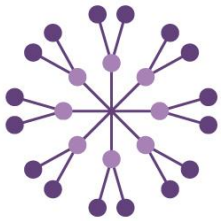

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THE FUTURE DECADE OF THE EU LAW

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BOOK OF ABSTRACTS

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I PANEL

Ján Ivančík[1]

ROMAN PRINCIPLES – FOUNDATIONS OF THE EUROPEAN LEGAL CULTURE AND THEIR POSITION IN THE CHANGING WORLD

Roman law is considered to be one of the most influential elements of the continental legal culture. However, rapid technological development and changing social and economic situation bring new challenges for principles tested during the centuries. Consumer protection; fight against corruption and money-laundering; social security law and other new fields of law emerge a fundamental question: are the ancient Roman principles still valid and required?

Tadas Lukošius[2]

THE PHENOMENON OF MEDIEVAL IUS COMMUNE: THE PAST OF EUROPE'S LEGAL FUTURE?

The claim that legal history may help to anticipate the development of law is often regarded by the jurists only as a pleasant phrase which at the same time has no real significant value. However, the legal history enables the researcher to perceive the specific legal phenomenon as a continuous and to study the antecedents of current legal challenges. Historical insight also helps to realise that major changes in Western law are being made by (re)interpreting the previous legal narratives in order to correspond to the needs of the present or future. The latter characteristics of historical approach may be fruitful in exploring the possible developments of the EU legal system. On the one hand, the EU has created a unique post-modern legal system which operates at the supranational level and has no analogies in the contemporary world. Indeed, the emergence of new technologies, protection of personal data, climate change, migration crisis or fight against the current coronavirus pandemic are just a few examples that indicate the global nature of ever-changing challenges the EU and its legal system has been facing lately. On the other hand, the issues of integrity and homogeneity remains central to the consideration of further legal developments. The constant rise of nationalist rhetoric, Brexit or recurrent non-compliance by some Member States with the general principles of the EU show the deep-rooted tensions between the national and supranational legal systems. As the abovementioned tensions in recent years have led to a rethink of future development of the EU (e. g. in 2017 the Commission published the white paper on the future of Europe, indicating five possible scenarios), one should remember that the same EU legal system has emerged and continues to function in the context of a long-standing Western legal tradition. Whereas the latter has for many centuries been characterized by the coexistence of different legal systems as well as constant struggle between ideal and reality. In this context it is especially useful to look more closely at one of the most prominent phenomena in the Western legal tradition – the medieval (or classical) ius commune. Originated in the XII century the ius commune (whose core mainly consisted of Roman and canon law) for over half a millennium was a unifying factor in European legal thought and legal practice. The paper mainly focuses on two issues. Both of them were effectively addressed centuries ago by the ius commune jurists. Moreover, each of them largely remains

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essential for the further development of EU law. First issue – the dialectical relationship between the ius commune and the ius proprium. This reveals the ways how tensions among the supranational legal systems and local laws were managed in the highly legally fragmented medieval Europe. Second, the driving legal sources and methods of ius commune, which not only promoted the unification of the local legal systems, but also ensured the longevity of ius commune and its potential for continual renewal. The paper finally analyses the question as to whether and to what extent the model of medieval ius commune could inspire the evolution of the EU legal system (as a new ius commune).

Magdalena Kolczyńska[3]

THE RULE OF LAW AND EUROPEAN IDENTITY: DOES THE EU HAVE ANY SUBSTITUTE FOR THE CONSTITUTION?

Constitution, like no other legal act, is the manifestation of what a community thinks of itself; what are its aims, values and priorities. But what if this common source of identity is lacking? Can a body politic exist without constitution? If yes – does it come at certain price?

Over a decade after the failure of a constitutional project for Europe I would like to ask whether the EU has any substitute for the constitution for the following 10 years. I will consider that questions from two different standpoints – the rule of law and common European identity. First, I will ask whether existing legal order of the EU needs the constitution to be consistent with the rule of law principle. This question was of great importance in Poland, as this decade started in our country with the EU triggering Article 7 of the Treaty of the EU with the charge of breaching by Polish government the principle in question.

The recent events however have drastically changed the situation in the European Community. The observance of the rule of law does not seem enough for the EU to assert its legitimacy in the course of the ongoing turmoil caused by the pandemic. What is needed is unprecedent solidarity among European Citizens – solidarity which transgress the demands of mere justice. I will claim that to maintain solidarity a common identity may be necessary. Thus, I will ask whether the constitution is necessary for the forming of European identity and whether it would be enough to achieve this aim.

Paulius Griciūnas[4]

NATIONAL IDENTITY AS A VIABLE PATH TOWARDS THE COMPATIBILITY OF THE OPPOSITE STANDPOINTS

Neither unconditional primacy of the EU law even over all the constitutional norms, nor absolute supremacy of any national constitutional rule over EU law could be considered as a solution, accommodating the cooperating interaction of two autonomous legal system. The pluralistic models on interaction cease to provide a solution when it comes to the potential collision between the EU and constitutional norms. In the last decade a discourse on the notion of national identity develops. This notion is complex. From the point of EU law, it is based on the obligation for the EU to respect the national identities of the Member States, inherent in their fundamental constitutional structures, as established in the TEU Art.4(2). From the point of national constitutions, it is the constitutional identity or a constitutional core, which retain an unconditional immunity over the primacy of EU law. National identity cannot be developed in any normative way under current Treaties. Therefore, the cooperative judicial communication between the Constitutional Courts and the ECJ according to the procedure of preliminary

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reference under TFEU Art.267 is the only institutional instrument available. To ensure the feasibility of cooperation, both parties, Constitutional Courts and the ECJ should look towards the path of mutual concessions to ensure the further development of the European project. The ECJ seems to be avoiding relying upon the national identity. In 2010 in Sayn-Wittgenstein case C-208/09, the ECJ mentioned national identity for the very first time and in 2011 in "Lithuanian" Vardyn case C-391/09, the ECJ for the first time explicitly based its decision on the TEU Art.4(2) and the respect of national identity. However, the ECJ is very cautious to widen the application of national identity, as the national Constitutional Courts discover a new method to oppose the unconditional primacy of the EU law. If not agreed on the balanced solution, this tool might become à la mode for the Constitutional Courts to ground their reasoning on national identity to limit the ever-expanding EU law.

Mateusz Podhalicz

CAUGHT IN THE GREY AREA BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND EUROPEAN FEDERATION? UNCERTAIN LIMITS OF THE EU JURISDICTION IN MATTERS CONCERNING THE RULE OF LAW

It is no exaggeration to state that the recent years in certain European countries were marked by radicalisation of these countries' legal regulations. Notable examples in this respects are those of Hungary and Poland. In cases of those two countries their legal developments led to EU's institutions expressing concerns over certain aspects of Member States' policies, which in turn resulted in triggering procedures – among others enshrined in Article 7 TEU. Political implications aside, the above-described situation, in which the European Union finds itself at the turn of the decade, merits calm and objective legal analysis.

It is thus necessary to ascertain what exactly are the limits the EU jurisdiction and its competences, especially in such delicate matters as regulation of fundamental aspects of functioning of Member States (such as judicial system or media) and their compliance with the rule of law, which after all remain within a domain of States' constitutional order. States that find themselves at odds with EU do protest that their actions are internal matters, within their margin of appreciation, and most importantly well outside of competences vested in the Union. The Union on the other hand argues that this notwithstanding, certain core values of the EU (rule of law primarily) have to be safeguarded, because otherwise there can be no effectiveness to EU law. From that vantage point, it is said that assessment of how Member States are organized especially in the matters of justice system is open for the ECJ and other EU authorities. That situation may cause a veritable legal dispute over authority, since in the end it may happen that both ECJ and national constitutional courts will be assessing these matters and will come to different conclusions.

The proposed analysis will depart from the scope of the EU competences, perceived with regard to principle of conferral (as envisaged in articles 4 and 5 TEU) but also taking take into account principles of EU law identified by the ECJ – such as principle of effectiveness, principle of EU law primacy and last but not least – a more recent concept of European citizenship. This analysis will in turn lead to the "Reverse SOLANGE doctrine", which posits that under ordinary circumstances, protection of the substance of EU citizens' rights (and of the essence of fundamental rights) is left to national law. This however can be 'reversed' in cases of 'systemic' failure in national law, which allows EU authorities to control the compliance of national law and its application with the values, all Member States obligated themselves to uphold as well fundamental rights. The author will critically assess merits of this doctrine, its scope and possible use of it by the ECJ.

The author posits that this doctrine also merits assessment from an unorthodox angle, namely from the perspective of international public law and most importantly Vienna Convention on the Law of Treaties. The reason is that the EU is at its core a very special, but still an international treaty, binding its

Parties as all other international agreements do. The legal issue at hand observed from that point of view will offer an answer, as to how to reconcile EU legal actions against “rogue” Member States with their sovereignty, and how to address the viability of the “Reverse SOLANGE doctrine”.

The analysis will also explore the practical aspect of realizing the abovementioned doctrine, namely what instruments are there in EU law framework, which could turn to be helpful in ensuring compliance Member State’s compliance with the rule of law, unwilling as they might be to comply. Apart from the existing measure the author will point out to possible new interpretations of the current regulations or desirable modification thereof.

Finally and more generally, the proposed research should be able to shed some light, as to where exactly the EU finds itself on its way on a scale between “simple” economic community and United States of Europe, how it can be changed and what are its likely lines of development.

II PANEL

Adam Máčaj[5], Sandra Sakolciová[6]

COMBATING DISCRIMINATION THROUGH BIG DATA – FUTURE OF EQUALITY?

The paper aims, firstly, to assess the future of anti-discrimination measures and policies, above all through the lens of ethnic data utilisation. The question posed is not only whether massive collection and usage of such data is viable in relation to its result, but also whether such ethnic data collection is an obligation incumbent upon state authorities, in international and European human rights protection systems in particular. On the other hand, this article aims to compare existence of such obligation with the existing standards on right to privacy and implications for this right stemming from such use of Big Data. The negative impact resulting from such obligation in this regard could weigh heavily on protection of personal data, currently one of the main concerns throughout Europe and the EU.

Adrianna Michałowicz[7]

MACHINE-GENERATED DATA – A NEW LEGAL CHALLENGE OF THE 2020s?

During the last years the European Union strengthened its position as a leading actor that sets the standards in the sector of data protection. Some of the legal challenges that emerged with the rapid development of new technologies have been tackled by adopting special legal measures, but the new ones still arise. In my opinion the future decade of the EU law will be partly dominated by issues concerning not only the protection of personal data, but mostly the exchange of machine-generated data, since data is no longer the new oil for the economy, but - as described in the latest communication of the European Commission „A European strategy for data" - the „lifeblood" for the further development.

Machine-generated data are produced by computer programs, applications, mobile phones and other end-users' devices. They mainly collect non-personal information, e.g. about the ways we use the terminal equipment or about its failures and dysfunctions. Such information is then used by device developers to improve the quality of their goods and services; it can be also shared with other commercial entities that could make use of the data for their own purposes, since the non-rivalrous nature of the data allows the same data to be exploited repeatedly by different actors to create new goods and services in order to better satisfy consumers' demands.

Despite the evident need for a solution in this area of law, the current EU legal system lacks instruments to facilitate access to machine-generated data between companies in the private sector. This definitely remains the future challenge of the upcoming years; therefore I would like to focus on this aspect during my presentation. My speech will be divided into two parts. The first one will be dedicated to the current state of the art; although so far no regulatory standard has been developed, some inspirations can be drawn from the existing regulations which concern access to public sector data. In the second part I will present possible solutions that may enhance the process of machine-generated data exchange. Currently this process is based on contractual solutions and soft law, but in my view in order to enhance the data-driven innovations a uniform solution is needed. Thus I will in particular analyze

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the rationales to introduce a new right of access to machine generated data, i.e. the potential scope of such a right and methods of enforcement.

Ineta Breskienė[8]

FREE MOVEMENT OF DATA IN THE EUROPEAN UNION: OPPORTUNITY OR BIG CHALLENGE IN A USE OF ARTIFICIAL INTELLIGENCE?

Artificial intelligence (hereinafter, AI) is one of the most important emerging technologies which is being considered to be strategic and economically valuable for the European Union (hereinafter, the EU) future plans. AI and data are essentially correlated. Without data there is no possibility to develop and compete with AI applications in the market. Free movement of data becomes an essential requirement for a successful AI development in the EU. However for the EU to become a leading region in AI technology would not be easy due to a strict legal framework to protect personal data and privacy, which also contains specific sectorial regulation. The existing provisions of EU law will be applied to AI technology regardless its specifics. The main obstacles for AI to use data freely are:

- AI has an ability to analyse data and identify individuals, even if such information is collected in separate databases or is anonymous. The extremely broad concept of personal data set out in the General Data Protection Regulation (hereinafter, the GDPR) creates a situation where all data can potentially become personal data in interaction with AI. Therefore, only where the identity of a natural person is likely to be disclosed, the data controller should apply the GDPR to the data processed ex ante and comply with all the relevant requirements.
- Automated-decision making and profiling (using AI technology) for data subjects may only be used in cases covered by the GDPR. One of them is the data subjects consent, which must be clear and given to achieve a specific goal. Due to the specific characteristics of AI, such as inability to fully predict the course and outcome of this technology, it is difficult to know what the end goal will be or when that goal has ended in the process of AI and has started a new one (requiring new data subject consent). The data controller should also provide a logical justification to the data subject according to decisions made concerning natural persons, but the GDPR does not explain such a provision in more detailed way. In many cases, decisions made by AI cannot be understood unless legislation only allows the use of Explainable AI, which progress is currently more theoretical than practical.
- The principles of storage limitation, purpose limitation and data minimisation must apply to personal data used by AI or even to data which may potentially become personal data. It is difficult to reconcile these principles with the need for AI to access large amounts of data and store it.

To sum everything up, it must be said that the aim to create a single European data sphere and to make data easily, comfortably accessible and usable for new technology, such as AI, development is possible, but limited by strict requirements for use for personal data and privacy. For a future development of competitive European AI technology the existing regulations should be reviewed and specific rules should apply.

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Jonathan Keller[9]

DIGITAL "STAKEHOLDERS": TOWARDS AN EFFECTIVE CONTROL OF THE PERSONAL DATA PROCESSING

Unwilfully, the General Data Protection Regulation (enforced in 2018) has mentioned a new concept "the stakeholders". However this concept has not been yet explicitly defined by the text. First, in order to understand the future importance this new concept will take, an introduction of the GDPR is required. This young regulation is inspired from the environment and consumers regulations. Those area mastered the concept of « stakeholders » and are defining it in a way where consumers or neighbours are involved within the decision process. Every national legislation has a caselaw filled of examples of dangerous substances, toxic wastes, harmful defective products… In order to prevent those dangers, standards and certifications are created to set up a level of minimum requirement. Those are also easing the freedom of movement of goods and products within the European Union. Furthermore, the European Union treaties agrees to provide to the Member State the power to categorically refuse some lawful goods on the justification of « value » or « public order ». However, the GDPR, one of the many new symbolic regulations related to the electronic common market, limits the wrongful use of personal data. Those data are a commercial good for companies but also a fundamental rights for data subjects. Those digital rights are immaterial, i.e. the frontier are not a barrier for them. Furthermore the electronic common market is considered as one of the new lungs of European consolidation and therefore is escaping directly from the real exercise of the power by the Member States of the EU. The GDPR has embraced the risk approach which as for direct consequence the enshrinement of the « accountability ». In an alternative way of speaking, data controllers have to determine and identify, solely, and to mitigate, solely, any risk prior to collect personal data from the data subject. The National Control Authority (such as the French CNIL, the English ICO, the German BSI) will only control the compliance of the respect of the rights. But this control will take place after and not before the deployment of the personal data collect and treatment. Whereas, the one of the two conceptions of the stakeholders could balance this lack of control. The first conception, the restricted one, includes only the "controller", the "data processor", eventually the "third party/parties". Basically, this vision covers all the actors involved in the personal data processing. However, the second reading is much broader through the incorporation of the "data subject". This reading could open up the involvement of consumers in the data process. This involvement is lightly supported by the European Data Protection Board and more strongly by the CNIL. Our proposition is to analyse this second vision where a European regulation but also fundamental right recognised by the European Charter of Fundamental Rights, is entrusting « stakeholders » as a key actor to compensate for the European Member's limited jurisdiction to control matters out of its real control.

Sviatoslav Kavyn[10]

INTERNATIONAL STANDARDS OF INFORMATION SECURITY OF THE EU

By studying the practice of European countries, it gives reason to summarise the lack of a single model of the national system of legal security of information security in building their own models of legal security of information security, counteracting cyber threats, as well as analysing a number of

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international legal documents. Howsoever EU countries have established a "coherent information security system", but at the same time, each country has its own laws, regulations, and instructions on how to regulate information security. Accordingly, the creation of an effective and reliable provision of information security in the context of the transformation of the international security and the multi-vector nature of the EU's foreign policy course are extremely relevant and obvious. As EU countries are members of the European Union international organization, and most of them are members of the NATO international organization, the standards of these international organizations regarding information policy and information security are extended to the national legislative platform of each state. There are, in particular, NATO's information security standards as set out in CM document (2002) 49 Security in the North Atlantic Treaty Organization (NATO) [316], NATO's official cybersecurity policy [372], a strategic cyber security concept formulated at the Lisbon Summit [330] and refined by the results of the Warsaw Summit [338], and others. Not only NATO but also the EU is active in the field of information security, which today brings together developed countries that have a significant impact on international relations, by establishing norms and standards of states' conduct in political, economic, social, information and other spheres. In 1991, the European Criteria for the Security of Information Technology was developed, which, in particular, defines the task of ensuring information security. In 1996, European Information Security standards were embodied into the "Unified Information Security Criteria" [373], which uses the CIA Triad model, which provides such basic information security features as confidentiality, integrity, accessibility [103, p. 43]. A European Commission document Networking and Information Security: A European Policy Approach (2001) identifies the Community's basic principles for information security. Particular attention is paid to information security issues in all EU countries. At the same time, issues of counteracting cyber threats, which are part of the process of ensuring information security, are found of paramount importance. Since 1999, Safer Internet programs have been implemented, which take measures to combat not only harmful content but also dangerous behaviour on the network. In addition, an important aspect of the legal security of the information security within the EU is the issue of the information openness of the state authorities of the participating countries. The issue of personal data protection is found of paramount importance here. In accordance with the research, the following key threats to the national and international security in the information field are now of utmost importance:

- Global changes and transformations in the information sphere create the latest challenges and threats that pose a real threat to human security and international law.
- There is a tendency in the information space to spread information aggression and violence, manipulation of consciousness of the person and the society, periodically information-psychological operations are carried out.
- Most countries in the world have encountered cyber-espionage, cyber-terrorism, cybercrime and cyber-attacks on critical infrastructure.
- The consequences of using modern information weapons can lead to a real loss of the state sovereignty and territorial integrity of the countries of the world.

Therefore, the research, evaluation and implementation of the positive achievements of EU countries are of found of paramount importance in the further building a unified and reliable information security system.

Krzysztof Kazmierczak[11]

GROUP INFORMATIONAL PRIVACY AS A CHALLENGE FOR THE EU LEGISLATION

Concept of a data subject has been the core aspect of data protection law ever since it first emerged in the 70s. Singular, identified or identifiable person serves as the entity to whom rights are addressed, and who may exercise those rights. Similarly, the legal instruments adopted across the EU in the field of personal data protection have focused on this identifiable individual and their position in regard to data.

However, in many situations involving privacy, the particular and the individual is no longer central, and the focus switches to large and undefined groups. Data is analysed on the basis of patterns and profiles; the results are often used for general policies and applied on a large scale. Many traditional notions of data protection appears to be either inapplicable to or incapable of properly addressing such situations, effectively prohibiting persons from exercising their rights. This has only become more pronounced in recent years with the developments of large scale trends analysis, impossibility to anonymize persons in a blockchain, broad-scale genetic testing. Concept of "demographically identifiable information" has arisen, where privacy and ethical issues can arise across the data chain for members of the group.

This has also lead towards a change of status of human expectations regarding processing. Where in recent years groups would define themselves based upon commonality and perception, with the advent of a digitized society the creation of such group often occurs outside of their input. Thus an individual may be unable to exercise control not only because of inapplicability of legal instruments, but since they have difficulties describing the full context and their expectations concerning processing.

The purpose of my presentation will be to present the challenges posed by the concept of Group Informational Privacy towards European legislators. Presentation will address the following issues:

- What is the context of group interests in informational privacy and how are they formed?
- How are current EU regulations challenged by such a notion?
- Is there a need to develop specific instruments to protect the privacy of groups?

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III PANEL

Sebastjan Okinčic[12]

BREXIT: LESSONS LEARNED, STATUS QUO AND WAY AHEAD

On 23 June 2016 almost 17.5 million citizens of the United Kingdom voted to leave the European Union. The UK government invoked the relevant Article 50 of the Treaty on European Union on 29 March 2017 . As authors of the said provision have admitted, it was never to be used. And yet here we all are, anno domini 2020, witnessing an unprecedented event of a sovereign state "taking back control" i.e. leaving in great pain the most powerful economic and political union of sovereign states ever established, taking advantage of the procedure that had initially not only been *de iure* impossible, but also seemed inconceivable in and of itself. With particular regard to what can be expected during the ongoing negotiations, the paper shall treat on the current interim period of the United Kingdom leaving the European Union, which we are finding ourselves in. We will examine the current (interim period) as well as expected future relations between the European Union and the United Kingdom as an ex-Member State. Finally, a broader perspective will be utilised to come to certain indicative conclusions as to whether Brexit can result in good know-how practices learned for future similar initiatives, or rather serve as an example for "never again". In our examination of the expected future EU – UK legal relationship particular attention will be paid to the changes happening with respect to the resolution of commercial disputes. During the transition period, the UK government will seek to agree on new reciprocal arrangements with the EU to facilitate civil justice cooperation. In this context there is no definite certainty that such arrangements will be found within the relatively short timeframe. Therefore, UK's intent to accede to the Lugano Convention 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters , as also urged by the England and Wales Bar Council , seems understandable. This sensible accession is likely at least to an extent to mitigate the cut off effects of Brexit. On the other hand, however, with formal negotiations starting on the date of submission of this abstract – 2 March 2020, and less than a week after both parties (i.e. EU and UK) presented their mandates for negotiations, it remains to be seen whether the current relatively clear discrepancies can be ironed out.

Jessica Njaboum

THE EVOLUTION OF THE EUROPEAN BANKING LAW

The banking regulation in Europe illustrates the importance of taking stock to move forward. In 2007 the subprime crisis showed a regulatory deficit and led European economists and authorities to understand that the banking and financial supervision needed to be reformed. The goal of the new regulation was to set a more reliable and more stable banking system. To achieve this goal, the European Union decided to strengthen the control of the banks.

Financial reforms were launched to create three European supervisory authorities (ESAs) which are: the European Banking Authority (EBA); the European Securities and Markets Authority (ESMA); and the European Insurance and Occupational Pensions Authority (EIOPA). The European authorities also followed the Basel Committee on Banking Supervision, the main international authority responsible for "supervising" banks. Furthermore, in 2012 the European Banking Union, was created by the European authorities to harmonize and globalize the European banking system. The EU seems to have focus its

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reform on following, giving more power or creating authorities. However, is European banking regulation: a question of authority?

This paper does not aim to explain in detail banking regulation but to debate its meaning and its regulatory purpose for the economy, the States and the individuals. The overview of the EU Banking Law historical evolution help understanding its main purposes which are mostly to ensure financial stability and reassure citizens, like bank customers, restore the confidence and the conditions for sustainable growth economy (I). Once the goals are determined the questions remains: are we in the right direction towards them? Can we consider that EU regulation, since 2008, has enabled a consolidation of the European banking sector? More than ten years after the subprime crisis, have we achieved these goals? Indeed, how have EU banks kept pace with the changing technology such as the block chain, and at what cost? Financial innovation and technological advancements have over the years led to the creation of a far more complex banking system. The present study contains a comprehensive overview of the evolution of European (EU) banking law in light of these changes (II).

The European Union crisis has shown that more integration of the EU financial system was needed. In 2020, EU members should work on proposals to complete the banking system so to insure integration and to keep safeguards in the event of a new financial crisis.

Laurynas Balčiūnas[13]

THE UK AND THE EU FUTURE LEGAL RELATIONSHIP IN THE FIELD OF BANKING AND FINANCIAL SERVICES

The United Kingdom (UK) and the European Union (EU) future relationship in the field of banking and financial services is a hot topic as both parties have a great interlink and interest. The UK is one of the largest world's exporter of financial services. Approximately one-third of that export goes to the EU. More specifically, in 2015, the UK exported £223 billions of goods and services to the other EU Member States, compared with £95.1 billion to the US and £15.9 billion to China. Export of financial services plays a crucial role as they account to 8% of the UK economic output and approximately 3.5% of employment. What is more, half of the world's largest financial firms have their European headquarters in the UK, and more foreign banks operate in the UK than any other country. Furthermore, the UK facilitates 74% of the EU's foreign exchange trading and 40% of global trading in euros. Similarly, the Office for National Statistics reports that 29% of all financial service exports in the G7 are from the UK. The City of London also continues to work as a pool of liquid assets which is essentially needed for the EU banking and FinTech sectors. It also plays an important role in funding and capital markets. What is more, there is a concentration of the US banks in London, which in case of hard Brexit (if the EU-UK future relationship deal will not be signed before the transitional period ends) tend to move their activities rather to New York than to the continental Europe what as a result could financially hit both the UK and the EU markets. Therefore, the future legal framework and partnership in the field of banking and financial service play an important role both for the EU and the UK. Furthermore, the UK, as the Member States, had greatly influenced the development of the legal framework at the EU level in the field of banking supervision and financial services. However, approaches to how the market should be regulated diverge. The UK's approach towards policymaking generally focuses on market-making, whilst the overall approach of continental Member States usually focuses on market-shaping and has a vigorous regulatory oversight. As the UK left the EU, there is a potential risk of decreasing level playing field and an increase in divergence of approaches. Brexit also forces to redefine the UK and the EU future legal relationship and raises a complex question of how this balance could be achieved building a future relationship. On the

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other hand, the EU has already used various legal instrument when defining the relationship with the third countries or European Economic Area countries. Considering the above mentioned, the research paper discusses to what extent existing EU legal instruments and existing precedents could be re-used for the future EU and UK relationship as well as potential new instruments within the remits of the EU law. Such research is, in particular, important as both negotiating parties – the EU and the UK – understand that the future partnership should be built on a different legal relationship what is in particular challenging task. The paper also aims to stimulate the discussion of this topic and to provide guidance with regard to the potential future relationship between the EU and the UK. Furthermore, this research is also important to the Republic of Lithuania, which is part of the EU, whose banking and, in particular, the FinTech sector is also, directly and indirectly, dependant from these developments. Furthermore, a greater understanding of the future relationship could also serve for thinking of how to increase the attractiveness of Lithuania as a financial centre from which the UK financial services companies and FinTech firms could continue to provide financial services to the EU.

Michał Lutek[14]

BRACE FOR IMPACT: RESHAPING THE EUROPEAN AVIATION IN THE POST-BREXIT ERA

As a result of the referendum held in June 2016 – to the wider audience known as Brexit- citizens of the United Kingdom of Great Britain and Northern Ireland voted in favour of leaving European structures. Despite its non-binding character, the procedure described in art. 50 of the Treaty on European Union has been initiated. The withdrawal of the United Kingdom from the European Union has far-reaching consequences in many areas of law. This fact remains indifferent to the aviation sector and aviation law in the strict sense. The impulse to research the matters of the UK-EU legal relations concerning aviation sector was, on the one hand great importance of the passenger flow between the foregoing territories, on the other it has not been subject to wider scientific analysis. That is why the above described issues should be investigated in-depth, mainly due to the fact that air traffic between EU Member States and Great Britain is very intense and its restrictions or complete suspension may cause huge losses to the economies of many States. This presentation aims to analyse the impact of Brexit on the legal situation of European carriers. The presentation will indicate the main problems faced by the aviation market after the cut-off date of leaving the EU by one of its members and possible and used solutions. Regulatory issues related to the certification and licensing of aviation personnel, the granting of traffic rights and the validity of international bilateral agreements will be discussed. The author will also focus on the impact of the changing paradigm in the area of air law on the Internal Market. The summary will be followed by the de lege ferenda postulates, implementation of which would have a beneficial influence on the shaping of the air legal relation between EU and UK.

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Rūta Janeckaitė[15]

UPCOMING LEGAL CHALLENGES FOR CROSS-BORDER E-HEALTH SERVICES IN THE EU

There are essentially three categories of situations, which fall under the scope of the fundamental freedom to provide services.

The situation explicitly foreseen in Article 56 TFEU is where providers are moving to another Member State to provide their services. In addition, the Court of Justice of the EU has established that free movement of services comprises two other types of situations, namely where the service recipients move to another Member State and where neither the service provider nor the recipient move across a border, but only the service itself.

In the healthcare field, all three situations raise specific legal issues, which have required the introduction of measures on EU-level and might necessitate further action. In the light of public health, most health professions are regulated in the Member States. Thus, free movement of health professionals would hardly be possible without a recognition mechanism of their qualifications. Currently, the Professional Qualifications Directive 2005/36/EC (PQD), which has recently been modernised by Directive 2013/55/EU, takes care of this and related aspects. Further, settled case-law of the Court of Justice concerning cross-border movement of patients to receive healthcare was eventually codified in the Patients' Rights Directive 2011/24/EU (PRD). The Directive ensures the rights of patients to reimbursement of cross-border healthcare costs by their statutory social security system and complements the rights granted under the EU social security coordination regulations.

Lastly, recent ICT developments were seminal for new possibilities in the health field, ranging from apps for contact between health professionals and patients to online consultation and distant surgery. They allow providing healthcare services without the professional or the patient moving. At the same time, they raise a number of important legal questions for the national and EU legislators alike.

The PRD is the first legally binding act on EU level addressing some issues concerning the provision of cross-border e-health services, without, however, defining them. Other issues, such as e-health services provided with the facilitation of collaborative economy platforms, have emerged very recently.

The legal challenges related to e-health from the perspective of data protection and cybersecurity, as well as to sharing economy in general have been analysed by many authors, including at the conferences organised by the International Network of Doctoral Studies in Law. By contrast, there is paucity of literature assessing such challenges from the free movement of healthcare services angle.

The paper would focus on the question to which extent the above-described current EU legal framework could apply to the provision of cross-border e-health services and which particular questions remain unaddressed or, at least, unclear. It would analyse EU legislation, case-law of the Court of Justice and other documents mainly by using traditional legal research methods, such as text analysis (linguistic) and logical method, as well as comparative and systematic analysis methods.

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IV PANEL

Simona Bareikytė[16]

THE EUROPEAN UNION ADMINISTRATIVE SPACE: CHALLENGES AND PERSPECTIVES

European integration is one of the main objectives of the European Union and law has always been a basic instrument for achieving it. Although that kind of integration is crucial basically to the effectiveness of European Union law, from the beginning of the European Union it was clear that the key to the successful European integration in each internal and external governmental area is also based on the mutual cooperation between the European institutions and the national authorities. From the decade prospective there has been an increasing tendency for the synchronization of administrative law in the Member States of the European Union, even though the European Union administrative law and national administrative law do not constitute the one legal order based on validity. This shows that the national authorities, even though the European Union administrative law itself does not constitute a valid legal system, because it is based on sectoral pluralism, are keen on improving their administrational skills in substantive way to reach the level of development in the European Union administrative law space and also modernization of national institutions in more procedural way to strengthen the standards of the protection of individual rights in administrative proceedings. Notwithstanding, the fact that the European Union does not have the codification of basic principles and rules for the European administrative (procedural) law makes negative effect not only on Member States' ability to be aware of European Union administrative law in a normative way, but also on the European Union legal order itself. Therefore, in order to respond to the theme of the conference this article will look at the concept of European Union administrative law throughout the time perspective, reflecting what constitutes the administration of the European Union and its system, what are the basic principles and rules that form the normative framework of European Union administrative law. Specific examples of national frameworks are provided to add value to the paper. The next part presents the author's insights into the perspective of the European Union administrative law by referring to the selected problems.

Karolina Mickutė[17]

PRECONDITIONS FOR PRODUCT COMPETITION CONSIDERATIONS WHEN LEVYING EXCISE DUTIES ON ALCOHOLIC BEVERAGES

The article contributes to the practical and scientific discourse regarding the ongoing European Commission's initiative to amend Directive 92/83/EEC, in order to ensure fair competition and reduce tax fraud incentives regarding taxation of products containing denatured alcohol. Currently surrogate alcohol beverages fall out of the scope of object of taxation under the Directive as being classified as a product "not for human consumption". Due to the ambiguity of the term surrogate alcohol beverages are placed in a taxation "grey zone". Said "grey zone" of levying excise duties and relief of it for surrogate alcohol under EU law harms the state budget and taxpayers, it disrupts fair competition and does not ensure the free movement of goods as intended by EU law. Moreover, such "grey zones" raise public health and rule of law questions. By applying the methods of intra-disciplinary research, formal dogmatic analysis,

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comparative research at the horizontal level, vertical comparison and econometric data analysis, the article aims to build a case for including objective and subjective product competition criteria in the process of levying excise duties under EU law as this would ensure fair competition and reduce the possible grounds for tax evasion. The research suggests that incorporating product competition criteria into the court's assessment when dealing with excise tax cases would ensure fair competition and respect to rule of law, it may also contribute to the overarching goals of ensuring a greater level of protection of public health by reducing availability of surrogate alcohol.

Eimantė Šilvaitė[18]

THE EU LEGISLATION ON THE SUPERVISION OF ACTIVITIES OF ECONOMIC OPERATORS: SUBSTANCE OF PROCEDURAL RIGHTS AND IMPACT ON LITHUANIAN LAW

The purpose of the paper would be to disclose the substance of procedural rights of economic operators in EU law and its impact on the supervision of activities of economic operators in Lithuania. Following tasks:

1) To analyse the substance of procedural rights of economic operators deriving from EU law. The debate on the imposition of criminal sanctions has received strong impetus in EU law, due to the newly gained competences of the Union in criminal law after the ratification of the Lisbon Treaty. This also reflects the shift and development of EU law during past decade. EU itself has adopted the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) when it comes to imposing punitive sanctions and after a period of time the Court of Justice of the European Union developed its own standards. The Charter of Fundamental Rights of the European Union (Charter) started its essential functioning during the past decade. This Charter presupposes that legal persons may invoke the principle of effective legal protection, that is why the provisions of the Charter are particularly relevant when it comes to the supervision of economic operators and their procedural rights. Moreover, the picture between administrative and criminal liability is blurring, what is noted on the European level as well. This raises a question, whether the procedural rights have to be ensured on the same level, when institutions impose various types of sanctions (having administrative nature or entailing criminal charge)? Does the legal system of the European Union provide the same protection as the Convention?

2) To discuss the sphere of supervision of the activities of economic operators in Lithuania and the procedural rights guaranteed to the economic operators; Supervision (inspection) of economic operators in Lithuania is a sphere of public administration, which can lead to imposition of administrative sanctions. Lithuanian law recognises different kind of administrative sanctions that have a deterrent and criminal nature. This triggers certain fundamental rights for the offenders (economic operators), such as the right of the defence, the right to be heard, access to one's file, etc., which are also developed in the case law of the Supreme Administrative Court of Lithuania. Those guarantees have been inspired by the Convention.

3) To evaluate the impact of the EU legal regulation on the supervision of the activities of economic operators in Lithuania. EU law has made a significant impact on legal regulation of supervision of economic operators and its procedural rights in Lithuania. National administrative courts started to derive the right to be heard from Article 41 of the Charter. While Lithuania struggles to ensure such procedural guarantees as the right of the defence, the right to counsel, the right to remain silent, protection against business premises and other procedural guarantees, it is important to search for inspiration of better protection in the EU law and discusses what kind of challenges are waiting in the future, e. g. in the field of data protection, competition, etc.

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Martynas Jablonskis[19]

STRATEGIC LENIENCY: INSIGHTS FROM GAME THEORY AND EMPIRICAL EVIDENCE

Strategic leniency refers to the exploits of leniency that may have pro-collusive effects. We distinguish three ways how firms could use leniency strategically: as a punishment, as an exit strategy, and as an obscure submission. The concept has roots in game theory, which helps to model optimal leniency rules. Since these formal models are based on theoretical assumptions, it is hard to know if firms actually use leniency strategically. Hence, based on the analysis of cartels investigated by the European Commission during the years 2010 – 2018, the article provides empirical findings related to strategic leniency. We find that leniency is often used as an exit strategy. We also find that the 2002 EU leniency reform had no disturbing effect on pre-reform cartels. Therefore, the success of leniency should not be overstated. In addition, we argue that leniency is insufficient to uncover cartels in the form of concerted practices.

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V PANEL

Katarzyna Ziolkowska[20]

AI MADE IN EUROPE – LEGAL AND POLITICAL SETTING FOR THE FUTURE AI DEVELOPMENT IN THE EUROPEAN UNION

Artificial intelligence (AI) has been recently the central focus in the area of enormous investment and development efforts in almost all developed countries, and enterprises, from small start-ups to international corporations. With such a dynamic development, AI is gaining more and more impact on the society and individuals. This, in turn, creates serious and unprecedented challenges, such as discriminatory profiling, 'hypernudging' or algorithmic redlining. One mechanism to respond to these challenges is the law. However, due to the pace and nature of the AI development, as well as particular features of this technology, providing an effective legal response is an extremely difficult task. Legislators face not only "traditional" obstacles associated with regulating innovations, namely the pacing problem and the uncertainty paradox, but also the transnational impact of the technology and its uneasy legal and ethical assessment. The design and development of AI themselves create additional difficulties due to the fact that they may be discreet, diffuse, discrete and opaque. The situation is further complicated by the current political and economic situation. Given this perspective and considering also the recent promise made by the new president of the European Commission Ursula von der Leyen, who plans to present soon an EU-wide draft regulation on AI, this paper will try to grasp the current state of the Union's coordinated approach to that technology. The analysis will begin with a presentation of the EU position on a global background, emphasising challenges that are EU-specific. Using current policies, strategic documents, fragmentary legal regulations and non-binding guidelines, positions and advice from various EU institutions, I will map the basis for the future of AI made in Europe. Subsequently, using a critical analysis of the collected materials, I will synthesise, and present achievements, intentions, tendencies and projections of further regulatory directions related to the challenges AI poses in the EU.

Aurelija Šerniūtė[21]

HUMAN RIGHTS 4.0 – A NEURO-UPDATE NEEDED FOR THE EUROPEAN REGULATORY FRAMEWORK?

Last year, in 2019, the European Union celebrated the 10th anniversary since the EU Charter of Fundamental Rights (from now on – Charter) became a legally binding instrument. Naturally, to mark the occasion, we could raise a question where the human rights' mechanism, enshrined in the Charter, stands today, perhaps aim to resolve the pertinent issues of its application, rethink the debate about the EU's accession to the European Convention on Human Rights. However, what appears to be of an equal (if not higher) importance, is the future. Would the Charter still be sound in the light of rapid development of the Fourth Industrial Revolution technologies?

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[21] PhD Student at Vilnius University Faculty of Law. Research field – interaction between emerging technologies and human rights (both from positive and negative perspectives).

Interestingly enough, the future might be just now. Neuroscience technologies are already offering us the opportunity to observe and influence brain activity in various ways and will continue to do so to even larger extent (Cinel et al., 2019). That brings together a great deal of legal (as well as ethical) concerns. Although some of neurotechnologies are indeed still at their infancy, we believe that this is the moment when potential implications ideally should be discussed, not after the development (in order to avoid the so-called 'delay fallacy') (Mecacci & Haselager, 2017; van de Poel & Royakkers, 2011). The proposed paper discusses the appropriateness of a current legal environment in the context of emerging neurotechnologies while evaluating the possibility of including neuro-specific rights into the Charter.

The proponents of a higher level of protection could think of a series of solutions. Firstly, we are not the only ones considering the idea of neuro-specific rights – some scholars already advocate the need for incorporating the 4th generation human rights into the Charter (e.g. Ienca & Andorno, 2017). Secondly, without aiming to reach an agreement regarding the status of a 'human right', one may propose additional, technology-specific provisions to the existing framework (where emerging technologies are posing a risk to already identified fundamental rights; see White Paper of the European Commission on Artificial Intelligence, 2020). Thirdly, the least binding option may be the issuance of guidelines regarding particular matters that would serve as a valuable source for interpretation (e.g. Guidelines 3/2019 on processing of personal data through video devices by the European Data Protection Board which, among other activities, issues soft law documents on the interpretation of the General Data Protection Regulation).

On the other hand, there are dissenting views claiming that the current level of protection is sufficient and there is no need to take additional measures on the EU level. One part of the opponents could consist of those who do not recognise the suggested neuro-specific rights in the first place (due to their content falling into the scope of other, already existing human rights, or simply lacking importance). Meanwhile the others might claim that the provisions of the current regulations are either: (i) clear and do not require any further explanation (related to the first counter-argument); (ii) created with a purpose to be technology neutral (therefore technology-specific regulations would contradict this idea). Finally, some could even argue that providing standards for neuroscientific developments should essentially be a matter of ethics instead of law. Which side of the argumentation will outweigh?

Goda Strikaitė[22]

ONLINE DISPUTE RESOLUTION: QUO VADIS, EUROPE?

According to Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality, there are too many European Union citizens who don't trust their justice systems and wait too long for justice to be served. Another related aspect is Article 6 of European Convention on Human Rights, which grants the right to a fair trial. Accordingly, this right must be ensured throughout and after implementing certain innovations in judicial system. What is more, technologies are developing rapidly and Europe wants to lead the way in AI-based on ethics and shared European values, thus it is of vital importance to regulate the European legal system in this regard properly. It is well known that litigation is one of the most popular way to resolve a dispute. Even though the legal maxim says that justice delayed is justice denied and automation of decision-making would significantly reduce the workload and promote the speed of proceedings, lack of technological knowledge and protection of confidential data while using technologies must be borne in mind together with other disadvantages caused by the potential transfer of dispute resolution to online platforms. European Ethical Charter on the Use of artificial intelligence in judicial systems and their environment was adopted in 2018 where it was indicated that artificial intelligence can be used to resolve disputes online as well. Successful examples of eBay, Alibaba

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and The European Online Dispute Resolution platform in resolving consumer-related disputes by artificial intelligence, as well as Estonia's and United Kingdom's ambitions to design robot judges that could adjudicate small claims disputes sound promising, however not only the question whether the adoption of all decisions can be delegated to artificial intelligence, but should we enable artificial intelligence in decision-making at all arises.

Ramunė Steponavičiūtė[23]

THE SCOPE OF CRIMINAL LIABILITY FOR MISAPPROPRIATION OF AUTHORSHIP IN THE EU COUNTRIES: COMPARATIVE ANALYSIS

Intellectual property legal protection is undoubtedly one of the most important factors and conditions of effective economic, social and cultural development in modern society. According to researchers, absolute majority of countries in the world have set criminal liability for certain crimes against intellectual property rights, including all of the European Union (hereinafter – EU) countries. One of those crimes is misappropriation of authorship. Yet the criminal laws of EU countries criminalise misappropriation of authorship very differently - some protect not only author rights but also related rights, the conditions for criminal liability in the main part of the norm are of a very different scope as well as the punishments for those crimes differ significantly. This analysis will present the scope of criminal liability in all the EU countries, including the reasons why, as well as will try to find the answer whether ways of coping with these difficulties exist.

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VI PANEL

Giovanni Chiapponi[24]

TIME LIMITS IN EUROPEAN CROSS-BORDER CIVIL LITIGATION: HOW MUCH ROOM FOR HARMONISATION?

My presentation will tackle time limits in EU cross-border civil litigation and their impact on the right to a fair trial. Time limits are not a mere technical question. They have a profound practical impact on the fairness of the proceedings and the due process guarantees of the defendant under Art. 47 of the Charter of Fundamental Rights of the EU and Art. 6 of the European Convention of Human Rights. Time limits differ considerably across the Member States. For instance, each Member State lays down its own rules on time limits on entry of appearance and the submission of written statements by the defendant. Some legal orders (e.g. Germany, see § 276 para. 1 sentence 3 German code of civil procedure) set the deadlines until which the defendant has to submit his defences on a case by case basis. Other national legal systems (e.g. Italy, see Arts. 163 bis and 166 Italian code of civil procedure) adopt a more rigid approach, strictly fixing these time limits by law. Thus, the latter provisions are not harmonized under EU law. As I will demonstrate, this lack of harmonization in a cross-border scenario may challenge the right to a fair trial and may hamper, as such, the recognition and enforcement of civil judgments under EU procedural law rules (see for example Art. 45 of the Brussels I bis Regulation). This shows that divergences on time limits firmly influence the challenges that the EU legislator faces (and will face in the future) to improve the quality and management of justice in cross border dispute resolution. In this regard, the proposed paper examines whether an autonomous and uniform concept of time limits under EU law could address these concerns. The objective is to formulate a proposal for the harmonization of the rules on time limits under EU civil procedure. This may help domestic courts mitigate the problems that arise in cross-border settings and improve judicial cooperation in civil matters.

Carlos Santaló Goris[25]

FIRST NATIONAL CASE LAW ON THE EAPO REGULATION: WHAT CAN WE LEARN ABOUT ITS APPLICATION BY DOMESTIC COURTS?

On 17 January 2017, the Regulation No 655/2014, establishing a European Account Preservation Order, entered into force. This recent instrument introduced the very first uniform provisional measure at the European level. It allows creditors to obtain the provisional attachment of their debtors' bank accounts in order to ensure the ultimate enforcement of the decision on the substance of the claim. This paper aims at analysing the first available judicial decisions on the EAPO Regulation rendered in eight Member States (Italy, Germany, Lithuania, Luxembourg, the Netherlands, Portugal, Poland, and Spain). Fifty-three judicial decisions were gathered in total. Despite the still scarce number of judgments concerning the EAPO Regulation, these decisions can be used as a thermometer to evaluate which kinds of issues domestic practitioners and judicial authorities confront upon its application. From the case law gathered, it is possible to distinguish two major kinds of issues or difficulties: on the one hand structure;

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[25] LL.M., Universität des Saarlandes; LL.M., University of Luxembourg; PhD Candidate at the University of Luxembourg. Research field: European civil procedural law.

issues derived from the own EAPO Regulation; on the other, specific national problems, derived from the manner in which the EAPO Regulation is applied in each national procedural system.

My presentation will have the following structure:

I. Introduction
II. General overview on the EAPO Regulation
III. The data gathered
IV. Case-law analysis
    A. Structural issues of the EAPO Regulation
        a. Limitations of the scope of EAPO Regulation
        b. Jurisdictional aspects
        c. Vagueness of certain provisions
    B. Specific issues at domestic level
        a. Identification of the competent authorities
        b. Additional national prerequisites
        c. Observing the EAPO through the lens of the national law
V. Conclusions

Eglė Kurelaitytė[26]

EXERCISE OF THE FREE MOVEMENT RIGHTS TO AVOID MATERIAL CONDITIONS FOR MARRIAGE: USE OR ABUSE OF RIGHTS?

Implementation of free movement of rights in order for the European Union to achieve its economic goals affects social relations as well. This effect is clearer in the more conservative societies reluctant to embrace social changes happening in personal relations already for a while. In some of those countries (*i.e*. Lithuania, Poland) conditions for marriage are not only regulated by imperative provisions but also constitutionally. Traditionally, abuse of rights is understood as exercise of rights contra their intended goal. Taking into account recent developments in ECJ case law and constitutional doctrine in Lithuania this paper takes aims to analyse, whether exercise of free movement rights for the sole aim to conclude marriage avoiding conditions set for marriage in the national law constitutes abuse of rights from the perspective of EU law.

Edvinas Bakanauskas[27]

PROTECTION OF MINORITY SHAREHOLDERS' RIGHTS IN GROUPS OF COMPANIES: LITHUANIAN AND EU COMPANY LAW PERSPECTIVES

Just as in the entire European Union, in Lithuania company groups are an integral part of the modern business world. It is the companies that are part of company groups are leading both in Lithuania and in the EU in terms of a number of economic indicators: revenues, number of employees, amounts of taxes paid and other contributions. Despite being an integral part of modern business, regulation of company groups has not yet attracted sufficient attention both at the EU or the national level. Such absence of a consistent regulation may lead to or cause, inter alia, infringements of interests of minority shareholders. Accordingly, the purpose of the present article is to assess whether the effective Lithuanian or European regulation is sufficient to protect the interests of minority shareholders of companies.

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