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Asymmetric Federalism and Divided Societies: A Synthesis Between Accommodation and Integration?

Societies divided along ethnic, religious, linguistic, or cultural lines give rise to challenges of highly practical importance. In fact, the tensions between ethnocultural groups may result either in violence (permanent discrimination, civil conflict, ethnic cleansing, genocide) or in the absence of violence, have a corrosive effect on the political dynamics of the state, create a stalemate in political institutions or even constitutional crisis. As defined by McGarry, O'Leary and Simeon, the solutions proposed by academics to address these challenges revolve around two main approaches: integration and accommodation. The parameter to trace the distinction between the two is their attitude towards the durability of ethno-cultural differences: accommodationists believe that ethnocultural divisions are resilient and durable; integrationists reject the idea that ethnic differences should necessarily translate into political differences arguing for the possibility of a common identity. Choudhry notes that the constitutions of multinational states may include a mixture of integrationist and accommodationist elements, and an example of this mixture could be asymmetric federalism. The objective of this paper is to assess whether asymmetric federalism could provide an optimal synthesis of the two models of constitutional design for divided societies.

The paper is divided into three sections. The first section reviews the main literature on integration, accommodation, and asymmetric federalism. Furthermore, it provides an in-depth analysis of the integrationist and accommodationist features that characterise asymmetric federal systems. The second section combines the theoretical elements of the first section with their direct application to multinational states, through a comparative analysis of a series of case studies. The comparative approach enables a more complete understanding of the potential strengths and weaknesses of the different models of the constitutional design for divided societies. In the last section, the paper will draw the conclusions of the previous two parts, providing an answer to the research question.

Keywords: asymmetric federalism, divided societies, accommodation, integration

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The Recognition of *Kafala* in the Belgian Case Law: Alignment Between Private International Law and Migration Law?

A significant part of the European population resides in a country other than their country of origin. Migration of non-European Union citizens to the EU also leads to migration of the legal status and/or legal institutes which concern the migrant. These legal institutes do not always exist in the European legal systems. Three of such institutes are *kafala*, child marriage and polygamous marriage.

Each EU-Member State interprets these foreign legal instruments in its own way and transplants them in its own legal system. This transplantation is important for private international law purposes, as this determines matters such as succession, parentage, parental responsibility and maintenance. This transplantation is also important for migration law purposes, such as family reunification.

The recognition of an unknown legal institute in private international law can differ from the effects of the recognition in migration law. No harmonisation with regard to the recognition of unknown family relations has taken place at EU level so far. Private international law that regulates this recognition is largely made by the national legislator, as the institutes come from outside the EU. However, in the field of migration law, some harmonisation has taken place for the institutes from outside the EU since this field of law is determined both by the national legislators in the Member States and the EU legislator (e.g. Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and Directive 2003/86/EC of 22 September 2003 on the right to family reunification).

The existence of some harmonisation in migration law and the absence of harmonisation in private international law create tension. The two areas of law overlap but sometimes also collide. The research investigates the recognition of *kafala*, child marriage and polygamous marriage in three EU Member States: Belgium, Germany and the Netherlands. This presentation will focus on a particular part of the research, namely the recognition of *kafala* in the Belgian case law. It will be examined whether the recognition in migration law, or more precisely the recognition in the context of family reunification, is consistent with the recognition in private international law. Since family reunification is the most important form of migration in terms of numbers and in terms of impact on the receiving society, this form of migration will be central.

Keywords: EU law, private international law, recognition, *kafala*, Belgian case law

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Improving Chinese Sustainable Public Procurement (SPP): Principles, Regulations and Rewards

Public procurement is the acquisition of goods, works and services by the State and other public law authorities. Traditionally, public procurement focuses on economic interest and the most important principle is value for money. When governments purchase, they look for the lowest price as offered during a tendering procedure mimicking the working of competitive markets. However, some other costs of a product arise when the product is used and disposed of. If governments take those costs into consideration, the total product cost is not only the initial price. The product with the lowest purchasing price is not always the one with the lowest total cost, which means that the product with the lowest purchasing price is not always the best choice for a government to purchase.

Those extra costs can be seen as the externalities of the goods, works and services purchased. Sustainable public procurement aims at bringing environmental and societal externalities into the purchasing strategies through the use of product life cycle cost (LCC) methodologies, thus including externalities within the value for money principle. Hence, SPP is not only concerned about purely economic interests, but also works as a policy tool to generate environmental and societal benefits and to promote sustainable development. Moreover, the SPP is a part of the United Nations' policies adopted within the 2030 Agenda of Sustainable Development Goals (SDGs). Many countries and international institutions in the world have policies and rules on SPP, as well as advanced tools such as labels and LCC.

China started to build its public procurement system in the late 1990s, but it does not have unified legislation specifics on the SPP so far. Even though, China has moved to implement the SPP, it already made sustainable award standards such as environmental checklist and energy saving checklist. However, the legislation of the Chinese public procurement has not taken the most advanced theories of LCC into consideration, which can quantify the environmental and societal externalities of the products.

China is the second largest economy in the world, and its carbon emissions are among the highest in the world. The improvement of China's sustainable public procurement can greatly promote the realisation of the global sustainable development goals. In this paper, firstly, the Chinese SPP regulatory framework is provided to give a broad perspective; the use of SPP to eradicate poverty in China is also considered. Furthermore, the paper discusses the principle of value for money in general, and it compares it with the Chinese public procurement principles. Next, China's specific SPP awarding standards will be analysed and compared with those in other counties and institutions globally. Lastly, the current situation regarding supervision in the Chinese SPP is examined. This paper is intended to contribute to a further understanding of the Chinese SPP regulations and practices, making it useful for the policy makers and public purchasers to aim at improving China's SPP, as well as for the enterprises globally that are interested in the Chinese SPP competitive market.

Keywords: Chinese law, public procurement, Sustainable Public Procurement

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State Liability for Damage Caused by Courts

State liability for damage caused by courts is a legal concept which, at the beginning of its development, did not receive wide acceptance within various legal systems. Due to the principle of judicial independence, i.e. the legal viewpoint that judges should not bear any liability for their judicial decisions, the idea of state liability for damage caused by such decisions to parties and third persons was not immediately well received by various legislators and courts. The outstanding contrast between private persons' rights to damage compensation and different principles aimed at protection of the judiciary from liability, such as the *res judicata* principle or the possibility to appeal a judgement, often results in a very small percentage of successful cases brought against the state for damage caused by a faulty judicial decision.

The current Croatian legal framework and case-law pertaining to state liability for damage caused by courts is the focal point of the research. In Croatia, the subject legal concept is generally regulated by merely a few provisions of the Courts Act which recognise the right of a party to bring an action against the state for damage caused by a judicial decision, as well as provide for special conditions that must be met before bringing such an action. Nevertheless, the number of decisions by which compensation is indeed awarded to the party for such damage remains extremely small, and the research aims to discover the reasons why the Croatian courts interpret the existing legal framework in a restrictive manner.

Due to the supremacy of European Union law to national legal systems of the EU Member States, the research also focuses on the part of EU law that regulates the liability of Member States for damage caused by national courts within decisions which are contrary to EU law. Several key judgements of the Court of Justice of the European Union which recognised such liability in cases where the breach is committed by a national court of last instance are analysed. Furthermore, since different countries around the world adopt different approaches to the problem of state liability for damage caused by courts, the laws of the United Kingdom, the United States, France, Italy and Greece are also comparatively examined.

The research puts forward a main hypothesis according to which it is extremely difficult for injured persons to obtain compensation for damage caused by courts, even though the legal concept of state liability for such damage is recognised in the current Croatian legislature and case law. In relation to the primary hypothesis, a second hypothesis is that the conditions for such liability are interpreted too restrictively by the Croatian courts and that it is possible for their interpretation to be extended in order to achieve a more righteous balance of the positions of parties in damage compensation proceedings.

Keywords: state liability, damage caused by courts, Croatian law

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Civil Liability for Artificial Intelligence

Artificial intelligence and smart autonomous robots are not a science fiction anymore; they are around us, in our homes, schools and offices, on the Internet. We interact with them without even being aware of it. As robots and intangible autonomous systems increasingly interact with humans, things with them can go wrong. AI is a great challenge to existing liability rules, its autonomy and unpredictability (even for their manufacturers) can cause difficulty in attributing liability for its actions. Therefore, I examine the legal basis for extra-contractual liability of producers, users, keepers and operators for wrongs committed by autonomous systems. First of all, I provide a definition of artificial intelligence and robots and their basic characteristics. Next, I examine if the product liability rules, the strict liability rules and fault-based liability rules, are applicable in cases where damage is caused by artificial intelligence, analysing the individual elements of each type of liability (such as damage, wrongfulness and fault, causal link, and etc). Furthermore, I examine whether we need to improve the existing rules of liability, or we need completely new liability concepts for artificial intelligence. I pay particular attention to the provisions of the Product Liability Directive and European Parliament Resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics, but also Croatian, German and French liability rules that can be applied in such cases.

On 16 February 2017, the European Parliament adopted a Resolution on Civil Law Rules on Robotics with recommendations to the Commission. It proposed a whole range of legislative and non-legislative initiatives in the field of robotics and AI. In particular, it asked the Commission to submit a proposal for a legislative instrument providing civil law rules on the liability of robots and AI. One of the most interesting parts of the Resolution is one in which the European Parliament calls on the European Commission to consider developing a legal status for electronic persons, so that autonomous robots can be liable for their own actions. Finally, I analyse whether the “intelligent” robots should be given a special kind of legal personality (e-personality) and its meaning. This refers to questions such as whether they should have their own legal rights and duties, including own a property, enter into contracts, and have legal standing before the courts.

Technological improvements have often led to major changes in the concepts of tort law, and time will tell in which direction the rules on liability for damage from artificial intelligence will develop.

Keywords: civil liability, tort law, artificial intelligence, the Product Liability Directive

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Smart Contract: Discipline, Critical Issues and Practical Implications

The use of digital technologies in the conclusion and execution of contractual agreements has now been established (vending machines or ATMs as examples). The advent of the *blockchain* phenomenon has made it possible to entrust artificial intelligence with the task of making choices regarding the actions to be performed. This is what happens in *smart contracts*, where the entire relationship and performance are managed by an algorithm capable of adapting the negotiation regulation to the contingent needs that occur. In other words, a *smart contract* is the "transposition into code" of any economic operation between two or more parties, which makes it possible to automatically verify the fulfilment of certain conditions and to self-execute actions when they are carried out, without either party affecting the operation. This paper attempts to investigate the legal nature of *smart contracts* through the application of the principles and values of the current legal system, in order to identify the most appropriate applicable framework in the interests of the parties and in accordance with the constitutional public order. We need a technical and flexible framework that takes the specific case into consideration and is capable of adapting to the parties involved, because too rigid of a framework would be inadequate to shape the rapid changes that technological development brings about in human relationships.

Moving on from the state of the art of national and transnational legal framework, I will analyse the potential and critical issues arising from the application of these new tools to legal relations, especially for the protection of the so-called weak contractor. On the one hand, private interest is growing in this new technology capable of ensuring the certainty of transactions in an even greater manner than traditional certification and execution systems, eliminating the risk of non-compliance, as the information is encrypted, permanent, traceable and self-executing. However, there are still doubts about the residual nature of the interpretation, the comprehensibility of the digital language and the rigidity of the code, which can lead to the immutability of the instructions given, the impossibility of correcting the negotiating content, the difficulties in identifying a responsible party in case of the algorithm malfunction, and the possible circumvention of mandatory rules.

Nowadays, in fact, the *smart contract* technology could be used beyond the field of *bitcoin*, in a variety of fields ranging from car sharing to the mapping of cultural and artistic heritage, from the *smart construction contract* to *smart love*. The need to identify which discipline to adopt implies a fundamental choice between the option to consider smart contracts as an advanced technological tool, but also as a means for carrying out the activity that must be traced back to the person who benefits from it and responds to it, and the sci-fi scenario to enhance the ability of smart contracts to make choices and therefore to be attributable to the activity performed.

What Asimov had imagined is being fulfilled and therefore we may consider that the three laws of robotics (First law: A robot may not injure a human being or, through inaction, allow a human being to come to harm. Second law: A robot must obey the orders given it by human beings except where such orders would conflict with the First law. Third law: A robot must protect its own existence as long as such protection does not conflict with the First or Second laws.), developed by him in 1942, can play the role of fundamental law in reference to the activities carried out with the use of increasingly automated machines. Or can we still say that Aristole's *summa divisio* distinguishes the tools available to man to administer his assets in "inanimate tools" and "animated tools", or servants, and classify smart contracts among the first applies?

Keywords: smart contract, legal nature, legal regulation

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Cross-Border Parental Child Abduction

The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter: Child Abduction Convention), supplemented between the European Union Member States by the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (hereinafter: Brussels II *bis* Regulation), has the objective to secure the prompt return of a child, who was unilaterally removed across the border by one parent, back into his or her habitual environment. This mechanism corresponds to a specific idea of what constitutes the best interests of the child. The abducted child should be returned promptly to his or her country of origin, where the courts are best positioned to determine the child's best interest and issue a judgement on the substance of the dispute. The removal of the child can only be exceptionally justified by objective reasons related to child's person or to the environment.

The Implementation of the Child Abduction Convention Act (hereinafter: Implementation Act) came into force in Croatia in 2019 and had introduced more stringent and specialised rules of procedure to be applied in cross-border child abductions. The Implementation Act was preceded by several ECtHR rulings that had pointed out the insufficiency of the child abduction regime in Croatia. The analyses of the Croatian court practise issued prior to the Implementation Act had confirmed the inconsistency with international and EU legislation and standards of good practice. This analysis indicated the large trend of return request refusals, from which most were based on the existence of the grave risk.

This research includes the statistical and descriptive analyses of the Croatian court practice issued in a 2-year period following the issuance of the Implementation Act. The data will be gathered and statistically processed. The reasoning of each decision will be examined and described in order to make the objective and systematic analysis of the selected aspects of the child abduction proceedings (duration of proceedings, concentration of jurisdiction, specialisation of judges, hearing of a child, grave risk of harm exception, preliminary measures and undertakings). The analyses of these aspects will be given by placing the national practice into the context of the procedural standards, landmark writings, practice of the Court of Justice of the European Union and the European Court of Human Rights in relation to the Brussels II *bis* Regulation and the Child Abduction Convention Act, and operational document issued by the HCCH and European Commission. The emphasis will be placed on the court practice issues after the Implementation Act in order to examine whether and to what extend the Implementation Act had enhanced the child abduction proceedings in Croatia in comparison to the earlier practices. In addition, the remaining gaps will be identified where there is room for improvement.

Key words: child abduction, the best interest of a child, grave risk, the Child Abduction Convention, the Brussels II *bis* Regulation, the Brussels II *bis* Regulation Recast, implementation legislation

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Principle of Non-Discrimination Within the European Union on Grounds of Nationality and Tax Implications

The research that is carried out concerns the principle of non-discrimination based on nationality in the European legal area, paying special attention to the framework in which it fits, namely the European Union economic constitution and the tension between market needs, fundamental rights and freedoms and demands for social justice. Anti-discrimination law is an inescapable theme of modern society – discrimination is its most visible by-product: social marginalisation. It adds elements, principles, institutes and perspectives for the understanding of the legal content of the principle of equality and its dimensions. It turns its attention to discrimination phenomena, its modalities and categories, as well as its mains main challenges and issues. In this way, anti-discrimination law provides Constitutional Law – with repercussions in all branches of the legal system – with categories and instruments of normative force of the Constitution, concretising and developing potentialities and effects relevant to the current understanding of the legal principle of equality, aimed in democratic societies at combating discrimination.

The principle of non-discrimination reflects the rejection of any protectionist policy that represents the first obstacle, not only to the establishment of a common market, but more broadly to the achievement of any form of free trade. At European level, this is expressly regulated in article 2 of the Treaty of the European Union. The prohibition of discrimination also covers forms of indirect discrimination in which the use of other distinguishing criteria, such as a worker's place of origin or residence, depending on the circumstances, produces effects equivalent to discrimination on grounds of nationality.

The prohibition of discrimination on grounds of nationality in EU law is formulated in terms of an absolute prohibition in Articles 18 and 45 of the Treaty on the functioning of the European Union. However, this rigidity is moderate in the area of free movement, with the provision of a limited and exhaustive number of exceptions. In particular, as regards the free movement of persons (i.e. the free movement of workers and freedom of establishment), the states may adopt measures providing special treatment for foreigners on grounds of public policy, public security and public health. As is well known, EU law provides the abolition of all forms of discrimination based on nationality, providing equal treatment between nationals of the Member States as regards employment, remuneration, tax and social security benefits and access to education.

Therefore, the research focuses initially on the reconstruction of the state of the art of discrimination studies, as well as the analysis of community legislation and jurisprudence, historical evolution, analysis of the most relevant theoretical studies dedicated to the theme of non-discrimination, paying special attention to the existing links between the principle of non-discrimination and the principle of equality, as well as the principle of proportionality (which serves as an instrument of verification and effectiveness of so-called positive actions). In a successive step, the functioning of this principle will be investigated in the tax field, in order to understand whether a discriminatory treatment based on nationality is configurable in tax matters.

Key words: discrimination based on nationality, non-discrimination legislation, EU law, tax law

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An Example of Judicial Self-Assertion: The International Court of Justice and Non-Reviewability Claims

The International Court of Justice (hereinafter: ICJ) is the principal judicial organ of the United Nations. However, arguably, it has not lived up to the high aspirations that came along with this denomination and that have accompanied it since its founding. The fact that a large part of the States prefers to settle their disputes elsewhere, often in political fora, casts further doubt about the ICJ's role.

In the remaining cases that reach the ICJ, the States furthermore often assert that it ought to abstain from reviewing their behaviour. Inter alia, they purport to show that the ICJ would lack the requisite jurisdiction, or that the dispute would not be admissible, so that "even if the Court has jurisdiction, […] there are reasons why [it] should not proceed to an examination of the merits" (ICJ, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Merits, Judgment, ICJ Rep. 2003, 161, para. 29). Such reasons could be for instance the applicant's lack of standing, the failure to exhaust local remedies, or the absence of a necessary third party in the proceedings.

The focus of this paper lies on yet another assertion through which the States try to convince the ICJ that it may not review their behaviour: the non-reviewability claim. When advancing that a measure before the ICJ is non-reviewable, the States argue that the measure *per se* would not be amenable to judicial review. Thus, through this assertion, the States directly question the role the ICJ can and should legitimately play in the conduct of international relations among the States. They challenge the idea of a "strong" ICJ, and instead advocate for a far more limited role for the ICJ, where disputes involving their core interests are settled not in this judicial forum, but elsewhere. At the same time, these assertions give the ICJ the opportunity to pronounce upon this vision, and potentially to assert itself.

This empirical study analyses whether the ICJ has seised these opportunities to dispel doubts about its role. Comprising both a quantitative and a qualitative dimension, it includes all instances where the States have asserted that a question would be non-reviewable. The comprehensive nature of this study allows to conclude that in the face of non-reviewability claims, the ICJ has systematically asserted itself. Thereby, this study furnishes a further mosaic stone in the academic discussion about the ICJ's role, its self-perceived role in the international community, and the usefulness and limitations of international law as a regulator for the State's behaviour in general.

Keywords: International Court of Justice, disputes among States, non-reviewability claim

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Objectives of Competition Law Within Privacy Concern Inquiries: Should We Seek Instrumentalisation of Competition Law?

The recent debate on intersection of competition law and privacy, followed by the rise of Big Data, constitutes a major challenge for the existing competition legal framework. Arguably, the breaches of privacy and data protection law might affect the welfare of individuals, as well as influence the democratic processes. The unprecedented magnitude of data collection could raise challenges for both society and legislation, as it has emerged that personal data is seen as a tradable commodity placing companies in a position where the data help them to achieve a stronger position in a market. In this respect, it is important to consider the impact of privacy on competition law, which appears to be multidimensional.

The aspects of personal data protection have had numerous impacts on the framework of competition law — from the anticompetitive agreements to abuse of dominance or merger control. Yet, the privacy concerns do not immediately result in anticompetitive conducts. To certain extent the acquisition of data could create competition law infringement, data violation might also harm consumers as they are objected to unfair trading practices, competition and upset innovation processes. The European Commission's practice might be analysed through three different phases: ignorance of data, identification of parallel pathways between competition law and data protection, and the third phrase recognised by the Member State practice — recognition of data in the competition sphere.

Yet, one might encounter a paradoxical relationship, as the EU competition law aims at both achieving a well-functioning, competitive market, as well as preventing consumer harm. This is, thus, unclear to determine what the potential stance for competition law could be. It is difficult to engage in an analysis of the consumer's long-term interest for dynamic efficiencies. Furthermore, privacy and data protection are recognised in the European Charter of Fundamental Rights as fundamental human rights, and data protection law — GDPR. Consideration of privacy-oriented goals could indicate a shift from consideration of the price parameters to the external goals. According to the EU data protection, the growing economic significance of data requires adoption of a new concept of consumer harm, taking on an evolutionary interpretation of the current competition enforcement, especially the abuse of market dominance concept.

Nevertheless, by incorporating the principles of other regimes into competition law, the competition analysis might become inundated with different methodologies, potentially displaying difficulties in establishing anticompetitive behaviour.

By examining the public enforcements, the technical problems are identified in this paper: (1) lack of transparency in the administrative enforcers' decisions and decision-making progress; (2) it is unclear as to whether with the Member State case law on incorporation of the data protection to the competitive framework, the EU competition law could move from its holistic approach to an approach which accounts external objectives; (3) in which ways should privacy concerns serve as an element of the competition assessment; (4) issues relating to non-price competition.

Keywords: EU law, competition law, privacy, data protection, non-price competition

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Conflict and Democracy in Interadministrative Relations Among the Levels of Government

The aim of the research is to identify the current legal approaches in the states of Ibero-America to organise the interadministrative relations among national executive authorities and local governments. For this purpose, the legal-administrative approaches on coordination and cooperation are grasped to identify the different ways to work out a conflict when a functional concurrency occurs. Many sensitive social issues rely on the interadministrative relations among the national executive authorities and the local governments, such as environmental damage, the distribution of public resources, inequalities between territories, the rights of indigenous people, the expansion of urbanisation, the location of mining projects, etc. Due to the social complexity of these issues, they are an object of a political debate in interadministrative relations and it is natural (and essential to democratic values) that different narratives emerge in favour of different positions.

Power is a problematic element in national-territorial relations when territorially decentralised entities have constitutionally recognised autonomy and their political authorities are democratically elected. This democratic and decentralised configuration of power is a common formula in modern democracies that empowers political tensions to arise between the local and the national political leaders. It is therefore important to have reasonable parameters to assess the kind of law that guides and controls power in those interadministrative relations.

The rules and principles that govern power among public institutions are part of the basic construction of a democratic rule of law. Informality (the absence of legal frameworks to guide and control the conduct of public administration) allows misuse of power and infringement of constitutional values, rights and freedoms. Therefore, the stability of the rule of law and the democratic institutions within a country depend to some extent on the legal framework of the interadministrative relations. The specific procedures that enable these relations will ultimately account for the rationality of public decisions on environmental, territorial and planning issues.

It is convenient to develop governance in interadministrative relations rather than chaos or indulgence in the face of power abuse. Trust and endurance are basic conditions to improve deliberation in interadministrative relations, which may strengthen democracy throughout society. The interadministrative relations, from deliberative democracy's point of view, must allow scenarios of dialogue and mutual understanding to reach convenient or acceptable agreements for the entities intervening in the relations. However, the executive branch of public power must develop and enforce regulations and public policies; in order to do so, effective decisions should be ensured within deadlines given by the social context. Therefore, democracy in interadministrative relations must be a subject to criteria of reasonableness through procedures in order to make effective decisions regarding enforcement of public programs and projects.

After analysing various Ibero-American legal sources, it can be argued that the interadministrative relations are mainly guided by the principle of coordination (among others), which in many legal systems is a "guarantee of harmony in the exercise of functions". In these cases (Colombia, México) the main role is given to cooperativism, appealing exclusively to consensus and harmony. On other occasions, coordination is a principle and also a specific form of relation, which authorises directive power by national executive authorities to be exercised over territorially decentralised entities. The directive power may consist in *a priori* administrative control of a national executive authority that can be applied immediately without previous consultation or deliberation (Costa Rica). In other cases, directive power is a subsidiary mechanism to cooperative relationships, that is, it has *a posteriori* features since it can be applied only when a consensus is not reached (Spain).

Keywords: democracy, rule of law, governance principles, relations among the government levels

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Proactive Law Theory: A Path Towards CISG in the 21st Century

The UN Convention on Contracts for the International Sale of Goods (hereinafter: CISG) was created with the belief that the adoption of uniform rules, which govern contracts for the international sale of goods and take into account the different social, economic and legal systems, would contribute to the removal of the legal barriers and promote the development within the international trade. It was a part of the UN's broader endeavour towards a new economic order based on equity, sovereign equality, interdependence, common interest and cooperation among all the States (as declared in the 1974 Declaration on the Establishment of the New International Economic Order). Whether and to what extent the CISG achieved its goals is still open to debate, and it depends on the indicators of success.

By the number of the signatory States, including the recent accession of Portugal as the 94th Contracting Party, it is evident that the CISG is a success. The view is different from the perspective of the parties engaged in the international trade. Not only that their world is rapidly changing with the impact of new technologies, growing need to reflect Sustainable Development Goals in their business operations, but also there is evidence suggesting that they are keener to opt-out of the CISG than to apply to it. Similarly, the risks of homeward trends have endangered the uniform interpretation and application of the CISG.

A path forward that the CISG academic community has not considered extensively could be in the proactive law theory. The theory focuses on how the law is used and operates in everyday life and how it is received in the community it seeks to regulate. In the context of the CISG, the aspects worth considering are CISG's proactive interpretations by the national courts and proactive application by the parties through contracting processes.

The paper thus focuses on three main aspects. It first outlines concepts of proactive law theory as a standalone theory and in the context of CISG. The outcome should demonstrate that the proactive theory can and should be considered in the interpretation and application of the Convention. Secondly, it examines if the principles that influence international trade, notably the UN Sustainable Development Goals (SDGs), stand the test under Article 7(1) of the CISG and therefore, can be the basis for a proactive interpretation of the Convention. The analysis should demonstrate that the courts can engage in the proactive interpretation of the CISG, mainly as the SDGs reflect some of the same values that the Declaration on the Establishment of the New International Economic Order did when the Convention was negotiated. Thirdly, it focuses on the private parties and considers if, instead of opting out of its application, they can use the Convention as a tool to design their contracts proactively. The analysis will outline the number of opportunities for the CISG's proactive interpretation through the exercise of party autonomy (Article 6 of the CISG).

Keywords: international sale of goods, CISG, proactive interpretation, party autonomy

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A Path Towards an Overarching Legal Framework for the Human Enhancement Technology

Over the past years, we have been witnessing the rapid development of new technologies advancing human abilities and improving individual human performance through, for instance, "smart" glasses, "smart" drugs, artificial intelligence-enhanced prosthetic limbs, or magnetic fingertips. The benefits of these new technologies are numerous, and at the same time, their potentially disruptive nature challenges several ethical principles and legal norms. There are two parallel debates ongoing in academia and political arenas. The one concerns the *ethics* of developing as well as deploying the human enhancement technology (HET), and the other deals with the applicability of one specific *legal field* at the time to HET, e.g. human rights law, privacy law, etc.

This presentation builds upon the ongoing doctoral research whose central research question is: How should the European Union lawmaker address the ethical and legal challenges that a specific type of human enhancement – the mood enhancement technology (MET) – brings along with its introduction into society? Within the discussion on creating a new law or adapting an old one, the definition of human enhancement has to be developed first. This is followed by an analysis of the often-occurring arguments in the societal debate on human enhancement. In that regard, rhetorical, ideological, as well as relatively uncontroversial ethical issues (i.e., safety, security, trust, autonomy, etc.) are distinguished. The analysis then turns towards the traditional fields of law that should be considered relevant for regulation of human enhancement. The focus of the latter part is not only placed on one field of the law. On the contrary, the aim is to show how already the existing EU and international legislation could mitigate the potential risks of the technology at stake. Certainly, where doing so is not feasible, possible solutions will be proposed. The presentation is concluded by stressing the reasons why, after all, it makes sense to at least draw the chalk lines or lay down the first step-stones for a special complete regulatory framework for the HET.

Keywords: human enhancement technology, EU law, international law

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Commitments with an International Element During the COVID-19 Pandemic

The coronavirus pandemic has had a significant impact on almost every area of human life, the law being no exception. Supplier-customer relations have been particularly affected, whereas the most problematic were international relations, as they have been complicated by a number of public measures to prevent the spread of the virus, such as increased hygiene requirements and current restrictions at national borders. These restrictions could be reflected for example in the timeliness of performance. The supplier thus often found himself in a situation where the fulfilment of the contractual relationship was considerably complicated, endangered or completely prevented, and the supplier was thus threatened with sanctions for breach of the obligation. The situation was also complicated by the fact that the beginnings of the pandemic were not always accompanied by fully coordinated measures, which were announced unexpectedly and without a unifying view of the European Union. The parties to the commitment with an international element were thus forced to monitor not only the situation in their countries and the country of the supplier or customer, but also, in the case of the road transport in particular, the measures of all transit states.

From the point of view of the legal assessment of contracts concluded between foreign entities, it will be absolutely essential to determine the applicable law to the given contractual relationship. In the presented article, the authors will focus mainly on the concept of *force majeure* in the Czech and French legal systems and the practical consequences they will have for the parties of the commitment. The authors will also focus on the EU law, as the article will also include a definition of force majeure according to the Court of Justice of the European Union and an analysis of the United Nations Convention on Contracts for the International Sale of Goods, whose contracting states are both states - the Czech Republic and the French Republic.

The article is intended as a response to issues arising in the situations where the parties have not agreed on a special provision on *force majeure*, so they must rely on legal regulation. Fundamental attention is dedicated to differences in the position of individual parties, if the contract is viewed from the perspective of the Czech law *versus* French law. The aim of the paper is to look at the COVID-19 pandemic from the perspective of the parties to international trade commitments and in this context to capture the specifics of the Czech and French legislation.

Keywords: contracts, cross-border element, restrictive regulation, COVID-19 pandemic

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Innovation in the Way Mediators and in Particular Family Mediators are Trained in England and Wales

Mediation is a form of intervention in which a third party – the mediator – assists the parties to a dispute to negotiate over the issues which divide them. The mediator has no stake in the dispute, and is not identified with any of the competing interests involved. In every mediation, the interests and needs of the parties will be the focus of the mediator and the participants. Mediators and in particular family mediators need to be robustly trained in order to correctly design, configure and supervise the building up of a new type of relationship between the parties. This new relationship will be based on communication, children's interests, solutions and understanding of each other's viewpoints and emotions.

In England and Wales, the content of family mediation training must be authorised by the Family Mediation Council (FMC). To become a family mediator, one has to attend family mediation training provided by a trainer approved by the FMC. Mediators who complete their training must then satisfy the FMC's annual requirements which include a specified level of supervision/consultancy and continuing training, leading to evidence-based assessment of competence to gain national accreditation with the FMC.

The purpose and goal of this paper is to consider how it is possible to improve the current mediation training in England and Wales. A significant recommendation made in this paper concerns the duration and method of delivery of the family mediation training. The current training only lasts two weeks and does not give sufficient time for family mediators to perhaps fully absorb the key skills and understandings surrounding their work. Therefore, the suggestion made in this paper is that the training should last one year and should be awarded upon successful completion of all classroom and online course requirements (blended learning approach to teaching). This paper also considers whether the program electives should allow trainees to concentrate on specific modules and expand their learning in a wide range of areas related to working with families in conflict. It is recommended that each module should assess trainees either through a Multiple-Choice Test (MCT), a viva, a role play, a reflective journal, a coursework or a written assessment. Currently, becoming a family mediator in England and Wales is perceived as a bolt on for people with an existing career, whereas it should be considered as a dedicated and specialist profession. This means that a career as a family mediator would be possible for a person who has just graduated. Thus, the aim of this paper is to present a new model of family mediation training that aims to be more rigorous and improve the calibre of the trainees.

Keywords: family law, mediation, training, England and Wales

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The Principle of Sovereignty and its Role in International Civil Procedure

The author argues that the system of the international conventions as well the national law in the field of international civil procedure rests on the principle of sovereignty, i.e. the necessity of the State to protect its monopoly in the sphere of adjudication and doing justice.

Historically, the principle of sovereignty was based on the premise that only the State holds the exclusive right to legally employ coercion over the persons within its borders. Consequently, any act of the foreign state in the field of international civil procedure involving coercion or any other use of state power required the consent of the other state where the relevant act was to be performed. For instance, in the 19th century, service of process in the European countries was executed through bailiffs (*huissiers de justice*) authorised to apply coercion in case the party refused to accept the court documents voluntarily. Due to the said approach, service of process out of jurisdiction was considered to be an encroachment of sovereignty of the State, thus there was a need for international convention which would set out the uniform rules for service of process abroad (the 1896 Hague Convention, now ultimately replaced by the 1965 Hague Convention).

The same principle for protection of state sovereignty applies to the activity of consuls in the sphere of international civil procedure. For instance, Article 8 of the 1965 Hague Convention provides that each Contracting State may affect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents. The same approach is followed by Article 15 of the 1970 Hague Convention which sets out that a diplomatic officer or consular agent may take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

The most vivid example of application of principle of sovereignty is the regulation of recognition and *enforcement* of foreign judgments. As enforcement of the foreign judgment requires application of state force it was believed that it could not take place without the authorisation of the state where the assets of the debtor were located in the form of exequatur. On the contrary, extension of the *res judicata* effect of foreign judgment does not require application of State force and therefore in the view of the doctrine from the period of 19th-20th century there was no need for exequatur for recognition of foreign judgment. The said approach was implemented in the German Civil Procedure Code 1877 (Article 328 – recognition and Article 723 – enforcement) and in the countries in which the legal system is based on the German Civil Procedure Code, such as Greece or Japan.

Upon analysis of the doctrine and case law, the author concludes that the principle of sovereignty generally rests on the out-dated concept of protection of the State's monopoly in the field of coercion. Nowadays, the application of the said principle creates hurdles in the interaction between the courts resolving cross-border disputes. One of the most evident obstacles is reservation made by several states to Art. 10 Hague convention under which the state may decline service of process by mail and by other means set out in this article. Therefore, the reconsideration of the principle of sovereignty in the field of international civil procedure may greatly enhance cooperation between the courts.

Keywords: State sovereignty, international civil procedure, foreign judgments, enforcement

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Non-Standard Forms of Employment and Precariousness

Progressive transformation of work should, despite further organisational flexibility, include investment in employees' well-being as priority of business reorganisation gaining motivated and productive workforce that will ultimately lead to sustainable competitiveness and long-term reputation of enterprise on the labour market. However, in the context of Post-Fordist economy policy discussions are revolving around the compromise between flexibility and security. It appears the options are divided about the concept of flexicurity that presents, on one side, key to optimise new social risks and, on the other, policy instrument that is to date resulting in the precarisation of atypical employment working relations.

Statistics show that almost 90% of the Croatian newly employed have fixed-term contracts which raises the following question: are government-sponsored measures to boost employment efficient? A further problematic trend observed in most EU Member States is the prevalence of short-term temporary contracts. In Croatia, this issue deserves special attention considering the high incidence of casual short-term contracts making the Croatia labour market the European Union record holder in precarious employment relationships. These indicators open the gap between the so-called insiders and outsiders caused by the significant use of atypical forms of employment. In the long-term perspective, this workforce division and all-or-nothing approach leaves temporary workers outside the protection scope leading to further segmentation of the labour market and financial, social and psychological repercussions for workers. This part of research focuses on the question of the extent to which the legislator should extend labour law protection and the criteria to be taken into account when determining the limits.

The present economic crisis and orientation to internal labour market requires a "refreshment" of the Croatian labour legislation which is insisted upon by employers' organisations calling for a relaxation of the rigid and complicated legislation, especially in regard to the institute of remote work as the currently dominant flex-work model. Croatian labour market is not an isolated case and its labour legislation will require the implementation of a number of atypical contractual forms of work, the use of which has been routine for many years at the international and EU level. Unions are rightfully pointing out the absence of labour regulations including minimal working conditions of these forms of employments that are in practice inadequately. However, this is by no means a closed list of non-standard work. Aside from the so-called "classic" atypical forms of employment, the research analyses the extent to which new labour arrangements are used in practice and questions the contestable argument of automatisation of atypical work as precarious.

The European policymaker has not yet defined precarious working conditions leaving them open for interpretation, thus disabling legislators to combat precarious work without specification on the EU level. The approach endorsing diversity of atypical forms of employment and combating precarious working conditions was recently adopted by the Direction 1152/2019 on transparent and predictable working conditions in the EU ensuring millions of people engaged in atypical work more secure working contracts considering extended list of forms of employment that fall within the scope of the Directive *ratione materiae.* Will this instrument *per se* be sufficient to tackle the lack of security at precariat level as ever-expanding labour force with bad credit of protection and to counter precariousness, in-work poverty, social exclusion and inequality in the EU is yet to be investigated using a comparative method in the research of various labour law provisions.

The research focuses on the proliferation of new forms of employment and their movement towards the risk of precariousness under the influence of competitive labour market logic. With special reference to the Croatian labour legislation research provides *de lege ferenda* suggestions which are country-specific and depend on comprehensive legal rules of a particular legal system controlling terms and conditions of employment specified in the contract. Therefore, the following challenges in form of a question set by some authors are justified: how to reach a balance between flexible and inclusive labour market with decent working conditions integrated in

new working arrangements and protect them from the abuse by including them under national regulation? Bearing in mind that the use of non-standard forms of employment in the future is permanent and irreversible we can conclude that there is a need to continue the academic discussion in the direction of shaping labour market and legal models of employment protection for persons performing gainful work inside or outside of employment relationships.

Keywords: labour law, EU law, Croatian law, non-standard employment, precarious employment

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Enhancing SME Access to Investment Arbitration Through Third-Party Funding

Small and medium size enterprises play a major role in national economies, thus having an important contribution to the global economy. In recent years, SMEs have increasingly been involved in international trade and investment. However, the international investment regime seems to be better suited for bigger and more powerful companies, as smaller companies appear to be more vulnerable in the face of the arbitrariness of receiving countries, which might result in disputes.

Investment arbitration, the preferred means of dispute settlement for the cases in which investors believe their investment has been put in peril or even made impossible through the actions of the State, represents a cumbersome procedure. The costs incurred by the parties of such disputes, starting with the costs of the procedure itself, but also lawyers' fees, can objectively be considered as being astronomical, thus constituting a heavy impediment for SMEs access to this means of dispute settlement.

Third-party funding (TPF) is a funding scheme through which the costs incurred by investors in investment arbitration proceedings are financed by third parties in exchange for a share of the award, usually set as a percentage. Thus, the financier becomes directly interested in the outcome of the dispute. This funding scheme has been around in the United States for some time, so it is not a wholly new concept. However, its crossing over into international investment arbitration has been the topic of debate in legal literature and more recently in the preparatory works of Working Group III of the UNCITRAL on Investor-State Dispute Settlement Reform. The earlier debates have been revolving around whether or not TPF should be allowed and what its effects could be on investment arbitration. Some have expressed their concerns regarding the possible proliferation of investment arbitration cases, once the profit motive enters the scene. My presentation will contain some of the arguments laid down regarding the possible effects of TPF. It has been established in this first round of debates that banning TPF is not really an option, as there are numerous ways in which investors can find funding and mask it, resulting in a second round of debate, which concerns its regulation. TPF can have numerous effects on investment arbitration procedures, especially regarding security for costs orders and ultimately costs paid. It has been stated in this regard that regulating TPF through transparency obligations would be the best option going forward. Nevertheless, it is still important to establish the level of transparency which should be asked for, to ensure full knowledge of the funding scheme, as well as the protection of some of the more sensitive clauses within the funding agreement. After presenting the most important arguments, conclusions are offered as to the direction in which the regulation of TPF should be headed.

Keywords: dispute resolution, investment arbitration, SME, third-party funding

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Shareholders' Right to Information

The right to information is an important component of company membership rights that enables a member to exercise his other membership, pecuniary or non-pecuniary, rights on the basis of truthful, complete and timely information. The right is intended to eliminate information asymmetry that stems from the fact that shareholders who are not the members of the board, i.e. managers, do not as a rule possess all information available to persons who conduct the company business. By virtue of the law, the right is protected as an individual right of every shareholder and it does not depend on the quantum of the member's capital participation. As any other right, it has its subjective and objective components: eligible persons and eligible contents, but also the manner in which it is exercised within the company or eventually (protected) at the court.

The time is right to undertake this research as the companies are more than ever exposed to various types of societal changes: the use of modern technologies is in rapid increase, corporate paradigm is changing, as well as management practices, such as *flat hierarchy* that promotes the principle of open communication and inclusiveness. The research intends, on the basis of the analysis of the state of art in comparative law and court practices, to detect segments of the improvement of the shareholder's information right in Croatian company law, while having in mind, the existing laws, court and corporate practices in joint stock companies and to propose new solutions in light of new scientific developments in the field. As a result, it is expected to propose possible new legislative solutions that could make it easier for shareholders to exercise the right in question, to encourage their activity, but - within legal boundaries. It is expected that novel legal solutions would direct the management bodies towards a more transparent legal rules, and would result in dispute minimisation.

Research is relevant for Croatian law in particular given the significant changes that are taking place in company law and corporate practice under the influence of new technologies and changes in the corporate paradigm and governance, as well stemming from harmonised laws of the EU. The research and analysis of foreign legal doctrine and the review of comparative solutions, as well as the specific characteristics systematisation of the right to information and the frequency and manner of exercising that right in the Croatian corporate practice, as well as in the case law, will enable finding the best *de lege ferenda* solutions shareholders' right to information in the Croatian law.

Keywords: EU law, Croatian law, company law, shareholder's rights, right to information

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Gender Inequality in the Italian Cultural Fabric and the *Talpis* Judgment

Gender inequality is such a delicate yet current topic that it forces us to reflect upon it. The word violence is juxtaposed with a noun, typically connected to the concept of security in the phrase "domestic violence" in the spatial dimension, where the current refers to the recent increase for help in the anti-violence centres during the COVID-19 period. According to the Italian Statistics Institute, the impact of COVID-19 is excessively negative because 25 women have already been killed by their partners.

The aim of the research therefore, is to analyse the society we live in on one hand, and on the other hand to, understand the behaviour and remedies adopted by the Italian State. The "Penelope complex" analysis, that is the cautious sedimentation of the feminine in our cultural fabric, must embrace everything, by doing and undoing the historical lacerations in the shroud considered patriotic tradition, together with the study of globalisation (where the market becomes a unit of measure for human relations) which alters not only the economy, but also sentiments.

Moving onto the study of freedom and the rights of the violated female body, one can see how the European Court of Human Rights has criticised the behaviour of the Italian Republic. In particular, the *Talpis* judgment has condemned Italy as it did not take immediate action, resulting in a situation of vulnerability, lack of protection and punishment: underestimating the gravity of the situation would therefore lead to an approval of such behaviour. The First Section of the ECtHR, in its judgment of 2017, has in fact agreed upon a compensation in favour of a Moldavian citizen resident in Italy, a victim of the repeated domestic violence caused by her spouse where the Italy failed to fulfil the right to protect her regardless of her complaints (even if reviewed by the prosecutor in the husband's favour) and her requests for help despite the first warning signs of danger. Already in its judgment of 1998, the ECtHR ruled against the UK in the *Osman* case where a teacher, attracted to a student, assaulted him and killed his father. The *Osman* judgment ratifies the formula that declares the State's responsibility when "the authorities should have known about when the existence of a person's is life at risk and the authorities didn't do what they could have done, and what can be reasonably expected by them to eliminate such a risk."

In the *Talpis* case, the ECtHR applies the *Osman test* to the particular circumstances of the case which is marked by a significant time-frame (June 2012 – November 2013) during which a domestic violence takes place, and it is diminished in relation to the gravity of the symptoms of the victim herself. The problem with predicting the risk has been resolved with the transition from the "criterion of the prognosis of the immediacy of the risk" to that of "predicting a structural danger" and, therefore, it is imminent. Italy, aware of the necessity of an anticipated and strengthened protection of women, has declared the "Red Code Law".

Keywords: domestic violence, ECHR, Italian law, gender inequality, the *Talpis* judgment

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Coherence in International Law

The expansion-diversification of rules of contemporary international law gives rise to challenging questions which are not altogether easy to answer. Since the constitution of the United Nations (UN), the volume of international legal rules has expanded (expansion), and international law's scope as a legal regime has evolved to encompass different themes (diversification). Two different interpretations of this are possible. One is the fragmentist view brought forward by the International Law Commission's Reports and held by some influential scholars, including Koskenniemi. Fragmentists argue that the expansion-diversification of international law and the lack of a clear hierarchy of rules have caused international law to become inconsistent. The other interpretation holds that, despite expansion-diversification and the lack of a hierarchy of rules, international law is consistent. While some scholars have dismissed fragmentation as a ghost of the past, it is not clear how one can depict international law as a consistent set of rules in light of expansion-diversification.

This document argues that a coherence theory can portray international law as a consistent set of rules. Such a theory would play a role in justifying beliefs about international law, and it would also be a substantive theory on international law. The theory adopts coherentist epistemology and constructivism; it maintains that international law can be coherent if the set of rules that composes it is consistent, set-justified, and comprehensive. This requires explanation: coherentist epistemology is a view that opposes epistemological foundationalism; it rejects the assumption that a linear chain of other beliefs is an adequate way to justify beliefs. Constructivism opposes both ontological realism and non-cognitivism; it holds that objective truth is not related to a mind-independent object but to a proposition's justification within a mind-dependent reality. A set of rules is consistent when it is not possible that there is a certain case in which the conditions of the rules are satisfied while the consequences attached by the rules are incompatible. Set-justified means that a particular belief is justified insofar as it fits within the set of all reasons for supporting such a belief, as well as with the set of all other beliefs held by a certain agent. Comprehensive means that the standards for justification are included in the set of what is subject to justification.

Regarding its contribution, the complexity of international law’s different rule sets is still one of the fundamental questions of international legal research. This research may help shed light on the issue through an examination that draws on the tools of analytical legal philosophy in matters of the epistemology of law and legal logic. Thus, the conclusions reached throughout this research may offer novel tools that help conceive of international law in a coherent light and may solve some of the problems that would emerge due to international law's expansion-diversification.

Keywords: international law, variety of rules, coherence theory, justification

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Comparative Aspects of Testamentary Formalism

According to the traditional view, succession law is moulded by the cultural, sociological, ethical and even religious values of each society – representing the "«life-blood" of their identity – to such an extent that comparative research, led by a spirit of critical evaluation, would be absolutely impracticable: unlike other areas of law, the (allegedly conspicuous) differences existing between the various legal systems could not be regarded, to use the words of Edouard Lambert, as «accidental», but should be attributed exclusively to cultural path-dependence.

In recent times, this line of reasoning has been called into question by an authoritative scholar (R. Zimmermann), who suggestively observed that – even assuming that succession law is so much "culturally impregnated", as it is often been said – there are no compelling reasons to continue regarding it as the "Cinderella of comparative law", thus preventing attempts to unify or, at least, harmonise the rules adopted in each State (but see the recent macroscopic novelty of EU Regulation No 650/2012, entered into force in August 2015). The validity of this new approach can easily be verified crossing two specific provinces of succession law: *the intestate regime* (since the order in which deceased blood-relatives are called to succeed complies with very few models) and, even more apparently, *testamentary formalities*. In fact, as far as the latter are concerned, the systems shaped by the Western legal tradition show – despite obvious variations in detail – three basic types: the *witnessed*, the *notarial* and, finally, the *holograph* will [to which must be added the "special" or "extraordinary" wills in case of emergency (e.g. wars, natural disasters, contagious diseases), as recognised by most Countries)].

Why do they *unanimously* derogate to the rule – that we find clearly codified in the Acquis Principles – according to which "unless provided otherwise, no form needs to be observed in legal dealings"? Many reasons have been brought forward throughout the centuries and they will be briefly commented upon during the presentation, starting from the archaic period of Roman law (which likewise knew three forms of wills: *testamentum calatis comitiis*, *testamentum in procinctu* and *testamentum per aes et libram*). However, besides the fact that every pattern undoubtedly has its *pros* and *cons* (for instance, private wills are convenient, but prone to error or even fraud, while notarial wills tend to be safe, but rather expensive and cumbersome), the overriding impression is still one of the *needless complexities* of testamentary formalism, especially in the light of technological evolution.

For this reason, the final part of the discussion focuses on the main techniques that – pursuant to the opposite principle of *favor testamenti* – have been conceived by the doctrine and the judiciary of modern jurisdictions to facilitate this "trend towards leniency", evident in legislative intervention; the "dispensing powers" doctrine to overlook deficiencies; the development of new forms of invalidity; the distinction between "core" and "secondary" requirements; the conversion of will; the estoppel. These trends are supported also by important examples from case law, but also cases that tend to reverse this evolutive and liberalising trend, like Cass. No. 23014/2015, decided by the Italian Supreme Court, are referred to.

Keywords: comparative law, succession law, testaments, formal validity, reduction of formalities

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A Study on Personal Data Processing and the Unfair Commercial Practices Directive: Italy, Germany, and the UK

Development of Big Data Analytics offered substantial economic and commercial benefits to the private and public domain. Consequently, data manipulation through Big Data Analytics has become essential for running today's businesses. However, Big Data Analytics interferes with the privacy of individuals and often leads to an imbalance between the data subject and data controllers. In that regard, using Big Data Analytics for data processing opens specific issues that have come up concerning transparency, payment with data, and the moving meaning of the consumer benchmark.

Considering that the primary concern of personal data processing, such as data collection or data manipulation, is the intention of producing new information about individuals, it is not for surprise that personal data processing is mainly used for commercial purposes. Based on the advantages of the collection and processing of personal data through Big Data Analytics, traders can very quickly obtain information about an individual's preferences or expected behaviour. Furthermore, the consumer data are often processed to a third party, whose business is adding value with Big Data Analytics. However, difficulties for consumer protection arise when an attempt is made to implement commercial exploitation of the consumer based on unfair commercial practices.

From the EU perspective, consumer law and data protection law belong to two different worlds. On the one hand, consumer law confers mandatory rights on consumers aiming to create a fair legal playing field for economic transactions. On the other hand, data protection law aims to protect fairness and fundamental rights when personal data are processed. Indeed, for a long time, consumer law has primarily been concerned with consumers and their relations with traders of products and services. However, the usage of Big Data Analytics for data processing creates needs for the application of consumer law besides data protection law regarding better consumer protection. Here it is important to clarify that the development of Big Data does not raise the different legal doctrinal structures at a fundamental level. Still, it does raise questions as to how the existing doctrines can respond to the emergence of data-driven technologies. In that sense, while the GDPR pays a crucial role in individuals' data protection in a case of personal data processing, the Directive 2005/29/EC (UCPD) plays a vital role in regulating individuals' protection from the unfair commercial practice when it comes to personal data processing. Moreover, a critical aspect of the UCPD is the enforcement of issues related to consumer privacy.

Since this paper considered a much-debated question whether the UCPD is fully effective or not when it comes to personal data processing, this paper has researched the examples of the Italian, German, and UK authorities based on different degrees of the UCPD enforcement in the mentioned states. This particular example demonstrates the radical attempt of the UCPD implementation into national law based on different approaches. Besides, this research aims to indicate whether the UCPD rules are suitable for the online platform as a recognised business model. Most importantly, this research relied on WhatsApp and Facebook as compelling examples when it comes to data processing. In that regard, the paper researched how national bodies, most notably, in Italy, Germany, and the UK, decided upon the same cases through application of the different rules. Finally, this paper offers a conclusion with a potential solution for better effectiveness of the UCPD when it comes to personal data processing.

Keywords: EU law, the UCPD, algorithms, artificial intelligence (AI), data processing, profiling, consumer

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Smart Robots and 5G: Global Connected Authors?

The arrival of "hyperconnectivity" is imminent due to connections using "5G" technology. This year's ill-fated Mobile World Congress (the "Mobile World Congress 2020") was the official launching act by major telecommunications companies. 5G will allow the number and speed of data and information circulating on the Internet to grow exponentially, directly affecting an increase in tasks performed on the network thanks to the main advantage and difference of this technology: the guarantee of continuity in service.

5G is designed so that network services are not subject to fatal outages or interruptions. Consider, for example, connected and self-piloted vehicles or surgeon robots remotely directed by a human expert from a million miles away. What would happen if driving at more than 120 MPH or in the middle of an open-heart operation, the connection to the internet would cut out? 5G is expected to be the solution and the vehicle that enables this.

In the field of intellectual property, it is known that artificial intelligence systems (AIS) or intelligent robots are currently capable of creating works in various fields that for many are equal to or better than those of humans. This is the result of their e-learning capabilities based on the complex systems of artificial neurons that function and "think" similarly to humans. However, their aptitude to be authors in a legal sense depends entirely on the regulation that is applied to them, or, rather, that is applied to that specific creative act that is carried out – or perhaps not – by an intelligent machine. In most cases, this question must be answered negatively. Likewise, we wonder who is liable for torts caused by the AIS, and according to what legal systems are we entitled to enforce our rights when the machine receives inputs from everywhere thank to its globally connected brain on the Internet.

Leaving aside their aptitude to be authors, the solutions to these questions must be found in the current regulations, going to figures such as co-authorship, collective works, work made for hire typical of Anglo- Saxon copyright systems or related authors' rights. However, what happens when we introduce the internet as a factor in this "equation"? How do we determine if we are in the presence of a work made for hire or a collective work if the contributions received by the robot's "artificial brain" connected to the internet? Where are the true authors who have contributed to the machine learning, for example, to paint and what order regulates them? Or how would you deal with a hypothetical situation in which the machine has created a work from others through plagiarism or any other copyright infringement? How is the competent court in this case determined to file a possible lawsuit requesting the numerous actions that the law allows? And what actions does the author take? Can precautionary measures be asked for and where?

These are all questions that arise in a situation deeper it is, more complex it becomes from the point of view of private international law, but which, at the same time, is real with the consequent need for its legal analysis and study.

Keywords: copyright law, private international law, co-authorship, collective works, smart robots

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The Purpose of the So-Called "Patto Marciano Bancario": Security Interest, Fulfilment, or Self-Help Remedy?

Pursuant to Article 2744 of the Italian Civil Code, it is generally prohibited to agree that the ownership of an asset, over which a pledge has been created, is transferred to the secured creditor in case of default. This prohibition, which also applies to mortgages, has generally been known as *patto commissorio* (foreclosure agreement) and was considered necessary in order to protect the weaker party in a contractual relationship (i.e., the debtor) who has a particular need for protection, to avoid any undue coercion by the secured creditor and therefore to preserve the contractual balance. However, for many years, the Italian Supreme Court and the main scholars have recognised the possibility for the secured creditor to appropriate or sell the secured asset, returning to the debtor the difference between the value of the asset and the outstanding debt (the so-called *patto marciano*).

As part of the recent reforms of the bank credit system, the Italian legislator intervened on the so-called *patto marciano*, which allows banks and other entities authorised to grant credit facilities to obtain the transfer in their favour of the property of the borrower (or third-party guarantor) granted as security of the loan, in case of default by the borrower. This instrument was introduced under Article 120 *quinquiesdecies* of the Italian Consolidated Banking Act (CBA) for consumer real estate loans and Article 48 *bis* of the CBA for corporate loans by, respectively, the Legislative Decree no. 72, 21 April 2016, implementing the European Directive 2014/17/EU and the Legislative Decree no. 59, 3 May 2016, converted with amendments into Law no. 119, 30 June 2016.

The new provision of Article 48 *bis* of the CBA permits the inclusion, in a loan agreement entered between an entrepreneur (also a non-commercial entrepreneur) and a bank, of a clause by means of which the creditor is allowed to obtain transfer of full title over the secured real estate asset in case an event of default of the debtor occurs, provided that: (1) before the relevant enforcement, the value of such asset is estimated by an independent expert; and (2) the creditor pays to the debtor an amount equal to the difference between the estimated market value of the asset and the amount of the outstanding debt on an *ad hoc* current account indicated in the loan agreement.

Against this background, the research illustrates, first and foremost, the rule of the unlawfulness of the so-called *patto commissorio* as well as the interpretative evolution and case law adaptations. Furthermore, moving from the new provision set out in Article 48 *bis* of the CBA, the research also analyses the *patto marciano*, describing its origins and main features. The critical point of the research is the issue regarding the true purpose of the transfer of ownership set out in Article 48 *bis* of the CBA. Since the new provision came into force scholars have discussed if the institute at hand constitutes a case of transfer of ownership by way of security, if it is a way of fulfilment of the secured obligation, or if it is a self-help remedy.

Keywords: EU law, Italian law, loan agreement, claim security, pledge, mortgage, ownership transfer

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The Shareholder Rights Directive II: Corporate Governance in the Context of Sustainability and Long-Term Orientation

Over the years, the EU institutions have taken a series of initiatives to modernise the corporate governance and strengthen the shareholder democracy. As reported in the Communication to the Council and the European Parliament of 21 May 2003 and in the Resolution of the European Parliament of 21 April 2004, these goals should be achieved by enhancing the shareholders rights and increasing the transparency duties among the companies and the institutional investors. As a first step in this direction, the Directive 2007/36/EC (SRD I) was adopted in order to facilitate the exercise of voting rights of the shareholders, by establishing the principle of equal treatment of investors and setting forth the requirements to take part to the shareholders meeting.

The weaknesses of the previous regulatory framework, however, have been revealed during the financial crisis. On these grounds, the Commission has undertaken a deep review of the corporate governance rules, pursuing the creation of value in the long-term period and the development of an inclusive and sustainable enterprise strategy, as addressed by the "Agenda 2020". As reported in the 2010 Green Paper on Corporate Governance in financial institutions and remuneration policies and in the 2011 Green Paper on a EU corporate governance framework, the main issues affecting companies' growth in the EU territory are represented by a lack of shareholders' engagement, excessive short-term risk taking approach and the poor quality of the information exchanged among companies and investors.

The results of the consultations addressed with the Green Papers put the premises for the issue of the directive 2017/828/UE (or Shareholders Rights Directive II), amending the previous adopted in 2007. The SRD II represents a further step towards solving the market failures related to information asymmetries and agency problems underpinning the "shareholder apathy" and the conflict of interests with the management. In such a perspective, the SRD II has significantly reformed the corporate governance framework, by introducing the identification of the shareholders, the obligation to disclose the engagement policies and the transparency duties on proxy advisors. In addition, the directive provides shareholders the right to vote on the remuneration policies (*say on pay*), in order to align the compensation with the performance of the directors, as well as transparency rules to enhance the control rights during the related parties' transactions.

The paper analyses the implementation of the SRD II in Italy, with special focus on the provisions related to the long-term engagement of the institutional investors and of the asset managers, also considering the ESG (*Environmental, Social and Governance*) factors, and on the issues, which may discourage the investors' involvement in corporate governance. Furthermore, the say on pay system will be examined as potential voice right and feedback action on management activities, as well as the role of the proxy advisors in the promotion of the engagement.

The research proposes to find an answer to the following questions. How incisive should be the engagement without interfering with the competences of the directors? Could the engagement lessen the Business Judgement Rule, and how far should that go? According to the SRD II, institutional investors and asset managers are "qualified" investors in the dialogue with the management, but could the SRD II create a different treatment among the shareholders? Should the engagement be necessary long-term oriented? How about other ways of short-term oriented activism (like hedge funds activism) which may be effective on corporate governance but are perceived as disruptive by the Commission?

Keywords: EU law, company law, corporate governance, shareholder's rights, protection of shareholders

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The European Social Charter's Dynamics for the Present and Future of National and European Social Rights Protection

The current crisis-era in Europe has admittedly revealed symptoms of lack of respect towards international socio-economic rights and their effectiveness at the national level. One such symptom relates to the (lack of) responsiveness of domestic judges with regard to the justiciability, direct applicability and enforceability of these rights. Against this background, a rather neglected regional treaty of the Council of Europe, albeit the most important one with respect to socioeconomic rights in Europe, the European Social Charter, has emerged to the surface of domestic courts' jurisprudence in recent years. Remarkably, the Charter, which has been considered the counterpart to the European Convention on Human Rights in the field of economic and social rights, seemed initially to exclude the possibility of being invoked before national courts, thus limiting the attractiveness of the instrument for potential litigants. However, the situation has changed today, especially since the adoption in 1995 of an optional Additional Protocol to the Charter, establishing a unique form of collective redress in international human rights law, the Collective Complaints Procedure.

This quasi-judicial procedure enables social partners and NGOs to apply directly before the Charter's monitoring body, the European Committee of Social Rights, for decisions on possible non-implementation of the Charter in the countries concerned. As can be seen in the practice of lower and apex courts of several states that have ratified the Protocol, this development has revolutionised the Charter system. Specifically, various domestic courts (e.g. in France, Greece, Italy, Spain and the Netherlands) have in many cases recently ruled in favour of the direct effect of various Charter provisions and the "quasi-case law" of the European Committee of Social Rights. They are thus providing an extraordinary perspective on the normative debates in legal doctrine about the (democratic) legitimacy of judicially reviewing the legislator's socio-economic policy choices and the issue of implementing and effectively protecting international socio-economic rights at the domestic level.

However, no study has managed to explore comparatively the particularities that underlie the European Social Charter's implementation in different jurisdictions, and especially the effects of the Charter and the collective complaints decisions of the European Committee of Social Rights on national case-law, as has been done with respect to other human rights treaties and monitoring bodies. This paper discusses the main research question of the author's doctoral research, which aims to fill that gap in literature. It inquires in particular into the question: "how do contracting parties' national courts apply and enforce the European Social Charter system and what are their differences and similarities?" Furthermore, it lays down the author's research methods and preliminary findings, with a view to receiving valuable feedback from the participants of the conference.

Keywords: European law, Council of Europe, economic rights, social rights, the European Social Charter

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International Jurisdiction in Trade Name Right Infringement Disputes

Building a good trade name (a name under which an entrepreneur carries on his business in given area) costs the entrepreneur effort, time, and money. Free-riding on this sign is thus, of course, unwelcome to their holder, and in a situation where the entrepreneur's rights to his trade name are violated, it is important to know the answers to the following questions. First, in which State's courts can the entrepreneur seek protection if he is doing business on territory of several European Union countries, either through a branch or an e-shop? Second, whether the designated court may decide on the claim for damages in full (i.e. also on damages incurred in the territory of other states)? And third, whether the protection of the right to trade name may be sought against several infringers at the same time in the courts of one state, or not?

These issues are consecutively analysed in the light of the 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. The criteria set out in Articles 4(1), 7(2), 8(1), 25, 26(1), 62, and 63, which determine the international jurisdiction of courts for infringement proceedings (or threats) to the right to trade name, are interpreted in the light of the CJEU case law, in particular C-412/98 *Group Josi*, 21-76 *Handelskwekerii*, C-68/93 *Fiona Shevill*, C 170/12 *Peter Pinckney*, C-509/09 *eDate*, C-194/16 *Bolagsupplysningen*, C-189/87 *Athanasios Kalfelis*, and C-616/10 *Solvay*. The relevant academic literature is also taken into consideration. Especially, the need for an autonomous interpretation of these criteria is emphasised. In next step, the criteria are compared with the criteria listed in the CLIP Principles (soft law) developed by the European Max Planck Group on Conflict of Laws in Intellectual Property, in order to find out how much is the European Union's point of view different from the academic point of view.

For the sake of completeness of the notion, the presentation mentions also the situations where the Brussels I *bis* Regulation is not used to determine the designated court, but other legislation is used instead, for example, the rules of private international law of a third state.

Moreover, the presentation is supplemented with a general consideration of the importance of classifying the "examined conduct" in law in order to classify it under the category of non-contractual obligations arising from infringement of the right to trade name (unregistered intellectual property right) to determine the designated court to assert the claims of such an injured entrepreneur (holder of the trade name), because despite Article 8 of the Paris Convention for the Protection of Industrial Property (which is binding, *inter alia*, for all WTO member states), is important to notify that not all Contracting States to this Convention provide foreign entrepreneurs protection for their trade names in their territory (e.g. the Czech Republic in relation to unregistered entrepreneurs in the Czech Commercial Register) and from this reason is really important to know where the entrepreneurs can be sued.

Keywords: EU law, private international law, international jurisdiction, Brussels I *bis* Regulation, trade name, infringement

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Artificial Intelligence in Civil Proceedings – A New Challenge for the Right to a Fair Trial?

With the COVID-19 pandemic, Belgian organisations have largely turned to digital tools to continue operating. Over the past few months, videoconferencing, collaborative tools, digital data banks and storage spaces have spread massively in various public and economic sectors. The judiciary is somewhat of an exception to this picture, which risks reinforcing the criticism that the Belgian Justice system is too complex, too slow, too inefficient and too inaccessible to Homo Numericus. This digital gap pushes even more citizens to distance themselves further from this discredited institution as it appears as “inadequate and unintelligible”.

Is this hope for progress? The digital industry is increasingly developing artificial intelligence (AI) tools for law and legal actors. At this stage of technological evolution, we can distinguish two types of algorithms. The first type is based on a system of statistical modelling, including variables and requiring an extensive learning phase in order to establish correlations between data (weak AI). The second type, which is currently only theoretical, is based on the self-learning potential of the algorithm, which is capable of being implemented without any human intervention (strong AI). Despite the fact that the second type of AI is receiving more media coverage, it is often the first type of AI that seems to be deployed by the legaltechs to serve the justice.

Is AI making the world a better place? These automated and semi-automated decision-making systems are designed to accompany, inform (i) or replace (ii) various legal actors in the future. In the first scenario as these services are mostly developed by the private sector, how can a citizen with limited means seek justice? How can a citizen who has never coded or even own a computer, understand the intricacies of the automated services offered to him? This type of use is likely to disrupt the traditional organisation of the trial raising the question whether the human rights are enough to guarantee the access to justice and the essential function of courts. In the second scenario, the litigant may no longer interact with certain actors of the judicial system. Filing documents online, affixing certain dates, online proceedings, instant transcripts etc. – will the courtrooms be empty? Should the judge who bases his judgment on the results provided by AI justify even more his solution or will the mathematical equation taste like undeniable truth? Even though the principles of independence and impartiality are (apparently) better guaranteed against the outside pressure when the judge has AI by his side, can we determine undeniably that it will be programmed to function more objectively and independently than the human judge? Do we need a new set of rules? Would not it be more fragile to change this “new set of rules” generated by the machine, resulting from an intensive application of data to the countless hypotheses? Can AI accompany every legal, political, societal, linguistic, grammatical and syntactic change?

In this research I seek to explore obstacles that we could face when AI is further introduced in the legal proceedings, as well as analyse to what extend the guarantee of a fair trial are compatible and sufficient for this technological evolution.

Keywords: civil proceedings, right to a fair trial, artificial intelligence, automated decision-making

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Online Dispute Resolution Supported by Artificial Intelligence: Efficient Access to Justice in Low-Value C2B e-Disputes in the EU

The current study stems from the need for dealing with low-threshold consumer e-disputes in the EU Digital Single Market (DSM). According to the Eurostat 2019, approximately 71 per cent of the internet users in the EU have purchased goods and services online, which has been steadily escalating, compared to 35 per cent in 2010. The money spent on most of these e-purchases ranges from 100 to 500 euros mostly relating to tangle goods, including clothes, sports goods and household items. E-commerce enables individuals to get access to a wide variety of products and has a convenient price comparison among the commodities, intriguing consumers' incentive to participate in the market. This leads businesses to present their products with higher quality yet lower price, bolstering the economy of the DSM. Nonetheless, there are also a considerable number of issues (i.e., wrong or damaged goods, technical issues with the trader's platform, etc.) that are raised by this phenomenon constituting consumer claims. Additionally, the use of artificial intelligence driven technologies by traders in this market – with the aim of providing consumers with more innovative and high-quality goods – has given rise to challenges related to AI, creating more complicated disputes, which the ordinary civil litigations have failed to handle in an expedited, cost-efficient, and simplified manner. The lack of effective access to justice (A2J) for consumers to resolve their low-value e-disputes with businesses can – in a long-term – cause harm to the economic boost of EU.

This study thence adopts a new solution-oriented approach to this problem based on the use of online dispute resolution (ODR) methods that have been advanced by the AI. On that account, this dissertation has two primary objectives. It first aims to conduct a thorough research on understanding whether AI-driven ODR (hereinafter, AI-d-ODR) models can provide efficient A2J for consumers, in EU. Second, this research also focuses on the doctrine of "privatisation of justice" to assess the feasibility of entrusting the implementation of AI-d-ODR systems to businesses to deal with consumer small claims. The importance and originality of this research is that it is the first of its kind to thoroughly investigate the use of AI to resolve low-threshold C2B e-disputes raised due to market malpractices in the EU DSM supported by AI. Hence, this research begins by exploring the state of art of the access to justice in C2B low-value e-disputes in the EU legal framework, followed by an in-depth discussion about the opportunities and substantial risks involved in the application of AI in the DSM. This study then discusses ODR and assesses the extent to which the use of AI in ODR can lead to A2J amelioration for consumers in small C2B e-disputes in the EU. In order to examine the applicability of the AI-d-ODR methods, this research contains 10 case studies in relation to application of such models by large corporations in EU. On the basis of all the theoretical and empirical data obtained within the previous sections, the final chapter then critically analyses whether entrusting the AI-d-ODR application to private sector can increase the efficient A2J for consumers regarding their low-value e-disputes with traders in the EU.

Keywords: EU law, online dispute resolution, e-disputes, consumer protection, artificial intelligence

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Duty of the Arctic States to Prevent Transboundary Environmental Harm in Arctic Continental Shelf Oil Production: Adequacy of Existing International Legal Frameworks

Under customary international law, States are obliged to abstain from causing significant transboundary environmental harm, known as the duty to prevent (the duty). The duty does not oblige to the level of zero pollution, but for the polluters not to cause significant pollution. Since it is also a duty of conduct and not a result, the State of origin may avoid international sanctions should it follow the requirements underpinning the duty. However, not adhering to its national provisions but to its international obligations is important.

The State of origin is to comply with the following: perform the activity with due diligence; assess it before starting it, upon and after its termination through constant monitoring; notify, inform, consult, cooperate and negotiate with the concerned States. In addition, the duty is not cast in stone and becomes subject to emerging principles such as a polluter pays, sustainable development and precautionary principle. Although seeming straightforward, the duty lacks clarity and may be interpreted in various ways. For this purpose, States enter into industry-specific agreements to guide the producer towards meeting its duties and negatively affected States know their rights.

It is to note that transboundary consequences of the hazardous activities are sometimes governed by the non-particular customary and general international law as well as standards, codes and practices. The issue with this approach is that in case of an incident those provisions would not always provide for the adequate rectification of the potential negatives. This is completely valid for the Arctic Ocean littoral States while engaged in the Arctic Ocean continental shelf oil production (CSOP).

The purpose of this research is to consider how they discharge their duty. The central research questions to answer are as follows. First, how do States benefit in general from the settled and emerging elements of the duty when complying with it? Second, how do certain regional agreements on seas, experienced in producing seabed hydrocarbons or potentially rich in seabed hydrocarbons, contribute to their littoral States' compliance with the elements of the duty? Third, how do States and international organisations contribute to the introduction of a uniform regime on liability on the CSOP? Fourth, how could the experience of the existing liability treaties on carriage of hazardous substances by sea contribute to the improvement of the liability regime on the CSOP? Fifth, how do the Arctic Ocean littoral States discharge their duty while engaged in the Arctic Ocean CSOP in the absence of global and regional treaties to which they all are members? Sixth, could the experience of the Arctic States contribute to answering whether a liability regime on CSOP would better serve its objectives if introduced on a regional or global level? Each of the research questions is reviewed separately with the ultimate purpose of concluding whether the existing legislation applicable to the Arctic Ocean oil production from its seabed is sufficient in providing the relevant protection of the Arctic stakeholders.

Keywords: international law, environmental protection, continental shelf oil production

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The Interaction Between Children's Right Law and International Family Law: Belgian and Swiss Case Law on International Child Abduction

Children's rights law and private international law in family matters (hereinafter: international family law) are two domains of law that apply to many of the same situations. One such situation, which will be the focus of this presentation, is international child abduction. During the return proceedings, courts have to decide whether the child should return to his or her State of habitual residence by applying the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (HCCA). The principle of this Convention, which is said to be based on the best interests of children in general, is to ensure the prompt return of the child. At the same time, courts have to consider the United Nations Convention on the Rights of the Child (UNCRC) which provides in Article 3 that the child's individual best interests shall be a primary consideration in all actions concerning children.

The interesting aspect about international child abduction is thus that both domains of law claim that their objective is to serve the best interests of the child while both domains have a different approach regarding this concept. While claiming to serve the same aim, both domains of law can come into conflict. Indeed, fully following the children's rights law approach when deciding on international child abduction may lead to a different and conflicting outcome than when one fully follows the international family law approach. This leads to the question if and how the possible conflictual interactions between the two domains of law can be reconciled. The hypothesis is that a conceptual reconciliation is possible, and that the seeds for such reconciliation may be found in the case law of courts since the first steps towards such reconciliation are reflected in the ECtHR judgment in *X v Latvia* in particular in para. 106.

The purpose of this presentation is to test this hypothesis by analysing Belgian and Swiss case law concerning international child abduction. In particular, the question will be scrutinised how Belgian and Swiss judges, when determining return cases, incorporate the best interests of the child in their decision-making process and how they reconcile the different approaches with regard to this open norm. One could think of various scenarios: judges could consider the UNCRC's concept of the best interests the sole or main criterion to decide on return, they could be of the opinion that the best interests are sufficiently guaranteed by the HCCA and find it unnecessary to investigate the best interests of the individual child, or they might seek conciliation between the legal texts either by applying the HCCA and considering the best interests at every step, or by filling in the UNCRC's idea of the best interests of the child with the rights and obligations enlisted in the HCCA.

Keywords: international family law, international child abduction, the best interest of the child

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Initial Ownership of Copyright and Limitations of *Lex Loci Protectionis*

Copyright has always reflected current technological needs and especially nowadays, in the light of rapidly evolving technologies and advancing globalisation, the area of copyright is quickly developing. As this has an impact on the copyright throughout its lifespan, the need to reflect constant technological advancements is everlasting. The Internet represents a fundamental role as it brought new ways of sharing copyrighted works, highlighting the main attribute of intangible assets, the potential ubiquity. This ease of distribution has significantly increased occurrence of cross-border elements and it may even cause cross-border infringements across many states concurrently. The territoriality principle, standing in the opposition to the potential ubiquity, is also important, as the author is provided only with a set of individual national rights instead of a universal one, so as the cross-border infringement occurs in every state individually, it is necessary to consider all the affected national legal regulations. Another issue potentially creating a cross-border element, associated with the recent advancements, is the greater delocalisation of subjects and their actions.

This has a considerable effect when enforcing copyright by its holders, notwithstanding the already existing harmonisation of copyright law by international conventions and EU law. One of the key issues is to determine the holder of the intellectual property rights, and thus the authorised subject to utilise and to enforce them. This question arises likewise in connection with the increasing appearance of cross-border elements in both contractual and non-contractual relationships. This paper aims to analyse the *lex loci protectionis* rule and its application to the issue of initial ownership of copyrighted works.

Even though not universally accepted, the most common connecting factor for determination of the law applicable to core issues of both registered and unregistered intellectual property rights is the *lex loci protectionis* rule (also recognised by the Czech private international law). As well as the regulation of ownership of copyright in national copyright laws, the private intellectual law regulation and the opinions on it are not uniform worldwide. Examining alternative approaches seems a current concern also in reaction to the technological developments. Especially for the question of initial ownership, the frequently proposed alternative to the *lex loci protectionis* rule is the *lex originis*, closely connected with the universality principle. Academic proposals (e.g. CLIP or ALI Principles) adopt various approaches for the question of the initial ownership of unregistered intellectual property rights as well.

Hence, the applicability of *lex loci protectionis* to the initial ownership will be analysed along with limits of its application, which are present for example in connection with the employment relationships, where the employees are the creators of copyrighted works, but also where the employers have to be considered as potential holders of intellectual property rights. For determination of the law applicable, the *lex laboris* rule is a possible option. Because of that, the limitations of *lex loci protectionis* and finding balance between these two connecting factors in this area need to be analysed, particularly regarding the question of initial ownership.

Keywords: copyright law, initial ownership, *lex loci protectionis*, *lex loci originis*

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Shared Services Centres in Local Government: The Examples of the United Kingdom and Poland

The Shared Services Centre (hereinafter: SSC) is a service model and a noticeable trend on the global market, which is a source of many benefits, as it contributes to reducing costs, improving the quality of services or better organising internal control. Managing the service of organisational units through SSCs was first introduced in corporate organisations. The selection of countries in comparative terms was made on the basis of a country for which the legal solution is relatively new (Poland) and a country in which the Shared Services have been operating for a long time (UK). This allows to show the fundamental differences between the regulations and to put forward *de lege ferenda* postulates. This paper covers only local authorities in England due to the possibility that there may be slight differences in solutions between Scotland, Wales and Northern Ireland.

In England and Wales, section 113 of the Local Government Act 1972 permits a local authority to enter into an agreement with another authority to place its officers at the disposal of the other authority, subject to consultation with the staff concerned and negotiation about any changes in terms and conditions. Furthermore, section 1 of the Local Authorities (Goods and Services Act) 1970 enables a local authority to enter into an agreement to provide another local authority with goods and services, including administrative, professional or technical services. Whereas, the Polish legislator introduced SSCs in local government units under the Act of 25 June 2015 amending the Act on Municipal Self-Government and certain other acts, which entered into force on 1 January 2016.

In this respect, shared services centres are the result of the transformation of the public sector, and are related to the so-called New Public Management concept, which indicates a tendency to “import” market solutions to the public sector. Activities originally used on a small scale as an element of innovation are now one of the fundamental elements of public administration management strategies in many countries around the world. Furthermore, such action is recommended, for example, by the Organisation for Economic Cooperation and Development (OECD).

The aim of introducing the SSC to local government units should be to improve the functioning and organisation of the performance of public tasks by local government units, including in particular the increase of autonomy and flexibility of local government units. Furthermore, the solution is to deliver value and efficiency, convergence around processes and data, and meet end user needs. In principle, the trend of introducing thriving, profitable and growing business solutions to the public sector is assessed positively. This paper is primarily a comparative analysis and evaluation of the practical implementation of the Shared Services Centre in English and Polish local government units. By seeing successful solutions in a given area it is possible to create *de lege ferenda* postulates to improve the current legal regulations.

Keywords: public sector management, local governments, shared services centres

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