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BOOK OF ABSTRACTS

INTERNATIONAL DOCTORAL AND POSTDOCTORAL
CONFERENCE IN THE LAW AND LAW RELATED FIELDS
SPLITLAW 2024

Split, 10 May 2024

Faculty of Law, University of Split

**INTERNATIONAL DOCTORAL AND POSTDOCTORAL
CONFERENCE IN THE LAW AND LAW RELATED FIELDS
SPLITLAW 2024**

BOOK OF ABSTRACTS

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Ratko Brnabić, Željka Primorac

Split, 10 May 2024

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**PROGRAM OF THE 1st INTERNATIONAL DOCTORAL AND POSTDOCTORAL
CONFERENCE IN THE LAW AND LAW RELATED FIELDS - SPLITLAW 2024**

Faculty of Law, University of Split

May 10, 2024

REGISTRATION AT CONFERENCE DESK (08:30 – 09:00)

OPENING CEREMONY

Welcome Addresses - Conference Room Vijećnica

09:00 - 09:15

**Ratko Brnabić, PhD., Associate Professor - Dean of the Faculty of Law, University of Split,
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**Željka Primorac, PhD., Full Professor - Director of the Center for Lifelong Learning, Co-
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**Ranka Jeknić, PhD., Assistant Professor - Vice Dean for Teaching and Students, President of
the Program Committee**

KEYNOTE SPEECHES

Conference Room Vijećnica

(chair: Ratko Brnabić, PhD., Associate Professor)

09:15 - 09:45 Tomislav Jakšić, PhD., Associate Professor, BLOCK CHAIN AND SECURITIES

**09:45 - 10:15 Antun Bilić, PhD., Associate Professor, COMMERCIAL LAW UNDER
CONSTRUCTION**

10:20 - 10:35 Coffee Break

Plenary Session I. - Conference Room Vijećnica

(chair: Ratko Brnabić, PhD., Associate Professor)

**10:40 - 10:55 Xenia Lapin - HOW SOFT LAW REGULATES THE OVER-THE-COUNTER
DERIVATIVES MARKET**

**10:55 - 11:10 Vedrana Švedl Blažeka - CHALLENGES AND DOUBTS OF THE PRINCIPLE OF
ACQUISITION OF A COMPANY SHARE IN GOOD FAITH**

11:10 - 11:25 Elena Assenza - HARMONIZING DUE DILIGENCE IN THE EU: THE UN GUIDING PRINCIPLES (UNGPs) AND THE EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CSDDD)

11:25 - 11:40 Rehulina Rehulina - INTEGRATING BUSINESS AND HUMAN RIGHTS: ASSESSING COMPANIES RESPONSIBILITY ON ITS SUPPLY CHAIN

11:40 - 11:55 Marta Hren - TOKENS AS OBJECTS OF PROPERTY RIGHTS – WITH NFT AS AN EXAMPLE

11:55 - 12:10 Dean Rahan - SMART MANAGEMENT OF MARITIME DOMAIN AS PRECONDITION FOR SUCCESSFUL LITORIZATION OF CROATIAN COAST

12:10 - 12:25 Tien Dung Nguyen - EVFTA: GOING BEYOND LABOUR COMMITMENTS IN A NEW GENERATION FREE TRADE AGREEMENT

12:25 - 12:35 Discussion

12:35 - 12:45 Coffee Break

Plenary Session II. - Conference Room Vijećnica

(chair: Luka Pribisalić, PhD., PostDoc.)

12:50 - 13:05 Jafaar Sakkour - STRATEGIES FOR MANAGING THE GENERAL BUDGET DEFICIT AND LEGAL SOLUTIONS IN ECONOMIC CONTEXTS (INSIGHTS FROM HUNGARY AND SYRIA)

13:05 - 13:20 Asrul Ibrahim Nur - THE ROLE OF STATE AID IN PROMOTING ELECTROMOBILITY: EU AND ASEAN LEGAL FRAMEWORK IN COMPARATIVE PERSPECTIVES

13:20 - 13:35 Thembi Pearl Madalane - RECONCEPTUALISING INTERNATIONAL ECONOMIC LAW: TOWARDS COMPREHENSIVE AGREEMENTS ON INVESTMENT AND TRADE (CAITs)

13:35 - 13:50 Adnan Tokic - COMPETITION LAW AND ECONOMICS - OPTIMAL ANTITRUST SANCTIONS FOR UNDERTAKINGS

13:50 - 14:05 Felipe Cristancho - THE INCLUSION OF HUMAN RIGHTS IN INTERNATIONAL INVESTMENT LAW

14:05 - 14:20 Namsrai Battulga - THE HYPOTHESIS OF BALANCING FRANCHISE DISPUTES: COURT AND ARBITRATION MATTERS

14:20 - 14:30 Discussion

14:30 - 14:40 Coffee Break

Plenary Session III. - Conference Room Vijećnica

(chair: Ivana Radić, PhD., Assistant Professor)

14:45 - 15:00 Pokker Zoltán Péter - PRINCIPLES IN THE HUNGARIAN CRIMINAL PROCEDURE

15:00 - 15:15 Rania Jallouli - EXPLORING CONFIDENCE IN THE JUDICIARY: ASSESSING INDEPENDENCE AND EFFICIENCY IN JUDICIAL PROCEEDINGS AMID ECONOMIC CRIME

15:15 - 15:30 Giola Cami - HUMAN RIGHTS AND CRIMINAL PROCEDURE: ETHICAL CONSIDERATIONS IN THE PROCESSING OF E-EVIDENCE

15:30 - 15:45 Martina Makaturová - IS THE CHARTER OF FUNDAMENTAL RIGHTS OF EUROPEAN UNION APPLICABLE IN CRIMINAL PROCEDURE?

15:45 - 16:00 Andrzej Lewna - NEGOTIATED JUSTICE IN AN INQUISITORIAL MODE OF TRIAL: REPORT ON THE POLISH STUDY

16:00 - 16:10 Discussion

16:10 - 16:20 Coffee Break

Plenary Session IV. - Conference Room Vijećnica

(chair: Ranka Jeknić, PhD., Assistant Professor)

16:25 - 16:40 Alexandra Kovacs - CHILD LABOR CHALLENGE IN IMMIGRATION

16:40 - 16:55 Rehab Abdullah Omar Barnawi - CONTRIBUTION OF THE LEGAL REFORMS IN KSA TOWARDS WOMEN'S LEGAL EMPOWERMENT IN EMPLOYMENT

16:55 - 17:10 Justyna Gumulak - THE INSTITUTION OF KAFALA IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THE COURT OF JUSTICE OF THE EUROPEAN UNION

17:10 - 17:20 Discussion

Plenary Session V. - Conference Room Mala Vijećnica

(chair: Dinka Šago, PhD., Associate Professor)

10:40 - 10:55 Hong Nhung Pham - GENERATIVE ARTIFICIAL INTELLIGENCE AND COPYRIGHT UNDER THE FAIR USE DOCTRINE - CASE STUDY AND PROPOSAL FOR VIETNAM

10:55 - 11:10 Claudia Melanie Anke Lydorf - MODULAR SYSTEMS - INTELLECTUAL PROPERTY RIGHTS AND LEGO BRICKS

11:10 - 11:25 Fani Milan Ostojić - DEVELOPMENT OF THE *REBUS SIC STANTIBUS* CLAUSE IN CONTEMPORARY LEGAL SYSTEMS

11:25 - 11:40 Mirna Dajak - COGNITIO EXTRA ORDINEM

11:40 - 11:55 Sanja Čović Jurčević - SOME ASPECTS OF THE VALUE OF THE SUBJECT MATTER OF THE DISPUTE IN CIVIL PROCEEDINGS

11:55 - 12:10 Tea Micevska - THE ODYSSEY OF WRITTEN WITNESS STATEMENTS IN CIVIL PROCEDURE

12:10 - 12:20 Discussion

12:20 - 12:30 Coffee Break

Plenary Session VI. - Conference Room Mala Vijećnica

(chair: Ines Medić, PhD., Full Professor)

12:35 - 12:50 Gellért Nagy - SOME REMARKS ON THE CONCEPT OF GLOBAL CONSTITUTIONALISM AND THE PROTECTION OF NATIONAL SOVEREIGNTY

12:50 - 13:05 Katalin Izsák-Somogyi - PRIDE AND PREJUDICE IN THE REALM OF LAW? THE RELATIONSHIP BETWEEN LEGAL MEMORY AND CONSTITUTIONAL EMOTIONS, ESPECIALLY IN HUNGARY

13:05 - 13:20 Alexandru Bajdechi - SAFEGUARDING THE STANDARD OF LIVING: A COMPARATIVE LEGAL ANALYSIS OF ROMANIA, SLOVAKIA, AND CROATIA. CONSTITUTIONAL DEFINITIONS AND PROTECTIONS OF DECENT LIVING STANDARDS

13:20 - 13:35 Karina Savchuk - HUMAN RIGHTS-BASED APPROACH TO CLIMATE CHANGE AND INTERGENERATIONAL EQUITY IN THE EUROPEAN COURT OF HUMAN RIGHTS

13:35 - 13:50 Marin Keršić - JUDICIAL REASONING AND BALANCING WITH ECONOMIC RIGHTS

13:50 - 14:05 Francisco Javier Moreno Ordoño - MODELS OF JUDICIAL PROTECTION OF THE RIGHT TO A MINIMUM INCOME

14:05 - 14:15 Discussion

14:15 - 14:25 Coffee Break

Plenary Session VII. - Conference Room Mala Vijećnica
(chair: Ines Medić, PhD., Full Professor)

14:30 - 14:45 Haekal Al Asyari - VALIDITY OF RULE OF LAW IN CYBERSPACE: EU AND ASEAN PERSPECTIVES

14:45 - 15:00 Laura Gazdagová - IMPROVEMENTS AND CHALLENGES IN THE PROTECTION OF THE RIGHT TO WATER AND SANITATION IN THE FIELD OF THE UNITED NATIONS

15:00 - 15:15 Lorena Calvo - Mariscal - EUROPEAN UNION, BORDER EXTERNALISATION AND HUMAN RIGHTS: ENFORCING THE DUTY TO PROTECT LIFE IN THE MEDITERRANEAN SEA

15:15 – 15:30 Eleonora Iannario - REDRAWING THE BOUNDARIES BETWEEN “US” AND “THEM”: DOES CITIZENSHIP ENHANCE INTEGRATION OR INCREASE EXCLUSION?

15:30 - 15:45 Sarra Rahoui - NAVIGATING POLITICS AT THE EDGE: SAFEGUARDING THE EU'S EXTERNAL BORDERS AMID IMMIGRATION DISCOURSE

15:45 - 15:55 Discussion

15:55 - 16:05 Coffee Break

Plenary Session VIII. - Conference Room Mala Vijećnica
(chair: Željka Primorac, PhD., Full Professor)

16:10 - 16:25 Ammar Alqatawna - CIVIL LIABILITY OF ARTIFICIAL INTELLIGENCE

16:25 - 16:40 Ghulam Mujtaba Malik - REGULATORY RESPONSES TO DIGITAL FINANCIAL CRIMES: ANALYZING TRENDS IN POLICY AND LAW ENFORCEMENT

16:40 - 16:55 Huthaifa Albustanji - THE RISKS OF USING ARTIFICIAL INTELLIGENCE INCYBERSECURITY

16:55 - 17:10 Bence Kis Kelemen - QUO VADIS TRANSATLANTIC PERSONAL DATA TRANSFERS?

17:10 - 17:25 Nyikes Zita - PROTECTION OF THE REPUTATION OF THE LEGAL ENTITIES IN TERMS OF HUMAN RIGHTS

17:25 - 17:35 Discussion

17:40 CLOSING CEREMONY

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HOW SOFT LAW REGULATES THE OVER-THE-COUNTER DERIVATIVES MARKET

ABSTRACT

The role of international financial soft law within the Over-The-Counter(OTC) derivatives market constitutes a notable anomaly in global economics. Distinct from other domains like international trade and monetary affairs, the OTC derivatives market is not ruled through formal international law, rather through rules derived from non-traditional sources. This market dynamic is shaped by private entities such as the International Swaps and Derivatives Association (ISDA) and other international organisations that are not based on formal treaties. The 2008 financial crisis exposed vulnerabilities and highlighted the need for restructuring the OTC derivatives market. Following the 2009 G20 summit in Pittsburgh, new expert committees and informal bodies were equipped with new powers to set guidelines which were subsequently translated into domestic regulation. Additionally, the Master Agreement published by ISDA has historically served as a boilerplate contract, heavily influencing OTC trading practices. This type of public-private regulation has been criticised as inefficient, opaque, and unenforceable. Nonetheless, ISDA has been very influential on the public legislative process, which has evolved to become a heavily dependent symbiotic relationship between private and public regulators. This presentation aims to analyse the procedures of rulemaking and enforcement within the OTC derivatives market and examines the drivers behind the actors' compliance. It contributes to the field of international law by highlighting the shift in international legal mechanisms towards a more distinct regulatory framework tailored to the unique characteristics of this market, a shift prompted by the inefficiencies of traditional approaches

Keywords: soft law, international financial law, OTC derivatives market, private governance, global financial crisis

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CHALLENGES AND DOUBTS OF THE PRINCIPLE OF ACQUISITION OF A COMPANY SHARE IN GOOD FAITH

ABSTRACT

The principle of acquiring a company share in good faith (in bona fides) implies the possibility of acquiring a company share from an unauthorized person, which was not possible in Croatian legal system until the legislative intervention of 2009 implemented in the wake of the solution of the German legal system. Until the Company Act Amendment from 2009, any acquisition from an unauthorized person was presumed to be invalid. This paper primarily aims to expand scientific knowledge about this issue. It is based on the basic hypothesis that the principle of acquiring company shares in good faith in the existing theoretical and legislative frameworks does not provide a satisfactory degree of legal security to the acquirers of company shares. The functioning of the company itself is therefore also called into question, knowledge about company membership and decision-making in an unspecified period of time. In order to answer the hypothesis, it is necessary to consider the need to approach the trust that participants in legal transactions have in land registers, and it is also necessary to examine the need for legislative improvements to the current legislative framework. In conclusion, it will display the results of research into the issue of acquiring company shares in good faith, and point out the observed controversies and their possible solutions with the aim of more transparent application of this legal institute.

Keywords: company share, good faith principle, share transfer, unauthorised person, book of shares

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HARMONIZING DUE DILIGENCE IN THE EU: THE UN GUIDING PRINCIPLES (UNGPs) AND THE EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CSDDD)

ABSTRACT

The UN Guiding Principles on Business and Human Rights (UNGPs), adopted in 2011 by the Human Rights Council in the form of a non-legally binding instrument, are today considered the authoritative international ‘soft’ standard on business and human rights. While the UNGPs generally fall within the category of international ‘soft law’ instruments that, as such, do not create obligations binding under international law, the last decade has witnessed a wave of legal developments inspired by the UNGPs, which attempt to convert soft principles set forth therein into binding law at different regulatory levels. At the EU level, specifically, negotiations are ongoing for an EU-wide Directive on Corporate Sustainability Due Diligence (CSDDD), which would aim to promote responsible behavior by companies across global supply chains by introducing ‘sustainability due diligence obligations’ for certain categories of company domiciled in EU member states and foreign companies active in the EU market. The article explores how the UNGPs have informed relevant aspects of the Directive. To this end, the article provides a preliminary analysis of the substantive alignment between the final text of the draft Directive and the UNGPs.

Keywords: *companies, soft law, human rights due diligence, UNGPs, EU CSDDD*

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INTEGRATING BUSINESS AND HUMAN RIGHTS: ASSESSING COMPANIES RESPONSIBILITY ON ITS SUPPLY CHAIN

ABSTRACT

Human rights are the cornerstone in defining the relationship between the state and its citizens, with the state as a duty bearer and citizens as duty holders. This relationship necessitates that the state protects the human rights of its citizens not only from its apparatus but also from third parties, notably companies and their expansive supply chains. The term "supply chain" encompasses the entire production process involving all companies directly or indirectly bringing a product to market. In human rights and business, the principal company must assume responsibility for upholding human rights standards throughout the supply chain. UN Resolutions reinforce this obligation, notably the UN Protect Respect and Remedy framework and its guiding principles, which mandate companies to assess and address human rights risks and impacts associated with their operations, including those of subsidiaries and suppliers. This study employs a normative legal research approach, drawing on secondary data from primary, secondary, and tertiary legal materials. The research methodology involves library research followed by qualitative analysis. Building upon Article 13 of the UN Guiding Principles on Business and Human Rights, the study delineates three distinct forms of supply chains: those directly causing harm to human rights, those contributing to harm through another entity, and those neither causing nor contributing to harm. The objective is to define each type and offer illustrative examples to elucidate their characteristics.

Keywords: *business and human rights, supply chain, corporation and human rights*

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TOKENS AS OBJECTS OF PROPERTY RIGHTS – WITH NFT AS AN EXAMPLE

ABSTRACT

As blockchain-based technologies are projected to constitute around 10% of the world's GDP by 2027, understanding the legal implications of tokenization, as a mechanism of incorporating certain legal rights into digital tokens, becomes imperative. This paper delves into the intersection of digital assets and Croatian property law, looking to contribute to the ever-growing discourse on ownership rights concerning digital objects. It uses non-fungible tokens (NFTs) as a prominent example of digital assets to explore the feasibility of recognizing tokens, including NFTs, as objects of property within the existing legal framework. The unique properties of NFTs, such as transfer security, immutability, distinct identification, and above all non-fungibility, pave the way for their potential integration into the realm of property law. The objective of this paper is to shine a light on the essential technologies integral to understanding NFTs, their characteristics, and applications. After a comprehensive analysis of these features, a comparative assessment is conducted with existing legal institutes, aiming to align NFTs within the parameters of established regulatory framework. Recognizing NFTs as legal entities with distinct ownership and transfer characteristics, the paper engages with the fundamental question of whether intangible entities like NFTs can be subject to ownership rights, drawing inspiration from legal theory while acknowledging the need for nuanced exceptions. Specifically, by assessing whether the legal fiction of extending the status of a “thing” to immaterial objects can be employed in the case of digital tokens.

Keywords: digital assets, tokenization, non-fungible tokens, property law, ownership rights

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SMART MANAGEMENT OF MARITIME DOMAIN AS PRECONDITION FOR SUCCESSFUL LITORIZATION OF CROATIAN COAST

ABSTRACT

The maritime domain is one of the most valuable resources of the Republic of Croatia, which until today has remained completely unused as a uncertain legal area in terms of specific real rights that exist on the maritime domain and its economic exploitation. Integral management of the maritime domain did not take root, even though the Republic of Croatia has adopted the Law on Confirmation of the Protocol on the Integral Management of the Mediterranean Coastal Area. However, the adoption of the new Law on Maritime Property and Sea Ports in 2023. brought us new hope in finally enabling the legal and smart development of our coastal area. A special issue is the construction of objects and the economic exploitation of real estate located within the protected coastal area of the sea. given the riskiness and complexity of legal relations in the area of maritime domain and the unquestionable obligation of the state to manage it and ensure its effective protection and effective use, it is clear that greater and more serious involvement of all factors in these processes is needed. This research will show that the existing legislative solutions and standards in the management and determination of maritime domain are very fragmented and insufficiently explained, especially in relation to determining the valid way of acquiring ownership rights to maritime domain, which situations, although unexpected, are clearly evident in the Republic of Croatia, but which legal relationships must be properly managed in order to recognize all the risks that accompany such processes in time, as well as to be able to take the necessary measures in a timely manner in the successful resolution of such complex problems.

Keywords: maritime domain, legal status of real estate on coast, litorization, management

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EVFTA: GOING BEYOND LABOUR COMMITMENTS IN A NEW GENERATION FREE TRADE AGREEMENT

ABSTRACT

This research provides profound knowledge of labour commitments in the new-generation European Union (EU) free trade agreement (FTA). It sheds light on the historical and theoretical rationales that underlie trade-labour linkages in EU policy in general and the labour commitments under the new-generation EU FTA in particular. The research further elaborates on how labour commitments are proposed in EU FTAs by making a comparison among developing countries, including the EU-Vietnam FTA (EVFTA). And ultimately, this research revisits and critically analyses the decision of the panel of experts with reasoning regarding the EU-South Korea (Korea) dispute under labour commitments within the EU-Korea FTA so as to clarify the nature of these commitments in EU FTAs and suggest policy implications for Vietnam and other developing countries on how to effectively implement them within EU FTAs in the long run.

Keywords: EVFTA, EU, Vietnam, free trade agreement, labour commitment

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STRATEGIES FOR MANAGING THE GENERAL BUDGET DEFICIT AND LEGAL SOLUTIONS IN ECONOMIC CONTEXTS (INSIGHTS FROM HUNGARY AND SYRIA)

ABSTRACT

This essay discusses strategies for managing general budget deficits and legal solutions in economic contexts, focusing on the experiences of Hungary and Syria. It begins by defining the concept of a budget deficit and exploring its implications, including its relationship with public debt and inflation. The realities and roots of budget deficits in Hungary and Syria are then analyzed, highlighting the challenges each country faces in managing its deficits. The essay also discusses the various strategies employed by governments to finance budget deficits, such as tax reforms, borrowing policies, and new currency denominations. Through a comparative analysis, the effectiveness of these strategies in addressing financial imbalances is evaluated, with Hungary's strategic approach contrasted with Syria's ad hoc measures.

Keywords: *budget deficit, public finance, tax reforms, Syria, Hungary, debt*

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THE ROLE OF STATE AID IN PROMOTING ELECTROMOBILITY: EU AND ASEAN LEGAL FRAMEWORK IN COMPARATIVE PERSPECTIVES

ABSTRACT

Climate change mitigation is a collective effort undertaken not only at the national level but also at the regional scale. Since the Paris Agreement was adopted, states and international organizations have been working to reduce carbon dioxide emissions from various sectors, including energy and transportation. Electromobility is one of the breakthroughs to reduce emissions by transforming the use of fossil energy-based vehicles into renewable energy-based electric power. One of the essential aspects in promoting electromobility is the extensive state aid provided by the state. This study will analyze the role and contribution of state aid in promoting electromobility from the broader perspective of regional organizations. The EU and ASEAN legal frameworks are compared because both represent two completely opposite types of integration. On the one hand, the EU has been known as a supranational organization with a solid level of integration, on the other hand ASEAN is also a regional organization but has a relatively lesser level of integration. This study will assess and map the pattern of state aid provision by comparing the two legal frameworks of regional organizations. The research method used is legal doctrinal with the use of primary legal sources adopted by the EU and ASEAN. This study will provide an understanding of the correlation between the pattern of regional integration reflected in the adopted legal framework and the promotion of climate change mitigation through electromobility mechanisms. In addition, this study will also provide an analysis of the strengths and weaknesses of the adoption of hard and soft law instruments in promoting electromobility through state aid.

Keywords: ASEAN, comparative, electromobility, EU, state aid

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RECONCEPTUALISING INTERNATIONAL ECONOMIC LAW: TOWARDS COMPREHENSIVE AGREEMENTS ON INVESTMENT AND TRADE (CAITs)

ABSTRACT

There is a need to develop a new term for international economic law that reflects the re-integration of investment and trade in international agreements. Such a reflection is also required in the titles of new comprehensive international agreements. Although titles assigned to international agreements normally have no overriding legal effects, they are descriptors that allow us to make quick judgments and assumptions of their categories and contents. The article argues that BITs and FTAs with investment chapters have been collectively referred to as "investment treaties," however these distinct titles for new trade and investment agreements do not reflect the significant changes they have brought to traditional models. Citing the EU-China CAI as an example, there is a need for a new title for such agreements. The article proposes the title 'Comprehensive Agreements on Investment and Trade (CAITs)' as suitable for such a new generation of international trade and investment agreements. It discusses the proposed title in terms of its descriptive words; "comprehensive," "agreement," and "investment and trade." The differences between "comprehensive" and "deep" in terms of their meanings and implications are also considered.

Keywords: *comprehensive, investment, trade, agreements, EU-China CAI*

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COMPETITION LAW AND ECONOMICS – OPTIMAL ANTITRUST SANCTIONS FOR UNDERTAKINGS

ABSTRACT

Effectiveness of the law is a general principle of European law. Thus, European competition law (art. 101, 102 TFEU) aims to prevent competition infringements. One instrument for prevention is to sanction undertakings that violate competition law. Antitrust sanctions can be twofold: fines (public enforcement) and damage claims (private enforcement). The main economic reason behind these sanctions is deterrence. However, efficient deterrence requires optimal sanctions: the expected sanction, discounted by the probability of enforcement, must at least exceed the expected gain from antitrust infringements. Furthermore, the magnitude of optimal sanctions must neither be too high nor too low. This is why the calculation of optimal fines is vibrantly discussed in competition law and economics literature. One side argues in favor of a gain-based rule (full disgorgement of any and all gains). The other side points to the advantages of a loss-based rule (internalization of the so-called “deadweight loss”). Economic analysis of competition law helps to put both points of view into context. In addition, legal consideration of the economic context helps finding the efficient method for calculating optimal antitrust sanctions. I argue that undertakings will follow competition rules, if the burden $[B(x^)]$ to do so and the missed cartel gain $[C(U)]$ due to legal behavior is lower than the expected (probable) liability $[PL(x)]$ and the burden attached to the infringement $[B(x)]$: $B(x^*) + [C(U)] < B(x) + PL(x)$. Moreover, I point out the implications of the formula to the calculation of optimal sanctions by competition authorities in practice.*

Keywords: antitrust, economic analysis, optimal sanctions, fines, deadweight loss

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THE INCLUSION OF HUMAN RIGHTS IN INTERNATIONAL INVESTMENT LAW

ABSTRACT

This paper addresses the possibility of harmonizing human rights with international investment law. To achieve this purpose, the paper first focuses on the importance of human rights within the context of international investment law, as well as the challenges in integrating regulations to resolve potential conflicts between these fields. Subsequently, it explores two alternatives that have been utilized to incorporate human rights into the international investment regime: firstly, the inclusion of human rights provisions in international investment agreements, and secondly, the inclusion through interpretation by certain arbitral tribunals. Finally, the paper presents some concluding remarks.

Keywords: *human rights, international investment law, international investment arbitration*

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THE HYPOTHESIS OF BALANCING FRANCHISE DISPUTES: COURT AND ARBITRATION MATTERS

ABSTRACT

The paper examines franchise dispute resolution scenarios based on drawing comparative research findings and places the author's assumption of the further approach of legal proceedings. Therefore, it found the research gap by applying study results from the literature and analyzing alternative dispute resolution. Thus, the research cited not only distinguished legal coordination but also the briefing of notable franchise litigations in the US and some EU countries. Namely, the importance of the study was act comparisons between law texts, while considering civil procedure matters linked to jurisdiction and tribunal field. Consequently, it covers pursuing legal globalism, and best practices in the Western world. As a result of the research, except in the occasion of class action, I suggest that franchise disputes have to be resolved through arbitration or other flexible ways rather than litigation. However, it does not mean a downgrade value of the court. To elaborate and strengthen the credibility of research, pre-contractual and post-contractual, arbitral, and judicial dual jurisdiction were taken into account. Comparing franchising practices across different industries, or periods was expected to identify commonalities and differences to gain a nuanced comprehension of how contextual factors influence franchise dynamics which was necessary to inquire or re-think about appropriate franchise lawsuit resolutions.

Keywords: franchise, arbitration, jurisdiction, forum selection

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PRINCIPLES IN THE HUNGARIAN CRIMINAL PROCEDURE

ABSTRACT

Law tries to regulate our lives as widely as possible, but it is clear - if only from the reactive nature of law - that this is impossible. It is for this reason that it is necessary to make fundamental, even perennial, statements from which lawyers can work on a question that has not yet arisen. This is the purpose of the principles. On the one hand, they provide an unshakeable, stable basis for legal interpretation, and on the other, they have a gap-filling function. In practical law, however, as a defender I have observed that in the majority of cases the invocation of principles is weightless, as if the principles did not have an independent law enforcement function. In fact, I have observed that in many cases, it is often the law itself - the law under discussion - whose provisions are in conflict with its own principles. In my work, I intend to present the principles that can be found in Hungarian criminal procedural law and to make de lege ferenda proposals to ensure that they are applied in everyday law enforcement in a manner commensurate with their importance.

Keywords: criminal procedure, principles, legislation, lawyer

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EXPLORING CONFIDENCE IN THE JUDICIARY: ASSESSING INDEPENDENCE AND EFFICIENCY IN JUDICIAL PROCEEDINGS AMID ECONOMIC CRIME

ABSTRACT

This research investigates the dynamics of confidence in the judiciary, particularly in the context of economic crime. The judiciary's effectiveness is largely based on public trust, which can be tested in economic crime, where complex legal proceedings intersect with complex financial transactions, often involving high-profile individuals or corporations. The perceived independence of the judiciary and the efficiency of legal processes become crucial factors shaping public perceptions of fairness and legitimacy. The study delves into the multifaceted dynamics of confidence in the judiciary within the context of economic crime, exploring the relationship between judicial independence, procedural efficiency, and public trust. It aims to provide valuable insights into the strengths, challenges, and opportunities inherent in the adjudication of economic crimes, contributing to theoretical understandings and practical strategies in judicial governance and combating financial wrongdoing. Economic crimes such as fraud, corruption, money laundering, and insider trading not only cause financial damage but also undermine public trust in institutions. The research takes a multidimensional approach, drawing on theoretical insights, empirical evidence, and comparative analysis to shed light on the key facets of the research topic. By shedding light on the nuances of judicial independence, procedural efficiency, and public trust, this research aims to provide policymakers, legal practitioners, and scholars with valuable perspectives and actionable recommendations, ultimately contributing to the enhancement of judicial integrity, accountability, and effectiveness in combating economic crime and reinforcing the foundations of a just and equitable society.

Keywords: *public trust, assessing independence, public confidence, economic crime, the judiciary*

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HUMAN RIGHTS AND CRIMINAL PROCEDURE: ETHICAL CONSIDERATIONS IN THE PROCESSING OF E-EVIDENCE

ABSTRACT

With the development of Communication and Information Technology electronic evidence relativity in criminal proceedings has augmented, impacting not only cybercrimes but traditional offenses as well. Considering the borderless nature of cyberspace, electronic evidence is not confined to a single territorial jurisdiction. Consequently, the collection of e-evidence is significantly occurring within a cross-border landscape that involves multiple states, representing complexities for criminal proceedings, particularly concerning the integrity of data pertaining human rights implications. Within the International Criminal Law governed by the framework of the Council of Europe on electronic evidence, standards governing access to and use of e-evidence have been provisioned, emphasizing the compliance with Human Rights. Central to this regulatory architecture is a firm commitment to provide a high level of protection for individuals, safeguarding their rights & privacy, and ensure strict compliance with the rigorous data protection standards set forth in the Budapest Convention. Conducting an in law legal analysis of primary legislation, this study critically examines (i) e-evidence standards in the context of cross-border acquisition of electronic evidence in criminal proceedings under the CoE framework; (ii) addresses the impact of these standards on safeguarding individual rights, and data integrity implications deriving from judicial competencies vested to the service providers, and (iii) study case of Albania as a signatory member to the CoE Framework assessing the ascertainment of national laws' consistency and compliance with the rule of law and fundamental rights in the cross-border collection of electronic evidence.

Keywords: *E-evidence, collection, data privacy, compliance, jurisdiction, human rights*

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IS THE CHARTER OF FUNDAMENTAL RIGHTS OF EUROPEAN UNION APPLICABLE IN CRIMINAL PROCEDURE?

ABSTRACT

The Charter of Fundamental Rights of European Union (CFR) is a document enshrining the fundamental rights protected within the European Union's legal framework. In this paper the author explores the role of the CFR in criminal procedure. Beginning with an overview of the CFR's historical development and legal significance, this paper explores its incorporation into the EU legal order, particularly through the Treaty of Lisbon. It explores the CFR's status as a primary source of law having legal force equivalent to that of the EU Treaties. Following that, the paper explains the applicability of the CFR in general and then concretely in criminal procedure. Paper investigates provisions of CFR relevant to the criminal proceedings and with mention of the case law of CJEU tries to answer some practical questions relating to CFR's provisions related to criminal proceedings. The main goal of this paper is to answer the question if the CFR is even applicable in criminal procedure.

Keywords: *the Charter of Fundamental Rights of European Union, criminal procedure, applicability of the CFR*

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NEGOTIATED JUSTICE IN AN INQUISITORIAL MODE OF TRIAL: REPORT ON THE POLISH STUDY

ABSTRACT

The purpose of a proposed paper is to present the results of an empirical study dedicated to exploring the reasons behind criminal defendant's choice to waive their rights to a contested trial to opt for consensual, negotiated conviction in the context of an inquisitorial mode of criminal procedure of Poland. Employed methods involved combined qualitative and quantitative elements. Qualitative data was collected during courtroom observations and direct, semi-structured interviews with a sample of 41 defendants, whose cases were concluded on consensual basis in one of 8 chosen common court units within a country in the period from May 2021 to April 2023. This was further supplemented by the data obtained through the use of highly standardized questionnaire for interviewed respondents, designed to obtain basic demographic information on the sample, as well as relevant procedural information related to the previous course of proceedings. One of the most significant factors determining defendants' choices was an expectation of a more lenient punishment in the consensual procedure compared to the punishment defendants would expect after a fully contested trial. The strong influence of defence attorneys in initiating consensual procedures was also noted, as well as impact of motivations related to the desire to avoid or shorten pre-trial detention. Presented study is the result of a research project conducted by the University of Gdansk funded by the National Science Center (Republic of Poland) under the PRELUDIUM program contract number: UMO-2020/37/N/HS5/03694.

Keywords: *plea bargaining, consensual modes, punishment, pre-trial detention*

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CHILD LABOR CHALLENGE IN IMMIGRATION

ABSTRACT

My research abstract was prepared to present child labor in a compact form and to help you prepare it, taking into account the available comprehensive information and research recommendations. The neglect or violation of a range of human rights exacerbates the conditions that lead to child labor, and child labor itself raises issues of neglect and violation of human rights. Harmful, hazardous or otherwise exploitative child labor can create, exacerbate or perpetuate intergenerational cycles of poverty and social disadvantage. In my method, I conduct data research using databases and articles related to the United Nation, civil organizations and immigration. A significant part of the information used in the research consists of classified reports, which I requested to be approved in a separate authorization procedure. I analyze the collected data and information geographically and by country. My scientific research is facilitated by the fact that I have worked as a professional police officer, lawyer and international human rights analyst for 25 years, currently at the UN. It is also due to increased mobility related to immigration, global crises and recent developments in refugee and migration needs. In particular, countries with a good economic situation are strongly affected by immigrants, and the situation of families and the role of children in illegal and legal employment require a separate analysis.

Keywords: *child labor, migration, immigration, United Nation*

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CONTRIBUTION OF THE LEGAL REFORMS IN KSA TOWARDS WOMEN'S LEGAL EMPOWERMENT IN EMPLOYMENT

ABSTRACT

KSA is one of the well-known Middle Eastern countries as an oil producer, an economic advantage that plays an important role in shaping the characteristic of its society. Reliance on oil had the effect of significantly reducing the numbers of female's participation in the public sphere and economy. Realising the effect of such low participation, the country started undergoing several developments recently. The purpose of this article is to analyse the most apparent development plans of legal reforms pertaining to women's employment. The major reforms took place in the country are those opening opportunities for women in The Ministry of Justice and The Ministry of Defence, those introducing new university majors and the those annulling the guardianship system, reforms that enable Saudi women to drive and obtain Identification Cards. In addition to several reforms in Civil Status Law and Labour Law and overall reforms related to women in leadership positions as the article would discuss. This article aims to appraise the reforms that opened new areas for women and encouraged them to participate in the economy, nonetheless, it argues (as a contribution to research) how this top-bottom approach takes long time for changes to take place in the society. It calls for the use of different approaches along the reforms. It suggest a bottom up approach of legal empowerment, starting from changing people's minds and women's agency and self-conscious to accelerate the process of changing women's status, thus leading to more participation in the economy as aspired.

Keywords: *KSA, women's legal empowerment, legal reform, employment, bottom-up approach*

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THE INSTITUTION OF KAFALA IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THE COURT OF JUSTICE OF THE EUROPEAN UNION

ABSTRACT

The kafala system represents a guardianship mechanism in Muslim countries, distinct from adoption as understood in the Western context. Islam does not permit adoption in the sense of entirely transferring parental rights and responsibilities or changing the child's identity, primarily to maintain clear lines of inheritance and family affiliation. Hence, kafala is an alternative, allowing childcare without violating these principles. Recognised as a form of foster care, kafala enables Muslim families to take care of children who, for various reasons, cannot be raised by their biological parents. This care includes material and emotional support, which does not alter the child's legal status. Under kafala, the child remains a member of their biological family and retains their original surname. In recent years, kafala has been the subject of judgments by the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU). The speech will discuss the significance of the judgments of these courts that addressed kafala, including Chbihi Loudoudi and Others v. Belgium (application no. 52265/10), SM v. Entry Clearance Officer, UK Visa Section (case C-129/18). Implementing the kafala system varies from Muslim country to Muslim country but is generally recognised and supported by Islamic law (Sharia) to provide care for needy children. The system plays a crucial role in Muslim societies, facilitating the care of orphans and other children deprived of parents while respecting religious and cultural values.

Keywords: case-law, sharia, kafala, foster care, children's rights, Islam

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GENERATIVE ARTIFICIAL INTELLIGENCE AND COPYRIGHT UNDER THE FAIR USE DOCTRINE - CASE STUDY AND PROPOSAL FOR VIETNAM

ABSTRACT

The development of generative Artificial Intelligence (genAI) has created many new legal implications in the modern world, especially in intellectual property (IP) law. One of the new issues is the developers of genAI using copyrighted content to train the machines, leading to many of the works generated by AI bearing a striking resemblance to the its training sources. Due to the “fair use” doctrine in the USA – which specifies exceptions of copyright infringement, there are cases where these are not considered a violation, however, there are still many people believing this is a major piracy problem. This was also demonstrated through many cases, but most prominently in Getty Images v Stable Diffusion in the USA in 2023. In Vietnam, since the invention of VietGPT – the Vietnamese ChatGPT, there have been debates on the possibility of copyright violation in the process of creating this AI. Since this is a novel phenomenon, addressing this in different legislations would also bring new perspectives on this international problem. This research will address two main questions: To what extend does using copyrighted works to train genAI violate copyright law? And to what extend does AI-generated works infringe copyright? Doctrinal and case study method will be applied to study the regulations on fair use in the USA, along with the EU and Vietnam from the comparision perspective. Finally, recommendations will be provided to Vietnam to avoid confusions for companies and law makers in the future.

Keyword: *intellectual property, copyright, generative artificial intelligence, artificial intelligence, fair use*

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MODULAR SYSTEMS - INTELLECTUAL PROPERTY RIGHTS AND LEGO BRICKS

ABSTRACT

This article uses the example of the Danish company Lego to show how companies combine individual intellectual property rights according to their needs. In order to achieve the best possible protection for their intellectual property, Lego uses the individual intellectual property rights like individual bricks in a building block system: Ever since the patent protection for Lego bricks had expired, the company tries to have the building block further protected via other intellectual property rights. Lego and its competitors take this approach even a step further while they seek protection for their products and against each other from the courts competent for intellectual property rights at EU level. This highlights the seemingly strong trust that not only Lego places in intellectual property law, its effectiveness and the associated EU case law. The main questions of this article will be: Can it be deduced from these aforementioned observations that intellectual property law takes economic contexts into account to a particularly high degree and can it be further deduced that the application of intellectual property law results in effective and profitable solutions for economic practice, both at national and EU level? To answer this question, the following three court decisions ECJ, 14 September 2010, C-48/09 P (EU trademark), CFI, 6. December 2023, T-298/22 (three-dimensional EU trademark) and CFI, 24 January 2024, T-537/22 (design protection) concerning Lego bricks will be considered. Legal experts believe that the EU case law fundamentally strengthens the position of companies.

Keywords: intellectual property law, EU trademark, EU design protection, extension of protection period, European jurisdiction

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DEVELOPMENT OF THE *REBUS SIC STANTIBUS* CLAUSE IN CONTEMPORARY LEGAL SYSTEMS

ABSTRACT

Although the contractual principle of pacta sunt servanda, which mandates the obligation to fulfil concluded contracts, is one of the fundamental principles of the law of obligations, insisting on its unconditional application can lead to unfair results. Namely, the circumstances after the conclusion of the contract may change to such an extent that the fulfilment of the assumed obligations for one or both parties becomes excessively difficult or associated with excessive losses. In such cases, the rebus sic stantibus clause is applied, an institute that foresees the possibility of changing or terminating the contract precisely because of changed circumstances. Although it seems to be a very necessary instrument for preserving the principle of equal value of mutual benefits and the principle of fairness, the acceptance of this institute in contemporary legal systems was not easy and unreserved. The great European civil codes of the 19th century did not accept the rebus sic stantibus clause as a general institute of civil law. Despite this, social and economic events of the 20th century made its repeated application necessary, which inevitably led to the development of various theories that tried to justify its application and provide it with a legal foothold. The presentation will demonstrate the development of the institute in some of the largest European legal systems; French, German and Italian, the social circumstances that led to the acceptance of its application, as well as the legal framework and application of the clause in those contemporary legal systems today.

Keywords: *changed circumstances, pacta sunt servanda, rebus sic stantibus, contemporary legal systems, law of obligations*

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COGNITIO EXTRA ORDINEM

ABSTRACT

Civil procedure, in the form as we all know it today, is a result of a long-term historical development. Some of its foundations were laid within the framework of Roman law. This presentation will deal with cognitio extra ordinem by considering its beginnings and gradual development into the only procedure for providing legal protection of private rights. In the beginning, this procedure existed as an exception to the formulary procedure but in the 3rd century it became a regular procedure. Its basic characteristics are that there is no division of the procedure into in iure and apud iudicem, the parties can no longer choose a judge and the procedure is conducted by a civil servant who knows the law. Also, there is a possibility of an appeal and the procedure is conducted in front of hierarchically organized state courts with regulated rules on jurisdiction. Special attention is dedicated to the rules of the initiation of the procedure, hearing sessions with reference to the moment of litis contestatio, as well as the issue of evidence and their hierarchy. Author also considers the drafting and the content of a sentence. A particularly important issue is the matter of the appeal that was introduced by this very procedure; to whom the appeal could be filed, what was the structure of the courts and what were the limitations when filing an appeal. Also, a brief overview of the execution of the sentence will be given.

Keywords: Roman law, civil procedure, cognitio extra ordinem, appellatio, sententia

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SOME ASPECTS OF THE VALUE OF THE SUBJECT MATTER OF THE DISPUTE IN CIVIL PROCEEDINGS

ABSTRACT

*Numerous procedural rights and obligations of the parties to civil proceedings depend on the determination of the value of the subject matter of the dispute. For example, the value of the subject matter of the dispute plays an important role as a criterion for determining the jurisdiction *rationemateriae*, the type of proceedings, the composition of the court, the authorization for representation and the entitlement to reimbursement of the costs of the proceedings. The amount of the claim in civil proceedings is crucial in establishing the value of the subject matter of the dispute. However, due to various circumstances, it may be necessary to change the value of the subject matter of the dispute previously determined by the plaintiff in the claim, which has a number of consequences. In this presentation, the change in the value of the subject matter of the dispute during the proceedings, which occurs both by the partial withdrawal of the claim and through the amendment of the claim, is presented in detail and the controversial situations from case law are presented. Also, the significance of the value of the subject matter of the dispute for the decision on the legal costs is shown. Finally, presentation will review the effects of the value of the subject matter of the dispute on the calculation of the attorney fees.*

Keywords: *value of the subject of the dispute, costs of proceedings, change in the value of the subject of the dispute*

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THE ODYSSEY OF WRITTEN WITNESS STATEMENTS IN CIVIL PROCEDURE

ABSTRACT

In today's continuously evolving world, where change is the only constant, one enduring necessity remains: the imperative to adjust the legal solutions to the emerging trends. Echoing the epic odyssey of Odysseus, the aim to ensure a balanced approach between the oral and the written form of the civil procedure represents a profound journey through the modern challenges of the legal theory and practice. Originating in the ancient legal traditions, these principles adjust to the evolving nature of the courtroom practices. Without exception, this reflects on the legal position and evidentiary value of the written statements of the witnesses as well. Namely, the right to an oral hearing of a party's case, as a fundamental principle of the civil procedure, is an integral part of the right to a fair trial. However, the pressing need for expeditious and cost-effective administration of justice calls upon emphasizing, or even preferencing the written form in a manner that maintains balance and does not create a disproportionate focus to either of the principles. Given the potential significance of these changes, a careful examination of their benefits and drawbacks is required. Presented with such a legal conundrum, an emerging question persists: should these principles evolve at all? If so, to what extent should the evolution extend?

Keywords: civil procedure, evidence, written statements, witnesses

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SOME REMARKS ON THE CONCEPT OF GLOBAL CONSTITUTIONALISM AND THE PROTECTION OF NATIONAL SOVEREIGNTY

ABSTRACT

Globalisation is a process that has brought new challenges not only to the economy, the labour market, and the environment, but also to constitutional law since regional and global international organizations are gaining increasing powers and competences, that traditionally belonged to individual nation states. These trends are often described by the concept of global constitutionalism. However, this concept is subject to a number of concerns in the legal literature. On the one hand, the truly global nature of the theory is questionable, on the other hand, its impact on national sovereignty raises several issues. This contribution will analyse the two main elements of global constitutionalism, that is convergence of constitutional solutions and constitutionalisation of international organizations. Regarding the convergence of constitutional solutions, it is important to underline that this process is developing in two main directions: the convergence of constitutional structures and the convergence of the protection of fundamental human rights and freedoms. As the latter direction is much more prevalent, the convergence of the protection of fundamental human rights will be analysed in more depth. As regards the other element of global constitutionalism, the constitutionalisation of international organizations, one can observe this disputable trend both at the regional and global level. After presenting all these elements of global constitutionalism, the paper will conclude with a brief overview of the reservations concerning the concept.

Keywords: *the concept of global constitutionalism, sovereignty, the convergence of constitutional solutions, constitutionalisation of international organizations*

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PRIDE AND PREJUDICE IN THE REALM OF LAW? THE RELATIONSHIP BETWEEN LEGAL MEMORY AND CONSTITUTIONAL EMOTIONS, ESPECIALLY IN HUNGARY

ABSTRACT

The study of law and emotions within legal theories can be considered relatively fresh. The same can be said about the examination of legal memory. To connect these two aspects of examination is an attempt with a history that is somewhat modest, but with a promising future. The main area of the research is the realm of memory laws, with a specific focus on constitutional memory within this sub-study. This narrative is closely aligned with the significant question raised in the study of legal memory, involving the self-exculpatory vs. self-inculpatory paradigm. Emotions gaining ground in the reflection on historical legacy are in line with the perspective on how the ruling political elite looks back on the traumatic events of the 20th century: whether they were solely victims or if past responsibility can be acknowledged. In my research, I examine and posit a hypothesis that during the textual analysis of laws forming the basis of constitutional memory, it is possible to identify emotionally charged words capable of approaching the collective memory with a specific emotional one, influencing the law-abiding citizen. The sub-study focuses on examining two highly contrasting emotions: pride and shame. The indirect or direct presence of these emotions in legal texts can illustrate the context that the legislator "prescribes" for the entities of the national memory can endure the enactment of memory laws. Furthermore, the research also focuses on whether there is a correlation with the fact that since 2010, Hungary has been governed by a nationalist-oriented government that looks nostalgically at the past.

Keywords: memory law, constitutional emotions, collective memory, shame, pride

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SAFEGUARDING THE STANDARD OF LIVING: A COMPARATIVE LEGAL ANALYSIS OF ROMANIA, SLOVAKIA, AND CROATIA. CONSTITUTIONAL DEFINITIONS AND PROTECTIONS OF DECENT LIVING STANDARDS

ABSTRACT

This comparative law article examines the legal frameworks in Romania, Slovakia, and Croatia concerning the protection of the standard of living. The research examines the constitutional aspects of defining a decent standard of living and evaluates mechanisms for its safeguarding. I explore how each country's socio-economic context influences living standards' determination and assess the effectiveness of legal protections and social policies. Employing a comparative legal methodology, the study scrutinizes constitutional texts, legal enactments, and judicial interpretations to understand similarities and differences in safeguarding living standards. By analysing constitutional provisions and implementation mechanisms, I contribute to understanding the intersection between constitutional law and socio-economic well-being. The paper underscores the diverse approaches of Romania, Croatia, and Slovakia, where Romania and Croatia explicitly embrace a welfare state concept, while Slovakia addresses living standards through fair work conditions and social assistance. Additionally, it highlights discrepancies in the implementation of constitutional safeguards and variations in methodologies for setting minimum standards of living. Overall, this study offers insights into legal frameworks' strengths and weaknesses, emphasizing the need for clearer guidelines and enhanced consistency in judicial rulings to better protect citizens' standard of living across the examined jurisdictions.

Keywords: constitutional safeguards, standard of living, comparative legal analysis, welfare state

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HUMAN RIGHTS-BASED APPROACH TO CLIMATE CHANGE AND INTERGENERATIONAL EQUITY IN THE EUROPEAN COURT OF HUMAN RIGHTS

ABSTRACT

Throughout the years, human actions have led to a rise in greenhouse gas emissions, causing climate change-related impacts, the majority of which are expected to manifest in the future years. Not only does climate change pose a threat to the existence of future generations, but it also raises concerns regarding intergenerational justice. This research examines the interlink between climate change, human rights, and intergenerational equity through the lens of the European Court of Human Rights (ECtHR). The key point of the analysis is based on controversial notion of safeguarding the rights and freedoms of future generations through climate litigation in Strasbourg, including critical examination of Article 34 and 14 of the European Convention on Human Rights. Considering the ECtHR has not explicitly dealt with the climate change concept in its jurisprudence, this paper argues for the necessity of a human rights-based approach to climate change, emphasising that the protection of future generations' rights is not only a moral imperative but also a legal one under the European human rights framework. By employing a doctrinal research methodology, the paper critically examines jurisprudence, academic discourse, and potential for jurisprudence to expand and to accommodate the rights of future generations, including the need for the ECtHR to broaden its interpretative horizons. By continuously refining our comprehension of the duties owed to future generations, we centre on a more inclusive – and ultimately more effective – human rights based framework to climate change.

Keywords: climate change, human rights, intergenerational equity, European Court of Human Rights

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JUDICIAL REASONING AND BALANCING WITH ECONOMIC RIGHTS

ABSTRACT

The problem of resolving conflicts between rights is one of the central, if not the central problem of law. In particular, the problem of resolving conflicts between constitutional rights is more complicated because it usually cannot be resolved by the traditional criteria of lex superior, lex posterior and lex specialis. One of the possible methods that is continuously studied by scholars and used by the courts to resolve such conflicts is the method of balancing. An important category of constitutional rights in modern constitutions are economic rights. The aim of this presentation is to analyse the method of balancing and its application when at least one of the conflicting rights that is being balanced is economic right. The presentation will include both theoretical framework of balancing, from the perspective of legal theory, but also consideration of constitutional cases.

Keywords: *judicial reasoning, conflicts between rights, balancing, economic rights*

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MODELS OF JUDICIAL PROTECTION OF THE RIGHT TO A MINIMUM INCOME

ABSTRACT

This article delves into the German model and the ECHR model of judicial protection concerning the right to a minimum income, exploring their implications for minimum income policies. The German Federal Constitutional Court's "Hartz IV" judgment establishes a fundamental right to a subsistence minimum, emphasizing human dignity and imposing constraints on legislative actions in social protection. In contrast, the ECHR model evolves from the prohibition of degrading treatment to defending the right to private property, offering a potential avenue for safeguarding individuals against legislative regressions in social policy. The objective of this analysis is to assess the interplay between constitutional principles and social policy objectives in the context of minimum income schemes, considering the implications of these judicial models on the constitutionality and effectiveness of social legislation. By synthesizing insights from both models, this article contributes to the discourse on a rights-based approach to minimum income policies, highlighting the complexities and considerations involved in balancing individual rights with state obligations in the realm of social protection. While the Hartz IV model offers a robust framework for scrutinizing social policy decisions, its exportability to supranational courts requires careful consideration to ensure alignment with the principle of subsidiarity and respect for national legal systems' autonomy.

Keywords: *minimum income, human dignity, social policy, judicial review, legislative regression*

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VALIDITY OF RULE OF LAW IN CYBERSPACE: EU AND ASEAN PERSPECTIVES

ABSTRACT

The development of cyberspace has sparked ongoing debates surrounding territorial sovereignty and geographical borders, particularly in the distinct contexts of European Union (EU) and Southeast Asia (ASEAN). While the Anglo-Saxon doctrine interprets the rule of law as a constraint on governmental power in favor of safeguarding basic rights and freedoms, its application varies across legal systems, notably between EU member states with their concept of pooling sovereignty, and ASEAN's respect for individual sovereignty. Despite the inherently exclusive nature of the rule of law to each nation-state, the transnational essence of cyberspace necessitates the establishment of internationally agreed-upon standards and norms to uphold an international rule of law. In the realm of cyberspace governance, states are confronted with the challenge of reconciling individual freedom with the need for regulatory frameworks that restrain arbitrary power, protect personal freedoms, and promote human dignity. This dynamic presents an implicit agreement wherein both states and individuals surrender certain freedoms and powers to govern and be governed within cyberspace. As cyberspace transcends geographical boundaries, regional approaches have demonstrated greater efficacy compared to international consensus. This is due to the different interpretation of particular norms; such as ensuring fundamental freedoms that are applied with substantial consideration to the region's legal framework, cyber infrastructure, and member states accepted social norms.

Keywords: cyberspace, European Union, rule of law, Association of Southeast Asian Nation

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IMPROVEMENTS AND CHALLENGES IN THE PROTECTION OF THE RIGHT TO WATER AND SANITATION IN THE FIELD OF THE UNITED NATIONS

ABSTRACT

The past few decades have seen a slow but steady convergence of certain aspects of the realms of environmental law and human rights. While the list of rights set out in the Universal Declaration on Human Rights contains no specific reference to the environment as such, a high-quality environment is coming to be regarded as prerequisite for enjoyment of some of the most fundamental human rights. The protection of the right to water and sanitation raises several challenges, especially when it comes to claiming protection of these fundamental human rights. International law is shaping the protection of these rights mainly through quasi-judicial bodies or judicial bodies providing indirect protection of these rights through other more recognized human rights. According to the United Nations (which has recognized right to water and sanitation as human rights in Resolution A/64/L.63/Rev.1) around 1.2 billion people live in areas of water scarcity, and another 1.6 billion people face economic water shortages. In this context, access to water and safe sanitation has recently emerged as a human right recognized at the universal level. The article will deal with the recognition of access to water and sanitation as a human right in various international legal instruments offering a comparative perspective from the practice in the field of the United Nations.

Keywords: human rights, right to water, right to sanitation, United Nations, resolution

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EUROPEAN UNION, BORDER EXTERNALISATION AND HUMAN RIGHTS: ENFORCING THE DUTY TO PROTECT LIFE IN THE MEDITERRANEAN SEA

ABSTRACT

The duty of due diligence, in the human rights context, imposes an obligation on States to take whatever measures are necessary to prevent the commission of human rights violations. This requires that the risk of a violation is reasonably foreseeable and that States are in a position to act to prevent it. In the EU migration context, the European policy is shaping a new European model of border externalisation that shifts responsibility for migration management to third countries through cooperation. However, in countries such as Tunisia and Libya, the conditions in which migrants and refugees live and the treatment they receive are increasingly problematic. This new model of externalisation therefore poses important challenges when it comes to determining the responsibility of European states in protecting the human rights of migrants and refugees who find themselves in a situation of vulnerability in these new areas of externalisation. Our main objective is to identify to what extent the elements of the duty of due diligence to protect the right to life in international law apply to European border externalisation practices with third countries, and how the legal consequences of human rights violations arising from this could be attributed to European States. This allows us to see how the new European border model is moving away from the minimum protection standards and promotion of human rights and European values.

Keywords: migration, border externalisation, European Union, due diligence, human rights

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REDRAWING THE BOUNDARIES BETWEEN “US” AND “THEM”: DOES CITIZENSHIP ENHANCE INTEGRATION OR INCREASE EXCLUSION?

ABSTRACT

Since the beginning of the 21st century, revocation of citizenship policies against undesirable citizens have returned to the political agenda of many Western countries with surprising rapidity. For these reasons, the analysis moves not merely from the criteria for the acquisition of nationality, but from the ways in which citizenship is involuntary lost, with a focus on the withdrawal of citizenship as a tool to fight the phenomenon of terrorism. Indeed, it seems interesting to examine the functioning of a revocation order, its impact, and its potential (un)justification in liberal societies, keeping in mind that a “punitive” sanction of this magnitude ultimately ends up eroding the essential core of the individual’s “right to have rights”. Through a comparative study of provisions on the revocation of nationality and the prevailing case-law developed in the United Kingdom and Italy, the aim is to answer a traditional question that is becoming increasingly pressing: up to what extent it is possible to guarantee the protection of individual’s fundamental rights in a context that considers security needs to be preponderant?

Keywords: *revocation of citizenship, national security, terrorism, human rights, exclusion*

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NAVIGATING POLITICS AT THE EDGE: SAFEGUARDING THE EU'S EXTERNAL BORDERS AMID IMMIGRATION DISCOURSE

ABSTRACT

This abstract investigates the nexus between the effective protection of the European Union's (EU) external policies and the increasingly politicized discourse surrounding immigration while taking France as a case study. The EU has sought to fortify its external borders to manage migration flows, mitigate security risks, and uphold Schengen Area principles. However, these efforts have been accompanied by political debates and polarization, as member states grapple with divergent interests, values, and approaches to immigration governance. This abstract examines the rise of the politicization of immigration and the new challenges facing the EU's border protection measures, considering factors such as rising nationalism, populism, and external pressures. Through a systematic review of relevant academic literature and policy documents, this paper aims to discern patterns and trends in EU immigration discourse over time. By critically examining the language and messaging used by past politicians, it seeks to elucidate the evolution of attitudes and policies towards immigration within the EU. This comparative analysis provides valuable insights into the underlying factors shaping contemporary immigration discourse and policy trajectories. Additionally, by drawing on historical perspectives, this paper aims to contextualize current debates and shed light on potential future developments in EU immigration governance.

Keywords: politicization, immigration, policies, France, borders

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CIVIL LIABILITY OF ARTIFICIAL INTELLIGENCE

ABSTRACT

In recent years, the use of Artificial intelligence (AI) has become increasingly common. We now rely on AI to perform tasks that were once the exclusive domain of humans. However, this widespread use of AI has created a pressing need to regulate its civil liability. Unlike traditional tools and machines, AI operates independently, which complicates matters when trying to determine liability in case of damages caused by it. Additionally, different AI applications have varying levels of independence and nature of work, making it challenging to develop a standard set of guidelines for determining civil liability. Furthermore, the emergence of new players, such as manufacturers, programmers, and AI developers, only adds to the complexity of the issue. It is, therefore, imperative that we establish a clear framework for determining civil liability in the context of AI to ensure the safety and protection of all stakeholders involved. In light of these challenges, the question of what the suitable legal basis for dealing with civil liability issues related to AI has become increasingly important. This article delves into this question, examining whether any of the current civil liability theories are applicable to AI and exploring the need to establish a special regime for civil liability related to AI. The article presents a comprehensive analysis of the legal, ethical, and practical considerations surrounding AI and civil liability and puts forward recommendations for policymakers and stakeholders on how to address this important issue.

Keywords: *AI liability, civil liability, AI programmers' liability, AI as decision-makers*

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REGULATORY RESPONSES TO DIGITAL FINANCIAL CRIMES: ANALYZING TRENDS IN POLICY AND LAW ENFORCEMENT

ABSTRACT

As the current era has been attributed to the exponential pace of digital advances, While the financial sector gets a complete makeover because of the added layers of anonymity and flexibility of the digital platforms, financial crimes are forthcoming and the sector, despite the many benefits, is almost as susceptible as it ever was. The study set to determine legal means of solving economic crimes in the digital era paying attention to European Union and international frameworks and practices. The fact under issue is the incidence of Money Laundering and terror financing group's activities. However, the most significant source of the issue that serves as the central object of the analysis is activities of the Money Laundering and terror financing groups. Research would be conducted with the major topic being the incidence of Money Laundering and terror financing group activities. This paper expects to provide a complete picture of the existing legal legislation of financial crime in the quantum space with the emphasis on the drawbacks of current and the enhancement of the legal and regulatory framework partly based on the analysis of some actual court cases. In conclusion, this study focuses on how these crimes evolve and manifest and the corresponding regulatory countermeasures. Analyzing qualitative data, such as policy papers, legal documents, and case studies, has been instrumental in understanding the characteristics of regulatory methods. The suggestions are based on the findings from this study and seek to provide guidance to policy makers, law enforcement agencies, and financial institutions.

Keywords: digital financial crimes, the EU, money laundering, terror financing, regulatory systems

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THE RISKS OF USING ARTIFICIAL INTELLIGENCE IN CYBERSECURITY

ABSTRACT

Artificial intelligence is revolutionizing the way value is created in enterprises, industries, communities, and society as a whole. Extensive research has shown its relevance in various aspects of the world, leading to its integration into different businesses and industries. The potential applications of AI are vast and diverse. In the realm of cybersecurity, AI has emerged as a crucial tool. With the increasing importance of cybersecurity in the technological industry, companies have recognized the need to incorporate information technology into their operations. This has necessitated the implementation of robust security measures to safeguard data and information. However, the growth of cybersecurity has also brought forth new challenges. The utilization of AI by cyber-attackers has posed significant risks, prompting researchers to delve into the implications of AI in cybersecurity measures. The research paper sheds light on these risks and explores the intricate relationship between AI and cybersecurity.

Keywords: cybersecurity, cyberattacks, artificial intelligence, cyber threats, vulnerabilities

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QUO VADIS TRANSATLANTIC PERSONAL DATA TRANSFERS?

ABSTRACT

The transatlantic transfer of personal data has been a contentious issue for almost a decade. When the CJEU invalidated the EC's adequacy decision in 2015, the need for a proper legal basis for processing personal data became apparent. After a quick review period, the EC adopted its second adequacy decision, Privacy Shield. Unfortunately, it faced the same fate as its predecessor when the CJEU invalidated the decision in 2020. Since then, companies relying on the transatlantic transfer of personal data as a business model have struggled to find a solid legal basis for such transfers. This situation seemed to be resolved in July 2023 when the EC adopted its third adequacy decision under the EU-US Data Privacy Framework. The aim of this paper is to examine the new adequacy decision and the accompanying US legal instruments from the perspective of the CJEU's two previous decisions on the issue. It claims that it is likely that the new Data Privacy Framework will also 'fall victim' to the privacy campaign of Maximilian Schrems (and NOYB), the person behind the initiative in the first two cases. The validity of the decision will likely revolve around the notion of the 'proportionality' of surveillance campaigns and the status of the Data Protection Review Court. It is worth noting that the General Court has so far rejected the suspension of the Framework as an interim measure, at the request of French MEP Philippe Latombe. However, the issue of transfer is far from closed.

Keywords: schrems, EU-US Data Privacy Framework, GDPR, NOYB, adequacy decision

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PROTECTION OF THE REPUTATION OF THE LEGAL ENTITIES IN TERMS OF HUMAN RIGHTS

ABSTRACT

Whether there is a right to reputation or not can no longer be a matter of question since the status of the right to reputation has been developing for decades from the context of the two articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR). However, the right to protection is not listed among the rights and freedoms in the ECHR, it is now organically included in particularly two articles. Having Article 8 and Article 10 suggesting that the right to reputation should be understood as human right, the European Court of Humans Rights (hereinafter: ECtHR) established the value of the right to reputation. Through the way, not only natural persons are included but legal entities are also given the right to reputation due to several judgements by the ECtHR. This paper focuses on essential steps of the way how the right to reputation has still been developing due to the cases the ECtHR.

Keywords: *right to reputation, legal entity, human rights*

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