applied. This provision was included in the civil law rules in Hungary based on the rules of the Animal Protection Act; since the entry into force of our Act XXVIII of 1998, the preamble has expressed that animals are living beings capable of feeling, suffering and rejoicing and everyone has a duty to respect them. Although Hungarian legislation tries to express and present the provisions important from an animal protection perspective in the Civil Code, the problem in current practice is primarily caused by the lack of special provisions. Therefore, the reference rule of the Civil Code, which requires the consideration of different legal provisions governing their nature, is still unsettled in many civil law legal relationships, so for example, there is no special rule regarding the placement of a common animal in the event of a divorce, and in terms of inheritance law, there is currently no specific legal provision for animals as a special legacy object.

The civil law regulation of Serbia, is particularly interesting both for comparison and for the development of the civil law status of animals. Given that there is currently no unified civil code in Serbia, property relations are governed by the The Law on Basis of Ownership and Proprietary Relations (Zakon o osnovama svojinskopravnih odnosa). This legislation does not contain a separate provision on animals, basically defining them as things that are the subject of property among the general rules on property rights. The adoption of the new, unified Civil Code may bring about changes regarding the legal status of animals under property law. A trend can be observed in Serbian legal literature toward establishing a separate legal status for animals under property law; numerous authors emphasize the importance of explicitly stipulating in the new, unified Civil Code that animals are not things. The most recent draft of the new Civil Code (Građanski zakonik) (from 2019) states that: “The objects of subjective rights are animals, things, human actions, personal property, products of the human spirit and mind.” (Section 127) and “The provisions of the code on objects shall apply to animals on matters not regulated by a special law.” (Section 144)

In my study, based on the examined civil law regulations, I seek the answer to the extent to which the fact that we explicitly state that animals are not things in the Civil Code influences animal protection efforts and judicial practice. Does this definition in the Civil Code represent only a moral value, or is it an important milestone in the civil law status of animals? After all, in the event of establishing that animals are not things, the question arises with reason: if they are not things and not persons, how can we determine their civil law status? In the current state

of development of civil law, this new independent legal status, which can be specifically applied to animals, has not yet been established. In my research, I seek the answer to whether this exclusion of animals from the property law category leads to the establishment of a new legal status or whether it fundamentally represents a kind of moral value while preserving the property law status.

The aim of my presentation and research is to promote Serbian and Hungarian legal discourse and cooperation, while examining international best practice.

Keywords: civil law status of animals, animal welfare, property law, animals as things, animals as sentient beings.

347.77/.78:004.78:061.1EU

Dr. Istvan Harkai[*]

DIGITAL SOVEREIGNTY AND WEAPONIZED INTERDEPENDENCE IN DIGITAL MARKETS: INTELLECTUAL PROPERTY LAW AS A STRATEGIC INSTRUMENT OF EU REGULATORY POWER

Digital platform services have become core infrastructures of the global economy. Over the past two decades, online markets have been shaped mainly by a small group of transnational technology corporations, most of them based in the United States, while China has developed a state-controlled and increasingly exportable techno capitalist model. Europe, by contrast, has not created platform infrastructures of comparable scale. Yet the European Union has become a key actor in digital governance through law. This paper examines whether the EU's regulatory toolkit – especially the Digital Markets Act, the Digital Services Act, the AI Act, the GDPR, the CDSM Directive and the Data Act – can partly compensate for Europe's technological deficit in the global platform economy. The paper argues that digital sovereignty is no longer merely a matter of data protection, competition law or platform liability. It must be understood as part of a broader geopolitical struggle over infrastructures, data flows, technological standards, artificial intelligence, intellectual property and communicative power. In a global environment shaped by "weaponized interdependence", control over digital chokepoints – cloud infrastructures, app stores, search engines, social media platforms, data repositories, AI training datasets and content moderation systems – has become a strategic source of power. The central question is whether EU law can transform regulatory authority into geopolitical leverage, and whether intellectual property law and digital market regulation can operate as instruments of European digital sovereignty. Methodologically, the paper combines doctrinal legal analysis, comparative legal reasoning and concepts drawn from international relations theory. It compares three models of digital power. The United States relies on market dominance, private innovation and the global reach of its platform corporations. China builds digital sovereignty through state control, data

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localisation, industrial policy and the integration of technology companies into state objectives. The European Union, lacking equivalent platform champions, seeks to shape global digital markets through law: by exporting standards, imposing obligations on gatekeepers, protecting fundamental rights and disciplining platform power. The analysis first discusses digital sovereignty and its evolution in EU legal and policy discourse. It then examines transatlantic tensions arising from data transfers, the GDPR, the CLOUD Act and the Schrems case law, showing that data localisation alone does not create genuine sovereignty if technological or legal access remains under foreign control. The paper also addresses data as an economic asset. It rejects a simple proprietary model of personal data, while recognising that European law is moving towards a more complex bundle of access, control and sharing rights. The Data Act and the Data Governance Act seek to balance innovation, competition, autonomy and public-interest data use. The paper further analyses copyright and content moderation as geopolitical issues. The shift from safe harbor regimes to the stricter obligations of Article 17 of the CDSM Directive and the systemic duties introduced by the DSA shows that online platforms are no longer treated as passive intermediaries. They increasingly function as regulatory infrastructures that shape access to culture, information and public discourse. This reveals the strategic role of intellectual property law: copyright enforcement, licensing duties, algorithmic filtering and transparency rules are not merely private-law mechanisms, but tools through which the EU attempts to rebalance power between platforms, right holders, users and public interests. Finally, the paper addresses artificial intelligence as the newest field of digital sovereignty. AI systems depend on massive datasets, computational infrastructure and globally concentrated technological capacities. This creates new dependencies for jurisdictions that lack sovereign cloud capacity, semiconductor production and competitive AI ecosystems. The EU's AI Act is therefore not only a risk-based regulatory framework, but also an attempt to define the conditions under which AI may be developed and deployed in European markets. The paper concludes that the EU's regulatory strategy has genuine geopolitical relevance. Through the Brussels Effect, European norms can influence global corporate behavior and create compliance pressure for non-European technology firms. However, regulation alone cannot substitute for technological capacity. Without investment in European digital infrastructure, cloud services, semiconductor production, AI development and innovation ecosystems, Europe risks becoming a "regulatory museum": capable of protecting rights, but unable to shape the technological future. The future of digital sovereignty will depend on whether the EU can combine normative power with material technological autonomy.

Keywords: Digital sovereignty, weaponized interdependence, global digital platforms, data governance, splinternet.

343.55
347.61/.64:342.7-053.2/.6

Dr. Katalin Visontai-Szabó[*]

PARENTAL ALIENATION OR DOMESTIC VIOLENCE?

This presentation examines the conceptual, diagnostic, and legal boundaries between parental alienation, parental alienation syndrome (PAS), parental estrangement, and domestic violence—concepts that are frequently conflated in both public discourse and forensic practice despite their significantly different theoretical foundations and practical implications. The lack of terminological clarity surrounding these notions has serious consequences for judicial decision-making, child protection interventions, custody evaluations, and psychological assessments. In highly conflictual family disputes, inaccurate interpretation of family dynamics may not only distort the assessment of parental capacities but may also expose children and vulnerable parents to further emotional or physical harm.

The presentation begins with a critical overview of the origins and development of the concepts of parental alienation and parental alienation syndrome. Particular attention is paid to the work of Richard Gardner, who introduced PAS in the 1980s in the context of child custody disputes. The lecture highlights the controversial nature of PAS, including the extensive scholarly criticism directed at its scientific foundations, methodological limitations, and lack of inclusion in major diagnostic systems such as the DSM-5 and the ICD-11. At the same time, the presentation acknowledges that behaviors commonly associated with parental alienation continue to appear in clinical and forensic settings, creating ongoing challenges for judges, lawyers, psychologists, mediators, and child protection professionals. The discussion therefore seeks to distinguish between the broader phenomenon of alienating behaviors and the more controversial syndrome-based approach represented by PAS.

The analysis then focuses on the distinction between parental alienation and parental estrangement, emphasizing that these concepts describe fundamentally different relational dynamics. The presentation underlines that children may dis-

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tance themselves from a parent for legitimate protective reasons, and that failing to recognize this distinction can result in severe professional and legal errors.

Special emphasis is placed on the child's perspective and psychological vulnerability during high-conflict parental separation. The presentation explores how prolonged exposure to interparental conflict, chronic litigation, emotional manipulation, and coercive family dynamics may affect children's emotional development, attachment patterns, identity formation, and long-term mental health.

The final part of the presentation examines the complex and often overlapping relationship between allegations of parental alienation and domestic violence. Particular attention is given to cases in which claims of alienation are strategically invoked during custody disputes in order to undermine or discredit allegations of abuse. The lecture discusses how coercive control, intimate partner violence, emotional abuse, and post-separation abuse may continue after the termination of the relationship and may become embedded within custody litigation itself. In such situations, simplistic references to alienation may obscure genuine patterns of violence and victimization. Conversely, the presentation also acknowledges that false or exaggerated accusations may emerge in highly adversarial proceedings, further complicating the assessment process.

The presentation argues that neither purely legal nor purely psychological approaches are sufficient to address these highly sensitive and multidimensional cases. Instead, it advocates for a multidisciplinary, evidence-based, and ethically grounded framework that integrates legal analysis, clinical expertise, child psychology, trauma studies, and family dynamics. The discussion highlights the importance of careful forensic assessment, methodological rigor, and professional caution, particularly in cases involving allegations of domestic violence, child abuse, or coercive parental behaviors. Greater conceptual clarity is essential not only for improving assessment practices and judicial reasoning, but also for ensuring that interventions genuinely protect the welfare, safety, and psychological well-being of children.

By clarifying the conceptual boundaries between parental alienation, parental estrangement, PAS, and domestic violence, the presentation aims to contribute to more precise terminology, more reliable forensic evaluations, and more ethically responsible decision-making in both clinical and legal settings. Ultimately, the lecture seeks to encourage a nuanced understanding of family conflict that avoids ideological polarization and remains firmly focused on the protection of children and vulnerable family members.

Keywords: domestic violence, parental alienation, child's best interest, family law, family psychology.

347.61/.64:342.7-053.2/.6

Dr. Sandra Samardžić[*]

CORPORAL PUNISHMENT OF CHILDREN IN THE PROPOSED AMENDMENTS TO THE SERBIAN FAMILY ACT

The proposed amendments to the Family Act of the Republic of Serbia have once again brought to the forefront one of the most sensitive issues in family law, namely corporal punishment of children in the family. By introducing new Article 70a, the legislator explicitly prohibits degrading treatment, corporal punishment, and other forms of punishment that violate the child's dignity and integrity. These amendments further harmonize domestic law with international child protection standards, particularly the UN Convention on the Rights of the Child, the General Comments of the Committee on the Rights of the Child, and recommendations issued by international bodies.

Although contemporary legal developments increasingly favor a complete prohibition of corporal punishment, this issue traditionally provokes intense public debate and divided opinions in Serbian society. Public discourse continues to reflect deeply rooted cultural attitudes that regard physical punishment as a legitimate component of parental authority and child-rearing practices, often shaped by experiences of previous generations.

Contemporary research in developmental psychology, pedagogy, and children's rights law demonstrates that corporal punishment does not contribute to healthy child development and may adversely affect children's emotional and social well-being. Scientific findings associate corporal punishment with aggressive behavior, anxiety, impaired parent–child relationships, and the intergenerational transmission of violence. These findings are consistent with influential psychological theories. According to Bandura's Social Learning Theory, children acquire behavioral patterns through observation and imitation of significant others, which may normalize aggression as a means of conflict resolution, while Bowlby's Attachment Theory emphasizes the importance of secure and supportive parent–child relationships. More recent research on toxic stress, particularly that of Gershoff, raises the possibility that even nonabusive physical punishment may constitute a

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source of toxic stress with implications for children's emotional regulation and brain structure and functioning. From a children's rights perspective, these findings reinforce the view that protecting children's physical and psychological integrity constitutes an essential component of the best interests of the child.

This paper analyzes the proposed legislative solutions considering international standards and the domestic legal framework, while examining the practical implications. Attention is devoted to whether a statutory prohibition alone can change deeply rooted social practices or whether a broader preventive approach is required.

The author argues that legal prohibition, although necessary, is not sufficient in itself. Effective protection of children's rights requires educating parents and a wider community about children's developmental needs and non-violent methods of upbringing. Parents should be supported through positive parenting programs, counseling services, and educational initiatives offering alternative methods of setting boundaries and resolving conflicts without physical force. Otherwise, the prohibition may be perceived merely as interference with parental autonomy rather than as a measure safeguarding the child's best interests.

Special attention is given to newly proposed electronic platforms for reporting and monitoring violence against children. While such tools may improve institutional cooperation and reporting mechanisms, public concerns regarding possible misuse and excessive interference with family life may affect acceptance of the reform and cooperation with institutions. For this reason, implementation of the new legal framework requires highly trained professionals capable of distinguishing harmful conduct from legitimate parental authority. Institutional action should always be guided by the best interests of the child, understood not only as protection from violence but also as preservation of family relationships whenever possible and consistent with the child's safety. Child protection systems should strengthen families and support parents, while resorting to family separation only when necessary to protect the child. Building public trust through transparent and expert-led decision making may prove essential for the effective implementation of these reforms.

The paper contributes to the scholarly debate on the limits of parental authority and the state's obligations to protect children from all forms of violence. In societies where traditional child-rearing practices remain deeply embedded, balancing family autonomy with children's rights remains a major challenge of contemporary family law. The long-term success of these reforms will depend not only on legislative change but also on institutions' ability to gain public trust and demonstrate that child protection measures support families while safeguarding children's rights and well-being.

Keywords: corporal punishment of children; children's rights; best interests of the child; family law.

347:342.7

Dr. Sloboda Midorović[*]
Milica Kovačević[**]

POST-MORTEM PROTECTION OF PERSONALITY RIGHTS

The maxim that one should speak of the deceased with respect reflects a deeply rooted social understanding that the memory of a deceased person must not be unjustifiably disturbed. Behind this ethical postulate lies the idea that biological death does not necessarily mark the complete cessation of an individual's social presence, and that the manifestations of their personality deserve protection even after the end of their physical existence. In civil law theory, it is widely accepted that certain personality rights outlive their holder and persist as long as the memory of their existence and deeds endures. Even after death, an individual remains present through the memories of their close persons and contemporaries, as well as through their scientific, literary, artistic, and other works created during their lifetime. Since every person shapes their identity and social reputation during life, it is reasonable to expect that such an image should not be subject to arbitrary interference after death. Accordingly, the absence of post-mortem protection of personality rights would allow for unpunished intrusions into values such as honor, reputation, privacy of the deceased. At the same time, such a solution could negatively affect the free development of individuals during their lifetime if there were a fear that their creative work, private life, or social engagement would, after death, be exposed to unlimited attacks without appropriate legal response.

The issue of protecting personality rights after death acquires particular importance in the modern digital environment. The development of information technologies and new media has significantly impaired control over personal data and content relating to individuals (so-called informational self-determination). In this sense, the unauthorized collection, publication, and distribution of photo-

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graphs, recordings, correspondence, and other information pose a risk not only to living persons but also to the dignity of the deceased.

Although there is a high degree of consensus regarding the need for post-mortem protection of certain personality rights, its dogmatic foundation remains a matter of debate. In this regard, two dominant approaches can be distinguished. According to the direct concept, certain personality rights continue to exist even after the death of their holder – thus constituting a form of subjectless rights – while their protection is exercised by third parties acting as trustees of the deceased. In contrast, the indirect concept is based on the view that what is protected are not the rights of the deceased themselves, but rather the rights of their close persons to preserve the memory of the deceased and prevent its disturbance.

Particular dilemmas arise with regard to issues of standing and the claims that may be asserted in cases of violation or endangerment of the personality interests of the deceased. It remains an open question whether the right to protection should be granted to all heirs, only to close relatives, or also to certain legal entities that have a justified interest in preserving the memory of the deceased (e.g., specific foundations). Furthermore, the scope of available claims is at issue, including claims for cessation, claims for natural restitution (e.g., publication of the judgment, withdrawal of an offensive statement), claims for damages, and disgorgement of profits obtained through the unauthorized use of the personality attributes of the deceased. The duration of protection and the criteria on which it should depend also remain particularly controversial.

These issues will be analyzed at a theoretical level, with special reference to the normative foundations of post-mortem protection of personality rights in the law of the Republic of Serbia. The research will include relevant domestic and comparative case law, as well as the practice of the European Court of Human Rights.

Keywords: Personality rights, post-mortem protection, standing, types of claims.

17:004.8:061.1EU

Dr. Ibolya Stefán[*]

ETHICAL COMPLIANCE OF ARTIFICIAL INTELLIGENCE SYSTEMS – TRUSTWORTHY AND RESPONSIBLE AI

The increasing adoption of artificial intelligence systems questions the traditional framework of civil law, particularly non-contractual liability. Autonomous, self-learning technologies usually operate in a non-transparent manner, commonly referred to as the 'black box effect', making their behavior unpredictable and decreasing direct human control. Consequently, liability is allocated among developers, operators, users, and the technological environment, rather than being designated to a single party. This allocation creates issues that are difficult to address – this phenomenon is frequently called the 'liability gap' –, in this context, ethical norms assume an important role.

In the presentation we examine whether the ethical principles developed for AI systems function solely as moral guidelines or possess genuine legal significance in the context of liability for damages. We argue that violations of ethical requirements do not independently establish non-contractual liability since that would require the fulfilment of conditions – such as unlawfulness, fault, damage, and causation – function as benchmarks for the conduct of developers and operators.

Furthermore, ethical norms are relevant not only to the emergence of responsibility, as well as its allocation and scope. As ethical principles, particularly transparency and explainability, affect users by allowing well-informed and conscious engagement with AI systems. This awareness grants users to identify the risks, contributing to harm prevention and mitigation.

We review the elements of trustworthy and responsible AI, such as accountability, transparency, explainability, and human oversight. These principles are set out in international and European Union documents as a shared set of values. Therefore, we examine the OECD Recommendation on Artificial Intelligence (2019), the UNESCO's Recommendation on the Ethics of Artificial Intelligence (2021), and the Council of Europe's Framework Convention on Artificial Intelli-

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gence and Human Rights, Democracy and the Rule of Law (2024). We also analyse the High-Level Expert Group's Ethics Guidelines for Trustworthy AI (2019), which culminated in Regulation (EU) 2024/1689 (the AI Act), showing that this soft-law was translated into legally binding rules – partially – as the ethical principles apply solely to high-risk AI systems.

Furthermore, we focus on the process by which ethical principles – initially formulated as 'soft law' instruments without legally binding force – are increasingly incorporated into legally binding regulations. This development can be noted in the European regulatory model, which translates ethical recommendations into binding, enforceable obligations, which indicates that ethics and law are interconnected. Therefore, the requirements once considered recommendations may be elevated to have legal effect, directly forming the behavior of developers, operators, and users.

Keywords: ethics, AI systems, soft law, EU.

349.42:631(439)
349.412:347.6(439)

Dr. Gergő Árvai[*]

REFLECTIONS ON THE RELATIONSHIP BETWEEN AGRICULTURAL GENERATIONAL RENEWAL AND THE REGULATION OF AGRICULTURAL FARMS IN HUNGARY

The aging agricultural community, the high average age of farmers, and the challenges associated with generational succession on farms present a complex challenge throughout Europe today. Agricultural laws in member states face numerous structural difficulties, among which the issue of managing generational transitions is of particular significance. This issue has also been prominently featured in Hungarian agricultural legislation and legal developments in recent years. A distinctive feature of the regulation of generational transitions in agriculture is that preserving the legal, economic, and functional unity of the agricultural enterprise, as well as ensuring its sustainable operation across generations, raises not only issues of a private law nature but also necessarily serves the enforcement of objectives of public interest. Consequently, the critical issues in the regulation primarily emerge within the scope of the applicability of private law institutions, taking into account the complex system of public interest restrictions, conditions, and prohibitions that constitute a defining feature of agricultural law. The Hungarian legal framework governing this subject is highly fragmented, a situation that can be attributed in part to the fact that, in recent years, the legislature has focused primarily on regulating land transactions. As a result, the body of law governing the inheritance of agricultural and forest land has followed a distinct trajectory. While in the case of land inheritance based on a will—with the breakthrough of the *ipso iure* principle—an increasingly expansive interpretation of both active and passive inheritance rights can be observed, in the context of intestate succession, an increasing restriction of passive inheritance rights prevails. At the same time, the special provisions governing land inheritance are not, in and of themselves, sufficient to ensure the long-term preservation of the

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legal, economic, and functional unity of agricultural farms, which necessitates the development of a more complex, farm-centered regulatory approach. This realization led to the enactment of the Family Farming Act and the Farm Transfer Act, both of which contain normative provisions reflecting a farm-regulation approach. Of decisive importance for the development of Hungarian farm regulation law is the legal definition of the term "farm," as well as the creation of the farm transfer agreement as a sui generis legal institution. Although the concept of an "agricultural holding" appears primarily in the context of agricultural subsidy regulations under European Union law, the Treaties respect the property regimes of the Member States; thus, the regulation of generational succession in agriculture falls fundamentally within the competence of the Member States. The aim of this presentation is to review the development of legislative and judicial practices concerning generational transitions in Hungarian agriculture, as well as to examine the regulatory aspects of these processes.

Keywords: agricultural law, generational renewal, inheritance, agricultural and forestry land, farm.

341.61
341.9(497.11)

Milana Ranković[*]

PARALLEL PROCEEDINGS IN THE EUROPEAN UNION AND THIRD STATES: A PERSPECTIVE FROM SERBIAN PRIVATE INTERNATIONAL LAW

Parallel proceedings represent a significant issue in contemporary International Procedural Law, particularly in the context of expansion of cross-border cooperation and the growing interdependence of legal systems. Its relevance is additionally emphasised by the fact that this issue is currently in the focus of the international legal community, which is working on the development of the Convention on parallel proceedings and related actions within the framework of the Hague Conference on Private International Law. This research conducts a comparative analysis of legal frameworks addressing the challenges of parallel proceedings in civil and commercial matters within the European Union (hereinafter "EU") and Third States, with particular reference to Private International Law of the Republic of Serbia.

Legal framework for prevention and resolution of positive conflicts of jurisdiction in EU is provided in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) - Brussels I Recast Regulation (hereinafter: "Regulation"). The Regulation establishes two distinct legal regimes for addressing parallel proceedings. The first refers to the case when parallel proceedings are initiated within EU Member States (Art.29 and 30 of Regulation), and the second to the case when parallel proceedings are initiated before the courts of EU Member States and Third States (Art. 33 and 34 of the Regulation). It is based on the assumption that parallel proceedings in the same subject matter are unacceptable and the decisive criterion is the moment of initiation of the proceedings, so that any potential positive conflict of jurisdiction is resolved by the principle of priority which is given to the court first seised.

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Art. 33 of the Regulation is applied when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the Third State. In that case, the court of the Member State has the discretionary power to stay the proceedings, if three conditions are met: if the proceedings were first initiated before the court of the Third State, if the judgment of the court of the Third State can be recognized and, if necessary, enforced in that member state, and if it is necessary for the proper administration of justice.

On the other hand, in a situation of related proceedings, when there is no identity of the subject matter of the dispute, Art. 34 of Regulation applies. The application of this article is subject to the same conditions as those governing Art. 33, with the additional requirement that it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Courts of the EU Member States apply unified rules from the Regulation in order to resolve positive conflicts of jurisdiction with the courts of Third States. However, these rules are unilateral, they are not binding on the courts of Third States, which apply the provisions of their national law to solve the problems of parallel proceedings. To analyse the parallel proceedings problem from the perspective of a Third State, the second part of the paper examines the relevant provisions of Serbian Private International Law.

In the Republic of Serbia, the legal framework applicable to the resolution of positive conflicts of jurisdiction arising from parallel proceedings initiated before Serbian courts and courts of EU Member States, is prescribed by Art. 80 of the Law on Resolving Conflicts of Laws with Regulations of Other Countries ("Official Gazette of SFRY", No. 43/82 and 72/82 – Amend. "Official Gazette of SFRY", No. 46/96 and "Official Gazette of RS", No. 46/2006 - oth. Law) (hereinafter: "Serbian PIL Act"). Serbian PIL Act provides that the court will, on a party's request, suspend the proceedings, in a situation where parallel proceedings are conducted between the same parties and in the same subject matter, if a foreign court has previously initiated proceedings in the same matter, if there is reciprocity and if there is no exclusive jurisdiction of the Serbian court.

This paper examines the coordination challenges that may arise in the context of parallel proceedings between EU Member States and third States. Namely, differences in legal norms hinder the effective resolution of positive conflicts of jurisdiction, thereby increasing the risk of irreconcilable judgments that may not be recognised or enforced at a later stage. It is concluded that the prevention of parallel proceedings in EU Civil Procedure Law represents a key mechanism to promote mutual trust, legal certainty and

procedural economy, but that its transnational reach and relationship with Third States remain areas that require further normative and theoretical development.

Keywords: lis pendens, international litigation, parallel proceedings, Brussels I Recast Regulation, Serbian Private International Law Act.

342.722:347.91/.95(497.11)

Olivera Jokić[*]

THE COMPATIBILITY OF WRITTEN CIVIL PROCEDURE IN SERBIA WITH THE RIGHT TO A FAIR TRIAL

Serbian civil procedure is designed as an oral procedure at first instance and as a written procedure at the appellate stage; however, exceptions exist in both instances. This research focuses on an exception in the first instance, which consists of two phases: the pre-trial stage and the trial stage. During the pre-trial stage, the parties file their pleadings. After the exchange of written submissions, the court usually schedules a pre-trial hearing, at which it discusses procedural objections with the parties, identifies undisputed and disputed facts, and addresses legal issues with the parties. If there are disputed facts between the parties, the trial stage is necessary because evidence can only be taken during an oral hearing. However, if the facts are undisputed, the court may adjudicate the case immediately after receiving the statement of defence or during the pre-trial hearing. There is no doubt that this solution serves the interests of faster resolution of disputes and contributes to the realisation of a right to a trial within a reasonable time. Holding a trial hearing in such cases would be contrary to the court's duty to conduct proceedings without delay and with minimum costs (Art. 10 Serbian Civil Procedure Code). If the court renders its decision during the pre-trial hearing, no issue arises with respect to the right to be heard. However, when the court decides without holding such a hearing, as permitted under Serbian law, it is controversial whether adjudicating on the merits without an oral hearing in cases involving undisputed facts is compatible with the right to be heard, as an element of the right to a fair trial. Given that procedural economy cannot prevail over the parties' right to present their case, it is necessary to analyse whether the rule allowing adjudication on the merits without hearing the parties is compatible with the right to a fair trial, as guaranteed by the Serbian Constitution and the European Convention on Human Rights.

Written procedures also exist in comparative legal systems. A written procedure is available under German law, which is particularly relevant given the strong

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influence of German private law and civil procedure law on Serbian law. The main characteristic of the German model is that a written procedure is possible only if the parties waive their right to an oral hearing. If only one party objects to the written procedure, the court must hold an oral hearing. Similarly, in the Member States of the European Union, claimants may choose the European Small Claims Procedure, established by Regulation (EC) No 861/2007. In such proceedings, the parties may request an oral hearing; however, the court may refuse such a request if it considers that an oral hearing is not necessary for resolving the case, even if evidence must be taken because the relevant facts are disputed. In relation to the EU model, the European Court of Human Rights has repeatedly confirmed its previously adopted view that a national court may refuse a request for an oral hearing only in exceptional circumstances that justify dispensing with such a hearing. This may be the case, for example, where the proceedings concern exclusively legal or highly technical issues. Conversely, where the case raises no questions of fact or law that cannot be adequately resolved on the basis of the case file and the parties' written submissions, the ECtHR has accepted that an oral hearing may not be required. The national court must also give reasons for dispensing with an oral hearing (Pönkä v. Estonia, No. 64160/11, 8 November 2016, §§ 31, 32, 37). Under Serbian law, parties do not have the possibility to choose whether the proceedings will be conducted orally or as written proceedings. However, if the court decides to adjudicate the case without an oral hearing, it must provide reasons for such a decision in the judgment in all cases. Furthermore, there is another difference between the German and EU models, on the one hand, and the Serbian model, on the other. Namely, under Serbian law, adjudication without an oral hearing is possible only if the facts are undisputed between the parties and there are no other obstacles to deciding the case. Thus, adjudication without an oral hearing is possible only where the case is "crystal clear". In every other case, whether the facts are disputed or legal issues need to be discussed due to different legal characterisations of the relevant facts, an oral hearing is mandatory.

In conclusion, the Serbian model of written procedure differs from the comparative models examined above because it cannot be applied in cases where the taking of evidence is necessary. Given that written proceedings in cases involving disputed facts do not automatically amount to a violation of the right to a fair trial under the case law of the ECtHR, it appears that the Serbian model is compatible with the right to be heard.

Keywords: the right to a fair trial, the right to be heard, written procedure, pre-trial stage, EU Small Claims Procedure.

347.65/.68(44)

Neda Vuksanović[*]

FRENCH INHERITANCE LAW BETWEEN TRADITION AND NEW LEGAL CHALLENGES: THE CONCEPT AND FORMS OF THE WILL

French inheritance law represents one of the most influential succession systems within the continental European legal tradition. Its distinctive character lies in balancing two fundamental principles: testamentary freedom and the protection of close family members through mandatory inheritance rules. The legal framework governing succession is primarily based on the Code Civil, which regulates the creation, validity, interpretation, and execution of testamentary dispositions while preserving the institution of the reserved portion (*réserve héréditaire*) for protected heirs.

This paper examines the concept of the will in French inheritance law and analyzes the legal mechanisms through which individuals may determine the distribution of their property after death. Particular attention is devoted to the substantive and formal requirements necessary for testamentary validity. The study explores the legal capacity of the testator, emphasizing that only persons possessing the required legal competence may validly dispose of their estate by will. It also discusses the importance of free and genuine consent, the absence of fraud, coercion, or mistake, and the requirement that the testament accurately reflects the true intention of the testator.

A central part of the analysis focuses on the various forms of wills recognized under French law. The holographic will (*testament olographe*), entirely handwritten, dated, and signed by the testator, remains the most accessible testamentary form because of its simplicity and low cost. However, it may create difficulties concerning authenticity, interpretation, and preservation. The authentic will (*testament authentique*), executed before a notary and witnesses, provides a higher degree of legal certainty and evidentiary value, although it requires compliance with stricter procedural requirements. The mystical or secret will (testament mystique) combines confidentiality with official authentication, allowing the content of the testament to remain unknown until the testator's death. The

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paper also examines the international will, introduced through the Washington Convention of 1973, which facilitates the recognition of testamentary dispositions in cross-border succession matters.

The role of notaries and witnesses in safeguarding the validity and authenticity of testamentary acts is also analyzed. French law assigns significant responsibilities to notaries, particularly in authentic wills and succession proceedings, where they contribute to legal certainty, prevent disputes among heirs, and ensure compliance with statutory requirements. The study further evaluates the legal significance of dating and signing a will, as well as the consequences of defects affecting testamentary validity. Particular consideration is given to circumstances that may result in nullity, including failure to comply with prescribed formalities, incapacity of the testator, defects of consent, and violations of mandatory inheritance rules.

Beyond ordinary testamentary forms, the paper examines special wills applicable in exceptional situations, such as military service, maritime employment, epidemics, or other circumstances limiting access to regular legal procedures. These forms demonstrate the adaptability of French succession law and its effort to preserve testamentary freedom even under extraordinary conditions.

The research also addresses contemporary challenges facing French inheritance law. Increased international mobility, mixed-nationality families, and cross-border ownership of assets have generated complex questions concerning applicable law, jurisdiction, and recognition of testamentary instruments. Furthermore, the growing importance of digital assets, online accounts, and virtual property raises new issues regarding succession planning and the adequacy of traditional testamentary mechanisms. These developments require the continuous adaptation of legal doctrine and practice while preserving the fundamental values of legal certainty, family protection, and individual autonomy.

The paper concludes that French inheritance law maintains a carefully balanced approach between testamentary freedom and the protection of family interests. Through detailed regulation of testamentary forms, procedural safeguards, and the preservation of reserved shares for protected heirs, the French legal system seeks to ensure both legal certainty and social justice in the transfer of property upon death.

Keywords: French inheritance law, testament, will, forced heirs, reserved portion, Code Civil, holographic will, authentic will, international will, succession law.

347.77:502.131.1

Lavinia Regina Simon[*]

SUSTAINABILITY AS A NEW PRINCIPLE OF INTERPRETATION IN INTELLECTUAL PROPERTY LAW?

Sustainable development has become one of the defining objectives of contemporary international, European Union and national legal systems. Its influence, however, is no longer confined to public policy; it increasingly shapes the interpretation and application of legal norms across different fields of law. This paper examines whether sustainability can be understood as a new principle of interpretation in intellectual property law, capable of influencing legal institutions that have traditionally been designed to promote innovation through the protection of exclusive rights.

The paper is based on the hypothesis that sustainability is gradually emerging as an autonomous normative consideration in the development of intellectual property law. Rather than undermining exclusive rights, this development calls for a renewed balance between innovation incentives and broader societal, environmental and economic interests. Employing a comparative legal methodology, the research analyses the regulatory approaches of the European Union, Germany and India, with particular emphasis on green innovation, technology transfer, compulsory licensing, the circular economy and the right to repair as illustrative examples of the evolving relationship between intellectual property protection and sustainability objectives.

Beyond analysing existing legal developments, the paper explores whether sustainability is capable of functioning as a cross-cutting interpretative principle within intellectual property law. Rather than treating sustainability as a policy objective external to the legal system, the research examines its normative influence on the interpretation of intellectual property rights in light of contemporary global challenges, including climate change, resource scarcity and the accelerating green transition. Particular attention is devoted to identifying common legal tendencies across different jurisdictions while recognising the distinct constitutional, economic and innovation policies that shape national approaches.

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The originality of the research lies in shifting the focus from the traditional question of whether intellectual property law supports sustainable development towards a broader theoretical inquiry into whether sustainability itself is gradually emerging as an autonomous principle of legal interpretation capable of shaping the future evolution of intellectual property law. By combining doctrinal legal analysis with a comparative examination of the legal frameworks of the European Union, Germany and India, the paper develops a conceptual framework that seeks to enrich the contemporary academic debate on the modernisation of intellectual property law in the context of sustainable development.

The paper argues that sustainability should no longer be regarded merely as an external policy objective affecting intellectual property law. Instead, it is progressively becoming an interpretative principle capable of shaping the future development and application of intellectual property regimes. It is further submitted that a modern intellectual property framework should reconcile effective protection of innovation with legal certainty and the long-term objectives of sustainable development. By advancing this perspective, the paper seeks to contribute to the broader academic debate on how traditional concepts of intellectual property law should evolve in response to emerging global challenges and the transition towards a more sustainable legal order.

Keywords: sustainable development; intellectual property law; legal interpretation; comparative law; green innovation.

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Dr. Bojan Tubić[*]

THE RIGHT TO ASYLUM IN THE JURISPRUDENCE OF THE COURT OF JUSTICE OF THE EU – NEW LEGAL CHALLENGES

The issues of asylum and asylum procedures are very important for modern Europe. The number of migrants and their impact on every society urge better policy response and new legal approaches in this field. Law imposes on European institutions and Member States obligations for regulating the status of migrants at the most favourable manner. The European Union has enacted relevant secondary legislation regarding the asylum, especially the Dublin Regulations in which this matter is precisely defined and contain obligations for Member States. Moreover, Pact on Migration and Asylum, which entered into application very recently, in June 2026, represents a most recent set of rules managing migration and establishing a common asylum system at EU level.

The Court of Justice of the EU (CJEU) has the jurisdiction to control the fulfilment of the obligations in this field and its jurisprudence is relevant for regulating the asylum procedure in the EU. The CJEU is a specific, sui generis judicial authority of the EU. Its role is to ensure that the law is observed in the interpretation and application of the founding treaties of the EU. It reviews the legality of acts of EU institutions and decides whether Member States have fulfilled their obligations under the EU law. Moreover, it has one special jurisdiction – to provide interpretations of EU law when requested by national judges. In all of these procedures, the CJEU is providing the uniform application and interpretation of EU law.

This paper includes detailed analysis of the CJEU jurisprudence in the field of asylum. It will deal with cases regarding the procedure on the right to effective access to the asylum procedures, then the interpretation on Dublin III Regulation (for example, the Court decided in cases in which third-country nationals lodged an application for international protection successively in three Member States, also whether Dublin III regulation allows national legislation to grant an interim

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measure which suspends the transfer time limit of a Dublin decision at the request of the competent authority and in a second instance proceeding). The Court also assessed the duty to cooperate, the burden of proof, the length of the procedure and credibility in asylum procedures. It also developed its case law on the interpretation of the Returns Directive in relation to international protection. Especially, the right to an effective remedy featured prominently in cases of asylum. The CJEU interpreted the relevant provisions of the EU legislation in light of Article 47 of the Charter of Fundamental Rights of the European Union and assessed whether an effective judicial review was ensured.

In its jurisprudence on asylum, the CJEU has used case-law of the European Court of Human Rights, explicitly or basing its reasoning on the judgments of this other European court. In that way, the CJEU has continued to create its own legal system in the field of asylum. Relations between these two courts remain strong with regard to human rights protection. The jurisprudence of the CJEU related to asylum represents an important element for understanding and improving EU policy in this field. One of the most recent cases deals with German benefits restrictions in which the CJEU has ruled that asylum-seekers must be given more than just the bare minimum to survive. It would be of great value to see the development of the Court's jurisprudence in the course of application of the new Pact on Migration and Asylum.

Keywords: asylum, Court of Justice of the European Union, human rights, European Union.

341.382(497.6)

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Dr. Aleksandra Savić[**]

MEANING AND INTERPRETATION OF THE DAYTON PEACE AGREEMENT: PROBLEMS OF DEFINING ITS LEGAL NATURE, CONTRADICTIONS IN INTERPRETATION AND ISSUES OF THE AGREEMENT'S DISCOURS

The authors' primary goal in this presentation is to determine the legal nature of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Peace Agreement), to establish objective criteria for the interpretation of its provisions as much as possible, and to point out the contradictory practice in this regard so far. Furthermore, the aim is to consider the discourse of the agreement itself, particularly in relation to the continuously open issues that burden Bosnia and Herzegovina (BiH), as well as the international community in general. In this sense, the authors also deal with the linguistic nature of the agreement itself, its dominant characteristics, and its interpretations, as well as the political-ideological positions contained within that discourse. The starting point is the consideration of the legal nature, content, and key characteristics of the Dayton Peace Agreement as a complex public international law treaty, which has been applied since 1995. Although, formally concluded between the FR Yugoslavia, Croatia and The Republic of BiH, its essential specificity lies in the fact that its annexes, including the Constitution of BiH (Annex 4), where also accepted and signed by two previously existing, state-forming entities: The Republic of Srpska (founded in 1992) and The Federation of BiH (founded in 1994). Therefore, at this point, the authors first consider the formal legal aspect of the Dayton Peace Agreement itself, and furthermore, substantive legal aspect which contains two levels – The General Peace Agreement and special annexes that regulate in more detail various aspects covered by this agreement. It was pre-

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cisely on the basis of these annexes that the two state-forming entities established BiH by their consent, whereby The Republic of Srpska and the Federation of BiH (as two state-forming entities) introduced (embedded) their already existing, de facto sovereignty into the Dayton Bosnia and Herzegovina (which succeeded the previous Republic of BiH). The specificity of the agreement, reflected in the mentioned two level structure, is particularly significant because this public international law treaty in addition to international legal provisions, also contains provisions of domestic law, specifically of a constitutional nature, since it contains the Constitution of BiH (Annex 4), thereby determining its status and internal organization. The second dimension of this presentation brings us to the problem of interpretation and contradictions regarding the legal framework and the wider political context, which has resulted in a continuous crisis for more than thirty years, both domestically and internationally. Namely, this concerns a conflict between the original framework established by the agreement itself and legal and political tendencies, primarily towards the centralization of BiH and pronounced international interventionism, which were not a priori envisioned by the Dayton Peace Agreement itself. This involves a confrontation of different political concepts, which can be illustrated through well-known linguistic constructs – the Spirit of the Dayton Peace Agreement, and then the Letter of the Dayton Peace Agreement. This will be specifically analyzed in the presentation. Also, one of the important aspects of interpreting any agreement is its linguistic level, so the authors view the entire agreement as a specific discourse whose goal is to produce and reproduce power. Thus, linguistic analysis will reveal specific relationships within the agreement, as well as the role of actors in constructing that discourse. Even after more than thirty years since the conclusion of the Dayton Peace Agreement, numerous doubts and deep legal and political disagreements persist regarding its consistent implementation, the issue of the disappearance of the original text, the authenticity of the text of the agreement that has been in use the entire time, but also substantially different, often completely opposed interpretations of its provisions. It is precisely these diametrically different interpretations that represent one of the main sources of constant legal and political instability in Bosnia and Herzegovina. In this regard, the aim of this presentation is to confirm some of the already established truths regarding the Dayton Peace Agreement, but also to offer a new perspective on its definition, understanding and interpretation. This perspective will take into account not only the legal aspects but also the deeper political, linguistic and historical context of the Dayton Peace Agreement.

Keywords: Dayton Peace Agreement, annexes, international treaty, interpretation of law, discourse, language, discourse analysis.

3.078.1(476+470+497.11)
343.232
3.078.3

Dr. Tatiana Telyatitskaya[*]
Yuri Telyatitsky[**]

LEGAL CONDITIONS FOR THE EFFECTIVENESS OF ADMINISTRATIVE COERCION AND FUNCTIONALLY COMPARABLE PUBLIC-LAW MECHANISMS IN BELARUS, RUSSIA AND SERBIA

The article examines the legal conditions that determine the effectiveness of administrative coercion in Belarus and Russia and functionally comparable mechanisms of public-law intervention in Serbia. The purpose of the study is to identify the legal requirements that make public intervention lawful, justified, procedurally fair, subject to review and capable of achieving lasting results.

The choice of these three countries reflects important differences in their legal systems. In Belarus and Russia, administrative coercion is an established legal concept covering various measures used by public authorities to prevent violations, stop unlawful conduct, ensure compliance with legal requirements, secure administrative proceedings and impose administrative sanctions. It is not limited to administrative offences. Serbian law does not treat these measures as a single legal category. Instead, comparable functions are performed through separate institutions, including general administrative procedure, inspection supervision, misdemeanour proceedings and judicial review of administrative decisions.

The study applies comparative legal, formal legal and functional methods. The comparison focuses on the purpose and legal grounds of public intervention, the powers of competent authorities, procedural requirements, evidence, legal safeguards, review mechanisms and enforcement of decisions. This approach makes it possible to compare different legal systems without treating their legal institutions as identical.

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Particular attention is paid to the distinction between inspection supervision and misdemeanour proceedings in Serbia. Inspection supervision is examined as an independent administrative function aimed at preventing and detecting violations and ensuring compliance with legal requirements. Misdemeanour proceedings constitute a separate mechanism of legal responsibility. Unlike Belarus and Russia, where administrative authorities consider a significant number of administrative-offence cases, Serbia primarily entrusts the adjudication of misdemeanours to specialized courts. In cases prescribed by law, authorized administrative bodies may also issue misdemeanour orders, which can be challenged before a court.

The study concludes that the effectiveness of administrative coercion and comparable public-law mechanisms depends not primarily on the severity of sanctions or the number of inspections, but on the quality of legal regulation and its practical implementation. Clear legal grounds, appropriate procedures, reliable evidence, effective protection of individual rights, judicial review and proper enforcement of decisions are essential conditions for achieving lawful and sustainable results. These findings provide a common framework for comparing different legal systems and identifying opportunities to improve public administration.

Keywords: administrative coercion; effectiveness; inspection supervision; administrative offences; misdemeanours.

336.221:351.853]:34

Dr. Salvatore Antonello Parente[*]

THE PROMOTIONAL FUNCTION OF TAXATION IN ENHANCING CULTURAL HERITAGE: BETWEEN LEGAL TRADITION AND NEW REGULATORY CHALLENGES

Within the renewed dialogue between legal tradition and emerging regulatory challenges, the relationship between taxation and cultural heritage has acquired increasing strategic significance. This paper examines the promotional function of tax law as an instrument for the protection, enhancement, and accessibility of cultural heritage, moving beyond the traditional conception of taxation as a mere mechanism for raising public revenue.

Drawing on a historical and systematic analysis of tax provisions pursuing extra-fiscal objectives, the paper demonstrates how contemporary legal systems increasingly employ taxation as a policy instrument to pursue public interests extending beyond revenue collection, assigning tax law an active role in the promotion of culture and the preservation of cultural heritage.

Particular attention is devoted to the Italian legal system, where the promotional function of taxation is embodied in a wide range of tax incentives. The analysis focuses, in particular, on the Art Bonus tax credit designed to encourage cultural patronage, tax incentives for donations and mortis causa transfers of cultural property and the possibility of discharging certain tax liabilities through the transfer of cultural property to the State. The paper also examines tax incentives for cultural sponsorships, reduced VAT rates applicable to specific cultural goods, services and activities, favourable tax regimes for foundations, associations and Third Sector organisations operating in the cultural field, as well as tax incentives supporting the restoration and redevelopment of buildings of historical and artistic interest. Taken together, these measures illustrate how taxation can serve not only as a source of public revenue but also as an effective instrument for achieving the objectives of protecting, enhancing, and promoting access to cultural heritage.

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The paper further adopts a comparative perspective by examining selected European experiences and fiscally supported public-private partnership models in the cultural sector. It also addresses the principal legal issues raised by promotional tax measures, focusing on their effectiveness, their consistency with the fundamental principles of tax law – particularly equality and ability to pay – and their compatibility with European Union law, with specific reference to the State aid framework.

Finally, the paper explores the future development of promotional taxation in the cultural sector in light of technological innovation, the digitalisation of cultural heritage and emerging forms of cultural production, access and participation. It argues that tax law should be regarded not merely as an instrument for financing public expenditure, but also as a strategic public policy tool capable of fostering sustainable development, strengthening social cohesion and ensuring the long-term protection and enhancement of cultural heritage.

Keywords: Promotional taxation, Cultural heritage, Art Bonus tax credit, Tax incentives, Public-private partnerships, State aid.

338.43:502.131.1 (498)
628.4.04 (498)

Dr. Violeta-Irina Stratan[*]

CIRCULARITY IN ROMANIAN AGRI-FOOD INDUSTRY: BETWEEN OPPORTUNITIES AND CHALLENGES

The increasing food demand entailed by demographic growth which coexists with an excessive food waste worldwide, in the context in which the agri-food system is responsible for 1/4 of global GHG emissions and a major contributor to global environmental change, highlights the importance of circularity as production and consumption model in the field. Following EU initiatives on circular economy, the Romanian government has shown, since 2016, its intention to build a favourable framework for the implementation of the circular economy. The first normative act on food waste reduction was enacted then: Law no. 217/2016. Successive acts and regulations have been adopted ever since, at national level, most of them transposing relevant EU directives, such as the National Strategy for Circular Economy (2022) and the Action Plan for promoting the Circular Economy (2023). These regulations have established the main objectives for the transition to circularity in Romania: prioritizing local production over imported products and materials; responsible and sustainable supply of raw materials; prioritizing R&D&I in the field of circular economy; sustainable use of natural resources; prevention of waste generation and sustainable waste management; promoting responsible consumption and environmental education; protection of ecosystems and citizens' health. All these objectives were to be attained through numerous priority actions, involving legislative, regulatory and policy changes likely to facilitate the transition from linear to circular economy. Some of the most relevant actions for the agri-food sector concern: better and more effectively implemented composting legislation; updated food waste legislation focused on improving food collection/donation infrastructure; enacting eco-design legislation; funding R&D&I in the field of integrating waste into energy production and agriculture (biofertilizers); promoting public fountains and distribution points to provide affordable drinking water; amending the list of loss leader products, etc. This study

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is focused on a policy analysis, meant to identify the legal amendments that are further necessary in pursuit of a circular and sustainable agri-food system. It also addresses current challenges, such as the lack of clear and unified data on food traceability, excessive bureaucracy and weak cooperation between public and private actors. Comparing the normative status quo of the circular economy legislation with several best practices identified at national and international level, it aims at pointing out future policy actions likely to enable Romania to capitalize on its rich biodiversity and industrial reconversion potential, by aligning with innovative research projects in the agri-food sector, deemed as key sector for circular economy shift.

Keywords: circular economy, agri-food industry, waste management, food-waste.

005.7-055.2:378
342.7-055.2

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Dr. Danijela Romić[**]

ANALYSIS OF WOMEN'S REPRESENTATION IN LEADERSHIP POSITIONS IN HIGHER EDUCATION

Gender equality has become a highly relevant issue in both international and Croatian academic discourse. A frequently raised question is whether women are sufficiently represented in leadership and managerial positions within the higher education system. Despite the increasing participation of women in higher education, they remain underrepresented in the highest leadership positions, reflecting the phenomenon commonly referred to as the "glass ceiling." This paper addresses this issue by analysing the representation of women in leadership positions at the constituent units of the Josip Juraj Strossmayer University of Osijek.

The authors conducted an empirical study by examining the official websites of all constituent units of the University and their governing bodies in order to collect data on the total number of women holding leadership positions, specifically the positions of deans and vice-deans. The aim of the research is to determine the representation of women in the positions of dean and vice-dean at the University and to examine the gender composition of its governing bodies. The research was conducted during the summer semester of the 2025/2026 academic year.

Within the framework of the study, the authors formulated two hypotheses. The main hypothesis states that men are more strongly represented in the position of dean within the governing structures of the University's constituent units. The secondary hypothesis states that the proportion of women is higher in deputy leadership positions than in top leadership positions.

The paper establishes a theoretical framework on gender equality in higher education and analyses the key legal provisions governing this area. The analysis is based on constitutional principles, the Gender Equality Act, the Act on High-

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er Education and Scientific Activity, the Anti-Discrimination Act, the National Public Administration Development Plan for the Period 2022–2027, and relevant European documents promoting the equal representation of women and men in governance.

The empirical part of the study is based on a systematic manual review and analysis of the official websites of all constituent units. The research sample includes all constituent units of the University (faculties, the academy, and university departments), while the analysis covers the period up to 1 October 2026. The collected data were analysed exclusively by means of descriptive statistical methods.

The scientific contribution of this study lies in establishing a theoretical framework on the representation of women in the governance structures of higher education institutions, conducting empirical research, and providing findings that highlight asymmetries in the representation of women in senior leadership compared with deputy leadership positions. The expected results are anticipated to confirm differences in women's representation between top and deputy leadership positions and to identify patterns of gender imbalance within the governance structures of the University's constituent units.

The significance of the findings can be explained at several levels: scientific, institutional, and practical. The results contribute to a better understanding of gender representation in the governance structures of higher education institutions in the Republic of Croatia and provide a basis for future comparative research. They may assist the management of higher education institutions in assessing the existing gender composition of governing bodies and in developing measures to promote a more balanced representation of women and men in leadership positions. Furthermore, the findings may support policymakers and competent public authorities in monitoring the implementation of the principle of gender equality and in preparing strategic documents and action plans. Finally, the study provides a basis for comparison with other Croatian and international universities and for monitoring changes in the representation of women in leadership positions over time.

Keywords: gender equality, higher education, management structures, deans, vice-deans, heads of departments, deputy heads of departments, representation of women.

3.077.3:347.992
556.18

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LL.M. Sanjin Gašparić[**]

LEGAL CHALLENGES REGARDING APPEALS IN SELECTED SPECIAL ADMINISTRATIVE PROCEDURES IN THE FIELD OF WATER MANAGEMENT

Analyzing constitutional and legal provisions, the authors briefly point out the importance that water has as a common good that enjoys special protection by the Republic of Croatia from the aspect of public interest. Water management in the Republic of Croatia represents a separate administrative area that refers to a complex system of closely interconnected activities (water management, water regulation, water protection, sustainable water use and many others). In order for the aforementioned area to be an efficient and sustainable system, strong institutional capacities and a harmonized legal framework are needed as one of the supporting tools for the implementation of the overall water policy. The Ministry of Environmental Protection and Green Transition is the umbrella body for water policy in the Republic of Croatia, with the authority to perform tasks related to the administrative area of water management. Croatian Waters has a special place in the implementation of water policy in the Republic of Croatia. The authors of the paper, from an administrative- procedural aspect, initially present the scope of work and competences of Croatian Waters - a legal entity for water management as a competent public law body, which relate to selected special administrative procedures in the field of water management. By analyzing the procedural provisions of the Water Act and the Water Management Financing Act, applying the normative, grammatical and teleological method, an overview of selected special administrative procedures that are initiated *ex offo* and impose financial obligations on the parties, based on water fees that represent the basis for financing water management is given. Water charges are an instrument in the form of a

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public monetary grant through which needs in the water economy are financed. The types of water fees and the common characteristics of water fees whose operations are performed by Croatian Waters will be briefly listed. Furthermore, the paper presents in detail the legal institute of appeal by which parties protect their rights and legal interests, as well as the specificities that appear within the framework of the appeal and the appeal procedure. The procedural actions, powers and principles applied by the competent public law body – Ministry of Environmental Protection and Green Transition after receiving an appeal and initiating the appellate procedure are presented, with an emphasis on specific procedural elements of legal protection. In general, in administrative procedures that result in the imposition of obligations on parties, and especially those in which the obligations are of a material (monetary) nature, it is important to examine whether the parties to whom the obligations are imposed are provided with an appropriate level of legal protection. By applying the comparative method, the extent to which they are aligned with the general framework set by the General Administrative Procedure Act is compared, and certain deviations that are observed through the analysis are highlighted and it is determined whether they are justified. In addition to the provisions of the General Administrative Procedure Act, which sets the general framework for legal protection in administrative proceedings regarding appeals, there are certain specificities in special administrative proceedings in the field of water management that are regulated by special regulations, such as the Water Management Financing Act and the General Tax Act, which relate to the appeal procedure. Therefore, the aim of the paper, after conducting an analysis and comparison, is to point out the specifics of legal protection based on an appeal in the field of water management. From the analyzed provisions, it is noted that an appeal against a decision made in a special administrative procedure does not postpone its execution. Furthermore, in relation to the statute of limitations on the right to calculation, execution of the decision, as well as the right to a refund, the provisions of the General Tax Act apply. Such a solution fully justifies the requirements of the administrative area and its specificities, which ultimately sets the requirement and need for a specific administrative area to have special regulation applicable only to that administrative area. The final part of the paper contains the author's concluding reflections on the procedural and practical challenges of appellate decision-making in this particular administrative area.

Keywords: appeal, appeal procedure, legal protection, water management, special administrative procedures.

UDK: 321.6/.8
342.34:328(450)
324(450)

Dr. Ignazio Spadaro[*]

ON THE STRUCTURAL WEAKNESSES OF PARLIAMENT IN THE FACE OF MODERN CHALLENGES: INSIGHTS FROM THE ITALIAN CASE

Parliament, the central organ of the parliamentary form of government and the cornerstone of democratic constitutionalism, is an ancient institution currently undergoing a historic period of crisis. To investigate the severity and structural nature of this crisis, this study examines two distinct factors of weakness inherent to the parliamentary institution, before briefly assessing respective repercussions with specific reference to the Italian case.

First, there is a weakness that could be defined as "genetic", which cyclically emerges every time Assemblies have to be dissolved and reconstituted. In representative democracies, elections are designed to operate as a mechanism for the "selection of the best", anchored to standards of ideological affinity and the personal merit of candidates. This implies a high degree of deliberation and rationality, which the progressive shift of electoral campaigns into the digital sphere inevitably tends to compromise. Indeed, the algorithmic engagement mechanisms typical of social media platforms ensure that user interactions are driven by emotional responses. These mechanisms confine political communication within strict frameworks of brevity and linguistic simplification, reward highly polarising content regardless of its veracity, and trap users inside echo chambers. Consequently, individual users experience a progressive ideological radicalisation and a drastic impoverishment of opportunities for debate and complex thought.

To this is added the marked communicative disintermediation between political leaders and voter-users, which erodes the traditional function performed by political parties as spaces for the selection and preliminary debate of social demands. In the most extreme cases, often exacerbated by the exclusion of preference voting within the electoral system, this leads to the proliferation of a vast number of "personal parties" politically dominated by their respective party secre-

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taries. The fallout of such electoral campaigns is the formation of fragmented assemblies, populated by numerically small parliamentary groups (or groups formed ad hoc during the legislature), characterized by a low rate of internal pluralism and an even lower willingness to engage in deliberative compromise. This stands in stark contradiction to the role of mediating social demands historically assigned to parliament. Assemblies of this type struggle to provide responses to the demands of the electorate within the timeframe and in the manner expected by citizens, particularly in ethically or politically sensitive – and therefore divisive – matters.

In the Italian case, this has long led to a tendency towards parliamentary aphasia, triggering compensatory dynamics by other constitutional bodies. In the long run, however, these dynamics have further accentuated the crisis concerning the centrality of the Houses in the perception of the citizenry. One need only consider the pervasiveness and clear preponderance of government-sponsored legislation, executed via decree-laws that the Houses often merely rubber-stamp through conversion laws. Similarly, multiple sectors of the legal system, in the face of the enduring silence of the Houses, have come to be regulated via judicial adjudication by the Constitutional Court (e.g., medically assisted procreation, assisted dying, intentional parenthood). In other instances, prior legislative choices are systematically struck down by judgments of annulment, without Parliament intervening to reaffirm its own perspective or to comprehensively redesign the statutory framework (e.g., cohabiting couples, grounds for exemption from criminal liability). A second factor of weakness lies in the ever-increasing technical complexity of numerous regulatory subject matters (such as AI and financial markets) and the growing regulatory interdependence with extra-state decision-making venues. Under both aspects, Parliaments face irresistible competition from Executives, which alone can rely on the expertise of the ministerial bureaucracy and act as interlocutors in foreign policy. In Italy, a vivid example of this is the Medium-Term Fiscal-Structural Plan 2025-2029, which the Government negotiated with the European Commission based on complex macroeconomic assessments, and which Parliament subsequently found itself effectively forced to ratify.

Having outlined these structural weaknesses – alongside others that could equally be mentioned (for instance, the vulnerability of individual MPs to lobbying, regarding which Italian legislation remains severely deficient) – this research will focus on identifying potential technical-legal solutions. This will be approached from both a *de iure condendo* and a *de iure condito* perspective, thereby encompassing both proposals for legislative reform and the more precise application of legal norms already in force.

Keywords: Parliament, democracy, elections, form of government.

336.2(438)

Dr. Justyna Skwirowska[*]

CASE LAW ON COMBATING TAX AVOIDANCE IN THE CONTEXT OF INVOICING ONE'S OWN COMPANY - ARE THE RULINGS OF ADMINISTRATIVE COURTS TOO RESTRICTIVE FROM THE PERSPECTIVE OF COMBATING AGGRESSIVE TAX OPTIMIZATION?

For quite some time now, both Polish and EU legislators have been introducing increasingly new regulations aimed at countering aggressive tax optimization. Undoubtedly, one of the most important provisions is Article 119a of the Tax Ordinance, namely the general anti-avoidance rule. At the same time, the tax legislator has also established the interrelationships between the aforementioned regulation and the procedure for obtaining individual tax rulings.

It is not possible to obtain an interpretation if the action described in the application for its issuance may constitute an action or an element of an action that is suspected of falling within the conceptual scope of tax avoidance. For some time now, there has been a practice of frequently refusing to issue interpretations due to such suspicions. The rulings of administrative courts on this issue alone have been, at the very least, questionable. Some members of the judiciary have come to the conclusion that the opinion of the Head of the National Revenue Administration (KAS), issued during such proceedings before the authority, is binding.

It should be noted that case law in this area is extremely important for taxpayers, as it draws the line between actions that are entirely safe and those that may result in the potential application of the aforementioned rule, i.e., the GAAR clause. In other words, businesses may be reluctant to engage in such activities. It is hardly surprising that partners "invoice" their own companies. However, the situation is different when the expense for such a service cannot be treated as a tax-deductible expense due to a lack of economic rationality, failure to actually perform the service, etc., which results in the inability to recognize them as expenses under Article 15 of the Corporate Income Tax Act, and quite another

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when the services are actually provided and are necessary from the company's perspective. The latter example appears to be fully permissible and should not generate any tax risks.

There have been court rulings, including those by the Supreme Administrative Court, according to which invoicing one's own company may constitute a form of aggressive tax planning. The aim of my paper is to examine whether such a practice leads to excessive strictness, under which the mere fact of a personal connection between the service provider and the company is sufficient to challenge the transaction, even if it has an economic justification, which in turn is directly contrary to Article 119a of the Tax Ordinance. Consequently, this may lead to the risk of challenging legitimate and economically rational forms of cooperation. In light of this, the courts may be seeking to identify tax avoidance where none actually exists, thereby undermining taxpayers' trust in the tax system and restricting the constitutionally protected freedom of economic activity.

Keywords: tax law, aggressive tax planning, economic activity, Tax Ordinance.

3.077.2(497.11)

Dr. Ratko Radošević[*]

THE PRINCIPLE OF COLLEGIAL ADJUDICATION IN SERBIAN ADMINISTRATIVE DISPUTES

According to the principle of collegial adjudication, court disputes are generally resolved by a collegium of judges. In other words, courts usually adjudicate disputes in chambers composed of judges, in a prescribed number.

In Serbia, the principle of collegial adjudication is also the principle of resolving administrative disputes. The Administrative Disputes Act of 2009 (ADA) stipulates that administrative disputes shall be decided by the Administrative Court, in a chamber composed of three judges. When reviewing Administrative Court decisions (an extraordinary legal remedy), the Supreme Court chamber shall also have the same composition.

The collegial adjudication in Serbian administrative disputes is not, however, an absolute rule. There are some exceptions. Some decisions can be made by an individual judge, but never the meritorious ones (the judgements). An individual judge can only decide on procedural issues. At the time when the ADA was enacted, the principle of collegial adjudication was also one of the constitutional principles governing the judiciary. Serbian Constitution of 2006 had stipulated in general that courts shall decide in chambers, unless otherwise prescribed by the law – that some cases shall be decided by an individual judge. The ADA simply applied this principle, as prescribed by the Constitution.

Constitutional principles governing the judiciary changed, however, after the Constitutional Amendments of 2022. The principle of collegial adjudication is no longer among them, which means that this principle is no longer constitutionally binding for the legislator and the future regulations on administrative disputes. In the context of the future reform of the Serbian administrative judiciary this question has therefore become widely open and justified. Changes in the Serbian administrative judiciary have been long discussed and expected. One of the main reasons for the changes is the necessary improvement of its efficiency. The main plan is to establish new administrative courts and a two-instance administrative court procedure. The principle of collegial adjudication is a more detailed

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question, but also important for the discussion, if the changes are approached comprehensively.

The principle of collegial adjudication certainly has its advantages and disadvantages. On the one hand, if decided by a chamber, court cases are usually discussed more objectively and more versatile. The quality of such decisions should also be higher. On the other hand, if made by an individual judge, the decisions should be usually made faster, simpler and more efficient. The legislative choice between these principles should be carefully considered, having in mind the reform in general and its goals.

Both principles can also be found in comparative Law. In Germany and Austria, for example, as countries that have mostly influenced Serbian administrative law. The principle of collegial adjudication is used in German administrative disputes: before the Federal (Supreme) Administrative Court exclusively and before other administrative courts as a rule. In some cases, prescribed very widely, disputes before administrative courts can also be decided by individual judges – not only in a procedural, but also in a meritorious way. Austrian administrative disputes are governed by the opposite principle: administrative courts regularly decide the cases through individual judges, unless adjudication in chambers is specifically prescribed. This, of course, does not apply to the Supreme Administrative Court, which always decides in chambers. It is now clear that the Serbian legislator will have both options in the following reform of administrative disputes. The first, to retain the existing principle of collegial adjudication. The second, to accept the opposite principle of individual judges – which is also available after the constitutional changes. The way how the exceptions to these rules will be provided, however, will be equally or even more important. The real challenge will be to keep the balance between them, to use them specifically in certain cases and procedural stages, so that their merits can be maximized.

At the end, one more observation should be made. Deciding administrative disputes in chambers, whether it is the rule or the exception, enables the jurors to be also included. All judges in the Serbian administrative disputes are currently professional judges. Therefore, the discussion on the future reform could also include the question of jurors, since their potential participation in resolving administrative disputes could provide the necessary expertise in certain administrative matters, as in German and Austrian law, to use the same examples.

Keywords: Administrative adjudication, administrative dispute, administrative court, principle of collegial adjudication.

342.71:341

Dr. Todor Rogoshev[*]

FORGOTTEN RESERVATIONS AND FORSAKEN OBLIGATIONS: THE CASE OF THE EUROPEAN CONVENTION ON NATIONALITY

The 1997 European Convention on Nationality has been perhaps the most comprehensive and complete codification of rules on nationality in the European context. It plays a bridging role between nationality law and human rights while seeking to maintain a balance between the sovereignty of states in determining their nationals and the interests and rights of individuals affected by nationality decisions. However, ten out of the twenty-one parties considered in this paper have made reservations with respect to various rules enshrined within the Convention. Following the withdrawal of the reservation made by North Macedonia, nine parties continue formally to maintain reservations, many of which were formulated more than twenty years ago.

The reservations currently maintained may be divided into several broad groups. Some concern the acquisition of nationality, including its acquisition by children, stateless persons and recognised refugees. Others relate to the loss and renunciation of nationality and allow states to retain grounds or conditions not otherwise contemplated by the Convention. A further group limits important procedural guarantees, including the requirements that nationality decisions contain reasons in writing and be open to administrative or judicial review. Other reservations concern the treatment of persons possessing multiple nationalities, including the conservation of a previous nationality and equality between single and multiple nationals. Finally, several reservations relate to military obligations in cases of multiple nationality. Considered together, these reservations affect both substantive and procedural elements of the Convention and vary considerably in their scope, purpose and continuing practical relevance.

Such reservations are not prohibited by the Convention per se. Article 29 permits reservations to provisions outside its core chapters, provided that they remain compatible with the object and purpose of the Convention. States are also required to provide information concerning the domestic law or circumstances

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underlying their reservations. However, both international law and the European human-rights framework have developed considerably since many of these reservations were formulated. The interpretation given by the European Court of Human Rights to the right to private and family life under Article 8 has materially expanded the protection afforded in nationality cases, particularly in relation to arbitrary denial or deprivation of nationality, personal identity, proportionality and procedural safeguards. Developments in domestic nationality laws may equally have removed or altered the circumstances originally invoked to justify particular reservations.

These developments require a proper re-examination of the reservations. The Convention itself provides that every state which has made a reservation shall consider withdrawing it, in whole or in part, as soon as circumstances permit. This does not necessarily impose an unconditional obligation to withdraw. It does, however, appear to establish a continuing obligation to reconsider whether a reservation remains necessary and justified. The International Law Commission's subsequent guidance on reservations, which encourages periodic review with particular attention to developments in domestic law, further supports such an interpretation. Nevertheless, nearly three decades after the Convention was adopted, only one reservation has been formally withdrawn.

This paper therefore examines the original justifications, present domestic context and continuing legal permissibility of the reservations maintained under the Convention. It distinguishes between the initial permissibility of a reservation, its continuing compatibility with the Convention's object and purpose, and compliance with the separate obligation to consider its withdrawal. It further considers whether subsequent developments in European human-rights law can affect the continued justification or permissibility of an earlier reservation and what legal consequences may follow where a reservation is no longer permissible or has not been genuinely reconsidered. This ultimately raises two related questions: have the parties fulfilled their continuing obligation to review their reservations, and can reservations formulated decades ago still be regarded as permissible under the contemporary European legal framework?

Keywords: Nationality, International Law, European Convention on Nationality, Reservations.

342.738:347.513(439)
342.7:341.6(4)

Dr. Bence Kis Kelemen[*]

DAMAGES CLAIMS FOR PRIVACY VIOLATIONS

Privacy violations have long been considered to expose personal data controllers and processors to administrative fines imposed by data protection authorities, or other state organs, e.g., competition authorities. What has been largely ignored is that these violations also give rise to civil liability towards personal data subjects. In addition to regulatory enforcement, individuals whose personal data have been unlawfully processed may seek compensation for material and non-material damage suffered. This dual exposure considerably increases the legal and financial risks associated with non-compliance with data protection obligations.

The legal foundation for such claims in the European Union is Article 82 of the General Data Protection Regulation (GDPR), which grants any person who has suffered damage (material or non-material) due to an infringement of the GDPR a right to compensation. The provision defines the scope of liability of controllers and processors and attributes responsibility according to their respective roles in the processing operation, creating a different framework for controllers and processors. Exemption from liability is only possible where the controller or processor demonstrates that it was not in any way responsible for the event giving rise to the damage. Despite this structured framework, Article 82 leaves considerable room for interpretation.

Against this background, the Court of Justice of the European Union (CJEU) has played a central role in clarifying the conditions under which compensation may be awarded. This presentation analyses the emerging CJEU jurisprudence on GDPR damages claims, with particular emphasis on the notion of non-material damage. For example, recent case law confirms that immaterial harm connected to data breaches, such as fear or distress arising from the potential misuse of personal data in the context of cybercrime, may constitute compensable damage under EU law.

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The presentation aims to clarify the Hungarian practice in light of the above considerations. The presentation will show how Hungarian lawmakers made it much harder to sue state organs for privacy violations, while not creating such barriers for non-state entities. The presentation will also illustrate the bagatelle nature of claims in this area of civil liability, meaning that in Hungary, the financial risk associated with such lawsuits is relatively low. Particular attention is paid to evidentiary issues, including the allocation of the burden of proof and the requirements for establishing damage, causation, and grounds for exemption. Finally, the analysis concludes by noting that, in light of these risks, insurance solutions are increasingly discussed as a possible means for companies to mitigate their exposure to privacy-related compensation claims, albeit in Hungary it does not seem necessary in light of the low compensation amounts. The presentation has the aim to inspire discussion among experts regarding the different national practices regarding such compensation mechanisms, even outside the European Union, as privacy violation can be the basis of civil liability even without the GDPR.

Keywords: privacy, liability, damages, GDPR, CJEU, Hungary.

327:321.01(4)

Dr. Zsuzsa Szakály[*]

FULL INDEPENDENCE AND ITS PARTIAL ABSENCE – WHERE IS THE LINE BETWEEN THEM IN THE SMALLEST POLITICAL ENTITIES IN EUROPE?

There are several political entities in international relations that are so small that their situation differs from that of the average or large political entities. A considerable number of them maintain relationships with a larger state in order to fulfil all the general duties of a state, due to their small size. The status of these political entities is not easy to define, as multiple factors must be taken into account. The commonly used binary criterion for determining this status is membership in the United Nations. If a political entity is a member, it is considered an independent state; if it is not, it is regarded as a sub-state entity. However, the actual circumstances of these political entities are more complex than can be captured by a single factor. Consequently, several different theories and categorisations have been developed.

Several small political entities in international relations can be categorised as states or sub-states. The smallest states in the world often struggle to safeguard their sovereignty, while some sub-states aim to achieve independence. However, not every sub-state seeks full independence, as support from the core state plays an important role in most of these territories. Even the differences between the two groups have been analysed in order to assess the degree of *de iure* sovereignty.

The aim of this presentation is to apply the method developed by Jean Louis Alberti and François Goujon to examine European microstates and European micro-partially independent territories (in the following: PITs), in order to determine whether the independent states possess a higher level of *de iure* sovereignty than PITs.

PITs are political entities which are, according to Rezvani: (1) nationally distinct, (2) constitutionally unincorporated, and (3) possess some authority and control over foreign affairs. (…) PITs also possess powers of sovereignty through (4) legally allocated final decision-making powers (…) that are (5) entrenched.

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There are several political entities at the international level which fulfil these criteria, even in the category of the smallest political entities in the world.

The study analyses five European microstates and five European microPITs to assess whether the level of sovereignty is indeed higher in the independent microstates than in the microPITs in Europe. The microstates examined are Andorra, Liechtenstein, Monaco, San Marino and the Vatican. The microPITs analysed are Åland, the Faroe Islands, Gibraltar, Greenland and the Isle of Man. The results of the research show the level of independence based on a six-level examination of characteristics of sovereignty, assessing whether actual independence is related to the formal status of the political entity or not. The analysed characteristics are the following: diplomacy, executive power, judicial power, legislative power, defence and monetary affairs. From the detailed examination of these points, a composite index can be created.

As the real level of independence could differ from the fact of a microstate being sovereign *de iure* in the eyes of the international community, and a PIT could have a higher level of sovereignty de facto, this analysis could shed light on the status of the smallest European political entities.

Keywords: European microstates, European microPITs, levels of independence, composite index of formal sovereignty.

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342.71-053.2/.5:061.1EU

Andrea Širočka[*]

A RIGHT NOT TO MOVE? THE RESIDENCE OF THIRD-COUNTRY NATIONAL PARENTS IN CASE SAFI (C-147/24)

Since *Ruiz Zambrano* (C-34/09), the Court of Justice of the European Union has gradually built a body of case law according to which a third-country national parent, caring for a dependent minor who is a national of a Member State, can derive a right of residence directly from Article 20 TFEU, even in absence of any cross-border movement creating an intra-Union element. This built upon foundations laid in earlier cases that did involve cross-border movement, such as *Baumbast* and *Zhu and Chen*, where a primary-carer parent's residence was justified simply by the need not to "deprive the child's right of residence of any useful effect", since the enjoyment of the right of residence by a minor necessarily implies the presence of child's primary carer too. Later cases, including *Chavez-Vilchez and Others* and the case of a *Thai mother of a Dutch minor*, clarify the conditions under which the derived right arises and put stress on the importance of the relationship of dependency between the minor and third-country national parent when assessing whether the child would be compelled to follow the primary-carer parent whose residence was refused and thus "leave the territory of the European Union as a whole".

The Grand Chamber's judgment in Case C-147/24 (*Safi*) adds a further piece to this puzzle, addressing a situation somewhat different from earlier cases: a third-country national parent was refused derived right of residence in the Member State of her child's nationality because she already had one in another Member State. Therefore, even if the child was compelled to follow her, he would not leave the Union as a whole, but would simply move to a different Member State within it. Advocate General Ćapeta›s Opinion in the case proposed closing this gap by interpreting Article 20 TFEU as protection of a standalone right *not to be compelled to move*. Under that view, merely interfering with a citizen's choice

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to remain in his own Member State would, on its own, be enough to award protection under EU citizenship law.

However, the Court took a different, more cautious approach. It upheld the traditional stance that Article 20 TFEU applies directly only if the child would be compelled to "leave the territory of the European Union as a whole", but ruled that the child's forced relocation between Member States nonetheless interferes with the exercise of his right to move and reside under Article 20(2) TFEU. The Court found that rejecting a derived right of residence thus constitutes an implementation of EU law, bringing the national decision within the scope of EU law, under Article 51 of the Charter of Fundamental Rights of the European Union. As a result, the refusal of residence in this manner cannot stand without prior assessment of its compliance with the fundamental rights enshrined in Articles 7 and 24 of the Charter. The final outcome largely resembles what the Advocate General's proposal would have achieved. However, the Court arrived to this conclusion through a different route – rather than expanding the citizenship right itself, it used the Charter's threshold of applicability to bring the case within the scope of EU law.

Looking at *Safi* alongside the earlier case law raises a question first put forth by *Ruiz Zambrano,* and reopened by *Chavez-Vilchez*, whether the "genuine enjoyment of the substance of rights [granted by the EU citizenship]" test concerns only formal expulsion from EU territory, or also the practical continuity of family life within it. It also invites reflection on what the Court's silence on the Advocate General's bolder proposal means for future cases, especially in situations where the Charter-based route would not be an option. Overall, *Safi* confirms Article 20 TFEU as a living, still-developing body of law, whose protective reach regarding the derived right of residence of third-country national parent now runs along two paths. One where the citizenship right applies in the traditional sense, and another where national decision triggers the Charter's application, even though the citizenship right does not.

Keywords: EU citizenship, Article 20 TFEU, derived right of residence, Case Safi (C-147/24), best interests of the child.

341.73

Miroslav Marković[*]

DIPLOMATIC IMMUNITY BETWEEN LEGAL TRADITION AND CONTEMPORARY LEGAL CHALLENGES

Diplomatic immunity is one of the most important institutes of diplomatic law and international law. Its contemporary legal framework is primarily based on the Vienna Convention on Diplomatic Relations of 1961, which codified rules that had developed through centuries of diplomatic practice and customary international law. The purpose of diplomatic immunity is not to create a privileged position for diplomats or to place them above the legal order of the receiving State. Its essential function is to secure the independent, safe and effective performance of diplomatic duties, allowing States to communicate, negotiate and protect their interests through official representatives. For that reason, diplomatic immunity represents a clear example of legal tradition, because it preserves long-established principles that remain necessary for the stability of international relations.

This paper examines diplomatic immunity at the intersection between legal tradition and contemporary legal challenges. The first part analyzes the traditional foundations of diplomatic law, with particular attention to the Vienna Convention, the inviolability of diplomatic agents, the inviolability of mission premises and archives, freedom of communication, and immunity from criminal, civil and administrative jurisdiction. These rules have created a predictable legal framework for diplomatic relations and have contributed to reciprocity, mutual trust and cooperation among States. They also show that diplomatic immunity should not be understood as a personal benefit of the diplomat, but as a functional guarantee connected with the work of the diplomatic mission and sovereign equality of States.

The second part focuses on contemporary problems related to the possible abuse of diplomatic privileges and immunities. Modern practice shows that diplomatic immunity may create tension between the need to protect diplomatic activity and the legitimate interest of the receiving State to protect public order, national security and the rights of individuals. Cases involving traffic offences,

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financial misuse, smuggling, violence, cyber-related activities or other unlawful conduct raise the question of whether existing legal mechanisms are sufficient to prevent abuse and ensure accountability. The receiving State usually has limited instruments at its disposal, such as declaring a diplomatic agent persona non grata, requesting a waiver of immunity from the sending State, or resolving the matter through diplomatic channels. Although these mechanisms are important, they do not always provide a complete response, especially when the injured party expects legal protection and justice.

The aim of this paper is to show that diplomatic immunity remains necessary, but that its application must be connected with the purpose for which it was established. The challenge of modern diplomatic law is not to abolish or weaken immunity, but to prevent its misuse and to strengthen responsibility, cooperation and good faith between States. This is particularly important in a period in which international relations are becoming more complex, while security risks are no longer limited to traditional forms of diplomatic activity. Diplomatic missions today may operate in an environment marked by political instability, technological development, transnational crime and public expectations regarding accountability.

In that sense, diplomatic immunity should be understood as an institute that connects the continuity of international legal tradition with the demands of the modern international community. It continues to be indispensable for the functioning of diplomatic relations, but its legitimacy depends on responsible application and respect for the balance between the independence of diplomatic missions and the legal order of the receiving State. The paper concludes that diplomatic immunity must remain a protected institute of diplomatic law, while States should apply it in accordance with its functional purpose and with due regard for the prevention of abuse.

Keywords: diplomatic immunity, diplomatic law, Vienna Convention, legal tradition, contemporary legal challenges.

004:[323.2:329(450)

Chiara Sagone[*]

NEW TECHNOLOGIES AND FORMS OF CITIZEN PARTICIPATION IN ITALIAN POLITICAL LIFE

The study examines the impact of new technologies on traditional forms of participation in the country's political life, starting from the framework of constitutional principles governing the relationship between citizens, institutions, and social groups. Indeed, the Italian Constitution establishes a model of representative democracy based on popular sovereignty (Art. 1)—exercised within the forms and limits prescribed by the Constitution—and fosters citizen participation in public life through the recognition of the inviolable rights of the individual and of social groups (Art. 2), the principle of substantive equality (Art. 3, second paragraph), and the right to freely form political parties to contribute, through democratic means, to shaping national policy (Art. 49).

However, in the face of digital innovation that has profoundly affected many aspects of economic, social, and private life, democratic practices appear still firmly anchored to the model outlined by the Constituent Assembly. This model centers on the role of political parties as essential intermediaries between the electorate and institutions, tasked with reconciling the diverse interests present in a pluralistic society. Devised in a historical context radically different from the present, this model could not, of course, account for the transformations brought about by digital technologies or the new ways in which political participation is exercised.

In particular, the spread of social networks—by enabling direct communication between political representatives and citizens—challenges the intermediary function traditionally assigned to parties by Article 49 of the Constitution, fostering forms of disintermediation that affect the processes of building political consensus and the quality of public debate. At the same time, the development of digital platforms for consultation and civic participation is altering the ways in which institutions, parties, and citizens interact; while expanding opportunities for involvement in decision-making processes, these developments also

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raise questions regarding procedural transparency, the protection of fundamental rights, and the actual effectiveness of such participation.

Furthermore, new technologies are playing an increasingly significant role in the formulation and implementation of public policy through the use of artificial intelligence, big data, and blockchain. While these tools can enhance administrative efficiency and the predictive capacity of public decision-making, they also raise complex issues regarding compatibility with constitutional principles—specifically impartiality and the sound functioning of the administration (Art. 97 of the Constitution), the protection of the individual and privacy, and transparency and accountability in the exercise of public power.

This research therefore aims to assess the extent to which the digital democracy paradigm can be developed in a manner consistent with the Italian constitutional framework, identifying tools capable of reconciling technological innovation with democratic safeguards. In this context, the study will examine both the benefits of using digital technologies in the public sphere—such as expanded opportunities for participation and strengthened dialogue between citizens and institutions—and the associated risks, including the digital divide, the need to ensure secure digital identities, the concentration of informational power within digital platforms, the manipulation of public opinion, and algorithmic disinformation.

Finally, the study seeks to identify key shortcomings in the current regulatory framework and to formulate reform proposals. These proposals aim to manage the evolution of political participation within the digital ecosystem while upholding constitutional principles—such as popular sovereignty, equality, pluralism, democratic party organization, and the sound functioning of the administration—thereby leveraging the potential of new technologies without compromising the safeguards inherent in a constitutional state governed by the rule of law.

Keywords: New Technologies, Political Parties, Public opinion, Digital Divide.

3.077.3:004.7

Đorđe Timotijević[*]

DIGITAL ADMINISTRATION AND THE TRADITIONAL PRINCIPLES OF ADMINISTRATIVE PROCEDURE

The integration of information technologies into public administration is a process aimed at enhancing legality, transparency, accountability, effectiveness, and efficiency. Digital administration also contributes to strengthening public trust in state institutions, increasing citizens' participation in the management of public affairs, and generating significant cost savings for individuals, businesses, and the state. At the same time, the digital transformation of administrative activity raises important legal questions concerning the preservation of the fundamental values and procedural safeguards that traditionally characterise the administrative procedure. Consequently, the digitalisation of public administration is closely linked to a number of fundamental principles upon which administrative procedure should be based.

Against this background, the paper examines the relationship between the digitalisation of public administration and the principles that, in the author's view, are essential for the effective functioning of digital administration. Particular attention is devoted to the principles of legality, the protection of legitimate expectations, legal certainty, transparency, effectiveness, and the realisation of public interest. These principles are analysed in the context of administrative procedures conducted through digital means, as well as the provision of public services in a digital environment. Furthermore, the paper seeks to determine whether digital technologies merely provide new instruments for implementing traditional administrative principles or whether they require a reconsideration of their interpretation and practical application.

The paper first considers the concept of the digitalisation of public administration and the elements encompassed by this notion. It then proceeds to examine each of the above-mentioned principles individually, exploring their relationship with digital administration and the manner in which they shape its functioning. In this regard, particular emphasis is placed on identifying the legal and institutional conditions under which digital administration can most effectively realise each

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of these principles, including the identification of various extra-legal factors and their influence on the functioning of digital administration.

Furthermore, the paper analyses the administrative law framework of the Republic of Serbia and assesses the extent to which it provides an adequate normative basis for safeguarding these principles within the process of digital transformation. The analysis seeks to identify both the strengths and the shortcomings of the existing legal framework and to evaluate its compatibility with the requirements of modern digital governance.

Finally, the paper proposes a number of recommendations for improving the normative and institutional framework governing the digitalisation of public administration. The primary objective of these proposals is to ensure that digital transformation reinforces, rather than undermines, the traditional principles of administrative procedure, thereby enabling digital administration to achieve greater efficiency while simultaneously providing effective protection of the rights and legitimate interests of individuals and ensuring the consistent pursuit of the public interest.

Keywords: Digital administration, administrative procedure, traditional principles, legality, legal certainty, public interest.

347.964.2(450)
347.96(450)

Laura Lorefice[*]

CURRENT ISSUES IN THE RECRUITMENT OF ITALIAN JUDICIAL ADMINISTRATION PERSONNEL

This paper focuses on the Italian experience of the Ufficio per il Processo (UPP - Eng. Office for the Process), an administrative body designed to collaborate closely with magistrates. Formally established in 2014, but becoming operationally active in 2021 as an emergency and temporary instrument, the UPP was converted into a permanent structure within the Ministry of Justice as of July 1, 2026. This stabilization was driven by the Government and Parliament in light of the solid performances recorded and the attainment of EU targets regarding the efficiency of the judicial system and the effectiveness of judicial protection, in both the civil and criminal sectors.

Indeed, the creation of the UPP implemented the principle of due process of law enshrined at the constitutional level in Article 111 of the Italian Constitution and, at the supranational level, in Article 6 ECHR and Article 47 of the EU Charter of Fundamental Rights. In view of the expiry of the labor contracts funded under NextGenerationEU, the legislature addressed the need to avoid dissipating the expertise acquired in the interim by the staff assigned to these offices within each Court. Thus, by a call for applications in March 2026, a stabilization procedure was launched for all personnel, within the limits permitted by the national budget.

Due to the strict timeline agreed upon with the European Commission, the initial recruitment procedures had been particularly streamlined: candidates sat for a single written examination on core subjects, followed shortly thereafter by the publication of merit lists and appointment to service. Conversely, the stabilization procedure was conducted through a comparative evaluation of qualifications and examinations. Furthermore, as no minimum passing score was required, all successful candidates were placed on distinct merit lists organized on a territorial basis. Significant weight was accorded to both length of service and academic qualifications. Finally, to ensure operational continuity within the judi-

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cial offices, the new employment relationships were established in chronological and legal continuity with the previous ones, and candidates were offered the option to remain at the same place of work, subject to seat availability. In parallel, Decree-Law No. 100/2026 provided for a temporary extension of appointments for less senior personnel, albeit involving a reassignment to the Immigration Sections of the Courts.

This sequence of events has renewed the topicality of the *vexata quaestio* regarding the constitutional legitimacy of legislation providing for the stabilization of fixed-term administrative staff. Article 97, para. 3 of the Italian Constitution prescribes that access to the public administration must occur by means of an open competitive examination, save for exceptional cases which the legislature is required to delimit strictly and exhaustively, as repeatedly reiterated by the Constitutional Court. It suffices to recall, most recently, Judgments No. 225/2010 and No. 156/2011, which laid down the minimum requirements for any stabilization procedure: (1) limited positions, fewer in number than those allocated through open public competitions; (2) the existence of a specific functional requirement of the Administration; and (3) the implementation of selective mechanisms which, though less rigorous than ordinary open competitions, remain suitable to ensure that stabilized personnel possess the professional competence necessary to fulfill the duties of the post.

Furthermore, any procedure derogating from the principle of open competitive examination must be adequately justified considering the specific nature of the functions to be performed and the constitutional guarantee of the good performance of the Public Administration (Art. 97, § 2 Const.). According to constitutional jurisprudence, this condition may be met when the legislature recognizes the need to consolidate specific professional expertise already acquired within a given administrative sector - provided that such expertise and experience cannot be equally acquired outside the Administration itself (i.e., through an open competition).

Starting from the legal distinctions between open competitive examinations and stabilization procedures under Italian law, this paper examines whether, in the case of UPP officers, the resort to expedited recruitment (initial hiring), reserved procedures (subsequent permanent integration into the ranks), or automatic extensions (prolongation of assignments) is legitimate under the relevant constitutional case law, or whether it constitutes a deliberate circumvention by the legislature, detrimental both to the right of all citizens to access public office on equal terms (Art. 51 Const.) and to the quality of justice as an essential public service (cf. Art. 24 Const.).

Keywords: justice, open competitive examination, UPP, stabilization.

327:341.231.14
341.221.4:342.7:341.6(4)

Awn Feras Alhendawi[*]

FUNCTIONAL EFFECTIVE CONTROL AND THE EXPANSION OF ECHR JURISDICTION: DOCTRINAL SHIFTS IN UKRAINE V. RUSSIA (EASTERN UKRAINE)

The doctrine of extraterritorial jurisdiction under Article 1 ECHR has evolved considerably over the past two decades, moving from a narrow, sovereignty-centered interpretation toward a more functional and context-sensitive approach. Early case law, most notably Banković v. Belgium, adopted a restrictive reading of Article 1, treating extraterritorial jurisdiction as exceptional and closely tied to territorial control. This position was gradually recalibrated in Al-Skeini v. United Kingdom, where the Court recognized that jurisdiction may also arise through the exercise of authority and control over individuals, even outside the State's territory. Subsequent judgments, including Ilaşcu, Catan, and Mozer, further developed this trajectory by acknowledging that decisive influence over de facto authorities can trigger Convention obligations, even in situations lacking formal occupation. Together, these cases established a more flexible doctrinal foundation that better reflects the complexities of modern conflict.

Against this background, the Court's 2023 judgment in Ukraine v. Russia (Eastern Ukraine) represented a significant consolidation of the jurisprudential shift. Building on Georgia v. Russia (II), the Court clarified the contours of the active hostilities gap and adopted a more functional understanding of effective control, one that reflects the realities of hybrid conflict, proxy involvement, and technologically mediated operations. The judgment demonstrated that jurisdiction may arise not only through direct territorial occupation but also through sustained military, political, and administrative influence exercised by a State over separatist entities.

By contrast, the 2025 judgment in Netherlands and Ukraine v. Russia expanded the framework further. Unlike the 2023 case, which emphasized military and administrative control, the 2025 decision broadened the scope of jurisdiction to include proxy involvement and multinational support structures. Importantly,

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the Court underscored that accountability extends not only to States exercising direct control but also to those providing operational, logistical, or political backing to de facto authorities. This contrast between the 2023 consolidation and the 2025 expansion demonstrates how the Court moved from clarifying functional control to embracing a wider conception of responsibility in complex conflicts.

Taken together, the 2023 and 2025 judgments mark a doctrinal turning point in the Court's Article 1 jurisprudence. By integrating territorial control, personal authority, proxy responsibility, and positive obligations into a coherent framework, the Court provides clearer guidance for future cases involving occupation, remote operations, and hybrid conflict. These developments illustrate how the Convention continues to adapt to evolving forms of State action, ensuring that human rights protection remains effective despite the increasing complexity of modern warfare.

Keywords: Article 1 ECHR, extraterritorial jurisdiction, effective control, proxy responsibility, hybrid conflict, positive obligations, Banković, Al-Skeini, Georgia v. Russia (II), Ukraine v. Russia (Eastern Ukraine), Netherlands and Ukraine v. Russia (2025).

343.15:342.2]:341
341.645:061.1EU

Nejat Dogan[*]

FROM BREACH TO LEGAL CONSEQUENCE: MINIMAL-REMEDY MERITS IN THE JURISPRUDENCE OF THE INTERNATIONAL COURT OF JUSTICE

The determination of an internationally wrongful act marks the beginning, rather than the end, of the remedial inquiry in international adjudication. Once a breach has been established, attention turns to its legal consequences and to how those consequences are reflected in the judgment. This paper examines that process in the jurisprudence of the International Court of Justice (ICJ), shifting the focus from the substantive field of a dispute to the remedial architecture that follows a finding of responsibility. The analysis does not assume that the Court should necessarily order more. Instead, it considers whether, within the lawful perimeter of each case, the judgment provides a sufficient legal response to make responsibility meaningful.

The paper develops Minimal-Remedy Merits (MRM) as a typological concept for identifying post-breach judgments whose remedial architecture falls below a robust threshold. MRM does not mean an absence of remedy, nor does it assume that declaratory relief is inadequate or that deferred determination is inherently defective. Rather, it identifies cases in which a materially triggered remedial function remains under-activated, or in which completion is deferred while the intervening period remains insufficiently integrated or protected. The framework distinguishes between direct MRM, where the merits judgment closes while a material remedial function remains under-activated, and deferred MRM, where important remedial work is left to a later stage and the intervening period remains materially exposed.

The study adopts a qualitative, doctrinal, comparative, and outcome-focused approach. It applies a common set of rules to a defined population of 148 ICJ contentious proceedings as of 31 December 2025 and examines the Court's

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post-breach practice through a dispositif-first, but not dispositif-isolated, reading of its judgments. Within the ordinary post-breach cases, the analysis identifies 11 cases displaying robust remedial architecture, eight instances of direct MRM, and four instances of deferred MRM.

The comparison shows that remedial robustness does not require maximal judicial intervention. The Court's jurisprudence already contains a varied repertoire of techniques (including cessation, restoration, domestic review, compensation, interest, and staged proceedings) through which responsibility can be translated into legal consequence. The difference between robust and non-robust architecture lies not in the apparent severity of the remedy, but in the relationship among operative specificity, completion architecture, and temporal protection. The analysis also shows that time can operate as a remedial variable. Where delay threatens the value of an established consequence, mechanisms such as immediacy, deadlines, stays, payment periods, interest, or defined return procedures can help preserve its practical and legal value.

Finally, the paper advances International Misdemeanor Law (IML) as a source-bound evaluative framework grounded in the principle of proportional accountability and the search for the lowest sufficient lawful response. Judicial restraint and remedial sufficiency are not opposites. A judgment should go far enough to make responsibility consequential, but no farther than jurisdiction, consent, submissions, evidence, causation, feasibility, and other applicable legal constraints permit. This remedy-centered perspective provides a framework for distinguishing sufficient judicial restraint from remedial under-structuring in ICJ adjudication.

Keywords: International Court of Justice, State responsibility, Minimal-Remedy Merits, International Misdemeanor Law, remedial architecture, proportional accountability.

347.251:342.9:004

Petra Nagy-Elekes[*]

RETHINKING POSSESSORY PROTECTION IN DIGITAL ENVIRONMENTS: HYBRID ADMINISTRATIVE AUTHORITY AND FACTUAL CONTROL

The digitalisation of contemporary society is increasingly transforming the conditions under which factual control is exercised over spaces, objects, and infrastructures. Smart-home systems, Internet of Things (IoT) devices, cloud-based platforms, and digitally mediated access mechanisms create environments in which effective control no longer depends solely on physical presence, but increasingly on technological permissions, platform-based authorisation, and access to data-driven systems. As a result, questions traditionally associated with possession and possessory protection acquire renewed significance in technologically mediated environments. This article examines these developments through the Hungarian system of possessory protection, which occupies a distinctive position within European legal systems. Unlike many continental jurisdictions where possessory disputes are resolved exclusively by civil courts, Hungarian law entrusts first-instance possessory protection to the municipal notary (jegyző) acting as an administrative authority. The Hungarian model therefore represents a hybrid institutional arrangement situated at the intersection of private-law protection and public authority. While the dispute itself concerns factual control between private parties, the procedure operates through an administrative decision subject to judicial review before the ordinary courts. The paper argues that digitalisation does not render possessory protection obsolete. Rather, technologically mediated forms of exclusion increasingly reproduce the practical effects traditionally associated with disturbances of possession. The revocation of digital credentials, the removal of platform permissions, or exclusion from smart systems may deprive individuals of effective factual control in ways comparable to traditional physical dispossession. The study therefore proposes a technologically neutral understanding of factual control and examines whether certain forms of

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digitally mediated access may justify a functional reinterpretation of possession within contemporary private law. Particular attention is devoted to the changing evidentiary structure of possessory disputes in digital environments. Whereas traditional possessory procedures primarily relied on visible physical circumstances and witness testimony, technologically mediated disputes increasingly depend on digital traces, access logs, platform-generated data, and algorithmically processed information. The analysis consequently addresses broader questions of procedural legitimacy, informational asymmetry, transparency, and effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union. The article also considers the relevance of recent EU digital regulatory instruments, including the Digital Services Act, and the Data Act. The paper concludes that possession remains a viable legal institution in the digital age, provided that legal doctrine is capable of recognising technologically mediated forms of factual control while preserving the constitutional guarantees of legality, transparency, and effective judicial protection.

Keywords: possessory protection, factual control, hybrid administrative authority, digitalisation.

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Dr. habl. Norbert Varga[*]

THE CONTENT OF CARTEL AGREEMENTS IN INTERWAR HUNGARY

During the interwar period, economic conditions changed significantly, which also had a profound impact on legal development, including the fields of private and commercial law. Agreements restricting economic competition were not automatically regarded as contrary to public morality; they were considered invalid only when the activities they regulated were found to be contrary to the public interest. Accordingly, courts assessed the validity of cartel agreements on a case-by-case basis.

This marked a fundamental shift in judicial practice during the first half of the twentieth century, as courts came to recognize the validity of cartel agreements provided that certain legal requirements were met. A major turning point was the adoption of the Hungarian Cartel Act of 1931, which legalized cartels under specified conditions. One of the central institutions of Hungarian cartel private law was the cartel agreement itself. However, the existing literature has paid relatively little attention to the practical operation of cartels on the basis of archival sources.

The core of the special part of cartel law was cartel private law in Hungary, which comprised the body of legal rules governing the legal status of cartel organizations, the rights and obligations of cartel members, the formation, operation, and dissolution of cartels, as well as the establishment, continuation, and termination of cartel membership. The predominance of private enterprises in economic life gave cartel private law a central role. At the same time, however, developments in cartel economic policy during the interwar period brought about structural changes in this field. Legislative attention increasingly shifted from private-law regulation toward cartel supervision and administrative control, reflecting the growing importance of the public economy and the protection of the public interest. As I will seek to demonstrate in the practical part of this presentation, following this theoretical introduction, judicial and commercial practice largely filled the

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gaps left by legislation. In the field of cartel private law, however, a significant problem remained: despite the enactment of the Hungarian Cartel Act in 1931, no comprehensive regulation of cartel private law was introduced.

An examination of the Act clearly shows that its primary objective was to regulate the public law aspects of cartel law. The rationale behind this approach was that the establishment of a system of cartel supervision would ensure that cartels pursued economic and commercial activities consistent with the public interest, thereby contributing both to consumer protection and to the continued operation of the participating enterprises. Consequently, cartel private law remained largely outside the scope of statutory regulation. This approach was consistent with broader European developments in cartel law codification. A notable example is the German Cartel Ordinance of 1923, which likewise gave priority to the regulation of cartel supervisory authorities. Similarly, the Norwegian Act of 1926 on the Control of Competition Restrictions and Price Abuses placed its principal emphasis on the public-law supervision of cartels.

In this presentation, I will briefly examine the content of cartel agreements through original archival materials preserved in the Budapest City Archives and in the Economic Archives Department of the Hungarian National Archives.

Keywords: cartel agreement, archival sources, commercial law, legal history, interwar Hungary.

347.61/.64 (517.9)

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A TRADITIONAL MONGOLIAN FAMILY LAW INSTITUTION: *ANDA-QUDA*

In the steppe equestrian society, the contracting parties could confirm the concluded alliance not only by shedding blood but also by marriage, which provided a double guarantee. Both internal and external sources report a complex alliance system, a combination of blood contract (*sworn brothership*) and marriage, which was called the *anda-quda* relationship in Mongolian terminology.

Quda, which means marriage in Mongolian, played an important role in the family relations of the Mongol Empire. According to *The Secret History of the Mongols*, a 13th-century linguistic monument, some tribal alliances always married from a given tribe, and this created a close political bond between the parties. According to the Mongolian chronicle, the Khongirads and their sub-unit, the Olkhonuds, did not wage war, but rather gained important allies by marrying off their daughters. The greatest success was achieved when *Dai Sechen*, the leader of the Khongirads, married his daughter to *Genghis Khan* (then known as *Temüjin*). Later, in the Mongol Empire, the *quda* connection remained an important alliance force, with warlords and statesmen loyal to a given Great Khan receiving the favor of marrying into the *Golden Horde*, the khanate.

Another form of alliance between tribes was artificial kinship, which the Mongols referred to as *anda*, and the Turks called *anta*. This term is similar to the ancient Hungarian blood contract (*sworn brothership*). There are examples of the occurrence of blood contracts among the Eurasian steppe peoples since ancient times, including *Herodotus* describing them among the Scythians as one of the most important elements of alliance between tribes. This phrase appears several times in *The Secret History of the Mongols*: *Temüjin* had previously concluded

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a blood treaty with *Jamuqa*, and later it is revealed that his father, *Yesugei*, had also concluded a blood treaty with the Kerait ruler, *Toghrul* (other names: *Wang* or *Ong*) Khan.

It seems that the two forms of alliance, artificial kinship and family ties, were first combined by *Genghis Khan* to strengthen his relationship with the Keraits. His plan was to marry his son, *Jochi*, to *Toghrul* Khan's daughter, and the children of the two andas, *Joch*i and *Senggum*, formed an anda alliance. However, the Keraits did not want a close alliance with the Mongols, and according to the source, they looked down on them. They eventually accepted the marriage offer in order to lure them into a trap. *Genghis Khan* therefore formed alliances with other peoples. The Mongol ruler *Alaqush Tegin Quri* (or *Alaqush Digit Quri*), tribal leader of Onguds, also formed an *anda-quda* relationship with *Tegin*, and then, according to the Secret History of the Mongols, others also formed such relationships with the Great Khan. *Anda-quda* relationship thus created multiple, close ties between the contracting parties.

There are relatively few sources for this type of alliance, the written descriptions mainly date from the Mongol era: on the one hand, during the wars to unify the empire at the end of the 12th century, and during the Yuan Dynasty (1271-1368) on the other. Although Mongolian and Chinese sources report on the anda-quda relationship, they do not mention the reason for the formation of the dual alliance, only the above expression occurs frequently in the sources.

The study presents this special legal institution based on source analysis.

Keywords: alliance; blood contract; marriage; anda-quda; legal institution.

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340.131(497.11)

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THE RULE OF LAW – A LEGAL AND/OR META-LEGAL PRINCIPLE OF THE 2006 CONSTITUTION OF THE REPUBLIC OF SERBIA?

It is a well-known fact in legal theory that the rule of law possesses formal, procedural, legal aspect, as well as material, substantive, political (ideological) dimension. The author of this paper previously argued (in 2017) that the rule of law in the 2006 Serbian Constitution is a value-laden concept. Similarly, R. Marković suggested that the current Constitution—unlike the 1990 version—does not reduce the rule of law to the rule of the constitution and laws. However, a linguistic interpretation of the 2006 Serbian Constitution may lead to a different conclusion. Namely, Article 1 of the Constitution, which fundamentally defines the state and establishes basic constitutional principles, states: “Republic of Serbia is a state of the Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.” Undoubtedly, in addition to determining the holders of sovereignty, this article proclaims the fundamental values that chart the political direction of the state. However, what is quite remarkable is the fact that, despite being an integral part of a provision that defines the state’s ideological orientation, the rule of law remains clearly conceptually separated from other values (primarily social justice). By using the conjunction “and,” the Constitution clearly separates the rule of law from social justice; it does not say, for example, “on the rule of law based on social justice.” Supporting the view that social justice is distinct from the rule of law are the words of R. Marković. In his critique of the part of the Constitution relating to the economic system and public finances, he points out that this section shows “how the provision of Article 1, according to which the Republic of Serbia is based, among other things (author’s emphasis), on ‘social justice,’ is a mere, non-binding declaration.” “This Constitution does not care about social justice. That small portion of the Constitution has been purged of all levers and mecha-

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nisms of social justice in favor of a liberal type of market economy." The question remains open: does the concept of the rule of law inherently carry certain values beyond the others proclaimed by the Constitution (such as social justice or European principles and values), or does it remain a purely legal principle that has "strayed" among those that are primarily political? Article 3 of the Constitution, which is exclusively dedicated to a more precise determination (definition) of the rule of law (its rubrum is also titled "Rule of Law"), to a certain degree resolves this dilemma. This article leads to the conclusion that it is exclusively a legal principle that views the rule of law as the fundamental prerequisite of the Constitution (para. 1) and defines the exercise of the principle of the rule of law (para. 2), without any reference to the ideological side of the concept. Through the system of enumeration in paragraph 2, the Constitution highlights as most important only those elements that are purely legal (procedural)—in the words of M. Pajvančić, "those areas which are the pillars of the legal state (Rechtsstaat) (author's emphasis)": free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary, and observance of the Constitution and law by the authorities. On the other hand, the constitution-maker did not devote special attention to a closer definition of the concept of social justice to which it aspires—which, as Hayek warns, either means nothing or means too many things—nor to European principles and values, likely considering them to be common knowledge. Having all this in mind, one can reach the conclusion that the value orientation of the 2006 constitution-maker was not absent (social justice, European principles and values), although it seems to have been placed outside the concept of the rule of law. The latter was almost certainly constitutionalized as a legal, procedural concept rather than, as Hayek would say, a meta-legal principle or a political ideal. Stripped of its value-laden burden, it seems that the concept of the rule of law in the 2006 Constitution has basically approached the de-substantialized concept of the legal state (as it is still perceived today by Anglo-American theorists).

Keywords: "Thin" Rule of Law; "Thick" Rule of Law; Legal state (Rechtsstaat); 2006 Constitution of the Republic of Serbia.

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342.8-055.2(497.1) “1918/1941”

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THE ‘WOMEN ISSUE’ IN INTERWAR YUGOSLAVIA

Under the term “the women issue” in interwar Yugoslavia, a broad spectrum of complex issues existing in the social environment of the time was understood. As was noted during a debate in the National Assembly, the concept could be defined as a set of difficulties regarding the position of women at the time, with particular emphasis that the social status of women in Yugoslav society was “deplorable.” The First World War brought the women issue into a new light, namely, it gained importance due to the significant engagement of women during the Great War.

During the interwar period, a shift toward greater visibility of women in public life became noticeable. Various women’s organizations were established with the goal of achieving equality between women and men. The Constitution of the Kingdom of Serbs, Croats, and Slovenes, adopted on June 28, 1921, stipulated in Article 4 that all citizens were equal in the eyes of the law and enjoyed equal protection from the authorities. However, the Constitution defined legal equality of citizens as only between social classes but not genders. The legal status of women was to be regulated by law. Specifically, the final paragraph of Article 70 stipulated that “the Law shall decide on women’s right to vote,” which left open the possibility for women to gain suffrage through the passage of relevant laws. It should be emphasized that the Vidovdan Constitution contained a provision regarding women’s voting rights for the first time in the history of Serbian constitutional development. Although it did not explicitly guarantee women suffrage, it pointed towards a future law that would resolve the issue. This constitutional provision was highly significant despite the fact that the law meant to regulate women’s right to vote was never enacted.

The struggle for women’s emancipation began at the end of the 19th century and gained momentum in the Yugoslav Kingdom during the interwar period, where this social engagement visibly influenced changes in women’s lives in both private and public spheres. Women’s rights and equality with men began to

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be discussed publicly, panel discussions dedicated to the topic were organized, articles were published and debates took place in the National Assembly.

All of this provided a legal foundation for the fight to secure women's suffrage. Thus, in 1927, a group of female intellectuals founded the Women's Party (Ženska stranka) in Belgrade, with the primary objective of fighting for women's voting rights. The political organizing of women did not achieve significant success due to the turbulent political situation, which culminated tragically in the assassination in the National Assembly, followed by the period of King Aleksandar Karađorđević's personal regime. After the King granted (octroyed) a new Constitution in 1931 that allowed political activity, the Women's Party did not resume its work. However, despite efforts and advocacy to pass a law enabling women to vote, the octroyed Constitution of 1931—by which King Aleksandar ended the personal regime established in 1929 (better known as the January 6 Dictatorship)—did not make any further advancements. Instead, it practically repeated the provision of the previous constitution, leaving the resolution of women's suffrage to future legislation. Progress toward greater rights for women across various spheres of social life was not achieved during this period, as the law that would have granted women the right to vote and participate in political life was never passed. Outside the framework of women's organizations, the so-called "women issue" was not among the priority issues requiring proactive engagement from the state authorities and decision-makers in the Yugoslav state at the time.

It can be concluded that the issue of women's participation in political life, as well as the comprehensive improvement of their status in society, remained on the margins of interest for both relevant state actors and the broader public.

Keywords: women issue, suffrage, constitution, equality, interwar Yugoslavia.

336.74:004:34(37)

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RESPONSIBILITY OF CRYPTO EXCHANGES AND DIGITAL PLATFORMS THROUGH THE PRISM OF ROMAN LAW

The research addresses a fundamental contradiction within the modern digital economy. While the cryptocurrency industry markets itself as a fully decentralized, peer-to-peer network designed to eliminate intermediaries, the reality is starkly different. The vast majority of everyday users and investors still heavily rely on centralized platforms and major corporate intermediaries, such as Binance for trading or OpenSea for digital assets. This ongoing reliance creates a significant legal vacuum, as traditional modern frameworks often struggle to keep pace with rapid technological shifts. The authors propose a revolutionary approach: regulating the legal nature of user-platform agreements by adapting ancient Roman law contracts, specifically those governing deposits (depositum) and mandates. A central focus of the research is the analysis of custodial wallets. These are wallets where the platform, rather than the user, holds the private cryptographic keys. The authors map this relationship onto the Roman contract of depositum. The research draws a critical distinction between two forms: firstly, in terms of classical depositum – the platform acts as a mere custodian, under obligation to return the exact, identical digital asset to the depositor upon request, and secondly, in terms of depositum irregulare – borrowed from the legal practices of Roman bankers (argentarii), this concept applies when the platform blends user assets into a general pool. Under this framework, ownership of the funds technically transfers to the intermediary, who then faces a strict obligation to return an equivalent value (in quantity and quality) to the user. By establishing this distinction, the research provides a precise vocabulary for modern courts to determine whether a platform is a safe keeper or a functional bank, which completely changes user rights during asset freezes. The research applies ancient

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Roman liability standards to modern tech crises, such as cyberattacks, smart contract exploits, or sudden platform bankruptcies. The authors analyze how courts can utilize classic metrics of fault and diligence: 1) culpa levis in abstacto in which case a platform's cybersecurity measures against the standard of a reasonably prudent economic actor. If a platform fails to implement industry-standard security encryption, it is held strictly liable for negligence; and 2) culpa levis in concreto in which case, i.e. examining whether the platform treated the users' digital assets with the exact same level of care it applies to its own proprietary funds. Furthermore, the research explores the concepts of receptio and custodia, ancient doctrines that imposed strict liability on specific commercial actors (like innkeepers and stable masters) for any loss of goods, regardless of personal fault. The authors argue that because modern crypto platforms profit immensely from holding user assets, they should bear a similarly high, objective standard of liability when hackers breach their infrastructure. This research presents an attempt to give a modest contribution to the ongoing global debate surrounding Web3 regulation and consumer protection. By anchoring abstract digital concepts to time-tested Roman legal traditions, the research moves past the unhelpful narrative that cryptocurrencies exist in a lawless legal vacuum. It offers judges, legislators, and legal scholars a sophisticated, flexible framework to hold massive IT and crypto conglomerates accountable. Ultimately, the research proves that ancient jurisprudence remains fully capable of protecting defrauded and damaged users in the digital age.

Keywords: Crypto exchanges, Roman law, Depositum, Custodial wallets, Liability standards.

340.13:623.44(497.5)

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Mag. iur Marko Repić[**]

LEGAL REGULATION OF FIREARM POSSESSION AND USE IN CROATIA DURING THE AUSTRO-HUNGARIAN PERIOD

The legal regulation of the possession, carrying, and use of weapons by civilians is essential in any state. Major social changes occurred in Croatia during the mid-19th century. With the abolition of feudalism and Croatia's transition to a civil social order, significant adjustments to existing regulations became necessary.

Thorough changes had to be introduced across almost every segment of social life, including healthcare, education, administration, land relations, the judiciary, legislation, and much more. A series of laws was enacted, regulating nearly every social relationship in a manner that was fundamentally different—and more modern—than that of the preceding feudal era.

Until then, the possession and use of weapons for civilian purposes had been governed by outdated feudal regulations, which managed ownership through individual permits issued to specific persons. There was no systematic regulation of weapon possession and use for the general citizenry. Consequently, different regulations were applied in various parts of Croatia, reflecting the specific characteristics of the feudal organization of social relations.

A major innovation in Croatian hunting practices was also introduced during this period. The old feudal system of managing hunting grounds—known as the *regal* system—was abolished and replaced by a new, modern *dominal* system. Hunting grounds were established where citizens could engage in hunting, marking a departure from the earlier system in which hunting rights were tied to a royal grant. In this way, hunting became accessible to a wider segment of the population, creating a need for legal regulation regarding the ownership, handling, and other aspects of hunting weapons.

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At the same time, numerous shooting associations were established across Croatia where citizens engaged in the sport of shooting, necessitating the regulation of firearm use for this purpose as well.

In mid-19th-century Slavonia, a large number of bandits emerged, causing widespread unrest among the population through frequent armed and violent robberies. The state implemented extensive measures against them; one such measure required the precise regulation of all procedures concerning weapons, gunpowder, and ammunition—from acquisition and possession to actual use—along with the prescription of severe penalties for violations.

Every state seeks to regulate its citizens' affairs regarding weapons, and Croatia in the second half of the 19th century was no exception.

Initially, in the 1850s, decrees regulating this matter were enacted, followed quickly by laws that provided detailed regulations on the possession and use of weapons. By the mid-to-late 19th century—largely due to the influence of Ivan Mažuranić, who held several high-ranking positions within the Austrian administrative system and later served as the Croatian Ban—a series of modern regulations was introduced in Croatia. These covered various aspects of public life, including the possession and use of weapons by citizens.

Keywords: weapon possession, weapon handling, weapon regulations, hunting weapons, hunting law.

327:341.24(497.11)
323.28(497.11)

Dr. Ognjen Vujović[*]

SIMILARITIES IN THE INTERNATIONAL POLITICAL CIRCUMSTANCES IN WHICH SERBIA FOUND ITSELF AT THE TIME OF THE ASSASSINATION OF PRINCE MIHAILO OBRENOVIĆ AND THE ASSASSINATION OF SERBIAN PRIME MINISTER ZORAN ĐINĐIĆ

The clearly explained assassinations of Prince Mihailo Obrenović and Prime Minister Zoran Đinđić will hardly ever occur. But we can analyze the politics of both and the international and regional political circumstances. That is what can tell us a lot. The second reign of Prince Mihailo Obrenović lasted from 1860-1868. Immediately before his accession to the throne, the Great European Powers signed the Paris Peace Agreement in 1856. The signing of this agreement ended the Crimean War. The agreement also regulated the issue of the Danube, so free movement along this important European river was declared, under the control of the major powers that signed the agreement. With the Paris Peace Agreement, Russia's previous exclusive protectorate over Serbia was replaced by a joint guarantee of six European powers: Great Britain, Russia, Austria, France, Prussia and Sardinia (later the Kingdom of Italy).

After Resolution 1244, it can be said that Yugoslavia, and then Serbia, have independence that is monitored, because part of the Serbian territory is under the international protectorate, AP Kosovo and Metohija. In addition, Serbia, together with Kosovo and Metohija, is a member of the UN, so it can be said that the entire Serbian political independence is under the supervision of the permanent members of the UN Security Council. From a legal point of view, there is a key difference, Serbia today is an internationally recognized country, unlike Mihailo's Serbia. However, when it comes to the political arena in which the Great Powers perform, the foreign policy position of Serbia at that time and now are somewhat similar. The Great Powers do not allow small states to conduct their own politics when it comes to the status of

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those states. Nor when it comes to the most important aspects of their internal and external policy. In the case of Serbia, we have two legal and political documents that formalize this positions, Paris Peace Agreement in 1856 and Resolution 1244 (1999), adopted by the Security Council at its 4011th meeting on 10 June 1999. Prince Mihailo was killed in the midst of the implementation of his plans and his intensive military preparations and intensive diplomatic activity for the creation of a Balkan military alliance against the Ottoman Empire. In this sense, Serbia concluded the agreements: 1) Treaty with Montenegro (1866); 2) Treaty with Greece (1867); 3) Close cooperation was achieved with the Bulgarian revolutionary committee in Bucharest and a Treaty of friendship was concluded with Romania (1868).

On the other hand, Prime Minister Đinđić was killed in the midst of his campaign to initiate the resolution of the Kosovo and Metohija issue from the standpoint of Serbian interests.

He announced his new foreign policy course to the public for the first time at the end of December 2000, when he told the German magazine "Der Spigel" that if the Albanians organize a referendum on the independence of Kosovo, then the Serbs in Bosnia should do the same. In that case, the Dayton Agreement must also be revised. At the beginning of February 2003, Zoran Đinđić wrote a letter to the NATO commander for Southeast Europe, Admiral Gregory Johnson, and asked for permission to return Serbian police and military units to the province. A similar letter to the United Nations Security Council soon followed. The purpose of those activities was to prevent the intensive actions of Kosovo Albanians in the direction of their international independence and the creation of armed forces. Due to his activities, he did not receive a public positive response from the Great Powers.

In March 2003, Đinđić was killed.

Keywords: Prince Mihailo Obrenović, Prime Minister Zoran Đinđić, Paris Peace Agreement 1856, Resolution 1244, political assassination.

342.8:321.7
342.7:341.6(4)

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RESTRICTIONS ON VOTING RIGHTS THROUGHOUT HISTORY: FROM STATUS PRIVILEGE TO MODERN STANDARDS OF DEMOCRATIC PARTICIPATION

The article analyses restrictions on the right to vote from a historical-legal perspective, from ancient and medieval forms of political participation to contemporary standards of democratic inclusion developed within the European legal sphere. The right to vote did not emerge as a universal, equal and individual right, but rather as a status-based privilege linked to membership in a particular political, social or legal group. The history of suffrage therefore cannot be understood merely as a linear expansion of democracy, but also as a history of the legal construction of exclusion.

In ancient political communities of Athens and Rome, participation in decision-making was limited to a narrow circle of free male citizens. Women, slaves, foreigners and other groups were excluded from political life. In the Roman Republic, the formal participation of citizens was further limited by social and property-based hierarchies, meaning that the political weight of each vote was not equal. Thus, the right to vote did not depend solely on the formal possibility of participation, but also on the legal position of the individual within the political community.

In the Middle Ages, political representation was not individual, but estate-based and corporate. Participation in diets, estate assemblies, town councils and other forms of decision-making derived from membership in the clergy, nobility, towns, guilds or other privileged bodies. Broad sections of the population remained outside the formal political sphere.

The transition towards the modern representative state brought a significant change. However, this transition did not immediately result in the establishment

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of universal and equal suffrage. The constitutional orders of the late eighteenth and nineteenth centuries often retained numerous restrictions, especially property and tax qualifications, educational requirements, gender-based exclusions and various forms of political eligibility. The right to vote was understood as the right of the "independent" and "responsible" citizen, which in practice meant the exclusion of women, the poor, workers and other social groups.

The gradual abolition of property, gender and other status-based barriers was of particular importance in the development of modern suffrage. The inclusion of broader social classes and the recognition of women's suffrage marked the transition towards the contemporary concept of universal suffrage. However, the modern universality of the right to vote does not mean that it is absolute. Restrictions still exist, but in contemporary democratic law, every restriction must pursue a legitimate aim, be proportionate and non-discriminatory, and must not impair the very essence of the right to free elections.

In the European legal sphere, the case law of the European Court of Human Rights is particularly important in the interpretation of Article 3 of Protocol No. 1 to the European Convention on Human Rights. Through its jurisprudence, the Court has developed the understanding that the right to free elections also includes individual electoral rights, including the right to vote and the right to stand for election. In cases concerning prisoners, persons under guardianship, citizens living abroad and minority groups, the Court has emphasized that states enjoy a certain margin of appreciation, but that restrictions must not be automatic, arbitrary or discriminatory.

Judgments of the European Court of Human Rights demonstrate that the contemporary right to vote lies at the intersection of democratic legitimacy, equality and the protection of the individual against unjustified exclusion. In this sense, the contemporary European standard does not require an unlimited right to vote, but it does require every restriction to be legally justified and compatible with the principle of democratic inclusion.

Historically, the right to vote served as an instrument for drawing the boundary between those who belonged to the political community and those who remained excluded from it. Contemporary democratic law does not entirely eliminate the possibility of restrictions, but it changes their legal logic: exclusion is no longer the rule, but an exception that must be proportionate, justified and compatible with the fundamental principle of political equality.

Keywords: right to vote, restrictions of right to vote, Article 3 of Protocol No. 1 to the European Convention on Human Rights.

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347.6:342.54 (497.11)“1835/1903“

Dr. Nina Kršljanin[*]

ON HER MAJESTY'S IMPORTANCE: PROVISIONS ON THE MONARCH'S WIFE IN THE CONSTITUTIONS OF THE PRINCIPALITY AND THE KINGDOM OF SERBIA (1835-1903)

The paper will analyse mentions of the monarch's wife (Princess, later Queen) in the constitutions of the Principality and the Kingdom of Serbia, starting with the Sretenje (Candlemas) Constitution of 1835, and ending with the Constitution of 1903 – the last Serbian Constitution prior to Yugoslav unification in 1918. The norms in which the first lady of Serbia is mentioned fall into several categories.

Firstly, there is the matter of provisions on the monarch's marriage, which are closely linked to the norms on the state religion, where we come from the Candlemas Constitution proclaiming that the Princess has to be of Orthodox faith, to later constitutions insisting on Orthodoxy just for the King and his children, potentially opening up the political space for marriage alliances with non-Orthodox countries, a possibility that became more likely as Serbia gained strength in the international arena.

Secondly, constitutions contain provisions for the case of a *nasciturus* who could inherit the throne – the situation in which the monarch would die with no living heir, but leaving a pregnant wife. This fairly common provision follows the same logic that the *nasciturus* fiction plays in private law (namely, that it would be unfair to deprive a child of inheritance due to the tragic coincidence of its father dying some months or even days before its birth), but it is also strengthened by the factor of politics and public law favouring as direct and as peaceful a succession of the throne as possible.

Thirdly, in the case of a minor inheriting the throne, several constitutions mention his mother's role in his education or, in one case (1901), even in the regency. It is, of course, safe to assume that a Princess or Queen mother would play

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a relevant role, besides her ruling husband, in the upbringing and the choice of teachers for all of their children, and this can be supported by some historical examples. However, it is only in the case of an underage ruler that this factor makes it into *materia constitutionis*: a royal couple making decisions on the education of their children, even the heir apparent, is one thing; the question of who educated or acts on the behalf of an already ruling, young, fatherless King, is quite another.

Finally, it is only the Constitution of 1901 that prescribed the possibility of a ruling Queen – the possibility of a King's daughter inheriting the Serbian throne in the absence of viable male heirs. The cause of this innovation was, of course, a concrete set of circumstances – the ruling couple at the time still had no children, and thus King Alexander wanted to make sure that, if at least a female child was born, the dynasty would not lose the right to the throne – and the norm was never applied in practice, as this constitution was short-lived. Still, it remains a testament to modernising tendencies of the time.

The provisions of various constitutions on each of these topics will be compared to each other and analysed in the context of circumstances that surrounded the passing of each constitution. From that analysis a conclusion will be made on the factors influencing the relevance attributed to the monarch's wife in constitutional matters.

Keywords: constitution, religion, Princess, Queen, inheritance.

636.045:34(497.5)
179.3(497.5)

Dr. Višnja Lachner[*]
Dr. Jelena Kasap[**]

THE DEVELOPMENT OF THE LEGAL PROTECTION OF ANIMALS IN CROATIAN TERRITORY FROM THE MIDDLE AGES TO THE INDEPENDENCE OF THE REPUBLIC OF CROATIA

This paper examines the historical evolution of the legal protection of animals in Croatian territory, from the late-medieval communal statutes to the independence of the Republic of Croatia in 1991. Drawing on historical-legal, legal-dogmatic and comparative methods applied to statutory and legislative sources, it advances the central thesis that, for the greater part of this period, the protection of animals in the Croatian legal order was indirect, functional and derived from other legally relevant interests, rather than direct and oriented towards animal welfare as an autonomous legal value. Throughout the period under consideration, the animal appears in normative sources primarily as a factor of public order, a sanitary risk, an economic resource, game, or a component of the natural order to be preserved.

The communal statutes of the Dalmatian cities and Kvarner communes — among them Korčula, Split, Trogir, Dubrovnik, Zadar, Šibenik, Lastovo, Rab, Cres-Osor, Rijeka, Pag and Mošćenice, together with the urban regulations of Zagreb — testify to an early regulation of animals motivated chiefly by the protection of public space, the health of the population and communal hygiene. Provisions restricting the keeping of swine within city walls, prescribing the use of communal slaughterhouses and fish markets, and controlling the movement of livestock were not designed to protect animals as such, but to order the relationship between the animal and the urban environment.

Parallel to these public-law norms, liability for damage caused by animals developed along a private-law line rooted in Roman law. The classical concept

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of pauperies, together with Ulpian's formulation that an animal cannot commit a wrong because it lacks reason (sensu caret), grounded the owner's objective liability, while Germanic law contributed the institution of distraining the offending animal (Tierpfändung). These models were received into Hungarian-Croatian law through the Tripartitum and, in the Dalmatian communes, through local statutes — the Poljica Statute representing an archaic exception that still punished the animal itself. With the reception of the Austrian Civil Code (ABGB/OGZ) from 1853, the animal was consistently classified as a movable thing, a conception that endures in modern Croatian property and obligations law.

The Austro-Hungarian period brought the first qualitative change, with regulations expressly prohibiting cruelty to animals (from 1855) and governing the conditions of their transport (1857, 1895), their castration (1879, 1883) and, in considerable detail, the keeping of dogs. Yet these norms rested primarily on public-health, police and moral grounds: the animal was protected as a vector of danger — above all rabies — or as an economic resource, rather than as a being with its own interest.

Alongside this, hunting and nature-protection legislation afforded animals indirect protection through closed seasons, restrictions on hunting methods and the gradual construction of a system for safeguarding natural values. The Birds Protection Act of 1893 marks an important turning point, introducing the protection of certain species on account of their role in the natural order, while the later nature-protection acts of 1960 and 1965 developed this into a systematic, multi-level legal regime.

By contrast, the direct protection of animals from ill-treatment remained normatively limited and fragmentary throughout the interwar and socialist periods, confined to a misdemeanour and public-order framework, most notably the Basic Misdemeanours Act of 1951. The recognition of animal welfare as an autonomous legal interest came only with the Animal Welfare Act of 1999, confirmed by the Animal Protection Act of 2006 and its alignment with European standards. The historical trajectory thus reveals a gradual transition from indirect and instrumental protection towards the direct and autonomous legal protection of animals, mirroring the broader shift from an anthropocentric conception to bio- and zoocentric approaches.

Keywords: legal history; legal protection of animals; communal statutes; liability for damage; Croatian law.

004.7:340.12

Dr. Dragana Ćorić[*]

DIGITAL RESHAPING OF THE STATE AND THE LAW

The pandemic year (2020) made it clear- "The New Normal" , at the first refered to various changes in human behavior during the pandemic or speculated changes after the pandemic, has also expanded to a set of solutions sought in the digital world so that the economy, education and other segments of society survive during this strange pandemic. The digitalization has come out of the strictly technical (and medical) sphere of life and work and has become a common way of improving different processes and saving lives, especially during the pandemic year.

The life itself didn't stop in 2020, or vanished because of this extraordinary type of influenza; internet and all other available tools, programs, applications for communications and sharing all sorts of materials preserved state's economies, educational processes, accelerated medical research in the search for an effective vaccine against COVID 19, and for many it saved not only their lives but also their mental state (and well-being). It is paradoxical that the newly created digital life has given us the world in the palm of our hands and unprecedented freedom, even though we were prevented from moving freely and many other rights were restricted.

Digitization of life was then a necessity; now it has become a conscious decision with clear intention to maintain the once acquired level of comfort and ease we gained earlier. From education, voting in elections, decision-making in state bodies, and the emergence of new digital rights and the need for their protection, we can say that digitalization has completely reshaped the state and law as we knew them in the theoretical sense before. It turned out that the "New Normal" wasn't that new; it was there, present and sort of waiting to appear on the stage of civilization and to take the main role in this play of life.

The use of artificial intelligence and its tools largely changes the image of the world and the image of man and his abilities, tendencies and skills in general. It becomes very difficult to distinguish where the use of artificial intelligence ends and where a person and his authentic thoughts, feelings and intentions begin.

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That is why we consider it important to clarify some terms that connect the digitalization process with standard concepts from the theory of the state and law, and which are increasingly in everyday use.

Further in the paper, part of the "new normal" vocabulary is presented, and some concepts are briefly discused, such as: digital sovereignty, digital governance, new digital human rights such as the right to a digital identity and its protection, the right to be forgotten, etc. Also, it is important to consider briefly the numerous bad sides of the general digitization of life and work, such as excessive use of digital solutions, reduction of face-to-face communication that leads to a general deterioration of culture and ways of communication, too much faith in the results of the work of artificial intelligence and negleciont of its errors caused by so called hallucinations, etc.

Keywords: digitalization, the state, the law, the "new normal".

342.31:340.12]:004.8

Dr. Ilija Jovanov[*]

THE SOCIAL CONTRACT AND ARTIFICIAL INTELLIGENCE

The social contract is one of the oldest and most controversial concepts in legal science. The relationship between natural law and the contractual character of human laws in antiquity and the notion of fidelity as an agreement between rulers and people in the Middle Ages preceded the modern history of the social contract. The doctrine of individual natural rights and the strengthening of the idea of popular sovereignty represent the foundations of the classical social contract theory, which had a great influence on the first written documents of a constitutional nature. Contemporary theory of the second half of the 20th century was significantly marked by Rawls's idealistic image of moral principles and metaphysical understanding of the social contract. In the 21st century, the development and use of artificial intelligence is beginning to encompass almost all aspects of human life. The use of automated systems (Human-in-the-loop) based on a computer that closes an autonomous loop through artificial effectors of a controlled process and a human who programs and supervises it all is visible from the service sector, medicine, pharmaceuticals, transportation, security, to writing the most ordinary message on a mobile phone. But there are also numerous challenges and problems in leaving decision-making to artificial intelligence. Big companies, but also states, impose new technology on citizens without their specific consent. This is why some writers point out that a new social contract is necessary that would involve society as a whole in overseeing the application of artificial intelligence. Others believe that artificial intelligence should also be consulted when establishing a new social contract. For example, to Rawls's egalitarian theory of justice based on "the veil of ignorance", should be added objective data and the application of artificial intelligence to obtain assistance to the state in making decisions and a more objective social contract among digitally literate peoples. The idea of a data-driven society is not new, but this level of integration of automated decision-making processes, which can possibly over time develop their own logic of thinking and decision-making, is somewhat worrying. The idea is

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that the algorithmic social contract should remove all the shortcomings of the social contract, which historically has always been a subject of human creation with all the prejudices and biases that are immanent to human nature. However, we should not forget that the ability to articulate human requests addressed to humans, that artificial intelligence needs to process, is very problematic, which makes the room for error in artificial intelligence quite large. In addition, one of the prerequisites is to have a sufficient amount of objective and accurate data about individuals, which the current level of technology development does not allow. There must be a good and clear source of popular opinion on the most important issues. Therefore, humanity should perhaps hold on to the "analog" social contract for now. The digitalized one will certainly come when its time comes.

Keywords: social contract, artificial intelligence, theory of justice.

347(497.11)”1844”:929 Matić D.

Dr. Uroš Stanković[*]

DOMESTIC ELEMENTS IN DIMITRIJE MATIĆ'S OBJASNJENIJE GRAĐANSKOG ZAKONIKA ZA KNJAŽESTVO SRBSKO [EXPALANATION OF THE CIVIL CODE FOR THE PRINCIPALITY OF SERBIA]

A recent research has shown that the first textbook of Civil law and the first and only comprehensive commentary of the Serbian Civil Code (SCC, 1844), authored by renown Serbian jurist Dimitrije Matić and named Objasnjenije Građanskog zakonika za Knjažestvo srbsko [Explanation of the Civil Code for the Principality of Serbia], was predominantly influenced by famous Austrian legal scholar Franz von Zeiller's four-volume work Commentar über das Allgemeine bürgerliche Gesetzbuch für die gesammten deutschen Erbländer der österreichischen Monarchie [Commentary on the General Civil Code for all German hereditary lands of Austrian monarchy]. Other notable foreign influences on Matić's commentary include Code civil expliqué par ses motifs, par des exemples et par la jurisprudence [Civil Code explained by its motives, examples and judicial practice], a concise comentary of the French Civil Code (1804), whose author was French attorney-at-law Joseph Adrien Rogron, and lectures of Roman law given by distinguished romanist Karl Adolph and Vangerow, taken down by Matić during his studies in Heidelberg.

Besides foreign literature, Matić's book was also influenced by some domestic ingredients. These were legislation of the Principality of Serbia, church law, judicial practice, two draft civil procedure codes of 1848, customary law, the first Serbian translation of Austrian Civil Code (published in 1849) and two works written by attorney-at-law from Petrovaradin Pavle Šeroglić, commonly reffered to as the first reviewer of the SCC ('Pregled Zakonika građanskog za Knjažestvo Serbiju, 25. marta 1844. obnarodovanog' ['Review of the Civil Code for the Principality of Serbia, issued on the 25th of March 1844'], Bačka vila 4/1845, 114–187] and Replika na odgovor gospodina Miloša Svetića u Utuku III jezikoslovnome ili Pregled II Zakonika građanskog za Serbiju [Response to Mr.

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Miloš Svetić's Reply in Utuk III jezikoslovni or the Second Review of the Civil Code for Serbia]).

Among cited sources, Serbia's legislation and Šeroglić's reviews stand out by their share in the Objasnjenje. References to Pregled or Replika can be traced in 47 Matić's commentaries to articles of the SCC, whereby the first review convincingly dominate by its presence (in 45 commentaries compared to only two with citations from Replika). Matić helped himself with Šeroglić either when calling attention to /lacunas in the SCC or when criticizing provisions of the SCC. In terms of existence or non-existance of a lacuna, Matić only once out of sixteen quotations opposed to Šeroglić's attitude. As for critics adressed to the SCC's norms, Matić acted in three ways: 1) by merely exposing Šeroglić's standpoint, without any value judgment (four times); 2) by adopting Šeroglić's opinion (twenty-four times); 3) by rejecting Šeroglić's point of view (three times).

Laws and by-laws of the Principality were part of about 40 Matić's commentaries. They mostly appear in explanations of the SCC's articles which weren't maintained in their original shape. On some places, Matić even provided full texts of the cited laws. The author touched on legislation belonging to both private and public law. The first-mentioned is, expectedly, more present, but not in expected ratio. The cited private law regulations cover all parts of pandectic system, but those prevalingly regulating general part and property law by their numerosity dominate over others.

Keywords: Dimitrije Matić, Objasnjenje Građanskog zakonika, Pavle Šeroglić, the Serbian Civil Code, Božidar Petranović.

347.736(439)
340.5(436:439)

Dr. Máté Pétervári[*]

COMMERCIAL BANKRUPTCY IN THE SECOND HUNGARIAN BANKRUPTCY ACT: A CASE OF THE LEGAL TRANSPLANTATION FROM THE AUSTRIAN LEGISLATION

Bankruptcy law has been a fundamental legal institution governing commercial life since its emergence in medieval Italy. Accordingly, French bankruptcy law traditions focused bankruptcy rules on merchants. Hungary, however, following on the German model, framed the first Hungarian Bankruptcy Act of 1840 around private individuals. Nevertheless, the particularities of the world of commerce could not be disregarded, and certain provisions were therefore adapted to the needs and expectations of merchants. Following the Provisional Rules of Jurisdiction, the modern Hungarian bankruptcy statute that replaced Act XXII of 1840, Act XVII of 1881, already set out the rules governing the bankruptcy of merchants in a separate chapter. The draft of the second Hungarian Bankruptcy Act was prepared by István Apáthy in harmony with the Commercial Code, which was made particularly necessary by the fact that the new bankruptcy regulation defined commercial bankruptcy as an independent type of bankruptcy procedure. Its personal scope was extended by Act XVII of 1881 to merchants and commercial companies. The codificator, István Apáthy paid attention to the German and Austrian legal solutions concerning bankruptcy law during the codification process. The separate commercial bankruptcy was regulated by the Austrian Bankruptcy Code of 1868, which served an example for the Hungarian bankruptcy proposal.

In my lecture, I would like to present the Hungarian regulation of the commercial bankruptcy based on the bankruptcy scientific literature from the 19th century (István Apáthy, Mihály Herczegh, Lajos Králik) and the legislative documents of Hungarian National Assembly. Besides, I want to examine this bankruptcy type in the practice because the law-in-action research is able to show for

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us how the will of legislator was implemented in the practice. For this reason, I will analyse the practice of the commercial bankruptcies based on archive sources from Bács-Kiskun County Archive of National Archives. In this material I examine 15 years legal practice of the court between 1915 and 1929, which is able to provide us a comprehensive overview about the functioning of this bankruptcy type. It gives an opportunity to know how legislative intent was implemented in practice. In addition to, the Hungarian bankruptcy procedure based on the German-language bankruptcy codes, therefore I would like to compare the regulation concerning commercial bankruptcy with the same organ of the German and Austrian bankruptcy codes. The commercial bankruptcy was ruled by Austrian Bankruptcy Code of 1868, therefore I will present this regulation in detail and examine its similarities and differences in comparison with Hungarian bankruptcy code. The aim of this research is to present how the Hungarian law-making leant on the German and Austrian jurisprudence, which caused more legal transplantations of certain legal institutions, like commercial bankruptcy. But because of the different legal system, they could not be equally effective, therefore this solution was often counterproductive.

Keywords: commercial bankruptcy, commercial law, insolvency law, comparative law, German-language jurisprudence.

341.241.7(439)“1930“

Dr. Patricia Dominika Niklai[*]

HUNGARIAN CULTURAL AGREEMENTS AND CULTURAL HERITAGE IN THE 1930’S

The subject of the research covers the cultural agreements concluded by Hungary with other European countries in the 1930’s: Hungary signed bilateral cultural agreements with Poland in 1934, with Italy and Austria in 1935, with Germany in 1936, and with Finland and Estonia in 1937.

These cultural agreements are approached not from the perspective of international law, but from the perspective of heritage protection and cultural administration. Cultural administration itself includes the protection of cultural heritage and cultural assets; in a narrower sense, it also encompasses public collections – museums, libraries, and archives – as well as public education. In a broader sense, cultural administration also extends to educational and scientific administration, press, film, and media administration, as well as church, arts, and sports administration. Among all these areas, the cultural conventions examined contained provisions relating to cultural administration in both the narrower and broader senses, primarily addressing libraries, archives, scientific relations, press and arts affairs.

The purpose of these cultural agreements was to broaden cultural ties between the countries as much as possible. The agreements included common elements, such as exchanges of higher education students and lecturers, study trips, the employment of language lecturers at universities in the capital to teach the other country’s language, the publication of materials from state archives by researchers from the other country, the presentation of plays, films, and radio programs, as well as museum exhibitions in each other’s countries.

The signing of the above cultural conventions dates to the middle of the so-called Horthy era, so we must mention the cultural policy of that political system. The Horthy era is the period between 1920 and 1944 in Hungary, named after the governor and head of state, Miklós Horthy. Cultural relations were quite important at this time; state ideology was closely linked to cultural policy. After the first world war and the Treaty of Trianon in 1920, Hungary’s territorial and

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population losses gave grounds for the concept of Hungarian cultural supremacy as the ideological background of the cultural policy. The essence of the idea of cultural supremacy was that Hungary could strengthen its position towards the surrounding nations by raising the standard of culture. The concept of cultural supremacy was promoted by the Horthy system, so in my research, I primarily examine how cultural policy affected the international cultural relations.

The main sources are the cultural conventions, but in addition to legal regulations the research includes various press articles, propaganda products and archival documents relating to the cultural agreements, as well as to the protection of cultural heritage and cultural assets.

In addition to a legal-historical analysis, this research seeks to explore possible connections – and the extent of such connections – between cultural agreements concluded in the first half of the 20th century and the challenges of cultural heritage protection in the 21st century, particularly with regard to literary and art works.

Keywords: cultural agreements, cultural heritage, Hungary's international cultural relations.

34:[351.853:004

Tamás Puskás[*]

LEGAL PERSPECTIVE AND ACCESSIBILITY OF DIGITAL CULTURAL HERITAGE

This research examines how contemporary Hungarian and European law conceptualise and regulate "digital cultural heritage", taking the 2003 UNESCO Charter on the Preservation of Digital Heritage as its normative and terminological point of departure. The Charter's broad understanding of digital heritage as unique resources of human knowledge and expression in digital form, coupled with its insistence on both long-term preservation and protection of sensitive personal information, provides the basic conceptual framework against which EU documents and Hungarian legislation on cultural heritage and digitisation are analysed.

A central focus of the analysis is the tension between the status of works of art and literature as public cultural heritage and the subsistence of heirs' copyright and personality based claims. Building on EU copyright developments concerning the public domain and digital reproductions of cultural heritage, the research asks at what point a work should be treated, in legal and institutional practice, primarily as part of the common cultural heritage rather than as an asset controlled by successors. Special attention is paid to the way in which digitisation, mass online access and the reuse of faithful digital copies challenge traditional distinctions between exclusive rights, public domain status and institutional stewardship.

The research further explores whether heirs may invoke succession law, copyright law and data protection law (including GDPR based rights of access and portability) to gain access to personal data storages that may themselves contain items of cultural heritage, such as a deceased author's cloud profiles containing for example the drafts of an unpublished novel. This raises difficult questions at the intersection of *post mortem* privacy, the protection of personal data, freedom of testation and the long-term interests of society in preserving and eventually accessing culturally significant materials.

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The research also focuses on whether Non-Fungible Tokens (NFTs) could constitute a category of digital cultural heritage and examines the accessibility question surrounding the topic. Drawing on the UNESCO Charter's call to maximise access to digital heritage while safeguarding personal data, the research argues that current Hungarian and EU frameworks only partially address these conflicts and often leave heirs in a zone of legal uncertainty.

By combining doctrinal analysis with case based hypotheticals, the research aims to outline possible interpretive pathways and legislative options that would clarify when digital artistic and literary products should be treated as public heritage. Also to define more clearly the position of heirs vis à vis digital platforms that host culturally relevant personal data. Lastly to strengthen cooperation between memory institutions, rights holders and data protection authorities. The overarching goal is to propose a more coherent legal concept of digital cultural heritage that can accommodate the realities of platform based creativity and digital succession, without sacrificing either fundamental rights or the long-term accessibility of Europe's cultural memory.

Keywords: digitalisation, cultural heritage, post-mortem.

614.257:34(37)

Mirna Dajak[*]

LEGAL PROTECTION OF PHYSICIANS' CLAIMS FOR REMUNERATION IN ROMAN LAW

The author examines the recovery of physicians' remuneration under the contract of locatio conductio and through cognitio extra ordinem, as well as the relationship between these two forms of legal protection. The starting point of this contribution is the apparent inconsistency between two texts by Ulpian: D. 9,2,7,8, which conveys Proculus' interpretation confirming the applicability of locatio conductio to a relationship arising from medical treatment, and D. 50,13,1 pr.–2, according to which the praeses provinciae adjudicates physicians' claims for remuneration extra ordinem. This raises the question of why physicians needed to be granted the possibility of recovering remuneration through cognitio extra ordinem if their relationship with the patient could already be governed by locatio conductio and protected by the actions arising from it.

Through an analysis of Roman legal sources and a critical examination of the views of Roman law scholars, this contribution explores the reasons for the existence of these two forms of protection. The discussion is situated within the broader context of the social standing of medical practice, its association with the artes liberales, and the distinction between agreed remuneration (merces) and an honorary reward (honorarium). The position of the freeborn physician (medicus ingenuus) is particularly relevant here. The key question is whether the social disapproval of paid work for persons of this status also constituted a legal barrier to contracting for medical services in return for remuneration. It is therefore necessary to distinguish the social assessment of such work from legal restrictions on contracting for it. Evidence of payment for medical services indicates that this practice was widespread, but does not in itself resolve the question of the legal basis on which a freeborn physician could claim payment.

The contribution systematically examines three main approaches to interpreting these sources. The first approach places medicine within the artes liberales, thereby excluding locatio conductio for freeborn physicians and seeking to explain their relationship with patients through the contract of mandate. The sec-

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ond likewise rejects this contract for remuneration, but associates the protection of claims for fees with an actio in factum. The third group of Roman law scholars accepts the applicability of locatio conductio to the services of freeborn physicians, maintaining that the social prestige of their profession did not constitute a legal obstacle to entering into such a contract. In assessing these approaches, particular attention is paid to the absence of explicit confirmation that mandate applied to the relationship between a medicus ingenuus and a patient, as well as to the scope of Pomponius' text on New Year's gifts to physicians (D. 19,5,26,1).

The author takes the view that the rise in the social standing of the medical profession and changes in the perception of intellectual work contribute to an understanding of extraordinary protection, but do not adequately explain its purpose. The focus therefore turns to cases in which remuneration had not been agreed in advance, particularly because medical assistance had to be provided urgently. The absence of an agreement on remuneration as an essential element of locatio conductio raises the question of whether payment could be claimed through ordinary legal remedies. In this context, the contribution examines the interpretation that intervention by the praeses provinciae provided protection for claims lacking an adequate basis in civil law, while also allowing disputes over the amount of remuneration to be resolved.

In summary, the presentation focuses on the availability of locatio conductio to freeborn physicians and the significance of recognising their claims for remuneration through cognitio extra ordinem alongside existing contractual protection. Particular attention is devoted to the possibility of interpreting these two forms of protection as complementary, examining the role of extraordinary proceedings in securing physicians' remuneration in circumstances where ordinary contractual protection did not provide an adequate remedy.

Keywords: Roman law, physicians' remuneration, locatio conductio, cognitio extra ordinem, medicus ingenuus, artes liberales, merces, honorarium.

316.654:349.6

Danilo Brajović[*]

THE ENVIRONMENT AS A STAGE FOR CONFLICT – MAINSTREAM PUBLIC NARRATIVES AND THE LEGISLATIVE FRAMEWORK

Legislative activity within a given system cannot be observed separately from the public narratives that establish priorities and shape public opinion. This phenomenon is particularly pronounced in democratic societies, where the link between public opinion and the legitimacy of government, including the legislative branch, is direct and transparent. A system of national democracy structured in this way simultaneously operates under the influence of external narratives, which may contain seemingly identical terms with different contents, while the narratives themselves may pursue different goals, including the promotion of interests of nationally less relevant interest groups. Macroregional narratives spill over into domestic narrative areas regardless of the intention to do so. Whether because of integrated business interests in supranational media holdings drawing their information from the same source or a targeted soft power campaign aimed at changing public opinion in a geopolitically relevant neighbour the effects of this intrusion of foreign terms and contexts disallow for an isolated domestic legislative process. This dichotomy between international and national narratives, and their influence on the legislative process and its outcomes, is of particular importance for the Republic of Serbia. In the process of accession to the European Union, Serbia seeks to balance the needs of local interest groups, as a source of democratic legitimacy, with the necessity of transposing supranational regulations. This challenging and complex task, given the need for careful stakeholder management and the ever-present mitigation of risks arising from legal transplants, is made significantly harder by the influx of non-domestic limitations, carried over from different legislative contexts.The focus of this paper will be the public narrative of environmental protection, which is equally present in both the national and international context, and its influence on legislation in the Republic of Serbia. This topic is one of the most relevant narrative areas of modern legal and political life. Environmental protection has grown from a niche

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and exotic subject, of interest to few people, to one of the most relevant political talking points in the public narrative. This has sparked a wave of environmental legislation, making environmental law one of the fastest developing branches of law in our current age. The goal is to give a broad overview of existing narratives, both legislative and public, their conflictual or complementary nature and the ways in which they influence the ability of the legislator to use best practices and comparative approaches to regulate a field with high emotional potential. The paper will use parliamentary protocols and debates, open-source government documents used in the process of enacting the relevant contemporary legislation as well as media reports and articles, both domestic and international to show the narrative surrounding the enactment of several pieces of domestic environmental legislation.

Keywords: Narrative, public opinion, stakeholder management, environmental law.

004.8:34(439)

Bence Szondi[*]

THE IMPACT OF ARTIFICIAL INTELLIGENCE ON THE FUNCTIONING OF JUDICIAL SYSTEM - INTERNATIONAL TRENDS AND HUNGARIAN PRACTICE

The rapid emergence of generative artificial intelligence, in its current form, has been part of our everyday lives for only a few years, yet the scale and significance of its advance are by now beyond dispute. Given the extraordinary pace of its development, its impact on the administration of justice warrants continuous examination. Through a theoretical approach combined with practical examples, this paper aims to demonstrate how the rise of artificial intelligence, and the closely related process of digitalisation, is already transforming and is likely to further transform the functioning of courts, as well as the case-management and substantive decision-making activities of individual judges.

The analysis takes the European Union's regulatory framework as its starting point. Point 8 of Annex III to the EU Artificial Intelligence Act (AI Act, Regulation (EU) 2024/1689) classifies as high-risk those AI applications used by courts or other judicial bodies to support the interpretation of facts or the law, or the application of the law to a specific case. The Regulation nevertheless proceeds from the premise that such systems merely support - rather than replace - the judge's decision: ultimate decision-making responsibility and human oversight always remain with the judge. This regulatory framework is complemented by the Council of Europe's CEPEJ European Ethical Charter, adopted in 2018, which sets out the ethical requirements governing the use of artificial intelligence in judicial systems along five principles: respect for fundamental rights, non-discrimination, quality and security, transparency, impartiality and fairness, and user control.

The presentation will also address the current state of Hungarian regulation. From an infrastructural standpoint, the digitalisation of the Hungarian judiciary is well advanced: the National Office for the Judiciary's Digital Court programme has resulted in a functioning system of electronic case administration, including

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the Client Document Access System (E-Akta) and the technical infrastructure for remote hearings. In criminal proceedings, sections 120-126 of Act XC of 2017 on Criminal Procedure govern the use of telecommunications equipment, enabling the remote examination of participants at any stage of the proceedings.

By contrast, the use of artificial intelligence is currently confined largely to case-management and administrative tasks, in particular electronic search functions, document management, and certain rule-based automated processes. No publicly known AI system that materially supports or partially automates judicial decision-making is currently in operation within the Hungarian court system; the judiciary's leadership has consistently maintained the position that judicial decision-making responsibility and discretion cannot be delegated to algorithms.

A significant risk nonetheless arises from the fact that the decision-making processes of AI systems are typically opaque, while such systems may - whether inadvertently or deliberately - influence the positions and decisions of courts and of the parties to proceedings.

The EU framework addresses this risk through concrete instruments. The obligations imposed on high-risk systems under the AI Act - human oversight under Article 14, transparency and information obligations under Article 13, and risk-management and record-keeping requirements under Articles 9 and 12 - are specifically designed to ensure that AI performs a supplementary, rather than a substitutive, role within the administration of justice; Recital 61 of the Regulation expressly states that such tools may not take the place of judicial decision-making. This EU approach is consistent with the administrative and support-oriented scope of application identified in Hungarian practice.

Nevertheless, several concerns remain. Analysis based on recurring (machine-learned) patterns may reinforce existing systemic errors, injustices, cognitive biases and social prejudices. Non-public information fed into publicly available AI models carries its own data-protection risks. The use of AI must not, therefore, come at the expense of judicial independence or of the further substantive and procedural safeguards of the legal system.

In conclusion, I argue that artificial intelligence can be a valuable tool for both the administration of justice and the legal profession; Hungarian practice, however - in line with the regulatory direction set by EU and the Council of Europe - currently, and deliberately, remains confined to an administrative, support-oriented scope of application. The impact of AI going forward - and the question of whether it may in the future come to be regarded as a kind of third decision-maker - warrants further research.

Keywords: artificial intelligence, digitalisation of the judicial system, EU AI Act, judicial independence, Hungarian court practice.

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Benedek Varga[*]

PROTECTING THE CURRENCY THROUGH CRIMINAL LAW IN INTERWAR HUNGARY: THE JUDICIAL INTERPRETATION OF ACT XXVI OF 1922 ABOUT OFFENCES RELATING TO MEANS OF PAYMENT

The economic consequences of the First World War created serious challenges for the Hungarian state. The shortage of essential consumer goods, declining tax revenues caused by poor tax compliance, and rapidly increasing inflation threatened both economic recovery and the stability of the national currency. At the same time, Europe witnessed the emergence of several transnational criminal networks engaged in the illegal transfer of currency and other financial assets across national borders. Hungarian offenders also became involved in these organizations, making currency-related crime an increasingly international phenomenon. In response to these developments, the Hungarian legislator chose to intervene through criminal law and enacted Act XXVI of 1922 on Offences Relating to Means of Payment, which criminalized a wide range of currency-related offences.

The Act introduced several legal concepts that had previously been unknown to Hungarian criminal law. It was often unclear what constituted currency speculation, under what circumstances an act could be regarded as seriously harming or endangering the interests of the Hungarian national economy, or even what legal interest (Rechtsgut) these offences were intended to protect. The question of the legal matter became particularly significant because the offences were not incorporated into the Hungarian Criminal Code of 1878, the so-called Csemegi Code, but were instead regulated in separate special statutes. his legislative choice raises important questions concerning the legislator’s objectives and the place of these offences within the Hungarian system of criminal law.

The paper examines the offences created by Act XXVI of 1922 by combining doctrinal analysis with an extensive examination of judicial practice. Besides contemporary criminal law scholarship, the analysis focuses on the decisions of

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the Royal Hungarian Curia, whose case law played a central role in defining the definitional elements of the offences. The paper also analyses the practice of the Royal Court of Appeal of Budapest and the lower courts within its jurisdiction in order to assess how these legal concepts were interpreted. The analysis of lower court decisions is based on systematic archival research conducted at the Budapest City Archives, where a significant number of previously unexplored criminal case files relating to currency offences were examined.

In addition, the paper analyses the parliamentary debates recorded in the Diaries of the Hungarian National Assembly. These debates are essential for identifying the protected legal interest (Rechtsgut) of the offences, as they provide valuable insight into the legislator's intentions and the political and economic considerations that shaped the Act. Reconstructing the legislative purpose is particularly important because the decision to regulate currency offences outside the Csemegi Code suggests that the legislator regarded them as exceptional measures addressing the extraordinary economic conditions of the post-war period rather than as ordinary offences against property.

Keywords: economic criminal law, legal history, dogmatics.

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