



The Role of Lawyers in Protecting and Promoting the Rule of Law and Mutual Trust

Training for Defence Lawyers

Zagreb, 1-2 April 2025



EXCELLENCE IN
EUROPEAN LAW

Speakers

Ciprian Băban, Defence Lawyer, Bucharest

Lorena Bachmaier Winter, Professor, Complutense University, Madrid

Vladimir Hrle, Defence Lawyer, Belgrade, Advisory Board member of the European Criminal Bar Association (ECBA)

Višnja Drenški-Lasan, Defence Lawyer, Zagreb

András Kádár, Hungarian Helsinki Committee, Budapest

Holger Matt, Defence Lawyer, Honorary Professor, Johann Wolfgang Goethe University, Frankfurt

Mikołaj Pietrzak, Advocate, Partner at the Pietrzak Sidor & Partners Law Firm, Warsaw

Key topics

- The rule of law and the essential role of criminal defence lawyers
- Protecting the independence of the legal profession
- The role of lawyers in protecting the independence of the judiciary
- The role of lawyers and the relationship between judges and prosecutors
- The new Council of Europe Convention on the Protection of the Rights of Lawyers
- The need for legal privilege
- Artificial intelligence (AI) challenges to the rule of law

Language
English

Event number
325DT16

Organisers
ERA (Cornelia Riehle) in cooperation with the Croatian Bar Association



The role of lawyers in protecting and promoting the rule of law and mutual trust

Tuesday, 1 April 2025

08:45 Arrival and registration of participants

09:00 **Welcome and introduction to the programme**
Representative of Croatian Bar Association & Cornelia Riehle (ERA)

PART I: Mutual trust: What role for lawyers?

Chair: Cornelia Riehle

09:05 **What is the rule of law and what is mutual trust?**
Lorena Bachmaier Winter

09:30 **The protection of the rule of law in the EU**
András Kádár

10:00 **The concept of mutual trust in EU criminal law**

- From MLA to mutual recognition
- Gaps of trust as gaps of mutual recognition
- EU procedural rights and safeguards

Holger Matt

10:30 Discussion

10:45 Coffee break

Chair: Mikołaj Pietrzak

11:15 **The new Convention of the Council of Europe on the Protection of the Rights of Lawyers**

- Scope and content
- Minimum standards and expectations

Višnja Drenški-Lasan

11:45 **The role of defence lawyers in criminal proceedings – an essential element of rule of law**

- Different aspects of the role of defence lawyer in criminal proceedings
- Required safeguards for the defence profession as a protection of rule of law in criminal proceedings
- The role of Bar Associations

Vladimir Hrle

12:15 **The need to effectively protect legal privileges in EU criminal proceedings**

- Legal professional privilege
- Attorney-client privilege

Holger Matt

12:45 Discussion

13:00 Lunch

PART II: Practical approaches

Chair: Ciprian Băban

14:00 **The role of lawyers in safeguarding the independence of judges**

- Article 6 (1) ECHR
- The rights of citizens

Mikołaj Pietrzak

Objective

This seminar will focus on the role of lawyers in understanding, protecting and promoting the rule of law and mutual trust, both as defence counsel in criminal proceedings and as a defence profession grouped in bar associations and lawyers' organisations. Participants will have the opportunity to get to know each other and to network with colleagues from across the EU.

About the Project

Training defence lawyers with special regard to European criminal law has gained more and more importance in recent years. Hence, this seminar is part of a large-scale project co-financed by the European Commission entitled "European Criminal Law for Defence Lawyers". Fifteen interactive, practice-oriented activities will be implemented within this project ranging from face-to-face seminars and conferences to webinars and eLearning courses. For more information, see: <https://training-for-defence.era.int/>

Who should attend?

Defence lawyers, who are citizens of eligible EU Member States participating in the EU Justice Programme (Denmark does not participate), Albania, Bosnia and Herzegovina, Kosovo* and Ukraine.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ opinion on the Kosovo declaration of independence.

Venue

Croatian Bar Association
Koturaška 53
Zagreb
Croatia

CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). Participation in the full programme of this event corresponds to **10 CPD hours**. A certificate of participation for CPD purposes with indication of the number of training hours completed will be issued on request. CPD certificates must be requested at the latest 14 days after the event.

- 14:45 Discussion
- 15:00 Coffee break
- 15:30 **The role of lawyers advocating for the rule of law in the context of lawyers' organisations**
- What is out there?
 - How to get involved?
- Vladimir Hrlje*
- 16:30 Discussion
- 16:45 End of first day
- 19:30 Dinner offered by the organisers

Wednesday, 2 April 2025

PART III: Challenges to the rule of law posed by Artificial intelligence (AI)

Chair: Višnja Drenški-Lasan

- 09:00 **Challenges a lawyer faces in court and AI solutions to overcome them in the context of protecting the rule of law**
- Court transcription and translation practices and AI solutions
 - Access to and studying court files
 - Lawyer-judge / lawyer-clerk Relationship
 - Virtual lawyers and their impact on trust in legal processes
 - Preparation of judicial decisions
- Ciprian Băban*
- 10:00 **Is AI able to replace the human factor in criminal sentencing while safeguarding mutual trust? Pros and cons: discussion with the participants**
- Equal treatment
 - Right to fair trial in the age of automation
 - Privacy issues and trust-building
- Ciprian Băban*
- 10:45 Coffee break
- 11:15 **Panel discussion: Strengthening the rule of law in the EU and the need for additional legal instruments**
- Chair: Holger Matt*
Lorena Bachmaier, András Kádár, Mikołaj Pietrzak
- 12:15 Discussion
- 12:30 Closing
Cornelia Riehle
- 12:45 End of seminar

For programme updates: www.era.int
Programme may be subject to amendment.



Times indicated refer to the local time
in Zagreb

Your contacts



Cornelia Riehle
Deputy Head of Section
European Criminal Law
E-Mail: criehle@era.int



Julia Reitz
Assistant
Tel.: +49(0)651 9 37 37 323
E-Mail: jreitz@era.int

Save the date

Annual Conference on White-Collar Crime in the EU 2025
Trier & online, 20-21 March 2025

Annual Conference on EU Border Management 2025
Trier & online, 10-11 April 2025

Summer Course on European Criminal Justice
Online, 23-27 June 2025

Apply online for "The role of lawyers in protecting and promoting the rule of law and mutual trust":

www.era.int/?133498&en



Co-funded by the European Union.

The content of this programme reflects only ERA's view and the Commission is not responsible for any use that may be made of the information it contains.

Application

The role of lawyers in protecting and promoting the rule of law and mutual trust

Zagreb, 1-2 April 2025 / Event number: 325DT16

Terms and conditions of participation

Selection

1. Participation is only open to lawyers in private practice from eligible EU Member States (Denmark does not participate in this EU Justice Programme), Albania, Bosnia and Herzegovina, Kosovo* and Ukraine.

The number of open places available is limited (10 places). Participation will be subject to a selection procedure. Selection will be according to professional eligibility, nationality and then "first come, first served".

Interested defence lawyers from Croatia should apply via the Croatian Bar Association.
Interested defence lawyers from Hungary should apply via the Budapest Bar Association.
Interested defence lawyers from Latvia should apply via the Latvian Council of Sworn Advocates.
Interested defence lawyers from Lithuania should apply via the Lithuanian Bar Association.
Interested defence lawyers from Portugal should apply via the Portuguese Bar Association.
Interested defence lawyers from Spain should apply via ICAB.

2. Applications should be submitted before **15 February 2024**.
3. A response will be sent to every applicant after this deadline. **We advise you not to book any travel or hotel before you receive our confirmation.**

Registration Fee

4. €110 including documentation, coffee breaks, lunch and dinner.

Travel and Accommodation Expenses

5. Participants will receive a fixed contribution towards their travel and accommodation expenses and are asked to book their own travel and accommodation. **The condition for payment of this contribution is to sign all attendance sheets at the event.** The amount of the contribution will be determined by the EU unit cost calculation guidelines, which are based on the distance from the participant's place of work to the seminar location and will not take account of the participant's actual travel and accommodation costs.
6. Travel costs from outside Croatia: participants can calculate the contribution to which they will be entitled on the European Commission website (<https://era-comm.eu/go/calculator>, table 2). The distance should be calculated from their place of work to the seminar location.
7. For those travelling within Croatia, the contribution for travel is fixed at €36 (for a distance between 50km and 399 km). Please note that no contribution will be paid for travel under 50km one-way. For more information, please consult p.10 on <https://era-comm.eu/go/unit-cost-decision-travel>
8. Accommodation costs: International participants will receive a fixed contribution of €104 per night for up to two nights' accommodation. National participants travelling more than 50km one-way will receive a fixed contribution of €104 per night for one night accommodation. For more information, please consult p.14 on <https://era-comm.eu/go/unit-cost-decision-travel>.
9. These rules do not apply to representatives of EU Institutions and Agencies who are required to cover their own travel and accommodation.
10. Successful applicants will be sent the relevant claim form and information on how to obtain payment of the contribution to their expenses. Please note that no payment is possible if the registered participant cancels their participation for any reason.

Participation

11. Participation at the whole seminar is required and participants will be asked to sign attendance sheets daily.
12. A list of participants including each participant's address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
13. The participant will be asked to give permission for their address and other relevant information to be stored in ERA's database to provide information about future ERA events, publications and/or other developments in the participant's area of interest.
14. A certificate of attendance will be sent electronically after the seminar.

Hotel recommendations

15. ERA neither provides nor endorses local accommodation recommendations. Kindly consult available online booking platforms.

Apply online for "The role of lawyers in protecting and promoting the rule of law and mutual trust":
www.era.int/?133498&en

Venue

Croatian Bar Association,
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Language

English

Contact

Julia Reitz
Assistant
Tel.: +49(0)651 9 37 37 323
E-Mail: jreitz@era.int

*This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

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I. Background Documentation

A. General (EU)

a) Legislation of the European Union

1.	Consolidated version of the Treaty on the European Union
2.	Consolidated version of the treaty on the functioning of the European Union
3.	Consolidated version of the Statute of the Court of Justice of the European Union
4.	Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union
5.	Charter of Fundamental Rights of the European Union
6.	Explanatory memorandum to the Charter of Fundamental Rights

b) European Union on AI and e-evidence

7.	The European AI ACT Regulation (EU) 2024/1689 of the European Parliament and of the Council 13 June 2024 laying down harmonised rules in artificial intelligence and
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	amending Regulations (EC) No 300/2008, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)
8.	Council Decision (EU) 2023/436 of 14 February 2023 authorising Member States to ratify, in the interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence (ST/6438/2022/INIT, IÖJ L 63, 28.2.2023)
9.	Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (PE/4/2023/REV/1, OJ L 191, 28.7.2023, p. 118–180)
10.	Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings (PE/3/2023/REV/1, OJ L 191, 28.7.2023, p. 181–190)

B. General (ECHR)

a) Legislation of the ECHR

11.	Draft Council of Europe Convention for the Protection of the Profession of Lawyer, European Committee on Legal Co-operation 11 December 2024
12.	Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law 5 September 2024
13.	European Convention on Human Rights
14.	Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 15 as from its entry force on 1 August 2021

b) Reports/Factsheets/Information notes

15.	A European Convention on the protection of the protection of lawyers: A small step for the legal profession, a giant leap for the rule of law
16.	Guide to the Case-Law of the of the European Court of Human Rights, Data protection, Updated on 29 February 2024
17.	Selected case-law of the European Court of Human Rights: Application of the principle of legality, right to a fair trial and other protected rights in core international crimes cases (2024).

c) Case law of the ECtHR

18.	Case of Grezda v. Poland (Application no. 43572/18) Judgement 15 March 2022
19.	Case of Reczowicz v Poland (Application no. 43447/19) 22 July 2021

20.	Case of Xero Flor w Polsce sp. Z o.o. v. Poland (Application no. 4907/18) Judgement 7 May 2021
21.	Case of Bilgen v. Turkey (Application no. 1571/07) Judgement 9 March 2021
22.	Case of Pasquini v. San Marino (Application no. 50956/16) Judgement 2 May 2019
23.	Beuze v. Belgium (Application no. 71409/10) Judgement 9 November 2018
24.	Case of Chim and Przywieczerski v. Poland (Application nos. 36661/07 and 38433/07) Judgement 12 April 2018
25.	Case of Haarde v. Iceland (Application no. 66847/12) Judgement 23 November 2017
26.	Case of Truten v. Ukraine (Application no. 18041/08) Judgement 23 June 2016
27.	Baka v. Hungary (Application no. 20261/12) Judgement 23 June 2016
28.	Case of Simeonovi v. Bulgaria (Application no. 21980/04) Judgement 12 May 2017
29.	Case of Dhab v. Italy (Application no. 17120/09) Judgement 8 April 2014
30.	Case of Jenita Mocanu v. Romania (Application no. 11770/08) Judgement of 17 December 2013
31.	Case of Zeynalov v. Azerbaijan (Application no. 31848/07) Judgement 30 May 2013
32.	Case of Oleksandr Volkov v. Ukraine (Application no. 21722/11) Judgement 9 January 2013
33.	Case of Pishchalnikov v. Russia (Application no. 7025/04) Judgement 24 December 2009
34.	Case of Ilatovskiy v. Russia (Application no. 6945/04) Judgement of 9 July 2009
35.	Case of Gurov v. Moldova (Application no. 36455/02) Judgement 11 July 2006
36.	Case of Posokhov v. Russia (Application no. 63486/00) Judgement 4 March 2003
37.	Case of Coeme and others v. Belgium (Application nos. 32492/96, 32547/96, 32548/96, 33209/09 and 33210/96 22 June 2000
38.	Décision sur la recevabilité de la requête no. 31657/96 présentée par Cristoforo Buscarini contre Saint-Marin 4 May 2000
39.	Case of Findlay v. The United Kingdom (Application no. 22107/93) Judgement 25 February 1997
40.	Case of Holm v. Sweden (Application no. 14191/88) Judgement 25 November 1993
41.	Case of Bock v. Germany (Application no. 11118/84) Judgement 13 November 1987
42.	Case of Poiss v. Austria, (Appplication no. 9816/82) Judgement 24 January 1986
43.	Case of König v. Germany (Application no. 6232/73) Judgement 28 June 1978
44.	Case of Neumeister v. Austria (Application no. 1936/63) Judgement 27 June 1968

C. Rule of law

a) Recent case law (CJEU)

45.	Case C-204/21 Commission v Poland, Judgment of the Court (Grand Chamber), 5 June 2023 (available only in FR and PL)
46.	Case C-204/21, Commission v Poland, Order of the vice-president of the Court, 21 April 2023
47.	Case C-817/21 Inspekția Judiciară, Judgment, 11 May 2023
48.	Case C-158/21 Puig Gordi and Others, Judgment of the Court (Grand Chamber), 31 January 2023
49.	Case C-694/20 Orde van Vlaamse Balies and others, Judgment of the Court (Grand Chamber), 8 December 2022
50.	Case C-587/20 Ligebehandlingsnævnet, Judgment, 2 June 2022
51.	Case C-718/20 P, Zhejiang Jiuli Hi-Tech Metals, Judgment, 5 May 2022
52.	Joined Cases C-447/20 and C-448/20, Judgment, 7 April 2022
53.	Case C-132/20 Getin Noble Bank, Judgment of the Court (Grand Chamber), 29 March 2022
54.	Case C-508/19 Prokurator Generalny, Judgment of the Court (Grand Chamber), 22 March 2022
55.	Case C-177/20 Grossmania, Judgment, 10 March 2022
56.	Case C-205/20 Bezirkshauptmannschaft Hartberg-Fürstenfeld, Judgment, 8 March 2022
57.	Case C-275/20 COM/Council (Agreement with the Republic of Korea), Judgment of the Court (Grand Chamber), 1 March 2022
58.	Case C-430/21 RS, Judgment of the Court (Grand Chamber), 22 February 2022
59.	Case C-160/20 Stichting Rookpreventie Jeugd and others, Judgment of the Court (Grand Chamber), 22 February 2022
60.	Joined Cases C-562/21 PPU and C-563/21 PPU, Judgment of the Court (Grand Chamber), 22 February 2022
61.	Case C-157/21 Poland v European Parliament and Council of the European Union, Judgment (Full Court), 16 February 2022
62.	Case C-156/21 Hungary v European Parliament and Council of the European Union, Judgment (Full Court), 16 February 2022
63.	Case C-522/20 OE, Judgment, 10 February 2022
64.	Case C-181/20 VYSOČINA WIND, Judgment of the Court (Grand Chamber), 25 January 2022
65.	Case C-432/20 Landeshauptmann von Wien, Judgment, 20 January 2022

66.	Case C-282/19 YT and others, Judgment, 3 January 2022
67.	Joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 Euro Box Promotion and Others, (Grand Chamber), 21 December 2021
68.	Case C-575/20 Apollo Tyres, Judgment, 16 December 2021
69.	Case C-413/20 Belgian State, Judgment, 18 November 2021
70.	Case C-681/19 P Fereydoun Mahmoudian v Council of the European Union, European Commission, Judgement of the Court (Sixth Chamber) of 18 November 2021
71.	Joined Cases C-748/19 to C-754/19 Prokuratura Rejonowa w Mińsku Mazowieckim, (Grand Chamber), 16 November 2021
72.	Case C-819/19 Equilib Netherlands, Judgment, 11 November 2021
73.	Case C-648/21 M.C. and M.F., Request for a preliminary ruling, 25 October 2021
74.	Case C-647/21 D. K., Request for a preliminary ruling, 25 October 2021
75.	Case C-824/19 TC, Judgment, 21 October 2021
76.	Case C-487/19 W. Ž., Judgment of the Court (Grand Chamber), 6 October 2021
77.	Case C-216/21 Asociația "Forumul Judecătorilor din România", Request for a preliminary ruling, 23 July 2021
78.	Case C-791/19 Commission v. Poland, Judgment of the Court (Grand Chamber), 15 July 2021
79.	Case C-439/19 Latvijas Republikas Saeima, Judgment of the Court (Grand Chamber), 22 June 2021
80.	Case C-896/19 Repubblica, Judgment of the Court (Grand Chamber), 20 April 2021
81.	Case C-824/18 A.B. and Others, Judgment of the Court (Grand Chamber), 2 March 2021
82.	Joined Cases C-354/20 PPU and C-412/20 PPU, Judgment of the Court (Grand Chamber), 17 December 2020
83.	Case C-658/18 Governo della Repubblica italiana, Judgment, 16 July 2020
84.	Case C-15/19 A.M.A, Judgment, 14 May 2020
85.	Case C-401/18 Herst, Judgment, 23 April 2020
86.	Joined Cases C-558/18 and C-563/18 Miasto Łowicz, Judgment of the Court (Grand Chamber), 26 March 2020
87.	Case C-274/14 Request for a preliminary ruling from the Tribunal Económico Administrativo Central, Judgement of the Court (Grand Chamber) 21 January 2020
88.	Case C-752/18 Deutsche Umwelthilfe, Judgment of the Court (Grand Chamber), 19 December 2019

89.	Case C-386/18 Coöperatieve Producentenorganisatie en Beheersgroep Texel, Judgment, 12 December 2019
90.	Joined Cases C-566/19 PPU and C-626/19 PPU, Judgment, 12 December 2019
91.	Case C-625/19 PPU, XD, Judgment, 12 December 2019
92.	Case C-627/19 PPU, ZB, Judgment, 12 December 2019
93.	Case C-482/17 Czech Republic/Parliament and Council, Judgment of the Court (Grand Chamber), 3 December 2019
94.	Joined Cases C-585/18, C-624/18 and C-625/18 A.K., Judgment of the Court (Grand Chamber), 19 November 2019
95.	Case C-280/18 Flausch and others, Judgment, 7 November 2019
96.	Case C-555/18, K.H.K. v B.A.C and E.E.K, Judgment, 7 November 2019
97.	Case C-192/18, COM/PL, Judgment of the Court (Grand Chamber), 5 November 2019
98.	Case C-331/18, TE, Judgment, 5 September 2019
99.	Case C-556/17 Torubarov, Judgment of the Court (Grand Chamber), 29 July 2019
100.	Case C-619/18 Commission v. Poland, Judgment of the Court (Grand Chamber), 24 June 2019
101.	Case C-509/18 PF, Judgment of the Court (Grand Chamber), 27 May 2019
102.	Joined Cases C-508/18 and C-82/19 PPU, Judgment of the Court (Grand Chamber), 27 May 2019
103.	Case C-55/18 Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE, Judgment of the Court (General Court), 14 May 2019
104.	Case C-566/17 Związek Gmin Zagłębia Miedziowego, Judgment, 8 May 2019
105.	Case C-396/17 Martin Leitner v Landespolizeidirektion Tirol, Judgment, 8 May 2019
106.	Case C-309/18 Lavorgna Srl v Comune di Montelanico and Others, Judgment, 2 May 2019
107.	Case C-699/17 Allianz Vorsorgekasse, Judgment, 4 April 2019
108.	Case C-492/18, TC, Judgment, 12 February 2019
109.	Case C-310/16 Dzivev and others, Judgment, 17 January 2019
110.	Case C-543/18 RX HG v Commission, Judgment (Reviewing Chamber), 17 September 2018
111.	Case C-542/18 RX, Simpson v Council, Judgment (Reviewing Chamber), 17 September 2018
112.	Case C-216/18, PPU Minister for Justice and Equality, Judgment of the Court (Grand Chamber), 25 July 2018

113.	Case C-564/16, EUIPO v Puma SE, Judgment, 28 June 2018
114.	Case C-390/17 P, Azoulay and Others v Parliament, Judgment, 30 May 2018
115.	Case C-64/16 Associação Sindical dos Juizes Portugueses, Judgment of the Court (Grand Chamber), 27 February 2018
116.	Case C-102/16 Vaditrans, Judgment, 20 December 2017
117.	Case C-516/16 Erzeugerorganisation Tiefkühlgemüse, Judgment, 20 December 2017
118.	Case C-416/17 European Commission v French Republic, Action brought on 10 July 2017
119.	Case C-105/15P Konstantinos Mallis and Others v European Commission and European Central Bank (ECB), Judgment of the Court (General Court), 20 September 2016
120.	Case C-506/04 Graham J. Wilson v Ordre des avocats du barreau de Luxembourg, Judgement of the Court (Grand Chamber) 19 September 2006
121.	Case 222/84 Johnston, Judgment, 15 May 1986

b) Safeguarding the rule of law

1) Websites

122.	European Commission, Rule of law conditionality regulation
123.	European Commission , Rule of law

2) Regulations/resolutions/communications

124.	2025 Rule of Law Report
125.	COM(2024) 800 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2024 Rule of Law Report The Rule of Law Report, 24 July 2024
126.	COM/2023/800 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023, Rule of Law Report The rule of law situation in the European Union, 5 June 2023
127.	COM/2022/500 final, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022, Rule of Law Report The rule of law situation in the European Union, 13.7.2022
128.	COM/2021/700, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2021, Rule of Law Report The rule of law situation in the European Union, 20 July 2021
129.	Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget, 16 December 2020

130.	COM/2020/580, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020, Rule of Law Report The rule of law situation in the European Union, 30 September 2020
131.	COM/2019/343, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rule of law within the Union, A blueprint for action, 17 July 2019
132.	COM/2019/163, Communication from the Commission to the European Parliament, the European Council and the Council, Further strengthening the Rule of Law within the Union State of play and possible next steps, 3 April 2019
133.	2019/C 433/10, Resolution, European Parliament, Proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, 12 September 2018
134.	COM/2014/0158, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A new EU Framework to strengthen the Rule of Law, 2014

3) Press articles/Academic Articles

135.	Council of Europe: Reform of the Statute of the Court of Justice: Council and Parliament negotiators reach provisional agreement (Press Release: 07/12/2023).
136.	FIDH, Poland, Hungary: Use of Article 7 to fight the shift towards authoritarianism in Europe, 19 May 2022
137.	Laurent Pech, Dmitry Kochenov, Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments since the Portuguese Judges Case, 30 September 2021
138.	Laurent Pech, Poland's Rule of Law Breakdown: A Five-Year Assessment of EU's (In)Action, Hague Journal on the Rule of Law, 2021

4) Opinions/Reports

139.	CCBE, Contribution for the 2024 Rule of Law Report, 14 February 2024.
140.	CCBE, Contribution for the 2023 Rule of Law report, 16 February 2023.
141.	Conference on „The Rule of Law in Europe: Vision and Challenges” Robert Spano 15 April 2021
142.	Venice Commission - Report, Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections, 26 May 2020
143.	Venice Commission - Rule of Law Check List, 11/12 March 2016
144.	FRA Opinion 2/2016 on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information, 15 April 2016

145.	Venice Commission, Report on the Rule of Law, Study No. 512/2009, 25/26 March 2011
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5) Case law

146.	Case C-564/19 IS, Judgment of the Court (Grand Chamber), 23 November 2021
147.	Case C-206/20 Prosecutor of the regional prosecutor's office in Ruse, Bulgaria, Order, 20 June 2021
148.	Case T-789/19 Tom Moerenhout and Others v European Commission, Judgment of the Court (Grand Chamber), 12 May 2021,
149.	Case C-66/18, European Commission v Hungary, Judgment of the Court (Grand Chamber), 6 October 2021
150.	Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19 Asociația 'Forumul Judecătorilor din România', Judgment of the Court (Grand Chamber), 18 May 2021
151.	Application no. 26374/18 Case of Guðmundur Andri Ástráðsson v. Iceland, Judgment of the Court (Grand Chamber), 1 December 2020
152.	Case C-78/18 European Commission v Hungary, Judgment of the Court (Grand Chamber), 18 June 2020
153.	Case C-49/18 Escribano Vindel, Judgment, 7 February 2019
154.	Case C-235/17 Commission v Hungary, Judgment of the Court (Grand Chamber), 21 May 2019
155.	Case C-220/17 Planta Tabak, Judgment, 30 January 2019
156.	1/17, CETA, Opinion, 29 January 2019
157.	Case C-136/17 G. C. and Others, Opinion of Advocate General Szpunar, 10 January 2019
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c) Judicial independence and access to justice

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202.	Case C-299/86, <i>Criminal proceedings against Rainer Drexler</i> , Judgment, 25 February 1988

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203.	Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings
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205.	Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
206.	2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision



The Role of Lawyers in Protecting and Promoting the Rule of Law and Mutual Trust

Training for Defence Lawyers

Zagreb, 1-2 April 2025



EXCELLENCE IN LAW
EUROPE
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What is the rule of law and what is mutual trust?

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain



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Introduction

1. Rule of Law (RoL) and mutual trust
2. The role of lawyers
3. The European Standards: RoL mechanism

Introduction

- Why discussion on RoL and role of lawyers?

1) Impact of the right to access to justice and fair trial rights upon RoL and democracy, and thus stability, security and economic growth (Annual Growth Survey 2018)

2) Risk for EU: no respect for its constitutional framework, as defined under art. 2 TEU, the ECHR and Charter)

3) Risk for AFSJ and mutual recognition principle (arts. 67, 81 and 82 TFEU)

4) Direct connection of lawyers and the judicial independence

RoL and mutual trust

- For cooperation upon the principle of mutual recognition, the basic requirement in mutual trust
- Mutual trust is built upon the idea that despite legal differences and different traditions, the same principles on human rights and RoL are respected.
- Mutual recognition cannot work without each MS complying with high standards on RoL
- Mutual trust does NOT mean blind trust
- The mutual trust does not apply to the defence
- The role of defence lawyers is to check compliance with the law, NOT to trust it has been respected.



STATE OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW

Populism – How strong are Europe's checks and balances?

Report by the Secretary General 19 May 2017

An analysis of democracy, human rights and the rule of law in Europe,
based on the findings of the Council of Europe monitoring mechanisms
and bodies

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain

Rule of Law

1) Rule of Law: a core concept

Rule of Law

**“Whenever law
ends, tyranny
starts”**



“Two Treatises of
Government”, 1690

Rule of Law

“Where the law is subject to some other authority and has none of its own, the collapse of state, in my view, is not far off, but if the law is the master of government and the government its slave, then the situation is full of promise and men enjoy all the blessings all the gods shower on a state”.

(Plato, *Laws*, IV century B.C)

PREAMBLE ECHR, Rome 4 November 1950

- Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are **best maintained on the one hand by an effective political democracy** and on the other by a **common understanding and observance of the Human Rights** upon which they depend;
- Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom **and the rule of law**, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Article 2 TEU

Article 2 TEU

- The Union is founded on the values of respect for human dignity, freedom, democracy, equality, **the rule of law and respect for human rights**, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Rule of Law

- The European Union's supranational nature led it to develop the concept of Rule of Law as a general principle of law applicable to its own legal system.
- According to the case law of the Court of Justice of the European Union, the Rule of Law includes the supremacy of law, the institutional balance, judicial review, (procedural) fundamental rights, including the right to a judicial remedy, as well as the principles of equality and proportionality.
- The Rule of Law has become “a global ideal and aspiration”
- *Rule of Law. A Guide for Politicians*, HILL, Lund/The Hague, 2012

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain

- Equal “ingredients”. but different ways for implementing the requirements.

Rule of Law

Democracy: demos=people; kratia=power

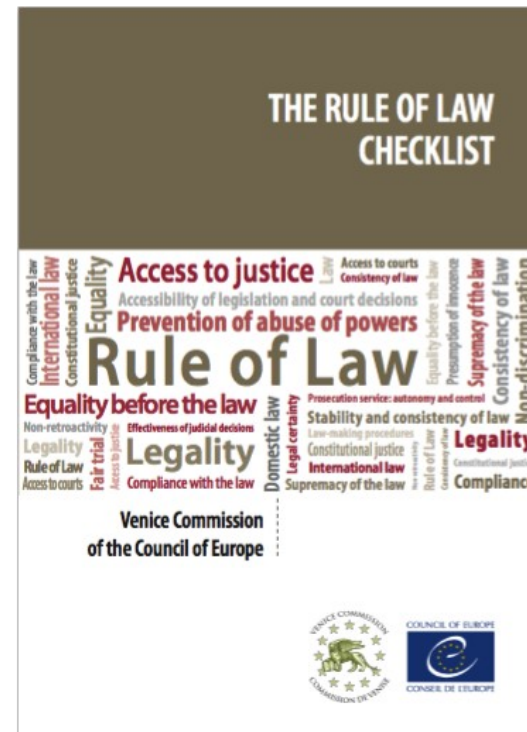
Human Rights: inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. Often recognized in the law. Universal: Declaration of 1948

Rule of Law, *Rechtsstaat*, *Etat de droit*

- Historically different features, core elements
- No punishment but for breach of law, which has to be certain (legality and certainty, measures for avoiding arbitrariness)
- Supremacy of the law: No one above the law
- Equality before the law
- Elements that define the relationship between state and individual: due process
- Separation of powers, **independent judiciary**: John Locke, Montesquieu

The Venice Commission Rule of Law Check List 2016

- The Rule of Law focuses on limiting and independently reviewing the exercise of public powers.
- The Rule of Law promotes democracy by establishing accountability of those wielding public power and by safeguarding human rights, which protect minorities against arbitrary majority rules.
- Upon Venice Commission Report on the Rule of Law, CDL-AD(2011)003rev, the 2016 “Check-list”



The Venice Commission Rule of Law Check List 2016

II. BENCHMARKS

A. Legality

1. Supremacy of the law
2. Compliance with the law
3. Relationship between international law and domestic law
4. Law-making powers of the executive
5. Law-making procedures
6. Exceptions in emergency situations
7. Duty to implement the law
8. Private actors in charge of public tasks

B. Legal certainty

1. Accessibility of legislation
2. Accessibility of court decisions
3. Foreseeability of the laws
4. Stability and consistency of law
5. Legitimate expectations
6. Non-retroactivity
7. Nullum crimen sine lege and nulla poena sine lege principles
8. Res judicata

C. Prevention of abuse (misuse) of powers

D. Equality before the law and non-discrimination

1. Principle
2. Non-discrimination
3. Equality in law
4. Equality before the law

E. Access to justice

1. Independence and impartiality

- a. Independence of the judiciary
- b. Independence of individual judges
- c. Impartiality of the judiciary
- d. The prosecution service: autonomy and control
- e. Independence and impartiality of the Bar

2. Fair trial

- a. Access to courts
- b. Presumption of innocence
- c. Other aspects of the right to a fair trial
- d. Effectiveness of judicial decisions

3. Constitutional justice (if applicable)

F. Examples of particular challenges to the Rule of Law

1. Corruption and conflict of interest

- a. Preventive measures
- b. Criminal law measures
- c. Effective compliance with, and implementation of preventive and repressive measures

2. Collection of data and surveillance

- a. Collection and processing of personal data
- b. Targeted surveillance
- c. Strategic surveillance
- d. Video surveillance

Independence and impartiality of the Bar

- **Are the independence and impartiality of the Bar ensured?**
 1. Is there a recognised, organised and independent legal profession (Bar)?
 2. Is there a legal basis for the functioning of the Bar, based on the principles of independence, confidentiality and professional ethics, and the avoidance of conflicts of interests?
 3. Is access to the Bar regulated in an objective and sufficiently open manner, also as remuneration and legal aid are concerned?
 4. Are there effective and fair disciplinary procedures at the Bar?
 5. What is the public's perception about the Bar's independence?

Independence and impartiality of the Bar

- Professional ethics imply inter alia that “[a] lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation”.
- He or she “shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer’s clients, the court, colleagues and all those with whom the lawyer comes into professional contact”, “shall not assume a position in which a client’s interest conflict with those of the lawyer” and “shall treat client interest as paramount”.

International Bar Association—International Principles of Conduct for the Legal Profession

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain

RoL Mechanism

- **What is the rule of law mechanism?**
- The European Rule of Law Mechanism provides a process for an annual dialogue between the Commission, the Council and the European Parliament together with Member States as well as national parliaments, civil society and other stakeholders on the rule of law. The Rule of Law Report is the foundation of this new process.

RoL Mechanism

- RoL 2022 Report
- The monitoring covers four pillars:
- *justice systems,*
- *anti-corruption framework,*
- *media pluralism and media freedom,*
- *and other institutional issues related to checks and balances.*
- The sources of the annual Rule of Law Report include in particular written input received from Member States, written contributions received during the targeted stakeholder consultation and information produced by international organizations or received from national authorities and stakeholders during country visits

RoL Mechanism

THE REPORT

- The country chapters, which rely on a qualitative assessment carried out by the Commission, analyse new developments since the previous report and the follow-up to the challenges and developments identified in the 2021 edition.
- The Report is part of broader EU efforts to promote and defend its values. This work includes the European Democracy Action Plan and the renewed Strategy for the Implementation of the Charter of Fundamental Rights, as well as targeted strategies to progress towards a Union of Equality. Another related aspect is monitoring the application of EU law and the protection of fundamental rights under the Charter, including through the use of infringement proceedings.

RoL and Judicial independence

Independent from what? Free from outside interference and free to adjudicate consistent with law and facts

Inner approach or dependence, is not to be considered (nicht zu messen, sogar unerfassbar), unless manifest

Judicial independence: as a means to an end: ensure impartiality and equality before the law, needed for democratic separation of powers.

Safeguards for the judicial independence

Judicial independence

A pre-requisite: court pre-established by the law

+

Four elements of judicial independence:

- 1) manner of appointment
- 2) term of office,
- 3) the existence of guarantees against outside pressure - including in budgetary matters - and
- 4) whether the judiciary appears as independent and impartial. (Venice Commission summarising the ECtHR case law)

Judicial Independence

The Venice Commission

Rule of Law Check List 2016

- The judiciary should be independent.
- **Independence means** that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch. This requirement is an integral part of the fundamental democratic principle of the separation of powers.
- Judges should not be subject to political influence or manipulation.

Judicial Independence

Independence

- from the executive and the parties
- from the legislature except in so far as they are bound to apply laws emanating from the legislative body;
- from any other external or internal influence;

Council of Europe Rec(2010)12

- paragraphs 3 and 4:
- **3.** ‘The **purpose of independence**, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.’

and,

- **4.** ‘The independence of individual judges is safeguarded by the **independence of the judiciary** as a whole. As such, it is a fundamental aspect of the rule of law.’

The Standards

3) The European Standards

European and CoE Standards

- Council of Europe Recommendation R(94) 12 of 13 october 1994
- **Council of Europe Recommendation R(2010)12, of 7 November 2010**
- European Charter on the statute for judges (CoE 1998)
- The Magna Carta of Judges (CCJE 2010)
- The Judges' Charter in Europe (European Association of Judges, 1997)
- The Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (OSCE 2010)
- + VENICE Commission and Reports ENCJ

Venice Commission

REPORT ON THE INDEPENDENCE OF THE JUDICIAL SYSTEM PART I: THE INDEPENDENCE OF JUDGES

Adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)

COMPILATION OF VENICE COMMISSION OPINIONS AND REPORTS CONCERNING COURTS AND JUDGES since 2010

Opinions: referred to precise constitutional and legislative instruments
(ex ante and ex post)

ECJ case law

ECJ C-824/18 *AB e.a v. CNPJ (Krajowa Rada Sądownictwa)* 02/03/2021.

C-896/19 *Repubblica v. Il-Prim Ministru*, of 20/04/2021.

C-83/19 *Asociația 'Forumul Judecătorilor Din România' and others*, of 18/05/2021.

C-791/19 *Commission v. Poland*, of 15/07/2021.

C-487/19 *W. Ż.*, of 06/10/2021.

C-748/19 *WB & XA v. Prokuratura Krajowa en other*, of 16/11/2021.

C-156/21 *Hungary* and C-157/21 *Poland v Parliament and Council* of 16/2/2022.

C-430/21 *RS* of 22/2/2022.



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THE PROTECTION OF THE RULE OF LAW IN THE EUROPEAN UNION

András Kádár
1 April 2025



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What is the rule of law?

Elements of the rule of law

Key concept: „**power acting within the constraints of law**”. Main elements:

- **Legality:** (i) state action is in accordance with the laws that (ii) are adopted in a transparent, accountable, democratic and pluralistic law-making process
- **Legal certainty:** laws are accessible and foreseeable → no retroactive effect
- **Effective judicial protection** if state action is not in compliance with the laws, including (i) access to justice, (ii) independent and impartial courts, (iii) non-discrimination and equality before the law.
- **Separation of powers**



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Development of the concept of the rule of law in the EU acquis

Development of the concept I.

- Not in the original treaties → Les Verts judgment (Case 294/83, 1986), § 23: „the European Economic Community is a **community based on the rule of law**” → neither its Members States nor its institutions can avoid a review of the question whether their measures are in conformity with the Treaty. (Paraphrased by *Lenaerts* as „neither EU institutions nor the Member States are above the law”)
- Maastricht Treaty (1992), Preamble: MSs **confirm their attachment** to the principles of liberty, democracy and respect for human rights [...] and of **the rule of law**.
- Lisbon Treaty (2007), **Article 2**: **The Union is founded on the values** of respect for human dignity, freedom, democracy, equality, **the rule of law** and respect for human rights [...]. **These values are common to the Member States** [...].

Development of the concept II.

- 2010: **Rule of law backsliding starts** in HU → development of the **RoL Toolbox** from 2012 on → **Need for definition** (typical RoL issue: foreseeability requires a standard against which to measure) → consecutive attempts.
- **Communications from the Commission to the EP and the Council**: increasingly definitive approach FROM „the **precise content [...] may vary** at national level” but core meaning can be defined (2014) → TO a list of elements (2019).
- **REGULATION (EU, Euratom) 2020/2092 on conditionality**: **enforceable and detailed definition**
- Article 2(a): ‘the rule of law’ refers to the Union value enshrined in **Article 2 TEU**. It includes the principles of **legality** implying a transparent, accountable, democratic and pluralistic law-making process; **legal certainty**; **prohibition of arbitrariness of the executive powers**; **effective judicial protection**, including access to justice, by **independent and impartial courts**, also as regards fundamental rights; **separation of powers**; and **non-discrimination and equality before the law**. The rule of law shall be understood having **regard to the other Union values and principles** enshrined in Article 2 TEU.
- Article 3: examples, including (i) endangering the **independence of the judiciary**; (ii) failing to prevent, correct or sanction **arbitrary or unlawful decisions by public authorities**, (iii) **limiting the availability and effectiveness of legal remedies**, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

Development of the concept III.

Challenged by Hungary and Poland before the CJEU (March 2021) → ironically, partly on the basis of the lack of legal certainty („the concept of ‘the rule of law’ **does not lend itself to a precise definition**”, as a result, „the Commission’s **application of that regulation may become so unforeseeable as to be incompatible with the principle of legal certainty, which is itself one aspect of the rule of law**”)

Judgment C-156/21, Action for annulment under Article 263 TFEU, brought by Hungary, and supported by Poland:

- Article 2 TEU is **not merely a statement of intentions**, these **values are an integral part of the identity** of the EU’s common legal order. MSs enjoy a **certain degree of discretion** in implementing the principles of the rule of law, but **the result may not vary from one Member State to another**.
- The elements of the rule of law have been “the subject of **extensive case-law of the Court**”. Those principles are thus **recognised and specified** in the legal order of the European Union
- (i) it is possible **to determine with sufficient precision the essential content of the principles listed in Article 2(a)** of the conditionality regulation; (ii) **those principles are not of a purely political nature**; and (iii) an assessment of whether they have been respected can be the subject of a **strictly legal analysis**



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Case law of the CJEU regarding the rule of law

Rule of law = judicial independence?

- RoL: in relation to MSs → so far only in the context of judicial independence
- **Case C-506/04 (Wilson)**: concept of **independence analysed in detail** → three aspects:
 - (i) the authority must **act as a third party** in relation to the authority which adopted the contested decision;
 - (ii) **External aspect** „requires [...] that the body is **protected against external intervention or pressure** liable to jeopardise the independent judgment of its members [...].
 - (iii) **Internal aspect** „is **linked to impartiality** and seeks to ensure **a level playing field for the parties** to the proceedings”
 - All these aspects can be guaranteed by rules regarding a number of issues, e.g. (i) the composition of the body, (ii) the appointment of its members, (iii) the length of their service; (iv) the dismissal of its members, etc.
 - „in order to **dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it**”

Connection of RoL to judicial independence – the law

- Article 2 TEU: The **Union is founded on the values of [...], the rule of law [...]**.
- Article 4(3) TEU: Pursuant to the **principle of sincere cooperation** [...t]he Member States shall take any appropriate measure [...] to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.
- Article 19(1) TEU: [...] Member States shall provide **remedies sufficient to ensure effective legal protection in the fields covered by Union law**.
- Article 47 CFR: Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an **effective remedy** before a tribunal [...]. Everyone is entitled to a fair and public hearing [...] by **an independent and impartial tribunal** previously established by law. [...]

Connection of RoL to judicial independence – the questions

- Is Article 2 TEU **justiciable**, i.e. does it create **directly applicable obligations** for MSs, and does the CJEU has jurisdiction to enforce those obligations?
- What is the **relation between Articles 2 and 19 TEU** (in light of the fact that effective legal protection is an element of the rule of law)?
- The **organisation of justice** in the Member States falls within the **competence of the Member States** themselves: does this mean that questions of judicial independence connected to the organisation of the justice system fall under the CJEU's jurisdiction only when the concerned courts implement/apply Union law?

Connection of RoL to judicial independence – the answers

- **Case C-64/16 Associação Sindical dos Juízes Portugueses (Portuguese Judges case), 2018:**
- Article **2 TEU is justiciable** through Article 19 TEU:
- Mutual trust requires respect for common values → RoL is one of those (Art. 2 TEU) → effective legal protection in the fields covered by EU law is a core element of the RoL → Art. 19 TEU does not only require such protection, but also entrusts this responsibility to national courts in addition to the CJEU (i.e. **national courts are also EU courts**) → MSs are obliged by the principle of sincere cooperation (Article 4(3) TEU) to make sure that domestic courts can fulfill this role → for protection to be effective, these bodies must be independent (as confirmed by Art. 47 CFR) → and not only if/when they actually implement EU law (c.f. Art. 51 CFR), the mere possibility of having to deal with EU law suffices (a not independent judge/court cannot become suddenly independent when dealing with an EU law issues) („every Member State must ensure that the bodies which, as ‘courts or tribunals’ within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection”).



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Post „Portuguese judges” jurisprudence and how does it matter in defence work?

The Dutch extradition case I.

- **Systemic attacks against judicial independence in Poland** (changing the composition of the National Judicial Council, disciplinary action against judges asking preliminary questions, etc.)
- **Dutch court has doubts in extradition procedure → Openbaar Ministerie** (L. and P.) (Joined Cases C-562/22 PPU and C-563/21 PPU)
- **Two-step examination (Celmer case, C-216/18 PPU, July 2018):** „where the executing judicial authority [...] has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State”, it cannot automatically presume that the requested person runs a real risk of breach of the right to a fair trial in that Member State, „without carrying out a specific and precise verification which takes account of [...] that person’s personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements or acts by public authorities which are liable to interfere with how an individual case is handled.”

The Dutch extradition case II.

- **Is Celmer valid?** Does it pertain when the „right to a tribunal established by law” is at issue?
- „Judicial appointments are an inherent element of the concept ‘tribunal established by law’”, which in turn is „a cornerstone of the right to a fair trial” → BUT: it is also necessary to take into account of **other interests**, „such as the need to respect [...] the fundamental rights of the victims” AND: If the existence of systemic or generalised deficiencies were, in itself, sufficient to enable the executing judicial authority to refuse to surrender, it would lead to a high risk of impunity, and „would lead to a de facto suspension of the implementation of the European arrest warrant mechanism in respect of that Member State” (can only be lawfully done in the political process of Article 7 TEU)
- **The two-step system must still be followed:** STEP 1: on the basis of objective and reliable factors, assessment of the judicial system in the issuing Member State and the general context of judicial appointment in that Member State (reasoned proposal of the EC on the basis of Article 7(1) TEU, the resolution of the Polish Supreme Court, relevant case-law of the CJEU and the ECHR are such factors). STEP 2: the requested person must adduce specific evidence to suggest that systemic or generalised deficiencies in the judicial system had or is likely to have a tangible influence on the criminal case. This evidence can be supplemented by information provided by the issuing judicial authority.
- **Application of the test:** denial of extradition (Polish politicians and media commenting on the case; accused mentioned in a memo from the national prosecutor to the public prosecutors, stating that because of this case, prosecutors in Poland must conduct a careful analysis of Dutch EAWs and consider denying them because the NL allows for euthanasia.)



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What shall we look for?

Post „Portuguese judges” jurisprudence I.

- **Appointment of judges: A.B and others** (C-824/18) → the substantive conditions and procedural rules governing [...] appointment decisions are such that they cannot give rise to reasonable doubts [...].
- **Removal of judges: Commission v Poland II** (C-192/18) → „The principle of irremovability requires, in particular, that judges may remain in post provided that they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. While it is not wholly absolute, there can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality” (e.g. being unfit for carrying out their duties on account of incapacity or a serious breach of obligations) BUT the appropriate procedures must be followed. The procedural requirements are as follows:
 - rules defining conduct and penalties
 - independent body
 - procedure which (i) fully safeguards the rights enshrined in Articles 47 and 48 of the Charter, and (ii) provides the possibility of bringing legal proceedings challenging the decision

Post „Portuguese judges” jurisprudence II.

➤ Transfer, secondment, demotion of judges:

- **W.Ż. v KRS** (C-487/19): Transfers without consent are „potentially capable of undermining the principles of the irremovability of judges and judicial independence.” Such transfers may constitute a way of exercising control over the content of judicial decisions because they affect the scope of the activities allocated to judges and the handling of cases entrusted to them. Furthermore: significant consequences on the life and career of those persons → „protection from arbitrary transfer [...is] a corollary to judicial independence” → Possible on legitimate grounds (e.g. workload) if may be legally challenged „in accordance with a procedure which fully safeguards the rights enshrined in Articles 47 and 48 of the Charter [...].”
- **WB and Others** (Joined Cases C-748/19 to C-754/19): „the rules governing the secondment of judges must provide the necessary guarantees of independence and impartiality in order to prevent any risk of that secondment being used as a means of exerting political control over the content of judicial decisions.”
 - To avoid arbitrariness and the risk of manipulation, the decision must be taken on the basis of criteria known in advance and
 - must contain an appropriate statement of reasons.
 - The possibility of termination at any time „could give an individual the impression that the assessment to be carried out by the seconded judge who is to hear and determine his or her case will be influenced by the fear of termination of the secondment” (**social perception**). „Furthermore, that possibility [...] could also give the seconded judge the feeling of having to meet the expectations of the Minister for Justice, which could give rise to the impression on the part of the judges themselves that they are ‘subordinate’ to the Minister for Justice [...]” (**judge’s perception**).
 - In addition: the MoJ occupies the position of Public Prosecutor General, i.e. has power over both the public prosecutor and the seconded judges: also a source of reasonable doubts for the defendants.

Post „Portuguese judges” jurisprudence III.

- **Remuneration: Portuguese judges case** → „the receipt by those members of a **level of remuneration commensurate with the importance of the functions** they carry out constitutes a **guarantee essential to judicial independence**
- **Disciplinary procedures: Euro Box Promotion (C-357/19 et al.)** → „that national judges are not exposed to disciplinary proceedings [...] for having exercised the discretion to make a reference for a preliminary ruling to the Court [...], which is exclusively within their jurisdiction, [...] constitutes a guarantee that is essential to their independence”. Furthermore: „the disciplinary liability of a judge may, in certain very exceptional cases, be triggered as a result of judicial decisions adopted by that judge (e.g. deliberate or grossly negligent violation of the law). However, in order to prevent the disciplinary regime „from being [...] used to exert political control over judicial decisions”, „the fact that a judicial decision contains a possible error in the interpretation and application of national and EU law, or in the assessment of the facts and the appraisal of the evidence, cannot in itself trigger the disciplinary liability of the judge concerned.”

Post „Portuguese judges” jurisprudence IV.

➤ Law in context:

- **A.B and others** (C-824/18) → lack of legal remedy „may [...] not prove to be problematic [...], but the situation is different in circumstances in which all the relevant factors characterising such a process in a specific national legal and factual context, and in particular the circumstances in which possibilities for obtaining judicial remedies which previously existed are suddenly eliminated, are such as to give rise to systemic doubts in the minds of individuals as to the independence and impartiality of the judges appointed at the end of that process.”
- **Land Hessen** (C-272/19) → „factors [having relevance to judicial independence], when taken together, in addition to the circumstances in which those choices were made, may [...] throw doubt on the independence of a body involved in the procedure for the appointment of judges, despite the fact that, when those factors are taken individually, that conclusion is not inevitable [...]” As regards the conditions governing the appraisal and promotion of judges, the CJEU concluded that „the documents submitted to the Court contain no indication as to how the manner in which the executive uses its powers in that regard are such as to engender legitimate doubts, particularly in the minds of litigants, concerning whether the judge concerned is impervious to external elements [...]”

Post „Portuguese judges” jurisprudence V.

- **Remedies through primacy of EU law: A.B. and others** (C-824/18) → „Where it is proved that those articles [4, 19 and 267 TEU] have been infringed, the principle of primacy of EU law must be interpreted as requiring the referring court to disapply the amendments at issue, whether they are of a legislative or constitutional origin, and, consequently, to continue to assume the jurisdiction previously vested in it to hear disputes referred to it before those amendments were made.”
- **Limitations of preliminary references: IS** (Case C-564/19) → Questions regarding the irregular appointment of court presidents and problems of remuneration → In preliminary reference proceedings, there must be „a connecting factor between that dispute and the provisions of EU law whose interpretation is sought, by virtue of which that interpretation is objectively required for the decision to be taken by the referring court [...]. In the present case, it is not apparent [...] that there is a connecting factor between the provisions of EU law to which the second and third questions referred for a preliminary ruling relate and the dispute in the main proceedings [...].” → Infringement procedure instead of preliminary reference.

Thank you
for your attention!

ERA Seminar Zagreb

01/02 April 2025

Prof. Dr. Holger Matt

Rechtsanwalt

Honorary Professor at Goethe-Universität

Frankfurt am Main



Co-funded by
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Relevant principles for (future) common standards to secure protection of LPP and ACP

- Legislation Art 82 TFEU
- Reform of EPPO-Regulation (EU) 2017/1939
- Best Practises
- Jurisprudence by ECtHR and CJEU
- Council of Europe
- Other Options

I. Aspects of discussion (analysis and questions)

1. General systematic approach (LPP and ACP)

- Confidential attorney-client communication and confidential documents/data (simplifying: there are two legal approaches - difference of LPP/ACP according Art 8 ECHR in general and in defence cases according Art 6 ECHR protection)
- Confidential attorney-client communication and confidential documents/data: LPP (professional protection of lawyers) and ACP (protection of confidentiality between lawyers and clients – professional secrecy as right of the client)

LPP:

- **Legal and professional duties correspond with** confidential attorney-client communication and confidential documents/data **protection**
- **Rule of law**
- **Role of lawyers for justice systems** – recognised by Art 6, 8 ECHR and EU law
- Balancing of legal interests (**no absolute protection**)
- **Owner of LPP is the lawyer dependent on clients'** disposal regarding entrusted secrets
- **Procedural safeguards** to secure role of lawyers (cf. CJEU)
- **Differences between common law** (privileged material by definition and declaration) **and civil law systems** (privileged legal sphere and consequently privileged material originated and stored in privileged legal sphere)
- Exception: Duties of disclosure (in contradiction to LPP, e.g. money laundering suspicion, cf. CJEU)

ACP:

- Confidential attorney-client communication and confidential documents/data protection is a **right of the client that refers to LPP** – “same medal, two sides” (but not identical)
- Recognized by Art 8 ECHR and EU law
- Additionally [1] opens confidentiality for **clients’ disposal (owner of ENTRUSTED secrets)**
- [2] better/stronger/more/absolute protection by **procedural safeguards in criminal proceedings** – Art 6 ECHR – Art 47, 48 CFR - Art 4 Directive (EU) 2013/48 - Art 7 Directive (EU) 2016/343) - rights of the client and
- [3] should be protected **also in clients’ sphere**, not only in law firms, at least in defence cases)

- LPP/ACP - Confidential attorney-client communication and confidential documents/data: **Mandatory relation of lawyers' obligation** (should be substantive criminal law and professional duty) **and privilege** (procedural law) not to testify on clients' issues or to disclose anything (protection of professional secrets and confidentiality and against supervision).

- LPP/ACP - Confidential attorney-client communication and confidential documents/data – **Question to MS: Protection against search and seizure in law firms**, does it **correspond to the legal obligations and privileges** of lawyers to protect professional secrets and confidentiality? Differences (and justification)?

- LPP/ACP-Questions: **Protection of clients as witnesses** by privileges (not to testify) in any legal proceedings (diff. criminal, civil, other proceedings)? Any obligations to disclose facts as witness in general ? Or in certain proceedings, e.g. insolvency? Consequences for criminal proceedings (exclusion of use)?
- **No obligation** to keep secrets of LPP/ACP => **no privilege** as witness => **no protection** of LPP/ACP in client's sphere?
- **Thesis:** Privileges as witnesses and protection of LPP/ACP in clients' spheres are necessary to make LPP/ACP effective and to avoid circumvention of protection or infringements of LPP/ACP.
- Special issue (independent of LPP/ACP): **Right to remain silent** as witness in legal proceedings (**right not to incriminate oneself**)
- Special issue: client as **suspect in criminal proceedings**
(Art 6 ECHR – Art 47, 48 CFR - Art 4 Directive (EU) 2013/48 - Art 7 Directive (EU) 2016/343)

2. Legal protection in law firms – two approaches: Art 8 and Art 6 ECHR (and EU law) – Thesis and Questions

- Thesis or Consent on LPP/ACP?

Professional secrecy should be a legal obligation **protected both by substantive criminal law and by professional rules with disciplinary consequences).**

Confidential attorney-client communication and confidential documents/data in **defence cases** (Art 8 plus Art 6 ECHR, Art 47, 48 CFR, Art 4 Directive (EU) 2013/48, Art 7 Directive (EU) 2016/343) **should be protected absolutely by procedural safeguards.**

- Any MS with lower standards?

- Confidential attorney-client (as damaged party or witness etc.) communication and confidential documents/data **in criminal cases** (Art 8 ECHR, Art 7 CFR, Directive 2012/29/EU):

Are communication and confidential documents/data absolutely protected if the clients are **not suspected or accused?**

Third parties “secrets” (e.g. internal investigations)?

Victims’ Protection by Directive 2012/29/EU?

- Confidential attorney-client communication and confidential documents/data in **(other) legal cases** (Art 8 ECHR, Art 7 CFR). Are communication and confidential documents/data absolutely protected if the **clients are not suspected or accused in a criminal case**? Third parties “secrets”?

- Remember: Protection of LPP/ACP in general (Art 8 ECHR, Art 7 CFR) – correspondence of obligation/privilege – interest of judicial authorities (e.g. EPPO) to respect legal privileges – rule of law

- **Relation of search and (following) seizure:** if seizures could be permitted (because documents/data are potentially not protected by legal privileges), are searches in law firms allowed? If seizures are prohibited, are searches also prohibited?

- **Protection by Procedure (procedural safeguards) in concreto** against potential factual infringements of LPP/ACP through investigators:

How should LPP/ACP be protected during searches and after seizures?

Involvement of the bar?

Exclusion of use (especially in the case against the client)?

Necessary consent regarding **IT-tools** and/or **AI**?

3. Scope of protection in law firms – Consent and Questions

- Consent: Law firms are not “safe houses” for *instrumenta et producta sceleris*.
- Consent: Limited protection regarding possession of **pieces of evidence** (created outside of confidential attorney/client-relationship). **However, what are the limitations (criteria), any common standards in the EU?**
- Consent: **No supervision of communication** (verbal and written), but **reliably guaranteed in all EU MS?**
- Consent: **Absolute protection of data and both products of lawyers’ work and material produced by clients for defence** cases (ACP: opinions, drafts, notes, letters, other communication, everything without approval for release), but **reliably guaranteed in all EU MS?**
- Consent: **Exclusion of use** of legally privileged pieces of evidence, illegally collected in law firms, but **reliably guaranteed in all EU MS?**

- **Products of lawyers' work in other cases** (opinions, drafts, notes), are they reliably guaranteed in all EU MS?
- **Protection** of LPP/ACP (in non-criminal cases) against search and seizure in law firms, does the scope **correspond with the legal obligations and privileges of lawyers to protect professional secrets and confidentiality** (e.g. right to refuse testimony as witness)? Reliably guaranteed in all EU MS?
- Law firms as employer and client of service providers (e.g. IT), are all **employees and assisting persons covered by the LPP/ACP?**

- Products of lawyers' work (opinions, drafts, notes) concerning **third parties?**
- Special issue: **Internal investigations (versus right of the defence to collect evidence)**

• Products of clients to be found in law firms? **Is it consent:** (Absolute) protection of law firms concerning data and both products of lawyers' work and material produced by clients for **non-defence cases** (ACP: opinions, drafts, notes, letters, other communication, everything without approval for release)? **Which level is reliably guaranteed in all EU MS?**

• Consent: **Protection by Procedure (specific procedural safeguards for law firms)** in concreto against potential factual infringements of LPP/ACP through investigators. **Which measures exist, which level** is reliably guaranteed in all EU MS?

• Consent: **Loss of protection after criminal activities of the lawyer**, but what are the consequences for the client and his right to secrecy and confidentiality (exclusion of use against client)? Is the lawyer allowed to defend without limitations including the "violation" of LPP/ACP consequences for the client and his right to secrecy and

- **Disposition of client (waiving of ACP)** and consequences
- **Disposition of lawyer** (with/without consent of client - consequences?)
 - ⇒ Self-Defence legitimate without consent of client (but exclusion of use against client because client continues to have right to ACP)
 - ⇒ Legitimate interests in civil or criminal cases of lawyer against client (e.g. remuneration, criminal complaint against client's threats)
 - ⇒ In general: violation of substantive criminal law and professional duties with disciplinary consequences
- **Protection of LPP key elements** as fundamental professional right of the lawyer (cf Art 12 German Constitution, Art 7 CFR) – independent of client, no waiver by client possible, remains on disposal of lawyer
- Special issue: disposition of **company clients** (which natural person is legally necessary/sufficient to waive ACP => Mueller case ECHR)

4. Legal protection outside of law firms – two approaches: Art 8 and Art 6 ECHR (and EU law) – Consent and Questions

- **Protection of LPP and ACP in clients' sphere as suspects' rights in criminal proceedings** (Art 6 ECHR, Art 47, 48 CFR, Art 4 Directive (EU) 2013/48, Art 7 Directive (EU) 2016/343), **consent: Absolute protection** of data and both products of lawyers' work and material produced by clients for defence cases (ACP: opinions, drafts, notes, letters, other communication, everything without approval for release), **but reliably guaranteed in all EU MS?**
- **Consequences for the client and his right to secrecy and confidentiality should be exclusion of use against client in self-defence-cases of the lawyer and investigations against the lawyer, but reliably guaranteed in all EU-MS?**
- Key element: **Right to confidentiality and ACP** (Art 6 ECHR, Art 47, 48 CFR, Art 4 Directive (EU) 2013/48)
- Key element: **Right to remain silent as witness** in legal proceedings (**right not to**

- How to protect LPP/ACP in clients' sphere if the **client is not a suspect** (i.e. no defence rights, same or less scope of protection or none)?
- **Option: Protection of LPP and ACP in clients' sphere ("material is privileged" – common law approach** – protection by definition and declaration - disposition of lawyer on LPP (with consent of client - two categories: confidential and disposable)?
- **Option: Protection of clients as witnesses by privileges** (not to testify) in any legal proceedings (diff. criminal, civil, other proceedings)? Any obligations to disclose facts in certain proceedings, e.g. insolvency, and consequences for criminal proceedings (exclusion of use)?
- Repetition: **No obligation** to keep secrets of LPP/ACP => **no privilege** as witness => **no protection of LPP/ACP in client's sphere?**
- **Thesis: Privileges as witnesses and protection of LPP/ACP in clients' spheres are necessary to make LPP/ACP effective and to avoid circumvention of protection or infringements of LPP/ACP.**

- (No?) **Protection of communication and documents/data (LPP) outside of attorney-client relation (third parties)?** Disposition of lawyers on LPP by declaration (two categories: confidential and disposable)?

- **Special issue: Internal investigations** of companies and the option to distinguish between originally lawyers work and company's work outsourced to service providers (lawyers, consultants etc.)?

- **Protection by Procedure** against factual infringements of LPP/ACP through investigators: How should LPP/ACP be protected during searches and after seizures? (Mandatory) Presence of a lawyer? Exclusion of use?

5. Further issues

- General exceptions (exclusion) for **lawyers under suspicion**
- Issues: **degree of suspicion**, protection of legally privileged **clients** – danger of **circumvention of LLP/ACP** by investigation against lawyers
- **Procedural protection of LLP/ACP** against (potentially unjustified) investigation measures – interest of judicial authorities (e.g. EPPO) to respect legal privileges – rule of law
- **Rules for illegally collected evidence** (exclusion of use, fruits of the poisoned tree)

- **Difference between litigation and advice privilege and/or exclusion of services not covered by legal privileges?**

- **Definition** of a lawyer, who is privileged?

- Special issue:

Option to distinguish between originally **lawyers work** and

(for example 1.) company's work outsourced to service providers (lawyers, consultants etc., e.g. for internal investigations) or

(for example 2.) asset manager's work or

(for example 3.) real estate business?

- **EPPO and transnational issues** for lawyers as witnesses in other EU MS:

- Are legal obligation and privilege not to testify on clients' issues recognised everywhere?
- Potential conflict of duty to testify and duty to keep confidentiality?
- Missing common standards and partly low standards of LPP/ACP protection in single MS lead to danger of forum shopping and to factual infringements of LPP/ACP.

- Practical issue when **third persons are involved**, e.g. interpreter: Reliability of confidentiality

- Instruments of EU law: **EIO, EPOC, EPOC-PR**

II. Principles for protection of LPP and ACP to be considered as common standards in the EU

- cf. CCBE recommendations of 2016, 2019
- cf. draft EC-Convention on protection of lawyers (2024/2025)

Preamble:

- Independence of advocacy (definition of “lawyer” = “attorney” and “client”)
- Clarification of definitions (professional secrecy, LPP, ACP)
- Substantive law and professional rules protecting confidentiality of LPP/ACP
- Confidentiality as condition for a trustful relation and effective legal advice or legal assistance
- Confidentiality is protected in all respects (verbal, written, electronic etc)

Principle One (perspective of legal profession and all clients Art 8):

2-Step-Correspondence

(1) lawyers **obligations** and legal **privileges** and

(2) right to refuse to testify for professional secrecy holder(s) and **protection of LPP/ACP** against supervision of communication or search and seizure of confidential documents/data (in possession of lawyer)

=> otherwise the legal obligation to confidentiality would not correspond with the protection of confidential documents/data and against supervision (LPP/ACP).

Principle Two (perspective of **citizen as suspect** Art 6 ECHR, Art 47, 48 CFR, Art 4 Directive (EU) 2013/48, Art 7 Directive (EU) 2016/343):

Absolute protection of confidentiality in defence cases both in clients' and in lawyers' area

(e.g. documents/data protected in possession of client and lawyer, supervision or tapping etc prohibited, such evidence excluded).

No exception for imprisoned clients: free and private communication should be guaranteed by appropriate measures (no camera, no security, no glass-door, no control of letters or phone calls etc)

Any illegally collected evidence (privileged material) should be excluded from any use (also regarding other investigations against other persons?).

No consequences for the client and his right to secrecy and confidentiality (**exclusion of use against client**) in **self-defence-cases of the lawyer and after collection of evidence against the criminally suspected lawyer** which is privileged in relation to the client.

Principle Three:

Disposition of clients regarding LPP is limited, waiver is only possible in the field of ACP.

- (1) Disposition of the client as a **general rule**: Release from the obligation to maintain secrecy regarding all information and secrets delivered by or disclosed to the client lead to release from protection of ACP.
- (2) **Exception**: No disposition of the client regarding “core inner area” of lawyers’ activities (e.g. documentation of thoughts, meetings/talks with colleagues, prosecutors, judges if not disclosed to client) both regarding right to refuse to testify for professional secrecy holder(s) and protection of LPP regarding search and seizure of confidential documents/data

Principle Four: Protection of lawyers' independence and integrity must correspond to independent legal privileges (also partly independent from clients' decision to release ACP, i.e. LPP is more extensive (covers more) and is an essential part of the justice system. Inhouse lawyers might not be privileged in the same way.

Therefore belong in this category of legal privileges (principle four) also a **better/stronger and more effective protection**:

- a. Stronger requirements in substantive criminal law for **prosecution of lawyers**
- b. **Higher degree of suspicion** before starting any criminal investigation, but definitely for coercive measures against lawyers in order to avoid abuse by state.
- c. Any investigation needs **procedural protection of LPP/ACP (safeguards)** against (potentially unjustified) investigation measures – this is in the interest of justice (including judicial authorities e.g. EPPO) and consequence of the rule of law, **examples for potential practical measures concerning law firms**: presence of bar representative during searches, participation of law firm and their lawyer when classification regarding evidential relevance is being conducted (Sichtung vor Beschlagnahme), sealing before any look (at privileged material) until classification and/or final decision on seizure, exclusive competence for judges, effective remedies (special chambers?) etc.

Principle Five:

(1) Clients as witnesses should have a **right to silence about legal advice and all secrets protected by LPP/ACP** (independent of status as suspect: protection of legal profession and client) **and regarding self-incrimination**, beside other witnesses' rights e.g. to be accompanied by a lawyer, refusal of testimony in cases of relatives etc.

(2) The right to refuse any testimony regarding LPP/ACP in legal proceedings should **correspond the protection of confidential documents/data in the area of clients against searches and seizure.**

=> Principle Five is the **consequence of the clients' right to ACP** which **refers to** the lawyers professional duties and the mandatory relation of **lawyers' obligation** (to be secured by substantive criminal law and professional duty) **and privileges** (in procedural law) not to testify on clients' issues or to disclose anything (protection of professional secrets and confidentiality and against supervision of Confidential attorney/client-communication).

Principle Six:

If lawyers are acting as lawyers with all the legal and professional **obligations of lawyers** (i.e. not: acting as private businessmen or acting as a criminal) **all legal privileges** (right to refuse testimony and corresponding protection of LPP/ACP against supervision and search and seizure) **should apply completely and absolutely.**

Same protection should be guaranteed for employees and other assisting persons (including interpreters, IT provider etc) in the specific capacity – warnings (cautioning) necessary by lawyers (preferred in writing with approval signature) – optional: warning/cautioning legally necessary by court/PPO/police who conduct the interview.

⇒ no relativizing consideration or proportionality according Art 8 ECHR jurisprudence.

⇒ Exception Principle Three: Disposition of client.

More details about **gaps in theory and practice** in the EU MS, a **comparative view**:
Lorena Bachmaier (several publications)

National examples with more details: Netherlands

EPPO perspective: Case Hamburg

HLF of the Commission 2025

Panel at the end of the seminar: Future

LPP/ACP - The need for better protection in theory and practise - Minimum standards under EU law and for EPPO proceedings ?

My legal conviction and for a better Europe is: Yes!

THANK YOU FOR YOUR ATTENTION!

THE NEW CONVENTION OF THE COUNCIL OF EUROPE ON THE PROTECTION OF THE PROFESSION OF LAWYER

1. *Scope and content*
2. *Minimum standards and expectations*



Co-funded by
the European Union

Višnja Drenški Lasan



11 Dec. 2024

The draft text of this Convention was adopted by the European Committee for Legal Cooperation (CDCJ) of the Council of Europe at its meeting held on

It is expected that the Convention will be adopted on May 14, 2025, after the procedure before the Parliamentary Assembly of the Council of Europe and the Committee of Ministers of the Council of Europe

14 May 2025

- **The Convention is divided into:**
- - Preamble
- - Chapter I - purpose , scope and use of terms (Article 1-3)
- - Chapter II - substantive provisions (Article 4-9)
- - Chapter III - monitoring mechanism (Article 10-15)
- - Chapter IV - relationship with other international instruments (Article 16)
- - Chapter V - final clauses (Article 17-23)
- - Appendix - privileges and immunities

- **Why was it necessary to adopt a new Convention on the Protection of the Legal Profession when there are already instruments already address this, such as:**
 - 1. **Basic Principles on the Role of Lawyers**, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba , 27 August - 7 September 1990).
 - 2. **Recommendation Rec (2000) 21 of the Committee of Ministers to members States on the freedom to exercise of the profession of lawyer** (25 October 2020.)
 - 3. **Resolution 44/9 on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers** adopted by the United Nations Human Rights Council (16 July 2020)

- **Because:**

- The Council of Europe aims to increase unity among its members
- - Because it has been observed that lawyers are increasingly exposed to attacks, threats, harassment and intimidation due to their professional activities, as well as improper interference or interference in the performance of their legitimate professional activities
- - Because lawyers and their professional associations have a fundamental role in upholding the rule of law, ensuring access to justice and protecting human rights and fundamental freedoms
- - Because there are different ways in which the legal profession can be organised in the member states of the Council of Europe
- - In order to strengthen the international legal framework that will ensure the freedom to practice the legal profession



- **WHAT IS THE GOAL - PURPOSE OF THE CONVENTION?**
 - Strengthening the protection of the legal profession and the profession and the right to exercise that profession independently and without discrimination, inappropriate interference or interference, or being subjected to attacks, threats, harassment or intimidation.
- **HOW WILL THIS PURPOSE BE ACHIEVED?**
 - By establishing specific mechanisms, this Convention ensures the effective implementation of its provisions by the signatory states/parties to the Convention.

- The Convention applies to:
- **professional activities of lawyers and their professional associations**
- **to lawyers who, under their home title, provide legal advice, assistance or representation in another party to the Convention** under the conditions set out in Articles 2 a and b of the Convention
- **to any person whose qualification as a lawyer or whose license to practice has been revoked or suspended** – Art. 3. a of the Convention
- **to any person recognized by an international court or tribunal, or a body established by an international organization, as competent to act in proceedings before it when giving advice or acting in such proceedings** in accordance with Article 3.b of the Convention
- **to persons employed or engaged by lawyers to assist them to the extent that they directly contribute to the exercise of the professional activities of those lawyers**, but only in relation to the provisions of Article 6, paragraph 3, subparagraphs b and c and Article 9, paragraph 4 of the Convention
- **to employed persons or persons engaged to assist professional associations in the part that concerns the performance of professional activities of those associations**

- FOR THE PURPOSES OF THE CONVENTION - ARTICLE 3 DEFINES THE FOLLOWING TERMS:
- **LAWYER** – means any natural person who is qualified and authorized, in accordance with national law, to practice the profession of lawyer
- **CLIENT** - any natural or legal person advised, assisted or represented by a lawyer
- **POTENTIAL CLIENT** – means any natural or legal person who seeks, either directly or indirectly, advice, assistance or representation from a particular lawyer
- **PROFESSIONAL ASSOCIATION** - means a representative body to which some or all lawyers belong, either directly or indirectly, or are registered and which has specific responsibility for the organisation or regulation of its profession under national law





- **PROFESSIONAL ACTIVITY OF A LAWYER** - means any act of preparing or providing advice, assistance or representation to clients or potential clients in relation to the interpretation or application of law, whether national, foreign or international, both in the Party to the Convention where they are established and where such action may be taken, including in relation to the proceedings and actions of an international court or tribunal or a body established by an international organisation.
- **PROFESSIONAL ACTIVITIES OF PROFESSIONAL ASSOCIATIONS** – means any activity covered by Article 4, paragraph 2, of the Convention
- **PUBLIC AUTHORITIES** – means:
 - Government and administration at national, regional and local levels
 - Legislative and judicial bodies to the extent that they perform administrative functions in accordance with national law
 - A natural or legal person in the area in which they exercise administrative authority
- **PRESCRIBED BY LAW and NECESSARY IN A DEMOCRATIC SOCIETY** - shall be understood in the sense of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the ECHR.

- THE SUBSTANTIVE PROVISIONS OF THE CONVENTION REGULATE THE POSITIVE OBLIGATIONS OF THE PARTIES IN RELATION TO THE FOLLOWING AREAS:

- 1. PROFESSIONAL ASSOCIATIONS
- 2. RIGHT TO PRACTICE
- 3. PROFESSIONAL RIGHTS OF A LAWYER
- 4. FREEDOM OF EXPRESSION
- 5. DISCIPLINE
- 6. PROTECTIVE MEASURES



PROFESSIONAL ASSOCIATIONS

- The Parties guarantee that the national legal and regulatory framework will ensure:
- **1. Independence & Self-Government:** Executive bodies elected without external influence.
- **2. Advising on Legislation:** Professional associations to advise on laws and rules affecting lawyers.
- **3. that membership in a professional association does not exclude a lawyer from establishing and participating in other associations for the purpose of promoting professional interests and activities**





- **4. Role of Professional Associations:**

- **Advocacy:** Represent and defend lawyers' interests and independence.
- **Standards:** Develop and promote professional conduct standards.
- **Access & Education:** Promote access to the profession and ongoing training.
- **Cooperation:** Collaborate with other organizations for legal matters and advocacy.
- **Support:** Provide assistance and promote the well-being of lawyers and their families.

RIGHT TO PRACTICE LAW

- The Parties shall ensure that:
 - 1. admission, continued admission and readmission to practice law are prescribed by law and are based on objective, relevant and transparent criteria that are applied through fair processes and are not subject to discrimination.
 - 2. and that these decisions are made by professional associations or other independent bodies, with the provision of review before an independent and impartial court or tribunal established by law





- PROFESSIONAL RIGHTS OF LAWYERS

1. Legal Advice and Representation

- Lawyers can offer legal advice, assistance, and representation, including for human rights and fundamental freedoms.

2. Client Relationship

- Lawyers can choose clients and terminate attorney-client relationships.

3. Access to Clients

- Lawyers have quick and efficient access to clients, even if they are deprived of liberty.

4. Recognition and Access to Materials

- Lawyers are recognized as authorized to represent clients and have effective access to relevant materials from public bodies, courts, and tribunals.

5. Access to Court and Communication

- Lawyers can communicate with courts or tribunals and participate effectively in proceedings.

6. Applications and Proposals

- Lawyers can submit applications and proposals, including requests for the disqualification of judges or prosecutors..

7. Public Information

- Lawyers can inform the public about their services.

8. Protection from Liability

- Lawyers are not liable for statements made in good faith during legal proceedings.

9. Confidential Communication

- Lawyers can provide private legal advice and communicate confidentially with clients.

10. Non-Disclosure of Client Information

- Lawyers are not required to disclose information received from clients, including materials related to legal proceedings.

- The rights which parties are required to ensure to lawyers shall not be restricted except **as are prescribed by law and are necessary in a democratic society**
- Such restrictions may include, but are not limited to, requirements to ensure the availability of legal advice, assistance and representation for all
- The Parties shall ensure that lawyers do not suffer adverse consequences for being identified with their clients or their clients' subject matter, without prejudice to the freedom of expression protected by the Convention for the Protection of Human Rights and Fundamental Freedoms and domestic law



FREEDOM OF EXPRESSION

- The Parties shall ensure that:
- That the right of lawyers to inform the public about matters relating to their clients' cases shall be subject only to such limitations as are prescribed by law and which arise from professional responsibility, the requirements of the administration of justice, respect for private life, and are necessary in a democratic society.
- The right of lawyers, individually and collectively, and professional associations to promote the rule of law, its respect, to participate in public debate on the content, interpretation and application of existing and proposed legal provisions, court decisions, the administration of justice and access to justice, and the promotion and protection of human rights, as well as to make proposals for reforms in relation to these issues.

- DISCIPLINE

- The Parties shall ensure that:

- 1. the reasons for disciplinary proceedings against lawyers to be based solely on professional standards of conduct prescribed by law and to be themselves in accordance with the rights and freedoms set out in the Convention for the Protection of Human Rights and Fundamental Freedoms.
- 2. Rules that disciplinary proceedings against lawyers be brought before and involve an independent and impartial disciplinary committee established by a professional association, an independent and impartial body, or an independent and impartial court or tribunal established by law



- 3. That the procedure be expeditious, carried out in accordance with the requirements for a fair trial according to Art. 6. Convention for the Protection of Human Rights and Fundamental Freedoms and the right to defense with a lawyer of one's own choice, and subject to review before an independent and impartial court or tribunal
- 4. That disciplinary sanctions imposed on a lawyer respect the principles of legality, non-discrimination and proportionality
- 5. Disqualifications from practicing law should only be imposed for the most serious violations of professional standards.

- **PROTECTIVE MEASURES for LAWYERS**

The Parties shall ensure that for the prevention, investigation or prosecution of criminal offences or for the protection of the rights of others, lawyers have:

1. Rights upon Deprivation of Liberty

1. Access to a lawyer of their own choice.
2. Immediate notification to professional association representatives about deprivation of liberty, legal basis, and location.

2. Presence During Investigations

1. Independent lawyer or professional association representative present during searches, seizures, or copying of professional materials unless conducted by investigating authorities.

3. Protection of Rights

1. Ensure compliance with protective measures during inspections or professional supervision activities.

4. Professional Associations' Rights

1. Representatives can access lawyers deprived of liberty, upon request.
2. Immediate notification of attacks or killings related to professional activities, if not made public.

5. Freedom to Carry Out Professional Duties

1. Lawyers and associations protected from threats, harassment, or any improper interference.
2. Obligation to investigate and prevent obstruction of lawyers' activities.

6. Independence & Self-Governance

1. Parties must refrain from actions that undermine the independence of professional associations.



MONITORING MECHANISM

- The Convention foresees two basic bodies that will deal with the implementation and observance of the rights protected by the Convention:
 - 1st group of experts for the protection of the legal profession – GRAVO
 - 2. Committee of Parties
- The Convention provides for:
 - **a regular procedure**
 - **an urgent procedure**
 - **an opinion procedure**



- **GRAVO - Monitoring the Implementation of the Convention**

1. Composition of GRAVO

1. Minimum 8, maximum 12 members.
2. Members are selected by the Committee of Parties from candidates nominated by Parties.
3. Must be nationals of a Party to the Convention.

2. Term and Election

1. Mandate: 4 years, renewable once.
2. Transparent election procedure among candidates of high moral character with relevant professional experience.

3. Selection Criteria

1. No two members can be from the same country.
2. Must represent different legal systems.
3. Ensure gender and geographical balance.

4. Independence & Availability

1. Members act in a personal, independent, and impartial capacity.
2. Available to perform duties effectively.

5. Election Procedure

1. Determined by the Committee of Ministers, with unanimous consent from the Parties.
2. To be completed within 6 months of the Convention's entry into force.

6. Privileges & Immunities

1. GRAVO delegation enjoys privileges and immunities during country visits as per the Convention Annex.



- COMMITTEE OF PARTIES
- **Composition**
 - Consists of representatives from Parties to the Convention
 - Strives for gender balance
- **Meetings**
 - Convened by the Secretary General of the Council of Europe
 - First meeting within 1 year of Convention's entry into force
 - Subsequent meetings held upon request from one-third of Parties, the Committee President, or the Secretary General
- **Responsibilities**
 - Adopts its own rules of procedure
 - Elects members of GRAVO
 - Can adopt recommendations based on GRAVO reports and conclusions
 - May set deadlines for Parties to implement recommendations and encourage cooperation

• **PROCEDURE**

1. Assessment Rounds

1. Divided into rounds with GRAVO defining scope and methods (e.g., questionnaires)

2. Sources of Information

1. GRAVO receives data from:
 1. Parties, NGOs, civil society, professional associations, and human rights institutions
 2. Regional and international bodies

3. Country Visits

1. GRAVO may visit countries with national authority cooperation, and independent experts if needed
2. Visits are for insufficient information or urgent procedures (Article 13)

4. Freedom During Visits

1. GRAVO delegation has freedom of movement and contact with authorities.
2. Privately meets with individuals and accesses relevant materials.

5. Draft Report

1. GRAVO prepares a draft with analysis, suggestions, and proposals.
2. Sent to the Party for comments.

6. Final Report

1. Final adopted report includes conclusions and the Party's comments.
2. Published after adoption and submitted to the Party and Committee of Parties.

• **URGENT PROCEDURE**

- **Triggering Urgent Attention**

- GRAVO acts when reliable information indicates serious violations of the Convention requiring immediate action.

- **Request for Special Report**

- GRAVO requests the concerned Party to submit a special report on measures taken to prevent violations.

- **Investigation**

- GRAVO may appoint members to investigate and report urgently.
- If needed, and with Party consent, an on-site visit may be conducted.

- **Findings and Reporting**

- After the investigation, findings are sent to the Parties, Committee of the Parties, Committee of Ministers, and Parliamentary Assembly.
- Includes comments and recommendations.

- **Publication**

- GRAVO's reports and conclusions are published along with the Party's comments.

• **OPINIONS**

- If necessary, GRAVO may adopt opinions on the implementation of the Convention
- Article 15 of the Convention stipulates that the Committee of Ministers and the Parliamentary Assembly of the Council of Europe will be periodically informed about the implementation of the Convention, and GRAVO's opinions serve that purpose



RELATIONSHIP WITH OTHER INTERNATIONAL INSTITUTIONS



The Convention shall not affect the rights and obligations arising from other international instruments to which the Parties to this Convention are or will become Parties and which contain provisions on matters governed by this Convention and **which provide greater protection for the right of lawyers to freely exercise their profession**



Parties to this Convention may enter into bilateral or multilateral agreements with each other on matters dealt with by this Convention for the purpose **of supplementing or strengthening its provisions** or facilitating the application of the principles contained therein



- FINAL PROVISIONS

- **Who Can Sign?**

- Member states of the Council of Europe, non-member states that participated in drafting, and the European Union.

- **Ratification Process**

- The Convention requires ratification, acceptance, or approval, with instruments deposited with the Secretary General of the Council of Europe.

- **Entry into Force**

- The Convention enters into force three months after 8 signatories, including at least 6 Council of Europe members, have consented to be bound.

- **Subsequent Accessions**

- Non-member states may be invited to accede by the Committee of Ministers under certain circumstances.

- **Contributions from Non-Members**

- Non-member Parties must contribute to the financing of GRAVO and the Committee of Parties as established by the Committee of Ministers.

- **TERRITORIAL APPLICATION, AMENDMENTS TO THE CONVENTION, DENIAL AND NOTIFICATIONS**
- **Territorial Application (Articles 18-23)**
- States or the EU can specify the territories to which the Convention applies when signing or ratifying, subject to amendments.
- **Declaration on Professional Professions**
- Parties must indicate which professions are covered by the Convention and define "public authority" as per Article 3g.
- **Amendments to the Convention**
- Amendments are possible, with procedures for adoption and entry into force outlined in Article 21.
- **Denunciation of the Convention**
- Any Party may denounce the Convention by declaring it to the Secretary-General.
- **Secretary General's Role**
- Responsible for notifying about signatures, territorial application, amendments, and denunciations.

- **APPENDIX - PRIVILEGES AND IMMUNITY**

- **Who is Included?**

- GRAVO members and other delegation members, including:
 - Independent national experts
 - Experts in specific fields (Art. 13)
 - Council of Europe staff, translators, and employees accompanying GRAVO.

- **Key Privileges and Immunities**

- **Personal Protection:** Immunity from arrest, detention, and seizure of personal luggage.
- **Legal Protection:** Immunity from legal proceedings for official actions, even after duties end.
- **Freedom of Movement:** Exemption from movement restrictions when entering or leaving the country.
- **Customs and Foreign Exchange:** Same benefits as foreign government representatives on official duty.
- **Inviolability of Documents**
 - Official documents carried by the delegation are inviolable.
 - No suspension or censorship of official correspondence.
- **Purpose of Privileges**
 - Granted to ensure independent performance of GRAVO's functions, not for personal benefit.
- **Waiver of Immunity**
 - Immunity can be waived by the Secretary General of the Council of Europe based on specific criteria.



THANK YOU FOR YOUR ATTENTION



**The Role of Lawyers in
Protecting and Promoting the
Rule of Law and Mutual Trust**

Training for Defence Lawyers

Zagreb, 1-2 April 2025



FACE-TO-
FACE

EXCELLENCE IN
EUROPEAN **LAW**



Vladmir Hrle, lawyer
Hrle Attorneys, Belgrade
ECBA Advisory Board Member

The role of defence lawyers in criminal proceedings – an essential element of rule of law



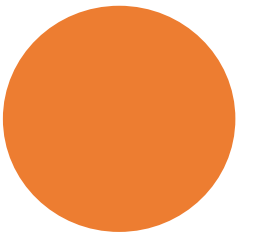
Co-funded by
the European Union

Role of defence lawyer in criminal proceedings

- *Enjoyment of fair trial rights and guarantees begin when a person is arrested or detained i.e. when person's situation has been "significantly affected"*
- *Its about the process itself especially at the early stages of the proceedings - for great number of defendants, the case will not go to trial and will be resolved in other ways, i.e. dropping of charges, plea agreement*
- *ECtHR – those rights should be real, practical and **effective***
- *But how to ensure effectiveness of those rights? By who?*
- *The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest stage of the proceedings is fundamental*
- *Defence counsels are main element and guardians of procedural safeguards who must provide **effective legal representation** which is a prerequisite for the enjoyment of fair trial standards*
- *The right to a counsel is one of the cornerstones of a fair trial but it is not the duty of defence counsel to ensure a fair trial for the defendant*

Required safeguards

- *But defence counsel's legal assistance alone cannot (and should not) guarantee fair trial if other elements are missing, for example*
- *Suspected/accused person is able to participate in the processes; to understand what is presented to them, and to be understood (especially through the translator); to be given information regarding the accusation; to be informed of the reasons; to have access to the case file; to resources (legal aid!) and time to enable them to respond to accusations and to prepare for trial; to put forward information and evidence that is in their favour, and to examine prosecution's evidence (witnesses); to enjoy the privilege against self incrimination; and to appeal and to receive a reasoned decision; to enable and maintain confidentiality*
- *But to invoke and sustain full spectrum of procedural rights, assistance of a defence counsel is essential, through counsel of their choice!*



Effective Legal Assistance

Right to an effective legal assistance requires certain quality of legal assistance, i.e.

- (i) Requires professional, committed, and appropriately trained and experienced lawyers*
- (ii) Lawyers who have enough time to dedicate to the case and are not overwhelmed with large number of cases or a overly busy schedule*
- (iii) Formal or de-facto specialization in different area*
- (iv) Not impeded by objective reasons (health issues)*
- (v) Motivation?*
- (vi) Type of the procedure i.e. inquisitorial or adversarial?*
- (vii) Cross-border cases, language barriers?*
- (viii) Countries where there is no official specialization – issue*
- (ix) Legal Aid cases, especially in countries with low remuneration fees, and in rural areas/smaller communities with limited number of lawyers with general knowledge*



Ineffective Legal Assistance-European vs US approach

- *ECtHR - Independence of defence counsel is the ultimate recourse and the Court generally refrained to assess in depth the quality or ineffectiveness of legal representation*
- *Court has been reluctant to hold states liable for the failures of lawyers who, as members of independent liberal professions, should regulate themselves*
- *The ECtHR basically only considers whether the right to a counsel is practical and effective or theoretical or illusory, i.e. situations where counsel completely fails to perform some duty (appear at court, file a legal remedy, etc), and does not require that a defendant is actually prejudiced to declare a violation of Article 6*
- *Anyhow, more scrutiny over court state appointed counsels in contrast to counsels of choice*
- *Limited judicial supervision and remedies due to independence of the counsel - thoughts?*
- *Right of the court to intervene and order production of certain evidence proprio motu which were not raised by the defence previously?*
- *US approach in contrast gives more scrutiny and requires so-called two prong test entirely reversing the burden of proof – defendants need to prove that counsels failed to perform due to their incompetence and errors and that such failure caused prejudice of the defendant in such a way that had there be no such errors, the outcome would probably have been different*

Role of Bars and International Organizations

-ECBA-

- *Criminal law and criminal justice policy are no longer exclusively made on a national level as supra-national bodies, have an important impact throughout the EU*
- *These changes present a need for organisation of defence lawyers able to advocate rights and minimum standards for all persons suspected, accused or convicted*
- *Reflecting the views of criminal defence lawyers practicing in Europe;*
- *Promoting professional development of, and cooperation between, criminal defence lawyers by regular awareness raising and capacity building events and different work streams;*
- *Submitting applications to supranational legislatures and policy-makers to ensure that they are aware of the views of criminal defence lawyers in Europe;*
- *Intervening in and observing significant cases in which fundamental human rights are at stake;*
- *Legal advisory and consultancy work*

Are you a criminal law practitioner? Join the ECBA!

WWW.ECBA.ORG

ECBA
EUROPEAN CRIMINAL BAR ASSOCIATION
An association of European defence lawyers



THANK YOU!

For additional questions, email me please at:

vladimir.hrle@hrle-attorneys.rs

The role of Lawyers in safeguarding the independence of judges

advocate Mikołaj Pietrzak

partner at Pietrzak Sidor&Partners, Warsaw, Poland

member of the European Criminal Bar Association



- **CONSTITUTIONAL TRIBUNAL**
- **NATIONAL COUNCIL OF JUDICIARY**
- **CHAMBERS AT THE SUPREME COURT (DISCIPLINARY CHAMBER,
EXTRAORDINARY REVIEW AND PUBLIC AFFAIRS CHAMBER)**
- **DISCIPLINARY PROCEEDINGS TARGETING LEGITIMATE JUDGES**




Xero Flor w Polsce Sp. z o.o. V. Poland (application no. 4907/19)

- **the erosion of constitutional judiciary (Constitutional Tribunal)**

ZABRALI MI MÓJ GABINET;
TAM TRZYMAŁEM SWÓJ
EGZEMPLARZ KONSTYTUCJI!

MYŚLI PAN, ŻE BĘDZIE
JESZCZE DO CZEGOŚ
PRZYDATNY...?

- 
- They took my office. I used to keep my copy of the Constitution there.
 - You won't be needing it anymore.

Broda and Bojara V. Poland (applications no. 26691/18 and 27367/18)

- **arbitrary dismissal of a judge from the position of court president**

Grzęda V. Poland (application no. 43572/18)

- **Early termination of judge's term at the NCJ**
- **Żurek v. Poland (application no. 39650/18)**





„Reczkowicz group” – chambers of the Supreme Court

- **Reczkowicz V. Poland (application no. 43447/19) – Disciplinary Chamber of the Supreme Court**
- **Advance Pharma Sp. z o.o. V. Poland (application no. 1469/20) – Civil Chamber of the Supreme Court**
- **Disciplinary proceedings against judges – Juszcyszyn V. Poland (application no. 35599/20), Tuleya V. Poland (application no. 21181/19)**



WARSZAWA

**SĄD NAJWYŻSZY: IZBA DYSCYPLINARNA SN
NIE JEST SĄDEM**

RE
V





Violations of judges' independence outside the scope of Article 6 (1) of the Convention

- **Baka V. Hungary (application no. 20261/12) – freedom of speech**
- **Oleksandr Volkov V. Ukraine (application no. 21722/11) – right to personal and family life**

Wałęsa V. Poland (application no. 50849/21)

- **Pilot judgement**
- **Non-implementation of the judgement into the domestic system**

IS THIS YOUR MOST
DIFFICULT CASE...?

NOT NEARLY AS DIFFICULT
AS DEFENDING THE RULE
OF LAW...



Старый Оклем Тенды

**Advocating for direct application of the ECHR standard regarding
judicial independence in domestic cases**

- **Requests for exclusion of a judge**
- **Civil society institutions**



Thank you for your attention.

Advocate Mikołaj Pietrzak - pietrzak@pietrzaksidor.pl


The Role of Lawyers in Protecting and Promoting the Rule of Law and Mutual Trust

ZAGREB, 1-2 APRIL 2025




Ciprian Băban – Criminal Defence Attorney





Challenges a lawyer faces in court and AI solutions to overcome them in the context of protecting the rule of law

"The law is reason, free from passion." —
Aristotle

- 
- Recent attempts to break RoL – attacks on Lawyers profession
 - Court transcriptions and translation practices and AI solutions
 - Access to and studying court files
 - Lawyer-Judge/ Lawyer-Clerks Relationship
 - Virtual Lawyers and their impact on trust in legal proceedings
 - Preparation of judicial decisions

U.S. President Calls for Sanctions Against Lawyers. UPDATE: Position of the New York Bar Association March 25, 2025

On Monday, March 24, 2025, the New York Bar Association strongly condemned the memorandum issued by Donald Trump, President of the United States of America, which calls on the Attorney General and the Secretary of the Department of Homeland Security to sanction lawyers and law firms involved in litigation against the federal government. According to nycbar.org, the New York Bar considers this document to be an unjustified attack on lawyers who defend their clients' rights against governmental abuses and calls for its immediate withdrawal.

The New York Bar criticizes the memorandum for its general and unfounded accusations against lawyers involved in immigration and pro bono litigation, arguing that it will discourage legitimate legal representation and violate the fundamental principles of the rule of law. It also highlights that lawyers have a professional duty to counsel their clients honestly, and accusations that they "coach" clients to lie are unjustified and undermine the confidentiality protection of the attorney-client relationship.

The Bar emphasizes that sanctioning lawyers for their work should remain within the jurisdiction of the courts and independent professional bodies, not be politically dictated by the Executive. Directives targeting specific categories of lawyers or appearing to politicize disciplinary measures are considered abuses of power and threaten the independence of the legal profession and the separation of powers.

The New York Bar calls on the Administration to respect the principles of professional independence, access to justice, and fair process, urging Congress to monitor the actions of the Department of Justice and the Department of Homeland Security. Furthermore, the New York Bar warns that discouraging lawyers from fulfilling their professional obligations jeopardizes the future of the American legal system and reaffirms its support for all lawyers who play a role in defending constitutional rights.

U.S Joint Statement of the Bar Associations Listed Below

We, the undersigned bar associations, stand united in condemning the President's orders targeting law firms. These actions violate fundamental principles of our legal system and undermine the right to counsel, the independence of the legal profession, and the rule of law.

Our justice system is premised on the principle that all individuals and entities – regardless of their political, social, or economic standing – are entitled to representation. This foundational principle is not a privilege granted at the discretion of those in power; it is a cornerstone of democracy, enshrined in our Constitution, and protected by our courts. Attempts to intimidate or penalize lawyers for representing clients whose interests do not align with those of the government are antithetical to our democracy, violate the rule of law, chill attorneys from fulfilling their ethical and professional obligations, and undermine our system of justice.

We call upon all branches of government to support the rule of law and the essential role of lawyers in our democracy, and to reject any efforts to use the tremendous power of the government against members of the legal profession for performing their duty. We further call upon our fellow members of the legal profession as well as members of the public at large to reject any attempt to harass or intimidate our country's lawyers and judges for simply doing their jobs.

[In Defense of the Rule of Law and the Independence of the Legal Profession | New York City Bar Association](#)

Court transcriptions and translation practices and AI solutions



Court Transcriptions

- WHAT IT USED TO BE
- WHAT IT IS NOW LIKE
- WHAT IT IS GOING TO BE

What it used to be

TYPEWRITER -> NOISE
NO EDIT, TEMPLATES
A LOT OF PAPER, TIME, POOR QUALITY



What it is now like


- USE OF COMPUTERS -> EDIT, PRINT
- LESS NOISE
- FASTER TRANSCRIPTION, TEMPLATES

BUT...

- **Delayed Processing:** Statements are not recorded instantly, leading to slower case progress.
- **Incomplete Record:** Key details may be missed, resulting in partial or fragmented statements.
- **Inaccuracy in Representation:** Judge's reinterpretation may introduce unintentional bias or errors.
- **Loss of Nuance:** Tone, emphasis, and subtle meaning from the witness are often lost in paraphrasing.
- **Inconsistency:** Statements may vary depending on the judge's interpretation, affecting reliability.
- **Reduced Accountability:** Lack of verbatim transcription makes it harder to hold witnesses to their exact words.
- **Limited Transparency:** The absence of a precise record may impact the fairness and transparency of the legal process.
- **Increased Reliance on Memory:** Without an accurate transcription, there's a risk of misremembering or altering details over time


Speech-to-text tool





Within the courts portal (Emap), a Google speech recognition tool (speech-to-text) is integrated to streamline the transcription of witness statements in court. The solution includes:

- **Continuous Speech Recognition** – Enables real-time voice processing, converting content into text format and assisting the clerk with high transcription accuracy.
- **Automatic Diarization Function** – Diarization automatically identifies and separates speakers (configured in this case for two people), allowing for better transcription clarity, especially in complex cases.
- **Advanced Settings** – Adapting the solution for Romanian (ro-RO) ensures recognition of local legal terminology, with the option to automatically restart the recognition process for extended dictation sessions.



A complementary in-house platform called **Optimus** is in advanced development within the judicial system, carried out by a specialized team within the courts, ensuring that the solution meets the exact needs of legal processes, aiming to provide a complete audio-to-text conversion system:

- **Processing of Already Recorded Audio Files** – Unlike real-time transcription, Optimus will allow the upload and automatic processing of audio files from court archives.
- **Complete Storage and Backup System** – Optimus is designed to include secure storage and automatic backup functionalities, facilitating file management.
- **Customization and API Integration** – Built on a microservices architecture, Optimus is a scalable and configurable solution that can be customized to integrate via APIs into other systems or applications used by the courts.

Technical description of the code:

1.Speech Recognition Function:

- The code initiates a `webkitSpeechRecognition` object, configured for continuous recognition (`continuous = true`) and interim results (`interimResults = true`), allowing users to see the partial result of the dictation before its final confirmation.
- The number of speakers is also specified for diarization (`diarizationSpeakerCount = 2`), which allows the separation of statements into two distinct roles (e.g., witness and lawyer).

2.User Interface:

- The start/stop button (`#start_button`) indicates status: green for availability and red for active.
- The status is also displayed by changing the microphone icon and the "listening" rotation icon (`#spanListeningStatus`), enabling users to immediately identify the application's status.

3Automatic Text Formatting:

- In the `onresult` event, the code processes the results, applying a series of rules for common expressions, for example, `enter` becomes `
`, and `comma` is transformed into `,`. This ensures a readable and correct transcription according to the specific format.
- If the clerk wants an automatic restart after an interruption, the code controls this option through a checkbox (`cbAutoRestart`) and restarts the voice recognition process according to the settings.

4.Capitalize and Line Break:

- `capitalize()` ensures the text begins with a capital letter, and `linebreak()` replaces newline characters with HTML format (`<p></p>` or `
`), for precise text formatting in the editor.

5.Integration with CKEditor:

- The code retrieves content from the editor and updates it with the new processed text through the `instance.getData()` and `instance.setData()` methods. This allows easy integration of the recognized speech text into the clerk's workflow, maintaining formatting in the CKEditor.

What it is going to be like

- **Real-Time Speech-to-Text Transcription:** Enables clerks to capture statements instantly, reducing manual transcription time and allowing the judge to follow along with an accurate record.
- **Automated Error Detection in Transcripts:** AI can automatically detect and flag potential transcription errors in real time, enabling clerks to make immediate corrections instead of reviewing long transcripts post-session.
- **Voice-to-Text Summarization for Judges:** AI can create concise summaries of testimonies or witness statements on the spot, allowing judges to review key points quickly instead of sifting through entire transcripts.

- **Instant Review and Playback of Testimony:** AI-powered tools can allow judges and attorneys to quickly retrieve and play back specific parts of a testimony, saving time compared to manually locating segments within lengthy recordings.
- **Real-Time Speaker Identification:** AI can distinguish between speakers in a multi-person conversation, streamlining transcription by accurately attributing each statement without clerical adjustments. AI can also verify the identity of witnesses or defendants by recognizing unique vocal characteristics, reducing the risk of impersonation.
- **Automated Annotation and Timestamping:** AI can automatically tag parts of the transcript (e.g., witness statements, objections, rulings) with timestamps and context, making it easier for judges and lawyers to reference specific moments.

- **Efficient Case Note Generation for Judges and Clerks:** AI can automatically generate organized notes based on the proceedings, allowing judges and clerks to focus on key decision points without extensive manual note-taking.
- **Smart Agenda and Time Management:** AI can monitor and track the length of each segment (e.g., witness testimony, objections, breaks), alerting judges to overlong segments and helping keep court sessions on schedule
- **Sentiment and Emotion Analysis:** AI can analyze vocal and facial cues during testimony to detect stress or emotions, potentially aiding in assessing credibility.
- **Evidence Authenticity Verification:** AI can check digital evidence (e.g., videos, photos) for signs of tampering, ensuring that only authentic evidence is used in court.


Court Translations (Interpretations)

➤ PROBLEMS

- Not enough time
- Lack of accuracy
- Consecutive instead of Simultaneous

➤ SOLUTIONS

- Speech-to-text tools for the interpreter



Both in courts and before prosecutors/investigation bodies, interpreters perform *consecutive* (not *simultaneous*) translations, which doubles the time of the deposition.

They do not have a booth, but stand by the witness/party, wait for them to make a pause, and then try to translate.

The translations thus made, are also inaccurate and may miss essential nuances, subtleties.

A Speech-to-text software would:

- Help the interpreter figure out what the interpreted person said and not mistranslate or forget parts of the statement
- Eventually Replace the interpreters, by performing live simultaneous translations (with human-in-the-loop, at first and then independently)

Access to and studying court files



Article 6 ECHR – Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

1. **Jasper v. the United Kingdom** (2000)

- **Issue:** The case involved non-disclosure of evidence by the prosecution for reasons of public interest immunity.

- **ECtHR's Interpretation:** The court found that the withholding of information hindered the applicant's defense and ruled that adequate facilities must include access to all material evidence necessary to prepare a defense unless outweighed by public interest reasons.

2. **Edwards and Lewis v. the United Kingdom** (2004)

- **Issue:** Involved restrictions on the defense's access to evidence deemed sensitive by the prosecution.

- **ECtHR's Interpretation:** The court emphasized the importance of "equality of arms," stating that denial of access to crucial evidence can breach Article 6. Access must be provided unless there is a strong and justifiable reason for its restriction, and any restriction should be balanced by counteracting measures, like allowing defense counsel access even if restricted from the defendant.

3. **Rowe and Davis v. the United Kingdom** (2000)

- **Issue:** Concerned the non-disclosure of evidence in a criminal case due to claims of national security.

- **ECtHR's Interpretation:** The court found that withholding evidence affected the applicant's ability to prepare their defense and, thus, breached Article 6. This case reinforced that defendants must be granted sufficient access to evidence for their defense, with exceptions only when absolutely necessary for public interest or security, and where alternative measures (such as reviewing sensitive information through legal counsel) are provided.

4. **Natunen v. Finland** (2009)

- **Issue:** Involved limitations on access to investigation files for the defense.
- **ECtHR's Interpretation:** The court found that the defense should have access to the case files, as withholding them infringed on the applicant's ability to prepare. This case affirmed that the principle of "equality of arms" requires the defense to be given access to the evidence in the prosecution's possession unless justified otherwise.

5. **Fitt v. the United Kingdom** (2000)

- **Issue:** Concerned the prosecution's refusal to disclose certain evidence to the defense.
- **ECtHR's Interpretation:** Here, the ECtHR concluded that while some restrictions can apply (e.g., for reasons of public interest), these must be closely scrutinized to avoid infringing on the defense's right to prepare. The case established the principle that when evidence is withheld, counterbalancing procedures are necessary to ensure fairness.

Current situation (Ro):

- Lawyer sends e-mail with request to study e-file
- Chief Clerk/Judge approves
- Court clerk grants access through 2FA (phone + e-mail)

This procedure may take from 1 to several days
Court terms may be even shorter

Some files (challenge against preventive measures or Challenge against precautionary measures) **do not appear on courts website.** (they are not scanned -> cannot be accessed electronically).



Even in this scenario, access to court file is not fully respected:

- limited time (hours, sometimes)
- only one telephone no./file is permitted for 2FA, due to shortcomings of the system
- some files are not scanned, due to their object/short terms

By fully digitizing court files and creating a centralized, AI-driven access system, lawyers and authorized personnel can gain immediate access to necessary files, significantly reducing wait times and administrative steps.

Solution → **AI-driven digital infrastructure**

1. Comprehensive Digital Archiving System

- **Automated Scanning and Digitization:** Implement an AI-powered bulk document scanner with OCR (Optical Character Recognition) to convert physical files into searchable digital files. This would allow courts to create a full digital archive, especially for frequently accessed documents.
- **Smart Indexing:** AI can automatically classify and tag documents based on case numbers, parties involved, dates, and legal topics, making it easier to locate specific files without human intervention.

2. Secure Cloud-Based Court File Repository

- **Centralized Access Portal:** Develop a cloud-based platform where all digitized court files are stored and accessible by authorized users through secure, role-based access.
- **Automated Access Requests:** AI can handle access requests, automatically verifying the identity and authorization level of each applicant, streamlining approval and minimizing the need for manual oversight.
- **Two-Factor Authentication (2FA):** For security, ensure that only verified users can access sensitive files, using 2FA as an added layer of security.

3. Self-Service Access Kiosk at Courts

- **On-Site Digital Kiosks:** Set up digital kiosks within the court, equipped with secure access to scanned files, for lawyers or authorized personnel. Kiosks can be equipped with biometrics or other identity verification measures.
- **Automated File Retrieval System:** Kiosks could be linked to the court's main database, allowing users to retrieve, view, and even print certain files on-site without needing to wait for administrative staff.

4. AI-Powered Document Requests and Tracking

- **Automated Workflow for Access Requests:** Implement an AI-based request management system where users submit access requests online. The AI can handle validation checks, route requests to the right department, and provide real-time status updates.
- **Access Prioritization with AI:** For urgent cases, AI can prioritize access requests based on the urgency and type of case, notifying users when files are ready.

5. Remote Access with Secure Digital Rights Management (DRM)

- **Restricted Viewing and Watermarking:** For highly sensitive documents, AI can apply watermarks and restrict downloads or copying, ensuring that files are viewed securely without risk of unauthorized sharing.
- **Remote File Viewers:** Allow lawyers and authorized users to access files via a secure, read-only web viewer. AI can monitor usage to flag any unusual activity that may signal a breach of policy.

6. AI-Driven Optical Character Recognition (OCR) and Search Tools

- **Enhanced Searchability:** With OCR applied to digitized documents, users can search within documents by keywords or legal terms, making it faster to find relevant sections within large case files.
- **Auto-Translation for Multilingual Access:** AI-powered translation tools can make documents accessible in multiple languages, which can be especially helpful in multinational cases.

7. Blockchain-Backed Access Logs and Security

- **Immutable Record of Access:** Using blockchain for access logging can ensure that all file accesses are permanently recorded, adding transparency and security.
- **Smart Contracts for Conditional Access:** Smart contracts can automatically grant or deny access based on preset conditions, such as case status or role authorization, reducing the administrative burden on staff.

Studying the file

1. Intelligent Document Analysis and Summarization


- **Automated Summaries:** AI can generate concise summaries of lengthy documents, highlighting key facts, case details, arguments, and conclusions.
- **Key Issue Extraction:** Identifies and organizes relevant issues, legal principles, and precedents, making it easier to focus on pertinent information quickly.
- **Natural Language Processing (NLP):** NLP algorithms can understand legal jargon and extract information relevant to specific queries, so lawyers can pinpoint details without reading the entire document.

2. Search and Query Optimization

- **Advanced Keyword and Semantic Search:** Goes beyond simple keyword search by understanding the context and meaning behind queries, retrieving more accurate and relevant information from case files.
- **Predictive Search Suggestions:** Provides suggested search terms and related cases based on common issues within the file, making the search process faster and more comprehensive.

Lawyer-Judge/ Lawyer-Clerks Relationship



- 
- Communication Barriers
 - Document Overload
 - Scheduling Conflicts and Case Management
 - Manual Data Entry and Time-Intensive Tasks



- AI Chatbots and Case Management Software
- Natural Language Processing (NLP) Tools
- Document Automation and Intelligent Filing Systems
- Scheduling and Calendar Optimization Tools

- **AI Chatbots and Case Management Software:** tools to facilitate real-time communication between lawyers, judges, and clerks → instant access to case updates and document status
- **Natural Language Processing (NLP) Tools:** AI-driven NLP to analyze and summarize case briefs, providing concise summaries for judges
- **AI-Powered Document Management:** Machine learning algorithms can categorize and organize documents based on keywords, case numbers, or context, making files readily accessible.
- **Optical Character Recognition (OCR):** to convert scanned documents into editable, searchable text, reducing manual filing and improving accessibility.
- **AI-Powered Scheduling Software:** tools to suggest optimal times for hearings or meetings based on all parties' availability, prevent scheduling conflicts and delays
- **Automated Reminders:** AI can send reminders to all parties involved, minimizing missed deadlines and ensuring timely action.
- **Robotic Process Automation (RPA):** RPA can assist clerks by automating repetitive data entry tasks, reducing the chance of errors and freeing clerks' time for other responsibilities.

VIRTUAL LAWYERS AND THEIR IMPACT ON TRUST IN LEGAL PROCEEDINGS

You have the right to a bottonney





AI
Assistant



Legal
Research



Practical
Guidance



Brief
Analysis



Litigation
Analytics



Legal News
Hub

+ Create New Conversation

Recent conversations

Clear all

What are the allowed exclusions in Ca...

Cases discussing homeowner foreclos...

What is the procedure to change emp...

Is there a treatise or article on Omani ...

Find me a dog bite case

AI Assistant

Which legal task can AI accelerate for you today?



Ask a question



Generate a draft



Summarize a case



Upload to summarize
or ask questions

Examples of legal questions to ask:

What is considered an act of moral turpitude in California?

What is the procedure for amending or supplementing a pleading in a civil action in Michigan?

What is the process for filing a motion to dismiss in a criminal case in New York?

Select Jurisdiction ▾

Includes: Case Law | Statutory Codes | Practical Guidance | Treatises

Ask a legal question



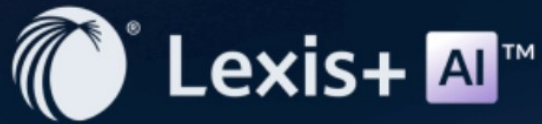
View FAQs



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Legea decriptată



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<https://lawren.ai/chat>

 Conversație noua Conversații Consultă un avocat

What is the status of limitation for theft?



În conformitate cu Codul penal al României, termenul de prescripție pentru infracțiunea de furt este de 5 ani. Acest termen se calculează de la data săvârșirii infracțiunii, conform articolului 154 din Codul penal. Totuși, este important de menționat că termenul de prescripție poate fi întrerupt sau suspendat în anumite condiții prevăzute de lege, ceea ce ar putea prelungi perioada în care o persoană poate fi trasă la răspundere penală pentru această infracțiune. Dacă aveți nevoie de informații suplimentare sau de clarificări, vă recomand să consultați un avocat specializat în drept penal.



Întrebare



My client, a Turkish national, is being investigated for a crime committed in Romania. This crime is not classified as such in Turkey. Could he be extradited, and what other defense mechanisms could he employ?



În cazul în care un cetățean turc este investigat pentru o infracțiune comisă în România, există posibilitatea ca acesta să fie extrădat, însă acest proces este guvernat de anumite condiții și tratate internaționale. România și Turcia sunt ambele semnatare ale Convenției Europene de Extradare, care stabilește cadrul legal pentru astfel de proceduri.

Conform legislației românești, extrădarea poate fi solicitată dacă infracțiunea pentru care se cere extrădarea este pedepsită de legea română cu o pedeapsă privativă de libertate de cel puțin un an. Totuși, extrădarea nu va fi acordată dacă infracțiunea nu este recunoscută ca atare în statul solicitat (Turcia, în acest caz), conform principiului dublei incriminări.

În ceea ce privește mecanismele de apărare, clientul dumneavoastră ar putea invoca următoarele:

1. **Principiul dublei incriminări:** Dacă infracțiunea nu este recunoscută ca atare în Turcia, acest principiu poate fi un argument puternic împotriva extrădării.
2. **Drepturile fundamentale:** Clientul poate argumenta că extrădarea ar încălca drepturile sale fundamentale, cum ar fi dreptul la un proces echitabil sau protecția împotriva tratamentelor inumane sau degradante.
3. **Condițiile de detenție:** Dacă există dovezi că condițiile de detenție din România ar putea fi inadecvate sau ar încălca drepturile omului, acest lucru poate fi un argument împotriva extrădării.
4. **Proceduri legale:** Asigurarea că toate procedurile legale sunt respectate și că clientul are acces la o apărare adecvată este esențială.

In the case where a Turkish citizen is investigated for a crime committed in Romania, there is a possibility for extradition; however, this process is governed by specific conditions and international treaties. Romania and Turkey are both signatories to the European Convention on Extradition, which establishes the legal framework for such procedures.

According to Romanian law, extradition may be requested if the offense for which extradition is sought is punishable under Romanian law by at least one year of imprisonment. However, extradition will not be granted if the offense is not recognized as such in the requested state (in this case, Turkey), in accordance with the principle of double criminality.

Regarding defense mechanisms, your client could invoke the following:

1. **Principle of double incrimination:** If the offense is not recognized as such in Turkey, this principle could be a strong argument against extradition.
2. **Fundamental rights:** The client may argue that extradition would violate their fundamental rights, such as the right to a fair trial or protection against inhumane or degrading treatment.
3. **Detention conditions:** If there is evidence that the detention conditions in Romania could be inadequate or violate human rights, this may serve as an argument against extradition.
4. **Legal procedures:** Ensuring that all legal procedures are respected and that the client has access to an adequate defense is essential.

Issues:

- How effective/trustworthy would the defence be?
- Confidentiality/GDPR issues
- Limitations in situations like searches, arrests
- Other issues?

Preparation of judicial decisions



AI ALREADY SUPPORTS COURTS

BUT AI MUST REMAIN A TOOL...

KEY AI FUNCTIONS IN THE JUDICIARY

Metadata
Processing

Text
Comparison
and Relation

Pattern
Recognition

Automated
Tagging /
Indexing

Decision
Support
Systems

Search
Machines and
Research

Examples of AI used in courts (De)

- CODEFY (already used)

Tool to classify documents (document processing) with human oversight

Low risk

- MAKI (sandbox tool – invented cases – going real Nov)

Assists judges by recognizing patterns, analyzing historical rulings, telling judges similar cases were tried by them in the past and gives them the option of acting the same, or going different – *High risk*

<https://www.mj.niedersachsen.de/startseite/aktuelles/presseinformationen/einsatz-kunstlicher-intelligenz-in-der-223207.html>

RISK BASED APPROACH

Limited/ Low risk

for non-critical
administrative tasks
with minimal potential
harm

**Minimal
obligations/ Basic
Transparency
Human in the Loop**

High Risk

influence decisions
affecting rights and
freedoms. Decision
Support. Sentencing
Algorithms

**Human Oversight
Transparency
Data Governance**

Prohibited Risk

manipulate
behaviour or
infringe human
rights. Social
Scoring. Predict
criminal behaviour
based on personal
characteristics

**Banned under AI
Act**

AI JUDICIARY SYSTEM – REGULATED



Challenge for judges: How can they counteract the use of AI by lawyers and the flood of cases? Because the use of AI for lawyers does not require regulation 😊

BIAS AND FAIRNESS

- AI – only as good as the trainer, so, if they have bias in their training, they will replicate it.
- US using AI for bail, for evaluating the likelihood of reoffending, was found having biased decisions against certain groups.
- Key Question: How can we ensure AI is trained on fair and representative data?

AUTOMATION BIAS

- **Automation bias** describes the inclination of judges to overly trust AI-generated outputs, particularly in sensitive fields such as legal judgments.
- Judges might lean excessively on AI recommendations, risking the oversight of essential details in a case..
- **Main Question:** How can we prevent judges from becoming overly dependent on AI and ensure they retain independent decision-making?

Philosophical Q:

*Will we lose the capacity of critical thinking?
[e.g. Google maps navigation vs Classical maps navigation]*

If AI does research for us, will our brains become lazy, or will they expand to conquer broader horizons?



Stay cyber-safe!

Ciprian Băban – *Attorney-at-Law*

Specialist White Collar Crime and
Cybercrime

ciprian.baban@babanlaw.com

+40753066152

