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**CENTRAL AND EASTERN EUROPEAN
NETWORK OF JURISPRUDENCE
(CEENJ)
ANNUAL CONFERENCE 2025**

Book of Abstracts

September 18-20, 2025
Vilnius



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TWO DECADES OF CEENJ: SHAPING THE FUTURE OF JURISPRUDENCE IN A CHANGING EUROPE

The Central and Eastern European Network of Jurisprudence (CEENJ) was established in 2005 to foster dialogue among legal theorists, philosophers and other legal scholars in a region marked both by shared traditions and diverse experiences. Over the past twenty years, CEENJ has grown into a dynamic platform for exchange, connecting academics across Central and Eastern Europe and beyond. Its conferences have become an important meeting ground where questions of the law's foundations, authority and social role are addressed from multiple perspectives.

Research into and studies of jurisprudence are more important than ever. They provide the conceptual framework for a comprehensive understanding of law, its societal role and its function in upholding justice. Through the cultivation of critical and reflective reasoning, jurisprudence equips practitioners and scholars alike with the intellectual tools necessary to analyse complex legal issues and to address the challenges confronting contemporary legal systems.

The contributions gathered in this volume address pressing and diverse issues, ranging from human dignity, vulnerability, and socio-philosophical justice (section I), to the resilience of the rule of law and democratic institutions in Europe (section II), to the foundations of statehood and constitutional authority (section III). They also grapple with urgent contemporary developments, such as law in the digital and artificial intelligence (AI) era (section IV), and engage with complex debates surrounding identity, religion and human rights (section V). Together, these papers exemplify how jurisprudential inquiry not only enriches academic understanding but also contributes to the practice of law in democratic societies.

This year's conference is particularly significant, as it coincides not only with the 20th anniversary of CEENJ but also with the 35th anniversary of Mykolas Romeris University (MRU). They both share a dedication to critical inquiry and innovation: CEENJ through its role in fostering regional and international scholarly exchange, and MRU through its commitment to legal education, interdisciplinary research and cultivating a generation of lawyers and scholars equipped to face contemporary challenges. The convergence of these anniversaries highlights a shared vision of

advancing legal thought and strengthening academic communities across Europe.

On behalf of the organisers, I would like to express my sincere gratitude to all contributors to this volume, to the members of the International Advisory Board and to everyone whose efforts have made this conference possible. It is through your scholarship, collegiality and commitment that CEENJ continues to shape the future of jurisprudence in a changing Europe.

Jolanta Bieliauskaitė

1. HUMAN DIGNITY, VULNERABILITY AND SOCIO-PHILOSOPHICAL JUSTICE

1.1. The Ontology of Vulnerability in the Context of International Human Rights Protection

Harald Christian Scheu, Charles University in Prague, Czechia

This project focuses on the ontology of vulnerability as a key philosophical and legal–theoretical premise of international human rights protection. Primarily, the project is based on the assumption that vulnerability is a universal human condition inherent to every human being. It is necessary to ask how this general concept of vulnerability can be understood as a normative foundation for human rights and how it is reflected in the concepts of autonomy, dignity and the principle of non-discrimination. Particular attention is paid to the question of whether, and if so to what extent, the current conception of international and European human rights protection is founded on the thesis that vulnerability must be compensated for through positive measures. Alternatively, human rights protection may be at least partly based on the thesis that vulnerability should be understood – and protected – as a value in itself.

In this context, the conceptualisation of vulnerability in positive law will be examined, particularly within legal regimes of special protection, e.g. the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC) and the 1951 Geneva Convention Relating to the Status of Refugees. Here, vulnerability is sometimes attributed to entire groups and sometimes to specific individuals, which leads to the construction of an implicit dichotomy between ‘vulnerable’ and ‘non-vulnerable’. The project therefore analyses the criteria by which these categories are constructed and the extent to which they reflect or reproduce power relations and normative hierarchies within the international legal system.

Special attention will be paid to the vulnerability of national minorities and their members in the context of interpreting and applying standards under the Framework Convention for the Protection of National Minorities (FCNM). This raises the

question of whether the right to a subjective choice of national minority affiliation also implies a subjective choice of vulnerability. What then are the objective and subjective standards of vulnerability in the case of national minorities? A key issue appears to be the interpretation of vulnerability in the application of the right to protect cultural and linguistic minority identity and in determining the conditions for minority education, which often oscillates between offering broad integration and inclusion on the one hand, and more or less subtle forms of pressure towards assimilation on the other.

Finally, the concept of vulnerability will be examined in relation to the prohibition of discrimination based on ethnicity, language, religion, and national minority status. It is necessary to explore whether the degree of vulnerability depends on external pressure from state authorities or the majority society, or on internal challenges within the minority, such as low levels of organisation and social participation. How does vulnerability under the Framework Convention relate to the phenomenon of social marginalisation, which does not affect all national minorities to the same extent? Based on an analysis of practice under the FCNM, the project will consider whether a greater degree of vulnerability translates into more favourable access to resources and visibility in practice, and what normative questions arise from this.

Keywords: vulnerability, human rights, national minorities, identity.

1.2. Social Security: Balancing Labour and Capital with Nature by Law

Ivan Padjen, University of Rijeka, University of Zagreb, Croatia

Social security commonly denotes security against old age, unemployment, sickness, disability, work injury, the incapacity to work due to maternity or paternity, and the loss of a breadwinner. Such a state or event is termed here a loss of labour capacity. Security against a loss of labour capacity is referred to here as labour security. It consists of the provision of labour security benefits, such as pensions, medications or training. Labour security can be provided by a variety of institutions, such as family, charity, welfare, social security and private insurance. The problem of this

inquiry is conceptual, i.e. one of meaning rather than policy, but with far-reaching practical consequences. Briefly, it relates to the widespread confusion around social security and welfare. This confusion is epitomised by the complaint of a retiree (incidentally, a former economist from the government bureau of statistics): *‘I have been contributing to the social security for thirty-five years and now when I need urgently biopsy, I have to wait three months’*, without any awareness that this problem may be of the complainer’s own making. It is an inescapable consequence of the free riding of the vast majority of the socially insured, who have made contributions to social security in the form of money but not children. Although inescapable, this is commonly denied. The understanding of the age is that children, as with the rest of nature, have been made dispensable by artefacts. Perhaps the consequence may be recognised by residents of the Central and Eastern European EU Member States who, faced with the choice ‘federate or succumb’ (e.g. to Russia), must decide on the powers – most notably of the social state – Member States should retain in the European Union.

The gist of the theoretical problem of this inquiry is the nowadays prominent view, which may be typical even of contemporary social democracy, that social security can be funded in two ways, namely, by contributions and taxes (e.g. Meyer, 2003, 315; ILO, 2001, 2, 23-25). The contributions are paid by workers according to the pay-as-you-go principle. Taxes are paid by taxpayers, who may be but need not be either workers or beneficiaries of social security, and whose taxes may be but need not be used for social security. The prominent view has – or may be seen as having – the following presuppositions: social security is an arbitrary name for constructs that social actors can make, such as symbols or securities, at will; and, as an artificial construct, social security is distinct from and not constrained by nature. According to the same view, the law is a mere instrument of any policy (see e.g. Meyer, 2003, 317-318; Bambra 2009, 94), while the social state and the welfare state are synonyms (see e.g. Meyer, 2003, 313); and so are social democracy and socialist democracy. Thus, the prominent view conflates social security and welfare or charity.

This conflation downplays both labour and nature as constituents of society and thereby acquiesces to the subjugation of living labour. Social security depends on

retaining the population. However, they are both obstacles to financial capitalism. Higher profits are yielded by redirecting social security contributions to private investment funds and by employing immigrant labour rather than domestic beneficiaries of social security. Thus, social security yields ground to private security, even when fertility rates can still support social security by being above the replacement level. When they are below this level, social security, irrespective of how it is viewed, collapses at best into a social safety net for the most vulnerable ones.

The primary end of this inquiry is to elaborate on an alternative view by performing the tasks stated in the introduction. According to the alternative view, social security is a set of institutions that are: paid by hired labour (even when the payment is made by employers) to compensate workers and/or their dependants for losses of a worker's labour capacity; embedded in nature as both the object of labour and cocreator of workers; functional only if current workers support future as well as past workers to maintain the population replacement level; social in the specific sense of overlapping with but distinct from both the state and the market; regulated by social law that is created by cooperation between labour, capital and the social state; constitutive of and largely identical to the social state; if necessary, balanced with capital by limited expropriation; different from both welfare as charity paid at will by the 'haves' to the 'have nots', and the welfare state as a provider of charity. A practical implication of the alternative view is that by keeping social security and welfare distinct, the former has a better chance of survival, even if the population is declining.

The inquiry formulates and/or analyses the following items, each in a corresponding section: (1) framework: (1.1) problems and tasks (*supra*) (1.2) theory and method; (1.3) key concepts: (1.3.1) labour, its capacity and risks, (1.3.2) institutions of labour security, (1.3.3) components of the institutions of labour security; (2) family as a model institution of labour security; (3) types of social security institutions: (3.1) confraternities, (3.2) guilds, (3.3) trade unions, (3.4) collective agreements, (3.5) state legislation; (4) decline in social security: privatisation, delabourisation, parasitisation and a declining population.

1.3. Philosophical Anthropology as a Model of Human Legal Subjectivity

Tatiana Chauvin, University of Warsaw, Poland

Law as a system of norms plays an important role within every culture, particularly because of the extent and significance of its influence on the most fundamental aspects of every person's individual and social life. However, the world depicted in legal texts is an inadequate representation of the actual world. Nevertheless, one can reconstruct from legal regulations a legislator's level of knowledge and gain insights into their presuppositions about that reality.

Law creates, among other phenomena, an abstract and general image of humanity that cannot capture humanity in its full richness. It typically aims to objectify and generalise the image of humans, consequently falling short of the full scope of actual human existence.

In serving not only an individual but also a political national community, the law 'seizes' an individual to grant them certain rights but also to place them beyond any individual order. What follows is a necessary reduction of individual needs and opportunities into universal marks of humankind that can be subjected to rationalisation.

Legal subjectivity is constructed as a right that is inherently equal for all people. Its anthropological dimension is manifested in its strong relationship to a human as the subject of fundamental rights. A human being is a beneficiary of these rights by virtue of the dignity that is correlated solely with their existence. The human mind-body construct is a source of constant and various needs: material, mental, emotional and cognitive. The most objective and universal of these are the minimal material needs related to existence, which must be satisfied for the maintenance of biological life and the undisturbed development of every individual. Only an integrated conception of rights emanating from the integrally understood essence of a human being might usefully address these complicated needs.

Legal regulations may consider each individual a) as a person in their integrity (in which case a law refers to a human, person, a human person, everyone, no one); or b) in their distinctive social roles and functions. The philosophical discursive

tradition that, in my opinion, corresponds with the image of a person emerging from legal regulations (mostly of public law, which I take to include constitutional, criminal and administrative law) is philosophical anthropology.

The influence of anthropological assumptions in the decisions of legislators is very strong, although too rarely clearly disclosed. What distinguishes the discussed type of anthropology from others (cultural and biological as well as pre-philosophical anthropology) is the content of questions and the manner of posing them, as well as the type of answers, in the context of fundamental philosophical problems.

Taking into consideration all the peculiar constituents of a human, such as speech, body, self-agency, community, state, myth, religion and art, the main objective of philosophical anthropology is to determine an individual's position or standpoint in the world in relation to other beings (such as animals and God) and to nature, history and culture, in order to demonstrate what justifies this distinction from those others.

Two currents in philosophical anthropology are of particular interest here: the classical view, originating in German philosophy in the first decades of the twentieth century (represented by Max Scheler, Helmuth Plessner and Arnold Gehlen), and Christian personalism – particularly the views of Jacques Maritain and Karol Wojtyła, who were both inspired, to a significant extent, by phenomenology and hermeneutics. These thinkers postulated recognition of scientific research as a source of knowledge about a person, equivalent to pure philosophical enunciations – one cannot separate a person's experience from the essence of that person. On these grounds, their views are valuable in terms of legal discourse and criteria of legal subjectivity, as well as the fundamental characteristics formulated in accordance with the model 'anthropology plus ethics'.

2. RULE OF LAW AND DEMOCRATIC RESILIENCE IN EUROPE

2.1. Upholding the Rule of Law: The Role of Academia in Preparing Lawyers Under the New Council of Europe Convention

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The adoption of the Council of Europe (CoE) Convention for the Protection of the Profession of Lawyer, in March 2025, marked a significant milestone in safeguarding legal practice across Europe. This paper explores the evolving notion of the ‘profession of lawyers’, reflected in two interconnected aspects protected by the convention: the profession of a lawyer and the right to practice that profession. The rationale for this protection lies in the crucial role lawyers and their professional associations play in securing access to justice, protecting rights and fundamental freedoms and upholding the rule of law.

The paper will analyse the legal profession from the perspective of the rule of law, a universally applicable concept. In the 2005 Outcome Document of the World Summit, all Member States of the United Nations affirmed the ‘*need for universal adherence to and implementation of the Rule of Law at both national and international levels.*’¹ In 2011, the Venice Commission identified core elements of the rule of law: legality, legal certainty, prohibition of arbitrariness, access to justice, respect for human rights, non-discrimination, and equality before the law². The European Commission noted that ‘*the principle of the Rule of Law has increasingly become a dominant organisational model in modern constitutional law and international organisations.*’³

1 United Nations General Assembly. (2005). *2005 World Summit outcome* (A/RES/60/1), § 134. Retrieved from <https://undocs.org/A/RES/60/1>.

2 Venice Commission. (2011). *Report on the rule of law* (CDL-AD(2011)003rev2). Adopted at the 86th plenary session (Venice, 25-26 March 2011). Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2011\)003rev-e&yearrelated=2011](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2011)003rev-e&yearrelated=2011).

3 European Commission. (2014). *A new EU framework to strengthen the rule of law* (COM(2014) 158 final). Brussels, pp. 3-4 Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158>.

While more states are incorporating the rule of law into their national constitutions, there is a concerning trend where the understanding of the rule of law and the responsibilities of legal professionals are being compromised. This highlights the urgent need to reaffirm commitments to effectively uphold these principles.

This paper will explore how law schools can teach professionalism, thereby strengthening the understanding of the rule of law among legal professionals and preparing future lawyers to navigate the complexities of their roles. It will emphasise the importance of a well-defined legal profession that serves justice and protects legal rights and freedoms. Ultimately, the paper argues that enhancing legal education is crucial for maintaining the integrity of the legal profession in Europe and beyond.

I will examine the historical development of the international framework related to the legal profession and the evolution of its essential qualities. The analysis will focus on the principles of the rule of law and access to justice as cornerstones of protecting individual rights and freedoms. Key global instruments, including the newly adopted Convention of Lawyers and its predecessors, such as the UN Basic Principles on the Role of Lawyers⁴, as well as European instruments such as Recommendation Rec (2000)21⁵ and the CoE Venice Commission's Rule of Law Reports (2011, 2014)⁶, will be analysed to determine whether the legal framework adequately addresses the need for specific education related to the resilience of legal professionals.

I integrate insights from scholarly works, including Boothe-Perry's exploration of legal academia⁷, McBride's feasibility study of legal instruments⁸, van Domselaar's

4 United Nations. (1990). *Basic principles on the role of lawyers*. Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba.

5 Council of Europe. (2000). *Recommendation Rec(2000)21 on the role of lawyers*.

6 Venice Commission. (2011). *Rule of law*, Venice Commission. (2014). *Rule of law checklist*.

7 Boothe-Perry, N. A. (2009). *Professionalism's triple E query: Is legal academia enhancing, eluding, or evading professionalism?* *Loyola Law Review*, 55(2), 517-XXX. [https://law.loyno.edu/sites/law.loyno.edu/files/images/24_55LoyLRev517\(2009\).pdf](https://law.loyno.edu/sites/law.loyno.edu/files/images/24_55LoyLRev517(2009).pdf).

8 McBride, J. (2021.). *Feasibility study on a new, binding or non-binding, European legal instrument on the profession of lawyer: Possible added value and effectiveness*. Arab Center

critique of legal education⁹ and Arandt's examination of ethical dilemmas faced by individuals living under totalitarian regimes¹⁰, as well as the American Bar Association's report on legal education and professional development¹¹. Thus, in this paper, I aim to deepen the understanding of the responsibilities of academic institutions in preparing professionals to foster justice and resilience against threats to the rule of law.

Ultimately, this discussion will highlight the necessity of a robust legal profession that serves justice and acts as a bulwark against the erosion of legal rights and freedoms in Europe and beyond.

Keywords: rule of law, legal profession, academia, justice, legal education

2.2. 'Geopolitical Context' in the Application of the European Convention on Human Rights: Contributions of the Baltic States to the Jurisprudence of the European Court of Human Rights

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Šuspāns Artūrs, University of Latvia, Latvia, Goethe-Universität Frankfurt am Main, Germany

Since Russia's full-scale invasion of Ukraine on 24 February 2022, European democracies have increasingly attempted to reconstruct their geopolitical position in the international arena.¹² For the Baltic states – Estonia, Latvia and Lithuania – this

for International Humanitarian Law and Human Rights Education. https://acihl.org/articles.htm?article_id=3&lang=en-GB.

9 Van Domselaar, I. (2021). *Where Were the Law Schools? On Legal Education as Training for Justice and the Rule of Law (Against the 'Dark Sides of Legality')*. *Netherlands Journal of Legal Philosophy*, 50(1), 3-12. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3871242.

10 Arendt, H. (1969). *Personal responsibility under dictatorship*. In *The Life of the Mind* (Vol. 1). Harcourt.

11 American Bar Association. (1992). *Legal education and professional development: An educational continuum. Report of the Task Force on Law Schools and the Profession: Narrowing the gap*. Section of Legal Education and Admissions to the Bar.

12 Bartnicki A. R., Ołędzka J. Between long-term hybrid geopolitical conflict and the ad hoc instrumentalisation of migratory pressure: Nature and specifics of the Polish–Belarusian border crisis. In: Kuźelewska E. Kasińska-Metryka A., Pałka-Suchojad K., Piekutowska

issue goes beyond contemporary political opposition to Russia's violations of international law. It touches upon questions of national identity in the Baltic states as Russia seeks to reconstruct historical narratives to justify its illegal actions and claims.¹³ From the Russian perspective, the Baltic states are still considered part of the 'Russian world', with the Kremlin asserting an imperial prerogative to influence their security and foreign policy decisions, as well as to determine their geopolitical orientation.¹⁴ Moreover, with the silent support of Russia,¹⁵ Belarus' instrumentalisation of migrants on the borders between Belarus and the European Union is a tool of geopolitical confrontation against the Baltic states and Poland, which can be deemed to constitute a hybrid attack.¹⁶ In the face of these threats, the Baltic states find themselves challenged both as independent sovereign entities and as liberal democracies grounded in the principles of the rule of law. This geopolitical context illustrates the challenge faced by contemporary democracies. These challenges for democracies are, on the one hand, protecting their national security, and, on the other hand, ensuring respect for human rights. For instance, the pressing challenge

A. (eds.). *Geopolitical and Humanitarian Aspects of the Belarus–EU Border Conflict*. London and New York: Routledge, 2024, p. 34.

13 Mälksoo L. *Illegal Annexation and State Continuity The Case of the Incorporation of the Baltic States by the USSR*. Second Revised Edition. Leiden, Boston: Brill Nijhoff, 2022, pp. 6-7.

14 See more: Kudors A. *Russia and Latvia. A Case of Sharp Power*. New York: Routledge, 2024; Bērziņš J., Bērziņa I., Rostoks T. *Contemporary Challenges to European Security: Neoliberalism, Democratic Backsliding, and Alliance Cohesion*. Riga: National Defence Academy of Latvia. Centre for Security and Strategic Research, 2024. https://www.naa.mil.lv/sites/naa/files/document/Contemporary_Challenges_to_European_Security.pdf

15 Gruodytė E., Buciuinas G. Lithuania's legal response to migration crisis: Theory and practice in the context of national security and human rights. In: Kuželevska E. Kasińska-Metryka A., Pałka-Suchojad K., Piekutowska A. (eds.). *Geopolitical and Humanitarian Aspects of the Belarus–EU Border Conflict*. London and New York: Routledge, 2024, pp. 144-149.

16 Broks E., Buka A., Buka L., Kučs A. Limiting the Right to Access Asylum: A Case Study of Latvia's Response to the Migration Crisis on the Latvia-Belarus Border. *Baltic Yearbook of International Law*, Vol. 22, No.1, 2024, p. 229.; Kuželevska E., Krašnicka I., Piekutowska A. Has Belarus violated international law? In: Kuželevska E. Kasińska-Metryka A., Pałka-Suchojad K., Piekutowska A. (eds.). *Geopolitical and Humanitarian Aspects of the Belarus–EU Border Conflict*. London and New York: Routledge, 2024, p. 126.

This paper will be structured in three sections. Firstly, it will clarify the meaning of geopolitical context in the jurisprudence of ECtHR. This section will turn to recent ECtHR case law to examine how governments invoke the notion of geopolitical context in their legal arguments. In doing so, this section will seek to uncover the ECtHR's underlying objectives of the notion's application in human rights cases. It will show how, in the recent judgements against Lithuania²⁰ and Latvia²¹, the ECtHR has used this concept by explicitly and implicitly referring to it. In addition, a critical view of dissenting and concurring opinions of the ECtHR judges will be included. In particular, their claims that geopolitical context is merely a rhetorical tool that can only illustrate the importance and sensitivity of a case²² or that the application of geopolitical context is inappropriate as it cannot be found in the text of the ECHR or in the interpretation thereof,²³ will be addressed.

Secondly, based on the findings of the first section, the subsequent section will further and systematically explore the role of the notion of geopolitical context within the ECHR. In particular, it will explore what the methodology is that is used by the ECtHR for finding a place for this concept in the system of the ECHR. It will examine how the notion of geopolitical context has been used in situations where such legitimate aims as national security, public safety and the prevention of

20 *UAB Ambercore DC and UAB Arcus Novus v. Lithuania*, App. no. 56774/18 (European Court of Human Rights, 13 June, 2023); *Zarubin and Others v. Lithuania*, App. no. 69111/17 (European Court of Human Rights, 26 November, 2019); *UAB Braitin v. Lithuania*, App. no. 13863/19 (European Court of Human Rights, 13 June, 2023); *Kirkorov v. Lithuania*, App. no. 12174/22 (European Court of Human Rights, 19 March, 2024).

21 *Ždanoka v. Latvia* (No. 2), App. no. 42221/18 (European Court of Human Rights, 25 July, 2024); *Savickis and Others v. Latvia*, App. no. 49270/11 (ECtHR, Grand Chamber, 9 June, 2022); *Gapoņenko v. Latvia*, App. no. 30237/18 (European Court of Human Rights 23 May, 2023).

22 Joint dissenting opinion of judges O'Leary, Grozev and Lemmens in *Savickis and Others v. Latvia*, App. no. 49270/11 (ECtHR, Grand Chamber, 9 June, 2022), § 6.

23 Concurring opinion of judge Derenčinović in *UAB Ambercore DC and UAB Arcus Novus v. Lithuania*, App. no. 56774/18 (European Court of Human Rights, 13 June, 2023), § 10.

disorder restrict human rights.²⁴ Additionally, it will examine the use of the notion of geopolitical context in the process of determining whether state interference is necessary in a democratic society.²⁵ Specifically, this is the process of balancing how the ECtHR looks at how domestic courts have, on the one hand, ensured the protection of an individual's human rights, and, on the other hand, ensured national security, public safety or the prevention of disorder in the context of the contemporary geopolitical context.²⁶ The process of balancing is interconnected with the doctrine of the state's margin of appreciation.²⁷ Therefore, this section will also show how the notion of geopolitical context is used by states by invoking the doctrine of the margin of appreciation.²⁸ Thus, it will be argued that the doctrine of the margin of appreciation not only allows states to use the notion of geopolitical context to reconcile human rights with political factors,²⁹ but that the doctrine of the margin of appreciation can also be used for setting limits to the application of the notion of geopolitical context.³⁰

The third and final section will analyse how the application of the notion of geopolitical context can be justified within the dialogue between national courts and the ECtHR. This section will present how Lithuania and Latvia have contributed to the jurisprudence of the ECtHR by applying the notion of geopolitical context,

24 *Kirkorov v. Lithuania*, App. no. 12174/22 (European Court of Human Rights, 19 March, 2024), § 57.

25 *Gapoņenko v. Latvia*, App. no. 30237/18 (European Court of Human Rights 23 May, 2023), § 43 and § 49.

26 *Zarubin and Others v. Lithuania*, App. no. 69111/17 (European Court of Human Rights, 26 November, 2019), § 57.

27 Gerards J. *General Principles of the European Convention on Human Rights*. Second Edition. Cambridge: Cambridge University Press, 2023, pp. 349-352.

28 *Ždanoka v. Latvia (No. 2)*, App. no. 42221/18 (European Court of Human Rights, 25 July, 2024) §§ 56-58.

29 For margin of appreciation as a tool to reconcile human rights and political issues see in: Agha P. Introduction. In: Agha P. (ed.). *Human Rights Between Law and Politics: The Margin of Appreciation in Post-National Contexts*. London: Bloomsbury Publishing Plc, 2017, pp. 11-12.

30 For determining scope of the margin of appreciation see: Gerards J. *General Principles of the European Convention on Human Rights*. Second Edition. Cambridge: Cambridge University Press, 2023, pp. 350-352.

maintaining alignment with ECHR standards and avoiding violations of the ECHR. This final section will be devoted to explaining how national courts can apply the notion of geopolitical context at the national level and what legal methods should be applied to ensure compliance with the ECHR and prevent human rights violations. National courts should exercise thorough scrutiny of any invocation of the geopolitical context to prevent its misuse in cases where such considerations are neither important nor relevant to the limitation of human rights. Moreover, national courts should avoid granting a *carte blanche* for human rights restrictions based on vague references to national security or geopolitical concerns. To foster constructive dialogue with the ECtHR, national courts must provide detailed reasoning in their judgements, offering a comprehensive assessment of potential threats and relying on legal methods and jurisprudence developed by the ECtHR to substantiate their decisions. The geopolitical context can only be deemed acceptable when it is well-reasoned, precisely articulated and demonstrably necessary in a democratic society as an effective measure for the protection of democracy grounded in the rule of law.

Keywords: geopolitical context, European Convention on Human Rights, European Court of Human Rights, margin of appreciation, balancing of human rights, judicial dialogue

2.3. Paradoxes and Dilemmas of Restoring the Rule of Law in Poland After the Period of Democratic Backsliding (2015–2023)

Mikołaj Iwański, Jagiellonian University, Poland

In recent years, many contemporary states have experienced a profound crisis associated with authoritarian populism and the erosion of democratic institutions and the rule of law. This applies both to countries with unestablished traditions of democracy and the rule of law, such as Turkey, Hungary, the Philippines and Poland, and countries with well-established traditions, such as the USA.

Between 2015 and 2023, Poland experienced a crisis in the rule of law, primarily characterised by the political establishment's systematic attacks on the independent

judiciary, which spilled over into other areas of social life, including violations of media freedom, attacks on women's rights and the unlawful and inhumane treatment of migrants at the Belarus–Poland border. This crisis would not have been possible without the complicity of certain members of the judiciary and legal community. Despite the clear violation of independence standards confirmed by rulings of the European Court of Human Rights and European Court of Justice, many judges were promoted to higher judicial positions following decisions made by the unconstitutional National Judicial Council. Many lawyers have also chosen to enter the judicial profession through this institution. This problem currently affects one-third of Polish judges.

Following the 2023 parliamentary elections, in which the democratic opposition emerged victorious, the newly elected government was tasked with restoring the rule of law. This revealed many paradoxes related to transitional justice. How should lawyers who became judges or were promoted to a higher judicial position in an obviously unconstitutional procedure be treated? The Ministry of Justice has drafted a bill that divides these individuals into three categories: 'red', 'yellow' and 'green', depending on their level of involvement in the unconstitutional transition. This bill has raised fundamental questions within the Polish and European legal community. Can the rule of law be restored in a way that appears to violate it? How can we prevent a future crisis of the rule of law when many members of the public, as well as public officials, support authorities who were not committed to the idea of the rule of law? Should the principles of the rule of law be applied to those who blatantly and cynically violate them? I will try to answer these questions in my presentation.

Keywords: democratic backsliding, transitional justice, rule of law

2.4. Drafting Laws in the Baltic States: Rational Legislator in Practice

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Darijus Beinoravičius, Mykolas Romeris University, Lithuania

Silvia Kaugia, Tartu University, Estonia

During the 20th century, the three Baltic states experienced a relatively similar

historical development. However, following the collapse of the communist regime, Latvia, Lithuania and Estonia have followed slightly different political paths, which excludes a simplistic conception of 'three similar Baltic states.' For example, one of the countries (Lithuania) is a semi-presidential state, while Latvia is characterised as a state with a strong parliament. However, the constitutional differences play almost no role when there is a discussion about the mechanisms for improving the work of the legislature, so that the result of the parliament's work – laws – were made in a proper procedure and reflect the best solutions in the specific circumstances. Legal and administrative reforms that took place before the accession to the European Union in 2004 have put strong emphasis not only to normative regulation. The 'rule of law' (*tiesiskums* in Latvian, *įstatymo taisyklė* in Lithuanian, and *seadus* in Estonian) became a key concept that led these countries on a path towards the development of a wide variety of institutes, activities and processes. What is the role of the rule of law in the work of the legislature? The knowledge of methodological requirements, rules and technical measures necessary for objectifying legal ideas into legal norms in all three Baltic states since the beginning of the 2000s has become an everyday topic of discussion among lawyers and policymakers. It is recognised that it is a goal-oriented interest not in formal legislative issues, but rather in questions: how to improve the effectiveness and efficiency of laws? How to evaluate which alternative would be more useful? Legislative evaluation in practice often reduces scepticism and provides a solid basis for responding to those who express doubts about the suitability of the regulation. Despite the well-developed regulatory basis for the state to create well-balanced laws, the practice of the parliaments in all three Baltic states is justifiably criticised.

Keywords: quality of legislation; rule of law; Baltic states; legislative evaluation

3. FOUNDATIONS OF STATE AND CONSTITUTIONAL AUTHORITY

3.1. From Criteria to Conditions: Rethinking Statehood in Contemporary International Legal Doctrine

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The concept of statehood has long stood as a foundational yet contested pillar of international law. Traditional doctrine, rooted in the Montevideo Convention of 1933, identifies four core criteria: a permanent population, a defined territory, an effective government, and the capacity to enter into relations with other states. While this framework retains doctrinal authority, the shifting dynamics of international politics, especially in the context of secession and contested recognition, have revealed the inadequacy of a purely positivist or declaratory approach.

This article explores the contemporary evolution of the legal doctrine of statehood by critically engaging with both classical legal theory and recent scholarly advances. It examines how additional normative conditions – such as democratic legitimacy and respect for human rights – have increasingly infiltrated recognition practices, blurring the line between legal criteria and political evaluation. Drawing upon the works of James Crawford, Thomas Grant, Jure Vidmar, Mikulas Fabry and Ilona Khmeleva, this study demonstrates that modern claims of statehood cannot be disentangled from broader concerns about the international order and the legitimacy of power.

The legal ambiguity surrounding the criteria of statehood is further compounded by the inconsistent application of recognition practices by states and international organisations. This article assesses how instruments such as the European Union's 1991 Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union introduced political conditions, such as democracy, respect for minority rights, and adherence to borders, that go beyond the Montevideo framework and serve as gatekeeping devices for access to the international legal order.

Moreover, the article reflects on the conceptual challenges raised by doctrines of remedial secession and 'earned sovereignty', particularly in conflict zones where statehood emerges out of contested legitimacy. These doctrines, though lacking

formal codification, are increasingly referenced in legal–political discourse and United Nations practice. In this context, recognition becomes not a passive acknowledgement of objective facts but an active assessment of normative credentials – a trend that distances legal practice from its formalist foundations.

Legal theorists such as Jean d’Aspremont and Andreas Zimmermann have questioned whether modern international law should abandon its formalist fixation with definitional rigidity and instead embrace a functional model of statehood that prioritises responsibility and legitimacy over formal structure. Others, such as Brad R Roth, caution against excessive moralisation of statehood, warning that it opens the door to politicised double standards and the erosion of sovereign equality.

By juxtaposing doctrinal theory with real-world practice, this article contributes to the re-theorisation of statehood as a legal status conditioned both by factual attributes and normative expectations. It concludes by calling for a renewed effort by the International Law Commission or a similar body to clarify the legal framework of state recognition, balancing the need for stability with the demands of justice, consistency and legal certainty.

Keywords: statehood, international recognition, Montevideo Convention, legitimacy, international legal doctrine.

3.2. Political Obligation. Restarting from Plato’s Crito

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The question ‘Why obey the law?’ has been a constant in philosophical reflection about law. In contemporary discourse, particularly in the Anglo-American literature, this question has been framed as ‘political obligation’, understood as a type of obligation that relies on reasons independent of the content of legal prescriptions. This has generated various theoretical positions, including consent/contract theory, gratitude theory, fair play theory, membership theory, and natural duty theory.

Many contemporary theories on legal obligations refer to Plato’s *Crito*, where Socrates chose to remain in prison and face death rather than escape. This dialogue has been interpreted as supporting various modern theories of obligation.

Usually, the *Crito* has been read through two complementary interpretative lenses:

1. Authority theory: the law must be respected because it is the law of the state which holds the community together.
2. Consent theory: obedience is founded on the agreement (*homologia*) that Socrates voluntarily concluded with the laws of Athens.

However, I suggest that the arguments presented by the personified *nomoi* (laws) in the dialogue point in a different direction.

The laws continually call for Socrates to make his choice based on a principle capable of maintaining unity, not only with his fellow citizens or political community, but also with his personal history and the completeness of his existence.

The obedience required by the laws should be understood as a call to recognise and respect what, by circumscribing Socrates' entire life, also preserves its possibility of being realized as a 'good life' (*eu zen*) rather than mere living (*zen*).

He is bound and limited precisely because he is entirely remitted to himself and preserved in his freedom.

The rule of action determined in the confrontation between Socrates and the law is not an expression of power or submission to power, but rather the manifestation of a reason that opposes power. Socrates' obligation arises from one of the law's most essential tasks: Opposing power.

Keywords: obedience, obligation, power, freedom, good life.

3.3. Post-Sovereign Democratic Constitution-Making – Transformation of the Concept of Constituent Power

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The concept of constituent power – the idea that the people hold the ultimate authority to establish or reshape a constitutional order – has undergone a profound transformation in contemporary constitutional theory. Traditionally understood as an unlimited, sovereign force standing outside and above the law, constituent power is increasingly being redefined within a 'post-sovereign' framework. This shift

reflects both theoretical developments and historical experience (about the dangers) of unconstrained power, even when exercised in the name of popular sovereignty.

Abbé Sieyès articulated the classical understanding of constituent power as the direct expression of a nation's will, unbound by prior legal constraints. For him, the nation's will was legitimate and unlimited, capable of creating new constitutional orders without legal restrictions. Carl Schmitt radicalised this idea, portraying constituent power as a political decision in which politics are unmediated by law. Schmitt's vision, which emphasised the absolute and inalienable nature of constituent power, carried troubling implications, as it could justify authoritarian exercises of power in the name of the people. The twentieth century demonstrated how appeals to unlimited popular sovereignty could be weaponised to dismantle democracy itself, as seen in the rise of fascist and other totalitarian regimes that claimed to embody the 'true will' of the people while suppressing pluralism and dissent.

In response to these dangers, contemporary constitutional theory has sought to rethink constituent power in ways that reconcile democratic legitimacy with legal and institutional constraints. Andrew Arato, for example, has argued against the myth of a unitary, sovereign people acting outside institutional frameworks. Instead, he proposes a model of post-sovereign constitution-making, where constituent power operates within procedural and substantive limits, ensuring that the process of constitutional creation remains democratic, deliberative and respectful of fundamental rights. This approach recognises that 'the people' are not a monolithic entity but a pluralistic and often fragmented collective, whose will must be constructed through inclusive and participatory processes rather than imposed through top-down assertions of popular sovereignty.

The growing influence of supranational legal norms – such as those enforced by the European Court of Human Rights – means that even constitution-makers must operate within a framework of shared legal principles. Some modern constitutions incorporate international human rights standards, ensuring the upkeep of fundamental rights.

Empirical examples demonstrate how post-sovereign constituent power functions in practice. The South African constitution-making process (1993–1996) stands as a paradigmatic case (another example could be Canada, in relation to

the secession of Quebec and the advisory opinion of the Supreme Court of Canada). Rather than allowing an unconstrained exercise of popular sovereignty, the transition was structured through an interim constitution that established binding principles and created the Constitutional Court to oversee the drafting process. This ensured that the final constitution adhered to democratic and rights-based norms, preventing majoritarian overreach. Similarly, Kenya's 2021 High Court decision (though later overturned) outlined a detailed four-stage constitution-making process, emphasising civic education, public participation, deliberative drafting and popular ratification, as a safeguard against elite capture and exclusionary decision-making.

The stakes of this theoretical shift are particularly high in an era of rising populism, where leaders often invoke the rhetoric of 'the people's will' to concentrate power and undermine democratic institutions. Hungary's 2011 constitutional overhaul, pushed through without meaningful opposition input, and Venezuela's repeated use of constituent assemblies to bypass democratic checks under Chávez and Maduro, illustrate how claims to unconstrained constituent power can be abused. In contrast, a legally and procedurally bounded understanding of constituent power helps to preserve democracy by ensuring that constitutional change remains participatory, pluralistic and respectful of fundamental rights.

Ultimately, the move from a sovereign to a post-sovereign conception of constituent power reflects a deeper recognition: democracy cannot survive if the very act of founding or refounding a constitutional order destroys the conditions for future democratic politics. While constituent power must remain rooted in popular legitimacy, its exercise must be structured through inclusive processes and subject to substantive limits. This will ensure people's authority, as well as its exercise in a way that supports, rather than undermines, a free and pluralistic society.

Keywords: constituent power, post-sovereign constitution-making, popular sovereignty, democratic legitimacy, pluralism

3.4. The Legacy of Mykolas Römeris: Between National and International Jurisprudence

Ieva Deviatnikovaitė, Mykolas Romeris University, Lithuania

Mykolas Römeris was one of the most important and significant Lithuanian lawyers in the interwar period. He was a justice at the Supreme Tribunal and a member of the State Council, where he had to deal with issues of administrative law, prepare and deliberate on draft laws, and advise the most senior officials. In addition, from 1932, Römeris served as a member of the secret Commission of Consultants for the Affairs of the Klaipėda Territory. There, he investigated complex legal cases related to the relationship between autonomy and the sovereign, and laid the foundations of Lithuanian constitutional justice.

Römeris not only provided consultations, considered and prepared drafts, and examined disputes but also actively engaged in scientific legal activities. He taught at the University of Lithuania (later renamed Vytautas Magnus University) from 1922 until 1939 and at Vilnius University from 1940 until 1945. He also authored nine scientific legal books alongside numerous scientific and journalistic articles (approximately 600), as well as serving as a rector for seven years.

Römeris directly participated in the trial involving the case of the interpretation of the Statute of the Klaipėda Territory at the Permanent Court of International Justice in 1932. He played the role of a national judge (judge *ad hoc*). In this report, we discuss this participation, the issues of both international and constitutional law, the process of hearing cases at the Permanent Court of International Justice, the role of the judge *ad hoc*, the relationship with the permanent judges, the personalities of the judges, the peculiarities of the discussions that took place between the judges, the psychological reasons when the judges decided on one decision or another, and experiences related to the struggle for the Klaipėda Territory. We present the preliminary opinions of the judges regarding the main and essential question – whether the governor of the Klaipėda Territory had the right to remove the chairman of the Directorate from his position. In this report, we present a story about individual judges' notes on the first four questions of the complaint, preliminary changes of

opinion on the fifth and sixth questions of the complaint, and the final decision of the Permanent Court of International Justice in the case of the interpretation of the Statute of the Klaipėda Territory. We also present the echoes of the decision made in the case of the interpretation of the Statute of the Klaipėda Territory in Lithuania and abroad and Römeris' activities, implementing the theses of the Permanent Court of International Justice's decision in the Lithuanian legal order. Furthermore, we describe Römeris' internal state while examining this case, his relationship with the judges of the Permanent Court of International Justice, the institute of *ad hoc* judges, aspects of the independence of the judge, as well as his perspective of becoming a permanent judge of the Permanent Court of International Justice.

The case of the interpretation of the Klaipėda Territory became crucial in resolving the issues of the autonomous region. It became the basis for the establishment of the first constitutional court in the Republic of Lithuania – the Statutory Court. The Statutory Court was required to create a flexible, unbiased, fair and civilised way of conducting relations between the autonomous territory and the state while avoiding direct interference from the central government in the autonomous areas. The Court was intended to resolve any conflicts between Greater Lithuania and the Klaipėda Territory.

Keywords: national law, international law, autonomy, sovereignty, the Permanent Court of International Justice, the case of the interpretation of the Klaipėda Territory.

4. LAW IN THE DIGITAL AND ARTIFICIAL INTELLIGENCE (AI) ERA

4.1. Digital ‘Fairness’: Between Impossibility and Necessity

Claudio Sarra, University of Padua, Italy

An important consequence of the digital revolution is that it has compelled scholars who approach it from various perspectives to engage in increasingly deep interdisciplinary collaborations.

Similar to what has already occurred in other sensitive areas of applied ethics (e.g. bioethics), the creation of working environments in which disciplines once considered far apart in content now interact to ultimately produce shared outcomes can no longer be postponed. The impact of artificial intelligence (AI) on the current economic and social fabric is, at present, one of the main domains in which such collaboration appears indispensable, as technical, economic, social, legal and ethical issues are profoundly intertwined.

Among the many challenges this development presents, those concerning the need to create ‘fair’ algorithms, ‘fair’ autonomous decision-making tools or, more generally, ‘fair’ AI, are arguably the most complex. This is because they lie at the intersection of technical implementation and the societal ideal of safeguarding fundamental rights.

Thus, the problem of ‘fairness’ demands both a scientific and technical approach, as well as ethical and legal reflection. It appears to be an ideal issue upon which to build fruitful interdisciplinary cooperation.

As far as law is concerned, even when limited to the scope of European legislation on the digital revolution, we observe that fairness, although a fundamental requirement in many contexts³¹, is neither clearly defined nor consistently associated with the same overarching meaning. Moreover, within the same legal framework, the term appears in reference to different legal domains (e.g. competition and trade

31 See for ex., *e plurimis*: Art. 8, *Charter of Fundamental Rights of the European Union*; artt. 5, 13, 14, 40 of the *General Data Protection Regulation*; art. 12, *Data Governance Act*; artt. 8, 10, 13, 20, 41, 47, 47, *Data Act*; art. 58, *AI Act*.

law, or the general principles of a ‘fair trial’³²).

However, to apply it to the design of autonomous AI systems, whether for preparing training data (pre-processing), adjusting decision logic (in-processing), or correcting outcomes (post-processing), engineers require a mathematically translatable ‘fairness formula.’ Case-by-case manual interventions are impractical and contrary to the purpose of developing automated decision-making tools.

Unfortunately, recent studies in the scientific literature suggest that even if such a construct were available³³, the enterprise would be inherently flawed: this is the so-called ‘impossibility of fairness’ problem.

In AI literature, this term refers to the fundamental limitation that, outside trivial cases, it is mathematically impossible to simultaneously satisfy multiple widely accepted fairness criteria in algorithmic decision-making. This issue was first formalised in foundational works demonstrating that criteria such as demographic parity, equalised odds, and predictive rate parity cannot all be achieved under realistic conditions, thereby necessitating trade-offs among competing notions of fairness. For instance, Kleinberg et al. (2016) and Chouldechova (2017) showed that calibration (predictive parity) and equalised error rates (equalised odds) are mutually exclusive when base rates differ across groups. Subsequent research has extended this impossibility to other frameworks, such as counterfactual fairness, which in practice often conflicts with group-based metrics. In fields such as healthcare and criminal justice, these limitations manifest as disparities in model performance across demographic groups, even when bias mitigation techniques are employed. The issue is further compounded in large language models (LLMs), where task and context flexibility render universal fairness guarantees intractable, necessitating context-specific evaluations and stakeholder participation to approximate equitable outcomes.

In other words, even when a mathematical construct for fairness is available, it inevitably captures only a partial aspect of the concept, and achieving this partial outcome entails rejecting other possible instantiations of the same value, as they

32 See for ex., *e plurimis*: art. 21, *Digital service Act*; artt. 26, 30 *Data Governance Act*.

33 Apparently, scholars have identified up to 21 different definitions of ‘fairness’ in the literature, with 4 (anticlassification, classification parity, calibration, statistical parity) being the most used in technical treatment of algorithm bias, cfr. Tsamados *et al.* (2022).

would be mathematically incompatible.

The reasons for this appear to lie in the historical evolution of the meanings associated with the term fairness, particularly in its origins and transformations as it came to acquire legal significance. These processes seem to have been marked by significant metaphorical transfers, which still influence the intuitive ‘common-place associations’ (Black, 1962) underpinning our diverse contemporary uses of the term.

In my paper, I will aim to: a) present a concise overview of the ‘impossibility of fairness’ problem; b) offer a brief etymological account focusing on the legal incorporation of the notion of fairness; and c) provide a philosophical reflection on the contemporary difficulties in defining the term.

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4.2. Smart Legislation: Principles of Law-Making for Technology Regulation

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Law, especially in situations where it faces agile development and requires agile approaches in theory and practice, apparently needs a new ‘agile methodology’, designed to fully meet the needs of efficient legal regulation of new phenomena, such as the rapid evolution of technology. However, this legislative methodology requires not only agile and iterative cooperation between the drafters of bills and experts in the respective field of technology, but it also has to respect certain basic principles

of law-making.

Modern technologies represent the area where the most rapid and significant transformations can be observed. The tension between legal and non-legal normative systems and forces is also most visible in this area. Law, especially in situations where it faces agile development and requires agile approaches in theory and practice, apparently needs a new agile methodology, designed to fully meet the needs of efficient legal regulation of the new phenomena. This novel methodology could potentially be built on a combination of empirical socio-legal methodology and the agile methodology of software development. To introduce the two approaches, I will begin with socio-legal scholarship (see e.g. McConnachie, 2020), whose roots trace back to the late nineteenth century and which has continued to challenge traditional doctrinal approaches to law ever since. It has always sought to present a more complex understanding of *'how legal rules, doctrines, legal decisions, institutionalised cultural and legal practices work together to create the reality of law in action'* (O'Donovan, 2016). This is thereby in clear contrast with doctrinal research, which is clearly shaped by an 'authority paradigm', i.e. a focus on authoritative sources and the normative function of rules, while identifying their prescriptive content rather than their actual effect, and disregarding background forces and an actual ability to regulate the object of regulation (Ibid.). The doctrinal approach is hence based on the belief that the law may be projected as an autonomous instrument of social intervention, independent from other forces and normative systems (Ibid.).

The doctrinal (dogmatic) approach thereby proved to be a workable concept in the 20th century, in a stable environment of a pool of traditional problems, with pre-solved and pre-fixed answers to prototypical situations. The focus of such legal scholarship is then naturally on hermeneutics and legal argumentation in the process of applying prototypical law onto prototypical facts. However, this approach proves unworkable in dynamic contexts and in complex environments, with numerous unsolved new problems (new, non-prototypical situations) that are continuously emerging in practice, thus creating an unstable, ever-changing fact-base onto which the law must be applied or for which new legal rules must be designed. Empirical knowledge and specific expert knowledge are necessary in such situations in order to grasp the facts themselves, before applying the law or before suggesting

new legal tools to tackle the new situations. Unfortunately, in most cases, it is not possible for a single individual to combine detailed technical knowledge with expert legal knowledge. Therefore, close cooperation between technology experts (and/or other stakeholders) and legal experts is necessary in the process of drafting, applying and evaluating new legal tools, using an evidence-based approach to assess the practical effects of the legal tools introduced.

This approach is, in fact, well-known and has been employed for decades, referred to as so-called agile methods in software development management. Agile methods first began to appear in the early 1980s, while their main principles were summarized in the Agile Manifesto of 2001. From the field of agile software development, this methodology was then transferred to legal practice in relation to agile software contracting (Nuottila, Kujala & Nystén-Haarala, 2015), where there is increasing demand for proactive coordination and flexible adaptation to changes.

However, further promising extensions into legal scholarship and legal practice, going beyond contracting to another type of rule-setting, namely legislation, have yet to be developed and tested. Building on the experience with regard to agile contracting, legislation is also '*...designed by lawyers to protect different parties against risks and to get commitments from others; commitments that the law will enforce at the court in the worst case scenario.*' (Ibid.). Similar to agile software development, where the aspired-to end result cannot be precisely defined beforehand, software contracts and potentially also the legislation nowadays require increased flexibility. This means greater demands for proactive coordination and flexible adaptation to changes, particularly in the context of a project characterised by complexity and uncertainty (Ibid.).

Just as in contract drafting, in the world of legislation, it was also often assumed that the project or product requirements were all known at the very beginning of a project. However, this proved to be wrong or, at least, inefficient, both in terms of software development as well as in terms of software contract drafting. Because of these challenges that the traditional model was facing, a newer, spiral model of management was developed. The spiral model started to change software development into an iterative and more responsive direction, in that it divided a project into smaller cycles. Each cycle could be assessed separately upon its completion, which

made the system more responsive and interactive, reflecting the actual needs of the customer (Ibid.).

Finally, the latest development in this evolution is proper agile methodology. The Manifesto for Agile Software Development, from 2001, is based on four main principles of agile methodology, which may be reformulated for the needs of a lawyer as follows:

- dynamic interactions should prevail over static processes and tools,
- substance prevails over the complex wording,
- collaboration prevails over formal top-down regulation, and
- responding to changes while following a plan is a natural part of the plan.

Speaking in software development terms again: '*Rather than starting out by defining the perfect requirements document*', it is recommended '*developing release after release as quickly as possible, testing them on users, and modifying them to truly meet user needs*.' (Hassett & Burke, 2020). In practice, this means that software technology firms:

- Develop programmes as quickly as possible
- Try them out on users
- Make changes based on feedback
- Then try them out again. (Ibid.)

This new approach thus promotes a more open, dynamic and flexible approach, being an idea that is also very much welcome in the field of contract law and possibly even the field of legislation drafting. Therefore, this novel approach comprises foremost the idea of increased cooperation with stakeholders, as well as the idea of encouraging changes rather than discouraging them, and by focusing on responding to change rather than on following a plan.

It is possible that this experience could also apply to other forms of project management, including legislation drafting. In fact, this was already suggested in 2018 by Lokin in her PhD dissertation, which drew heavily on agile software development methods (Lokin, 2018). Lokin thereby embraced the idea that, just as mainstream contract drafting moved to a more proactive form of drafting, this could also be successfully applied in the field of legislation drafting. In both sectors, agile methods promote the idea of '*continual refinement of the product and project practices*'

(Nuottila, Kujala & Nystén-Haarala, 2015). This is essentially the way legislation in general already works nowadays, having abandoned the traditional stability of legal norms and accepted the fact of ‘legislative avalanches’ present in all European Union Member States. However, there is more to agile processes than simply continual and rapid changes in legislation: ‘*in agile, policy or product designers need the input of users, citizens, or customers because their own experiences are not as useful or representative*’ (Mergel, Whitford & Ganapati, 2020, p. 6-7). Additionally, ‘*agile assumes situations are fluid and change over time. As new information, constraints, or opportunities emerge, agile drives practitioners to revise and update early working versions to improve processes or services.*’ Agile processes thereby even assume failures will occur, believing that agencies that experience failure in early iterations are better equipped to improve. This helps in the end to ensure that products and services are usable and fit for purpose. The agile methodology thus emphasises bottom-up change over top-down direction, meaning it recommends taking a close (empirical) look at the actual situation and the actual players who are fully involved in the process of testing and iterating – often even with some degree of responsibility within the partial project cycles. Thus, stakeholders are themselves becoming involved in the regulation, being managers of the actual exertion of the tools in practice.

Keywords: smart legislation, agile methodology, principles of legislation, modern technology

4.3. Traditional Legal Styles in the Age of Artificial Intelligence: Towards Accelerated Legal Globalisation?

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Artificial intelligence (AI), as a transformative and potentially disruptive technology (in the sense attributed to the term used by Sourdin), exerts a profound influence across various domains of social life. The extent of change resulting from the application of AI ranges from relatively moderate, when it is perceived as a tool to support human decision-makers, to potentially far more radical, when its use surpasses the boundaries of supportive technology. Scholarly perspectives on the

legitimacy of deploying AI-based systems in the field of law vary considerably, ranging from cautionary warnings about potentially harmful consequences to enthusiastic advocacy for their use. Despite these opposing viewpoints, the integration of AI-based systems into both the creation and application of legal rules has already become a reality.

This paper examines whether the deployment of AI contributes to the convergence, or even disappearance, of distinctions among traditional legal styles, a concept employed in comparative law literature to distinguish major legal systems or families of law. It further considers whether the growing integration of AI into the legal domain could give rise to the formation of a future universal hybrid legal system, and whether such an outcome would be normatively desirable, i.e. whether it would produce beneficial outcomes or, conversely, undermine key principles foundational to the rule of law.

Some authors have already compared the impact of AI on law to the historical role of codification in shaping the civil law tradition. With respect to the creation of legal rules, it is possible to anticipate a shift towards what Lawrence Lessig termed the ‘West Coast Code’, in which software code functions as a regulatory mechanism. This development may diminish the traditional role of legislators and fundamentally alter the nature of legal regulation itself (carrying, according to Lessig, significant risks of reductions in the transparency and democratic legitimacy of the process). The dual meaning of the term ‘code’, referring both to major legislative acts and to algorithmic rules, reinforces the effectiveness of this analogy.

According to the classical understanding of legal style developed by Konrad Zweigert, the elements of legal style, as a defining characteristic of a major legal system and a key criterion for distinguishing among legal families (*Rechtskreise*), include: 1) its historical origin, 2) the mode of legal reasoning, 3) particularity of its distinctive legal institutions, 4) legal sources and their interpretation, 5) underlying ideological factors. Many of these elements are already undergoing transformation under the influence of AI, and its transformative potential in this respect is likely to become even more pronounced in the future. AI-based systems may reshape prevailing models of legal reasoning, potentially fostering the emergence of a hybrid model that bridges the traditional divide between civil law and common law

approaches. The European-continental legal system (civil law) is characterised by reasoning in general concepts and the deductive application of abstract legal norms to specific cases, whereas common law rules are developed casuistically, through the resolution of individual disputes, relying heavily on inductive reasoning. Closely linked to this is the question of legal sources: while the civil law tradition is grounded in codified statutes and legislative codes, the common law system is primarily based on case law and judicial precedent. AI has the potential not only to reshape traditional legislative processes but also to enable the recognition and application of new types of legal sources. This paper will examine the possible directions in which these changes may unfold and consider the role of AI-based systems in shaping their trajectory.

Furthermore, this paper explores the changes that the application of AI may bring to the legal domain, particularly in the context of ongoing legal globalisation and the accelerated diminishing of distinctions between major legal systems. It addresses whether AI-based systems could affect the foundational differences between legal families, the forms such influence might take, and whether, in the long term, the use of AI could lead to the emergence of a unified hybrid legal system. This issue is also examined from an axiological perspective, assessing whether such a development in the evolution of legal systems should be regarded as normatively desirable, by outlining the potential advantages and disadvantages of such a scenario.

Keywords: legal style, legal families, artificial intelligence, civil law, common law, legal reasoning, legal sources, legal globalisation

5. LEGAL REASONING ON IDENTITY AND HUMAN RIGHTS

5.1. Turning a Blind Eye to the Intersection of Religion and Gender in the Case Law of the European Court of Human Rights

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Intersectionality is a theoretical framework that ‘allows for the recognition of the complex processes that generate social inequality because it understands individual “positionality” [...] as the inextricable result of many social structures [...]. Social inequalities are produced by the interaction of gender, class, race, national origin, sexual orientation, age and disability. These social structures dynamically constitute each other over time and across space in different “institutional domains”, such as economy, politics, or civil society’ (La Barbera, Cruells Lopez). Intersectionality is also a type of philosophy of activism intended to advance goals of race, gender and sex equality, largely synonymous with ‘intersectional feminism’ (Houh).

Over the past decade and a half a number of United Nations human rights bodies (including the Committee on the Elimination of Race Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights) and constitutional courts in Europe (including the German Federal Constitutional Court) have taken up intersectionality as a relevant framework for interpreting human rights. However, the European Court of Human Rights (ECtHR) has not been so forthcoming in looking at gender discrimination through the lens of intersectionality. While the Court’s application of the concept of intersectionality has traditionally been very limited, and where it has happened, it has not been explicit (see, notably, *Opuz v. Turkey*, *B. S. v. Spain*, *Carvalho Pinto de Sousa Morais v. Portugal*), in cases concerning religious identity-based gender discrimination, it has been particularly disregarded.

In this paper, I look at the case law concerning the prohibition of wearing religious clothing – principally different types of Islamic headscarves – in which religion and gender necessarily intersect. After a series of rulings in which gender discrimination was not considered at all (*Karaduman v. Turkey*, *Dogru v. France*, *Kervanci v. France*) or was considered summarily and abstractly (*Dahlab v. Switzerland*, *Leyla*

Sahin v. Turkey, *Kurtulmus v. Turkey*), the ECtHR took a more nuanced approach in *S.A.S. v. France*. Although this judgement is not devoid of criticism on many counts (Marinkovic), the ECtHR did recognise in it the individual positionality of the applicant, specifically ‘*that a State Party cannot invoke gender equality in order to ban a practice that is defended by women – such as the applicant*’. However, in more recent rulings (*Dakir v. Belgium*, *Belcacemi and Oussari v. Belgium*, *Mikyias and others v. Belgium*), the ECtHR returned to its previous practice of a total disregard of the intersection of religion and gender. Furthermore, in the last-mentioned ruling – *Mikyias and others v. Belgium* – the Court rendered in the form of a decision, thereby depriving the applicants of not only substantive but also procedural justice (Ouald-Chaib).

As the ECtHR is expected to rule soon in another case concerning the prohibition of wearing of religious clothing (*‘Les hidjabeuses’ c. France*) and after it has taken a bolder stance in recognising intersectionality in another context (*F.M. and Others v. Russia*), in this paper I call upon the ECtHR to take up the concept of intersectionality in the context of religious-based gender discrimination, an approach that lies between paternalistic feminism and repressive tolerance.

5.2. Law and Emotion: The Role of Pathos in Constitutional Decisions Regarding the Right to Abortion

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This paper aims to provide an overview of the influence of emotions on law and legal decision-making. The paper is divided into two parts. First, the complex relationship between law and emotions in legal scholarship is explored. The second part examines the significance of emotions in constitutional courts’ decisions on the right to abortion.

Law and Emotions

The significance of emotions in legal studies diminished dramatically in the period following the Enlightenment, the French and American Revolutions, and the rise of legal positivism (Sajo, 2011, p. 2; Maroney, 2018, p. 17). During this time, a

clear divide emerged between reason and emotions, leading to a legal tradition that regarded legal reasoning as a cognitive process primarily influenced by professional training (Abram & Keren, 2010, p. 2003).

In legal theory, a dominant position is occupied by what Maroney calls a '*caricatured view of emotion*'; reason and emotions are viewed separately as if they '*exist in an oppositional relationship to one another*' (Maroney, 2018, p. 13). The involvement of emotions in reasoning is seen as '*a troubling external nuisance*', and the law is viewed '*as a mechanism*' that should remove this problem (Sayo, 2011, pp. 11-13).

Furthermore, the detached and rational approach used by judges when making decisions should protect them from political pressures and the influence any sympathy they may feel towards a litigant can have on their decision-making (Abram & Keren, p. 2003). Emotions are viewed as a '*judicial vice*' (Maroney, 2018, p. 17). According to Marko Novak, '*An ideal judge has been portrayed as a "sober" logomachy who is capable of an (absolutely) objective and rational judgement by withstanding all the attempts of his or her emotions to influence the judgement*' (Novak, 2024, p. 120). We are discussing the impartial judge model, which Maroney refers to as the '*persistent cultural script of judicial dispassion*'.

An ideal judge is free from negative emotions, such as fear, anger and hatred, as well as positive ones, such as love and compassion (Maroney, 2018, p. 16). Nevertheless, this model does not accurately reflect reality, as judges are still human beings who are subject to emotions, even when performing their function. This necessitates exploring '*a legitimate role for emotions*' in legal decisions (Maroney, 2018, p. 16). The ongoing distinction between reason and emotion, still prevalent in law today, is also scientifically unfounded. Advances in neuroscience have revealed significant connections between emotions and logical thinking (Novak, 2024, p. 120). Moreover, neuroscientists and psychologists have provided compelling evidence that '*without a normal capacity for emotion, human beings become incapable of practical reason*' (Maroney, 2018, p. 16).

The Use of Emotions in the Constitutional Interpretation of the Right to Abortion

Pathetic argument (*pathos*) is one of three 'modes of persuasion', based on participants' emotions (Greene, 2013, pp. 1389, 1398; Pinho, 2018, pp. 138-139). In

Aristotle's classic work *On Rhetoric*, there is a logical argument (*logos*), which relies on 'deductive or inductive reasoning', and an ethical argument (*ethos*), which is based on the speaker's character. Pathetic arguments are often present in constitutional law (Greene, 2013, pp. 1389-1398). To fully grasp the concept of pathetic argument, it is crucial to understand it as a mode of persuasion, rather than an 'archetype of argument', such as historical or textual analysis (Greene, 2013, p. 1394). Pathos is not solely a personal emotion; it also encompasses a significant public aspect, relying on common human feelings and reactions shaped by 'collective visual culture' (Harrington, Series & Ruck-Keene, 2019, p. 307). The renowned US Supreme Court Justice William Brennan believed that by validating emotions in constitutional interpretation, we correct a system misguided by 'abstract rationality' (Brennan, 1988, p. 20).

A significant example of emotions in constitutional interpretation is the US Supreme Court's decision in *Gonzales v. Carhart*, 550 U.S. 124 (2007), which upheld the legal ban on partial-birth abortions (Abrams & Keren, 2010, p. 2017). The Court justified its decision by emphasising post-abortion regret, highlighting the feelings of regret that women may experience after having an abortion.

In recent decades, the discourse surrounding abortion has increasingly focused on 'arguments that protect women' from the consequences of their own choices (Greasley & Kaczor, 2018, p. 17). The second part of the article examines how emotions influence the constitutional interpretation of a woman's right to abortion within comparative constitutional jurisprudence.

Keywords: reason, emotion, abortion, constitutional reasoning

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5.3. The Sterilisation Requirement for Legal Gender Change Through the Lens of a Discrimination Test

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Despite increasing efforts to promote equal treatment in society, discrimination remains a persistent phenomenon in many areas of life. Courts play a key role in protecting against discrimination, and their rulings deserve consideration. Their task is to address the definitional features of discrimination. For this purpose, so-called discrimination tests serve as important guidelines.³⁴ These tests allow the identification of discriminatory conduct, including its various forms, such as direct and indirect discrimination. Tests vary, i.e. they may focus on whether the differential treatment of one person compared with another is based on a protected

³⁴ See the Decision of the Constitutional Court of the Czech Republic dated January 21, 2003, file no. Pl. ÚS 15/02; Decision of the Constitutional Court of the Czech Republic dated July 10, 2014, file no. Pl. ÚS 31/13, paragraph 45; Decision of the Constitutional Court of the Czech Republic dated May 26, 2014, file no. I. ÚS 2482/13, paragraph 36.

ground (e.g. age, gender, race, etc.) and whether such conduct is justifiable. As we will demonstrate in this paper, Czech courts still struggle with the inconsistent application of these tests.

The goal of this paper is to analyse Czech court decisions in cases involving the protection of transgender individuals' rights. Unfortunately, such decisions have often failed to eliminate the discriminatory conditions faced by these individuals. One clear example of this failure is that Czech courts have deliberately ignored the position of the European Court of Human Rights (ECtHR), which opposed forced sterilisation as a prerequisite for legal gender recognition. The ECtHR regarded such surgical interventions as incompatible with the right to respect private and family life under Article 8 of the European Convention on Human Rights (hereafter referred to as 'the Convention'). Individuals face a fundamental choice: either to forego gender identity recognition or undergo sterilisation surgery, thus losing full exercise of their bodily integrity. Both violate the cited provision of the Convention.³⁵

Despite the ECtHR's stance and European efforts to abolish sterilisation requirements for legal gender change, this condition remained in Czech law. The Czech Supreme Administrative Court (SAC) rejected the ECtHR's argument, stating that it cannot be fully applied to the Czech legal and social context. The SAC viewed gender identity in the Czech Republic as an anomaly, not to become the norm. Czech society's conception of gender is strongly binary, with a belief in biological sex determinism. The court concluded that the position in the ECtHR's case law, which strengthens the importance of personal identity, is too recent and ambiguous. This is why Czech courts did not follow it. Furthermore, the SAC ignored the alleged discrimination and, instead of applying a discrimination test assessing whether the sterilisation requirement disadvantaged transgender individuals compared with other individuals with no rational justification, it relied mainly on the cultural and value norms of the majority. It labelled Czech regulations regarding sterilisation as appropriate, but with no detailed reasoning, only vaguely referring to what can be

³⁵ A.P., *Garçon and Nicot v. France*, judgment of the European Court of Human Rights, April 6, 2017, application nos. 79885/12, 52471/13, and 52596/13.

fairly demanded of a person facing gender discrepancy legally and subjectively in today's Czech society.³⁶ A subsequent constitutional complaint against the SAC's stance was dismissed by the Czech Constitutional Court with minimal argumentation.³⁷

Change came in 2024, when the Constitutional Court reconsidered its previous views on legal gender change. It found statutory requirements for surgical modification of sexual organs and reproductive capacity deprivation solely for gender change incompatible with rights to bodily integrity, personal autonomy and human dignity. The court aligned with the ECtHR's earlier position. It examined the justification for conditioning surgical intervention solely in relation to the limitation of the fundamental rights to bodily integrity and personal autonomy. It concluded that this legal requirement may pursue a legitimate aim, as it effectively prevents arbitrary gender changes. However, this cannot be achieved in a proportionate manner if surgical alteration of the body is the determining criterion. Surgical modification should not be decisive. The court decided that the goal can be reached by less invasive, *lege artis* means. Although not explicitly applying a discrimination test, this modified reasoning implies that transgender individuals are discriminated against compared with others by this legal requirement restricting self-determination. The preceding analysis shows that Czech courts accepted forced sterilisation as lawful despite its discriminatory nature.³⁸

Keywords: discrimination tests, transgender rights, forced sterilisation, legal gender recognition

36 Decision of the SAC dated May 30, 2019, file no. 2 As 199/2018-37.

37 Decision of the Constitutional Court of the Czech Republic dated November 9, 2021, file no. Pl. ÚS 2/20.

38 Decision of the Constitutional Court of the Czech Republic dated April 24, 2024, file no. Pl. ÚS 52/23.

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