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БЕОГРАД 2026 /БРОЈ 3 /ГОДИНА LXXIV

UDC 34/35 : ISSN 0003-2565

ИЗДАВАЧ /

Правни факултет Универзитета у Београду

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БЕОГРАД 2026 / БРОЈ 3 / ГОДИНА LXXIV

UDC 34/35 : ISSN 0003-2565

Анали Правног факултета у Београду
Година LXXIV, бр. 3/2026, стр. 381–608

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UDC 340.12

CERIF: S 115

DOI: 10.51204/Anali_PFBU_26301A

Kenneth Einar HIMMA[*]

PRACTICAL AUTHORITY, WILL-IMPOSITION, AND THE SOCIETY OF ANGELS

Joseph Raz argues both that there can be practical authority without sanctions and that such authority is constituted, in part, by the power to impose its will on subjects with respect to what they must do. This essay argues that the Razian claim that practical authority is partly constituted by a power of will-imposition implies that a telling counts as authoritative only if backed by the threat of a sanction. Since law is a form of practical authority, this claim is logically inconsistent with the conclusion Raz draws from the society-of-angels argument.

Key words: *Authority. – Will-imposition. – Law. – Conceptual jurisprudence. – Coercion.*

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Joseph Raz argues that practical authority is constituted, in part, by the power to impose its will on subjects with respect to whether they comply with an authoritative directive. As he puts the matter, a person counts as having practical authority over other persons only if they are "effective in *imposing [their] will* on many over whom [they claim] authority" (Raz 1994, 211, emphasis by author). Note that Raz's claim assumes, plausibly enough, that it is a necessary condition for *P* to count as having practical authority over *Q*, that *P* is *effective*, or *efficacious*, in inducing *Q* to comply when they are not antecedently disposed to do so.

There are two key claims here. The first is that *P*'s directives must be efficacious in guiding the behavior of *Q* to count as having practical authority over *Q*. That is, it is in the nature of practical authority that it is efficacious in guiding the behavior of those over whom authority is claimed. Otherwise put, practical authority is conceptually efficacious. This is not surprising: if *Q* always openly defies *P*'s directives and *P* can do nothing about it, then *P* lacks practical authority over *Q.* It might be true that *P claims* authority over *Q*, but *P*'s claim is false.

Practical authority resembles the law in this important respect: it is a conceptually necessary condition, for a normative system to count as one of law, that it is efficacious in guiding behavior. Indeed, Hart regards efficacy as one of the two minimum conditions for the existence of a legal system:

> There are […] two minimum conditions necessary and sufficient for the existence of a legal system. On the one hand, those rules of behaviour which are valid according to the system's ultimate criteria of validity must be generally obeyed, and, on the other hand, its rules of recognition specifying the criteria of legal validity and its rules of change and adjudication must be effectively accepted as common public standards of official behaviour by its officials. The first condition is the only one which private citizens *need* satisfy; they may obey each 'for his part only' and from any motive whatever (Hart 2012, 116).

If there are two systems in a society that claim legal authority over its members and only one is efficacious, the efficacious system is the one that counts as the law in that society. This is true of practical authority and for the same reason. The claim that practical authority is conceptually efficacious cannot plausibly be denied.

The second key claim is that the conceptual efficacy of practical authority must be explained in part by the authority's ability to impose its will on subjects when they are not antecedently disposed to comply. Raz's claim is thus that for *P* to have practical authority over *Q*, it is a *necessary condition* that *P* has a power to induce *Q* to comply, when *Q* is not antecedently disposed to comply by means that amount to *an imposition of P's will* on *Q*.[1]

This essay argues that Raz's claim that practical authority is partly constituted by the power of will-imposition – which I think is correct – is inconsistent with the conclusion he draws from his famous society-of-angels thought experiment – that there can be law without sanctions. My thesis here is concerned with the implications of Raz's view that practical authority is partly constituted by the power of will-imposition, with respect to the conclusion of his society-of-angels argument.

This analysis is grounded in an explication of the nature of will-imposition, as that is defined by *our* conceptual practices. I argue that if it is true of our conceptual practices, as Raz believes, that practical authority is partly constituted by the power of will-imposition,[2] then a mandatory directive counts as authoritative only if backed by a detriment reasonably contrived to deter enough noncompliance to enable the authority or *telling* to minimally achieve the purposes they intend to achieve by guiding behavior, which hence counts as a sanction (the sanctions thesis).[3]

This point should not be glossed over. I believe both that practical authority is partly constituted by a power of will-imposition *and* that a directive counts as authoritative only if backed by a sanction.

However, it is crucial to understand that I argue for neither claim here. The thesis of this paper is a claim about the relationship between two of Raz's positions – namely that those two positions are logically inconsistent. Accordingly, the thesis of this paper is logical: it is that Raz's claim that the power of will-imposition is a constitutive property of practical authority is inconsistent with his claim that, for the existence of a legal system, it is not necessary that it backs at least some legal norms with the threat of a sanction.

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1 There are, of course, other necessary conditions for *P* to have practical authority over *Q* – or, as the matter is commonly put, other *existence conditions* for practical authority (Raz 1994, fn 1).

2 Insofar as some property partly *constitutes* someone as having practical authority, I will characterize it as a *constitutive property* or *feature.* The constitutive properties of something thus correspond to its existence conditions and conceptually necessary properties, which define its metaphysical nature.

3 By a *telling*, I mean content that has its source in some agency and that tells someone what she must do; the concept hence picks out authoritative directives and orders, as well as non-authoritative demands.

The methodology involves an analysis of *our* conceptual practices for applying the phrase *impose one's will* and is thus a philosophical explication of *our* ordinary concept of will-imposition. It might be true that there are objective, mind-independent truths about the nature of will-imposition – although if so, I have no idea how we human beings could have reliable epistemic access to these truths.

However, it is important to understand, as will be discussed below in Section 1, that Raz's claim about practical authority makes a claim about the content of our conceptual practices. It does not even *purport* to identify objective truths about a given mind-independent concept of authority.[4] *Our* conceptual practices regarding the use of a phrase are determined by *our* conventions for using it, together with shared philosophical assumptions, if any, about the nature of the associated kind that might condition the application of these conventions in hard cases. Since my argument is grounded in an analysis of our conventions for using the relevant locutions, it is partly empirical and partly philosophical – as is true of any piece of conceptual analysis.[5] Accordingly, it counts as a piece of naturalized jurisprudence.

Further, it should be noted that there is nothing in my analysis that implies that the reason people comply with the requirements of law is that they wish to avoid the sanctions authorized as a response to noncompliance. It is compatible with my thesis that there can be a legal system in which everyone always obeys the law for moral reasons. Of course, I think that this state of affairs is vanishingly improbable, which is why I am not a Marxist. But there is nothing in our conceptual practices that would preclude such a state of affairs. Either way, nothing of significance turns on this claim.

1. A PRELIMINARY NOTE ON METHODOLOGY

At the outset, it is important to note that conceptual jurisprudence is concerned to explicate the content of *our* concepts, which is determined by *our* conceptual practices, as constructed by *our* semantic conventions for using the associated word and any *shared* philosophical assumptions about

4 See the next section for a defense of this claim.

5 For example, if the Pope does not count as a bachelor because he is not eligible for marriage, then the semantic conventions for using the term, which are summarized in the dictionary definitions of the term as "unmarried man", are qualified in this case by the *philosophical* assumption that it is in the *nature* of bachelorhood that bachelors are institutionally eligible for marriage.

the nature of a kind that, if any, qualify the application of those semantic conventions in hard cases. Put simply, conceptual jurisprudence, properly understood, is concerned to explicate what we do with words and phrases having to do with legal practice.

H. L. A. Hart makes this utterly clear at the beginning of his Preface to *The Concept of Law*:

> The lawyer will regard the book as an essay in analytical jurisprudence, for it is concerned with the clarification of the general framework of legal thought, rather than with the criticism of law or legal policy. Moreover, at many points, I have raised questions which may well be said to be about the *meanings of words*. […] Many important distinctions, which are not immediately obvious, between types of social situation or relationships may best be brought to light by an examination of the *standard uses of the relevant expressions and of the way in which these depend on a social context, itself often left unstated* (Hart 2012, vi, emphasis by author).

If there is doubt about this (and there should not be), Raz is just as clear that his theory is concerned to explicate the concept of law as its content is determined by our conceptual practices. As he explains:

> The notion of law as designating a type of social institution is not, however, part of the scholarly apparatus of any learned discipline. It is *not* a concept introduced by academics to help with explaining some social phenomena. Rather it is a concept entrenched in our society's self-understanding. […] It occupies a central role in our understanding of society, our own as well as other societies. In large measure what we study when we study the nature of law is the nature of *our* own self-understanding. […] It is part of the self-consciousness of our society to see certain institutions as legal. […] [T]hat consciousness is part of what we study when we inquire into the nature of law (Raz 2009, 31).[6]

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6 Scott Shapiro also makes clear that the goal of conceptual jurisprudence is to explicate the content of our ordinary concepts: "[T]he term 'jurisprudence' has a couple of other *well-established uses* as well" (Shapiro 2011, 1, emphasis by author). Indeed, the reason that his planning theory of law fails is that his analysis of positive norms as identical with plans *obviously* has no basis in our conceptual practices with respect to those ordinary concepts. If you were to use *norm* instead of *plan* in asking someone to make plans with you for the weekend, they would not

Though neither theorist explicitly conceived an analysis of our concepts as being grounded in our semantic conventions – that is obvious. It is nonetheless clear that both theorists think that the canons of ordinary usage pertaining to law are qualified in hard cases by what they take to be shared philosophical assumptions about the nature of the corresponding kind and that the principal task of conceptual analysis is to identify and explicate those assumptions.

Neither theorist is concerned with a mind-independent or objective concept of law, the content of which is determined independently of what we do with words. And one reason is that it is difficult to explain how ordinary human beings, with the abilities we have, could discern the contents of concepts that are determined independently of our practices, even assuming that the claim that the universe self-sorts into various categories is not utter nonsense. Accordingly, this essay is concerned to explain the nature of will-imposition as it is determined by what *we* do with *our* words, and not as determined by objective, mind-independent considerations that can be discerned only by someone who can attain a God's-eye perspective, which no human being can plausibly claim to have.

That said, it is important to reiterate that the arguments of this essay do not depend on the assumption that we do not have reliable epistemic access to the nature of a kind, as determined by objective considerations. The claims of this essay are that (1) *our* conceptual practices pertaining to the notion of will-imposition imply that the power of will-imposition is partly constituted by the power to induce compliance by threatening detriment that counts as a sanction, and (2) this is inconsistent with the conclusion Raz draws from his society-of-angels argument.

2. THE POWER TO INDUCE COMPLIANCE BY WILL-IMPOSITION AS THE POWER TO PERSUADE

It is a conceptual truth, as the Raz quote above assumes, that practical authority is generally efficacious in inducing subjects to comply. Just as it is a necessary condition that a normative system is generally efficacious in inducing subjects to comply for that system to count as one of law, it is a necessary condition that *P*'s tellings are generally efficacious in inducing *Q*

have a clue what you were asking. See Himma, "Farewell to the Planning Theory of Law: No Laws Are Plans or Planlike" forthcoming in *Canadian Journal of Law and Jurisprudence*.

to comply for *P* to count as having practical authority over *Q*. If *Q* has no inclination at all to comply with *P*'s tellings and *never* complies with them, then *P* does not count as having authority over *Q* – though *P* might claim otherwise.

It is important to observe that the claim that *a* is effective in producing *b* implies, by definition, that the occurrence of *a has something to do* with the occurrence of *b*. In the medical context, to say that treatment *a* is efficacious in inducing sustained remission of condition *b* is to say that the application of *a causes* the remission. In the context of guiding behavior, to say that *P* is efficacious in guiding the behavior of *Q* is to say that *Q* generally complies with *P*'s tellings and that *Q*'s compliance *has something to do* with the fact that the telling has its source in the system or person. Accordingly, the behavioral efficacy of a normative system or person must be explained in terms of an ability – or power – that helps to explain the capacity of the system or person to induce subjects to comply when subjects are not antecedently inclined to do so.

Raz explains practical authority's constitutive efficacy in terms of it possessing an "effective" power to induce compliance. Someone lacking the right kind of power to induce members of a group to do as they direct lacks the requisite resources to guide their behavior by telling them what they are required to do and hence does not count as having practical authority over them for that reason.[7] Having the power to induce compliance in potentially recalcitrant subjects is, in his view, the ground of authority's constitutive capacity to direct behavior by telling subjects what to do.

The applicable power is not physically mechanistic. Whatever power an authority might have to induce compliance, it does not involve an ability to mechanistically bring it about that subjects comply. It should be clear, for instance, that *P*'s implanting and using a microchip in *Q*'s brain, which enables *P* to mechanistically control what *Q*'s body does by means of imperative sentences, does not count as exercising practical authority over *Q* by telling *Q* what to do. *P*'s imperative sentences in this case are analogous to commands that one might input into a computing device to cause it to perform a desired operation.

Authoritative guidance is equipped by nature, as we conceive it, with the resources to make a practical difference in what subjects decide to do, *not* by mechanistically causing a complying act *but* by inducing subjects to

7 Similar considerations explain why it is a necessary condition for a system to count as one of law that it is efficacious in guiding behavior. See Hart's quote associated with Note 2, above.

comply. While it is not preposterous to describe *P*'s causing *Q* to do <u>*a*</u> as *inducing Q* to do <u>*a*</u>, a power to mechanistically cause someone to comply cannot constitute, even partly, someone as having practical authority over others. Practical authority induces compliance by making a difference in a subject's deliberations about what the subject should do. However, *P* cannot make the required difference in *Q*'s deliberations by mechanistically *causing Q* to make the desired movements because those mechanisms bypass *Q's* deliberations altogether.

Practical authority can make a difference in a subject's deliberations about whether to comply only by *rationally inducing* them to do so – i.e., by creating something they are likely to regard as a reason to perform the required act because, as a rational self-interested agent, they should regard it as such. Practical authority, as we conceive it, is partly constituted by the power to generate reasons that are reasonably contrived to rationally induce compliance in rational self-interested agents, by *persuading* them to do so, and is thus partly constituted by the power to *persuade*.

The relevant power, in Raz's view, is the power of will-imposition. Again, as Raz explains, a person counts as having practical authority over members of a group only if they are "effective in imposing [their] will on many over whom [they] claim authority" (Raz 1994, 211). Indeed, it is plausible to think will-imposition is the only capacity that practical authority has, by its nature, to induce rationally competent subjects to comply, by creating reasons that persuade them to do so. It is hence the power of will-imposition that constitutes the requisite power to persuade, which any practical authority has, by its nature.

3. THE POWER OF WILL-IMPOSITION

The relevant power of will-imposition cannot be understood without grasping the concepts of power and will-imposition out of which it is constructed. This section explicates these constituent concepts as a step towards explicating the compound notion of the power of will-imposition, as the content of that concept is determined by our conceptual practices.

3.1. The Concept of Power

To have a power to bring about state of affairs S is to have the ability to bring about that S occurs, as it is incoherent to say *P* has the *power* to bring about something *P* is unable to bring about.[8]

This power is nomological, or causal, in character. The claim that *P* has the *power* to bring about state of affairs S entails that it is *nomologically* possible for *P* to do something that causally brings about the occurrence of S.[9] However, it likewise entails the stronger claim that there is something that *P* has the ability to do that is reasonably likely to bring about S. It might (or might not) be nomologically possible for me to run a sub-four-minute mile by moving my legs fast enough to traverse a mile in less than four minutes, but I do not have an ability that counts as a power to do that because I cannot make them move that fast while carrying my weight across the length of a mile without some technological enhancement, no matter how hard I train.[10]

To constitute a power, this causal ability must be reliable in the sense that someone with this ability can regularly do *a* and consistently bring about S by doing *a*. There is a sense, for instance, in which Bob Beamon counts as having been *able* to long-jump 29 feet, since he did that in 1968, and it is self-evidently true, to put the matter in philosophical slogan-speak, that "*does* implies *can*." However, he never had something that counts as the *power* to do so, because his next-best jump was under 28 feet, during a career that

[8] *The Oxford English Dictionary* defines *power* as "an *ability* or capacity to do something or act in a particular way" (*https://www.lexico.com/definition/power*, last visited June 22, 2026, emphasis by author), while *The Merriam-Webster Dictionary* defines it as the "*ability* to act or produce an effect" (*https://www.merriam-webster.com/dictionary/power*, last visited June 22, 2026, emphasis by author). I cite dictionary definitions in this essay only to justify the claim that a certain proposition is a truism – which would otherwise have to be assumed – or to clarify which usage is relevant. The dictionary definitions I cite do no heavy philosophical lifting at all.

[9] The relevant use of power has not, as far as I can tell, been explored by legal theorists. Legal theorists tend to focus on political power, which is not the relevant usage here. Political power refers to what a person is authorized to do in the political sphere or, for those who are more cynical, what they can get away with doing in that sphere.

[10] I once devoted a year to trying to run a mile in under five minutes and got no closer than five-and-a-half, before I realized, to my great frustration, the futility of the endeavor.

spanned more than ten years. Although breathtaking, his record-breaking jump was a fluke because, while he was *able* to do that once, that ability was not reliable and hence did not rise to the level of a power.[11]

Someone with a causal ability to bring about S without fail counts as having the power to bring it about, but one can have the power to bring about S that is not perfectly reliable in bringing it about. Although the causal ability of a calculator to bring about a state of affairs in which two numbers are correctly added might be perfectly reliable, most adults count as having the power to add two numbers even though they often make mistakes. It is therefore enough to constitute them as having the power to add two numbers that they can consistently bring about that two numbers are correctly added, by performing the relevant operations over the period during which they count as having the power to do so.

How consistently someone must be able to produce S by doing *a* in order to count as having a power to bring about S by doing *a*, is not clear, but this much is: the claim that someone can have the power to bring about S by doing *a* without being perfectly reliable in bringing it about by doing *a* entails that the requisite ability need not be causally mechanistic. Since we conceive practical authority's power to persuade as a causal ability (what else could it be?) to *influence* the subject's reasoning *rather than as the ability to mechanistically change* the brain states on which the subject's beliefs supervene, noncompliance remains both conceptually and causally possible.

Accordingly, the claim that *P* has the causal power to bring about state of affairs S by doing *a* does not entail *P*'s doing *a* *causes* the occurrence of S. I have a causal ability to bring it about that some readers are persuaded by the arguments I make and accept the conclusion, but it misdescribes the matter to say that I *caused* them to accept it. Although one needs certain causal abilities to persuade other people (e.g., the ability to communicate content), one does not count as persuading a person by *causing* their beliefs to change. As we conceptualize the notion, persuasion operates by *influencing* someone's deliberations and not by *causing* their beliefs or deliberations to change.

11 There are some complications here, such as the fact that the stadium in which Beamon landed that jump is more than 2,200 meters above sea level, but none that requires modifying the analysis: if he could reliably jump that distance there, he would count as having the power to jump that distance – at least, in that stadium.

3.2. The Concept of Will

Though it is uncontentious that practical authority is constituted, in part, by the power to impose its will on subjects with respect to what they do, it is not clear what will-imposition amounts to, since there is no literature explicating that concept. One conspicuous difficulty pertains to the meaning of *will* in this context, as we cannot explicate what it is to *impose one's will* without understanding what the term *will* means.

It is important to note that the problems associated with fleshing out the concept of *free will* are not concerned with the concept of will; they are concerned with explaining the concept of *freedom* in a manner that entails that competent rational subjects can permissibly be held accountable for acts that are morally wrongful because they have freedom to choose what they do. As Timothy O'Connor and Christopher Franklin describe the issue:

> [D]isputes about free will ineluctably involve disputes about metaphysics and ethics. In ferreting out the kind of control at stake in free will, we are forced to consider questions about (among others) causation, laws of nature, time, substance, ontological reduction vs emergence, the relationship of causal and reasons-based explanations, the nature of motivation and more generally of human persons. In assessing the significance of free will, we are forced to consider questions about […] rightness and wrongness, good and evil, virtue and vice, blame and praise, reward and punishment, and desert (O'Connor, Franklin 2002).[12]

The problem of free will is ultimately concerned with whether our folk attributions of culpability are justified and thus with whether subjects may, on our shared moral views, be permissibly blamed, censured, or punished.[13] It is, accordingly, concerned to explicate the relevant concept of *free*dom in order to ascertain whether we can justly be held morally accountable for our acts, because those acts count as *freely* chosen on the relevant usage of

[12] The problem is especially acute if determinism, i.e., the view that every event has a physical cause, is true.

[13] I make no claims here about the content of objective morality since I doubt, like most moral theorists, that we have epistemic access to any such content. The only theories that imply that we have such access – such as moral intuitionism and the Kantian claim that the content of an objective morality can be derived from objective truths of reason to which we have reliable epistemic access in virtue of being rational – have long been decisively refuted.

the terms *free* and *freedom* – which requires ascertaining, once that concept is adequately explained, whether our wills are free in the morally requisite sense.[14]

The noun term *will* is etymologically related to the noun term *willing* as its root but the occurrence of the former in the locution *impose one's will* does not refer to something that counts as a willing. The term *willing* is used to describe a conscious mental state that is commonly believed to constitute the immediate cause of an action: the conscious mental state constituting my willing (or volition) to lift my left arm at time *t*, on these shared views, causes me – in some mysterious way – to lift it at time *t*. Although it is not optimally clear what will-imposition amounts to, it is clear that a willing qua conscious mental state is not the kind of thing that can be *imposed* on others.

To understand the relevant use of *will*, it is helpful to consider the idea of something being done *against* someone's *wishes*.[15] To say an act *a* was done against *Q*'s wishes is to say that *a* was done against *Q*'s *evident* desires – and hence to say that it was done not just without *Q*'s consent but *over* *Q*'s expressed objection. If *P* does something *Q* does not want done but is unaware that *Q* does not want it done, then *P*'s doing it does not count as *against Q*'s *wishes*. While *Q* need not verbalize their objections, to constitute *P*'s act as done *against Q's wishes*, this must be evident to *P*: if *Q* criticizes *P* for having done it against *Q*'s wishes when those wishes have not been made evident to *P*, then *P* is likely to respond, and quite reasonably, that *P* did not know that *Q* did not want it done.

This much is clear about the logical relationship between doing something against a person's *wishes* and doing something against a person's *will*: the claim that *a* is done against *Q*'s *will* implies it is done against their *wishes*; however, the claim that *a* is being done against *Q*'s *wishes* does not imply that it is done against *Q*'s *will*. A judge who overrules *Q*'s objection to permitting *R*'s testimony counts as permitting it against *Q*'s *wishes* but not as against *Q*'s *will* – unless *Q*, for instance, has committed a criminal offense trying to prevent the judge from issuing the order. It might be true that *Q* need not do something to physically resist *a* being done in order for it to count as having *a* done *against Q*'s will, *but Q* must, at least, express an objection to it being done.

[14] As they explain, "[t]he topic of free will also gives rise to purely empirical questions that are beginning to be explored in the human sciences: do we have it, and to what degree?" (O'Connor, Franklin 2002, Note 16).

[15] As *The Merriam-Webster Dictionary* defines the term, *to wish* is "to have a desire for" (*https://www.merriam-webster.com/dictionary/wish*, last visited June 22, 2026).

This suggests that the term *will*, like the term *wish*, refers to a mental state that takes as its content an *evident* preference with respect to something; however, this use of *will* in claims about act $\underline{a}$ being done *against* this preference, unlike the term *wish*, asserts that the preference has been expressed in a way that communicates resistance to $\underline{a}$ being done. While one might think the relevant difference has to do with the strength of the preference, this is problematic: I can have the most passionate preference that $\underline{a}$ not be done, but doing $\underline{a}$ is not done against my will *unless* I express my resistance by attempting in some manner to prevent it being done.

Another difference between the two concepts is that the claim that $\underline{a}$ is done against *Q*'s *will*, unlike the claim that $\underline{a}$ is done against *Q*'s *wishes*, implies that *Q* has some *direct* control over whether $\underline{a}$ is done. A judge's order that *R* take *Q* into custody can be made against *Q*'s *wishes* but not against *Q*'s *will* because *Q* lacks the right kind of control over whether the judge issues that order to *R*: given that *Q* can resist *R*'s efforts to take *Q* into custody even if *Q* is handcuffed, *R* can take *Q* into custody against *both* *Q*'s wishes *and* will. However, that is different from resisting the judge's issuance of the order.

Consequently, one relevant usage of *will* is to refer to a preference expressed in the form of a willing. Just as the claim that $\underline{a}$ is done against *Q*'s will implies that *Q* has instantiated a willing that resists $\underline{a}$ being done, the claim that *P* has imposed their will on *Q*, with respect to *P*'s doing $\underline{a}$, implies that *P* has instantiated a willing which conflicts with *Q*'s willing that *P* not do $\underline{a}$. If *P*, for instance, must deploy force to incarcerate *Q*, *P* has done something against *Q*'s will that counts as an imposition of *P*'s will on *Q* – although that need not also count as an exercise of authority over *Q*. The meaning of *will* is related to the meaning of *willing* in this instance as follows: *P*'s willing that $\underline{a}$ be done produces the behavioral manifestation – i.e., *P* doing $\underline{a}$ – of the preference expressed by *P*'s will that $\underline{a}$ be done.

Another relevant use of *will* is to refer to a preference that is, or would be, expressed in a willing: if *Q* is disposed to instantiate a willing expressing a preference not to do $\underline{a}$ but decides to instantiate a willing to do $\underline{a}$ because *P* has threatened *Q* with detriment should *Q* not do $\underline{a}$, then *P* counts as having imposed *P*'s will on *Q* with respect to *P* doing $\underline{a}$ – though not necessarily as having done something *against* *Q*'s *will*. The meaning of *will* is related to that of *willing* in this example in the following way: *P*'s act expressing a willing that *Q* do $\underline{a}$ reverses and thereby, as one might put the matter, *overrides* *Q*'s will that *Q* not do $\underline{a}$ in virtue of, say, making a threat that induces a willing on the part of *Q* to do $\underline{a}$.

These two usages of *will* correspond to two important mechanisms of authoritative guidance: the first describes how it functions in contexts where a telling is *enforced* against a subject for noncompliance, and the second describes how it functions in contexts where the subject is induced to comply as a means to avoid the imposition of a sanction. It would, of course, be premature to infer the sanctions thesis at this point in the argument because these are examples that merely illustrate two usages that cohere with – rather than provide substantive support for – that thesis. But they clearly speak to its plausibility.

3.3. The Compound Concept of Will-Imposition

It is clear that the notions of will-imposition and will-opposition (i.e., something being done against one's will) are related since both involve the ability to override someone else's will by reversing or neutralizing it. However, authority's constitutive power of will-imposition cannot be explained in terms of the notion that it characteristically does something against the will of subjects with respect to what they are directed to do. The problem is that if *P* tells *Q* to do *a* and *Q* complies out of fear that *P* will *punish Q* if *Q* does not comply, *P* has imposed *P's* will on *Q* without doing something against *Q*'s will. (*P* might, of course, punish *Q* for noncompliance with *P*'s will).

It is a conceptual *truism* that will-imposition involves the use of force. As the idiomatic phrase *impose one's will* is defined by *The Merriam-Webster Dictionary*, it means "to force other people to do what one wants".[16] Practical authority's constitutive power of will-imposition can thus be explained only by reference to a power that involves using force as a means of inducing compliance. It should be clear that Raz is concerned not only with our ordinary concept of law and authority, but also our ordinary concepts of power and will-imposition. Nowhere does Raz (or anyone else in the literature) stipulate special meanings for any of these terms.

That said, we cannot reliably infer the sanctions thesis from the claim that practical authority is partly constituted by a power of will-imposition with respect to what subjects do because the term *force* is ambiguous. Although the term *force* is most commonly used to refer to a threat of violence as

[16] Impose one's will. *Merriam-Webster English Dictionary* (*https://www.merriam-webster.com/dictionary/impose%20one%27s%20will*, last visited June 22, 2026).

a means of coercing someone to do something they do not want to do,[17] a second usage is defined in terms of a power to *persuade*: the *Oxford English Dictionary* defines this use as a "mental or moral strength or power".[18]

4. PERSUASION BY WILL-IMPOSITION: AUTHORITY AND THE POWER TO PERSUADE

Epistemic authority differs from practical authority in a number of interesting respects but one is especially salient: while *P* being able to do something reasonably contrived to persuade *Q* to do what *P directs Q* to do is a necessary condition for *P* to count as having *practical* authority over *Q*, *P* being able to do something reasonably contrived to persuade *Q* to believe what *P* says should be believed is not a necessary condition for *P* to count as having *epistemic* authority over *Q*.

Epistemic authority on a given topic is wholly constituted by recognized expertise on it: an oncologist counts as an epistemic authority on cancer solely in virtue of their expertise, which is conferred by their education and publicly acknowledged by their license to practice medicine and a medical board certification in oncology; it is their expertise that constitutes their diagnostic and therapeutic claims as reasons for patients to believe them. An oncologist utterly unequipped to persuade patients of their claims and recommendations might be quite bad at doctoring; however, they nonetheless count as having epistemic authority on cancer in virtue of possessing the requisite expertise.[19] Societally recognized expertise on topic *t* is enough to constitute someone as having epistemic authority with respect to *t* because it is not a necessary condition for *P* to count as having *epistemic* authority over others as to *t* that *P* is efficacious in persuading them that *P*'s beliefs about *t* are correct.

In contrast, as Raz points out, *P* being minimally efficacious in persuading *Q* to do what *P* tells *Q* to do is a necessary condition for *P* to count as having practical authority over *Q*; someone unable to persuade others to

[17] *Oxford English Dictionary* defines this usage as "coercion or compulsion, especially with the threat of violence" (*https://www.lexico.com/definition/force*, last visited June 22, 2026).

[18] Force. *Oxford English Dictionary*, *https://www.lexico.com/definition/force*, last visited June 22, 2026.

[19] Similarly, someone who has expertise in a given area of mathematics counts as an epistemic authority in that area regardless of whether they are any good at *teaching* courses in their area of expertise.

comply with their tellings lacks the power to induce compliance that is partly constitutive of practical authority. If, for instance, someone lacks the resources to persuade drivers to pull over to the shoulder when they are committing an infraction on a stretch of highway, it is partly because they do not count as having practical authority over them to *direct* their driving behavior on that stretch.

Practical authority also differs from epistemic authority in terms of the mechanism it uses to persuade: *when* an epistemic authority wants to persuade, it will do so by means of explanations that others are free to question: if an epistemic authority wants to persuade *Q* to believe or do *a*, they will try to do so by explaining why it should be believed or done, according to some evidentiary metric that *Q* regards, or should (on the relevant epistemic standards) regard, as relevant in deciding *whether Q* should believe or do *a*. An oncologist counts as not crappy *at doctoring* partly in virtue of being willing and able to explain their claims about a cancer patient's condition in an accessible manner that answers any questions the patient might have.

In contrast, a police officer who pulls you over on the highway *need not* attempt to convince you they are justified in either pulling you over or ordering you to exit your car – though they should, especially during these times of unrest between the police and the public. If a police officer finds it disrespectful to be questioned, they will likely respond by threatening to arrest you should you fail to comply. However, if they answer your questions, they are likely to regard themselves as having done you a favor. Although practical authority is partly constituted by a power to induce compliance by means of persuasion, practical authorities are not usually willing to explain themselves to subjects because practical authorities expect subjects to do as they are told when they are told to do so. This is part of what authoritative guidance is deployed to do – i.e., to preempt debate.[20]

It is true, of course, that practical authority must be able to create epistemic reasons for subjects to believe that they should do what the authority tells them to do; however, one need not be an epistemic authority to create epistemic reasons to believe what one says. It is enough with respect to the vast majority of what we say that we are sensibly regarded as credible and reasonably conscientious about verifying claims before we assert them. If *Q* knows that *P* carefully reads the newspaper and is generally honest, then *Q*

[20] This does *not* imply that authoritative tellings give rise to second-order preemptive reasons for action, as Raz defines that compound notion. One can preempt debate by threatening force, but a threat of force gives rise only to a first-order prudential reason to comply.

has a defeasible epistemic reason to believe what *P* says when *P* claims that the newspaper said something. It suffices to endow a practical authority *P* with the capacity to produce epistemic reasons that *Q* has persuasive reason to believe that (i) some normative system governing *Q*'s behavior confers authority upon *P* to *direct Q*'s behavior over a given range of acts, *and* (ii) *P* says what they mean when they tell *Q* to do something within the applicable range of behaviors.

The relevant power to persuade subjects to comply is what is picked out by talk of practical authority being *effective* in imposing their will on subjects. Since *P* counts as having practical authority over *Q* only *if P* is, at least, minimally effective in imposing *P*'s will on *Q*, having the power of will-imposition over *Q* with respect to what *Q* does is partly constitutive of practical authority. Nonetheless, someone who is equipped to persuade others to do *a* *only* by resorting to the means deployed by epistemic authorities when they try to explain themselves does not count as having practical authority pertaining to whether other people do *a* because someone can count as having practical authority to require a subject to do *a* without being remotely inclined to explain why they must do *a*. "Because I said so" is often said to emphasize that the subject of an authoritative telling is not entitled to an explanation – and will not get one. Persuasion by explanation has nothing to do with will-imposition and thus tells us nothing about the nature of practical authority as it is determined by our conceptual practices.

4.1. Causal and Rational Inducement

There are two ways that *P* can do something that counts as imposing *P's* will on *Q* to induce *Q* to perform some act: causal inducement by physical compulsion and rational inducement by persuasion.

Physical compulsion, as was discussed above, is *not* relevant in explaining practical authority's constitutive power to induce compliance by will-imposition because authority imposes its will by *rationally* inducing the subject to comply by giving rise to reasons that persuade, and not by *causally* inducing the brain states that mechanistically produce body movements. Practical authority persuades, and hence rationally induces, subjects to comply by providing reasons that are reasonably contrived to change their deliberations about whether to comply. In contrast, one can physically compel a person to "do" something that they do not want to do only by neutralizing any effect the applicable reasons may have in a subject's deliberations – by rendering them normatively impotent. This could be done, for example, by producing a sequence of brain states that causes a subject to ignore those reasons. However, someone whose bodily movements are physically *compelled* in this way does not count as having *performed* an act.

Rational inducement by persuasion involves the transmission of content that makes a difference in a subject's deliberations by implicating practical reasons they find relevant, whereas causal inducement by physical compulsion does not. Although it might be possible for *P* to causally induce *Q* to do *a*, *P* does not count as exercising their practical authority by doing so because the relevant mechanisms do not – and need not – include transmitting content: practical authority is exercised by directing the behavior of others. Nonetheless, one can do something that counts, on our conceptual practices, as *directing* behavior only by transmitting content that expresses a telling.[21]

The only way *P* can do something that counts as persuading *Q* to do *a* is by creating reasons that change *Q*'s assessment of the applicable reasons in *Q*'s deliberations so that *Q* goes from believing that the reasons favor not doing *a* to believing that they favor doing *a*. Persuasion involves making a person aware of reasons that change, or should change, their deliberations; while this can be done by calling their attention to a reason they are unaware of, practical authority does this, or attempts to do this, through tellings that *create* new reasons to do what they require.

4.2. Will-Imposition as Persuasion by Force

Practical authority is partly constituted by a power to persuade subjects to comply by doing something that creates practical reasons to comply; however, as seen above, the mechanism is different from making arguments or giving explanations. Our conceptual practices mark this difference by explaining authority's constitutive ability to persuade in terms of a power of will-imposition. However, this entails that practical authority's constitutive

[21] Imposition of will by *enforcement* does not *necessarily* involve changing the content of the subject's will, and for this reason, does not *necessarily* count as exercising authority. Someone whose sole responsibility is to administer lethal injections to inmates convicted of capital crimes is *authorized* to do so but is not plausibly characterized as *exercising practical authority* by doing so. Although etymologically related, the concepts of authority and authorization come apart in such cases.

power to persuade, and thus to *rationally induce*, subjects to comply is grounded in an ability to threaten something that counts, on at least one of the two definitions discussed above, as *forcing* compliance.

Practical authorities do not exercise their authority when they attempt to persuade subjects by making arguments. Since (1) practical authorities, as discussed above, need not attempt to persuade subjects by giving arguments and (2) someone can count as exercising practical authority only by doing something reasonably contrived to persuade its subjects, practical authority cannot be exercised by simply giving arguments; though there is nothing in our conceptual practices that would preclude someone who has practical authority from making arguments, doing so does not count as exercising practical authority.[22]

Practical authorities persuade by means of *coercive* force. If you point a gun at me and threaten to kill me unless I give you the money in my wallet, your threat will persuade me to do so. By conveying that I will be killed if I do not comply, you have created a reason for me to surrender my cash that outweighs any countervailing reasons I might think I have because, being rationally self-interested, I should regard it as such.

Notice that it would not merely be *unjustified* to refuse. Given that you are threatening my life, it would be arguably *irrational* to do so since refusing to do so, absent exceptional circumstances, raises serious concerns about my mental health. While not every unjustified decision counts as irrational, it is irrational, absent exceptional circumstances, to refuse to surrender one's wallet when a gun is pointed at one's face. Indeed, this strikes me as the case even if one has reason to believe the robber is bluffing. Some bets are not worth making no matter what the odds of winning turn out to be. When one is betting one's life in circumstances where someone else has threatened it, the best bet is to avoid death by complying. One can always earn more money, but one cannot get one's life back.

22 One might think that appellate judges must attempt to persuade litigants by issuing opinions justifying their orders and hence count as exercising their authority when they do so, but this conclusion is false. If judges are not legally obligated to issue opinions, then they are simply extending a courtesy by doing so. However, if judges are legally obligated to issue opinions, they are satisfying a legal directive that constrains how they exercise their legal authority when they issue an opinion. But judges are not exercising their legal authority *by* issuing opinions expressing their reasoning. It is not uncommon for authorities to do things that do not count as an exercise of their authority – even if they are legally required to do these things. Police in the U.S. are legally required, for instance, to read suspects their Miranda rights but do not count as exercising authority when they do so.

Of course, a robber does not count as exercising practical authority over someone by threatening to kill them; however, the issue is whether a robber does something that counts as persuasion by threatening force – and that is easily settled: just as a judge does something that counts as *persuading* a litigant when the latter complies with the judge's order to avoid being held in contempt, a robber does something that counts as *persuading* a victim to part with their cash when they comply to avoid being murdered. Though garden-variety robbers cannot do something that counts as exercising practical authority by bundling their tellings with threats of punishment or sanctions, that is exactly how courts do something that counts as exercising their practical authority.

What is being changed in these cases is a *belief* on the part of the subject about what the subject should do. A credible threat of nontrivial detriment alters the deliberative calculus by implicating the subject's prudential interests in a way that changes, and should change, their beliefs about whether to comply, by creating something they regard, and should regard, as a reason to do so. Persuasion-by-force constitutes a mechanism of rational inducement that is uniquely effective among self-interested beings who are hard-wired, like us, to avoid what *we regard* as detriment.[23]

We can now straightforwardly resolve the ambiguity with respect to the term *force*. It might have seemed that something can count as an instance of force on just one of these usages; on this reasoning, nothing can count as an instance of coercion *and* as an instance of persuasion. But coercion can rationally induce a subject to comply by persuading them to comply as a means of avoiding the threatened detriment in circumstances where they are not already disposed to comply.

5. THE SANCTIONS THESIS: WILL-IMPOSITION, ACQUIESCENCE, AND EFFICACY

Establishing that the sanctions thesis can explain practical authority's constitutive power of will-imposition is straightforward. Given (1) that the phrase *impose one's will* means "to *force* other people to do what one wants" and (2) that the sanctions thesis explains authority's power to *persuade* in terms of a norm-governed capacity to en*force* (or order enforcement of) its

[23] I include the qualifier *we regard* because what counts as detriment to us depends on our preferences. Some people, for instance, do not regard certain kinds of pain as detriment because they experience it as pleasurable.

tellings, the sanctions thesis explains practical authority's constitutive power of will-imposition as a power to persuade subjects to do as they are told – as a means of avoiding the imposition of something that counts as force.

The application conditions of the relevant use of the term *force* are as broad as those of the term *coerce*. As the *Oxford English Dictionary* defines it, *force* means "coercion or compulsion, especially with the use or threat of violence."[24] The inclusion of the term *especially* indicates that one can deploy something that counts as force without threatening violence: if *P* threatens to disclose embarrassing facts about *Q* if *Q* refuses to do *a̲* and *Q* complies to prevent the disclosure, *Q* counts as forced *and* coerced to do *a̲*, as we conceive those notions. Force and coercion amount to the same thing because *P* counts as coercing *Q* to do *a̲* if and only if *P* threatens to deploy force in the event *Q* fails to do *a̲*.

It is equally straightforward to show that *only* the sanctions thesis can explain practical authority's power of will-imposition. Any act reasonably contrived to "*force* other people to do what [an authority] wants" constitutes an en*force*ment mechanism in virtue of thereby being reasonably contrived to deter noncompliance to the requisite extent. Since the only way to *force* someone to do something not involving physical compulsion is by means that count as coercive, the sanctions thesis uniquely explains practical authority's constitutive power of will-imposition.

The sanctions thesis incorporates both uses of *force* discussed above by explaining authority's constitutive power of will-imposition in terms of its norm-governed capacity to create *persuasive* force by threatening *coercive* force: the notion that we have, or converge *on taking ourselves to have*, an objective reason to avoid coercive force is what explains its persuasive force. Practical authority's power of will-imposition can thus be explained only in terms of a constitutive ability to persuade through means that count as coercive and is hence *force*ful in both senses of the root term.

(It bears noting that this explains why normative political philosophy is principally concerned with articulating the conditions under which authoritative guidance, such as that of law, is morally justified. The only plausible explanation of why authoritative guidance, by its nature, stands in need of moral justification is that it threatens and *does* bad things to people when they do not comply. However, the only bad thing practical authorities

[24] Force. *Oxford English Dictionary*, *https://www.lexico.com/definition/force*, last visited June 22, 2026. This usage of *force* is purely descriptive.

could do, *by its nature*, to subjects who fail to comply is to impose detriment that is plausibly described as a *sanction*, as I have explained the notion above.)

Although the two terms share the root *force*, the claim that *Q* was *forced* to comply with a telling is logically independent of the claim that the telling was en*force*d against *Q*. To begin, if *Q* counts as having been forced to do *a*, it is false that a telling requiring *Q* to do *a* counts as enforced against *Q* because a telling can count as *enforced* against a subject only after they have not complied. While a clear and credible threat of en*force*ment can induce compliance (by *forcing* it), an act counts as an instance of enforcement only if performed in response to a case of noncompliance. For instance, a court is permitted to apply a contempt sanction to induce a subject to comply only if the subject has not already complied.

Conversely, if a telling requiring *Q* to do *a* has been enforced against *Q*, it is because *Q* was deemed – by some agent authorized to make such determinations – not to have done *a* and thus does not count as having been forced to do it prior to its enforcement. It is true that a sanction can be imposed on a complying subject because the authority either believes the subject did not comply or just does not care. However, it is as misleading to characterize a telling as *enforced* against a *complying* subject as it is to characterize a subject as *punished* for an offense they did not commit. Since the point of a norm permitting enforcement is to induce *compliance* and one cannot induce the compliance of someone who has already complied, it is misleading, if not incoherent, to characterize a telling as having been *enforced* against a subject who complied. Since, further, punishment involves "inflict[ing] […] retribution"[25] and since retribution cannot be inflicted on an innocent person, it is also misleading, if not incoherent, to describe someone who is sanctioned for something they did not do as having been *punished*.[26]

While we might sometimes use the phrase "wrongful enforcement" to describe such cases, this is more a matter of verbal economy than of conceptual precision. Such precision is usually unwelcome in ordinary conversation but is essential in coming to understand *our* concepts – which are the only concepts we have reliable epistemic access to. A punishment imposed on an innocent subject counts no more as an instance of enforcement than a voided agreement counts as a contract. Conceptual precision requires

[25] Punish. *Oxford English Dictionary, https://www.lexico.com/definition/punish*, last visited June 22, 2026.

[26] Retribution involves the infliction of punishment that counts as *deserved*. "Retribution," *Cambridge English Dictionary*; *https://dictionary.cambridge.org/us/dictionary/english/*, last visited June 22, 2026.

much more verbiage, which is why it is unwelcome in most social situations. Nonetheless, nothing is lost other than the time it takes to add a few words; it is as unjust to impose a sanction against someone who complied with the relevant telling as it is to impose one for a crime they did not commit. A *threat* of en*force*ment can be deployed to *force* a person to comply but only if they have not already complied – and, *a fortiori*, only if they have not been *forced* to comply.

While the related concepts of force and enforcement can hence come apart in both directions, they are both related to the concept of coercion since they involve reference to the same mechanisms. However, although the concepts of force and enforcement thus incorporate the concept of coercion, which is forward-looking because it is concerned only with efforts to induce compliance by *deterring* noncompliance, only the concept of enforcement incorporates the concept of a sanction, which is backward-looking, in virtue of being a response only to noncompliance.

We can now explain the two ways that someone with practical authority can impose their will on subjects. The first is by backing their tellings with a threat of detriment reasonably contrived to induce compliance by persuading subjects to comply as a means of avoiding its imposition. The second is by enforcing tellings with detriment that counts as a sanction in virtue of being reasonably contrived to deter and punish noncompliance, if not expressly intended to do so. Since only the sanctions thesis is equipped to explain what constitutes practical authority as having the power to impose their will on others in each of these ways, it uniquely explains practical authority's constitutive power of will-imposition.

It bears remembering that there is nothing in the sanctions thesis or the supporting analysis here that entails that subjects always comply; the mere fact that an authority has the power of will-imposition over subjects does not entail that the detriment threatened by the authority will necessarily induce compliance. Subjects violate authoritative directives for a variety of motives, which might include the belief they will not be caught or that the benefits of noncompliance exceed the costs.

The thesis and arguments of this essay also do not entail that people are motivated to comply with authority *only* by prudential considerations. It might be true that most subjects comply with the authorities in their lives because they accept them as legitimate and hence regard authoritative directives as giving rise not only to prudential reasons but to moral reasons.

Nonetheless, all that the sanctions thesis presupposes, by way of claims about the motivation of subjects, is that self-interested subjects regard the prudential reasons to which nontrivial sanctions give rise as relevant – even in cases in which they do not need recourse to considerations of self-interest to decide to comply. I comply with traffic laws because I believe I have a moral obligation to others to protect their safety by doing so. But I also comply because I, like most people, regard the prospect of having to pay a ticket or go to jail for a violation as relevant – though I do not need to think about these considerations to decide whether to violate a traffic law (which, like most folks, I sometimes do if there are no safety-related reasons to comply).

One might reject the underlying premise that practical authority is partly constituted by the power of will-imposition precisely because it entails that practical authority is coercive by nature, and one might find this conclusion counterintuitive. However, it is crucial to observe that, as an observable empirical matter, every uncontentious instance of a telling that counts as authoritative is backed by a threat of detriment reasonably contrived to deter noncompliance to some threshold extent. An employer's tellings are backed by a threat of termination; a teacher's tellings are backed by a threat of suspension; a military commander's tellings are backed by a threat of a court martial; and the valid tellings of a legal system are backed by liabilities that take the form of punishment for breaches of criminal law and take the form of orders of compensation for breaches of civil duties; these court orders are backed by the contempt sanction.[27] While I am aware that the conclusion may be regarded as contentious, I think this essay succeeds, at the very least, in shifting the burden of proof to dissenters to find an uncontentious counterexample.

6. A CONCEPTUAL INCONSISTENCY IN RAZ'S THEORY OF PRACTICAL AUTHORITY

It is worth noting that the Razian theory of authority is marred by an inconsistency. Raz's claim that it is a necessary condition for *P* to possess practical authority over *Q* that *P* is minimally effective in imposing *P's* will on *Q* is inconsistent with his society-of-angels argument. The latter argues that it is possible to have a normative system that counts as law in a society of rational self-interested beings who are always inclined to comply with the authority's tellings, regardless of what they purport to require. Otherwise put, the society-of-angels argument is intended to establish that there can be something that counts as legal authority without sanctions.

[27] Court orders are backed by the contempt sanction in every legal system we know of; such sanctions include incarceration and fines to induce compliance.

The obvious problem here is that the idea that there can be a normative system that counts as a system of law and hence as authoritative without sanctions cannot be reconciled with Raz's claim that it is a necessary condition for *P* to count as having practical authority over other persons that *P* is effective in imposing *P*'s will on them and thereby in inducing them – by means of threats of force – to do as *P* directs. As we have seen, the only way a person can impose their will on others is by means that count as threatening detriment in the form of sanctions. It straightforwardly follows that there cannot be a system that counts as law without sanctions and hence that there cannot be someone who counts as having legal authority in a system of norms lacking sanctions.

One might think that the idea that there can be a normative system lacking sanctions that counts as a system of law is also inconsistent with Raz's claim that it is in the nature of practical authority that its tellings give rise to second-order preemptive reasons, but there is no inconsistency here. There is nothing in Raz's theory of practical authority that implies that authoritative tellings give rise *only* to second-order preemptive reasons. Although Raz's society-of-angels argument implies that authoritative tellings need not be backed by a sanction, his theory of practical authority implies that authoritative tellings necessarily give rise to first-order reasons of some kind, as any theory of practical authority must. A preemptive reason is a second-order reason that merely excludes acting on certain first-order reasons; for this reason, by itself, a preemptive reason is not a reason to do anything – and is hence not a reason to comply. If authoritative tellings are conceptually normative, as Raz believes, then it is because they give rise to first-order reasons to comply, which, in his view, are augmented by second-order preemptive reasons.

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Article history:
Received: 1. 4. 2026.
Accepted: 27. 5. 2026.

UDC 343.85:343.9.02(680)

CERIF: S 149

DOI: 10.51204/Anali_PFBU_26302A

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WHISTLEBLOWERS AS AGENTS EXPOSING SYSTEMIC CRIMINALITY: A STUDY OF TWO SOUTH AFRICAN PERIODS

The Republic of South Africa's recent history, and contemporary period, has fallen victim to systemic criminality, which this article argues has transpired across two periods, namely state capture under Jacob Zuma's presidency and the contemporary period encompassing the capture of the policing apparatus. The full extent of both cases of capture emerged because of disclosures by whistleblowers. Across both periods, whistleblowers have faced retaliation. This article, however, contends that an observable pattern of escalation in retaliation has transpired. It determines that state capture whistleblowers were largely subjected to social and legal retaliation, while policing apparatus whistleblowers have been frequently subjected to physical retaliation (assassinations). This is the result of inadequate measures taken to address previous instances of systemic criminality, thereby setting a precedent in which wrongdoers seldom face meaningful punitive consequences. The recommendation is that the South African state authorities need to react quickly to reverse the trend.

Key words: *State capture*. – *Systemic criminality*. – *Whistleblowing*.

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1. INTRODUCTION

The contemporary period in the Republic of South Africa, along with its recent history, has been vitiated by frequent revelations regarding high-level malfeasance, manifesting as corruption and capture of integral state elements, leaving a profound impact on the country. This capture, executed through illicit and covert influence over state affairs, has persisted over two periods.

The first period encompasses state capture during the presidency of Jacob Zuma. The second period, which is currently being detailed by a commission of inquiry, entails the capture of South Africa's policing apparatus. This article, therefore, seeks to explore the recent periods of systematic criminality that have deeply affected South Africa's democracy. Central to this exploration are the narratives of whistleblowers that have brought this criminality to the fore. The act of whistleblowing can be understood as "the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action" (Near, Miceli 1985, 4).

Employing this long-standing seminal understanding of the concept, this article accepts that a disclosure needs to entail the reporting of a perceived wrongdoing to an authority that has the capacity to effect remedial action, but it broadens the understanding of the whistleblower agent to include an organizational insider as opposed to a constricting requirement of the agent having to be an employee. This is supported by Peter Jubb's (1999, 83) notion that the agent (or "actor" element, as Jubb refers to it) merely needs to be a person with privileged access to an organization's information or data, effectively reducing the agent requirement to "insider". This article also accepts that the whistleblower does not need to exclusively make a disclosure to an internal authority. Rather, as Vandekerckhove (2006, 25) has indicated, a whistleblower can make a disclosure to "internal authorities, external authorities or the media". Therefore, a disclosure can be made via three tiers: first, internally to an authority "within the organization"; second, externally to an agency outside of the confines of the organization (Park *et al*. 2008, 930); and third, publicly to the media with the third tier acting as "a watchdog over the second tier" (Vandekerckhove 2006, 18).

Therefore, considering that whistleblowers are organizational insiders that have reported an illicit act to an internal, external or public authority, this article examines how such individuals have served as agents exposing systemic criminality. It examines two broader high-profile cases (or, effectively, periods of capture) that have transpired, and are currently transpiring, in South Africa – state capture under Jacob Zuma's presidency and the capture of the policing apparatus as the contemporary period. The objective of this article is, thus, to examine not only the two periods of systemic criminality but also the role of whistleblowers in exposing both periods. Furthermore, since one of the primary concerns of this article is that of the roles of whistleblowers in exposing systemic criminality, it aims to illustrate the nature of retaliation experienced by whistleblowers across periods – positing that an observable pattern of escalation in retaliation has transpired, signaling an evolution from the Zuma-era state capture to the contemporary capture of the policing apparatus (with a new tendency of wrongdoers to deploy physically violent reprisals). In addressing its objective, this article utilizes documents as sources of data. For the purposes of social scientific research, a document entails any material that can be read, is readily available for analysis, and is relevant to the topic under study (Bryman 2012, 523). This article, thus, relies on pertinent digital and print news outputs, relevant academic research, and books concerned with both systemic criminality and disclosure.

2. CONTEXTUALIZING CAPTURE

It is of utmost importance to begin the contextualization of capture in South Africa by conceding that it is not a new phenomenon. On the contrary, it is a phenomenon that has widely affected the territory of present-day South Africa from the very arrival of the *Vereenigde Oostindische Compagnie* (VOC) – the Dutch East India Company – in Table Bay on the Cape Peninsula. European colonization of the southern tip of Africa was accompanied by several cases of capture, stretching from Dutch arrival through to apartheid rule (Blackman, Dall 2021; Radulovic 2025). In a rereading of South Africa's history, one could present the argument that the country was founded with capture in mind.

The introductory contextualization within this article intentionally refrains from the use of the central noun "state", but rather refers exclusively to capture. The motivation is twofold. First, at the time of the capture of the Cape Colony, when VOC governing agents executed not only the capture of the said colony but also of the land itself, "the Colony was not a state in the sense of a nation or territory as an organised political community under one government" (Radulovic 2025). Thus, how (and when) we understand and define the South African state to have been founded in its contemporary form is merely a matter of semantics. Second, with recent revelations pertaining to the capture of South Africa's policing apparatus, it would entail prematurely defining the capture of the apparatus as a capture of the state (with it, at present, not being directly comparable to the common understanding of state capture as it transpired under Jacob Zuma's presidency). Regardless, the term state capture still holds value and relevance in both cases, since its primary constituting concepts drive an understanding of the implications of a clandestine network capturing elements integral to the healthy functioning of a state – for the purposes of private gain.

Thus, it is relevant to provide an understanding of state capture and then delve into the intricacies of the systematic criminality that has plagued South Africa. The term "state capture" was initially applied to Eastern European states undergoing post-socialist transitions tainted by interference and irregularities (Longhurst 2016, 151; Myburgh 2017, 4; Uzelac 2003, 103). However, this phenomenon has since been identified as manifesting in mature liberal democracies, prominently enacted by the finance sector in both the United States and Western Europe (Radulovic 2025). This is effectively a form of systematic corruption with far-reaching consequences. With state capture fully realized, private actors encroach on state affairs by directing state policies to serve their private interests (Desai 2018, 501; Fazekas, Tóth 2016, 320).

A network intent on shaping state outcomes must develop substantial organizational capacity to realize its objectives. This is achieved through recurrent and increasingly systematized transactions (Bhorat *et al*. 2017, 5). The actors engaged in such illicit behavior strategically consolidate around pivotal state institutions, enabling them to advance private interests to the detriment of collective welfare (Fazekas, Tóth 2016, 320). Over time, this network acquires the capacity to "influence the design and adoption of new laws, rules, and regulations", while simultaneously manipulating existing frameworks (Mbaku 2018, 772). Realizing these ends necessitates collusive practices that divert public resources, facilitated through the coordinated involvement of private beneficiaries and compromised officials (Desai 2018, 501; Trantidis, Tsagkroni 2017, 263).

The consequences of state capture are dire. It leads to an absolute state descent, resulting in the deterioration of the rule of law, severe economic implications affecting both individual citizens and the state as a whole, and thus a loss of citizen confidence transpires.

2.1. The Zuma Era: The Capture of the State

The two cases of capture examined for this study were selected because they have both significantly impacted South Africa; both are extremely severe instances of capture, and both cases (or periods) have resulted in the formation of commissions of inquiry tasked with uncovering the full depth of systemic criminality. The first case is that of state capture during Jacob Zuma's presidency, which commenced on 9 May 2009. What preceded this appointment was a highly contested jostle for the leadership of the African National Congress (ANC) – a political party that had started as a liberation movement, negotiated a peaceful transition from segregationist white minority rule to democracy, and eventually firmly established itself as the absolutely dominant political force in South Africa. The intra-ANC power struggle that preceded Jacob Zuma's presidency, between anti-apartheid struggle stalwarts (the outgoing president, Thabo Mbeki, and the incoming president, Jacob Zuma), would steer South Africa in the direction of state capture. Thabo Mbeki had grown increasingly unpopular as president, with the 52nd national elective conference of the ANC in December 2007 being testament to this. The conference "showed resentment against Mbeki and his followers for their determination to cling to power and in effect deprive ANC comrades, arguably at least as qualified as the incumbents, of a turn to drink from the trough" (Booysen 2011, 35).

At the conference, Mbeki was ousted as president of the ANC. Nine months later, he would eventually be ousted as the president of South Africa. The four interrelated factors that drove the ousting of Mbeki were intra-ANC democratic rotation, a "revenge" against Mbeki for having acted against certain members of the ANC, party member greed and careerism, and policy and ideological differences (largely centered around divergent meanings of, and motivations for, nationalization) (Booysen 2011, 35). The ANC party leaders ultimately announced that they removed Mbeki from office because "he had used the country's law-enforcement system to undermine Zuma's chances of succeeding him" (Lindow 2008). The succeeding Jacob Zuma would, in due course, build a network that would embed systemic criminality into the fabric of South Africa's governing apparatus.

The ANC had negotiated a triple transition, encompassing social, political and economic change (Uys 2014, 205–213). This negotiated transition would end apartheid and, consequently, exploitative white minority rule (Radulovic 2026, 51). The ANC, graduating from a liberation movement, was a crucial cog in facilitating this relatively peaceful negotiated transition, granted that while the country did not descend into a civil conflict, at the time, there was the presence of political violence – largely stemming from two historically black political parties vying for public support leading up to the transition (Kaufman 2017, 511–513; Radulovic 2023b, 64). One of these parties was the ANC. Nevertheless, the ANC was the principal force for transformation in South Africa. It would lose its status as the principal force for transformation through a silent coup organized around a relatively small core network comprised of Jacob Zuma and his collaborators (Bhorat *et al*. 2017, 2). The ensuing outcome would be the capture of the state.

Jacob Zuma built a network of collusion organized largely around himself, close relatives, ministers and politicians loyal to him, as well as influential private individuals. The key actors in this arrangement were the Gupta family (three Indian brothers that had migrated to South Africa in the early 1990s and established a powerful information technology company) along with Jacob Zuma and most notably his son, Duduzane (Basson, du Toit 2017, 56 and 60; Myburgh 2017, 21; Pauw 2017, 20). The Gupta family, through its close affiliation with Jacob and Duduzane Zuma, leveraged state decision-making and consequently secured lucrative state contracts (Desai 2018, 500). Complicit ministers and politicians would also benefit from this relationship, with many crucial state-owned enterprises being misappropriated for the benefit of a few private corrupters and corrupted officials. The long reach of this capture would extend well past merely Gupta influence, and subsequently engage other actors and government enterprises.

Capitalizing on the vulnerability of the state, owing to the top echelons of the government being compromised, additional opportunists stepped in to capture facets of the state (and it would be unrelated to the Zuma-Gupta network, yet still perpetrated under the Zuma presidency) (Radulovic 2023a, 104). As a consequence, state institutions such as the Department of Correctional Services and the Public Investment Corporation (PIC), the largest asset manager on the African continent, were subjected to processes of state capture (Mahlaka 2019; PIC Commission 2019; Styan, Vecchiatto 2019, 39). This capture was executed by a new cohort of actors with strong affiliations to the ANC.

The financial damage incurred by South Africa was substantial. Early estimates placed that financial damage at ZAR 1.5 trillion (approximately EUR 79.5 billion in early 2026) (Merten 2019). Despite the profound quantifiable financial losses for the country, significant socio-economic strain was also exerted on the populace and the country's international standing was greatly eroded (Radulovic 2024, 55). At a structural level, state capture precipitated a collapse of public trust in governmental institutions, debilitated key economic sectors tasked with fostering growth, and undermined both domestic and global confidence in South Africa's economic stability (Bhorat *et al*. 2017, 63).

The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (conventionally referred to as the Zondo Commission[1]) was tasked with determining the scale of capture that ensnared the country. The Commission produced an extensive five-part report which established that several state-owned enterprises capitulated under state capture. For example, part one of the report identified that the national flag carrier airline, South African Airways (SAA), had its leasing agreements, and catering, procurement and treasury divisions perverted for the benefit of the corrupt network (Zondo 2022a, 2–447). It was further established that the Government Communication and Information System was captured by a Gupta-linked entity in order to misappropriate government funding (Zondo 2022b, 450–623). Even the South African Revenue Service was the victim of the siphoning of funds via a private entity (Zondo 2022c, 625–714).

Deputy Chief Justice Raymond Zondo offered several recommendations which were detailed in the Commission's report (with the last part of the report released on 22 June 2022). Yet, a mid-2025 progress report indicated that, of the 218 recommendations, only approximately 4.5% of the cases had been fully finalized, with "the outcomes of acquittal, withdrawal, or termination of investigation [being] ringfenced within the banner of 'finalised'", which signals that little action has been taken to hold the perpetrators of state capture to account and that the judiciary has responded very slowly to the Zondo recommendations (Radulovic 2025). The state capture revelations did, however, result in the eventual removal of Jacob Zuma as president of South Africa. One could consider it a removal in the broader sense, even though he opted to resign as president of South Africa on 14 February 2018, since he was instructed by the ANC to do so, failing which he would have faced a motion of no confidence supported by his own political party (Merten 2018). These circumstances developed as a consequence of the state capture allegations, despite Jacob Zuma having been the one to establish the Zondo Commission in January 2018 in order to investigate the allegations of state capture (albeit having faced mounting public and political pressure to do so).

[1] Raymond Zondo chaired the eponymous Zondo Commission from 2018 to 2022. At the time of his appointment as the chairperson of the said commission, he was serving as the Deputy Chief Justice of South Africa. He would later occupy the role of Chief Justice of South Africa, until his retirement in 2024.

2.2. The Contemporary Period: The Capture of South Africa's Policing Apparatus

Systemic criminality in South Africa did not come to a definite end despite the state capture revelations, Zuma stepping down as president, and the Zondo Commission recommendations. Rather, what eventually transpired was a transition into a new period in which the locus of capture shifted from the executive and administrative centers of the state to the institutions tasked with enforcing the law. Thus, this second period has effectively been characterized by the progressive capture of South Africa's policing apparatus. While distinct from the Zuma-era state capture, the capture of the policing apparatus has directly undermined the state's capacity for crime control and it has, subsequently, also undermined the rule of law.

Unlike the former (and more common understanding of) state capture, which centered on the manipulation of policy formation and procurement fraud, the capture of the policing apparatus operates through the strategic neutralization, repurposing, and paralysis of law enforcement functions. This form of capture does not primarily seek to control the key functions of the state (as was the case under the Zuma-era state capture), but rather it seeks to infiltrate policing structures so that criminal networks are able to shield themselves from detection, disrupt investigations, and intimidate or eliminate perceived threats.

Revelations regarding the spectacular scale of the capture of the policing apparatus began emerging when the Provincial Police Commissioner of the KwaZulu-Natal Province, Lieutenant-General Nhlanhla Mkhwanazi, convened a media briefing on 6 July 2025, alleging that the Minister of Police and the Deputy National Police Commissioner were protecting a criminal syndicate (Singh 2025). President Cyril Ramaphosa (who succeeded Jacob Zuma as president on 15 February 2018) announced the establishment of the Judicial Commission of Inquiry into Criminality, Political Interference, and Corruption in the Criminal Justice System (widely referred to as the Madlanga Commission[2]) shortly after Lieutenant-General Mkhwanazi went public with his allegations. The Madlanga Commission proceedings commenced on 17 September 2025 and, as of mid-2026, are still ongoing.

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2 Mbuyiseli Madlanga, a retired judge, presides over the eponymously named Madlanga Commission. His last appointment before retirement was as the Deputy Chief Justice of South Africa in the Constitutional Court.

The Madlanga Commission revelations have exposed, and continue to expose, a deep justice crisis in South Africa. In accomplishing this, the Madlanga Commission has thus far detailed a web of systemic criminality, involving political actors, senior law enforcement officials, intelligence operatives, and even segments of the judiciary. Lieutenant-General Mkhwanazi's allegations commenced with his interpretation of why the Political Killings Task Team (PKTT), which he led, was disbanded. The PKTT was a specialized police operations unit assigned to the investigation of politically motivated murders in the KwaZulu-Natal province (a province with a long history of contestation for resources and violent political conflict) (Ngcobo 2025; Radulovic 2025). It was disbanded allegedly in order to cease investigations into the illicit operations of a criminal syndicate with connections to politicians, senior police officials, and state prosecutors (Nozulela & Mlambo 2025).

Inadvertently, it would be the very disbandment of the PKTT that would draw attention to the capture of the policing apparatus. Since its disbandment led to Lieutenant-General Mkhwanazi going public with his allegations and the Madlanga Commission subsequently being established, the disbandment of the PKTT was thus, paradoxically, the very catalyst that would put in motion the events that exposed the capture of the policing apparatus. Crucially, the Madlanga Commission exposed the existence of the Big Five.[3]

Testifying before the Madlanga Commission, Lieutenant-General Dumisani Khumalo, who was the chief of the South African Police Service (SAPS) Crime Intelligence Division[4] until 2025, exposed that the Big Five cartel had "penetrated South Africa's political sphere and is also involved in tender fraud, extortion, kidnappings and contract killings" (Dolley 2025). Khumalo would go on to allege that the cartel had captured the criminal justice system by enlisting the collaboration of judicial and law enforcement officials, in order "to manipulate investigations, suppress evidence and obstruct legal proceedings that threatened its operations" (Dolley 2025). During his testimony, Khumalo named several individuals connected to the Big Five cartel "creating the impression that the Big Five has connections extending from the top of the police ministry" (Dolley 2025). Through collected testimonies, two of the kingpins of the Big Five have become

[3] Appropriately named after the eponymous Big Five animals of Africa – lion, leopard, elephant, rhinoceros, and buffalo – which are the most difficult to hunt on foot. All Big Five animals can currently be found on the South African banknotes.

[4] The intelligence agency responsible for tracking criminal elements within South Africa.

known. Khumalo stated that one of the kingpins, influential businessman Vusimuzi "Cat" Matlala, was funding the Minister of Police's delegates at ANC events, who would, in return, provide classified police intelligence (Moichela 2025a). Cat Matlala's key point of political influence was "political fixer" Brown Mogotsi, whom he used "to infiltrate the political sphere, control the SAPS, and also influence the judiciary" (Moichela 2025a).

The other known kingpin allegedly constituting one part of the Big Five cartel, Katiso "KT" Molefe, has also been named at the epicenter of the Madlanga Commission revelations. Molefe, also a businessman, has a long history of being involved in the public sector and was also once the Gauteng[5] Provincial Manager for the National Lotteries Board. Molefe is facing "multiple charges, including murder, conspiracy to commit murder, and possession of unlicensed firearms and ammunition" (Majadibodu 2025). He also stands accused of masterminding the assassination of South African musician Oupa Sefoka, popularly known as DJ Sumbody. According to an anonymous witness testifying before the Madlanga Commission (referred to on record as Witness B), Katiso Molefe's nephew, Lucky Molefe, manipulated a multi-million-rand tender involving Transnet[6] (Moloi 2025). Once investigations were launched into the tender, engineer Armand Swart was assassinated in what was a case of mistaken identity – the assassins had incorrectly presumed that Swart had blown the whistle on the tender fraud (Moloi 2025). Katiso Molefe and veteran detective Michael Pule Tau have been placed in the vicinity of Swart's murder days before he was assassinated, allegedly having been there to conduct scouting activities (Khanyile 2025).

Michael Pule Tau, along with other hitmen, was arrested in connection to the Swart murder (Seeletsa 2025). Tau, being a veteran detective, "had unfettered access to police profiling tools" which equipped him with "invaluable intelligence" to carry out the murder of Swart (Wicks 2025, 213). Four of the assassins implicated in Swart's death have also been formally arraigned in connection with the murder of DJ Sumbody, and, according to the national police spokesperson, the same weapons were used in both killings (Koka 2025b). The forensic analysis of seized cellular phones has led to "Katiso Molefe being identified as a central figure" in the Swart murder conspiracy (Wicks 2025, 212). With both Molefe and Matlala being implicated as kingpins forming part of the Big Five cartel, and their access to

[5] Gauteng is the most populous province in South Africa, with Johannesburg (the financial capital) and Pretoria (the executive capital) both being located in the province.

[6] A South African state-owned rail, port and pipeline company.

policing agents and the accompanying police resources, the criminal capture of South Africa's policing apparatus has raised significant concerns regarding how compromised the state has become.

3. EXPOSING SYSTEMIC CRIMINALITY ACROSS PERIODS

Both the Zuma-era state capture revelations and contemporary allegations of the capture of the policing apparatus have largely come to the fore (or have, at the very least, been adequately detailed) because of the disclosures of whistleblowers.

3.1. State Capture Whistleblowers

The state capture revelations were primarily the result of whistleblowers coming forward with information that would have otherwise remained undiscovered. Arguably the critical discourse moment that foregrounded state capture was the act of two anonymous whistleblowers. "Stan" and "John" had acquired hard drives that belonged to a company owned by the Gupta Family – Sahara Computers (the same company where Duduzane Zuma was once employed as an intern) (Radulovic 2024, 54; Uys 2022, 74). The hard drives contained 300 000 emails that detailed nefarious relationships between the Gupta Family, Duduzane Zuma, numerous government officials, and chief executive officers of a number of state-owned enterprises (Uys 2022, 74). "Stan" and "John" approached a prominent South African lawyer who, with the assistance of independent media outlets, publicized the information (Uys 2022, 74–75). The emails would come to be known as the Gupta Leaks, "ultimately contribut[ing] to the establishment of the Zondo Commission" where they were formally admitted as evidence (Uys 2022, 75).

The key information detailing state capture was further supplemented with disclosures from several other whistleblowers. Part one of the report produced by the Zondo Commission determined that the operations of SAA and its associated companies had become compromised and perverted (Zondo 2022a, 2–447), and a large contribution to the detailing of the nefarious affairs at SAA was the result of Cynthia Stimpel's disclosure. Stimpel was SAA's Group Treasurer when she opposed a deal worth ZAR 256,000,000 (approximately EUR 13,500,000 in early 2026) which she deemed suspicious (Radulovic 2023a, 105). She immediately made a disclosure to the National Treasury (Stimpel 2021, 123), yet no action was taken by the institution (Radulovic 2023b, 69). She then painstakingly compiled evidence (through the accrual of several quotes determining that the deal had an inflated cost) and made an internal disclosure – which was also ignored. She was ultimately forced to make a public disclosure, through the use of independent media and the support of a non-governmental organization, and the inflated deal was consequently annulled (Radulovic 2023a, 105). The deal, orchestrated by one of Jacob Zuma's close political allies, would have financially compromised an already thinly-stretched state-owned enterprise. Stimpel had effectively stopped the capture of SAA.

Mosilo Mothepu was another whistleblower whose disclosure was crucial in detailing part of the vast scope of state capture under Zuma. Mothepu served as the Chief Executive Officer and Executive Director of Trillian Financial Advisory, a firm that held close business ties with Salim Essa, one of the Gupta Family's closest associates (Radulovic 2023b, 69). Witnessing malfeasance within the organization, Mothepu decided to resign from Trillian Financial Advisory. She would later blow the whistle to Public Protector Thuli Madonsela.[7] Mothepu's disclosure was reinforced by Bianca Goodson's corroboration. Goodson was the Chief Executive Officer of Trillian Management Consulting. Both Trillian Financial Advisory and Trillian Management Consulting were subsidiaries of the holding group – Trillian Capital Partners. Mothepu and Goodson learned that Trillian's owner, Eric Wood, and Gupta-linked business mogul Mohamed Bobat were engaged in the process of the appointment of the minister of finance (Radulovic 2023b, 70). Private companies and individuals were not supposed to have any knowledge of such government decisions and procedures. Other malversations emerged during this period and, as a consequence, Bianca decided to resign from Trillian.

Mothepu had provided advocate Madonsela with Goodson's telephone number and Goodson was subsequently called by the Office of the Public Protector (Wiener 2020, 260–261). As a consequence of the call, she composed a detailed statement explaining the nefarious dealings at Trillian (Wiener 2020, 261–262). Goodson's statement also disclosed how Trillian had invoiced South Africa's national power utility for apparent services rendered, as part of an illicit transaction (Basson, du Toit 2017, 118). Coupled with Mothepu's earlier disclosure to the Public Protector, which detailed Trillian's politically-

[7] The Public Protector is one of six core independent state institutions established according to Chapter Nine of the South African Constitution. The primary role of these institutions is to safeguard democracy without political interference. The primary mandate of the Office of the Public Protector is to investigate matters pertaining to, and protect the public from, maladministration emanating from government and public functions.

connected affairs via Gupta-linked associates, Goodson would help to firmly establish how the financial perversion and misappropriation of government enterprises was conducted via a private entity.

During the state capture period, the emergence of additional opportunists led to the capture of the PIC. Largely responsible for the investment of state pensions, the PIC was targeted by wrongdoers for financial misappropriation. When allegations regarding the capture of the PIC emerged, its Chief Executive Officer, Dan Matjila, was implicated at the center of these allegations. The allegations emerged from an anonymous whistleblower, "James Nogu", who claimed that the board members were engaging in impropriety and that Matjila "was financing his girlfriend from the PIC budget" (Radulovic 2023b, 68). Simphiwe Mayisela, who worked at the PIC as the head of information technology security for only a brief period of time, was requested to uncover the origin of the emails and thus uncover the true identity of "James Nogu" (Radulovic 2023a, 105). To obtain this information, Mayisela needed super administrator privileges on the PIC's cybersecurity platform, which he applied for by opening a case with the Directorate for Priority Crime Investigation. Mayisela sought to apply for a Section 205 subpoena, in line with the 1977 Criminal Procedure Act No. 51,[8] which is granted by a magistrate for the purpose of retrieving information regarding alleged offences. The police expressed interest in the case that Mayisela had opened, and required his cooperation in investigating the corruption rather than investigating the identity of "Nogu" (Radulovic 2023b, 68).

Mayisela complied with the police request and was granted super administrator privileges via the Section 205 subpoena. He then retrieved sensitive data which contained allegations that Matjila was abusing "PIC funds by directing them towards girlfriends, and irrational staff increments and bonuses" (Radulovic 2023b, 68). Mayisela subsequently provided this information to the police, and later testified before the PIC Commission of Inquiry.[9] Similar to other state capture whistleblowers, Mayisela's role was crucial in dismantling the capture of a state entity under the Zuma presidency.

8 Criminal Procedure Act No. 51, *Government Gazette* 143(5532).

9 The PIC Commission of Inquiry was tasked with investigating improprieties within the PIC. Mayisela's evidence was of crucial importance at the said commission.

3.2. Policing Apparatus Whistleblowers

While the state capture revelations exposed a system that was compromised largely for the financial benefit of a few (yet, admittedly, the misappropriation of key government institutions and functions does not present a minor crime), the capture of the policing apparatus has signaled toward a more ominous intent.

Lieutenant-General Mkhwanazi was the first whistleblower to expose the capture of South Africa's policing apparatus during its current period, which appears to be the greatest interference in South African police matters to date. Mkhwanazi enacted the role of a whistleblower and, per Near and Miceli's (1985, 4) foundational definition, he qualifies for this status on the basis of being in the employ of the SAPS, and exposing what he believed to be organizational wrongdoing (perpetrated by members of, or associated with, the SAPS) via a public disclosure (holding a media briefing). Mkhwanazi alleged that Minister of Police Senzo Mchunu had been "colluding with underworld figures", was involved in the disbandment of the PKTT, and had interfered "in criminal investigations linked to a syndicate spanning police generals, prosecutors, business people and gangsters" (Cowan 2025, 208).

These were not the first allegations that South Africa's policing apparatus had intimate dealings with organized crime, with Cowan (2025, 209) remarking that "systemic corruption has plagued the institution for decades". These decades of abuse "paved the way for what SAPS has become today: a deeply compromised institution, vulnerable to political interference and organised crime influence at the highest levels" (Cowan 2025, 213). Yet, the sheer scope of the revelations uncovered that decade-long corruption within the SAPS ultimately led to the capture and breakdown of the institution. With Mkhwanazi naming senior police officials, judges, and criminal networks involved in the capture of the policing apparatus across South African provinces, his disclosure exposed a deep web of collusion.

Mkhwanazi's allegations were supported by the allegations brought forward by Lieutenant-General Khumalo. Khumalo, also acting as a whistleblower, provided "large files of evidence" to the Madlanga Commission and took the stand to illustrate both internal and external threats faced by the policing apparatus (Moatshe 2025a). Critically, Khumalo identified both Katiso Molefe and Cat Matlala as "two of the leaders of the notorious Big Five cartel" that had infiltrated the policing apparatus (Moatshe 2025a). Khumalo would go on to testify that Matlala made payments to compromised individuals in order to gain access to highly sensitive police information, stifle criminal investigations into his activities, and coordinate payments from the SAPS to a Matlala-owned company (Moatshe 2025a). Khumalo also identified several compromised police officials in his testimony.

Revo Spies, retired deputy chief of the Ekurhuleni Metro Police Department (EMPD),[10] also testified before the Madlanga Commission. He revealed that "private vehicles were registered as municipal vehicles and installed with the state's blue lights by Julius Mkhwanazi, the EMPD's deputy chief of police," and that these vehicles belonged to Cat Matlala (Koka 2025a). He further testified that police officials within "EMPD's specialised services unit allegedly ran a criminal racket, hijacking trucks and disappearing with their freight" (Cruywagen 2025). Spies implicated Julius Mkhwanazi as an accessory to murder and in the concealment of evidence through the sanitization of a crime scene (Cruywagen 2025). The crime scene was linked to a murder where a victim was tortured by EMPD police officials, who used a rubber tube to induce suffocation. Spies would go on to testify how a whistleblower, Jaco Hanekom – who had exposed another unlawful EMPD operation by providing video footage of an EMPD-orchestrated theft – was assassinated for having done so (Cruywagen 2025).

Hanekom would be the first of two whistleblowers who were murdered after having exposed EMPD-linked criminal activity. In an assassination that has grabbed both national and international attention, Marius van der Merwe was killed outside his home on 5 December 2025. Van der Merwe, who had testified before the Madlanga Commission (partially off-screen and under the pseudonym Witness D, although his voice had not been distorted and it would have been easy to identify him through the details he provided) alleged that EMPD officers orchestrated a murder cover-up. It was the same case referred to by Spies. At the site of the crime, van der Merwe witnessed EMPD officers drag the suspect of a warehouse break-in into a room and torture him to death. Van der Merwe was then instructed, allegedly by Julius Mkhwanazi, to dispose of the body, which he did (Moichela 2025b). He provided his testimony regarding the matter, in detail, before the Madlanga Commission. Cumulatively, these disclosures aided in detailing the extent to which South Africa's policing apparatus had not only been captured by criminal enterprise but had also become an accomplice to criminal enterprise.

[10] The EMPD is a police department responsible for crime prevention, traffic law enforcement, and municipal by-law enforcement in the City of Ekurhuleni, a large suburb of the City of Johannesburg.

4. EXAMINATION ACROSS PERIODS: A GRADUATION TO FREQUENT PHYSICAL RETALIATION

Despite having brought systemic criminality to the fore, whistleblowers have felt the burden of reprisals. The history of South African whistleblowers is abundant with narratives of retaliation (see Uys, Radulovic 2025) and the state capture whistleblowers have endured their fair share of reprisals. Fearing for their physical safety, "Stan" and "John" were relocated abroad and continue to remain anonymous (Radulovic 2024, 58–59).

Stimpel, on the other hand, faced actual retaliation. She was suspended from work with "insolence" cited as the reason for her suspension and, according to her employer, she had allegedly failed to comply with SAA's internal whistleblowing policy. Beyond the disciplinary proceedings, after having left SAA, Stimpel was unemployable for some time, and found herself undesirable to prospective employers due to the negative label associated with being a whistleblower. She was ostracized by former SAA colleagues as well as friends, again due to the negative stigma attached to her in the wake of the disclosure. She also faced strategies that delayed legal outcome and she had to sit before the Labour Court and the Commission for Conciliation, Mediation and Arbitration[11]. Mothepu was also ostracized in the workplace, and experienced character assassination. She was accused of several legal contraventions by Trillian and, as a consequence, spent 13 months and ZAR 1,300,000 (approximately EUR 67,500 in early 2026) defending herself from the charges. She also lived in fear for her physical safety and took precautionary measures to ensure no harm came to her. Mayisela was also suspended (albeit without charge) and faced organizational disciplinary proceedings. He faced significant reputational damage and has since found it difficult to find employment. Moreover, he was subjected to public censure by the PIC Commission for having violated the Electronic Communications and Transactions Act.[12] Mayisela and members of his family also endured intimidating telephone calls, although nothing further transpired with regards to physical retaliation (Radulovic 2023a, 106–112).

The reprisals faced by state capture whistleblowers were indeed significant and greatly impacted their lives. However, the severity of retaliation faced by policing apparatus whistleblowers appears to have

[11] The Commission for Conciliation, Mediation and Arbitration is an independent tribunal that adjudicates labor disputes between employees and employers.

[12] The Electronic Communications and Transactions Act No. 25, *Government Gazette* 446(23708), regulates administration and control of electronic communications and exchanges.

graduated in magnitude. Lieutenant-General Mkhwanazi, much like the state capture whistleblowers, has faced an onslaught of social and legal retaliation. Mkhwanazi had built a reputation of being a credible police officer, and he has challenged corruption in the policing apparatus perpetrated by his political bosses on two separate occasions (Ngcobo 2025), despite it opening him up to scrutiny by detractors. A businessman, Calvin Mathibeli, accused Mkhwanazi of being corrupt, "captured by private interests or linked to organised crime syndicates" (Ndou 2026). A court ordered that Mathibeli retract the statements and prohibited him from making such allegations in the future, yet Mathibeli plans to challenge the ruling. Forensic investigator Paul O'Sullivan also made allegations that Mkhwanazi is corrupt. Mkhwanazi reacted by filing a defamation lawsuit against him and O'Sullivan responded with a counterclaim. Most recently, a member of parliament publicly accused Mkhwanazi of "disregarding the law" and being "a constitutional delinquent" (Merrington 2026). Mkhwanazi's colleague, Lieutenant-General Khumalo, was arrested on allegations of fraud and corruption even prior to coming forward with his bombshell revelations. Mkhwanazi has indicated that he believes that "Khumalo's arrest was strategic, aiming to disrupt investigations into powerful drug cartels and organised crime syndicates" (Moatshe 2025b).

Evidently, much of the retaliation faced by Mkhwanazi and Khumalo has been of a social and legal nature. Yet, other policing apparatus whistleblowers have fallen victim to physical retaliation, i.e. "a deliberate and premeditated act of physically assaulting the whistleblower, often involving the use of a weapon, or threatening to cause physical harm" (Radulovic 2023a, 112). Uys (2022, 119) has indicated that even the mere threat of physical retaliation affects the whistleblower's quality of life after disclosure. The experiences of several policing apparatus whistleblowers have indicated an observable escalation in the severity of retaliation, namely physical retaliation. The assassination of EMPD-linked whistleblower Jaco Hanekom is evidence of this. Marius van der Merwe's murder after his Madlanga Commission testimony raised concerns in the top echelons of the state as well as amongst members of the public. To further compound the issue, van der Merwe was murdered in front of his family when arriving home, having been shot in the head and leg with an AK-47[13] assault rifle (Zeeman 2025).

Van der Merwe was offered official state protection but had apparently declined it. Other potential Madlanga Commission witnesses and whistleblowers have expressed fear for their lives citing security concerns emanating from threats, with one such individual alleging that "their home

13 Officially referred to as the Avtomat Kalashnikova.

had been broken into recently, just days after they found their alarm system had been tampered with" (Zeeman 2025). The investigation into the motive for van der Merwe's murder is still ongoing. The assassination of a person mistaken for a whistleblower, Armand Swart, only further aggravates the issue of instilled fear for future policing apparatus whistleblowers. These victims are all linked, in some way, to the activities of the alleged cartel that has carried out the capture of the policing apparatus. Previously, Babita Deokaran was murdered for exposing hospital procurement fraud (Uys, Radulovic 2025, 106), where Cat Matlala was one of the beneficiaries of the corrupt deals (Westerdale 2025). Deokaran has been recognized as a whistleblowing martyr since her murder in 2021.

It is important to note that whistleblowers had been assassinated in South Africa prior to the Madlanga revelations (see Uys 2022, 75–78 and 120); however, the frequency of assassination, occurring in a relatively short period of time, has raised significant safety concerns for whistleblowers, particularly for those exposing the capture of the policing apparatus. This article has noted that state capture whistleblowers were not readily assassinated, while the assassinations of policing apparatus whistleblowers are frequent. It must be conceded that the motives of these assassinations are being investigated, as are the perpetrators, and that unrelated factors could be behind these assassinations. Yet, the abundance of such assassinations is cause for concern.

5. CONCLUSION

If systemic criminality is not adequately addressed, it runs the risk of reemerging and running more rampant. Such has been the case in South Africa, with the Zondo recommendations not being adequately realized. Aside from being slow to implement, these recommendations have yielded ineffective results, as only 4.5% of the cases have been finalized. As a consequence, South Africa has been experiencing a spillover from the state capture era. The cases of state capture and the capture of the policing apparatus are unrelated cases of capture, but the lack of political will and the absence of actions taken to protect and secure whistleblowers and their disclosures (post-state capture) have resulted in brazen assassinations during the contemporary period of capture.

The assassinations related to policing apparatus capture constitute an escalation from the social and legal retaliation faced by state capture whistleblowers. Ultimately, a weak follow-through by state authorities has paved the way for this escalation in retaliation. This has signaled an institutional rupture where the state, failing to effectively sanction the constituents of a prior network of capture, has inadvertently allowed criminal networks to penetrate new domains. These new and evolved criminal networks act more violently against those that would seek to expose them. Such escalation also represents a qualitative shift in criminality, one where the methods of the networks executing systemic criminality have become increasingly violent.

To address this escalation, it is necessary for all three branches of the government of South Africa to take a reactive approach to past incidents of capture and build a proactive system that would render future whistleblowers safer. The legislature should therefore move hastily to draft a new (adequate) whistleblower protection law. At present there is promise of a new whistleblower protection law with a draft Bill in circulation, but serious remedial action appears to be lacking, with the political machinery moving at a slow pace to institute reforms. The executive should immediately thereafter implement the said law, and the judiciary should be trained on how to interpret that law. All three branches of government are interdependent and, as such, a failure in one branch would cascade into systemic paralysis where, for example, legislative delay would lead to executive inertia and thus result in judicial incapacity. Therefore, monitoring throughout the entire reform process would need to be implemented systematically.

However, an over-reliance on a state-based solution would not yield a comprehensive and adequate outcome for whistleblowers; this is, in part, because it would reduce the disclosures of whistleblowers to legal jargon, as well as lead to whistleblowers' narratives being used as political tools. In addition to reforms conducted by state authorities, political will would also be necessary for holding former and current wrongdoers to account. This is difficult to achieve in a context where elite complicity is the primary contributor to the lack of political will. With the absence of political will, whistleblowers will continue to find themselves at the mercy of wrongdoers that are left to commit crimes with inadequate (if any) punitive measures taken against them. Yet, even in such contexts, whistleblowers need to be understood as agents of democratic accountability rather than simply as victims. They enact a role that actively challenges corrupt structures, with their treatment simply reflecting the moral health of the polity (an escalation in the severity of retaliation signals a decline in the moral health of the polity). It should be noted that without the aforementioned reparative measures, criminal syndicates would further entrench themselves within the policing apparatus (and other elements of the state), assassination would be normalized as a response to disclosure, leading to the erosion of public trust in disclosure mechanisms.

Although this paper focuses on two South African periods of systemic criminality, its findings could be extended to other geographical or institutional contexts. The findings, determining that inadequate measures in response to state capture led to the evolution of a new form of capture, can be transferred to, and tested in, other contexts grappling with systemic criminality. Having recognized that the concept of state capture was first utilized in transitional post-socialist Eastern European states, and that the construct is also not absent from neoliberal Western contexts, the findings of this paper could be employed for comparative analysis with these, and similar, contexts. In addition to future comparative analyses, the recommendations of reform via state authorities could also be tested in various environments. Moreover, future research could interrogate an unresolved limitation of this paper – namely, the absence of recommendations for confronting the lack of political will (compounded by elite complicity) to enact meaningful structural change by addressing systematic criminality through the adequate protection of whistleblowers.

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Article history:
Received: 11. 3. 2026.
Accepted: 19. 8. 2026.

UDC 346.548(4-6EU); 349.6(4-6EU)

CERIF: S 130, S 183

DOI: 10.51204/Anali_PFBU_26303A

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GREEN TRANSITION OR NORMATIVE COMPLICATION: EMPOWERING CONSUMERS THROUGH DIRECTIVE (EU) 2024/825 AND CURRENT PRACTICE CHALLENGES

Directive (EU) 2024/825 on empowering consumers for the green transition seeks to address the challenges of manipulative green marketing and establish a stricter regulatory framework, ensuring better transparency of environmental claims and other essential information on product sustainability. By prohibiting unfounded and misleading environmental claims and introducing an obligation to provide information on the product's reparability score and the duration of software updates, and by preventing planned early obsolescence, the Directive seeks to contribute to sustainable development in the EU's internal market. The paper outlines new provisions on greenwashing and planned early obsolescence, accompanied by new national solutions, particularly in Croatian law, and examples from the CJEU case law and EU Member States. Following a comprehensive analysis of the rules and practice, a legitimate question has arisen regarding the effectiveness of the newly introduced solutions and shortcomings that may hinder the goals of the green transition and sustainable development.

Key words: *Directive (EU) 2024/825. – Manipulative green marketing (greenwashing). – Planned early obsolescence. – Unfair commercial practices. – Sustainability.*

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1. INTRODUCTION**

The world we live in today and the planet, as the only habitat, is extremely threatened and depleted by excessive and irresponsible production and the consumption of various goods and services. Across the world, as well as at the level of the European Union (EU) legal order, there is a multitude of political, economic and legal initiatives, programmes and regulatory frameworks aimed at transition from a linear to a circular economy, waste and environmental pollution reduction, increasing energy efficiency, as well as numerous other activities, with the ultimate aim of achieving sustainable development.[1] Unlike the linear economy (‘*take, make and dump*’), the circular economy, even though it is not a new concept, emphasises reuse and recycling, as well as repairing and reduced use of products, and in this sense it contributes significantly to sustainability and preservation of the planet in a holistic and adaptable manner (Terryn 2021, 1–3).

Article 3(3) of the Treaty on European Union promotes sustainable development of Europe, at the same time achieving the goal of a high level of protection and improvement of environmental quality, while Articles 11 and 12 of the Treaty on the Functioning of the European Union, and Articles 37 and 38 of the Charter of Fundamental Rights of the European Union contain horizontal clauses and require the guarantee of environmental protection, with the aim of promoting sustainable development and consumer protection in the establishing and implementation of Union policies and activities.[2] Consumer law and the relationship between producers/traders and consumers (business-to-consumer, B2C) are especially important in achieving these goals. The production chain whose ultimate goal is to

** This paper has been written within the scope of the project “Connecting Croatia: Advancing Sustainable, Green, and Inclusive Transport through Effective Legal Regulation” (uniri-iz-25-99), funded by European Union–NextGenerationEU via the Croatian National Recovery and Resilience Plan 2021-2026, in conjunction with the University of Rijeka, Faculty of Law Programme Financing. The views and opinions expressed are solely those of the author and do not necessarily reflect the official position of the European Union or the European Commission. Neither the European Union nor the European Commission can be held responsible for them.

[1] The 1987 Brundtland Report defines the sustainable development as development ‘that meets the needs of the present without compromising the ability of future generations to meet their own needs’. UN Report of the World Commission on Environment and Development: Our Common Future (1987) UN doc A/42/427.

[2] Treaty on European Union and Treaty on the Functioning of the European Union, *OJ* C 202/1 of 7.6.2016. (consolidated version); Charter of Fundamental Rights of the European Union, *OJ* C 202/389 of 7.6.2016.

generate profit, consumers, traders, producers, as well as numerous other stakeholders, inevitably affect sustainability and preservation of the planet through their actions and businesses (Mak, Terryn 2020, 227).

In regard to strengthening the position of consumers in the green transition, Directive (EU) 2024/825[3] represents an important step forward in improving consumer rights in the context of the green transition and sustainable development, by providing better protection against unfair practices and better information. Through the adoption of Directive (EU) 2024/825 on the green transition, the European legislator is attempting to respond to the existing challenges of manipulative green marketing and to establish a more stringent regulatory framework, which would ensure better transparency of environmental claims as well as other important information related to product sustainability. On the one hand, strengthening transparency in B2C relationships empowers consumers to choose sustainable products: by providing precise, clear, and comprehensible information on the product, traders can significantly contribute to the sustainable development goals. On the other hand, practices such as misleading advertisement and other unfair commercial practices and violations of traders' obligations related to providing information should be sanctioned more efficiently. By establishing new rules, Directive (EU) 2024/825 aims to contribute to the achievement of these goals, as well as to generally strengthen sustainable development within the EU's internal market.

According to the European Green Deal,[4] the green transition represents a strategic goal of the Union, aimed at achieving climate neutrality and establishing sustainable production and consumption practices. Responsible consumption and production are among the key UN goals related to sustainable development and therefore comprise an integral part of the UN Guidelines for Consumer Protection.[5] The European Green Deal, the new Circular Economy Action Plan,[6] the New Consumer Agenda,[7]

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[3] Directive (EU) 2024/825 of the European Parliament and of the Council of 28.2.2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, *OJ* L 2024/825.

[4] European Commission, The European Green Deal, COM(2019) 640 final.

[5] UN 2015. Transforming our world: The 2030 Agenda for Sustainable Development, UN Doc A/RES/70/1; UN Conference for Trade and Development. 2016. UN Guidelines for Consumer Protection, New York/Geneva: United Nations.

[6] European Commission. 2020. A new Circular Economy Action Plan, For a cleaner and more competitive Europe, COM(2020) 98 final.

[7] European Commission. 2020. New Consumer Agenda: Strengthening consumer resilience for sustainable recovery, COM(2020) 696 final.

as well as numerous other initiatives, confirm that without informed and responsible actions of consumers in the market, it is not possible to fully achieve the sustainable development, circular economy, climate neutrality, and environmental pollution reduction goals (Šajn 2022, 1–8). This is also particularly reflected in Directive (EU) 2024/825, which in its preamble, in addition to the foundational principles of the proper functioning of the internal market and high level of consumer protection, also introduces environmental protection by stating that '[i]n order to contribute to the proper functioning of the internal market, based on a high level of consumer protection and *environmental protection, and to make progress in the green transition,* it is essential that consumers can make informed purchasing decisions and thus contribute to more sustainable consumption patterns'.[8]

However, comprehensive research and studies on market and consumer conduct indicate that consumers often do not have at their disposal the necessary information for making sustainable purchasing decisions, such as precise and transparent information about the environmental characteristics or repairability and durability of the product (European Commission 2018; BEUC 2023a). Furthermore, regardless of the existing legal order of consumers' rights at the level of the EU, unclear, generic, incorrect and misleading claims are regularly used in practice when providing goods and services, creating only an illusion of product sustainability, without any real and factually substantiated basis (e.g. 'go green'; '100% recycled bottle', etc.) (OECD 2025, 21–23). Statistics and studies from the past several years confirm that, at the EU level alone, more than 50% of products contain false or misleading environmental claims, while 85% of consumers reported being unsatisfied regarding environmental claims and 82% reported being unsatisfied with information about product durability and repairability.[9] This type of misleading unfair commercial practice by traders, so-called

8 Directive (EU) 2024/825, rec. 1, emphasis by author.

9 European Commission. 2019. Sustainable Products in a Circular Economy: Towards an EU Product Policy Framework Contributing to the Circular Economy, SWD(2019) 91 final; European Commission. n.d. 2020 – sweep on misleading sustainability claims. *https://commission.europa.eu/topics/consumers/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en#ref-2020--sweep-on-misleading-sustainability-claims*, last visited January 15, 2026; European Commission, Green Claims, *https://environment.ec.europa.eu/topics/circular-economy-topics/green-claims_en*, last visited January 15, 2026; European Commission. 2022. Impact Assessment Report Accompanying the Proposal for a Directive Amending Directives 2005/29 and 2011/83 as Regards Empowering Consumers for the Green Transition Through Better Protection Against Unfair Practices and Better Information. Commission staff working document, SWD(2022) 85 final.

greenwashing, represents a serious obstacle to informed and sustainable consumer decisions about purchases, by significantly degrading consumer trust and fair market competition.

The focus of this article, therefore, is precisely the practice of manipulative green marketing and planned early obsolescence, as well as the analysis of Directive (EU) 2024/825, which introduces comprehensive rules aimed at combating these unfair practices. Even though one-sided at first glance, Directive (EU) 2024/825 actually introduces – in a normatively complex manner – numerous changes and amendments to already existing key consumer directives, therefore aiming to strengthen the consumer regulatory framework. In addition to the amendments to Directive 2005/29/EC on unfair commercial practices[10] and Directive 2011/83/EU on consumer rights,[11] the new Directive references definitions and solutions from a range of other European acts. This normative approach does not only impede the expression of numerous new rules, but also calls into question their effectiveness and enforcement in practice. In addition to analysing the innovations, this article therefore also critically deliberates the effectiveness and contribution of Directive (EU) 2024/825 to the green transition and sustainable development. The article provides a detailed depiction of the newly introduced European rules and the impact of accepting Directive (EU) 2024/825 at the national level, particularly by presenting the solutions in Croatian law. It analyses current examples from the practice of the Court of Justice of the European Union (CJEU), as well as comparative court practices of other EU Member States and beyond, such as examples from France, Italy, Germany, the Netherlands, Croatia and other jurisdictions where the application of the Directive (EU) 2024/825 is anticipated.

[10] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council, as well as Regulation (EC) No 2006/2004 of the European Parliament and of the Council, *OJ* L 149.

[11] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, *OJ* L 304.

2. REGULATORY REASONS AND GOALS OF THE ADOPTION OF DIRECTIVE (EU) 2024/825 ON EMPOWERING CONSUMERS FOR THE GREEN TRANSITION

Bearing in mind the increasingly widespread practice of greenwashing, i.e. the misleading unfair commercial practice of depicting products as environmentally more acceptable and sustainable than they actually are, the European legislator has recognised the need for establishing clear and transparent criteria and additional regulation and specification of the environmental and product sustainability claims (Hedemann-Robinson, 2025, 64).[12] The legal framework for consumer protection, especially Directive 2005/29/EC and Directive 2011/83/EU, provides protection from unfair commercial practices and establishes the obligation of comprehensive pre-contractual and contractual informing of the consumer, but in practice it proved to be insufficient for addressing the increasingly widespread unfair practice of manipulative green marketing and digitalisation challenges (Mišćenić 2024, 103). The frequent use of misleading environmental claims, planned early obsolescence, non-transparent and misleading information in the digital environment, as well as many other aspects of unfair commercial practices, required additional and more precise normative regulation at the European level. Despite the fact that the aforementioned directives and EC guidelines on their interpretation and application already contain certain provisions that could encompass such forms of prohibited unfair commercial practices, as well as omissions in the information of consumers,[13] the European legislator now for the first time specified and explicitly prohibited them, regulating them in detail in the EU consumer legal framework and consequentially in those of the Member States.

In order to enable the achievement of the goals related to better protection from unfair practices and more efficient consumer information, Directive (EU) 2024/825 introduces new bans on unfair misleading commercial

[12] Merriam-Webster defines ‘greenwashing’ as ‘the act or practice of making a product, policy, activity, etc. appear to be more environmentally friendly or less environmentally damaging than it really is’, (*https://www.merriam-webster.com/dictionary/greenwashing*, last visited January 15, 2026).

[13] Commission Notice, Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, *OJ* C 526/01; Commission Notice, Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights, *OJ* C 525/01.

practices, on the one hand, and prescribes a number of trader obligations regarding transparent information of consumers, on the other. Directive (EU) 2024/825 suppresses unfair commercial practices and marketing exploitation of the consumer interests related to sustainable products by introducing a ban on generic claims of environmental friendliness, so-called green claims, such as 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'energy efficient', 'biodegradable', 'biobased', etc., 'when recognised excellent environmental performance cannot be demonstrated'.[14] In the future, traders will be required to provide detailed and transparent information on the durability and repairability of products, availability of spare parts, software update availability and duration, etc., with the aim of suppressing unfair practices of early and planned obsolescence, especially in the case of electronic products and products with digital elements.[15]

It should also be pointed out that Directive (EU) 2024/825 – which was adopted based on Article 114 TFEU, as the legal grounds for approximation of the laws of the Member States, aimed at the establishment and functioning of the internal market, but also the only 'true' legal grounds for harmonising regulations on consumer protection – comprises only one in a series of European acts that aim to achieve the goals of the green and digital transition and sustainable economy in consumer law (Mišćenić 2022, 701). It is also linked to other consumer acts, such as Directive (EU) 2024/1799 on common rules promoting the repair of goods,[16] the Ecodesign for Sustainable Products Regulation (2024/1781),[17] Twin Directives (EU) 2019/770 and 2019/771,[18] the 'Omnibus' or 'Modernisation' Directive (EU)

[14] Directive (EU) 2024/825, rec. 9.

[15] Directive (EU) 2024/825, Annex I.

[16] Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828, *OJ* L, 2024/1799.

[17] Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC, *OJ* L, 2024/1781.

[18] Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, *OJ* L 136; and Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, *OJ* L 136.

2019/2161,[19] and many others (De Franceschi 2023, 45–48). At the same time, in the legislative trialogue of the EU institutions, in June 2025, some of the closely connected regulatory European legislator's initiatives, such as the adoption of the so-called Green Claims Directive,[20] were postponed until further notice.[21] And while many of the listed directives have been part of the Croatian consumer legal framework for some time (Mišćenić 2023, 127), Directive (EU) 2024/825 had to be adopted by 27 March 2026, with the start of implementation of the adopted measures by 27 September 2026.[22] In late 2025, public consultations on the draft of the upcoming amendments of the Croatian Consumer Protection Act[23] (*Zakon o zaštiti potrošača*, ZZP) were initiated,[24] and on 12 March 2026 the Government of the Republic of Croatia introduced to the Croatian Parliament the Act on the Amendments to the Consumer Protection Act. Considering that the amendments to the ZZP are expected to be adopted by the deadline for mandatory implementation of the measures in the Member States, this article also examines their compliance with Directive (EU) 2024/825 and provides a brief overview of Croatian consumer law (Horak 2024, 35; Mišćenić 2020, 173).

[19] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, *OJ* L 328.

[20] Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims, COM/2023/166 final.

[21] European Parliament. Green Claims Directive: EP co-rapporteurs hold a press conference at 15.15. Press release. *https://www.europarl.europa.eu/news/en/press-room/20250623IPR29094/green-claims-directive-ep-co-rapporteurs-hold-a-press-conference-at-15-15*, last visited January 15, 2026.

[22] Directive (EU) 2024/825, Art. 4.

[23] Consumer Protection Act, *Narodne Novine* 19/22 and 59/23.

[24] E-savjetovanja. Prijedlog zakona o izmjenama i dopunama Zakona o zaštiti potrošača. *https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=32306*, last visited January 15, 2026. The amendments came into effect after this article was submitted for publication, *Narodne Novine* 59/26.

3. KEY CHANGES TO THE REGULATION OF UNFAIR COMMERCIAL PRACTICES AND CONSUMER INFORMATION

3.1. The Amendments in General and Introduction of New Concepts

The first line of Directive (EU) 2024/825 emphasises the regulation of the manner in which products are presented to consumers, regarding their durability, repairability and functionality, as well as the credibility of the environmental claims. It expands the existing regulation on unfair commercial practices and introduces new rules on product sustainability, functionality, durability and repairability, in an effort to protect consumers from misleading practices and encourage producers and traders to conduct business responsibly and transparently. Through Directive (EU) 2024/825, the European legislator introduced the requirement for traders to guarantee to consumers the provision of clear and comprehensible, i.e. transparent information, based on which consumers would be able to make informed and sustainable decisions on purchasing certain products (Mišćenić 2024, 89).

Standing out among the numerous innovations introduced are the new provisions and harmonization of terms and definitions related to the effort aimed against early and planned obsolescence, and manipulative or misleading green marketing (greenwashing). The new provisions of Directive (EU) 2024/825 significantly tightened the obligation of traders to inform consumers on the functionality, durability and repairability of products, given that numerous studies have confirmed that consumers are often unaware or uninformed about the functional durability of the products and the possibility of their repair (Augenhofer 2022).

New rules are also introduced regarding updates of software installed in digital products, where traders are required to inform consumers beforehand and transparently about the software update support duration.[25] This regulation is especially important for so-called smart devices, such as smartphones, laptop computers, household appliances, automobiles with software support, etc., which could lose functionality over time due to the ending of software updates. This provision prevents the unfair practice of early and planned device obsolescence, through which traders compel consumers to replace or purchase new products, instead of repairing the product or using it for longer.

25 See section 3.3.

Directive (EU) 2024/825 is the first mention of a product repairability rating, as well as information that may significantly influence the decision of the average consumer to purchase a certain product. This rule was modelled after the existing legal regulations in certain countries, such as France and Belgium, which have for years used the so-called repairability score and a numerical indicator of how easy or worthwhile it is to repair certain products.[26] The Directive also introduces a number of provisions on suppressing greenwashing, the prohibition of unfounded use of terms and labels in product advertisement and sales, e.g. 'green', 'natural', 'climate neutral', etc., due to them not being based on clear and transparent criteria and evidence of environmental efficiency.[27]

Directive (EU) 2024/825 thus adopts key amendments to the EU consumer law through the amendment of the provisions of two basic consumer directives: Directive 2005/29/EC concerning unfair business-to-consumer practices in the internal market and Directive 2011/83/EU on consumer rights. This is achieved by introducing amendments to Directive 2005/29/EC through a number of new terms and definitions related to environmental efficiency (Art. 1), and by harmonising the existing definitions with other relevant directives (such as the terms 'goods' and 'durability' from Directive (EU) 2019/771), as well as changing and adding several basic provisions of Directive 2005/29/EC and expanding the black list of prohibited unfair commercial practices (Directive 2005/29/EC Arts. 2, 6, 7). Article 2 introduces amendments to Directive 2011/83/EU and following the same model introduces new concepts (e.g. 'repairability score'), harmonises existing definitions of basic terms (e.g. 'commercial guarantee of durability', 'durability', 'producer' from Directive (EU) 2019/771), and amends Articles 5, 6 and 8 of Directive 2011/83/EU regarding information and transparency.

Other than in Articles 1 and 2, accompanied by Annex I containing 12 new prohibited unfair commercial practices and an extensive preamble, Directive (EU) 2024/825 does not contain any further regulations or provisions. Even though it may appear simple at first glance, detailed analysis of Directive (EU) 2024/825 indicates a complex and ineffective nomothetic method of regulation, where the two main articles of the Directive simultaneously address all of the abovementioned innovations; in the first part of these provisions definitions and basic terms of Directive 2005/29/EC and Directive 2011/83/EU are amended and expanded, and then in the second part of the

[26] E.g. the French Code de l'Environnement, Art. L 541-9-2, Création LOI No. 2020-105, 10 February 2020, in effect since 1 January 2021, final amendments 5 April 2024.

[27] Directive (EU) 2024/825, rec. 9 and Annex I.

provisions of both Articles 1 and 2, their key provisions are amended, such as those related to misleading practices and omissions, and pre-contractual information. This approach occasionally results in duplications, e.g. Articles 5 and 6 of Directive 2011/83/EU regarding pre-contractual information. Namely, in the case of the definition of terms there is minor substantive deviation in the definitions of the same terms in Articles 1 and 2 of Directive (EU) 2024/825, such as in the case of the key definition of 'software update'. The regulation is further complicated by the fact that this definition, as well as others, systemically refers to the definitions of terms from other acts, primarily those from twin Directives (EU) 2019/770 and 2019/771. Such a complex nomothetic regulation requires creativity on the part of the national legislators when transposing Directive (EU) 2024/825, which will be illustrated using the example of the amendments to the Croatian ZZP. The following sections present the substance of the key newly introduced solutions and critically examine their compliance regarding the achievement of the Directive's objectives and the effectiveness of their implementation.

3.2. Combating the Unfair Commercial Practices of Manipulative Green Marketing (Greenwashing)

3.2.1. New Regulation

The prohibition of different forms of unfair business-to-consumer practices is regulated through Directive 2005/29/EC, which defines it as a practice that is 'contrary to the requirements of professional diligence' and 'materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers'.[28] This definition is appropriately adopted in the Croatian ZZP, including with regard to consumers who, due to certain characteristics, such as a physical or mental infirmity, age or credulity, are considered vulnerable consumers.[29] Even without going into the details of this long-term regulation, unfair commercial practices may be misleading (actions or omissions) and aggressive, therefore, borrowing from Directive 2005/29/EC, both forms are accompanied by so-called black lists of prohibited actions that represent misleading or aggressive commercial practices (Mišćenić, Mamilović 2019,

[28] Directive 2005/29/EC, Art. 5 (1) and (2).

[29] ZZP, Art. 34 (1) and (2).

273). Especially prominent in the context of the new regulation are the amendments of the provisions on misleading actions and omissions from Articles 35 and 36 of the ZZP, as well as associated black lists of misleading commercial practices from Article 37 of the ZZP, which can mislead the average consumer through incorrect and false information, the omission of material information, or other ways, even if the information is correct, when the entire presentation is such that it leads the consumer or it is likely that it will lead them to make a transactional decision that they would otherwise not make.[30]

According to the European Commission Guidance, manipulative green marketing in B2C relationships may entail all forms of commercial practice pertaining to ecological product characteristics, i.e. 'all types of statements, information, symbols, logos, graphics and brand names, and their interplay with colours, on packaging, labelling, advertising, in all media (including websites) and made by any organisation, if it qualifies as a "trader" and engages in commercial practices towards consumers'.[31] Through Directive (EU) 2024/825, the European legislator amended the provisions of Directive 2005/29/EC, by introducing definitions of terms and provisions that also pertain to the prohibition of so-called greenwashing unfair practices, i.e. the depiction of goods and services as greener and more sustainable than they actually are (European Parliament 2024). Especially noteworthy among the relevant new definitions are the definition of 'environmental claim'[32] (e.g. the product has a positive impact or does not impact the environment or is less harmful to the environment than competing products),[33] and which differs from a 'generic environmental claim'[34] (e.g. 'environmentally

30 Arts. 35(1) and 36(1) ZZP.

31 Commission Notice, Guidance on the interpretation and application of Directive 2005/29/EC, 4.1.1.

32 Directive (EU) 2024/825, Art. 1, amending Directive 2005/29/EC by introducing Art. 2(1)(o) '"environmental claim" means any message or representation which is not mandatory under Union or national law, in any form, including text, pictorial, graphic or symbolic representation, such as labels, brand names, company names or product names, in the context of a commercial communication, and which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time'.

33 Directive (EU) 2024/825, rec. 8.

34 Directive (EU) 2024/825, Art. 1, amending Directive 2005/29/EC by introducing Art. 2(1)(p) '"generic environmental claim" means any environmental claim made in written or oral form, including through audiovisual media, that is not included on a sustainability label and where the specification of the claim is not provided in

friendly', 'eco-friendly', 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'energy efficient', 'biodegradable', 'biobased', etc.),[35] as well as definitions of 'sustainability label',[36] 'certification schemes'[37] and definition of 'recognised excellent environmental performance' in line with Regulation (EC) 66/2010 and ISO standards,[38] related to the previous terms.[39]

According to Directive (EU) 2024/825 Recital 9, generic environmental claims should be prohibited when excellent environmental performance cannot be demonstrated. For example, the use of the term 'biodegradable' is misleading in the case of a product that is not biodegradable or studies have not been conducted, because it contains false and untrue information that misleads consumers. Even factually correct information can mislead the average consumer, if the claims are unclear, ambiguous, or insufficiently substantiated.[40] At the same time, when the specification of the environmental claim is clearly and prominently stated on the same medium (e.g. advertising spot, product's packaging or online selling interface), the environmental claim is not considered a generic environmental claim. For example, 'climate-friendly packaging' is a generic statement, while the claim '100% of energy used to produce this packaging comes from renewable sources' is specific and is not subject to this prohibition, but other provisions of Directive 2005/29/EC still apply. Such a claim can be misleading if it does not state that the energy from renewable sources is used only during a certain phase of the product life cycle, while the claim that '100% renewable material (except fittings)' clearly indicates that parts of the product were not manufactured from renewable material.[41] Even though defined in detail and

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clear and prominent terms on the same medium'.

35 Directive (EU) 2024/825, rec. 9.

36 Directive (EU) 2024/825, Art. 1, amending Directive 2005/29/EC by introducing Art. 2(1)(q): '"sustainability label" means any voluntary trust mark, quality mark or equivalent, either public or private, that aims to set apart and promote a product, a process or a business by reference to its environmental or social characteristics, or both, and excludes any mandatory label required under Union or national law'.

37 Directive (EU) 2024/825, Art. 1, amending Directive 2005/29/EC by introducing Art. 2(1)(r).

38 Directive (EU) 2024/825, Art. 1, amending Directive 2005/29/EC by introducing Art. 2(1)(s).

39 Directive (EU) 2024/825, Art. 1.

40 Commission Notice, Guidance on the interpretation and application of Directive 2005/29/EC, 4.1.1.3.

41 *Ibid*.

substantiated by practical examples from the preamble, the Directive itself indicates that in practice it will not always be simple to determine whether the environmental claims are prohibited or not, therefore determining this will sometimes require the gradual assessment based on a large number of provisions of Directive 2005/29/EC.

The other terms are harmonized with the existing definitions, previously adopted into Croatian law from other directives, such as ‘goods’, ‘durability’, ‘functionality’, in accordance with Directive (EU) 2019/771, and ‘software update’, in accordance with Directives (EU) 2019/770 and 2019/771, as well as the introduction of the new term ‘consumable’.[42] All these definitions are closely linked to the amendments of Directive 2005/29/EC, Articles 6 and 7, and the amendment of the black list of prohibited unfair commercial practices from Annex I to Directive 2005/29/EC, which aims to curb the increasingly widespread issue of misleading through environmental claims. Therefore, the previous description of the main characteristics of the product, from Directive 2005/29/EC Article 6(1)(b), is significantly amended, with an emphasis on ‘environmental or social characteristics, accessories, circularity aspects, such as durability, reparability or recyclability’.[43] Unlike the first part of Article 1 of Directive (EU) 2024/825, which intervenes in the definitions, the second part of the same clause substantively amends the main provisions of Directive 2005/29/EC.

The new Article 6(2)(d) of Directive 2005/29/EC introduces completely new points on making environmental claims, while Article 6(2)(e) addresses advertising consumer benefits that are irrelevant and do not stem from any characteristic of the product or business,[44] e.g. claims that paper sheets do not contain plastic or that a particular brand of bottled water does not contain gluten.[45] The new Article 6(2)(d) of Directive 2005/29/EC prohibiting misleading actions includes the presenting of environmental claims for future environmental efficiency (e.g. abolishing the emission of greenhouse gasses by 2050) but without clear, objective, publicly available and verifiable commitments, based on a realistic implementation plan that is regularly checked and monitored by a third party expert, independent of the trader – a so-called certifier.[46] As pointed out above, in practice there is the question of the independence and credibility of the certifier, i.e. a third

42 Directive (EU) 2024/825, Art. 1, amending Directive 2005/29/EC by introducing Art. 2(1)(v).

43 Transposed in Art. 35(2)(2) ZZP.

44 Transposed in Art. 35(3)(4) and (5) ZZP.

45 Directive (EU) 2024/825, rec. 5.

46 Directive (EU) 2024/825, rec. 4. Transposed in Art. 35(3)(4) ZZP.

party expert, who will ultimately check and verify the certifier. As is usually the case, the difficulties in interpretation and application will be passed on to the national courts and practices, which will depend on the interpretation of the CJEU.

In addition to the described regulation of misleading actions, a new provision on misleading omission is introduced, stating that material information, whose omission to the average consumer could result in misleading commercial practices, includes trader services for comparing products regarding environmental and social characteristics and aspects of circularity, such as the durability, repairability, and recyclability of the product, etc. (Art. 7(7) Directive 2005/29/EC).[47] These include social characteristics throughout the entire production process, such as fair and equal working conditions, wages, gender equality, inclusion and diversity, etc.[48]

In Croatian consumer law, all of the listed definitions have been appropriately transposed in Article 4 ZZP, which contains the definitions of terms, while the newly introduced provisions have been transposed into the relevant provisions on misleading actions and omissions (Arts. 35 and 36 ZZP), leading to a significant expansion of the black list of misleading commercial practices, in Art. 37 ZZP. With regard to greenwashing, the law emphasises the prohibition of displaying sustainability labels that are not based on a certification scheme or that have not been established by public bodies, and the prohibition of generic sustainability claims without the trader being able to substantiate the recognised excellent environmental performance relevant to the claim.[49] For example, the generic claim of 'energy efficient' could be supported based on the recognised exceptional environmental performance in accordance with Regulation (EU) 2017/1369, but the 'biodegradable' claim cannot be supported based on the recognised excellent environmental performance in line with Regulation (EC) No. 66/2010, if the special criteria for EU ecolabelling do not include requirements for biodegradability pertaining to the given product.[50] Traders should also not make generic claims ('sustainable', 'conscious', 'responsible') if they are based solely on excellent environmental performance, because such claims in fact also apply to other characteristics, such as social characteristics.[51]

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47 Transposed in Art. 36(5)(4) ZZP.

48 Directive (EU) 2024/825, rec. 3.

49 Transposed from Annex I to Directive (EU) 2024/825 in Art. 37(3) and (6) ZZP.

50 Directive (EU) 2024/825, rec. 10.

51 Directive (EU) 2024/825, rec. 10.

This new and specified regulation is exceptionally important, given the widespread unfair practices of manipulative green marketing, which is used in the everyday advertisement of products with unchecked, unequal and often misleading features. The prohibition of generic environmental claims also suppresses misleading visual marks and symbols (e.g. green leaves, the planet, etc.) which consumers rely on even when they are not supported by credible proof and verified information (Kovač, Dunković, Kovač 2025, 13). The average consumer faces a range of visual and various other marks on products, where it is nearly impossible to distinguish official certificates by independent third-party experts from those that producers and traders have created on their own (Fella, Bausa 2024). According to a study by the European Consumer Organisation (BEUC), only 3% of consumers in the EU claim that they can recognise misleading and false environmental claims and labels (BEUC 2023b).

The new regulations also prohibit traders from using sustainability labels that are not based on certification/verification schemes by third party experts, or that have not been established by a public authority, where issuing the certificate or verification must be verifiable based on transparent, fair and non-discriminatory verification terms, including ensured public accessibility.[52] Therefore, sustainability labels must be supported by certification schemes, with the exception of sustainability labels determined by a public authority or additional forms of presenting food according to Regulation (EU) No. 1169/2011 on the provision of food information to consumers.[53] Even though Directive (EU) 2024/825 establishes the principal criteria for certification schemes related to sustainability labels – such as transparency, credibility, the existence of procedures for resolving non-compliance and/or withdrawal or suspension of the use of the sustainability label, as well as monitoring of compliance of the trader with the scheme, in accordance with ISO standards and existing regulations,[54] the question arises regarding the efficiency of the prescribed certification and verification schemes and their implications. Also, there is a justified concern that due to the costliness of third-party certifier services, small and medium enterprises will be placed in an unfavourable position compared to large companies in the market.

52 Directive (EU) 2024/825, Art. 1, adding Art. 2(1)(r) Directive 2005/29/EC on certification schemes, transposed in Art. 4(35) ZZP.

53 Directive (EU) 2024/825, rec. 7: 'Examples of sustainability labels established by public authorities are logos awarded when complying with the requirements of Regulations (EC) No. 1221/2009(6) or (EC) No 66/2010(7) of the European Parliament and of the Council'.

54 Directive (EU) 2024/825, rec. 7.

Additionally, environmental claims regarding the entire product or trader business are prohibited when it is evident that they pertain to only a certain aspect of the product or business, as well as unfounded claims on greenhouse gas compensation.[55] For example, traders often state that the product is made of recycled material, leaving the impression that the entire product is made from it, even though this de facto applies only to the packaging.[56] Also, it is prohibited to use claims such as 'climate neutral', 'CO_2 neutral certified', 'carbon positive', 'reduced climate impact', 'limited CO_2 footprint', etc., unless it is based on actual product performance during its life cycle, and not on the offsetting of greenhouse gas emissions.[57] The presentation and statement of requirements that are imposed by law on all products within the relevant product category on the EU market, including imported products, as a distinctive feature of the trader's offer, is prohibited under all circumstances.[58] An example of this would be the representation of the repairability of the product as a distinctive feature of the trader, even though it is a basic consumer right in the event of the non-conformity of the goods, or if the trader advertises a given product as a product that does not contain a specific chemical substance, but the specified substance is already prohibited by law for all products within the given product category in the Union.[59]

3.2.2. Examples from Practice

In practice, the assessment of unfair commercial practices, modelled on Directive 2005/29/EC, uses the abovementioned general prohibition of unfair commercial practices and their subforms, as well as the influence on the average consumer, who is reasonably well-informed and reasonably observant and circumspect.[60] And while this approach leaves significant discretionary assessment space to the national courts and authorities from case to case, the presented new regulation allows for the transition from a discretionary model of assessment to a normatively more precise framework

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55 Annex I to Directive (EU) 2024/825, adding points 4.b and 4.c to Annex I of Directive 2005/29/EC, transposed in Art. 37(7) and (8) ZZP.

56 Directive (EU) 2024/825, rec. 11.

57 Directive (EU) 2024/825, rec. 12.

58 Directive (EU) 2024/825 Annex I adding point 10.a to Directive 2005/29/EC Annex I, transposed in Art. 37. ZZP.

59 Directive (EU) 2024/825, rec. 15.

60 Judgement of 16 July 1998, C-210/96, *Gut Springenheide i Tusky*, ECLI:EU:C:1998:369, para. 31.

(MacLennan, De Catelle 2025, 457). Comparative practice and CJEU case law contain a large number of examples of greenwashing. In the *Dyson* case, the CJEU addressed the omission of information on the conditions for the testing for energy classification, regarding the labelling of energy class of vacuum cleaners, and concluded that it did not represent a misleading omission in the sense of Directive 2005/29/EC, but that the incorrect depiction of symbols and marks could mislead or confuse consumers regarding the device's energy consumption.[61] At the same time, in the *Porsche Inter Auto and Volkswagen* case, the CJEU addressed the liability of the seller for the lack of conformity of motor vehicles that have actually not been harmonised with the prescribed standards, in which vehicle exhaust gas emissions were manipulated using defeat devices whose use is prohibited.[62]

However, this case is directly linked to the Dieselgate scandal, which involved misleading consumers about motor vehicle harmful gas emissions, and which has still not been concluded at the level of certain Member States.[63] In the recent ruling, issued in France on 5 May 2026, in a dispute on the protection of collective consumer interests, filed by Consommation Logement et Cadre de Vie (CLCV), the Court of Appeal of Pau for the first time ruled in favour of the consumers against the defendants, Société Volkswagen Bank GmbH and S.A.S. Volkswagen Group France, finding them responsible for the damages caused by marketing automobiles with software that manipulated emissions. Bearing in mind the scope of the damages caused to the community of consumers, as well as harm to their health and the environment (Fr. '*de tenir compte de l'importance du préjudice causé à la collectivité des consommateurs en ce qui concerne l'atteinte à sa confiance à sa santé et à l'environnement*'), as well as the causal link between the damages caused and the culpability of the defendants, the court ordered compensation for harm caused to the collective interests of the consumers, to the sum of EUR 100,000.[64]

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61 Judgement of 25 July 2018, C-632/16, *Dyson*, ECLI:EU:C:2018:599.

62 Judgement of 14 July 2022, C-145/20, *Porsche Inter Auto and Volkswagen*, ECLI:EU:C:2022:572.

63 While an out-of-court settlement with the consumers was reached in Austria in 2024, in the amount of EUR 23 million, in 2025 prison sentences were given to the managers in criminal proceedings. In Italy, the Volkswagen Group was fined EUR 5 million by the Italian Competition Authority in 2016 (Ruling PS10211, *Volkswagen-Emissioni Inquinanti Autoveicoli Diesel. https://www.agcm.it/media/comunicati-stampa/2016/8/alias-8372*, last visited January 15, 2026).

64 Cour d'appel de Pau, Judgement of 5 May 2026, RG 24/01348, N° Portalis DBVV-V-B7I-I24T, *https://www.courdecassation.fr/decision/69face7ccdc6046d47befb4a*, last visited May 17, 2026.

In 2025 a court in Paris brought a precedent ruling in the case filed by associations Greenpeace France, Les Amis de la Terre France and Notre Affaire à Tous, against companies S.A. TotalEnergies Electricité et Gaz France and Société TotalEnergies SE, for the use of misleading claims about future environmental performance. The court ruled that by using the marketing claim 'ambition to achieve carbon neutrality by 2050' (Fr. '*ambition d'atteindre la neutralité carbone d'ici 2050*') and stating 'being a major player in the energy transition' (Fr. '*d'être un acteur majeur de la transition énergétique*'), the defendants misled the consumers and ordered that the traders cease using such claims within one month or face a fine of EUR 10,000 for every day of delay, as well as that they publish the ruling on all their official websites.[65] The court based its rationale and decision on the above-mentioned key provisions and goals of the still untransposed Directive (EU) 2024/825, demonstrating not only the respect for the consumer legal framework, but also the adoption of a stricter approach to greenwashing.[66]

A similar development can also be noted in the practices of Italian regulatory agencies, particularly the case of the Acqua Minerale San Benedetto S.p.A. company, which, following the intervention of the Italian Competition Authority, removed from its products green claims such as 'zero CO_2 impact' and 'ecogreen' that had in August 2025 been judged to be potentially misleading because they had not been clearly and verifiably substantiated.[67] Two months earlier the Agency had fined the Infinite Styles Services Co. Ltd company, which managed websites in the EU for the sale of SHEIN brand products, to the sum of EUR 1 million. Misleading and incomplete environmental claims had been used in different places on the websites for the promotion and sale of SHEIN brand clothing products,[68] such as stating that products used materials that are fully recyclable and generic statements on reducing greenhouse gas emissions by 25% by 2030, and their complete abolition by 2050, which were in fact contradictory considering

65 Tribunal judiciaire de Paris, Judgement of 23 October 2025, RG 22/02955, N° Portalis 352J-W-B7G-CWJKL, p. 37, *https://www.courdecassation.fr/decision/68ff2f777e08341cb497abca*, last visited February 15, 2026.

66 Tribunal judiciaire de Paris, paras. 17, 29, 46.

67 Autorità Garante della Concorrenza e del Mercato, Ruling PS12596, *https://www.agcm.it/media/comunicati-stampa/2025/8/PS12596*, last visited January 15, 2026.

68 Autorità Garante della Concorrenza e del Mercato, Ruling PS12709 of 29 June 2025, *https://en.agcm.it/dotcmsdoc/pressrelease/PS12709%20chiusura.pdf*, last visited January 15, 2026.

the increase in emissions in SHEIN's business.[69] The Agency's decision also anticipated the implementation of Directive (EU) 2024/825, which was still not transposed into Italian law and which establishes a stricter regulatory framework than the one applicable at the time regarding green claims (Ital. '*che disporrebbe un quadro normativo più stringente rispetto a quello attualmente applicabile in materia di green claims*').[70] The Agency's decision built upon a series of investigations by the European Commission launched against SHEIN in 2025, through the Consumer Protection Cooperation (CPC) Network[71] (Bertelli, Farina 2025).

German court practice includes a large number of cases, including the *Katjes*[72] case, involving a family-owned company producing fruit gum and liquorice and advertising them as climate-neutral products (Gsell, Meyer 2025). Since the trader did not produce such products but only supports a project for CO_2 compensation, the plaintiff believed that such advertisement was misleading consumers. The courts of first and second instance ruled that the unfair commercial practice of misleading the average consumer had not occurred and that climate neutrality can be achieved through compensation measures.[73] However, the German Federal Court of Justice overturned both rulings and concluded that such a practice misleads the average consumer, because it used an ecologically vague term whose meaning was not clearly and unambiguously explained in the advertisement, even more so because the term 'climate neutral' encompassed both the reduction and compensation of CO_2 emission, which was not clearly specified in this case.[74]

[69] Autorità Garante della Concorrenza e del Mercato, PS12709, *https://www.agcm.it/media/comunicati-stampa/2025/8/PS12709-*, last visited January 15, 2026.

[70] *Ibid.*, para. 131.

[71] European Commission. 2025. Commission and national authorities urge SHEIN to respect EU consumer protection laws. Press release. May 26. *https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1331*, last visited January 15, 2026. European Commission. 2026. Commission launches investigation into Shein under the Digital Services Act. Press release. February 17. *https://ec.europa.eu/commission/presscorner/detail/en/ip_26_420*, last visited March 15, 2026.

[72] Bundesgerichtshof, Judgement of 27 June 2024, BGH I ZR 98/23, ECLI:DE:BGH:2024:270624UIZR98.23.0.

[73] Landgericht Kleve, Judgement of first instance of 22 June 2022, 8 O 44/21, ECLI:DE:LGKLE:2022:0622.8O44.21.00; Oberlandesgericht Düsseldorf, Judgement of second instance of 6 July 2023, 20 U 152/22, ECLI:DE:OLGD:2023:0706.20U152.22.00.

[74] Bundesgerichtshof, Judgement of 27 June 2024, BGH I ZR 98/23.

The issue of unfair practices related to greenhouse gasses emission compensation includes cases of greenwashing in the aviation sector. One of the most prominent ones is the Dutch case against the KLM airline, which was sued for the misleading business practice and use of the 'fly responsibly' and 'CO2ZERO' slogans.[75] Through the coordinated action of the European Commission, the CPC Network, and the BEUC, in 2023 an action was started for harmonising airlines, with 21 airlines committing to changing misleading business practices and environmental claims (such as climate neutral, sustainable aviation fuel (SAF), etc.), especially related to emission compensation, transparent representation of CO_2 emissions calculations, providing evidence and clarification of environmental performance (e.g. net-zero greenhouse gas emission rates), etc.[76]

Among the relevant and current cases regarding environmental claims, one could point out the misleading claims related to plastic bottle recycling, where in 2023 the BEUC, in cooperation with the European Commission and CPC Network, as well as national consumer protection and market competition authorities in 13 EU Member States, issued warnings to producers and traders Coca-Cola, Nestlé, and Danone. This cooperation led to the compliance with the requirements from Directive (EU) 2024/825, and in the following two years Coca-Cola HBC (in 2025) and Nestlé (in 2026) harmonised and agreed to change advertising.[77] This was a case of misleading advertisement on plastic water bottles, such as '100% recycled bottle' when the cap and label were not included in these environmental claims, or calls for recycling in cases where the company's infrastructure actually did not allow for this, as well as in general regarding the guarantee that the labels and marketing materials do not mislead the average consumer regarding environmental packaging (Keirsbilck, Terryn, Van Acker 2023).

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[75] Amsterdam Court, Judgement of 20 March 2024, *FossielVrij NL et al v KLM*, C/13/719848/HA ZA 22-524, ECLI:NL:RBAMS:2024:1512, *https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2024:1512*, last visited January 16, 2026.

[76] European Commission. Sustainable consumption actions, Greenwashing in air travel sector. *https://commission.europa.eu/topics/consumers/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/sustainable-consumption-actions_en*, last visited January 15, 2026.

[77] European Commission. Sustainable consumption actions, Recycling claims on plastic bottles.

3.3. Combating Planned Early Obsolescence Through Better Consumer Informing on Product Durability and Repairability

3.3.1. New Regulations

The new regulations aim to simultaneously address the widespread unfair commercial practice of planned product obsolescence, where producers intentionally limit the lifetime of certain products in order to encourage more frequent replacement and purchasing of new products, but also early product obsolescence of products that fail, i.e. lose their necessary functionality, significantly earlier than their expected lifetime (Valant 2016). According to Directive (EU) 2024/825, planned early obsolescence entails the commercial policy of deliberately planning or designing products 'with a limited lifespan so that it prematurely becomes obsolete or non-functional after a certain period or after a predetermined intensity of use'.[78] Purchasing such products is considered detrimental not only to the consumers, but in general to the environment, which is unnecessarily polluted by increasing waste and use of energy and materials.[79]

Planned early obsolescence can be manifested in many ways, e.g. the inability to repair the product, withholding spare parts or the pointlessness of replacing them, inducing unnecessary purchase of consumables, etc., however, especially problematic is so-called software obsolescence. The latter is manifested, for example, as reduced device functionality and performance through software updates or by ending software support and impeding updating, which intentionally slows down or completely prevents the proper operation of the device (Kryla-Cudna 2024, 121). In the digital environment, software has a key effect on the durability and functionality of digital products, and the lack of transparency regarding the security, functionality, compatibility, interoperability and other features can mislead consumers regarding the actual lifespan and proper use of the product.

With the aim of suppressing such producer and trader practices, Directive (EU) 2024/825 significantly amends the so-called black list of unfair commercial practices in Annex I to Directive 2005/29/EC, prohibiting misleading actions and omissions that support or affect planned early product obsolescence. The new ban on misleading unfair commercial practices includes, for example, withholding information from consumers regarding software updates that will negatively impact the functioning of the

[78] Directive (EU) 2024/825, rec. 16.

[79] Directive (EU) 2024/825, rec. 16.

goods with digital elements or the use of digital content or digital services.[80] Also, it is prohibited to falsely present a software update as necessary, if it only improves product functionality,[81] since it is not necessary for the safe use of the product, while security updates are.[82] Also prohibited are false claims that goods under normal conditions of use have a certain durability in terms of usage time or intensity,[83] such as a certain number of wash cycles for a washing machine, while actual use shows that this is not the case.[84] Especially important in the context of suppressing planned obsolescence is the ban on commercial communication related to goods that have a feature that was introduced in order to limit the durability of the good, where this information is available to the trader.[85] The preamble of Directive (EU) 2024/825 gives the example of software that stops or downgrades the functionality of goods after a certain time, a piece of hardware that is designed to fail after a particular period, or the design or manufacturing flaw that results in the early failure of the goods, if it is not fixed after the trader has been informed of this.[86]

In this regard, another important series of amendments in regulating consumer rights relates to amendments of Directive 2011/83/EU, regarding stricter requirements for transparency and consumer information on product durability, legal and commercial guarantees of durability, product repairability and availability of spare parts and repair services, as well as the availability and updating of software in the case of digital and smart devices through so-called harmonised notices and labels.[87] The definitions of numerous terms are mainly harmonised with the existing definitions, such as 'software update', from Directives (EU) 2019/770 and 2019/771, as well as from Directive (EU) 2019/771, such as 'commercial guarantee of durability', 'durability', 'functionality', as well as the term 'producer'.[88] These definitions have been transposed into Croatian law through previous harmonisation, i.e.

80 Directive (EU) 2024/825, Annex adding item 23.d into Annex I of Directive 2005/29/EC, transposed in Art. 37(33) ZZP.

81 Directive (EU) 2024/825, Annex adding item 23.e into Annex I of Directive 2005/29/EC, transposed in Art. 37(34) ZZP.

82 Directive (EU) 2024/825, rec. 18.

83 Directive (EU) 2024/825, Annex adding item 23.g into Annex I of Directive 2005/29/EC, transposed in Art. 37(36) ZZP.

84 Directive (EU) 2024/825, rec. 20.

85 Directive (EU) 2024/825, Annex adding item 23.f into Annex I of Directive 2005/29/EC, transposed in Art. 37(35) ZZP.

86 Directive (EU) 2024/825, rec. 19.

87 Directive (EU) 2024/825, recs. 20–28.

88 Directive (EU) 2024/825, Arts 1 and 2.

adoption of amendments to the Civil Obligations Act (ZOO)[89] and the ZZP, as well as the adoption of the Act on Certain Aspects Concerning Contracts for the Supply of Digital Content and Digital Services (ZDSDU) in 2022 (Mišćenić, Ileković 2024, 183).[90] Among the new definitions introduced by Directive (EU) 2024/825, one should point out the definition of 'consumable',[91] as well as 'repairability score' as the score 'expressing the capacity of a good to be repaired, based on harmonised requirements established at Union level'.[92]

As is the case with the Twin Directives, Directive (EU) 2024/825 additionally expands product durability and functionality by encompassing not only the material characteristics of the product, but also its digital elements. Directive (EU) 2024/825 aims to directly address the issue of software obsolescence by referencing the definition of 'durability' from Article 2(13) of Directive (EU) 2019/771 as 'the ability of the goods to maintain their required functions and performance through normal use', and 'software update' as 'a free update, including a security update, that is necessary to keep goods with digital elements, digital content and digital services in conformity in accordance with Directives (EU) 2019/770 and (EU) 2019/771', as well as the amendments of Articles 5 and 6 of Directive 2011/83/EU on pre-contractual information.[93]

It should be noted, however, that such normative regulation also additionally complicates and impedes the implementation of the already fragmented legal regulation of consumer law. The intertwining and referencing of numerous definitions and legislative solutions from other directives and regulations impedes the comprehension and clarity of regulations, which will certainly affect the effectiveness of the enforcement in practice. In the context of Croatian law, the available solutions are not the most fortunate nomothetic solutions, due to the previous unsystematic

89 Civil Obligations Act (*Zakon o obveznim odnosima*), *Narodne Novine* 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 145/23 and 155/23.

90 Zakon o određenim aspektima ugovora o isporuci digitalnog sadržaja i digitalnih usluga, *Narodne Novine* 110/21. This law transposed the regulations from Directive (EU) 2019/770 and regulates the trader's obligation to provide consumers with information on the compatibility, interoperability and updating of software necessary for maintaining the functionality of the product.

91 Directive (EU) 2024/825, Art. 1, amending Directive 2005/29/EC by introducing into Art. 2(1)(v) '"consumable" means any component of a good that is used up recurrently and that needs to be replaced or replenished for the good to function as intended'.

92 Directive (EU) 2024/825, Art 2(1), amending Art. 2(14)(d) Directive 2011/83/EU, transposed in Art. 4(18) ZZP.

93 Directive (EU) 2024/825, Art. 2.

harmonisation (Kanceljak 2021, 65), therefore the abovementioned definitions of ‘durability’ and ‘functionality’ are defined in Article 399 ZOO, ‘functionality’ is defined anew in Article 4 ZZP and Article 3(k) ZDSDU, while the definition and provisions related to software updating and relevant information are contained in Articles 4, 46, and 60 ZZP, and the ZDSDU provisions. Due to existing differences in the definitions regarding software updating from Articles 1 and 2 of Directive (EU) 2024/825, in the transposition Article 4(1) ZZP combines them, adding ‘including security updating or functionality updating’ to the abovementioned definition of ‘software update’.

Further noteworthy important amendments include the more stringent obligation to inform consumers, in Articles 5 and 6 of Directive 2011/83/EU, i.e. Articles 46 and 60 of the ZZP,[94] which primarily pertain to the reminder of the existence of the legal guarantee for goods, including for goods with digital elements, digital content, and digital services with the contract (conformity of goods), as well as legally defined deadlines,[95] the existence of commercial guarantee of durability free of charge, if the producer offers it and it lasts for more than two years,[96] and the existence of the possibility of software updating for goods with digital elements, digital content, and digital services.[97] Traders will be required to transparently state whether there is a free commercial guarantee of durability that is offered by the producer, as well as the minimal period during which digital products will have software updating support, including security updates necessary for maintaining the compliance of digital content and digital services.[98]

Regardless of the long-term normative regulation in the case of non-conformity of goods with the contract, i.e. the existence of material defects on things, Directive (EU) 2024/825 points out that reports indicate that consumers are often unaware of their legal rights.[99] The preamble of Directive

94 Directive (EU) 2024/825, Arts. 2(2) and (3) amending Arts. 5 and 6 Directive 2011/83/EU.

95 Directive (EU) 2024/825, Art. 2(2) amending Art. 5(1)(e) and introducing Art. 5(1)(eb) Directive 2011/83/EU and Art. 2(3), amending Art. 6(1)(l) and amending Art. 6(1)(lb) Directive 2011/83/EU.

96 Directive (EU) 2024/825, Art. 2(2) amending Art. 5(1) Directive 2011/83/EU and introducing Art. 5(1)(ea) Directive 2011/83/EU, and Art. 2(3) amending Art. 6(1)(la) Directive 2011/83/EU.

97 Directive (EU) 2024/825, Arts. 2(2) amending Art. 5(1) Directive 2011/83/EU and introducing Art. 5(1)(ed) Directive 2011/83/EU, and Art. 2(3) amending Art. 6(1)(lc) Directive 2011/83/EU.

98 Directive (EU) 2024/825, rec. 33.

99 Directive (EU) 2024/825, rec. 27.

(EU) 2024/825 emphasises the importance of informing consumers of the existence of *commercial guarantees* through a harmonised label, and the obligation to display differentiation from the *legal guarantee* of conformity, i.e. the legal rights that consumers have in the case of non-conformity.[100] The *harmonised label* should be transparent to consumers, clearly visible and displayed in a prominent manner, either by placing the label directly on the product packaging, displaying it on the shelf or alongside the image of the goods sold online, while the *harmonised notice* should be highlighted in a prominent manner, e.g. as a poster on the wall of the shop, next to the checkout counter, or as a general reminder on the trader's website.[101] In the Implementing Regulation of September 2025, the European Commission adopted the harmonised notice of the legal guarantee of compliance and the harmonised label for the commercial guarantee of durability,[102] whose implementation will start on 27 September 2026, which is the deadline for the obligation to implement the measures transposed from Directive (EU) 2024/825 in the Member States.

This brings us to the key third aspect, i.e. reparability of goods, where Directive (EU) 2024/825 additionally regulates and improves the existing legal solutions on the right to repair defective goods (Zoll *et al.* 2024, 103). The introduction of the definition of the *repairability score*, as information on whether and to what extent it is possible to repair the product, affects the purchasing decision of the average consumer in the context of sustainable consumption. Directive (EU) 2024/825 amends Articles 5 and 6 of Directive 2011/83/EU on the obligation to provide pre-contractual information to consumers, in a way that introduces the obligation to provide information on the repairability score of the goods, if applicable, or if it is not applicable, the obligation of the trader, who has been provided the necessary information by the producer, to inform the consumer of the availability, procedure for ordering and cost of spare parts, as well as the availability of the repair and maintenance instructions and repair restrictions.[103] At the same time, the amendments of Directive 2005/29/EC prohibit unfair commercial practices such as false claims of repairability, stimulating consumers to replace or

[100] Directive (EU) 2024/825, recs. 26 and 27.

[101] Directive (EU) 2024/825, rec. 28.

[102] Commission Implementing Regulation (EU) 2025/1960 of 25 September 2025 on the design and content of the harmonised notice on the legal guarantee of conformity and of the harmonised label for the commercial guarantee of durability, *OJ* L 2025/1960.

[103] Directive (EU) 2024/825, Art. 2(2) and (3) amending Arts. 5(i) and (j), and Art. 6(u) and (v) Directive 2011/83/EU, transposed in Art. 46(1)(16) and 60(1)(27) ZZP.

replenish consumables earlier, withholding information on the impairment of the functionality when using consumables, spare parts or accessories that are not provided by the original producer, or false claim that such an impairment would occur.[104] This addresses the issue of planned early product obsolescence, which encourages the consumer to purchase consumables and spare parts that are not necessary for the regular functioning of the good.[105] The preamble of Directive (EU) 2024/825 lists the example of smart devices designed in a way to limit their functionality to the use of chargers or spare parts only from the original producer, which is information that must not be withheld from the consumer at the time of purchase.[106]

Product repairability is directly linked to the sustainable development and green transition goals, therefore in the EU consumer legal framework the legal right to repair a good or product in case of the non-conformity is promoted as one of the primary consumer rights (Terryn 2019, 851; Reyna, Gautier 2025, 93). Croatian consumer law and the ZZP are accordingly harmonised with Directive (EU) 2024/1799 on common rules promoting the repair of goods,[107] whose aim is to encourage consumers for their first choice to be repair and extending the duration of the product, instead of replacing it (Petrić 2021, 22). In line with Directive (EU) 2024/1799, transposed in the newly-introduced Chapter IV.A Repair of Goods (Article 112(a)–(l) ZZP), the producer or trader, distributor, repairer will be required to enable the repair of a good, for a reasonable price and within a reasonable period.[108] The goods encompassed are mainly household appliances (e.g. dryers, washers, vacuum cleaners, air conditioners, etc.), but also mobile and wireless phones, tablets, etc. The standardised European Repair Information Form in Annex I of Directive (EU) 2024/1799 will be transposed into the rules as a bylaw (Art. 112.b ZZP), and plans also call for the creation of a European online platform, which would provide information on the availability of repairers and spare parts.[109] Once again, in this case the Croatian legislator reaches for an inadequate nomothetic solution, by transposing the definitions from the Directive through Article 112.a ZZP, instead of their systematic introduction into Article 4 ZZP, which defines terms from all the transposed directives.

[104] Transposed from Annex Directive (EU) 2024/825 into Art. 37(37)–(39) ZZP.

[105] Directive (EU) 2024/825, rec. 23.

[106] Directive (EU) 2024/825, rec. 24.

[107] Directive (EU) 2024/1799.

[108] *Ibid.*, Arts. 1 and 2.

[109] European Council. 2026. Right to repair products. Repair platform. *https://www.consilium.europa.eu/en/policies/right-to-repair-products/#platform*, last visited March 18, 2026.

Also, Chapter IV.A Repair of Goods substantially does not belong after the provisions on distance financial services, but rather with the provisions that are related to the performance of the sale contract. The deficiencies of the regulation, as well as the fragmentation of consumer law, where the right to repair is scattered throughout several legal acts, raise the issue of the effectiveness of the enforcement of these provisions in practice.

3.3.2. Examples from Practice

Among the examples from practice, one should undoubtedly note cases of planned early obsolescence of smartphone mobile devices produced by the Apple and Samsung companies. In these cases, the producers and traders encouraged users to upgrade, i.e. to apply software updates that consequently led to the significant slowing down of the devices, and in some cases complete cessation of operation, all without previously informing the users of the possible consequences with regard to the functioning of the devices (Loos 2026, 38). The US court practice has seen several consumer protection cases launched against producer Apple for intentionally slowing down the processor on older Apple iPhones through iOS software updates – also known as Batterygate. Apple disputed culpability and claimed that slowing the processor was necessary to prevent mobile devices with older batteries from shutting down, and offered replacement batteries at reduced prices. Even though both literature and practice emphasise this case as a planned early obsolescence practice aimed at encouraging consumers to buy new iPhone models, the cases were concluded through a settlement with Apple.[110]

Similar cases include the 2018 decision of the Italian Competition Authority, which fined the Apple and Samsung companies to the sum of EUR 1 million and EUR 5 million, respectively, for using the unfair commercial practice of planned early obsolescence. This was a case of encouraging software updates that resulted in malfunctions and significant deterioration of the functioning of the devices and their batteries, therefore accelerating their replacement with new products. Apple persistently encouraged consumers to update the operating systems on the iPhone 6, iPhone 6 Plus, iPhone 6s, and iPhone 6s Plus phones to the iOS 10 operating system, and subsequently

[110] E.g. United States District Court Northern District of California San Jose Division, Settlement Agreement and Release, Case No. 5:18-md-02827-EJD, *https://www.cpmlegal.com/media/news/314_Apple%20Battery%20Stipulation%20of%20Settlement.pdf*, last visited February 16, 2026.

to iOS 10.2.1,[111] while Samsung encouraged the updating of the Galaxy Note 4 phone to Android Marshmallow, which also reduced the functioning of the device.[112] Furthermore, Samsung intentionally ended support for products whose guarantees had expired, exposing consumers to high costs of repair or forcing them to replace devices. The Agency therefore ruled that, by intentionally encouraging and forcing consumers into replacement and the purchase of new devices, the companies had used misleading and aggressive unfair commercial practices, in violation of Articles 5, 6, 7, and 8 of Directive 2005/29/EC (De Franceschi 2018, 218).

On the topic of planned early obsolescence, also noteworthy are the 2023 warnings and compensation measures passed by the Italian Competition Authority, in connection with the numerous customer complaints regarding software in diesel vehicles produced by Stellantis (e.g. Opel, Peugeot, Citroën, DS). The software in the company's vehicles falsely indicated that the AdBlue reservoir was nearly or completely empty, which led to the vehicles shutting down, causing extraordinary expenses for numerous repairs. Following reports, the Agency initiated negotiations with the European Commission and CPC Network, leading to an agreement that the producer Stellantis would expand the compensation measures to all the Member States and reimburse certain types of the ensued costs, through August 2028.[113] A similar problem was identified in the Joy-Con Drift case, related to the Nintendo Switch gaming console, which consumers could not repair simply or free of charge, but were forced to purchase new ones. After receiving nearly 25,000 complaints, the BEUC and the CPC Network issued a warning to producer Nintendo of Europe GmbH, which in 2023 committed to repairing the consoles free of charge at Nintendo repair centres.[114]

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[111] Autorità Garante della Concorrenza e del Mercato, Ruling PS11039, *http://www.agcm.it/dotcmsdoc/allegati-news/PS11039_scorr_sanzDich_rett_va.pdf*, last visited January 15, 2026.

[112] Autorità Garante della Concorrenza e del Mercato, Ruling PS11009, *http://www.agcm.it/dotcmsdoc/allegati-news/PS11009_scorr_sanz_omi_dichrett.pdf*, last visited January 15, 2026.

[113] European Commission. 2026. Sustainable consumption actions, AdBlue tanks in Stellantis cars. *https://commission.europa.eu/topics/consumers/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/sustainable-consumption-actions_en#adblue-tanks-in-stellantis-cars*, last visited January 15, 2026.

[114] European Commission. 2026. Sustainable consumption actions, Nintendo. *https://commission.europa.eu/topics/consumers/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/sustainable-consumption-actions_en#nintendo*, last visited January 15, 2026.

Cases of planned early obsolescence have not been identified in Croatian court practice (Kanceljak, Roksandić 2025, 813-852). However, available rulings regarding the non-conformity of goods indicate the existence of sustainability awareness among average consumers (Mišćenić *et al.* forthcoming). For example, in the case of non-conformity of the Quadro brand washing machine, prior to the legal right to replacement, the consumer demanded repair on several occasions.[115] This is also confirmed by the rulings on the non-conformity of automobiles. In addition to customers insisting on repairs prior to using the legal right to replacement,[116] one can detect potential issues with software updates. In a 2024 ruling, a witness statement leads to the conclusion that the automobile had been repaired on several occasions because it would jolt and shut down while driving, which could be linked to the software regulating fuel injection.[117] In one case from 2025, the malfunction on an automobile produced by Opel Automobile GmbH was not fixed, and after five or six different pieces of software were changed, it was not rendered operable.[118] The same case pointed out the lack of distinction between consumer rights based on commercial guarantee and legal guarantee, which is also addressed in this paper.

Bearing in mind the abovementioned amendments from Directive (EU) 2024/825 regulating pre-contractual information on commercial and legal guarantees through the harmonised notice and harmonised label, future shifts are expected in traders' compliance and improved consumer information on the durability and repairability of products. In this regard, one should mention the notable CJEU *Victorinox* case.[119] In this case, the trader absoluts -bikes and more- GmbH & Co. KG company sold pocket knives produced by Swiss company Victorinox through the Amazon online platform, however, without providing the necessary information on the commercial guarantee and customer notice of the legal rights in the event of non-conformity. The CJEU concluded that the obligation to provide information on the manufacturer's commercial guarantee does not arise solely based on the existence of the guarantee, but when the consumer has a legitimate interest to learn about that information. It also exists when

[115] High Administrative Court of the Republic of Croatia, Judgement Usž 3637/2016-2 of 15 March 2017.

[116] Municipal Misdemeanour Court in Zagreb, Judgement Pp-14244/2025 of 30 October 2025.

[117] Municipal Court in Zadar, Judgement Pp-1762/2024 of 17 December 2024. Due to lack of evidence, the case was returned for retrial by decision of the High Misdemeanour Court of the Republic of Croatia, Ppž-2157/2025 of 11 March 2026.

[118] Municipal Court in Split, Judgement P-3639/2020-35 of 25 September 2025.

[119] Judgement of 5 May 2022, C-179/21, *Victorinox*, EU:C:2022:353.

that information is significant and decisive for the decision to purchase, i.e. when 'the trader makes the manufacturer's commercial guarantee a central or decisive element of its offer'.[120] For verifying this, the CJEU offers several criteria for the interpretation of Article 6(1)(m) of Directive 2011/83/EU regarding pre-contractual information, such as the content and general layout of the offer, the importance of referring to the manufacturer's commercial guarantee for sales or advertising, the place occupied by the reference in the offer, the risk of possible mistake or confusion of the average consumer who is reasonably well informed, reasonably observant, and circumspect, with respect to different rights regarding the guarantee or the identity of the guarantor, the existence of explanations relating to other guarantees, etc.[121]

Prominent cases in Croatian court practice are related to unfair commercial practices by traders misleading the average consumer by offering additional payment guarantee, without fulfilling the legal obligation of distinguishing between legal and commercial guarantees, i.e. misleading the consumer on legal rights in the event of non-conformity. And while the defendant trader in one of the Croatian judgements pointed out that it 'is neither realistic nor logical' for the average consumer not to distinguish guarantees,[122] Directive (EU) 2024/825 states that 'confusing consumers between the commercial guarantee of durability and the legal guarantee of conformity' should be avoided.[123] In line with the presented provisions of Directive (EU) 2024/825, in 2022 the Administrative Court in Zagreb correctly elaborated on the substantive legal and terminological differences between legal and commercial guarantee. In the given case of the sale of a special product called *protecto guarantee* (extending the guarantee to 3 years in total with 100% discount) by the third trader, who was neither the producer nor the seller of the mobile phone, it is pointed out that 'there is no other (unregulated by the ZOO but otherwise permitted) guarantee beyond the commercial guarantee (warranty), nor is it allowed, in the sense of consumer law, to cite the term "guarantee" outside of that context',[124] which is misleading to the average consumer.

120 *Victorinox,* para. 66.

121 *Victorinox,* para. 66.

122 High Administrative Court of the Republic of Croatia, Judgement Usž-109/21-2 of 20 October 2021; Administrative Court in Zagreb, Judgement UsI-2717/19-8 of 8 October 2020, UsI-2717/19-8.

123 Directive (EU) 2024/825, rec. 26.

124 Administrative Court in Zagreb, Judgement Us I-2716/2019-5_of 4 April 2022; subsequent unpublished decision of the High Administrative Court of the Republic of Croatia Usž-2438/2022-2 of 20 March 2024, translated by author.

4. CONCLUDING REMARKS

In conclusion, the environmental protection, green transition and sustainable development goals have for a long time been finding their way into consumer law, and consequently into private law of the EU Member States (Micklitz 2019, 229). The innovations introduced into the laws of the Member States by Directive (EU) 2024/825 clearly indicate a shift from traditional consumer protection towards the concept of green and sustainable consumption. As shown in the paper, Directive (EU) 2024/825 introduces numerous changes to the existing consumer protection legal framework, by establishing as many as 12 new bans on unfair commercial practices of misleading actions and omissions in regard to greenwashing and planned early obsolescence. Furthermore, it introduces a number of new obligations for providing pre-contractual information to consumers for all types of consumer contracts concluded within and out of trader's business premises, especially relating to product durability and repairability. In the literature, Directive (EU) 2024/825 has been criticised for its sporadic environmental protection goal in consumer law and the overgeneralisation of the claims and expressions that are used in it, such as 'environmental or social characteristics of the product' and 'circularity aspects'.[125] Bert Keirsbilck (2024, 208) believes that the specification and definition of these terms would contribute to the legal certainty and coherence of the consumer protection legal framework. Also, as pointed out in the paper, many of the innovations require additional interpretation of certain prescribed conditions and criteria, likely through amendments of the existing guidance on the interpretation and application of Directive 2005/29/EC and Directive 2011/83/EU.

While the first part of the innovations for suppressing greenwashing is systematically fairly regulated (despite the existing open clauses and issues that require the interpretation of the CJEU), one cannot escape the impression that the second part of the amendments on more stringent information on product durability and repairability was rendered in a manner that is rather unintelligible and difficult to implement in practice. Regardless of the significance of the issues being addressed, the lack of systematicity in the normative regulation of Directive (EU) 2024/825 and the constant referencing to definitions and provisions from other EU directives and acts will undoubtedly affect the effectiveness of the enforcement of consumer law in the practice of the Member States. Another issue is how harmonisation with the Directive, in line with full targeted harmonisation, will affect the

[125] Directive (EU) 2024/825, rec. 9.

existing legislative solutions in certain countries, such as the French, Belgian and Italian regulations prohibiting greenwashing, information on spare parts, ban on planned obsolescence, prohibition of misleading advertisement on fossil fuels, etc. (Terryn 2023, 174). Some Member States have already harmonised their legislation, such as the German Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb* – UWG),[126] the Luxembourg Code of Consumer (*Le Code de la consommation*),[127] and the Croatian regulations presented in this article. The transposition of the presented obligations into the laws of the EU Member States should lead to a greater awareness of product sustainability and support the green transition, however, due to the demonstrated normative deficiencies of Directive (EU) 2024/825, the question remains whether it will contribute to the more effective enforcement of consumer law.

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Article history:
Received: 30. 5. 2026.
Accepted: 19. 8. 2026.

UDC 316.64:305(497.11); 314.113(497.11:4-6EU); 321.022::351/354(497.11:4-6EU)

CERIF: S 210, S 211

DOI: 10.51204/Anali_PFBU_26304A

Suzana IGNJATOVIĆ, PhD*

*MECHANISMS OF INTEGRATION OF GENDER EQUALITY POLICY INTO SCIENCE POLICY IN SERBIA AND THE EUROPEAN UNION***

The paper explores gender mainstreaming in science policy in Serbia, in the context of EU accession, through hard and soft instruments (laws and strategies) and funding programs. The first part of the paper analyzes the integration of gender equality policies into the science and research sector in the EU, which has intensified in recent decades. In the current EU funding program, the promotion of gender equality goes beyond research action. New institutional mechanisms are introduced (gender equality plans) and the gender dimension is included in evaluation criteria for research grants (content regulation). In the second part, we explore how gender equality policies are incorporated into the science policy in Serbia. It is argued that gender equality mechanisms in the scientific sector are based on incoherent regulation. The EU mechanisms are introduced selectively, focusing on indirect policies (science popularization) and formal measures of gender equality, whereas other mechanisms (content regulation) are introduced inconsistently.

Key words: *Gender equality*. – *Science and research policy*. – *Serbia*. – *European Union*. – *EU accession*.

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** This paper is part of the Research Program of the Institute of Social Sciences (2026), which is supported by the Ministry of Science, Technological Development and Innovation.

1. INTRODUCTION

Gender *and* science and gender *in* science are not new research topics in Serbia. Over the past thirty years, there is an established tradition of sociological research on gender in science and the social status of women scientists (Blagojević 1992a; 1992b; Milić 1992; Pudar, Rácz 2018; Delibašić, Pudar Draško, Fiket 2018; Ćeriman, Fiket, Rácz 2018; Ignjatović 2006; Ignjatović, Buturović 2022). However, the relationship between *gender equality policies* and *science policies* has become relevant in political terms after the process of EU accession was initiated in Serbia. This process has become the strategic orientation of Serbia, leading to top-down reforms. The EU promotes gender equality in all segments of society, including science and research. The gender dimension and the scientific field are closely related, especially in recent decades. The number of research studies on gender has increased by 35% over the past twenty years (Čičkarić 2019, 94). Hence, the question of integrating science and gender policies is relevant for Serbia, including both the positive and the negative consequences of this process.[1]

In this paper we explore how gender equality policies are incorporated into science policies in Serbia within the EU accession process. The focus is on the specific features of public policy and the social context in Serbia, and their influence on the implementation of gender and science policies. We explore the links between the social context and the science sector. Also, it should be noted that the science sector (research institutes) and university sector (higher education) in Serbia are both involved in science and research, yet separated and subject to different regulations. This paper does not explore higher education, although universities are involved in scientific and research activities and belong to the science sector. Higher education curriculum is also beyond the scope of this paper.[2]

We compare science policy and gender equality policy in Serbia and the EU focusing on how they are intertwined and complement each other. We examine in more detail the main instruments for promoting gender equality in science policy in Serbia, and their expected effects on scientific research

[1] Science policy refers to regulations in the sector of science and research, including organization, financing, and management, and scientific activities at the micro-level of institutions and actors. Science is now commonly connected to innovation (R&I), but here we are focusing on the scientific field, especially the programs for basic research which prioritize generating knowledge as a role of science.

[2] Gender aspects of higher education curriculum are explored in Serbian higher education institutions, for example, the Faculty of Law (see Vujadinović, Petrušić 2017).

and the status of men and women scientists. The consideration of the substantial and long-term implications of all relations between these two policy domains is beyond the scope of this paper. The focus is on formal mechanisms and public policy measures for gender equality and science policy in the EU and Serbia. We look at the transformation of regulations in both domains (the scientific sector and gender equality) during Serbia's EU accession process, and the mechanisms of direct or indirect incorporation of gender equality in science (through direct research funding and other related activities). It should be noted that Serbia's accession process has been stalled for the past decade, leading to a significant gap between substantial and formal reforms in many domains. This means either only formal reforms, or reversible or worsened conditions in other domains. A recent example is the temporary suspension of the Law on Gender Equality (adopted in 2021) by the Constitutional Court (Ustavni sud Republike Srbije 2024). This is an example of disharmonious development, which prevents the implementation of gender equality in all social domains.

2. THE MECHANISMS FOR INTEGRATING GENDER EQUALITY POLICY INTO SCIENCE POLICY IN THE EU

Gender equality policy and science policy in the EU are implemented through different public policy measures. Similar methods are implemented in gender equality, science, higher education, and health (Ahrens 2019, 7). Since the 1980s, these domains have been regulated through "soft" public policy instruments, instead of "hard" legislative forms and directives. These policy programs include strategies, action plans, timeframes, and funding for their implementation, but also mechanisms for evaluation and monitoring (Ahrens 2019, 7). This approach was used for harmonizing complicated positions and reducing structural differences between member states (Ahrens 2019). They are implemented through soft *Acquis*: recommendations, conclusions, etc. (Višekruna 2022, 254). Of course, hard policy instruments were also used in gender equality policies. The six directives addressing gender equality, primarily in labour and social rights, are relevant for the scientific domain, for example, gender equality in the workplace, maternity leave or parental leave (European Commission 2020, 8). Science remains under the authority of national regulations for identity-related, and other reasons (Višekruna 2022, 256). The way to overcome these differences at the national level was to strengthen the supra-national EU administrative level, which acquired a dominant position and capacities to allocate funds and even to impose harmonization of the national systems through administrative measures at the EU level, which is particularly important for the countries in the accession process.

The principles of gender equality are mostly introduced through strategies that address all domains through a dual public policy paradigm: gender mainstreaming and specific measures for women. The *gender mainstreaming* approach aims to introduce changes in the "gender contract" in all social areas, including family, work, and politics (Booth, Bennett 2002; Ignjatović, Bošković 2013). Gender mainstreaming is supposed to introduce gender equality in all domains of social life (Čičkarić 2015, 495). The second approach, gender as a *cross-cutting* dimension in terms of intersectionality, combines other dimensions of discrimination and social identities with gender identity (ethnicity, disability, sexual identity, etc.) This approach has been implemented in the scientific domain over the past twenty years. It has been addressed in the latest strategy through intersectionality and other relevant dimensions of discrimination (European Commission 2000; 2006; 2010a; 2020). Both principles have been used in the mechanisms for integrating gender equality into the science sector.

2.1. The sector strategies for science and gender equality

The Lisbon Strategy is a meta-strategy that defined the guidelines for science after 2000, specifically through the Council of the European Union's Resolution of 15 June 2000 establishing the European Research Area (ERA). It emphasizes the "knowledge triangle" of research, innovation and education, with the goal to contribute to the Lisbon Agenda (Council of the European Union 2008).[3] The ERA process introduced a radical change in funding

[3] Meta-strategic frameworks, which set the guidelines for the social and economic development of the European Union for certain time periods, have had a significant direct impact on both gender equality policy and science policy, but they have also indirectly influenced both areas.

Science policy in the EU is guided by the Lisbon Agenda (2000–2010). The Lisbon Agenda determined the strategic development goals of the EU, including those related to science. It has three main goals related to science: sustainable growth, social cohesion, and "to become the most dynamic and competitive knowledge-based economy in the world" by introducing "a new paradigm based on knowledge" (Dion 2005). This orientation of the Lisbon Process was implemented through science funding programs, emphasizing innovation, competitiveness, technology and the IT sector. The core ideas from the Lisbon Agenda are relevant today, especially focusing on innovation and the social role of science. After the Lisbon Agenda, the Europe 2020 strategic document was adopted, covering the 2010–2020 science through *framework programmes,* in order to boost competitiveness, innovation, and practical approaches to social issues (European Parliament, 2017). The EU administrative level of funding science and research was reinforced, emphasizing the harmonization of national systems (Višekruna 2022, 258). The integration of gender equality into science policies was initiated within this framework, focusing on further articulation and convergence of gender equality principles and science policies.

In the next section, we analyze the transformation of goals and instruments for implementation of gender equality in the scientific sector after 2000. In the 2001–2005 strategy (adopted in 2000), science and gender equality are linked through the goal of changing gender roles and stereotypes in science (European Commission 2000). Specific mechanisms were introduced in the 2006–2010 period: gender parity in the management of public scientific institutions, and a mechanism to encourage the participation of women in sectors where women are the minority, such as ICT and technology (European Commission 2006). The third mechanism focused on family-work balance.[4]

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period (European Commission 2010b). It was developed following the 2008 global economic crisis. Europe 2020 focuses more on "smart, sustainable and inclusive growth", but it builds on the strategic goals from the previous strategy – applied science that addresses practical issues. Among the five strategic goals, science and research policy was elaborated in Innovative Europe, which emphasized more investment in R&D (the target was 3% of GDP) by combining basic and applied science, but also private and public sectors.

Gender equality is "a core value of the EU, a fundamental right and key principle of the European Pillar of Social Rights" (European Commission 2020, 1). It is defined in the principles of social cohesion in the Lisbon Agenda. A later critical revision of the strategy, promoted *gender mainstreaming* as a method for introducing gender equality into public policy, but it also recognized multiple discrimination (European Parliament 2009). In Europe 2020, gender equality is addressed similarly as in the Lisbon Strategy (European Commission 2010b). In European Pillar of Social Rights, gender equality is one of the 20 principles that were supported by all EU institutions (European Parliament 2017). This document is more balanced than the Lisbon agenda because it emphasizes the social dimension as a core value of the EU, in contrast to the more market-oriented Lisbon process.

4 There are many initiatives addressing gender equality in science. For example, The Helsinki Group on Women and Science was established in 1999, aiming to promote equal participation of women in science (European Commission 2010a). ENWISE initiative focused on postsocialist countries during their accession to the EU (European Commission 2003). There are many relevant projects financed within EU framework programmes focusing on the status of researchers, and women scientists in particular (Bozzon, Murgia, Poggio 2019). The European Institute for Gender Equality (EIGE) was established in 2010 for monitoring gender equality at the EU level, including official statistics and research (European Union n.d.).

The 2020–2025 Strategy introduced more developed measures for promoting women's participation in ICT, natural and technical sciences (European Commission 2020). This strategy introduced new mechanisms also. One mechanism is the Gender Equality Plan (GEP), a mandatory institutional gender equality plan for institutions applying for scientific framework programmes (Horizon Europe). Moreover, Horizon Europe addresses some current social issues, such as gender aspects of artificial intelligence (European Commission 2020). All these instruments have been integrated into scientific programs.

This process of gender equality integration into science was further articulated through the Ljubljana Process, which defined all the above instruments: institutional measures (mandatory GEP), content regulation in research and methodology, but also monitoring and evaluation of the results achieved in the priorities and goals (Council of the European Union 2021). These mechanisms have three goals: gender equality in research careers, decision making (management), and finally, scientific content (Council of the European Union 2021). The 2022–2024 ERA Plan relied on the Ljubljana Declaration, addressing gender equality as one of the priorities in science reforms (European Commission 2021). This document suggested introducing GEP as a mandatory requirement for research organizations in the application process (European Commission 2021). Since 2022, the GEP has been a mandatory evaluation criterion for applicants, leading to a full integration of gender equality in the funding of scientific projects.

2.2. Gender equality policy in EU framework programmes for science funding

Integrating gender equality into science policy was implemented through the above instruments and mechanisms within framework programmes (FPs) based on seven-year cycles of funding science and research at the EU level. The framework model was introduced in the 1980s as a strategic instrument for coherent implementation of research programs (European Parliament 2017). It is beyond the scope of this paper to explore in detail the history of convergence between gender equality policy and science policy through the FP mechanism. We focus on the recent process of integration and the current science funding program in the EU.

Unlike framework programmes where policy of gender equality is aimed at equal participation of women scientists in all scientific fields and overcoming difficulties related to career breaks due to family burden (see Avramov 2015), in the more recent programs, the gender dimension gained more articulated public policy forms. In Horizon 2020 (2013–2020), the gender dimension was introduced in the rules for calls for proposals, based on the dominant gender mainstreaming paradigm. In addition to the gender balanced composition of applicant teams, gender was introduced in research content and methodology, as an evaluation criterion for some calls, for example, Marie Skłodowska-Curie Actions (MSCA) (European Commission 2017).

The current funding cycle, Horizon Europe (2021–2027), introduced additional changes in all key segments of science (European Commission 2022b; 2022c). First, gender equality goals are *more comprehensive* for applicants; for example, they include prevention of gender-based violence and sexual harassment in scientific and higher education institutions. Some aspects are defined as standards that should be met in the preliminary stage of the application process through internal procedures. Second, there are *new mechanisms* for gender equality that are mandatory (GEP). Scientific institutions are obliged to adopt gender equality plans. These preconditions are mandatory for applicants, and it is not possible to submit a proposal without satisfying these criteria. Third, gender equality policy is explicitly defined as a topic of *horizontal funding programs* within Horizon Europe. These are programs for strengthening the soft infrastructure of scientific institutions (for example, gender budgeting as an institutional mechanism in academic institutions). Gender is recognized as the key dimension of soft infrastructure.[5]

The mechanism of content regulation was implemented in the current model as a legacy of the previous Horizon 2020. It has probably the most far-reaching effect on science because it is implemented through the evaluation mechanism. Gender aspects are not only included in research based on the researcher's judgment and scientific relevance, but they become a mandatory part of all projects. Actually, it is not formally mandatory to address gender dimension, but it should be justified why the applicant does not consider it to be relevant for the given research project. Key components of the project (research problem, scientific methodology) must address the gender dimension. For example, the programs for individual mobility, such as the MSCA, introduced content regulation both in Horizon 2020 and Horizon Europe.

5 For example, *Budget-It* project addresses gender budgeting in academic institutions (and local municipalities) through research and intervention activities (Budget-It 2023).

We looked at the MSCA grants for early career men and women researchers.[6] Gender aspects are included in *excellence*, as the main criterion for project evaluation. This criterion assesses the substantial scientific value of the project: identifying a research gap, state-of-the-art, relevance and novelty of methodology, and expected insights that should contribute to the body of knowledge. A specific sub-criterion of excellence focuses on the methodology, where *gender and diversity aspects* are included as relevant (mandatory to address) dimensions. It is clear that addressing gender does include formal criteria, such as the gender balance of the team. The core methodology is assessed through this subcriterion, so it is necessary to provide an explanation why gender and diversity aspects are not addressed in the proposal (Radiance 2025). Applicants are encouraged to address gender and intersectionality in the other two project evaluation criteria (*impact and implementation*) (MSCA-NET 2021). Proposals usually address the gender dimension by default, through far-fetched claims without proper theoretical and methodological justification. It is implicitly desirable to address gender, so it is rarely the case that applicants disregard this dimension as "not relevant" (even though the rules allow such an approach). There are unintended consequences of content regulation – gender is addressed as a generic, formal, and nonsubstantially relevant dimension of the proposal.

Today, the principles of gender equality are integrated into science policy in the EU through the instruments that shape scientific activities through internal regulations and content regulation (research and methodology). It is beyond this paper to address the long-term effects of these measures. Also, the question arises how this model is transferred to the national science funding programs of EU member states, considering that one of the goals is harmonization of the national frameworks for science funding (European Parliament 2017). The same question arises for EU candidate countries, including Serbia. We explore how the process of harmonization and translation of the EU model has been implemented from above in the science sector.

[6] The 'early career researcher' status is based on the PhD date. Applicants are eligible for MSCA postdoctoral fellowships if up to eight years have passed since they earned their PhD degree. Career breaks are also calculated as additional years due to maternity leave, or career path change. The early career stage is not based on a researcher's age because it would be age-based discrimination.

3. TOP-DOWN GENDER MAINSTREAMING OF SCIENCE POLICY IN SERBIA

Science and research are not the key or critical sectors in the process of Serbia's harmonization with the EU. One reason for this is that science and research are still predominantly regulated at the national level in the EU, in spite of the abovementioned strengthening of the EU administrative level of science funding. The second reason is that researchers from Serbia already participate in the ERA to some extent. Paradoxically, although it is not required to harmonize it with the EU policy, it is precisely science policy in Serbia that has been fundamentally harmonized with the EU. A final evaluation of the chapter addressing science and research in the EU accession process will be performed after the more complicated areas have been successfully transformed through the harmonization process.

A formal inclusion of Serbia in the ERA started when Serbia became the candidate country for EU membership, but collaborative activities were initiated before the official status was granted, in the fields of agriculture, IT, and energy (Potočnik 2009). Following Serbia being officially granted candidate country status in 2012, the process of harmonization with the EU standards has been monitored as part of Chapter 25 (Science and Research). After screening, this chapter was opened and temporarily closed in 2016. The plan was to close this chapter after all the other chapters had been closed, following the progress through reporting (Višekruna 2022, 264). Systemic changes in the science sector are mostly introduced top-down and driven by the incentive for harmonization with the EU. In one of the previous progress reports, innovation and commercialization were given the most attention, in line with the Lisbon Agenda (European Commission 2022a). The report acknowledged that Serbia has participated in seven-year framework programmes for science funding (currently Horizon Europe for 2021–2027), and further investment in science and innovation was encouraged. The 2025 progress report found no progress during the previous reporting period (Evropska komisija 2025).

Although Serbia's EU accession progress has been stalled for years, science policy has radically changed the scientific sector in Serbia. A new systemic legal framework was introduced and fundamentally changed the science and research sector (Zakon o nauci i istraživanjima 2019; Zakon o Fondu za nauku 2018). The Innovation Fund and the Science Fund have become key institutions for project-based funding of scientific research, which fundamentally changed the functioning of science and the status of researchers. Along with this new systemic change, the 2015 amendments to the Law on Science and Research increased the power of the state in scientific institutes by changing the composition of governing boards of research institutes, introducing a majority of government representatives and a minority of representatives of researchers (Zakon o naučnoistraživačkoj delatnosti 2005).

Some issues have been identified in the most recent progress report. The report demands that Serbia guarantee the autonomy for research institutes and universities, and respect academic freedom and freedom of scientific research, in line with the ERA principles (Evropska komisija 2025, 16). We will not go into detail here on the backsliding of Serbia's accession progress. We will focus on the key changes in science and gender equality and demonstrate how some EU principles and standards have been introduced selectively. For example, content regulation is not as significant in Serbia's calls for scientific projects, although this was introduced in the set of evaluation criteria, without modifications for small scientific systems with many specific needs. Also, some mechanisms of gender equality in science cannot be implemented because they are not supported by the basic regulations necessary for their implementation (for example, the suspension of the Law on Gender Equality).

The reforms of the scientific sector are supported by IPA funds and World Bank loans. One example is the Serbia Accelerating Innovation and Growth Entrepreneurship Project (SAIGE), which was a framework for the transformation of scientific institutes (Republic of Serbia 2019). This project reflects the Lisbon process, imposing a new model of science funding and management. According to this paradigm, science is inseparable from the economy and its "commercial" dimension. The Innovation Fund has a role, along with the Science Fund, to promote entrepreneurship and innovation. Even the calls for basic research projects by the Science Fund impose the post-Lisbon conception of science. This orientation of Serbia's science policy is a sign of the lack of awareness of the specific needs of Serbia's small science and research sector. The direct copy-paste of mechanisms may result in unintended consequences. Gender equality policy was integrated into science policy in this process. For example, the Science Fund opened calls that promote the participation of women and women's entrepreneurship (Republic of Serbia 2019).

In Serbia's accession process, gender equality is addressed in the chapters addressing fundamental rights, whereas the chapter related to science does not address gender equality as a value that must be incorporated in the system through harmonization. However, a large part of gender equality policy was guided by the EU accession process. The policies were transformed into "state feminism" which set strategic priorities, but also encountered certain problems in the implementation (Ignjatović, Bošković 2017; Antonijević 2016). Currently, there are several modalities of connecting gender equality and science policy in Serbia. The first is *direct participation* of Serbian researchers in EU science funding programs. The rules and conditions apply to participants from Serbia, which means that certain instruments for gender equality must be introduced to ensure eligibility.[7] The second modality is the promotion of gender equality policy in science through *reform programs* funded by the EU. These programs target science, gender equality, and the intersecting areas. After 2000, the topic of gender equality in science was supported in different ways. For example, the program for research and innovation targets the *widening countries* with weak track records of success in EU science funding programs (Serbia is one of them) in order to promote their participation in the ERA. Along with the harmonization of national science system with that of the EU, this program has different instruments for systemically addressing gender equality in scientific projects, for example, by providing support for developing *gender equality plans* (European Commission 2022b).

3.1. Diverging paths of soft and hard instruments for gender equality and science policy

Another two methods of integrating gender equality policy and science policy in Serbia show the level of integration of gender equality policy into science policy at the national level. First, there are soft and hard instruments of national public policy, legislation and strategic documents in science and related areas (education, technological innovation) and in the area of gender equality (similar as in the EU, as mentioned above). There are also programs for funding scientific research which show how plans and regulation frameworks are implemented in the system for the allocation of financial resources in the science sector.

Gender equality policy and science are linked by the following legislation: the 2009 and 2021 laws on gender equality, and the 2005, 2010, 2018 and 2019 laws regulating the science sector.[8] The 2005 Law

7 For example, the Leading Towards Sustainable Gender Equality Plans in research institutions (LeTSGEPs) project, implemented by the Mathematical Institute of the Serbian Academy of Sciences and Arts, deals with introducing GEPs.

8 The Budget Law is an important hard instrument because it allocates public funds for strategic goals, including science and gender equality. Also, regulations for preventing discrimination are important. Here, we are primarily interested in the convergences of the basic legislative frameworks for science and gender equality.

on Science and Research does not address gender perspective, whereas the amendments to the law (2015) introduced gender equality principles: balanced participation of men and women in science governing bodies, national commissions for scientific fields and scientific journals (Zakon o naučnoistraživačkoj delatnosti 2005). The 2009 Law on Gender Equality mostly regulated discrimination in the science and research sector (Article 30, Zakon o ravnopravnosti polova 2009). We argue that gender equality is addressed more specifically in the legislative framework for science than in the general legislation on gender equality.

This relation between gender and science regulations deteriorated further. In the current regulatory framework, there are fewer measures and instruments for gender equality than in the basic law on gender equality. The law stipulates that science and research are based on the principles of "gender equality in science and research, as well as in governing bodies in science" (Article 4, Zakon o nauci i istraživanjima 2019). The law introduced a note about using the grammatical male gender for women, disregarding gender sensitive language for science promotion grades. Maintaining the researchers' registry by gender is presented as a gender equality mechanism, rather than just an administrative measure (Vlada Republike Srbije 2021b). The previously mentioned parity in the representation of both genders in governing bodies was not included in this law. According to the Law on the Science Fund, gender equality must be ensured in the Science Council, as the governing body of the Science Fund (Zakon o Fondu za nauku 2018).

Unlike in the case of these modest measures, the current Law on Gender Equality (2021) contains evidence that the ongoing process of integrating gender equality into science in the EU has effected the new regulations. There are measures for "equal opportunities for women and men" in different areas of society, including science and technological development (Article 1, translated by author). Furthermore, goals and instruments are elaborated in the sections of education, science, and technological development, stating that resources should be provided for gender equality promotion (Article 37): "introducing and implementing measures in the area of science and research, financed by public funds, for the purpose of including the gender perspective in all stages of the creation, evaluation, selection, implementation and assessment of scientific projects results, as well as equal participation of women and men in research teams and governing bodies responsible for the creation, evaluation, selection, and implementation of scientific research projects" (Zakon o rodnoj ravnopravnosti 2021, translated by author). This strategic goal was aligned with the Ljubljana process, but the legislation for the science sector did not follow these changes, despite both laws being adopted during the same time period (Table 1).

Now we take a look at the strategic documents to examine whether gender equality is more integrated into science policy through soft instruments, like in the EU. Our focus is on the period starting with the temporary closure of Chapter 25: Science and Research (2016) until the present. The strategic documents for the gender equality and science domains were adopted following the same dynamics (2016 and 2021). The Strategy for Science and Technological Development (2016–2020) addressed gender equality through the economy, with no specific links to the science area. The gender dimension is included in the strategic goal addressing human resources and minorities. Gender budgeting is planned at all levels of governance, and measured through quantitative indicators of participation of women in decision making and some research areas (Vlada Republike Srbije 2016b, 15–16). The 2016–2020 Strategy for Gender Equality reinforced the participation of women in certain scientific fields, the promotion of women's achievements in science, fighting discrimination, and ensuring the promotion of women (Vlada Republike Srbije 2016a). In this segment, these two strategies converge to a large extent.

Another segment of the strategy related to science apparently goes a step beyond the science strategy. It includes changing gender patterns and promoting gender equality culture in higher education and gender studies, implying a narrow scientific approach to gender (Vlada Republike Srbije 2016a). Marijana Pajvančić noted another goal that is not specific to science: introducing gender perspective into all strategic documents (Pajvančić 2020). However, there are no guidelines for science, nor are the effects of the earlier model examined, when science was addressed together with education, technological development, and economic empowerment, thus completely disregarding the specific features of science.

Did something change in Serbia after the Ljubljana process? The 2021–2025 Strategy for Science and Research draws on the ERA principles, among others: "Gender equality in leadership positions, developing gender equality policies in research organizations" (Vlada Republike Srbije 2021b). It is stated that the goal of the previous strategy (enhancement of gender equality and minority equality in science and innovation) has been partially achieved, but the revision of goals and new measures for gender equality were not addressed. The Strategy is "gender blind", just like the current legislation in the science and research sector (2019) lacking even the basic gender sensitive language (for academic ranks in the science sector).

The 2021–2030 Strategy for Gender Equality addresses this discrepancy between the previous strategies and laws on promoting gender equality in science (Vlada Republike Srbije 2021a). In this new stage, there is a divergence regarding the strategic direction for the development of gender equality during the same period, in terms of the EU trends. The terminology of the Ljubljana process was introduced into Serbian regulations and the mandatory GEP is mentioned as a precondition for EU calls in science (Vlada Republike Srbije 2021a). The new strategy for science does not adequately address the issue of gender equality, although some positive solutions from the Law on Science and Research (2019) are mentioned. However, basically, these stipulations just partially contribute to the integrating of gender equality in the science sector. Some solutions are taken from previous practices, for example, maternity leave is deducted from the period for scientific promotion, as is the case with providing statistics by gender (registry).

On the other hand, the Strategy does not define specific measures for gender equality in leadership. Gender sensitive language is again addressed in a note about grammatical male gender as inclusive of both genders (Vlada Republike Srbije 2021a). Formal representation is emphasized, like gender parity in higher education in different research areas. However, the current strategy for gender equality does not provide specific solutions for local science in Serbia, with complicated status-related and organizational forms. Only universities are addressed in the strategy, whereas institutes are not recognized as scientific research organizations. This dualism in the science sector became even more evident when the ministries for education and science were separated in the government (Vlada Republike Srbije 2022).

Table 1. The level of harmonization of regulations for gender equality and science

Gender equality	**Science**	**Level of harmonization**
Law (2009): ban on discrimination in science	Law (2005): no specific measures for gender equality	Law on Gender Equality (2009) and Law on Science and Research (2005): low
	Law (2005/2015): Gender parity in governing bodies (national boards for scientific areas, other commissions)	Law on Gender Equality (2009), Law on Science and Research (2005/2015): high

Gender equality	Science	Level of harmonization
Law (2021): Representation, content regulation in science, gender dimension in project evaluation criteria	Law (2019): Representation of women in leadership, administrative measures (registry by gender) Law on the Science Fund (2018): gender equality in governing bodies (Science Council)	Law on Gender Equality (2021), Law on Science and Research (2019): low

Source: author.

3.2. Gender mainstreaming of science funding

We will look at the two examples to show the scope and limits of financial support for integrating gender equality policies into science policy in Serbia. First, we analyze the role of the Center for the Promotion of Science in the gender equality promotion activities. The Center performs auxiliary and secondary activities related to science. It is more related to education and media domains, than science. However, its role is recognized in the 2021–2025 Strategy for Science and Research. It is interesting to note that its role in promoting gender equality is not clearly emphasized in laws and strategies, but it is involved in promoting gender equality as "scientific activity". In the Law on the Budget of the Republic of Serbia for 2023, resources were allocated for "gender and science" through promotional activities of the Center, under the following program activity: "Providing support to the Center for the Promotion of Science" (Zakon o budžetu Republike Srbije za 2023. godinu, 2022, translated by author). The second goal is more specific: "Increase the amount of popular science content for young people, to support future generations of scientists and enhance gender equality in science and increase the interest of women in careers in science" (Zakon o budžetu Republike Srbije za 2023. godinu, 2022). One of the indicators for monitoring this activity is "the number of workshops addressing stereotypes [the word was misspelled in Serbian, note by the author] in science and the importance of women in science" (Zakon o budžetu Republike Srbije za 2023. godinu, 2022, translated by author). Leaving aside linguistically and fundamentally vague definitions, which may indicate the low quality of Center's program activities, this approach to integrating gender equality into the science sector is based on indirect, secondary activities in science (popularization of science).

Another example is the Science Fund, which has an even bigger role in science funding, and consequently – gender mainstreaming. Since 2019, the Science Fund has the main role in allocation of public expenditure for scientific research in Serbia through different calls and programs. The Fund is modelled on the EU framework programmes and plays a key role in science funding because institutional funding does not cover research expenses. The Science Fund was established as one of the pillars of the 2016–2020 Strategy, which introduced a balance between institutional and project-based funding in science. Paradoxically, although the previous model was project-based science funding, it was much more flexible compared to the current mixed model. The Science Fund has the main role in funding science and in the past several years it has shaped scientific work more than any other institution before.

The question is: has the gender dimension been included in the science funding model, predominantly implemented by the Science Fund? The Fund has a key role in the allocation of public resources for scientific research through public calls. The legal framework for the Science Fund (2019) insufficiently addressed gender equality. We mentioned above that gender parity was mandatory for the governing bodies of the Science Fund (Scientific Council). However, unlike EU programs, the Fund's public calls and programs do not include all mechanisms for gender equality, for example, mechanisms for addressing sexual harassment, especially in universities and scientific institutes, although a great number of scientific institutions have developed these mechanisms in the past few years.

The requirements for basic research grants and programs in all scientific fields have diverged from the EU requirements. The first calls for proposals by the Science Fund in 2020 (the special COVID-19 and IDEAS programs), just like the 2022 program IDENTITIES, did not include gender studies as a scientific field in the application form. The question arises regarding how competent the selected project evaluators were if there was no clear indication of a scientific subfield.[9] However, in the 2024 IDEAS Call, the gender dimension was introduced through content regulation in the excellence criterion, similar to Horizon Europe (Fond za nauku 2024). It is

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[9] The results of the previous Science Fund calls should be explored from a gender perspective, as well as the effects of the Science Fund funding model on the status of researchers employed in the science sector. We do not address these issues here, but we do focus on public policy and the formal framework for gender equality in science.

too early to estimate the effects of integrating gender equality into science policy, considering that the results of the call are still pending (a year and a half after the call closing date).

4. CONCLUSION

The process of integrating gender equality into science policy in Serbia was guided by the process of accession to the EU, in spite of stalled dynamics of harmonization with EU standards in other areas over the past years (Evropska komisija 2025; European Commission 2022a; Pejić Nikić 2026). Although gender equality policy has changed in the EU over past decades, the result of this development was the complete integration of gender equality in the science and research sector. The ERA plan for 2022–2024 showed a gap between EU level and national systems, therefore the process of harmonization was included in the science agenda. Also, science funding at the EU supra-national administrative level was strengthened and had a great influence on the science systems of the EU member states and candidate countries. Further development in Serbia will depend on the country's future strategic orientation, considering that its accession has for some time been more formal than substantial.

The process of Serbia's accession to the EU has influence on the integration of gender equality policy into science policy. First, some activities related to gender equality in science are mostly based on auxiliary, secondary activities which are not directly related to scientific research (Center for Science Promotion) but take the role of promoters of gender equality. The second dominant mechanism is formal representation in governing bodies; gender equality is less represented in content regulation and program-based funding of topics addressing the gender dimension.

The integration of gender equality into science policy in Serbia is achieved through *selective adoption* of EU models, including the strategic directions and their implementation through instruments and mechanisms. Some instruments are introduced indirectly through education and training projects in research organizations (for example, training on gender budgeting or GEP development), but their effects are not direct. The analysis of regulations in the science sector indicates that the legislative framework was developed with a *discrepancy* in the dynamics and types of measures. Due to the discrepancy, in some periods there was greater convergence between gender equality in basic legislation (the law on gender equality) and gender equality in legislation in science. The culmination of the discrepancy was the recent suspension of the Law on Gender Equality, which practically prevented the coordination of measures in different areas, including in science. Finally, the mechanisms of gender equality in the science sector have been introduced *inconsistently* in practice. Even when some principles are introduced in gender equality policy based on the EU model, they are not implemented consistently. For example, the IDEAS Call (2024) introduced mechanisms for the gender dimension in projects, but the call has administrative and substantial problems, so the funding for projects has not yet been granted.

The adoption of the EU models of gender equality in the science and research sector in Serbia is shaped by global factors, which have radically changed the status of science in society, but also by the specific trajectory of gender equality policy in Serbia over the past thirty years (Ignjatović, Bošković 2017). Leaving aside Serbia's specific features in the area of gender equality and the stalled accession process, the global context is the same for Serbia and for the EU. Some policy instruments in the science sector in Serbia and the EU are created as an attempt to respond to the recent changes in the status of science as a profession, which has changed substantially in recent decades. Researchers are faced with challenges of precarious work, a reputational crisis in science, and restricted autonomy of scientific work (Ignjatović, Buturović 2022). As a reaction to these challenges, researchers have increased their interest in their own status, which has resulted in an increased number of research studies on the status of science in society (as we mentioned in the Introduction). One aspect of this auto-reflexivity is an increased interest in the intersection of the gender dimension with science policy and its effects on the functioning of science (Le Feuvre *et al.* 2019; Ignjatović, Buturović 2022). This context will shape the future direction of the integration of gender equality policy into science policy in Serbia.

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Article history:
Received: 7. 4. 2026.
Accepted: 27. 5. 2026.

UDC 347.65:[004.78:347.23

CERIF: S130

DOI: 10.51204/Anali_PFBU_26305A

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SUCCESSION TO DIGITAL PROPERTY AND THE ROLE OF NOTARIES PUBLIC IN DIGITAL ASSET PROBATE

This article presents an analysis of the theoretical and practical challenges of inheriting property in digital form. The authors conclude that, in most cases, there are no justified reasons for non-inheritability of digital assets, pointing out that exceptions to the principle of inheritability of subjective rights need to be justified with convincing reasons. Special attention is devoted to the question of invalidity of terms in contracts for digital services which unjustly prohibit succession to contractual rights and duties. The authors also analyse the role of notaries public in the succession of digital property and the potential of the service of notaries public in improving the practice of planning and inheriting digital assets. The authors conclude that existing rules of succession law are adequate for the succession of digital rights and that there is no need for a reform of succession law or for special legislation.

Key words: *Digital property. – Succession. – Notary public. – Succession law. – Cryptocurrency.*

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1. INTRODUCTION

Technological development of the past several decades has drastically changed the way in which we communicate in everyday life, the way in which we work, and the way in which we keep our property. Digital assets – assets that exist in the form of digital data or as a right to a certain digital service – make up an increasingly significant part of estates, not only because numerous digital assets are becoming more valuable, but also because of the development of new types of digital assets and because traditional property interests are also often expressed in digital form. Consequently, the notion of digital property is discussed increasingly often as a set of rights with pecuniary value that exist only in the digital world (only in the form of digital data). Since this is a relatively new phenomenon and property in digital form was most often owned by young people, the question of succession to digital property was rarely raised. However, the time is now fully ripe to discuss and legally regulate this aspect of digital assets. At the same time, a drastic deviation from existing rules on property should not be expected, but rather their adaptation to new forms in which pecuniary values are expressed.

Contemporary civil law is founded on the principle of the inviolability of private property, market freedom and autonomy of will of subjects in civil law transactions. Therefore, it is easy to understand that civil law is biased towards inheritability and transferability of patrimonial rights. Civil law rights are transferable and inheritable as a matter of principle (Vodinelić 2012, 40–41). Non-inheritability and non-transferability are exceptions that must be justified by convincing reasons. However, in the world of digital assets, inheritability is often called into question – whether due to technical obstacles that stand in the way of heirs (such as lack of knowledge of access data), or due to attempts of digital services providers to limit the rights of users and to exclude all costs and risks associated with succession to these rights. The move from the analogue to the digital world endangers the system of succession because heirs are often unable to access and administer digital assets. It should also be kept in mind that, broadly speaking, there are two categories of digital assets depending upon whether there is an intermediary who allows the owner to use the digital asset or the owner directly administers the digital asset themselves. The first category encompasses all digital services and all digital assets that are enjoyed through an online platform or on the basis of an information system of the service provider. The second category encompasses digital data based on distributed ledger technology, which are controlled directly by the user without an intermediary. In the former case, the digital service provider may allow the heirs to access digital assets. In the latter case, the heirs may rely only on data that they received from the decedent.

Even if digital service providers attempt to limit the inheritability of the rights of their users, it is difficult to deny the interest of heirs to include those rights in the estate. The heirs have a justified interest in accessing digital assets of the decedent and especially their online accounts, which is of importance for administration of the estate. Heirs need the access in order to determine the value and composition of the estate, to acquire a complete picture of the legal relations of the decedent, to interpret the last will of the decedent and, in general, to be able to administer the estate (Kutscher 2015, 18–19). In addition, civil law is based on the principle of the inviolability of private property, which includes the right to dispose of property *inter vivos* and *mortis causa*. Rules that exclude the possibility of succession to digital assets, without good reason, should be viewed with great suspicion. It is necessary to carefully examine the justifiability and the legal validity of contractual terms that preclude heirs from accessing digital assets or limit their ability to succeed to digital rights.

This article contains an analysis of the notion of digital property and digital estate as well as reasons that speak in favour of or against the inheritability of rights to digital assets. The starting point is the idea that rights in the digital world may be incorporated in the existing system of civil law and succession. The authors advance the thesis that rights to digital assets are capable of being subject to succession and that exclusion from succession must be justified by convincing reasons.

2. THE NOTION OF DIGITAL PROPERTY

The development of digital technologies and their application in all spheres of life and work have resulted in a significant market value of digital data and rights of access to digital services. The term digital assets or digital property is used to denote such digital data and services with patrimonial value. These expressions do not have a precisely defined meaning, nor do they require it, because they are used to refer collectively to various kinds of digital objects. For example, digital property may refer to digital data stored on physical data carriers, rights to use accounts on various online platforms, digital content stored on cloud servers, intellectual property rights to digital content (photos, videos, announcements, etc.), rights to use internet domain names, rights to digital currencies and tokens, video games, accounts on dating websites... It is rightly pointed out in the literature that the notion of digital property or digital estate is of a descriptive nature and that it encompasses such varied relationships that no legal conclusions may be drawn from that notion and that legal questions arise only with regard to certain interests in digital assets (Budzikiewicz 2018, 559–562). Digital property is not a separate patrimonial unit in the sense of civil law because the rights that are included in that notion are of different content; they are not under a unitary legal regime and they are not a single organised whole with a defined legal function. The notion of a separate patrimonial unit implies an organised set of rights that are subjected to a unitary legal regime, with the aim of serving a given interest (Vodinelić 2012, 271–272). One of these separate patrimonial units is the estate, which is comprised of all inheritable rights and obligations of the decedent, for the purpose of allowing universal *mortis causa* succession (Vodinelić 2012, 276). Therefore, the notion of digital estate should be derived from the notion of digital property: it is necessary to determine which of the rights, from the broad concept of digital property, are capable of being subject to succession so that they are included in the estate, as a separate patrimonial unit that undergoes universal succession.

One cannot speak of inheritability of digital rights in general because it depends on the object, the legal basis and the aims of these rights. It is, therefore, useful to analyse various digital rights through a typology of digital assets, which is based on characteristics that are relevant for the civil law regime. Legal theorists have developed numerous such typologies, in accordance with issues they have examined (Klasiček 2023, 238–239). In the context of this article, a simple three-part typology may provide a starting point. In most cases, rights to digital assets and services may be deemed contractual rights. The use of accounts on various online platforms or mobile apps is based on a contract between the user and the service provider. Thus, the issue of inheritability of these rights is subject to the rules on inheritability of contractual rights and obligations. However, some digital assets are not based on contract, which raises the questions whether these assets are objects of property rights (*iura in re*) or sui generis rights that are neither contractual claims nor property rights. This question arises with regard to bitcoins, other digital currencies and digital tokens that are based on distributed ledger technology. Finally, the question of rights to individual digital data, regardless of the digital asset they comprise, is also raised due to their increasing economic significance.

2.1. Contractual Rights in Digital Assets

The biggest part of digital property is comprised of rights, which differ from property rights in that they are not connected to a physical object nor can they be applied directly without the use of a technical intermediary.

The existence of an intermediary is one of the fundamental characteristics of digital forms of property and it requires special regulation (Birnhack, Morse 2022, 5–7). We use our accounts on online platforms, email accounts, internet domain names, online payment accounts and other similar services on the basis of contracts with service providers, which act as technical intermediaries between us and 'our' accounts and data. The 'owner' of a Facebook account has nothing but a contractual right to use the Facebook platform on the basis of a contract concluded with the Meta company (Meta Platforms, Inc.). Similarly, the 'owner' of a national internet domain name has a time-limited right of use on the basis of a contract with one of the authorised registrars. Even if the registration of an internet domain name can be extended an unlimited number of times, the right to use an internet domain name is not unlimited in time and may not be used without the support of the internet service provider. The right to use an email address is regulated by a contract with an email service provider and cannot be separated from that relationship.

When speaking about access to online accounts, a distinction should be made between the right to access the account (formal access) and the factual ability to access the account (informal access). In most cases, an account may be accessed on the basis of certain access data (username and password), regardless of whether the person who accesses the account is formally entitled to use that account. Online services providers do not have the means nor the interest to control whether an account is accessed by the formal 'owner' or by another person who received the access data from them. However, since unauthorised access to an account may be deemed a breach of contract (Berlee 2017), it is important for the heirs to have their right to access the account formally recognised, regardless of their factual ability to gain access.

Accounts cannot be deemed movable things because they lack physical form, because they are not computer programmes but only sets of data that enable the use of certain computer programmes, and because they are inseparable from these computer programmes (Kutscher 2015, 22–25). Technically speaking, accounts are not separate entities but parts of larger digital systems. A user has the right to use a certain online platform and to store their data on servers, which are controlled by the service provider. Of course, even the servers, as physical things, do not necessarily have to be owned by the service provider, which means that ownership of technical infrastructure cannot be used as a criterion for determining digital data rights and rights to use a certain digital service. Most digital services, especially the services of large online platforms, such as social networks, are based on a complex web of contractual relations.

Succession to digital rights is sometimes examined from the viewpoint of intellectual property rights, however, this area of law offers answers for only some of the questions that arise in connection with digital estates. Regardless of the fact that content on online platforms may be protected by intellectual property rights, this protection will be of little help to the heirs because IP rights do not guarantee the right to access an account and also because heirs often do not have knowledge of the contents of a decedent's account (Kutscher 2015, 37–39). IP rights are also of no help to the heirs with regard to digital assets that fall outside the scope of IP protection, such as virtual objects in online video games (Kutscher 2015, 40). Such virtual objects are part of the computer programme, which is subject to the IP rights of the programmer who made it. Therefore, succession to IP rights does not cover all of the rights that are necessary for the enjoyment of digital assets.

Given that the rights to use digital services are based on contracts between users and service providers, the issue of succession to these rights is determined by rules of succession to contractual rights and obligations. Civil law accepts the principle that contractual rights and obligations are transferred to the universal legal successors of the deceased contracting party, unless they are bound to the person of one or both contracting parties – either due to the nature and functions of a right or duty, or according to the intention of the contracting parties. However, digital service providers often exclude the possibility of transferring or succeeding to contractual rights, which raises the question of legal validity of such clauses. In a large number of contracts the possibility of transferring or succeeding to rights is completely excluded, but recently there is also a growing number of contracts which allow the user to designate a 'successor' within a certain digital service whose rights are usually more restricted in comparison to the rights that the user enjoyed on the basis of the contract (Vidić, Kovačević 2022, 430–433). There can be no doubt that contracting parties have the freedom to exclude inheritability of contractual rights and obligations, but that freedom is limited by general rules of contract law, which safeguard fairness of contractual transactions. The exclusion of inheritability of contractual rights cannot be legally valid if there is no legal interest to exclude succession and also if such a provision was forced on the party who finds itself in the weaker bargaining position. It should also be kept in mind that the presumption of inheritability of subjective rights serves not only private interests, but also the public interest in unimpeded transactions in patrimonial rights and preservation of continuity in legal relationships.

Exclusion of transferability and succession has become so dominant in the world of digital assets that the move from the analogue to the digital world is associated with a loss of freedom and autonomy. This may be illustrated by a simple example that is often encountered in the literature: if we buy a book, we are entitled to freely dispose of it – it becomes our property; if we buy a digital book, we have most likely bought only a limited licence to read it through the online platform with which we concluded the contract. The law started to react to such limitations of the freedom to dispose of digital assets. The practice of excluding the right to dispose of digital assets has been strongly criticised in legal theory and it is even being discussed under the notion of *digital feudalism* (Banta 2017, 1149–1156). This expression is not exaggerated because it clearly indicates the fundamental difference of rights in digital assets. When we say that a certain digital asset is 'ours' it often means something quite different from the meaning these words would have in the analogue world. In a large number of cases the 'owners' of digital assets only have the right to use digital services and cannot transfer that right to others.

The validity of contractual terms that exclude succession may be examined from the perspective of several different general rules. First of all, if a non-inheritability clause is part of general contract terms, the rules protecting formal and substantive fairness of general contract terms are applicable. If the party that accepted general contract terms was not adequately informed of their content, the general contract terms will not be considered as part of the contract.[1] However, regardless of this, a general contract terms clause is void if it is contrary to the purpose of the contract or to good business practice.[2] In addition to this rule of invalidity, which may be understood as an expression of the general provision on invalidity of contracts, the Law on Obligations authorises the court to refuse to apply any general contract terms clause that it finds to be unfair or excessively strict towards the other party.[3] The legislator thus established a stricter standard for fairness of clauses in general contract terms: they will have no legal effect if they drastically impair the contractual balance (frustrating the purpose of the contract or violating good business practice), as well as if they are unfair to a lesser degree.

The fact that social networks users offer their personal data and consent to its use as consideration for the right to use an account may speak against inheritability of rights relating to social media accounts. The creation of

1 Law on Obligations – LO (Zakon o obligacionim odnosima), *Official Gazette of the SFRY* 29/78, 39/85, 45/89 – decision of the CCY and 57/89, *Official Gazette of the FRY* 31/93, *Official Gazette of SCG* 1/2003 – Constitutional Charter, and *Official Gazette of the RS* 18/2020, Art. 142 (3).

2 Law on Obligations, Art. 143 (1).

3 Law on Obligations, Art. 143 (2).

personalised advertising content would be made significantly more difficult if heirs were entitled to continue using the account of the decedent since the personal data of different persons would become mixed together, which could lead to the conclusion that the obligation of an account user is of a personal nature and that the right to use the account is therefore non-inheritable (Budzikiewicz 2018, 570–571). This argument loses its power with regard to digital service providers whose business model does not involve personalised advertising. In addition, a distinction should be made between individual contractual rights and the contractual relationship as a whole. Even if the right to use an account is bound to the person of the user and ends with their death, this does not mean that the whole contractual relationship also ends. The legal relationship that existed between the deceased user and the service provider is transferred to the heirs to the degree that is necessary to resolve that relationship – by deletion or transfer of the data that the user had entrusted to the service provider (Budzikiewicz 2018, 571–573). The complete exclusion of heirs from accessing an account may be argued for only with regard to online platforms that contain intimate data, such as dating sites, or when the user expressly stipulated so. The intention to exclude heirs from access to an account may be presumed when access to an account is biometrically protected – when access is obtained by fingerprint or facial scanning.

It is difficult to justify exclusion of the right to use a digital service when the service includes storage of users' data because the right of heirs to access and receive the data is necessary for achieving the purpose of the contract. A digital service contract that includes data storage would be significantly undermined if the obligation of safekeeping users' data would not extend to the obligation to provide that data to the heirs after the user's death. When heirs did not have any rights with regard to the data of deceased users, the data would simply be lost, even though such a result does not serve the interests of the service provider, the interests of heirs, or the legitimate expectations of the deceased user at the time when they concluded the contract. This line of reasoning may be decisive when deciding the validity of contractual non-inheritability terms – if heirs are, without good reasons, excluded from accessing and receiving the data of a deceased user, the digital service contract is frustrated and the non-inheritability clause may be deemed contrary to good business customs, unfair or excessively strict towards the user. By way of an example of unfair general terms of contract, the German Civil Code explicitly mentions terms that deviate from the fundamental principles of legislative solutions and terms that undermine the main obligations of contracting parties in a way that frustrates the purpose of the contract.[4] The freedom of contract is naturally limited by the purpose and meaning of the contract that has been concluded.

Finally, one should keep in mind that succession cannot be completely avoided – digital data will not automatically disappear when a user dies; the question then arises who will be authorised to access the data in the future and whether they will have the right to delete it. Clauses that prohibit succession to digital assets cannot completely prevent the transfer of data – or control over data – to another person. The death of an account user does not imply the extinction of their data and digital assets; it is only uncertain whether these assets belong to the estate or revert to full control of the owner of the online platform on which they are located (Banta 2017, 1131). In most cases there are no convincing reasons to deny the heirs access to digital data. Inheritability of accounts and account data meets the legitimate expectations of all interested subjects: the deceased user, their heirs, and the service provider.

2.2. Bitcoin and Similar Digital Tokens

Digital tokens are digital data that may be accessed and controlled only by persons who hold the necessary access data (private key). Digital tokens have pecuniary value as a means of exchange or as a digital representation of other patrimonial values. According to the definition in EU law, crypto-assets are comprised of digital data, which represent certain value or rights and which may be kept and transferred on the basis of distributed ledger technology (DLT) or similar technology.[5] Serbian law contains a similar definition of digital assets, which includes any 'digitally recorded value' that may be transferred digitally, apart from digital records of fiat currencies.[6] Serbian law makes a distinction between the notion of virtual currency, which is used to designate crypto currencies (decentralised fungible digital tokens), and the notion of digital token, which is used to refer to all other digital tokens that represent other patrimonial rights.[7] It is very important that the Law on Digital Property, in the definition of a digital token, explicitly acknowledges that patrimonial rights apply to digital tokens as immaterial

4 More on this *infra*.

5 Regulation (EU) 2023/1114 on markets in crypto-assets (MiCA), Art. 3 (1) (5).

6 Law on Digital Property (Zakon o digitalnoj imovini – ZDI), *Official Gazette of the RS*, 153/2020), Art. 2 (1) (1).

7 Law on Digital Property, Art. 2 (1) (2 and 3).

property.[8] Digital tokens are based on distributed ledger technology, which entails decentralised recording of transactions with digital tokens that prevents copying and falsifying digital tokens. Data relating to digital tokens is part of an autonomous and decentralised system in which the validity of transactions is checked automatically by way of computer algorithms (UK Jurisdiction Taskforce 2019, 10). Without going into excessive technical details, it can be said that digital tokens are similar to moveable things (e.g. cash) in that the 'owner' of a token has immediate control over their tokens. With access data, the owner may freely dispose of tokens and all other persons are prevented from interfering with transactions (the protection is even stronger than with moveable physical things). Transfers recorded in the common digital ledger are final and irrevocable, but the transferee may effect a return transfer if they have the necessary access data. The main difference, in comparison to other forms of digital assets, is that there is no intermediary, there is no service provider who enables the use of digital tokens – digital infrastructure is used directly, on the basis of access data. Intermediaries appear in the process of selling and buying digital currency (digital exchange offices), but they are not necessary for the transfer of digital tokens.

First of all, the famous bitcoin should be mentioned – but this category also includes all other digital currencies and digital tokens that are based on distributed ledger technology. In addition to digital currencies, which are fully fungible and divisible (same as fiat currencies), there are also non-fungible digital tokens, which are not fungible nor divisible, but are unique and represent an individually defined right of the owner of the token (e.g. ownership over a certain piece of art). Both types of digital tokens are based on the same technology and are significantly different to other forms of digital property. Digital tokens are specific because they most closely resemble the civil law notion of movable things. Even if they are not physical objects (which may also be called into question from a technological viewpoint – they consist of electrical energy as part of the physical world), digital tokens cannot be copied, they are controlled by an 'owner' and may be freely transferred and exchanged. Another characteristic of this type of digital asset is that they cannot be easily qualified within the existing categories of civil law, which is very important for their legal regulation – they are neither ownership rights in things, nor claims towards a person. 'Owners' of digital tokens have immediate digital control over the tokens and may use them and dispose of them without participation of an intermediary. This fact has influenced legislators to provide special laws, which recognise civil

8 Law on Digital Property, Art. 2 (1) (3).

law protection of digital tokens as a special kind of property. An example may be found in the English Law on Digital Property which recently entered into force and which wisely provides that property law protection cannot be denied to digital assets only because these assets are neither things in possession nor things in action.[9]

The fact that English law spearheads the acceptance of digital property comes as no surprise since common law allows much greater freedom to courts to apply general legal principles to new factual situations, compared to continental legal systems where new solutions must be incorporated into a codified legal system. In order to support the development of digital property and security of transactions in digital tokens, a group of distinguished English jurists has drafted a professional commentary which calls for acceptance of property rights in digital assets. They point out that crypto-assets conform to the definition of property rights that has been developed in court practice and that there is a practical need to provide crypto-assets with the same protection that is provided to property rights (UK Jurisdiction Taskforce 2019, 11–16). Similarly to other property rights, digital tokens are defined, they can be controlled, and they can be transferred from one subject to another, with the assumption that the owner of digital tokens is the person who legally acquired the private key that allows control over data stored in the digital ledger. The classification of property rights into two categories, physical objects (*choses in possession*) and non-physical rights that are enforced before courts (*choses in action*), which has been developed in court practice, does not prevent the adoption of new forms of property rights, regardless of whether that property can be physically possessed or enforced before courts or within an autonomous digital system (UK Jurisdiction Taskforce 2019, 18–21). This categorization was developed in order to make legal rules more transparent and its significance comes to the foreground when a right is bound to physical possession of a thing, such as a lien, but its significance is not in the prevention of legal protection of new forms of property rights.

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[9] English law, and common law legal systems in general, recognise a different division of legal rights than civil law systems. English law divides property into moveable and immovable property, and moveable property is further divided into moveable physical objects (*choses in possession*) and immaterial objects – various subjective rights which may be enforced only through court action (*choses in action*). However, for the purposes of this article, there is no need to delve into the details of English property law; it is sufficient to point out that both common law and civil law systems face the same problem – how to qualify rights in digital assets which cannot be understood either as a physical thing or as a claim.

Bitcoin is not too different from cash when it comes to unauthorised disposition. Just as possession is crucial for physical currency, registration in the digital ledger is crucial for bitcoins and other digital tokens. The registered person, provided that they hold the private key, may dispose of bitcoins in favour of another and this transfer cannot be prevented. Digital registration of bitcoins should be considered as a matter of fact, separate from the matter of legal right, just as possession is considered as a matter of fact, separate from the matter of ownership over a thing (Lehmann 2019, 118–120). Therefore, heirs may acquire the right to digital tokens independently of the private key and regardless of who has factual control over the digital tokens.

The distributed ledger shows who has the technical means and not who is authorised to dispose of certain crypto-assets (UK Jurisdiction Taskforce 2019, 30). The person who is registered as the owner in the digital ledger may not be the real owner. When a discrepancy arises between the factual and legal situations, there are numerous legal mechanisms to force the person in control of crypto-assets to transfer those assets to the person to whom that property legally belongs. In any event, factual digital control (possession of the private key) should not be confused with legal entitlement to crypto-assets. This is especially important for the issue of succession since succession is one of the situations in which it comes to a discrepancy between the digital ledger and legal rights. In other words, rights in crypto-assets may be transferred outside of the digital ledger, making it necessary to register crypto-assets in favour of the new owner.

Keeping all this in mind, it may be concluded that rights in crypto-assets pass to heirs as part of succession, but the question remains how the heirs will be able to use these rights. Heirs are entitled to acquire private keys and to demand registration of crypto-assets in their favour within the distributed ledger system. The fact that succession to crypto-assets is linked to technical difficulties cannot exclude the inheritability of rights in these assets, which are recognised by the legal system.

2.3. Digital Data

The issue of property rights in digital assets arises not only with regard to digital services or use of digital assets, such as crypto currencies, but also with regard to digital data as such, regardless of whether digital data can enjoy direct legal protection or be objects of absolute property rights – like ownership rights over physical moveable things. Different views of rights in digital data are found in the literature: some authors consider digital data as electrical impulses (physical objects), while others discuss the legal protection of digital files as organised sets of digital data. It is, however, certain that information in itself cannot be subject to ownership rights.

Some authors call for recognising absolute rights over digital files, as defined and transferrable sets of digital data, relying on the views of English courts about the characteristics of objects that enjoy absolute legal protection (Michels, Millard 2022). Namely, English legal theory starts from the assumption that property law protection may be enjoyed by interests which can be individualised, which can be recognised by third parties, which can be transferred from one person to another, and which are sufficiently stable. These characteristics of objects that enjoy property law protection have been developed in court practice and are clearly defined in the 1965 decision of the House of Lords in *National Provincial Bank v. Ainsworth*.[10] Digital data are different from data stored on physical data carriers in that there is a middle layer consisting of logical computer infrastructure between the right of ownership over the physical data carrier (such as a computer) and the intellectual property rights relating to their content (Michels, Millard 2022, 329–332). At this level digital data may fit the mentioned criteria exactly, which opens the path for their property law protection erga omnes (Michels, Millard 2022, 332–336). Of course, it should be noted that notions of property, real rights and the right of ownership have very different meaning in English law compared to in continental legal tradition, however, regardless of that, the practical arguments that have been voiced in favour of erga omnes protection of digital data have universal significance and should be taken into account when legal protection of digital data is examined within the framework of civil law.

In favour of erga omnes protection of digital data, it is stated that, through computer programmes and user interface, data may be recognised as individual units, may be controlled and protected against unauthorised access, and may even be transferred indirectly – by copying data and deleting the original data that remained with the transferor (Michels, Millard 2022, 332–336). Digital data are not mere ideas or information that cannot be separated from the subject who perceives them; they can be isolated as specific individual entities that are subject to control and disposal, which means that they can exist as independent objects of legal protection, independently of the owner to whom they belong or of the contractual relationship to which they are bound.

[10] House of Lords, National Provincial Bank v. Ainsworth [1965] A.C. 1175.

In addition to this, in practice there is a need for erga omnes protection of digital data in order to protect the 'owners' of data, in the event of insolvency of the person who 'holds' the data on their servers, as well as in the event of unauthorised copying of data (Michels, Millard 2022, 344–347). However, when a contractual relationship exists between the parties, courts are inclined to resolve issues relating to data access by interpreting the contract. For instance, when a company offering database services refused to allow access to a database of subscribers to a magazine publisher with whom it had a contract, the court decided that there is an implied contractual duty to hand over a copy of the database after the contract had ended (Michels, Millard 2022, 344–345). It is easy to understand that courts are inclined to resolve issues of access to digital data on the basis of flexible rules of contract law, avoiding the complex issue of the legal protection of data as such.

Recognising rights that would refer directly to digital files does not seem like a measure that would simplify relations with regard to digital assets, especially because the individualisation of digital files is not perfect. The unlimited possibility of copying and using digital data also undermines their protection as independent legal objects.

Some authors point out that recognising rights in digital data is justified when data can be individualised (so that the principle of the transparency of property rights is preserved) and they propose an examination of the certainty of digital data, which would encompass their nature, the subjects to which they relate, and their purpose (van Erp 2017, 12–16). According to this idea, digital data would enjoy sui generis absolute legal protection similar to the right of ownership. The 'owner' of digital data would be entitled to request access and transfer of control over 'their' data. As an illustration of this approach, a clause of the Luxembourg Commercial Code is mentioned, which allows for '*reivindicatio*' of incorporeal movable things that have been entrusted to an insolvency debtor (van Erp 2017, 18–21).[11] However, this is not a right of ownership over digital data, since the contents of the right of ownership and other rights in rem is appropriate for physical objects capable of being in possession.

If there are no rights in digital data, there can be no succession to digital data; they are transferred only as part of succession to other rights that comprise the estate. Data contained on physical data carriers are inherited through succession to ownership rights on the data carriers. Heirs are entitled to access all data that the decedent kept on physical data carriers that

[11] Luxembourg Code de commerce, Art. 567 (2).

belonged to them at the moment of their death. This situation is no different from the case of other objects containing the decedent's data. Data kept on physical data carriers that did not belong to the decedent are inherited through succession to contractual rights and obligations from the contract, based on which the physical data carriers have been used. Succession to crypto currencies and other digital tokens cannot be resolved through the right of ownership or through contractual rights. Crypto currencies, as well as other digital assets that are based on distributed ledger technology, enjoy protection as complex units of public and private data that allow transactions within a certain system, while the data that forms the crypto currencies is not itself an object of legal protection (UK Jurisdiction Taskforce 2019, 16–17). Therefore, there is no succession to the data itself, but to the digital entities that comprise the digital data.

3. DIGITAL ESTATE

Succession is mandatory universal succession of heirs to the rights and obligations of the decedent. With the aim of protecting legal certainty and legal continuity, succession is always universal acquisition of all inheritable rights and obligations that belonged to the decedent at the moment of his death. Succession resolves the legal uncertainty which arises when a legal subject ceases to exist and guarantees the survival of private property (Đurđević 2022, 25–27). The principle of universal succession prevents the possibility of any inheritable right or obligation remaining without a legal subject (Đurđević 2022, 35–36). Universal succession is established in the first Article of the Law on Succession which provides that 'the estate comprises all rights that are suitable for succession and that belonged to the decedent at the moment of death'.[12] The law does not discriminate between the rights belonging to the estate: neither according to their value (the estate also includes physical objects without any market value, such as family photographs), nor according to the type of right (for instance, whether a right is classified as a right to dispose, a claim, or a legal power), nor according to whether a right relates to physical objects. Suitability for succession is not dependent on the form in which a certain right is expressed (Vidić, Kovačević 2022, 427). The only factor that decides on the composition of the estate is inheritability. Non-inheritability may be determined by law or by the will of the contracting parties, but it may also

[12] Law on Succession (Закон о наслеђивању – ЗОН, *Службени гласник РС*, бр. 46/95, 101/2003 – одлука УСРС и 6/2015) Art. 1 (2), translated by author.

arise out of the nature of the right itself. Rights which are bound to their owner by their purpose cannot be part of succession. In the domain of the law of obligations, such a strong personal connection exists in cases in which a claim would lose its purpose if it were transferred to another subject or in which a debt would lose its purpose if it were transferred to a new debtor (Đurđević 2022, 51–52). According to the wording of the Serbian Law on Obligations, an obligation is extinguished due to death of one party only if it was incurred with regard to personal characteristics of the debtor or the creditor.[13] Personal obligations are obligations that arise in connection with the personal characteristics of the debtor or creditor, such as the specialist knowledge or art of the debtor, or a relationship of trust that exists between the creditor and the debtor (Karanikić Mirić 2024, 128–129). One should also keep in mind that each right or obligation from a certain legal relationship should be regarded individually. Thus, Karanikić Mirić gives the example of the personal obligation of a novelist to write a book, which ceases to exist if the novelist dies before the book is finished, and compares it to the obligation of the novelist to hand over the finished manuscript, which is not personal and which may be performed by the novelist's heirs. Such individual examination of the personal nature of rights and obligations is of great importance in complex legal relationships. It should also be mentioned that the extinction of one right or obligation, due to the death of its subject, does not automatically entail the extinction of the entire contract if it contains other rights and obligations that are suitable for succession; therefore, careful examination of the applicability of non-inheritability to the entire contract or only to certain rights and obligations arising out of it is required (Karanikić Mirić 2024, 890–891).

Irrespective of the nature of the right or obligation, inheritability may be excluded by the will of the contracting parties, but this can be expected only when they have important practical reasons and when this does not disturb the balance of their interests and contractual positions. Frivolous and unjustified exclusion of inheritability, even if it is based on the freedom of contract, may be disputed as a legally invalid departure from the basic principles of civil law.[14] Contractual provisions that exclude inheritability of contractual rights and obligations are certainly allowed based on the freedom of contract, but they are subject to general rules on contract validity.

13 ZOO, Art. 359.

14 This has already been mentioned in the part dealing with contractual rights in digital assets, *supra*.

The issue of the validity of the contractual exclusion of inheritability may be especially important when the exclusion is provided in the general terms of contract.

The idea that an estate includes digital assets has already been accepted in German legal theory and court practice because it is in line with the principle that an estate encompasses all the rights of the decedent, which serves justice and preservation of legal continuity (Pockrandt 2020, 23). However, since digital assets are comprised of various different legal relationships, it is impossible to give one answer to the question whether these relationships are strictly personal – inheritability must be analysed with regard to every type of relationship separately (Budzikiewicz 2018, 566–567). The expression 'digital assets' is used to refer to various digital rights with monetary value, but it does not have a technical meaning: some forms of digital assets are subject to rules of contract law, some are not; some rights consist in claims, while others allow for direct control over digital data; digital assets are sometimes contained on physical data carriers that are owned by the same person who 'owns' the data. All these situations require separate appraisal and different legal reasoning.

A subjective right is non-inheritable by its nature – if the change of the entitled person would lead to a change in the substance of the right. Only if there is a very close connection between a person and a certain right, can the right be considered tied to that person. The analysis of legal relationships in social media accounts, email accounts, domain names, and similar digital assets leads to the conclusion that these relationships do not contain rights or obligations that have a close personal connection: users of accounts are not under a duty to prove their identity prior to the contract conclusion, service providers do not control the real identity of their users, information is transferred between accounts and not between individuals, and accounts are often used under a pseudonym (Pockrandt 2020, 25–29). In this sense, succession to an account does not alter anything with regard to the nature of the rights and the relationship between the account user and the service provider.

When speaking of social media accounts and similar digital services, the 2018 decision of the German Federal Court should be mentioned because it offers convincing and influential arguments in favour of inheritability of the right to access a social media account.[15] The Federal Court decided that the parents of a deceased Facebook user have the right to access data in

[15] BGH III ZR 183/17, Verdict dated 12 July 2018, *https://openjur.de/u/2110135.html*, last visited April 20, 2026.

her account as her heirs, even if Facebook only provided the possibility to change the account of a deceased user into a so-called ‘memorial account’ (the account would remain visible, but heirs would be barred from accessing it or downloading the data of the deceased user). In support of its decision, the Federal Court gave the following significant arguments: the right to use a Facebook account is not strictly personal; the exclusion of inheritability in the general contract terms must be transparent and it would not be valid if it departs from the fundamental principle of universal succession or undermines the main duty of the service provider to keep the user’s data; that rules on personal data protection, secrecy of correspondence and protection of personality rights cannot prevent succession and the right of heirs to access personal data.

The right of heirs to access the accounts of the decedent cannot be denied with reference to the duty of secrecy because digital service providers have no statutory duty of secrecy and because the relationship between the account user and the service provider is not based on personal trust to the same degree as relationships that include a duty of secrecy, such as relationships with doctors, lawyers or notaries public (Budzikiewicz 2018, 574–575). On the other hand, it should be presumed that the decedent wanted their heirs to have access to their data because they had the possibility of deleting data that they wanted to keep secret.

Inheritability of digital assets may also be examined from the perspective of posthumous protection of personality rights. As a rule, digital assets contain personal communication and other content that express the decedent’s personality rights (photographs, videos, personal posts, notes etc.). A digital estate may be intertwined with various personal content. The question arises whether this personal content prevents or limits the possibility of succession to digital assets. There are several compelling reasons why protection of personality rights cannot prevent succession to a digital estate. First of all, it would be technically unfeasible to separate personal and non-personal content. Providers of digital services are not authorised, nor would they have the capacity, to sort data of a deceased user according to their content. Apart from this, it would not be logical to protect the personality of the decedent by granting access to their personal data to a third person (the service provider) rather than to their heirs (Pockrandt 2020, 32–34). Non-inheritability of personal data would lead to a so-called ‘infection’ of the entire user account – if an account contains even one piece of personal information, this would be enough to conclude that the entire account is non-inheritable (Pockrandt 2020, 34–35).

Even putting aside the technical issues, within the system of civil law there are no substantive reasons to deny the inheritability of digital assets that contain personal data. Succession to property that contains personal information is nothing new. In the world of analogue assets, heirs unquestionably acquire all the rights to physical things that belonged to the decedent, whether these objects contain personal information or not. Heirs thus acquire the decedent's diaries, letters, notes, photographs, and similar objects with personal data. The same is true of physical digital data carriers (hard drives, CDs, USB memory sticks, etc.). This solution guarantees continuity in property relationships and ensures that objects containing personal data are not left without an owner (Pockrandt 2020, 36). This solution is also appropriate for digital assets. A clear distinction should be kept between succession to property – whether analogue or digital – and posthumous protection of personality rights. The persons who are entitled to protect the personality of the decedent may react if their posthumous personality rights are violated – if heirs, for instance, make unauthorised use of the decedent's account in their name or if they refuse to delete personal data contrary to the wishes of the decedent – but the persons entitled to protect the personality of the decedent are not entitled to dispose of decedent's property (Pockrandt, 41–42). Succession and posthumous protection of personality rights remain two separate spheres of civil law even when they are connected and intertwined. The protection of the posthumous personality rights is entrusted to the 'next of kin', regardless of whether they are the heirs of the person whose personality rights they are protecting. In short, posthumous protection of personality rights does not have the significance that would prevent succession; it serves as a correction in the event that feelings of piety towards the decedent are injured (Budzikiewicz 2018, 576), regardless of whether by the heirs or by third parties. Digital data deserve a lesser degree of protection because users of digital means of communication must be aware of the heightened risk of access by unauthorised persons and often willingly share their content with the public or publish their personal and intimate views under a pseudonym (Pockrandt 2020, 38). In any event, digital communication deserves no additional protection of secrecy, compared to communication in analogue form.

EU personal data protection law also does not prevent succession to digital property. The rules of the General Data Protection Regulation do not apply to personal data of deceased persons, as explicitly stated in the preamble.[16] The decision on the need for legal regulation of the use of

[16] Preamble 27, General Data Protection Regulation, available at: *https://eur-lex.europa.eu/eli/reg/2016/679/oj*, last visited April 20, 2026.

personal data of deceased persons has been left to the member states. In German law the view has been accepted that protection of personal data applies only to persons who are alive because the protection is based on constitutional rules on the protection of personality rights, which cease to exist upon the death of the subject (Budzikiewicz 2018, 578–579, 581–582). The purpose of personal data protection does not imply the need to limit or exclude the possibility of succession to property that contains personal data. Protection of personal data aims to protect the individual from abuse of their personal data for commercial purposes and to provide informational freedom, as an expression of the general right to free personal development. None of these goals are relevant in the context of succession because there is no risk of commercial abuse of personal data and because the right to free personal development ceases with death (Pockrandt 2020, 65–66). Individuals should be protected against unauthorised use of their personal data and against unauthorised access to personal data by third parties, but that protection is superfluous when data is accessed by the heirs of the data subject. Heirs cannot be considered unauthorised third parties. One should also keep in mind that every person has to contemplate their mortality and keep in mind that after their death their personal data will be accessed by their heirs, so that privacy can be protected by deleting or protecting data.

Inheritability of email accounts and social media accounts may also be denied, with reference to the secrecy of correspondence. Regardless of the complex discussion on whether rules on secrecy of correspondence apply to providers of internet communication services, it should be kept in mind that heirs of a user account are not unauthorised third parties, but that they gain access to the contents of communication as the user's universal legal successors that succeed to their civil law position (Budzikiewicz 2018, 585). According to the Serbian Law on Postal Services, secrecy of letters and other forms of communication is violated if the operator discloses their content to an unauthorised person.[17] Even if this statute does not apply to online communication, it is clear that the purpose of protecting the secrecy of communication is to keep the content of communication away from unauthorised third parties. The Law on Electronic Communications regulates the issue of secrecy of electronic communication only insofar as to limit data secrecy on grounds of public policy.[18] In any event, the starting point should be that heirs are not unauthorised third parties and that they are

[17] Law on Postal Services (Zakon o poštanskim uslugama), *Official Gazette of the RS*, 19/2025. Art. 16.

[18] See Law on Electronic Communications (Zakon o elektronskim komunikacijama), *Official Gazette of the RS*, 44/2010, 60/2013 – CC decision, 62/2014, 95/2018 – other law, 35/2023 – other law, Arts. 126–130a.

entitled to access the content of the digital communication of the decedent, unless circumstances exist that undoubtedly show that the decedent had the intention of excluding their heirs from access to certain communication. However, the fact that an account may be accessed only with the access data (e.g., user name and password) cannot be understood, on its own, as an expression of the decedent's intention to deny their heirs access and they will have the right to demand access from the service provider. The right of heirs to access the contents of digital communication is excluded only if the decedent clearly expressed such an intention, whether online or offline, or when it is evident that a digital account is connected to the intimate sphere of the decedent (dating sites, adult sites).

Keeping in mind all the arguments for and against the inheritability of digital assets, it is easy to arrive at the conclusion that there should be a presumption that rights to digital assets are inheritable, that they are transferred to the heirs as part of universal succession, and that the only non-inheritable rights are those that are clearly connected with the personality of their holder, either by their nature or by clear and justified intention of the contracting parties. Therefore, the inheritability of digital assets should not be doubted as a matter of principle; the question of inheritability may be raised only with regard to particular rights or contracts, in accordance with their content and the intention of the contracting parties. The notion of the estate, as a collection of inheritable rights and obligations that belonged to the decedent at the moment of death, has never been limited to physical things nor did it exclude objects without market value or things that contain the decedent's personal information. Even today, in the domain of civil law relationships, heirs may be considered continuators of the decedent's personality and they acquire the entire civil law position in which the decedent found themself at the moment of death.

4. CONTRACTUAL EXCLUSION OF INHERITABILITY

In a large number of contracts for digital services, the service providers attempt to limit or fully exclude the transfer of rights of a deceased user to their heirs. This is usually achieved by general contract terms because contracts for digital services are concluded in great numbers, without the possibility of negotiating their content. Because of this, when analysing the validity of non-inheritability clauses, the rules on general terms of contract should be kept in mind, since they usually set strict requirements of transparency and substantive fairness. It should also be kept in mind that digital services are provided across national borders, on a global scale, which sometimes makes it difficult to determine the law that is applicable to the issue of validity of general contract terms. That problem is made somewhat easier by the rule that contracting parties are free to choose the applicable law, but it should not be overlooked that digital services contracts are consumer contracts, which means that consumer protection law rules may also be of significance.

4.1. Applicable Law

Given that the seats of many digital service providers are in different countries, the validity of non-inheritability contractual clauses depends firstly on the applicable law. The freedom of contract includes the freedom to choose the applicable law so that the contracting parties are entitled to choose the law that will apply to their contractual relationship.

At the level of the European Union, conflict of laws rules for substantive contract law are determined by the Rome I Regulation. According to the rules of this Regulation, the validity of contractual clauses is determined according to the law that has been chosen by the contracting parties.[19] However, one should keep in mind that the choice of applicable law is limited in consumer contracts. The choice of law cannot deprive a consumer of the protection that they enjoy according to cogent rules of the state in which they have their habitual residence, which means that the applicable law will be the law that is more favourable for the consumer: the law chosen by the contracting parties or the law of the consumer's habitual residence.[20]

The limited choice of law in consumer contracts applies only to contracts that are deemed consumer contracts. If an account on an online platform is used for commercial and private purposes, the qualification of the contract will depend on the balance of these two aspects; in the event of doubt, the consumer nature of the contract should be presumed, in order to save the protective purpose of the rule (Kutscher 2015, 78–79). Contracts for use of an online platform for professional networking, such as LinkedIn, cannot be deemed consumer contracts, which means that the contracting parties are completely free to choose the applicable law.

[19] Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I), Art. 10 in connection with Art. 3.

[20] Rome I Regulation, Art. 6 (2).

4.2. Exclusion of Inheritability in General Terms of Contract

Clauses that exclude the possibility of succession to rights from digital services contracts are often found in digital service provider general contract terms. Compared to other contractual provisions, general contract terms are subject to stricter fairness control. According to the rules of the Serbian Law on Obligations, general contract terms that are contrary to the purpose of the contract or good business practices are null and void.[21] In addition to this, a court may decline to apply the general contract terms that are unfair or unjustifiably strict towards the party that accepted these terms; clauses based on which a party loses their contractual rights are given as an example of unfair terms.[22] These rules may be crucial when determining the validity of clauses through which digital services providers limit the possibility of succession to contractual rights and exclude heirs from access to the decedent's account. First of all, it can be said that such clauses are contrary to the purpose of the contract because in the case of social media and similar accounts, it is a fundamental duty of the service provider to provide unhindered access to the given platform and the data stored on it. Second of all, non-inheritability clauses may be deemed unjust even if they do not lead directly to loss of contractual rights, because they lead to the loss of rights in a broader sense: the rights of the user will not be transferred to their heirs, so the user loses the right to dispose of their assets *mortis causa*. Non-inheritability clauses could be justifiable only if it is possible to show that in a particular case the service provider has legitimate reason to exclude succession.

The German Civil Code provides rules on the invalidity of the general contract terms that are very similar to the rules of the Serbian Law on Obligations. According to the norm of § 307, clauses that, contrary to the principle of good faith, place a contracting party in an unjustifiably unfavourable position (*unangemessen benachteiligen*) are null and void. Clauses that deviate from the fundamental principles of statutory norms and clauses that limit fundamental rights, arising from the nature of the contract, to such a degree as to endanger the purpose of the contract are listed as unfair clauses.[23] Non-inheritability clauses are undoubtedly allowed and their validity cannot be questioned merely because they deviate from the principle of universal succession, but a distinction needs to be made between clauses that completely exclude the possibility of heirs accessing

21 Law on Obligations, Art. 143 (1).

22 Law on Obligations, Art. 143 (2).

23 § 307 BGB.

an account and its content and clauses that allow access by the heirs, but prevent them from using an account for their own purposes (Budzikiewicz 2018, 589–590). Only the first type of clauses can be considered as unfair clauses because there is no doubt that access to an account and its data is a fundamental right contained in the contract for use of the digital account.

General contract terms must be just, but also transparent. If the party that accepted the general terms did not have the possibility to learn their content in a reasonable way, it will be considered that these terms have not become part of the contract, i.e. that no consensus has been reached with regard to these terms. The Serbian Law on Obligations explicitly states that general contract terms bind a contracting party only if they were aware of them or if they could have known of their content at the time of the contract conclusion.[24] This provision should be interpreted in connection with the rule in the same article, which states that general contract terms must be published according to business customs.[25] If a digital service provider did not publish its general contract terms so that they are clear, known and available to a service user, it can be claimed that they never became part of the contract. Similar reasoning was adopted in the decision of the German Federal Court dealing with the question whether inheritability of a Facebook account was excluded by the rules that were laid out on a separate online help page, to which the general terms of the user agreement did not even refer. According to the view of the court, stating rules on non-inheritability in this manner is not sufficient for their inclusion in the user agreement.[26]

Therefore, exclusion of inheritability in the general contract terms is legally valid only if general terms have been made clear and available to the user at the moment of the contract conclusion and only if the service provider sets an exclusion of inheritability that is adequate to the purpose of the contract and justified by its legitimate business interests. As we have seen, a service provider may prohibit heirs from using an account in the name of the decedent, but it cannot completely exclude them from access to an account and prevent them from obtaining data stored on the servers. General contract terms cannot be used as a means to circumvent the legitimate expectations of the contracting parties and to endanger the position of the party with a weaker negotiation position. General contract

[24] Law on Obligations, Art. 142 (3).

[25] Law on Obligations, Art. 142 (2).

[26] BGH III ZR 183/17, Verdict dated 12 July 2018, *https://openjur.de/u/2110135.html*, last visited April 20, 2026.

terms also cannot be used with the aim of unjustified deviation from the fundamental principles of civil law, such as the principle of the transferability and inheritability of subjective rights.

5. THE ROLE OF NOTARIES PUBLIC IN SUCCESSION TO DIGITAL ASSETS

Succession to digital assets raises theoretical, as well as practical dilemmas and difficulties. Unlike other forms of property, digital assets can easily remain unknown or unavailable to the heirs. The heirs must first have a way of finding out about the decedent's digital rights and then they need the access data. Most digital services are used through an account that can be accessed with a user name and a password, or by using some other method of authentication. Heirs often cannot find this information without the help of the decedent or the digital services provider. In a global questionnaire for professionals in the field of succession, a quarter of all participants mentioned problems in accessing and transferring digital assets (Michels, Hartung, Millard 2021, 13–14). The following major problems were listed: technical barriers to access (passwords and other access data), unclear rules on the rights to digital assets, ineffective estate planning, and unwillingness of service providers to allow and facilitate the transfer of digital assets to heirs (Michels, Hartung, Millard 2021, 15–19). An additional problem can arise when there are several heirs who cannot agree about the administration of a digital account or digital data. In order to solve these problems, it is necessary to develop awareness of the legal significance of digital assets, through the education of users of digital services and professionals in the field of succession. In this context, a very important role belongs to notaries public because they are under the duty to provide preventive legal protection in juridical acts for succession planning, as well as in probate proceedings. Notaries public may significantly contribute to the development of the legal awareness of the importance of planning digital succession and help with organising transfer of digital rights.

One of the main goals of the institution of notaries public is to achieve the cautionary function of form in civil law by instructing parties of the legal significance of juridical acts they undertake (Đurđević 2014, 30–32, 79–81). When drafting notarial deeds and authenticating private juridical acts, notaries public are under a duty to inform the parties of the legal consequences and legal risks of the act that they are undertaking, as well as to determine the real intention of the parties and their legal capacity. Notaries public do not have a duty to advise parties with regard to the economic effects of juridical acts, nor may they advise parties in contracts in a way that brings their impartiality into question (Đurđević 2014, 87). However, notaries public are not limited to instructing parties only about the typical legal consequences of a juridical act, without entering into the details of each party's particular situation; quite to the contrary, they should examine the intention of the parties and determine the aims that they want to achieve in their particular case. In this sense, when drafting wills, notaries public are authorised to inform testators of the importance of precisely defining rights belonging to the estate (including related to digital assets), as well as of the possibility of providing a special regime for digital assets. The fact that civil law only recently started dealing with the issues related to digital assets does not prevent notaries public from informing testators of the importance of stating a clear testamentary intent also with regard to those assets. The legislator has expressly provided the duty of notaries public to warn testators of the rules related to forced shares,[27] but this does not limit the notaries public's duty, because the purpose of this statutory rule is to underline the duty of information with regard to the most important limit to testamentary freedom, but not to free notaries public from the duty of informing parties of the other important legal consequences of making a will.

In addition to the duty of information, which takes centre stage when planning succession, notaries public also play an important role in the probate procedure when the estate is discussed. In order to alleviate the workload of the courts and provide preventive legal protection, the legislator has provided original competence of notaries public for conducting certain actions in probate procedures and the possibility of delegating whole probate procedures to notaries public (Đurđević 2022, 282–285). Notaries public have the original competence for compiling a document containing basic information on the decedent, the heirs and the estate[28] and for making an inventory and evaluation of the estate.[29] In both cases notaries public have the duty to investigate the existence and composition of an estate. Having in mind the growing importance of digital assets, notaries public should also examine whether a decedent had significant digital assets. The legislator has provided that the object of an inventory are all the assets that were in the decedent's possession at the moment of death, assets that belonged to the decedent but were in possession of another, as well as claims and debts of the

[27] Law on Non-contentious Procedure (Zakon o vanparničnom postupku), *Official Gazette of the SRS* 25/82 and 48/88, *Official Gazette of the RS* 46/95 – other law, 18/2005 – other law, 85/2012, 45/2013 – other law, 55/2014, 6/2015, 106/2015 – other law, and 14/2022, Art. 183 (5).

[28] Law on Non-contentious Procedure, Art. 92 (2).

[29] Law on Non-contentious Procedure, Art. 96.

decedent.[30] Even though this provision is formulated with physical property in mind – which can be in possession – it does not prevent taking inventory of digital assets because digital assets can be deemed claims (when based on contract) or property that belonged to the decedent, but was in possession of another (e.g. data on another's server).

The first step in which notaries public may help with succession to digital property is connected to succession planning. Even though the legal regime of digital assets is still not clearly defined in most cases, holders of digital assets may alleviate problems related to succession by making use of traditional institutions for succession planning, such as a will. The clearly expressed intention of the decedent may be of decisive importance in cases in which digital services providers deny inheritability of digital assets or data on the grounds of privacy or presumed intention of the decedent. When a will is made in notarial form, the notary public should, within their duty of information, warn the testator that their estate also includes their digital assets and that it is desirable that they regulate their succession by a will. The notary public should also warn the testator of the importance of informing potential heirs of the existence of digital assets and of keeping access data in a way that allows the heirs to acquire those data in the event of the testator's death. The notary public could also help the testator by informing them of the possibility of providing special rules for digital assets, by disposing of those assets in the form of a legacy and by appointing an executor who would supervise the fulfilment of that legacy.

Notaries public are independent legal professionals who enjoy public trust and who, among other things, are authorised to take deposits. Holders of digital assets may provide their heirs with access to their digital assets by depositing access data with a notary public. There is no doubt that access data may be deposited with a notary public in paper form, i.e. in a sealed or open envelope, however, according to a broader understanding of statutory norms on the objects of deposit, they may also be deposited on a physical data carrier, such as a hard drive, memory card or USB flash drive.[31] Notarial deposit is practical for keeping access data because it guarantees a high degree of security, secrecy of access data, and that they will be handed over to an authorised person. A depositor may make a deposit in favour of their potential heirs, without making the handing over of the object of deposit conditional on a decision in probate procedure identifying heirs. A depositor

30 Law on Non-contentious Procedure, Art. 97.

31 See the Law on Notaries Public (Zakon o javnom beležništvu, *Official Gazette of the RS* 31/2011, 85/2012, 19/2013, 55/2014 – other law, 93/2014 – other law, 121/2014, 6/2015, 106/2015 and 94/2024), Art. 165.

may simply make a deposit in favour of their potential heirs, naming them individually, regardless of their legal position as heirs, in order to allow them to access the digital assets even before the probate procedure is completed. It is of great importance for the heirs to acquire access to digital assets as soon as possible in order to be able to make a decision on accepting the estate or administer the digital assets. The importance of depositing access data would be greatly diminished if the heirs could only obtain access on the basis of a final probate decision in which they are recognised as heirs. In order to allow heirs to learn of the deposit of access data, information about the deposit should be included in the will or another reliable means of informing heirs of the deposit of access data.

Depositing access data would not be of much use if it is necessary to periodically change access data and also if the terms of a digital service contract exclude the possibility of sharing access data. In the first case, depositing is practically unfeasible, while in the second case it may be considered as a breach of contract for the digital service, which could entitle the service provider to block access to a decedent's account. Depositing access data is of greatest practical importance with regard to digital currencies and tokens based on DLT technology because these assets may be controlled directly based on access data, unless their administration has been entrusted to another.[32] Lastly, it should be stressed that access data should never be stated in a will because the contents of a will must be published to all interested persons; access data should remain known only to those persons to whom the decedent wanted to give access.

The potential role of notaries public as depositaries of digital data has already been recognised in Dutch law, where the Dutch association of notaries public proposed the creation of a digital vault for safekeeping data (Berlee 2017). Such a solution should be considered in the Serbian legal system as well. The existence of a central digital vault, administered by the Serbian Chamber of Notaries Public, could create more legal certainty in succession to digital assets, provided that adequate technical measures against unauthorised access to stored data are employed. Similar services are already available on the private market, but they are not characterised by public trust and legal guarantees that are inherent to the profession of notaries public.

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32 Although the participation of an intermediary is not necessary in the case of digital assets based on DLT technology, the law provides for the possibility of entrusting such assets to persons professionally engaged in the safekeeping and management of such assets. See ZDI Art. 3 (1)(4).

Notaries public also play an important role in probate proceedings. They are authorised to collect all information that is of importance for making a decision on succession, to take an inventory of an estate and to evaluate it, as well as to conduct probate procedures as delegates of the courts. By exercising these duties, notaries public can develop legal practices and rules on succession to digital assets. Investigation of the contents of an estate should not remain limited to traditional forms of property. Notaries public are under a duty to take into account all significant digital assets of the decedent, especially email accounts, social media accounts, online payment accounts, digital currencies and tokens, domain names, etc. There are no statutory limits to take all this property into account in the probate proceedings. Namely, the Serbian Law on Succession recognises a very broad definition of an estate – an estate is comprised of all 'rights which are suitable for succession that belonged to the decedent at the moment of death'.[33] Therefore, all civil law rights that are not tied to the person of their holder make up an estate. From the perspective of the law of succession, the issue with digital assets is not their incorporeal nature, but the uncertainty with regard to their legal regulation. The main question is whether the decedent even had a right to a digital asset that can be transferred to their heirs. However, with regard to most digital assets of practical importance, there is no longer any doubt that they are objects of legally protected interests. Whether these rights are contractual or sui generis rights of direct control is not of importance for succession.

Notaries public are not required to investigate contractual exclusions of inheritability with regard to accounts on various online platforms. For the purposes of probate proceedings, as a non-contentious procedure that is aimed at preventive legal protection, it is sufficient to list all accounts that belonged to the decedent at the moment of death and to state that the rights to use these accounts have been transferred to the heirs, in accordance with contractual provisions. A probate decision must contain information about the decedent, the heirs, immovable property, and moveable property with reference to the inventory of the estate.[34] The purpose of a probate decision is to enable heirs to prove their position as the decedent's successors, which serves the need for preventive legal protection. A probate decision is not a final court decision on the composition of an estate because disputes about the composition of an estate must be decided in a regular civil procedure. Therefore, in a probate decision it is sufficient to enumerate all accounts on online platforms that belonged to the decedent at the moment of death;

33 Law on Succession, Art. 1 (2), translated by author.

34 Law on Non-contentious Procedure, Art. 122.

heirs will be able to prove their status of successors of the user account and all potential disputes regarding the inheritability of rights to an account will be settled in contentious civil procedure.

When conducting probate proceedings as a delegate of the court, a notary public is entitled to request of any person to disclose information that is relevant to the proceedings.[35] According to the procedural statutes, a court or notary public may demand a document (or data) when a third party has a statutory duty to hand over certain information or documents. The problem lies, however, in the fact that digital service providers do not have a statutory duty to hand over data to users' heirs. The rules on protection of personal data, which, among other things, grant the right to access personal data, apply only to the person whose personal data is being used and not to their heirs. Therefore, if access to a decedent's account is necessary for reaching a probate decision (e.g. email account or an account containing online means of payment), the request for granting access to the account may be made only by the heirs and not by the notary public, as the holder of a public office.

When taking inventory and evaluating an estate, notaries public are faced with the challenge of assessing the value of digital assets. Adequate valuation of digital assets may be of crucial importance for the protection of the interests of the forced heirs and the decedent's creditors. In Serbian succession law, the value of forced shares is determined on the basis of the so-called calculated value of an estate – the net value of the estate increased by the value of all gifts made by the decedent in their last year of life, as well as all gifts made at any time to persons from the circle of their intestate heirs.[36] In addition to this, the liability of the heirs for the decedent's debts is limited to the value of the assets they inherited.[37] The liability of the heirs is limited *ipso iure* to the value of the estate at the moment of decedent's death; heirs cannot limit their liability to the assets belonging to the estate and changes in the value of the assets are not taken into account. According to this strict rule, the heirs bear the risk of a decrease in the value of the inherited assets after the decedent's death (Đurđević 2016, 178–180). On the other hand, the creditors cannot make use of a subsequent increase in the value of inherited assets; they can benefit from an increase in value of inherited property only if they have submitted a successful request for separation of the estate from

35 Law on Civil Procedure, Art. 242, on the basis of the Law on Non-contentious Procedure, Art. 30, (2).

36 Law on Succession, Art. 48.

37 Law on Succession, Arts. 222 and 224.

the property of the heirs (*separatio bonorum*).[38] Keeping in mind the very large and frequent fluctuations in the value of crypto-assets, these rules may create significant problems and lead to unfair results. In any event, the position of the forced heirs and the decedent's creditors is directly tied to the value of the estate and they bear the risk of uncertainty with regard to the market value of digital assets. Therefore, notaries public should be aware of the great importance of the valuation of the estate and request expert help whenever they deem it necessary.[39] Determining the value of digital assets does not pose great difficulties with regard to crypto currencies and similar assets that have a market value – in that case, a notary public should simply refer to the value of a certain crypto-asset on a given date. However, with regard to other rights, such as internet domain names or accounts on certain online platforms, the public notary will have to request expert appraisal.

In order to effectively fulfil their duties in the probate proceedings, notaries public must have adequate access to the decedent's digital data. Serbian law still has no special rules on access to digital data of deceased persons, but such rules could alleviate the technical problems that notaries public face and provide more legal certainty in succession to digital assets. The right to access to a decedent's data should be regulated for the purposes of conducting probate proceedings, separately from the rules that regulate succession to rights in digital assets. For example, in US law access to digital assets of a decedent is regulated by the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), which has been enacted in nearly all states (with the exception of Louisiana). This law provides very detailed and flexible rules that aim to achieve a balance between the interests of the decedent, the heirs, and the digital service providers.[40] First, this statute provides that digital assets may be accessed only based on the decedent's consent, which is determined in two ways in strict hierarchy: primary importance is given to online mechanisms for appointing persons who are authorised to access digital assets, and secondary importance is given to the intention of the decedent that has been expressed in a will or in other written document.[41]

38 Law on Succession, Arts. 225–227.

39 Law on Non-contentious Procedure, Art. 99 (1), provides the possibility of engaging expert witnesses when making an inventory and evaluation of the estate.

40 A service provider or a person who 'holds' digital assets is referred to as the custodian, while the person who administers the estate is referred to as a fiduciary. In American law, as well as other common law jurisdictions, heirs do not acquire the estate directly from the decedent, it must first pass to a decedent's personal representative or trustee, who is under a duty to administer the estate, settle the decedent's debts, and distribute the remaining assets among the heirs.

41 RUFADAA, Section 4.

If a decedent made no statement of the right of heirs to access their digital data, the rules of the general terms of contract for digital services will apply.[42] This statute also regulates in great detail the way that a service provider may grant access to digital data and gives it the right to charge a reasonable administrative tax for the additional costs associated with granting access.[43] A service provider is free to choose whether it will give heirs full access to an account or only to the data which they require, and also whether it will allow online access or only data in paper form. It is also made clear in the statute that a service provider is not under the duty to sort the decedent's data in order to allow heirs to obtain access only to those data that they need, if sorting data would be a significant burden for the service provider. In such cases, the service provider may request a court order for access to all data, data from a certain time period, denying access entirely, or allowing access to all data. It is important to state that it is explicitly stipulated that a service provider is not under any duty to grant heirs access to data that the deceased user has deleted, even if it is technically possible to restore them. Deletion of data is considered as a clear expression of the intention to make them unavailable to the heirs.

Apart from these rules, the RUFADAA specifically regulates the issue of access to the electronic communication of a decedent. The contents of electronic communication may be accessed only based on the consent of the decedent, which has been expressed online or in a written document, or based on a court decision when access to the content of digital communication is necessary for administering the estate.[44] The statute, however, also provides the possibility of allowing heirs to access a 'catalogue of electronic communication', which implies meta-data about communication (time of communication, addressees, etc.), in order to learn the facts that are significant for estate administration (e.g. that the decedent had an account with a certain bank). To access these data, it is sufficient that the decedent has not explicitly prohibited access, but a service provider may request a court decision that access to these data is necessary for administering the estate.[45]

These rules reflect a successful balance between the interests of the decedent and their right to privacy, the interests of the service provider not to be overburdened with requests by heirs or exposed to liability for

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[42] RUFADAA, Section 5.

[43] RUFADAA, Section 6.

[44] RUFADAA, Section 7.

[45] RUFADAA, Section 8.

unauthorised disclosure of information, and the interests of the heirs or trustees in probate proceedings to learn all facts that are relevant for succession. It is especially important that this statute facilitates access to a 'catalogue of electronic communication' because this solves the problem of unknown digital assets: in most cases, heirs will be able to draw conclusions about the composition of the estate and about digital assets based on these meta-data. The second important solution of this statute is the flexibility in the way that heirs are granted access to digital data. Digital service providers are given great freedom to grant access to data in a way that most suits their needs and business interests, and they are explicitly given the right to an administrative charge for the cost of providing access. The RUFADAA rules remove the arguments that digital service providers could use to avoid the duty of granting data access to heirs, while, at the same time, recognising the new forms of succession planning that have developed in the digital world, which are specific to digital assets.

Statutory rules such as these do not change substantive rules of succession, nor do they resolve the dilemmas regarding legal rights to digital assets, but they are of great practical importance in probate proceedings. Their primary purpose is to regulate technical issues related to the conditions and means of accessing the digital assets and electronic communication of a decedent. Keeping that in mind, these rules are clearly not specific to American law or common law legal systems in general, but can also be adopted in civil law legal systems. Mindful of the importance of digital assets and the difficulties faced by heirs trying to access them, the RUFADAA rules may be recommended as adequate for other legal systems. Of course, regardless of particular solutions, it is clear that a need exists for specific regulation of the right to access digital property, independently of subjective rights and the system of succession.

6. THE IMPORTANCE OF WILLS TO THE SUCCESSION TO DIGITAL ASSETS

Freedom of testation allows everyone to make detailed plans for their digital assets after their death. A testator is free not only to name heirs, but also to leave legacies (bequests) of individual rights. In this way, a testator may create a special legal regime for digital assets and limit access to their digital data. In a system of mandatory universal succession, a testator cannot prevent their digital assets from transferring to their heirs, but they can limit the heirs' access and their rights to those assets. A testator may leave their digital assets to a certain person as a legacy and appoint an executor who will take care of the fulfilment of the legacy. In that case, heirs do not have the right to administer or dispose of rights from the estate before the executor fulfils their duty and secrecy of digital data can be protected by a password that is available only to the legatee (Pockrandt 2020, 43–44). When digital data are stored on physical data carriers owned by the testator, there are no limits to disposing of digital assets. Likewise, there are no issues with regard to digital currencies and tokens because their holder can directly dispose of them using the access data. However, when it comes to rights based on contract, the issue of their inheritability will arise. In many cases, transferability and inheritability of rights are excluded by contractual provisions, so service providers can simply block access, provided that contractual provisions are legally valid.

Even if rarely used in contemporary Serbian legal practice, a will executor can have very important rights with regard to an estate and may significantly contribute to the efficient application of the testamentary dispositions. Their role is especially important when an estate is comprised of rights that require professional management, such as shares in commercial companies or rights in digital assets. The rights and obligations of the executor are determined by the intention of the testator, but the Law on Succession provides for very broad competence of the executor: their duties include safeguarding the estate, administering the estate, payment of the decedent's debts and legacies, and generally taking care that the last will of the decedent is applied effectively.[46] As long as an executor is in place, the right of heirs to administer and dispose of the estate is limited (Đurđević 2022, 288–289). The estate belongs to the heirs, but the executor has priority in administering and disposing of the estate in accordance with the provisions of the will. An executor may be appointed only for one part of the estate or for taking care of a certain legacy (Đurđević 2022, 289), which means that their role can be limited to solving problems that arise in connection with digital assets. In this sense, the need for including a clause on the digital executor into wills is already being discussed in Dutch law (Berlee 2017). Such a solution would significantly facilitate administration of digital estates and prevent potential disputes between heirs.

When digital assets are left as a legacy to one of the intestate or testamentary heirs, the testator has the right to decide whether those assets will be included into the heir's share of the estate (*collatio bonorum*). This issue can be very important because of the unstable value of some digital assets, such as cryptocurrencies, but also because of the difficulty of evaluating digital rights. According to dispositive rules of the Serbian Law

46 Law on Succession, Art. 173 (1).

on Succession, gifts and legacies made to intestate heirs are included in their shares of the estate.[47] The law does not provide a rule for testamentary heirs, which means that gifts and legacies will be included in their shares of the estate only if the testator orders this explicitly (Đurđević 2022, 346). A testator may protect their heir from the risk of the evaluation of digital assets by excluding rules on *collatio bonorum*. Heirs will thus be certain of the division of other property because the value of the digital assets will not influence the distribution of the estate. The issue of evaluation, however, cannot be avoided if issues relating to the forced shares or liability of the heirs are raised; in both cases it is necessary to determine the value of the estate, including digital assets. The impossibility of determining the value of this property inevitably hurts the interests of the forced heirs and the decedent's creditors.

When digital assets are disposed of based on a will, it is useful to clearly and precisely define digital rights, but it should also be kept in mind that a will is not an adequate means for protecting access data because of their secrecy and the need to periodically change them, therefore, access data must be kept outside the will (Juhász 2024, 560–561). Access data may be kept in a separate document or in digital form on a physical data carrier or an online platform for storing data. A testator can refer in their will to the document wherein access data is contained, which does not mean that the document will become part of the will if it does not fulfil the requirements of testamentary form (Đurđević 2022, 151), so that it will not be necessary to publish the content of that document in the probate proceedings.

7. CONCLUSION

Inheritance, as universal succession to rights and obligations of the decedent, includes all rights that are suitable for succession and belonged to the decedent at the moment of death, regardless of the type and form of the legal rights. Only rights that are, by their nature, tied to their holder are excluded from the estate, as are rights that are non-inheritable by statute or contractual agreement. Consequently, it should be presumed that all rights to digital assets are inheritable. Uncertainties in the succession to digital assets do not arise from rules of succession – which are defined broadly and liberally – but from insufficient legal regulation of rights in digital assets. In short, it is indisputable that rights to digital assets can be part of succession,

[47] Law on Succession, Arts. 66–68.

but it is unclear whether there are any rights in digital assets in the first place. This is especially problematic with digital assets, which cannot be deemed as things or claims, such as crypto assets based on DLT technology. Nevertheless, in contemporary law there is a clear tendency towards accepting civil law rights in these assets and their succession should not be called into question.

A special issue related to digital succession concerns contractual provisions that exclude the possibility of succession to rights and obligations from contracts for digital services. Such provisions are very common in today's world because they suit the business interests of digital services providers. However, the issue of fairness and validity of such clauses should be raised. Legal theory accepts the view that non-inheritability of digital assets is an exception that should be interpreted narrowly and that privacy, personal data and secrecy of correspondence cannot prevent succession. Furthermore, general contract terms that exclude the possibility of succession may be deemed unfair clauses without legal effect. This is especially the case when heirs are completely barred from accessing and removing the decedent's data. Complete exclusion of the right of heirs to access the decedent's data may be justified only on the basis of the explicit or presumed intention of the decedent.

Notaries public, as impartial legal professionals, may contribute significantly to the development of rules on succession to digital assets and to legal certainty in particular cases. First of all, notaries public are under a duty of helping parties in succession planning, which includes the duty to inform them of the importance of digital assets and the need for clear regulation of the fate of those assets by will or contract. Notaries public should question parties about their digital assets and present to them the legal mechanisms for disposing of that property. This duty arises from the principle of information of parties and the position of notaries public as independent and impartial legal professionals. In addition, notaries public are required to take digital assets into account when conducting probate proceedings and particular actions in probate procedures, especially when taking inventory and evaluating the estate. Rights to digital assets should not remain outside the inventory because they form part of the estate and may have significant monetary value, which directly influences the interests of heirs, the forced heirs, and the decedent's creditors.

Finally, one of the main conclusions of this article should be emphasised: new forms of property interests do not require a fundamental reform of the rules of succession. Succession to digital assets is already regulated by flexible and well-known rules of succession law and all issues pertaining to digital succession may be resolved by adequate interpretation and careful application of these rules. This task is entrusted to the Serbian courts, notaries public, solicitors and legal theorists who will increasingly often have to devote their attention to the issue of civil law protection of digital assets. However, there is no need for legislative intervention because an attempt to provide special rules for digital succession could undermine the unity and coherency of the rules that regulate succession in general and also unfairly limit legal recognition and protection of new forms of property. On the other hand, a legislative intervention would not remove the technical issues that arise from the fact that some assets exist only as sets of digital data. Therefore, succession to digital assets should be approached based on well-established rules of succession law, which, for a good reason, do not provide special rules for every particular type of property, but attempt to cast the net of succession as widely as possible, in order to protect the justified interests of the heirs and the decedent's creditors.

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Article history:
Received: 20. 4. 2026.
Accepted: 27. 5. 2026.

/АНАЛИЗА СУДСКЕ ПРАКСЕ

UDC 347.952-051(497.11)

CERIF: S 142

DOI: 10.51204/Anali_PFBU_26306A

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LIABILITY OF A PUBLIC ENFORCEMENT OFFICER FOR DAMAGE CAUSED IN THE EXERCISE OF PUBLIC POWERS: A REVIEW OF THE SERBIAN SUPREME COURT'S JUDGMENT

The delegation of public powers from the courts to public enforcement officers within the enforcement procedure raises the issue of the supervision of the work of the new judicial professionals. Public enforcement officers are supervised by the Serbian Ministry of Justice and the Chamber of Public Enforcement Officers, and any irregularities identified during such supervision can give rise to disciplinary proceedings. The courts decide on legal remedies and other legal means directed against the public enforcement officer's decisions and actions. Judicial mechanisms of legal control are regulated by law, and supervision by the Ministry of Justice and the Chamber of Public Enforcement Officers is regulated by law and bylaws. Liability of the public enforcement officer for damages caused in the exercise of public powers is regulated by a single statutory provision, which has given rise to uncertainties in judicial practice. This paper analyses the Serbian Supreme Court's judgment addressing disputed legal issues.

Key words: *Public enforcement officer. – Exercise of public powers. – Liability for damages. – The Supreme Court of Serbia.*

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1. PROCEEDINGS BEFORE PUBLIC ENFORCEMENT OFFICER AND PROCEEDINGS BEFORE COURTS OF LOWER INSTANCE

In enforcement case II 3/2023, the enforcement creditor filed a motion for enforcement before a public enforcement officer based on an enforceable document – a final and enforceable decision rendered by the Misdemeanor Court in Pančevo, PR 8502/2021 of 18 July 2022, against the enforcement debtor, i.e., the Republic of Serbia, the Misdemeanor Court in Pančevo. The public enforcement officer rendered the writ of execution, II 3/2023, on 30 January 2023. The enforcement creditor filed an objection against that writ. By ruling IPV (I) 37/2023 of 7 March 2023, the Basic Court in Pančevo rejected the objection as ill-founded and confirmed the challenged writ of the public enforcement officer. Then, on 23 March 2023, the public enforcement officer rendered the ruling determining the costs of proceedings. In that ruling, the costs of the enforcement proceedings before the public enforcement officer were assessed at RSD 1.861,20. This ruling ordered that the enforcement creditor reimburse these costs. In the reasoning of the ruling, the public enforcement officer referred to the provisions of the Law on Enforcement and Securing of Claims[1] and the Schedule of Fees for Public Enforcement Officers.[2] The enforcement creditor filed an objection against the ruling of the public enforcement officer. In ruling IPV (I) 67/2023 of 13 June 2023, the Basic Court in Pančevo adopted the objection and repealed the public enforcement officer's ruling determining the costs of proceedings. In the same ruling, the Basic Court in Pančevo rejected the enforcement creditor's claim for reimbursement of the costs incurred in drafting the objection, because these were not ancillary costs that could be charged to the enforcement debtor. According to the Basic Court in Pančevo, the enforcement debtor did not cause these costs, and they were not costs incurred in conducting the enforcement proceedings. The enforcement creditor engaged an attorney and paid RSD 18.000 to the attorney's account as reimbursement for the costs of drafting the objection.

After the Basic Court in Pančevo rejected the enforcement creditor's claim for reimbursement of the costs incurred in drafting the objection against the public enforcement officer's ruling, the enforcement creditor filed a claim for damages against the public enforcement officer. In the civil proceedings,

[1] Zakon o izvršenju i obezbeđenju (Law on Enforcement and Securing of Claims) – ZIO, *Official Gazette of the RS* 106/2015, 106/2016 – authentic interpretation, 113/2017 – authentic interpretation, 54/2019, 9/2020 – authentic interpretation, 10/2023 – other law and 91/2025.

[2] Javnoizvršiteljska tarifa (Schedule of Fees for Public Enforcement Officers), *Official Gazette of the RS* 93/2019 and 15/2023.

the enforcement creditor sought compensation for damages from the defendant, i.e., the public enforcement officer, in the same amount that the Basic Court in Pančevo had previously refused to award as reimbursement of the costs incurred in conducting the enforcement proceedings, together with the statutory default interest from the date of judgement until the day of collection, and the costs of the civil proceedings from the day when the judgement became enforceable until the day of collection. The Basic Court in Pančevo rejected the claim as ill-founded. The court found that the enforcement officer cannot be held liable for any damages that the plaintiff, i.e., the enforcement creditor, may have suffered in the enforcement proceedings. The Basic Court in Pančevo found that the defendant's conduct did not cause the sustained damage, because the public enforcement officer had acted as a holder of public powers, in accordance with the relevant statutory provisions. It is undisputed that the plaintiff incurred the legal costs for an attorney's drafting of the objection, and that the objection was adopted. The mere fact that the public enforcement officer has incorrectly interpreted a statutory provision or applied an incorrect statutory provision does not constitute a breach of duty in the performance of his functions. An understanding of the law, and a decision based on that opinion, cannot give rise to liability for damages. Taking the above into consideration, in judgment P 1516/2023 of 23 January 2024, the Basic Court in Pančevo rejected the claim as ill-founded, and ordered the plaintiff to reimburse the costs of the civil proceedings to the public enforcement officer.

The plaintiff filed an appeal against the judgment of the Basic Court in Pančevo. In judgment Gž 323/2024 of 29 October 2024, the Higher Court in Pančevo reversed the first instance judgment rendered by the Basic Court in Pančevo and accepted the plaintiff's claim. In its judgment, the court obligated the public enforcement officer to reimburse the plaintiff for RSD 18.000, together with statutory default interest from the date of judgment until the day of collection, and the costs of the civil proceedings together with statutory default interest from the day when the judgment became enforceable until the day of collection. The Higher Court in Pančevo concluded that the defendant, i.e., the public enforcement officer, was at fault for the damage suffered by the plaintiff (formerly the enforcement creditor), since the plaintiff had to engage an attorney to prepare an objection against the public enforcement officer's ruling determining the costs of the enforcement proceedings. In the reasoning of the judgment, the court concluded that the requirements under Articles 154 and 158 of the Law of

Contract and Torts (ZOO)[3] for establishing the liability of the defendant, i.e., the public enforcement officer, for the damage suffered by the plaintiff (the former enforcement creditor) had been met.

The first instance civil proceedings before the Basic Court in Pančevo and the appellate proceedings before the Higher Court in Pančevo were governed by the provisions of the Civil Procedure Law (ZPP)[4] regulating proceedings in small claims disputes. This is a special procedure in which numerous rules differ from those applicable to general civil procedure. The civil lawsuit is not served on a defendant for answer. Instead, it is served together with the summons to the main hearing. No preliminary hearing is held (Art. 472 ZPP). The parties are obliged to present the facts on which their claims are based and propose evidence to establish these facts by the conclusion of the first hearing of the main trial, meaning that they cannot present new facts or propose new evidence in an appeal against the judgment. The first instance judgment can be challenged only on the grounds of absolute substantial violation of civil procedure rules and erroneous application of substantive law (Art. 473 and Art. 479 para. 1 ZPP). The court of second instance cannot repeal a judgment rendered by the court of first instance and return the case to the first instance court for a repeated trial, if it considers that, because of new facts and evidence, and for proper establishment of facts, it is necessary to hold a new trial before the court of first instance. Also, the court of second instance cannot repeal a judgment rendered by the court of first instance and return the case to the first instance court for a repeated trial, if it considers that the erroneous application of the substantive law resulted in an incomplete establishment of the facts (Art. 479 para. 2 ZPP).

Article 479 para. 6 ZPP states that parties cannot seek review against a second instance judgment in the proceedings in small claims disputes. Initially, it was disputed whether this statutory provision refers only to the (regular) review or also to the special review. In its decisions, the Supreme Court of Cassation, i.e., the Supreme Court,[5] stated that a special review is

3 Zakon o obligacionim odnosima (Law of Contract and Torts) – ZOO, *Official Gazette of the SFRY* 29/1978, 39/1985, 45/1989 – decision of the CCY and 57/1989, *Official Gazette of the FRY* 31/1993, *Official Gazette of Serbia and Montenegro* 1/2003 – Constitutional Charter and *Official Gazette of the RS* 18/2020.

4 Zakon o parničnom postupku (Civil Procedure Law) – ZPP, *Official Gazette of the RS* 72/2011, 49/2013 – decision of CC, 74/2013 – decision of CC, 55/2014, 87/2018, 18/2020 and 10/2023 – other law.

5 Zakon o uređenju sudova (Law on Regulation of the Courts), *Official Gazette of the RS* 10/2023, Art. 92, states that as from the date of constitution of the High Judicial Council, i.e., 10 May 2023, the Supreme Court of Cassation shall continue its work as a Supreme Court in accordance with the Law on Regulation of the Courts.

allowed in the proceedings in small claims disputes if the conditions set out in Article 404 ZPP are met. This means that the Supreme Court can decide on a special review in small claims proceedings when it finds that an interpretation of a legal issue of general interest is required, that uniform case law needs to be ensured, or that a new interpretation of the law is warranted.[6]

The public enforcement officer filed a request for special review of the judgment of the Higher Court in Pančevo. The Supreme Court ruled that the special review was admissible, stating that the conditions set out in Article 404 ZPP are met, namely, that it was necessary to ensure uniform case law.

2. THE SUPREME COURT'S RULING AND LEGAL POSITIONS

Upon deciding on the public enforcement officer's motion for a special review, in judgment Rev 1028/2025 of 21 November 2025, the Supreme Court reversed judgment Gž 323/2024 of the Higher Court in Pančevo of 29 October 2024, confirmed judgment P 1516/2023 of the Basic Court in Pančevo of 23 January 2024, and rejected the plaintiff's appeal as ill-founded.[7] In the same judgment, the Supreme Court rejected the plaintiff's request for reimbursement of the costs of the appellate proceedings, and ordered the plaintiff to reimburse the costs of the review proceedings. In its reasoning, the Supreme Court concluded that the Higher Court in Pančevo, as the appellate court, had erroneously applied substantive law by finding that the defendant, i.e., the public enforcement officer, was liable for the damage sustained by the plaintiff. The Supreme Court found that the fact that the ruling of the public enforcement officer, determining the costs of the proceedings had been repealed by the ruling of the Basic Court in Pančevo, could not constitute a basis for the public enforcement officer's liability for damages. If the public enforcement officer rendered a decision in accordance with his statutory powers, the mere fact that he failed to apply the statutory provision that should have been applied or applied it incorrectly does not mean that the requirements set out in Article 498 para. 1 of the ZIO have been met. This Article states that a public enforcement officer is personally liable with all his property for any damages caused through his fault in the course of enforcement or proceedings for securing of claims. The reversal

6 Supreme Court of Cassation, Judgment, Rev 9826/2022 of 15 December 2022, Supreme Court of Cassation, Ruling, Rev 4902/2019 of 4 December 2019, Supreme Court of Cassation, Ruling, Prev 260/2015 of 10 May 2016.

7 Supreme Court, Judgment, Rev 1028/2025 of 21 November 2025.

or repeal of the public enforcement officer's decision does not in itself mean that the public enforcement officer is liable for the sustained damages. Article 498 para. 1 of the ZIO refers to damage caused by a public enforcement officer through his fault. In its reasoning of the judgment, the Higher Court in Pančevo referred only to Articles 154 and 158 of the ZOO, and it is not apparent on what basis the public enforcement officer was found liable for the damage caused. The Higher Court in Pančevo accepted the factual findings of the court of first instance as correct and complete, but found that the Basic Court in Pančevo had erroneously applied substantive law when it concluded that reversing or repealing the public enforcement officer's decisions, by itself, could not constitute a basis for the public enforcement officer's liability for damages. The Higher Court in Pančevo found that the public enforcement officer was liable for damages solely because his ruling had been repealed in the appellate proceedings. Contrary to the view of the Higher Court in Pančevo, the Supreme Court found that it was not proven that the public enforcement officer acted unlawfully or improperly, namely, it was not proven that the public enforcement officer caused any damage to the plaintiff, i.e., the enforcement creditor in the enforcement proceedings, through his fault. Taking the above into consideration, the Supreme Court reversed the judgment of the Higher Court in Pančevo and found that the public enforcement officer acted within his public powers and could not be liable for any damages. The application of an inappropriate statutory provision or the erroneous interpretation of a statutory provision, namely, the legal understanding adopted in interpreting the law, cannot in itself constitute a basis for the liability of the public enforcement officer, regardless of whether the public enforcement officer's decision had been confirmed, repealed, or reversed in appellate proceedings.

The same issue was also raised before the Supreme Court in the case Rev 2404/2025.[8] The public enforcement officer rendered the writ of execution, II 128/2022 of 14 September 2022, based on an enforceable document – a final and enforceable judgment, Prr1 73/2021 rendered by the Basic Court in Pančevo. The enforcement debtor in these proceedings was the Republic of Serbia, the High Judicial Council, the Commercial Court in Pančevo. The enforcement creditor filed an objection against that writ. In ruling IPV (I) 139/2022 of 20 October 2022, the Basic Court in Pančevo rejected the objection. On 22 May 2023, the public enforcement officer rendered a ruling determining the costs of proceedings, and ordered the enforcement creditor to pay RSD 3.824,18. The enforcement creditor filed an objection against this ruling. In ruling IPV (I) 94/2023 of 16 June 2023, the Basic

[8] Supreme Court, Judgment, Rev 2404/2025 of 14 November 2025.

Court in Pančevo adopted the objection, and at the same time, rejected the enforcement creditor's claim for reimbursement of the costs incurred in drafting the objection. In the reasoning of the ruling, the Basic Court in Pančevo stated that these were not ancillary costs that could be charged to the enforcement debtor, because the enforcement debtor did not cause them, and these are not costs incurred in conducting the enforcement proceedings. The enforcement creditor engaged an attorney and paid RSD 18.000 to the attorney's account as reimbursement for the costs of drafting the objection. Subsequently, the enforcement creditor sought the same amount of RSD 18.000 in civil proceedings as compensation for damages caused by the unlawful and irregular conduct of the public enforcement officer. In judgment P 1532/2023 of 16 January 2024, the Basic Court in Pančevo accepted the plaintiff's claim. In the reasoning of the judgment, the Basic Court in Pančevo stated that the public enforcement officer was at fault for the damage suffered by the plaintiff (formerly the enforcement creditor), since the plaintiff had to engage an attorney to prepare an objection against the public enforcement officer's ruling determining the costs of the enforcement proceedings. The Basic Court in Pančevo concluded that the requirements, under Articles 154 and 158 of the ZOO for establishing the liability of the public enforcement officer for the damage suffered by the plaintiff, had been met. Upon deciding on the public enforcement officer's appeal, in judgment P 315/2024 of 29 October 2024, the Higher Court in Pančevo rejected the appeal as ill-founded and confirmed the challenged judgment of the Basic Court in Pančevo. The Higher Court in Pančevo concluded that the Basic Court in Pančevo had correctly applied substantive law when it ordered the public enforcement officer to pay damages to the plaintiff. In this case, the Supreme Court also accepted the motion for a special review to ensure uniform case law. In the reasoning of the judgment, the Supreme Court held that the plaintiff's claim for reimbursement of costs had already been decided by the Basic Court in Pančevo in the enforcement proceedings, in which the plaintiff had the capacity of an enforcement creditor. The enforcement creditor's claim for reimbursement of the costs was rejected with final effect in the enforcement proceedings, meaning that the enforcement creditor cannot claim the same amount as damages in civil proceedings. The Supreme Court also stated that the public enforcement officer cannot be held liable for his legal understanding adopted in interpreting the law.

The Commercial Appellate Court also addressed the liability of public enforcement officers for damages caused in the exercise of their public powers. In its judgment 6 Pž 7329/2022,[9] upon deciding on the plaintiff's

[9] Commercial Appellate Court, Judgment, 6 Pž 7329/2022 of 6 June 2024.

appeal against the judgment of the Commercial Court in Belgrade, the Commercial Appellate Court concluded that the fact that a public enforcement officer's decision has been repealed or reversed does not mean that the requirements set out in Article 498 para. 1 of the ZIO have been met. This Article states that a public enforcement officer is personally liable with all his property for any damages caused through his fault in the course of enforcement or securing of claims proceedings. If the public enforcement officer acted in accordance with his statutory powers, the reversal or repeal of the public enforcement officer's decision does not lead to his liability for any sustained damages.

3. DELEGATION OF PUBLIC POWERS TO PUBLIC ENFORCEMENT OFFICERS

Article 97 it. 2 of the Constitution states that the Republic of Serbia organizes and provides for proceedings before courts and other state bodies. The Constitution establishes the principles governing the organization of the judiciary and the exercise of the judicial function, as well as the constitutional rights that must be guaranteed in judicial proceedings. Article 137 of the Constitution is named "Delegation of Public Powers and Public Services". The law can stipulate delegation of performing particular affairs that fall within the competence of the Republic of Serbia to the autonomous province or local self-government unit (para. 1). Particular public powers can be delegated to enterprises, institutions, organizations and individuals (para. 2). Public powers can also be delegated to specific bodies through which they perform a regulatory function in particular fields or affairs (para. 3). The Republic of Serbia, autonomous provinces and local self-government units can establish public services (para. 4). Their organization and work shall be stipulated by law (para. 5).[10]

The cited constitutional provisions govern the delegation of public powers in public administration. The Constitution does not have a provision relating to the delegation of public powers falling within the competence of the courts to notaries public and public enforcement officers. The original text of the Constitution was adopted in 2006. However, the situation remained

[10] In accordance with Art. 33 para. 4 of the Basic Law of the Federal Republic of Germany, the rule is that the execution of tasks falling within the competence of the state as a permanent duty is delegated to public service officials who are in a public law relationship and must be loyal to public service. *https://www.gesetze-im-internet.de/gg/*, last visited July 30, 2026.

unchanged following the 2022 constitutional amendments concerning the judiciary. This does not imply that the delegation of particular public powers to notaries public and public enforcement officers is unconstitutional.

The Law on Enforcement and Securing of Claims (ZIO) from 2011[11] introduced the public enforcement officers into the Serbian legal system. This law used the term "enforcement officer", and the term "public enforcement officer" was introduced by the law currently in force. Shortly after enforcement officers began operating under the provisions of the 2011 ZIO, the question arose whether the delegation of public powers to the enforcement officers not employed by the courts was constitutional. The initiative submitted to the Constitutional Court challenged the constitutionality of Articles 251–256 of the 2011 ZIO, which regulated special enforcement proceedings for the settlement of monetary claims stemming from utility and related services. The initiators argued that delegating to enforcement officers the authority to decide on a motion for enforcement for the purpose of collecting a monetary claim incurred by utility services and related services violated Article 32 para. 1 of the Constitution, i.e., the right to a fair trial. The initiators stated that, according to the challenged provisions of the 2011 ZIO, enforcement officers assumed the role of the court. The Constitutional Court dismissed the initiative to institute proceedings for assessing the constitutionality of the aforementioned provisions of the Law on Enforcement and Securing of Claims applicable at the time (Bodiroga 2014, 121–122).

The Constitutional Court held that Article 32 para. 1 of the Constitution, which guarantees the right to a fair trial, including the right to access to a court, does not mean a court must decide on the rights and duties of natural and legal persons at every stage of the proceedings. The Constitutional Court had previously expressed the same view in relation to a similar legal issue in the proceedings for assessing the constitutionality of the Law on Misdemeanors, in case IUz-1577/2010 of 25 April 2013. In that regard, the Constitutional Court also relied on the case law of the European Court of Human Rights regarding the scope of the application of Article 6 para. 1 of the European Convention on Human Rights. The European Court of Human Rights has emphasized that States are not required to submit every "dispute over civil rights and duties" to proceedings in which every stage is conducted before judicial bodies. If one stage of proceedings is conducted before some other body, there is no breach of the Convention if those first instance proceedings are subject to subsequent control by a

[11] Zakon o izvršenju i obezbeđenju (Law on Enforcement and Securing of Claims) – 2011 ZIO, *Official Gazette of the RS* 31/2011, 99/2011 – other law, 109/2013 – decision of CC, 55/2014.

judicial body that has full jurisdiction (judgment in the case *Albert and Le Compte v. Belgium* of 10 February 1983). According to the Constitutional Court, it is not unconstitutional that the Law on Enforcement and Securing of Claims authorizes the public enforcement officer to decide on a motion for enforcement based on a credible document for a settlement of monetary claims stemming from utility and related services. The legislature may, within the scope of its constitutional powers, stipulate who can conduct particular enforcement proceedings and under which procedural rules. In exercising these powers, the legislature is guided by legislative policy and an assessment of usefulness. Taking the above arguments into consideration, the Constitutional Court held that the initiative was manifestly ill-founded in that respect.[12]

It is also worth noting the Constitutional Court's position concerning the delegation of public powers to notaries public in non-contentious proceedings. In the initiatives submitted to the Constitutional Court, it was stated that, by authorizing notaries public to conduct certain non-contentious proceedings and perform specific acts therein, part of the judicial powers was transferred to bodies belonging to the executive branch. The Constitutional Court held that these claims are entirely ill-founded. It should be taken into consideration that the Law on Non-Contentious Proceedings precisely defines which non-contentious proceedings can be delegated to notaries public and under what conditions, while also providing for judicial supervision and legal remedies against decisions rendered by notaries public acting as court commissioners. For these reasons, the claim that notaries public have assumed powers belonging to the judicial branch cannot be accepted. The court is not excluded from non-contentious proceedings delegated to notaries public. The court acts as a supervisory body and, under the conditions prescribed by law, can withdraw a case assigned to a notary public. Moreover, a decision rendered by a notary public can be challenged in the same manner and under the same conditions as a decision rendered by the court. Taking the above arguments into consideration, the Constitutional Court dismissed the initiative to institute proceedings for assessing the constitutionality of Articles 30a–30z of the Law on Non-Contentious Proceedings (Bodiroga 2026, 575–576).[13] The decision was not adopted unanimously, and one of the justices issued a separate opinion, arguing that the Constitutional Court did not address the issue of whether

[12] Constitutional Court, Decision, IUz-782/2012 of 27 February 2014.

[13] Zakon o vanparničnom postupku (Law on Non-Contentious Proceedings) – ZVP, *Official Gazette of the SRS* 25/1982 and 48/1988, *Official Gazette of the RS* 46/1995 – other law, 18/2005 – other law, 85/2012, 45/2013 – other law and 14/2022.

the conduct of non-contentious proceedings delegated to notaries public could be regarded as an exercise of judicial power and whether judicial powers may be delegated to non-state bodies at all.[14]

The legislature delegated certain public powers to public enforcement officers. Article 468 para. 1 of the ZIO states that the public enforcement officer exercises public authorities delegated to him by this or other laws. The public enforcement officer performs his activities either as a sole trader or a member of a partnership whose members are exclusively public enforcement officers (Art. 468 para. 2 ZIO). Unlike a judicial enforcement officer, a public enforcement officer is not a public servant. Instead, he exercises public powers within the broader concept of the judiciary (Keča, Knežević 2022, 514).

Public enforcement officers are appointed by the Minister of Justice following a public competition. Public enforcement officers are appointed for the territory of a higher court and the territory of a commercial court, namely one public enforcement officer for every 25,000 inhabitants. The number of public enforcement officers can increase, depending on the needs or upon a reasoned motion of the Chamber of Public Enforcement Officers (Art. 469 ZIO). Requirements for appointment of the public enforcement officer are stated in Article 471 of the ZIO. A legally capable person, being a citizen of the Republic of Serbia, can be appointed as a public enforcement officer if he meets the following criteria: 1) he has received a degree from the Faculty of Law and passed the public enforcement officer license exam and the bar exam; 2) he has completed the initial training and has at least two years of professional experience in legal affairs after having passed the bar exam; 3) he is worthy of the activity of a public enforcement officer; 4) the general partnership he is a member of is not subject to bankruptcy proceedings; 5) he is not subject to criminal proceedings for crimes against legal transactions or official duty, has not been convicted of a crime and sentenced to an unconditional prison term of at least six months, or of a punishable offence making him unworthy of the public enforcement officer activity (Art. 471 para. 2 ZIO). A person who has been dismissed from the office of a public enforcement officer or a notary public, on whom a disciplinary measure of striking from the directory of attorneys was imposed, or was discharged from a judicial position, or the position of a public prosecutor or deputy public prosecutor, cannot be appointed as a public enforcement officer (Art. 471 para. 3 ZIO).

[14] Constitutional Court, Decision, IUz-97/2020 of 4 February 2021 and the Separate Opinion of Justice Tamaš Korhec.

In accordance with Article 493 of the ZIO, a public enforcement officer exercises the following public powers: 1) issuing a writ of execution based on a credible document for the purpose of settling a monetary claim arising from utility services and related activities; 2) adopting a conclusion to set, amend, or add the means and objects of enforcement; 3) issuing writs and conclusions; 4) undertaking activities that directly conduct enforcement or securing of claims; 5) serving court acts and those of public enforcement officer as well as of the parties and other participants in the proceedings, in cases where the public enforcement officer conducts the enforcement; 6) collecting data on the enforcement debtor (Art. 30); 7) performing other duties prescribed by this or other laws.[15] The public enforcement officer's authorities can be analyzed in different stages of enforcement proceedings (deciding on the enforcement motion and conducting enforcement). The public enforcement officer has exclusive jurisdiction to decide on the enforcement motion and to conduct enforcement to settle monetary claims arising from utility services and related activities. The public enforcement officer also has exclusive jurisdiction to decide on the enforcement motion and to conduct enforcement to settle monetary claims against the enforcement debtor, which is the Republic of Serbia, an autonomous province, or a unit of local government, or the beneficiary of the state budget funds. The court decides on the motion for enforcement in all other enforcement proceedings. When it comes to conducting enforcement, as a rule, the public enforcement officer has exclusive jurisdiction, while the jurisdiction of the court is limited to the following situations: enforcement of performance that can only be undertaken by the enforcement debtor, enforcement of nonperformance or sufferance, enforcement of enforceable documents related to family relationships (except the collection of statutory maintenance), reinstatement of an employee, and enforcement proceedings in which the court's jurisdiction for enforcement is prescribed by a separate law. The public enforcement officer has other authorities that are delegated to him by provisions of the ZIO or by a separate law. The exercise of the aforementioned authorities is subject to various forms of supervision and control (Keča, Knežević 2022, 514; Poznić, Rakić-Vodinelić 2015, 664–665; Rakić-Vodinelić 2012, 296–297).

[15] For example, pursuant to Article 40 of the Court Taxes Act, public enforcement officers are entrusted with the authority to enforce the collection of court taxes from natural persons.

The Ministry of Justice supervises the actions of public enforcement officers. The supervision is conducted upon the motion of the presiding judge of the court for whose territory the public enforcement officer has been appointed, upon the complaint of a party or participant in the proceedings, or on the Ministry's own initiative. While supervising, the Ministry is authorized to obtain data on the manner in which the public enforcement officer has issued decisions and undertaken activities in the particular proceedings, to inspect the choice of means and objects of enforcement and their change during the proceedings, to request evidence of how the documents have been served, to request documentation about the amount of costs of the proceedings, as well as to take other actions prescribed by Article 523 of the ZIO. Following the completion of the supervision, the state official who performed the supervision forwards the minutes of the supervision to the Ministry of Justice's disciplinary prosecutor and the disciplinary prosecutor of the Chamber of Public Enforcement Officers. The Ministry of Justice's supervisory proceedings are governed by the provisions of the ZIO and by the provisions of the bylaws adopted by the Minister of Justice.

The operation of the public enforcement officer is also supervised by the Chamber of Public Enforcement Officers. In the course of supervision, the Chamber of Public Enforcement Officers has the same authorities as the Ministry of Justice and can also take additional actions prescribed by Article 524 of the ZIO, other statutory provisions, and the Chamber's regulations.

The courts also exercise control over the public enforcement officer's actions and decisions when deciding on legal remedies and other legal means in enforcement proceedings. Parties and participants in enforcement proceedings have various legal remedies and other legal means at their disposal through which they can challenge decisions and actions taken by public enforcement officers. In proceedings concerning legal remedies and other legal means, the court examines the legality and correctness of the public enforcement officer's decisions and actions.

Disciplinary accountability is a specific form of accountability of public enforcement officers. A public enforcement officer is held accountable for disciplinary infractions in the event of infringement of the law or other regulations, failure to fulfill his responsibilities under the provisions of the Association and other regulations or general acts of the Chamber, as well as in the event of violation of the reputation of public enforcement officers (Art. 525 ZIO). Severe disciplinary infractions are set by the law, and minor disciplinary infractions are set by the Articles of Association of the Chamber (Art. 526 ZIO). Disciplinary proceedings are usually instigated following the supervisory proceedings by the Ministry of Justice or the Chamber of Public Enforcement Officers. However, conducting the supervision of a public enforcement officer's actions is not a precondition for the initiation of disciplinary proceedings. The request for determining disciplinary accountability can be filed by the Minister of Justice, the disciplinary prosecutor of the Chamber, the disciplinary prosecutor of the Ministry of Justice, and the president of the Chamber (Art. 536 ZIO). The disciplinary proceedings are conducted by the Disciplinary Commission, whose composition is prescribed by law (Art. 532 ZIO), and administrative dispute proceedings can be initiated against the Disciplinary Commission's decision (Art. 541 ZIO). The most severe disciplinary measure is a permanent ban on practicing the activity of a public enforcement officer.

Public enforcement officers can also be held criminally liable. Pursuant to Article 112 para. 3 it. 3 of the Criminal Code (KZ),[16] a public enforcement officer is deemed to be an official (Stanković, Boranijašević 2020, 701). The KZ prescribes criminal offences against official duty.

Finally, a public enforcement officer is personally liable with all his property for any damages caused through his fault in the course of enforcement or securing of claims proceedings (Art. 498 para. 1 ZIO). The Republic of Serbia is not liable for any such damages (Art. 498 para. 2 ZIO).[17]

[16] Krivični zakonik (Criminal Code) – KZ, *Official Gazette of the RS* 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, 94/2024 and 63/2026.

[17] Article 58 para. 1 of the Law on Notary Public Office prescribes that the notary public is liable to redress any damage caused in the course of performing his professional activities. Para. 4 of the aforementioned Article prescribes that the Republic of Serbia is not liable for any such damages. Similar solutions can also be found in comparative law. Article 19 para. 1 of the German Federal Code for Notaries states that when a notary, through intent or negligence, breaches the official duty incumbent upon him vis-à-vis other persons, that notary is required to compensate those persons for the damage arising therefrom. The state is not liable in place of the notary. *https://www.gesetze-im-internet.de/bnoto/BJNR001910937.html*, last visited July 30, 2026. Article 42 para. 1 of the Croatian Public Notaries Act states that a notary public is liable to redress any damage caused by breaching his official duty. Para. 2 of the aforementioned Article states that a notary public is liable for any damages caused in accordance with the general rule for compensation for damages committed by officials. The state shall not be liable for damage committed by a notary public. *https://www.zakon.hr/z/188/zakon-o-javnom-biljeznistvu*, last visited July 30, 2026. Article 34 para. 1 of the Montenegrin Law on Public Enforcement Officers states that a public enforcement officer is personally liable with all his property for any damages caused through unlawful and improper

A distinction should be made between the aforementioned forms of supervision and liability, as they are frequently confused in practice. We mentioned that supervision could be delegated to different bodies. When it comes to liability, certain forms of liability are established in different types of proceedings and should not be confused. The Supreme Court pointed this out in its decisions and interpretations. Civil liability for damages caused by a public enforcement officer in exercise of his public powers is established in the civil proceedings initiated by a claim brought by the injured party. The existence of disciplinary liability does not constitute an interlocutory issue in civil proceedings brought by an injured party against the public enforcement officer. The public enforcement officer is indeed liable for any damages caused in the course of enforcement or securing of claims proceedings, but he is also subject to disciplinary liability. Disciplinary liability is established in disciplinary proceedings conducted by the Disciplinary Commission, and administrative dispute proceedings can be initiated against the Disciplinary Commission's decision. By contrast, the public enforcement officer's civil liability can be established only in civil proceedings.[18]

4. PUBLIC ENFORCEMENT OFFICER'S LIABILITY FOR DAMAGES CAUSED THROUGH UNLAWFUL AND IMPROPER WORK

Article 35 para. 2 of the Constitution of the Republic of Serbia states that everyone has the right to compensation for material or non-material damage inflicted on him by unlawful or improper work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government. The law stipulates conditions under which the injured party can demand compensation for damage directly from the person that inflicted the damage (Art. 35 para. 3 Constitution). According to Article 172 para. 1 of the ZOO, a legal person is liable for injury or loss caused to a third party by its governing body in performing or in connection with performing its functions. Unless otherwise specified by law for a specific case, a legal person is entitled to recover against a person being at fault for injury or loss with intent or by gross negligence (Art. 172 para. 2 ZOO).

work in the enforcement proceedings, and para. 2 states that the state is not liable for damage committed by a public enforcement officer. *https://www.javni-izvrsitelji.me/*, last visited July 30, 2026.

[18] The legal interpretation adopted at a session of the Civil Department of the Supreme Court of Cassation of 11 December 2018. *https://www.vrh.sud.rs/sr/*, last visited July 23, 2026.

It follows from the cited constitutional provisions that the right to compensation for damage caused by the unlawful and improper work of a state body or entities exercising public powers is exercised against the Republic of Serbia, while the law prescribes the conditions under which an injured party can demand compensation for damage directly from the person that inflicted the damage. In this context, it is important to distinguish between judges and entities exercising public powers in civil proceedings (the public enforcement officers and the notaries public).

The Republic of Serbia is liable for damages caused by a judge through unlawful or improper work (Art. 7 para. 1 ZS).[19] If the Republic of Serbia is obliged by a final judgment to pay damages caused by a judge through unlawful or improper work, it may demand that the judge reimburse the compensation paid only if the damage was caused intentionally (Art. 7 para. 2 ZS). The same goes if the Republic of Serbia is obliged to pay for damages by a decision of the Constitutional Court, a decision of the European Court of Human Rights, or a decision of another international court (Art. 7 para. 3 ZS). The Republic of Serbia exercises the right of recourse in civil proceedings initiated by the State Attorney's Office against a judge. Before initiating the civil proceedings, the State Attorney's Office is required to seek the opinion of the High Judicial Council, which is composed predominantly of judges (Art. 7 para. 4 ZS).

In contrast to the aforementioned statutory provisions, in the case of public enforcement officers and notaries public, a claim for compensation for damages caused in the course of their work is brought directly against them. Unlike judges, they do not enjoy civil immunity.[20] Furthermore, the

[19] Zakon o sudijama (Law on Judges) – ZS, *Official Gazette of the RS* 10/2023, 9/2026 and 56/2026.

[20] In one case, on 8 August 2008, the plaintiff filed a claim in the Second Municipal Court in Belgrade against the Republic of Serbia – the Ministry of Justice, and several judges of the Municipal Court in Pančevo, the District Court in Pančevo, and the Supreme Court of Serbia. The plaintiff requested that the court order the defendants to pay him jointly and severally the amount of RSD 9.900,00, as compensation for non-material damages to reputation and violations of rights of personality, together with statutory default interest from the date of judgment until the day of collection, as well as the costs of the civil proceedings. The plaintiff alleged that the defendants had caused damages to the plaintiff by holding a meeting attended by the President of the Supreme Court of Serbia, the President of the Civil Department of that Court, and the President of the Second Municipal Court in Belgrade, together with the representative of the then defendant, the Ministry of Defense. In this meeting, the general position was reached that "the plaintiff was not entitled to compensation for damages" on the ground that his salary in the Serbian Armed Forces had been paid regularly. In ruling P 4163/2008 of 16 September 2008, the Second Municipal Court in Belgrade dismissed the claim as inadmissible. In the reasoning, it was

statutory provisions explicitly state that the Republic of Serbia is not liable for any damages caused by a public enforcement officer or notary public (Art. 498 para. 2 ZIO; Art. 58 para. 4 ZJB).

To establish a public enforcement officer's liability for damages caused in the exercise of his public powers, the damages must be caused by unlawful or improper work. The Republic of Serbia is liable for damages caused by a judge through unlawful or improper work. Regardless of whether the damages were caused by a judge or a public enforcement officer, the exercise of the right to compensation for damages against the Republic of Serbia or directly against the public enforcement officer requires a finding that the damages resulted from unlawful or improper work. There is no uniformity in judicial practice on this issue. This has been pointed out by the Supreme Court (of Cassation).

In judgment Rev 1947/2021, the Supreme Court of Cassation addressed disputed legal issues. Initially, civil proceedings were initiated seeking compensation for investments made in a residential building. In the judgment, the Basic Court in Pančevo rejected the entire claim as ill-founded. Upon deciding on the plaintiff's appeal, the Appellate Court in Belgrade reversed the Basic Court in Pančevo's judgment and obliged the defendant to pay a specified amount of money for the aforementioned investments. The plaintiff filed a motion for enforcement based on an enforceable document – the aforementioned judgment. A writ of execution was issued, based on which the public enforcement officer adopted a conclusion of enforcement on immovable property, more specifically, the aforementioned residential building. The public enforcement officer appraised the immovable property, a public auction was held, the immovable property was awarded to the buyer, and the conclusion on awarding the immovable property was adopted. However, the judgment of the Supreme Court of Cassation reversed the judgment of the Appellate Court in Belgrade, based on which enforcement was ordered and carried out. The enforcement debtor (the

stated that the claim was inadmissible for lack of a legal interest. Additionally, the legal position adopted at the session of the Civil Department of the Supreme Court of Serbia, held on 15 March 2007, established that, pursuant to international standards, the Constitution, and the Law on Judges, the right to seek compensation for damages directly from judges is not suitable for judicial protection. Acting upon the appeal lodged by the applicant in the constitutional complaint, in its contested ruling Gž. 12054/2008 of 23 October 2008, the District Court in Belgrade rejected the appeal as ill-founded and confirmed the ruling P 4163/2008 of 16 September 2008 by the Second Municipal Court in Belgrade. In decision Už-1350/2008 of 4 February 2010, the Constitutional Court held that the Second Municipal Court in Belgrade and the District Court in Belgrade had correctly dismissed the claim against the defendant judges.

defendant in the civil proceedings) filed a motion for counter-enforcement based on the fact that the enforceable document had been finally reversed. However, during the counter-enforcement proceedings, it was established that the enforcement creditor (the plaintiff in civil proceedings) did not own any movable or immovable property, his accounts were blocked, and he had transferred his sole proprietorship to another person. Due to the inability to recover his claim in counter-enforcement proceedings, the enforcement debtor filed a claim against the Republic of Serbia seeking compensation for damages caused by actions and decisions of the judges adjudicating the case. The court of first instance rejected the claim, and that decision was confirmed by the court of second instance. Upon deciding on review of the second instance judgment, the Supreme Court concluded that the review was ill-founded. In the reasoning, the Supreme Court stated that liability for damages caused by a judge arises where the damage has resulted from unlawful (conduct contrary to the law or other regulation, or failure to apply the law or regulation) or improper work of a judge (performance or omission contrary to the usual manner of conducting the activity, which violates the rights and interests of a person). Therefore, conduct that is in accordance with the law or carried out within the scope of the relevant authority's powers cannot constitute unlawful or improper work. Even the incorrect application of the relevant statutory provision or an erroneous assessment of whether the conditions for adopting a particular decision have been met does not, in itself, constitute a breach of duty in the performance of their functions for which the state should be liable. The Constitution of the Republic of Serbia guarantees autonomy and independence of judges, namely, the right to express an opinion when rendering a decision, for which a judge cannot be held liable in any way. Taking the above arguments into consideration, the claim was correctly rejected as unfounded, given that it had not been established that the state bodies had acted unlawfully.[21]

[21] Supreme Court of Cassation, Judgment, Rev 1947/2021 of 26 May 2021. By contrast, if a court fails to exercise the statutory powers available to it, this may constitute unlawful and improper conduct on the part of the court and give rise to liability for damages caused to the parties in the enforcement proceedings. When there is a clear disproportion between the value of the enforcement debtor's sold property and the amount of the claim of the enforcement creditor, and the enforcement debtor suggested other means and objects of enforcement that are sufficient for settlement of the claim of the enforcement creditor, a breach of the principle of proportionality in such circumstances constitutes unlawful and improper conduct on the part of the court for which the Republic of Serbia is liable. Furthermore, the court is required to ensure compliance with the principle of proportionality (Supreme Court of Cassation, Judgment, Rev 4947/2018 of 22 February 2019).

In support of the position adopted by the Supreme Court (of Cassation), it is necessary to point out the relevant constitutional and statutory provisions. Article 144 para. 1 of the Constitution states that a judge is independent and adjudicates based on the Constitution, ratified international treaties, laws, generally accepted rules of international law, and other general acts, adopted in accordance with the law. A judge is free in holding his views, determining facts, and applying law in all matters under his deliberation (Art. 22 para. 1 ZS). A judge is not required to justify to anyone, even other judges and/or the president of the court, his understanding of the law and the facts found, except in the reasoning of the judgment or when particularly stipulated so by law (Art. 22 para. 2 ZS). It follows from the aforementioned constitutional and statutory provisions that the judge's conduct cannot be regarded as unlawful or improper if he has a different understanding of the law, or if he applies an incorrect statutory provision to a particular set of circumstances, or where the applicable statutory provision is applied incorrectly.

The judgment of the Supreme Court in case Rev 1028/2025 makes it clear that the aforementioned principles concerning unlawful and improper conduct of a judge also apply to the conduct of public enforcement officers. A public enforcement officer exercises the delegated public powers in the enforcement and securing of claims proceedings; namely, he exercises part of the jurisdiction that was previously within the courts' jurisdiction. A public enforcement officer will perform his duty professionally, in accordance with the law and other general acts, so that through his work and behavior he justifies and strengthens the trust of parties, citizens, courts, and other state bodies (Art. 494 ZIO; Art. 5 Code of Ethics of Public Enforcement Officers).[22] When performing actions within the scope of his powers and duties, the public enforcement officer is obliged to comply with the Constitution, laws, and other general acts (Art. 10 Code of Ethics of Public Enforcement Officers). It follows that the public enforcement officer cannot be held liable for having a different understanding of the law or the application of the statutory provisions. The public enforcement officer's decisions and actions are subject to judicial review through legal remedies and other legal means. Under the ZIO and the ZPP, the court adjudicating the legal remedy can confirm, repeal, or reverse those decisions. The court can also cancel enforcement actions already taken by the public enforcement officer. Repealing or reversing the public enforcement officer's decisions, or canceling his enforcement actions on the grounds provided by law, is not enough to constitute unlawful or improper work of the public enforcement officer and, consequently, liability for damage within the meaning of Article

22 Etički kodeks javnih izvršitelja (Code of Ethics of Public Enforcement Officers), *Official Gazette of the RS* 105/2016.

498 para. 1 ZIO. The powers of a public enforcement officer are prescribed by the ZIO and may also be prescribed by a separate law. If the public enforcement officer renders decisions and takes actions in accordance with law, he cannot be held liable for his legal understanding, even when a court has reversed or repealed the public enforcement officer's decision or canceled any of his actions.

5. IN LIEU OF A CONCLUSION

A person who received a degree from the Faculty of Law, passed the bar exam, passed the public enforcement officer license exam, has at least two years of professional experience in legal affairs after having passed the bar exam, and meets all other criteria set out in Article 471 of the Law on Enforcement and Securing of Claims, can be appointed as a public enforcement officer. These criteria also include completing the initial training, the program and duration of which are prescribed by the Chamber of Public Enforcement Officers. For comparison, a person who obtained a degree from the Faculty of Law and passed the bar exam, and has at least three years of professional experience in legal affairs after having passed the bar exam, and meets all other criteria set by the Law on Judges, qualifies for appointment as a judge of a basic court. The difference is that the public enforcement officer must have at least two years of professional experience in legal affairs after having passed the bar exam. However, in addition to having passed the bar exam, the public enforcement officer is also required to pass the separate exam for public enforcement officers (Bodiroga 2026, 663).

One of the most important duties of a public enforcement officer is the duty of continuing professional development. A public enforcement officer must undergo regular professional training (Art. 499 para. 1 ZIO). The Chamber of Public Enforcement Officers keeps attendance records for regular professional training and other forms of professional development (Art. 499 para. 2 ZIO). The Chamber also prescribes the curriculum for professional development (Art. 499 para. 3 ZIO). The Chamber keeps attendance records for the initial and regular professional trainings, and notifies the Ministry of Justice (Art. 499 para. 5 ZIO). A public enforcement officer is obliged to constantly monitor regulations, judicial and public enforcement officer practice, as well as to renew, improve and expand his legal and general education without neglecting any area of law (Art. 5 para. 2 Code of Ethics of Public Enforcement Officers). Unjustified refusal of professional training constitutes a severe disciplinary infraction (Art. 527 para. 1 it. 22 ZIO).

Legal scholars emphasize that when the tortfeasor practices a profession that requires professional education and practical training, that tortfeasor is subject to the rules governing professional liability (Karanikić Mirić 2024, 542).[23] In the case of public enforcement officers, it is necessary to establish whether they acted in accordance with the public powers delegated to them, mainly, whether such conduct was in accordance with the laws and other provisions governing their work. If a public enforcement officer rendered decisions and took actions in accordance with law, bylaws, and respected duties prescribed by the ZIO and separate laws, this cannot constitute unlawful or improper work, even when his decisions are confirmed, repealed, or reversed. A public enforcement officer has a right to his own understanding of the law, namely, the right to his own interpretation of the statutory provisions applied in specific enforcement proceedings. The court's different understanding of the law in the second instance proceedings does not imply that the public enforcement officer's work was unlawful or improper, nor can liability of the public enforcement officer be established pursuant to Article 498 para. 1 ZIO.

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Article history:
Received: 31. 7. 2026.
Accepted: 19. 8. 2026.

/ПРИКАЗИ

Boris BEGOVIĆ, PhD*

Greif, Avner, Joel Mokyr, Guido Tabellini. 2025. *Two Paths to Prosperity: Culture and Institutions in Europe and China, 1000–2000.* **Princeton & Oxford: Princeton University Press, 533.**

THE GREAT DIVERGENCE TURNING INTO THE GREAT CONVERGENCE AND BEYOND

'But many who are first will be last, and the last will be first.'

Mark 10:31

It is fascinating to watch the transformation of China from a poor, rural, fragmented country with weak government in the first part of the 20th century, and still equally poor and rural from the 1950s to the 1980s, though with a strong, sometimes merciless government – into a modern superpower.[1] Nonetheless, the crucial question is how China had become a

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[1] Because of the huge population, China's GDP *per capita* is rather low. In 2025, it ranked 74th in the world (with a GDP *per capita* of 13,862 nominal USD), immediately below Malaysia and directly above Argentina. Based on this indicator alone, China would be described as a middle-income emerging market. Paradoxically, according to all other economic indicators (its nominal GDP is second only to the USA), the country is a world economic powerhouse. The internationally comparable data are available at: *https://data.worldbank.org/indicator/NY.GDP.PCAP.CD*, last visited August 1, 2026.

poor, rural, feeble country with weak government at the beginning of the 20th century, since it was somewhat more developed than Europe at the end of the first millennium. At that time (around 1100 CE), Chinese cities were bigger, its GDP *per capita* was slightly higher (Broadberry *et al.* 2018, 46), and it was technologically advanced. It was in China, not Europe, that the compass, gunpowder, and the printing press emerged. Accordingly, China's economic and political power declined substantially during the second millennium, almost through to its end.

Although the authors do not explicitly specify the book's aim, it provides an explanation of the great divergence between Europe and China. All three authors who committed themselves to this task deserve reverential awe. The first among equals is Joel Mokyr, a 2025 Nobel Laureate in Economics and professor of economic history at Northwestern University, one of the most prominent contemporary economic historians, whose contribution to understanding relations between culture and economic outcomes, especially between culture and economic growth (Mokyr 2017), is unavoidable and immense.[2] Avner Greif, a professor of economics at Stanford University, follows: his contribution to the theory of institutions, their origin and impact on the modern economy, is immense, as he developed a bottom-up approach to the origins of economic institutions (Greif 2006a), which is somewhat more convincing than the top-down thesis and the unconditional primacy of political over economic institutions that inevitably follows (Acemoglu, Johnson, Robinson 2005). Last but not least is Guido Tabellini, a professor of economics at Bocconi University (Università Commerciale Luigi Bocconi), a seasoned and prolific political economist whose valuable contributions shed light on relations between institutions and culture (Tabellini 2008; Tabellini 2010).

Three intellectually super-heavy authors, a mighty triad portrayed as a 'dream team' (Van Zanden 2025), produced a super-heavy book. Its text is so dense, speckled with so many references, that it offers an abundance of insights based on strong, convincing arguments. Hence, it would be counterproductive to review this book step by step, i.e. in a conventional manner. The only thing the reader of such a book review would effectively get is a shorter version of the book – definitely of much lower calibre. Hence, the author of this book review essay opted for another concept: focusing on the crucial distinctive features, almost dichotomies, of the two paths to

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[2] It is Mokyr's definition of culture that is used in this book review essay: 'Culture is a set of beliefs, values, and preferences, capable of affecting behavior, that are socially (not genetically) transmitted and that are shared by some subset of society' (Mokyr 2017, 8).

prosperity, i.e. explanations of the contrast between Europe and China.[3] Accordingly, each section of the paper (except the final one) focuses on a specific Europe–China dichotomy.

1. THE GREAT DIVERGENCE: INDUSTRIAL REVOLUTION VS PIECEMEAL PROCESS

The notion of 'the Great Divergence' was introduced in the economic history debate by Pomeranz (2000). His position, shared by others from what is known as the California School,[4] can be summarised in several crucial points.

First, around 1750 CE, Europe and China were at similar levels of national income *per capita* (i.e. living standards) and technological levels.[5] Second, the Industrial Revolution drove the Great Divergence: Europe's progress and China's relative decline. Third, the reasons for the Industrial Revolution happening in Great Britain, i.e. Europe, are basically contingent: (a) deposits of reasonably priced coal; (b) colonial access to cheap raw materials such as cotton. In short, in the words of the book's authors: 'The California School's approach is that the Industrial Revolution was rather sudden, unexpected, and contingent. In their view, it could have happened almost anywhere, and Europe's advantages stemmed from the fleeting accidents of politics and the whims of geography. This claim also implies that such dynamics were readily reversible' (pp. 366–367).[6]

[3] Throughout their book, the authors use 'Europe' to refer to the part of the Continent west of the Hajnal line, which runs from Saint Petersburg to Trieste (Hajnal 1965), although they are aware that much of what they say about 'Europe' may not apply to some regions in the Mediterranean.

[4] The other most prominent authors of the California School are Jack Goldstone and Peter Perdue.

[5] This thesis of the equality between China's and Europe's GDP *per capita* at the time of the emerging Industrial Revolution is something that Goldstone (2009) especially insists on.

[6] The authors refer to another scholar from the California School who emphasises contingency even more than Pomeranz (2000). 'The Industrial Revolution is not a deep, slow evolution out of centuries of particular conditions unique to early modern Europe. It is a late, rapid, unexpected outcome of a fortuitous combination of circumstances in the late eighteenth century. In view of what we now know about Imperial China, Japan, and India, among other places, acceptable explanations must invoke a global perspective and allow for a great deal of short-term change' (Perdue 2005, 537).

The authors unambiguously reject all the propositions of Pomeranz (2000) and the California School. They provide data: the GDP *per capita* and living standard gap between Europe (data are for Great Britain) and China started to diverge around 1450 CE (in that year the Chinese GDP *per capita* was 93.8 per cent of the British, and in 1500 it was only 77 per cent) and at the beginning of the Industrial Revolution in 1750, the GDP *per capita* gap was already substantial, as the Chinese GDP *per capita* was only 42.5 per cent of the British (Broadberry *et al.* 2018, 46). Obviously, the Industrial Revolution did not create the Great Divergence – it only substantially amplified it. This reality check vividly demonstrates that the Great Divergence began much earlier, before the Industrial Revolution, so it cannot be its consequence. It also suggests that it stemmed from factors the California School does not consider.

Economic progress in Great Britain – measured by living standards – began in 1650 CE after a long Malthusian stagnation, while Chinese decline began in 1700 and was so intense that in 1850 the GDP *per capita* was only 54 per cent of the base year (1700). Accordingly, another significant contribution to the Great Divergence was the absolute decline in China's GDP *per capita*. In short, the divergence would have happened even with hypothetical stagnation in Europe (i.e. Great Britain), due to China's decline. This is why the authors prefer the term the Great Reversal. Instead of going hand in hand with Europe, China economically declined not only in relative terms, but also in absolute terms.[7]

Taking all this into account, the California School's position that the Industrial Revolution was the watershed event of the Great Divergence, as the authors point out, becomes increasingly untenable. In fact, the authors emphasise that Pomeranz himself (2011) has modified his 2000 position to some extent. As to coal being the origin of the Industrial Revolution, the authors explain that what was required, above all, was the knowledge to find, efficiently extract, transport, and utilise it – not the coal deposits themselves. They emphasise that, moreover, China also possessed extensive coal fields and that its early economic expansion (during the Han and Song dynasties) relied heavily on its coal abundance. They also refer to what they call a memorable summary of a critique of Pomeranz's (2000) concept of the Great Divergence: 'The exploitation or failure to exploit coal does not answer questions, it raises them' (De Vries 2011, 15).

[7] There is no way to attribute the Industrial Revolution in Europe as the factor in the decline of Chinese output. On the contrary, the Industrial Revolution increased demand for raw materials, some of which were produced by China, which led to increased export demand and, on the demand side, created preconditions for economic growth in China rather than decline.

As to the other argument made by Pomeranz (2000) – that Europe, unlike China, had access to colonial lands and resources, especially cotton, which was the crucial raw material for the textile industry, the forerunner of the Industrial Revolution – the authors point out that cotton was indigenous to China, which should have provided the country with a *prima facie* advantage. Furthermore, they emphasise that the colonial explanation of the Industrial Revolution has a timing problem: much of Europe's colonial expansion occurred after the Industrial Revolution had run its course. Moreover, other significant colonial empires within Europe, such as Spain and Portugal, were clearly not at the forefront of the Industrial Revolution. After all, it is telling that Great Britain lost its most valuable colony – America, with its substantial cotton production – in the early stages of the Industrial Revolution, but that did not stop the process.

The author of this book review essay would like to add a few arguments against the California School theses regarding the Great Divergence that were not mentioned in the book. First, coal-burning steam was not the crucial first step in the Industrial Revolution – hydropower was. The textile industry, the forerunner of the Industrial Revolution, was based on the invention of the spinning jenny, followed by the water frame and the spinning mule, and these increasing labour-productivity machines were powered not by a steam engine, but by hydropower.[8] Mighty rivers are something China has been endowed with since the beginning of civilisation.[9] Second, as the textile industry was the crucial forerunner of the Industrial Revolution, which changed society, it was based on two basic raw materials: wool, produced domestically in Great Britain, and cotton, to a great extent imported from America (which declared independence in 1776) and, even before that event, cotton was imported from the US South strictly under commercial conditions – the same conditions under which China imported cotton from India.

In short, the authors convincingly demonstrate that the Great Divergence did not start with the Industrial Revolution but much earlier and that the California School explanation of the Industrial Revolution is quite inadequate.

[8] The steam engine, as an icon of the (First) Industrial Revolution, made its way into the textile industry somewhat later, in the late 18th century and in the 19th century it enabled innovations such as railways (steam locomotives) and steamships, which revolutionised transportation. The coal-fired steam engine dramatically sped up the Industrial Revolution, but it did not start it.

[9] What was missing was technology, something along the line of machines like water frames and spinning mules, obtained by technology transfer or as indigenous Chinese innovations, and a trained labour force. An episode described later in this book review essay demonstrates that the crucial constraint was on the demand side of the technology transfer to China.

Accordingly, both a new timeline and explanation of the Great Divergence or rather the Great Reversal are needed. As to the timing, the prime suspect is the High Middle Ages; accordingly, the analysis started with 1000 CE and ends in 2000 CE, consistent with the title of the book. The first question regarding the explanation is what the configuration of Europe and China was like in 1000 CE.

2. FRAGMENTATION VS EMPIRE

The authors emphasise that in 1000 CE Europe was still suffering from the substantial consequences of the collapse of the Roman Empire, since it had caused such prolonged devastation that by the turn of the first millennium state infrastructure in Europe had almost completely disappeared. Political and military power was fragmented among multiple local actors who were in frequent, occasionally bitter, conflicts with one another, and cooperation among economic agents could not be enforced beyond the local level (Scheidel 2019).[10] A possible exception was the Carolingian Empire in the 9th century, which unified substantial, predominantly Franconian parts of Europe under the undisputed leadership of Charlemagne. This, however, was not a proper empire; rather, it was a short-lived, weak state and, furthermore, proved to be an aberration from the general trajectory of Europe's fragmentation.

In short, Europe was fragmented, states were weak, their fiscal capacity was limited, and their capacity to provide the people with public goods and local public goods, including club goods, was very limited. The people had to organise themselves to provide these; they could not rely on the state. Nonetheless, Europe's fragmentation provided the framework for competition – by and large a military one – between numerous local political actors. The Middle Ages in Europe were an age of war and military conflict between political actors who were, first and foremost, warlords. Such a state of affairs created strong incentives for these actors to invest in innovations in military technology, groom innovators of their own, and/or grab them from competitors. Military innovations also had ample opportunity for battlefield tests, as warfare was common in Medieval Europe. With that in mind, political actors had no choice but to innovate in military technology. This is exactly the reason why Europe conquered the world (Hoffman

[10] Scheidel (2019) provides a comprehensive and detailed analysis of Europe's political fragmentation due to the collapse of the Roman Empire and the long-term consequences of that fragmentation. The authors subscribe, always with proper references, to many of Scheidel's (2019) insights regarding post-Roman Europe.

2015). When the colonisation process started, overseas civilisations and tribes stood no chance against Europeans and their military technology: hardware (weapons), know-how in using the hardware (training), tactics, and logistics. After all, it was a *conquistador*, Francisco Pizarro (in a public–private partnership with the Spanish Crown), who emerged in the Inca capital of Cusco – not the Incan Emperor Atahualpa who appeared in Madrid (Hoffman 2015).

The authors accept Hoffman's (2015) insights – with two important extensions. First, military innovation had substantial spillover effects on general-purpose technologies and their innovations. Furthermore, an innovation-friendly environment cannot be limited only to military technology. The second is that fragmented Europe provided sanctuaries for innovators if the environment of one community became less innovation-friendly, so they could move, continue and even improve their work. The migration of innovators across Europe, from one community to another, created a market for innovators as well as a European network of knowledge. It was precisely European fragmentation that, paradoxically, created a network of the kind.

Unlike Medieval Europe, China was an empire from ancient times until 1912. Dynasties changed, some of the borders shifted a bit, some rebellions took place, and a few Mongol invasions occurred, but China was, as the authors emphasise, by and large, a peaceful unitary empire (save for a few rebellions and cases of dynastic wars when different parts of China were controlled by different dynasties). There was almost no fragmentation of the country, especially compared to the one in Europe, so there were no grounds for continuous wars between political actors. In short, all the incentives that existed in Medieval Europe did not exist in Medieval China. Furthermore, there were no checks on the autocratic emperor's power.

Accordingly, only the emperor's preferences directed innovation. In some cases, emperors encouraged innovations. For example, emperors under the Song Dynasty (960–1279 CE) were rather enthusiastic about innovations, and '[a]round 1250, Chinese technology was far more advanced than that of Europe in many ways. It developed techniques and innovations that Europe adopted only centuries later, many of which are often identified with progress: […] printing, gunpowder, and the compass' (p. 29). As the authors point out, there was no ongoing serious military conflict, and intrusions by nomadic people from the north did not threaten the Empire's existence, therefore gunpowder innovation was not sustainable in China. When it reached Europe, it became sustainable – very sustainable – because Europeans were constantly at war with each other.[11]

Contrary to the Song Dynasty, the preferences of the emperors of the Ming Dynasty (1368–1644 CE) were not innovation but stability, i.e. strengthening and protecting the power of the emperor and the political elite around him; consequently, innovations became unwanted, counterproductive, even dangerous. According to the authors, under Zhu Yuanzhang, the founding and perhaps the most consequential emperor of the Ming dynasty, all of China's sea explorations ceased, and later a huge segment of the Great Wall of China was constructed. The authors emphasise that the Wall was not of significant military value; intrusions by the nomadic tribes from the north were insignificant. Rather, according to the authors, it symbolised the unity and authority of the newly centralised empire. The reader would add that it also epitomised a xenophobic, self-isolated and complacent China. The country became a fortress, reminding the reader of the one in J. M. Coetzee's *Waiting for the Barbarians*.

The preferences of the Ming Dynasty left no room for China to join the Industrial Revolution – centuries before its advent in Europe. One way or the other, the point is that in an autocratic empire like China, the emperor's preferences were decisive for the direction the country took and what its future would be.[12] That was the price of the empire.

3. CORPORATIONS VS CLANS

In fragmented Europe, following the collapse of the Roman Empire, state infrastructure in Europe had almost completely disappeared. There were various small local actors without significant fiscal capacity, so they were unable to facilitate social organisations and cooperation between households, by providing public goods, local public goods and club goods.

[11] Neither were the other two, like many other inventions/innovations during the Song dynasty. According to Mokyr (2026), the crucial question is why some societies convert bursts of inventions into durable and sustainable innovations that generate economic growth and prosperity. In short, Medieval China is a prime suspect for those societies that evade this conversion.

[12] It was beyond the scope of the book to consider the factors that influenced the preference changes from one dynasty to the other. That is understandable for the author of this book review essay, because the book focuses on differences in culture and institutions as an explanation of the Great Divergence.

These goods are crucial for the existence and sustainability of any society, but a single household is too small to provide them – yet the Roman Empire was efficient at this.[13] The authors have in mind goods like protection against theft and external threats, market and transportation infrastructure, dispute settlement, education, public health, water management (including irrigation), risk sharing, religious worship, etc. It goes without saying that the authors remind the reader that in modern societies, cooperative behaviour that supports the provision of these basic public and club goods is largely (although not exclusively) facilitated by state agents, thanks to the rule of law and the government's enforcement powers.

Nonetheless, in the High Middle Ages in Europe there was no viable state, let alone a modern one. So, what was Medieval Europe's answer to the problem of the provision of public and club goods? It was – corporations. The notion should not be understood in contemporary terms. Following earlier contributions of one of the authors (Greif 2006b), the authors refer to Medieval European corporations as 'a "social organization," established by unrelated individuals to pursue common objectives and interests, regardless of kinship. This definition of "corporation" is broader than that commonly used today and corresponds to its premodern use' (p. 122). Examples of Medieval European corporations include fraternities, guilds, monastic and religious orders, universities and academic associations, self-governing cities, and even traces of the modern business corporation. All these corporations, i.e. social organisations, provided some public goods and club goods.

Contrary to fragmented Europe, Medieval China was an empire. *Prima facie,* China was a state that, at least in principle, should provide public goods and club goods. Nonetheless, the empire was a weak state with limited fiscal capacity, so it provided very few public goods. China's answer to the

[13] Public goods are those goods with zero marginal costs in consumption and infinite marginal costs of exclusion. Local public goods are public goods on the local level (limited area). Club goods are goods with zero or negligible marginal costs of consumption up to the capacity and reasonable marginal costs of exclusion. Because of the reasonable marginal costs of exclusion, these goods can be priced, so they can be provided by the private sector. Nonetheless, the public sector should provide a favourable framework for such operations. Details of these types of goods are available in any serious textbook on public economics, e.g. Stiglitz (1985). In the terminology of economics, public goods is a shorthand for goods and services, as many public goods are actually services.

undersupply of public goods was straightforward: clans, as kin-based social organisations.[14] Clans provided, and to some extent still provide today, some club goods to their members.

These two types of social organisations are completely different, and their features substantially affect the character of the societies that they operate in. Membership in corporations is voluntary; it is based on the individual's free decision to join a corporation, based on the membership benefits and costs. If a person is not content with the benefit–cost relations of his/her choice, the choice could be altered. For example, a household that was not content with the benefit-cost relations in one self-governing city could move to another. In principle, both entry and exit from the corporations are free. This generates competition between corporations and rivalry for attracting members, especially given that barriers to entry for a new corporation are, in principle, low. Industrial Organisation 101 insight: competition generates efficiency.

By contrast, membership in clans was not a free choice. It is given by birth, and therefore exogenous to the individual – and there was no room for his/her free will. Accordingly, there is no free entry, and virtually no exit at all – an unsatisfied household cannot move to another clan. Furthermore, genealogy specifies the number of clans, so there is no entry for new clans. Apparently, there is no competition between clans, hence, there are no incentives for efficiency.

Corporations were specialised in providing public and club goods. Fraternities provided individuals with networks, aid, and social capital, with some risk sharing. Guilds, with specialisation across the industries, were 'engaged in forms of risk sharing for members struck by bad luck and provided members with loans (which sometimes were forgiven). They resolved conflicts and arbitrated disputes, regulated and supervised master-apprentice relationships, offered protection, organized periodic gatherings to strengthen friendship, and labored to consolidate a common identity among people of the same trade. Guilds provided a variety of other economic services to their members, such as monitoring product quality and guaranteeing standards, enforcing contracts, regulating trade and setting prices, and coordinating the purchase of raw materials' (p. 179). A trained economist would highlight that most of the guilds' output was club goods and that some of them, e.g. price setting, suppress competition.

[14] In the book, as well as in this book review essay, the notion of clans is used interchangeably with extended family (as opposed to nuclear family), lineages and dynasties, as these were associations of individuals who claimed to descend from a common patrilineal ancestor.

Monastic and religious orders provided religious services and some education, universities and academic associations provided education, and self-governing cities provided a rich blend of local public goods. Only self-governing cities were not specialised in the public goods they provided: they provided almost everything their citizens needed – if it was not provided by specialised social organisations.

By contrast to specialised European corporations, save self-governing cities, China's clans were general-purpose social organisations that provided all public goods, all local public goods and all club goods to the members of the clan. There was no specialisation whatsoever. Since the dawn of economics as an academic discipline and the contribution of Adam Smith, it has been undisputed that specialisation, i.e. division of labour, increases efficiency. There should be no doubt that there was some division of labour within the clans (the book provides no information on whether and how that division was accomplished), but there was no division of labour between the clans, implying lower efficiency in producing public goods, local public goods and club goods, compared with specialised corporations. This lower efficiency could be reflected in higher per-unit costs, due to more resources being engaged, or lower output quality, or both. One way or the other, economically speaking, China's clans were inferior to European corporations.

The persons who joined European corporations were complete strangers to each other. Accordingly, they did not trust each other, so they required unambiguous and formal rules governing relations between members of the corporations. They also demanded that the rules be applied uniformly, without any bias, to all the members of the corporation. This was basically a request for the rule of law. Because the costs of exit and entry to corporations were reasonably low, corporations competed for membership and, in doing so, applied the rule of law within their jurisdiction. The culture of the rule of law thrived within corporations, which were the starting point for its dissemination beyond the corporations. European societies became based on the relations, both in production and consumption, between strangers, i.e. in *The Company of Strangers*.[15]

All the members of a clan were relatives, as clans were kin-based social organisations. Accordingly, they were no strangers to each other, so there was no demand for formal and unambiguous rules for interactions between clan members. Instead, clans had traditional informal rules, norms of

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15 Exactly as the title of the brilliant book by Seabright (2010), who explains the mechanism why individuals in contemporary times, based on a substantial division of labour, literally put their lives in the hands of complete strangers, such as in the hands of an airline pilot or a neurosurgeon.

cooperation among kin: strong bonds of reciprocal loyalty, strict gender hierarchy, and respect among relatives. This was not the great start for the dissemination of the rule of law beyond the clan, to those who were not relatives – to strangers.

Both corporations and clans were hierarchical social organisations. The difference lies in how the people at the top of corporations and clans were chosen. In corporations, leadership is elected by the constituency of the members. This is not to say that the process was democratic, that all members comprised the constituency, but only to say that there was an election process (sometimes even formally specified *ex ante*) and a contest between the candidates, a confrontation of persons and perhaps sometimes of ideas about leading the social organisation.

Since the clans were kin-based organisations, the leadership was allocated to the eldest members of the clan, according to the already mentioned Confucian norm of strict gender hierarchy. In short, wisdom was axiomatically attributed to the elders and their words and deeds were not disputed; there was no contest whatsoever. These norms could not even accommodate the idea of the hindsight wisdom that some decisions were wrong – for the simple reason that the elders cannot be wrong and they must be respected.

Since Europe's corporations and China's clans had distinctive features, one thing they had in common should be emphasised: they were both social organisations, and according to North (1990), they were institutions because they encompassed both the norms of interaction between the agents (i.e. rules of the game) and the organisations that enforce these norms. In short, both Medieval Europe's corporations and China's clans were perfect examples of institutions, according to North's academically undisputed definition. Their substantially different features led the authors to refer to the Middle Ages as a time of the Great Bifurcation between Europe and China, a long time before the Industrial Revolution.

Back to the election process in the European corporations, it is perhaps the most visible in the Catholic Church, which the authors refer to throughout the book as 'the mother of all European corporations'. Popes were and still are elected. It is not that the entire flock is the constituency – it is not a one-Catholic, one-vote rule – but it is the conclave (made up of cardinals) that has been electing the Pope for centuries.

When discussing the Catholic Church, the consideration of the Great Divergence, or rather the Great Bifurcation, should shift to the spiritual and cultural differences between Medieval Europe and China.

4. CHRISTIANITY VS CONFUCIANISM

The Catholic Church embodied Christianity in Medieval Europe prior to the Reformation. Emperor Theodosius I made it the official religion of the Roman Empire with the Edict of Thessalonica (380 CE). However, the collapse of the Roman Empire did not induce the collapse of the Catholic Church. On the contrary, the collapse of the state structures removed the obstacles to the prosperity of the Catholic Church. Christian doctrine based on the *New Testament* provided the grounds for a European culture, distinct from both China and other non-European civilisations (Incas, Mayas, Aztecs, etc.). One of the very important outcomes of the Christian doctrine is that, because every human being is created in the image of God, *all* human beings, both men and women, are equal; they are also equal because the soul of every human being is salvable, and the dignity of every human being should be preserved.

Accepting Christian doctrine and belief in God and his son on Earth, Jesus Christ, brings believers closer together and gives them identity; through baptism, they become 'brothers and sisters in Christ'. Hence, it serves as a substitute for kin-based sibling identity; it is not necessary to be kin to have trust in someone else. Strangers who have accepted Christianity trust each other, at least up to a point, because they all subscribe to the *New Testament* and the moral norms it developed. Perhaps, these moral norms may not have been very strong, because members of the corporations, predominantly Christians, requested the establishment of formal rules.

The Catholic Church played a significant role in the emergence of the European marriage pattern (EMP), a crucial element of the cultural and institutional bifurcation between Europe and China. The EMP consists of three basic elements: relatively late marriage, nuclear families, and neolocality. The authors point out that it involved some other rather radical changes in the institutions of marriage and procreation: increasingly strict prohibitions of consanguineous marriage, polygamy, divorce, adoption, levirate and sororate marriage, and infanticide. The policies of the Catholic Church 'were based on three principles, none of which ironically were drawn from the Scriptures. They were that marriage was permanent and indissoluble, that valid marriage required consent by both parties, and that matrimony was permissible only between nonconsanguineous couples, even if the degree of consanguinity was often disputed' (p. 102).

The authors emphasise that the early Catholic Church also encouraged individualism, another key cultural element that contributed to the Great Bifurcation. The Catholic Church's marriage rules empowered individuals to make choices regarding whom to marry (if at all), removing this decision from the influence of greater society. Moreover, a basic tenet of the *New Testament* is that all humans share original sin, but redemption is personal and depends on individual choices.

Finally, relations within the Catholic Church, as a social organisation, were regulated early on by formal canon law, which became the seed for modern European law and the rule-of-law society, with the subsequent revival of the Roman legal tradition. The authors point out that through canon law, the Church set an example for secular authorities regarding how to organise and govern a community. Additionally, as canon law emerged, generations of scholars across Europe were directed toward the formal study of law, facilitating the development of a transnational class of legal experts and professionals, which was essential for efficient law enforcement.

Meanwhile, in China, Confucianism decisively shaped the cultural pattern – especially its later, more rigid version, neo-Confucianism, as formulated by the preeminent Southern Song philosopher Zhu Xi (1130–1200 CE) and his followers.[16] The authors point out that its emergence, at the start of the millennium, led to a major cultural transformation in China – it became the dominant social and intellectual culture in the Empire. As it became 'the living faith of China's elite down to the twentieth century' (Fairbank, Goldman 2006, 98), it is, as already pointed out, much more appropriate to consider it a counterpart to Christianity, when comparing the cultural patterns of Europe and China.

Neo-Confucianism, according to the authors, is a series of doctrines governing both personal and public life, and it emphasised kin-based values as the basis of social order. 'Interpersonal relations, including cooperation, were to be governed by filial loyalty, strict gender hierarchy, and respect among relatives. An archetype of the communitarian value system, neo-

[16] The author of this book review essay chose to contrast Confucianism, rather than Buddhism, to Christianity. It is the authors of the book who provide arguments for such a decision. In the beginning, Confucianism had to contend with competing philosophies such as Legalism, Buddhism, and Daoism (Taoism), but Confucianism became a recognised state philosophy only in the first century BCE, during the Han Dynasty. Buddhism did not vanish; its popularity increased in China during the Tang Dynasty (618–906 CE), but that rise was not sustainable. The consequent decline of Buddhism just prior to the Song period helped bring about the rise of neo-Confucianism, which became the 'official' philosophy that shaped the cultural pattern of China in the second millennium (like Christianity did in Europe), rather than Buddhism. Hence, the counterparts suitable for comparison are Christianity and Confucianism, especially its neo-Confucian version.

Confucianism made it easier to sustain cooperation among kin, who were tied together by clannish norms: strong bonds of reciprocal loyalty, strict gender hierarchy, and respect among relatives' (p. 10).

In addition, the neo-Confucian doctrine of ancestor worship, together with kin loyalty, implied that there was no need to elect clan leadership, because this was the role of the eldest, as well as that their decisions should not be re-examined. In short, they were not only legitimate authorities, but they were also always right. Furthermore, the authors emphasise that the neo-Confucian doctrine 'strengthened the legitimacy of the emperor – who promoted himself as the patriarch of an enlarged family – and his dynasty, as they were chosen by heaven' (p. 15). A cynic would say that the rational emperors had no incentives to erect barriers to the spread of the neo-Confucian doctrine – it only legitimised their autocratic rule and provided for its stability.

The distinction between Christianity and Confucianism is mirrored in the contrast between universalism and communitarianism.

5. UNIVERSALISM VS COMMUNITARIANISM

The authors specify for consideration of different cultural patterns that they relied on an important distinction between universalistic and communitarian value systems (or, equivalently, between generalised and limited systems of morality). 'This distinction refers to how the intensity of moral sentiments changes in relation to the social distance between individuals' (p. 5). They explain that in a utilitarian and consequentialist approach this distinction also refers to how altruism is affected by social distance. A universalistic value system is one where altruism and moral sentiments are not very sensitive to social distance: moral beliefs are applied with similar strength in interactions with friends and strangers. By contrast, in a communitarian value system, altruism and moral sentiments are much stronger toward socially close people than toward strangers. As the authors point out, Enke (2024, 136) emphasised, '[a] communitarian is a great friend to have, while a universalist is a great stranger to encounter'.

The distinction between universalism and communitarianism can easily be explained by the basic features of Christianity and Confucianism. On the one hand, for Christians, all other Christians are 'brothers and sisters in Christ', all people are made in the image of God, and all people are equally susceptible to sin. Hence, all people (Christians, and especially Catholics) are equal, and it is expected that moral sentiments do not change with the social distance between individuals. Donations to the Church for people in need, strangers whom the donors do not know personally, are the best example of that universalism. On the other hand, the neo-Confucian doctrine of ancestor worship, together with kin loyalty, explains that increasing social distance between individuals must change moral sentiments. It is 'kin loyalty' that rules, not 'universal loyalty to human beings', which is doctrinal grounds for communitarianism.[17]

The authors emphasise that the difference between universalistic and communitarian values influences with whom people cooperate, which social networks are formed, and how this collaboration is sustained. Once these networks crystallise in organisational form and develop social organisations, i.e. institutions – inclusive on the one hand, and exclusive on the other hand – they exert unintended and lasting influence on future economic and political outcomes. In the opinion of the authors, the effects of culture are not only direct; they are also mediated by social organisations, i.e. institutions, which are complementary with specific cultural traits. Once in place, these institutions are difficult to dismantle, and they contribute to spreading and maintaining the cultural foundations on which they are built. The caveat of this 'cultural multiplier' concept is that initially, small differences in cultural traits or in institutions, i.e. social organisations, can set in motion a lasting process of cultural and social bifurcation.

Regardless of whether this approach is applied to the consideration of the Great Bifurcation between Europe and China, or in any other case, this finding is very important for the general consideration of the relationship between culture and institutions as an explanation of economic outcomes. The authors point out that such two-way positive feedback and complementarities, from culture to institutions and vice versa, imply that neither is purely causal, but instead the two coevolve and reinforce one another. Economists have increasingly emphasised this line of thinking, and the authors refer to like-minded economists (Tabellini 2008; Alesina, Giuliano 2015; Bisin, Verdier 2017). The authors indicate that in these models, the emphasis shifts from the often fruitless search for causality

[17] The authors emphasise that in this debate their intention is not to imply that the Western Christian tradition, which they argue is more universalistic, is in any sense morally superior to the Confucian traditions, which they argue are more communitarian. Nonetheless, they imply, though between the lines, that universalism is more efficient in providing public goods and club goods than communitarianism, because it is inclusive. A trained economist always suspects economies of scale as a consequence of inclusiveness, i.e. low barriers to entry, and production efficiency (lower per unit costs) as the result of the economies of scale.

to the joint evolution of culture and institutions.[18] One implication of such positive feedback models is that appropriate institutions, those consistent with the dominant cultural patterns, can amplify initial cultural differences over time, eventually creating significant divergence between societies.[19]

This approach to the relations between the two as an explanation of the economic outcome – accepting positive feedback, i.e. culture and institutions mutually reinforcing each other – is theoretically and methodologically superior to the 'institutions only' approach, i.e. that culture is completely irrelevant (Acemoglu, Johnson, Robinson 2005; Acemoglu, Robinson 2012). This is especially so taking into account that the conventional wisdom of the 'institutions only' approach is a top-down approach: from political to economic institutions.

The superiority of this approach is easy to illustrate. The mutual positive feedback between culture and institutions can explain the closed circles. A virtuous circle is created by both beneficial cultural patterns and institutions, and the nation is set on a steady-state towards prosperity. By contrast, a vicious circle, due to inadequate cultural patterns and poor institutions, prevents the nation from moving towards prosperity, even generating economic decline. Breaking the vicious circle is a difficult task; rapid and radical institutional change alone is hardly an answer to that problem.

For centuries, China was in decline because of an inadequate cultural pattern, reinforced by poor institutions. It is now time to examine another cultural trait that cost China very dearly, especially when the first globalisation arrived.

6. CURIOSITY VS COMPLACENCY

The authors point out that Europeans did not deny the superior knowledge of other societies, even if they regarded them with hostility. For example, Europeans adopted windmills and paper from the Islamic world,

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[18] In short and in very succinct form, a very convincing argument is: 'In these environments the origin, and hence the causation, question loses most of its interest: culture and institutions are jointly and endogenously determined and they jointly affect economic growth and prosperity, indeed all sorts of economic activity. The focus is moved from the cause (both culture and/or institution can have causal effects) to the process as determined by the interaction.' (Bisin, Verdier 2017, 3).

[19] Reviewing the book, Gaddo (2026) points out that if one were to look for a single 'secret ingredient', this is probably not culture in the abstract, but universalistic moral order embedded in corporate forms. In short, both appropriate culture and appropriate institutions.

as well as much knowledge and thought from fields such as medicine and philosophy. After the terrible bloodshed of the locals, European conquerors, such as the *conquistadores*, took back to Europe accomplishments of the conquered indigenous peoples of what is presently Latin America: maize, potato, tomato, paprika, avocado, tobacco, cocoa, natural rubber. These products transformed Europe's agriculture, industries and day-to-day living. The potato saved many Europeans from starvation.

In short, Europeans were aggressive, relentless, ruthless, and unscrupulous in their overseas conquests, but they were very open-minded regarding their adversaries (Hoffman 2015). Furthermore, they were very curious about the accomplishments of the civilisations they destroyed. So, after the military successes, their arrogance in combat transformed into curiosity about the accomplishments of the defeated.

In China, everything depended on the emperor's preferences, but generally speaking, China's emperors were no strangers to arrogance. With the advent of the Ming dynasty, due to the emperors' preferences, society became closed: China became xenophobic, and the key word was stability. And there was no curiosity about anything. Complacency dominated.[20] As usual, not only limited to China, this multiplied the price that was about to be paid.

Things related to curiosity (or rather lack of it) went from bad to worse under the Qing rulers (China's last dynasty), especially the Yongzhen Emperor (who reigned 1722–1735), as China's political elite became increasingly suspicious of Western influence, considering it a source of instability. 'In 1792, the first Earl Macartney, who visited China with an exhibit of Western devices, was politely told that if these inventions had been useful in China, the Chinese would have thought of them themselves' (p. 65).[21] China's

[20] One of the indirect indicators of that, as the authors point out, was that China had nothing that resembled intellectual property rights. It had no patent system or copyright. It never developed any formal, centrally enforced protection of intangible assets. Indeed, with no propensity for innovation, especially dispersed innovations of the economic agents, rather than state-controlled innovations, there was no need for protection of intellectual property rights.

[21] This is evidence that a necessary condition for the Industrial Revolution technology transfer from Europe to China was missing. There was no Chinese demand for that technology.

self-isolation in an increasingly globalised world was unsustainable. Western influence came to China in a dramatic and humiliating way in the 19th century – with the Opium Wars.[22]

It was Europeans and especially their intellectuals, with their culture of reconsidering everything and with a 'nothing is sacred' attitude (Mokyr 2017) that made Europe forward-looking. This attitude, with accumulated scientific achievements and useful knowledge (the one, according to the authors, necessary for the technological transformations that drove economic progress), enabled Europe to blaze the trail of the Industrial Revolution.[23] By contrast, China was backwards-looking. The authors explain that ancestor worship fostered coherence of the lineage and had become a feature of Chinese society in antiquity; this feature proved very resilient, making China backwards-looking. It was Europe's passion for demonstrating that ancestors were wrong that, unlike China, made it forward-looking.

7. REPUBLIC OF LETTERS VS MERITOCRACY

The authors highlight that in Europe the process of creating useful innovation and transmitting it from generation to generation was entirely decentralised, largely left to the private sector, and therefore driven by competition. Hence, it was based on the scattered accomplishments of intellectuals (scientists) and artisans. Such a structure posed a great danger – isolated accomplishments, without any spillover effect; this would have made this arrangement inefficient and unproductive.

Nonetheless, an unavoidable and indomitable passion for communication created the Republic of Letters, a virtual network of intellectuals who exchanged views, cross-checked evidence, and compared arguments. Based

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[22] It was Leon Trotsky (Lev Davidovich Bronstein) who quipped, 'Maybe you are not interested in war, but war is interested in you'. Although the epigram was formulated much later, referring to a completely distinctive historical situation, it is very suitable for describing 19th-century China and the Opium Wars.

[23] The authors underscore that Britain's leadership in the Industrial Revolution should not lead to the misconception that the Industrial Revolution was 'British'. It was European, and whereas British leadership was real and can be understood, the issue of British leadership is different from the 'Europe versus China' issue. Allen (2009) and Mokyr (2017) have different explanations for why the Industrial Revolution occurred in Britain of all European countries. Nonetheless, the debate why Britain was the 'cradle' of the Industrial Revolution, as opposed to some other country in Europe (e.g. France), is irrelevant for the Great Divergence debate.

on those interactions, the superior insight was selected – the one that best explained reality, or at least better than the others. As the authors emphasise, in the Republic of Letters, 'Sacred cows were slaughtered mercilessly: from the notion of a geocentric universe to the idea of divine authorship of the Bible and the writings of the bogus classical author Hermes Trismegistus. Skepticism was paired with the growing belief in the progressiveness of knowledge' (p. 448). As to the methodology, the authors remark that 'the Republic of Letters anticipated the twentieth-century engineer W. Edwards Deming's famous gag that "in God we trust – everyone else has to produce data"' (p. 386).

The Republic of Letters was the framework through which European intellectuals made scientific breakthroughs that enabled quantum leaps in useful knowledge, necessary for the technological transformations that drove economic progress. This scientific breakthrough laid the groundwork for the Industrial Revolution (Mokyr 2017). In short, it was not based on step-by-step artisan improvements to products, but rather on entirely new technology and engineering, grounded in new scientific findings.

Meritocracy is undisputed as an essential ingredient of the Republic of Letters. Accordingly, it could be puzzling that the title of this section of the book review essay opposes the Republic of Letters to meritocracy, as if those two are opposites. They are not, of course – in principle. Nonetheless, meritocracy in China has had some specific features.

Of all the civilisations in the world, China has perhaps the longest tradition of meritocracy (Wooldridge 2021). Even in ancient times, in China meritocracy was embodied in the state exam, a demanding civil service exam that required lengthy preparation. In short, because the Chinese state had a long tradition of relying on a powerful and effective central bureaucracy to fulfil its aims, it did not recruit members based on social status or previous administrative experience in civil society. Instead, they were recruited on merit, and those merits were assessed by a rigorous state exam administered without bias. This was quite refreshing compared with Europe, where social status was decisive in such recruitment. China in ancient times paved the way for Weberian bureaucracy.

The problem, however, lay in the content of the state exam. Candidates were expected to be extremely well versed in Confucian doctrine. Hence, taking the state exam required lengthy preparation and extensive training in the subject. The exam included no science, technology, engineering, or mathematics (STEM) subjects, making it – and especially the preparation process – more like indoctrination than learning. There is no doubt that China's meritocracy created incentives for the accumulation of human capital, and that the level of human capital was substantial. Nonetheless, that human capital was based on doctrine rather than on useful knowledge. Contrary to the human capital created within the framework of the Republic of Letters, it was not the human capital that would boost the Industrial Revolution, even if other preconditions for it were met.

8. CONVERGENCE AND BEYOND

China's decline – the Great Reversal, as the authors specified – became especially visible with the advent of the first globalisation. 'Perhaps nothing is more emblematic of China's decline relative to the West than its humiliation during the disastrous Opium Wars, its need for Western military assistance in stamping out the Taiping Rebellion, and its ignominious defeats in subsequent conflicts with both the West and Japan' (p. 32). The reader would add to this the equally humiliating 1860 Treaty of Peking, by which China surrendered territories in the north of river Amur to the Russian Empire while also providing concessions to that nation.

The end of the empire and the advent of the republic did not change much in China's international position or in its domestic affairs. Nonetheless, the Communist Revolution did: the central government became strong, relentless and merciless. China's sovereignty was accomplished – no foreign power had any doubts about that. Nonetheless, the central government's policies under Mao Zedong, such as the Great Leap Forward (1958–1962) and the Cultural Revolution (1966–1976), took more than 70 million lives (Rummel 1997), due to political executions, forced labour, policy-induced starvation and deportation, with destruction of the social fabric, including clans and kin-based lineage, at least up to a point.

The demise of Mao Zedong and the political resurfacing of Deng Xiaoping could be perceived as a change of emperor, but, more importantly, as a change in emperors' preferences. From that moment, the order of the day was to introduce a market economy, i.e. capitalism, without challenging the political monopoly of the Chinese Communist Party (CCP). Hence, in a rather ironic development, the CCP was very efficient and highly successful in introducing capitalism. Furthermore, capitalism, under the vigilant eye of the CCP, produced unprecedented economic growth, lifted hundreds of millions out of poverty, and transformed China from a poor country into a powerhouse of the world economy.

The authors provide little material to explain this remarkable development, let alone link it to their own consideration of the Great Bifurcation in the book. In short, how the Great Divergence became the Great Convergence, through remarkable economic growth in such a short time, remains a mystery to the reader. Implicitly, by rejecting Landes's (1998) view of culture as a constant, the authors admit that the cultural pattern in China has changed, which, with the blossoming of entrepreneurship in the country, is rather a trivial observation, but it provides no explanation of the exceptional change that, paradoxically, occurred under the auspices of the CCP. Furthermore, the authors speculate that, despite Mao Zedong's ruthless campaign to eradicate them, clans still exist in China and play a role in its shift to a market economy and capitalism, but they stop short of the details. The reader is none the wiser.

At the end of the book, the authors speculate about the future. Their view is straightforward: '[m]odern China has removed many of the obstacles that prevented scientific progress in the past and invests considerable resources in innovation. Nevertheless, the political regime retains tight control over how these resources are allocated, what enters the educational curricula, and what sources of information citizens can access. This makes it more likely that innovation, when it occurs, will take the form of a gradual adaptation of progress that was initiated elsewhere. Radical and disruptive breakthroughs tend to emerge in open and decentralized environments, where there is not much respect for authority and where political and economic incumbents can be challenged without fear of reprisal. No matter how different it is from its past, modern China is certainly not such an environment. Without political liberalization, growth sustained by radical innovations seems difficult to achieve and continue. But political liberalization is certainly not in sight – on the contrary, under Xi Jinping, the regime has returned to the despotic and arbitrary personal rule of the Mao era' (p. 453).

The reader agrees with the authors that political liberalisation in China is not in sight, although the claim about a return to 'despotic' personal rule seems somewhat exaggerated to the reader, as the country's political economy has many strong entrepreneurs of substantial fortune, and vested interests are definitely complicated.[24] Nonetheless, a more important comment on the authors' prediction is that it rests on a standard logic of the middle-income trap: a situation in which a country reaches a middle level of GDP *per capita*

[24] Nonetheless, the absence of political liberalisation in sight is beyond doubt in the literature. Herndon (2026) claims that the CCP 'seems determined to prove' that autocratic government and innovation-based economic growth can go hand-in-hand.

through investment-led growth, and then, to sustain that growth, it should turn to innovation-led growth. The problem is that applying this approach to China is wrong. Although it is a middle-income country by GDP *per capita*, China is on the technological frontier in many industries, especially in tradable sectors such as the car industry, robotics, electronics (up to a point), and green energy technologies (solar panels and batteries). Hence, it is an autocratic country that reached this technological position. More precisely, Chinese entrepreneurs have found the way to the technological frontier by using government subsidies and avoiding government obstacles. Hence, middle-income country catechism is hardly applicable to China.

The book's conclusion is missing another relevant consideration: a specific time horizon. Stable autocracies – and China is definitely one – consider things over a much longer run than democracies, which are constrained by election cycles (Nordhaus 1975; Olson 1993). In economics jargon, stable autocracies have a lower discount factor, the measure of intertemporal impatience, by which future values are transformed to their present value. It is the speculation of the author of this book review essay that Chinese political culture features a lower discount factor, i.e. less intertemporal impatience, than Western countries: for Chinese culture, the long run is important. In the case of innovations, long-run consideration is decisive for a desirable outcome.[25]

So, after all, China's economic growth rate may not slow down substantially without political liberalisation. It would not be the first time that China has surprised the world. Perhaps all these considerations should be the topics for a new book – *The Great Convergence*.

9. EPILOGUE

There is no doubt that this is a remarkable, groundbreaking book. This book is 'a major contribution not only to economic history, but to the broader argument and understanding about the relationships between culture, institutions, and prosperity' (Gaddo 2026). Furthermore, the author of this book review essay believes that the book is a showcase exercise that

25 Unexpectedly, Elon Musk provided corroboration for the importance of the long-run consideration in his explanation of why he delayed the initial public offering (IPO) of his SpaceX company. Shareholders are obsessed with short-run thinking and would not have tolerated massive financial losses for the company in the R&D process of heavy-lift launch vehicles. The interview is available at: *https://www.economist.com/insider/the-insider/an-interview-with-elon-musk*, last visited August 1, 2026.

– in examining specific episodes from economic history – institutions and culture are not mutually exclusive. The book demonstrates that they are not substitutes, but rather complementary concepts that together – with interaction between the two, not merely unidirectional causality from one to the other – enable us to better understand the process of economic growth and creating prosperity. Well done! The only disappointment is that the Great Convergence, China's remarkable growth in the past several decades, remains virtually unexplained. Despite this being the only disappointment – it is a big one.

Reading this book is a demanding and arduous task. This is a very well researched book, with densely packed explanations, arguments and references to the contributions of other authors. As Gaddo (2026) points out: 'Whilst a shorter version for general and more harried readers would be welcome, that is a complaint made against many serious books and seldom against mediocre ones. This one is serious in the best sense: bold, learned, and worth wrestling with.' The reader agrees with these insights only up to a point. Undoubtedly, this is a serious book in the best sense, but although there should be no shorter version whatsoever, it could have been written to be more readable and likeable.

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ОБАВЕШТЕЊЕ О ПОВЛАЧЕЊУ ЧЛАНКА

ОБАВЕШТЕЊЕ О ПОВЛАЧЕЊУ ЧЛАНКА

У складу с тачком 3.3 Етичког кодекса Анала Правног факултета у Београду, Уредништво повлачи чланак Наташе Петровић Томић и Мирјане Глинтић "Principles of Reinsurance Contract Law – Between Tradition and Legal Certainty in a Changing Global Order", објављен у часопису Анали Правног факултета у Београду, 2026, Vol. 74, бр. 2, стр. 295–321.

Одлука је донета након разматрања захтева др Франциске Арнолд-Двајер за испитивање навода у вези с начином на који је њен рад "PRICL and the Long Shadows of Domestic Laws and Linked Contracts: Is Soft Law Effective?" коришћен и цитиран, као и заједничког захтева ауторки за повлачење чланка.

У поступку спроведеном према тачки 3.1 Етичког кодекса утврђени су недостаци у научном апарату рада који се огледају у неодговарајућем означавању и приписивању делова текста и ставова преузетих из научне литературе, преузимању делова туђег текста и непотпуном и непрецизном навођењу коришћених извора. Имајући у виду природу и обим потребних измена, Уредништво је оценило да се наведени недостаци не могу отклонити објављивањем исправке, због чега је чланак повучен.

RETRACTION NOTICE

In accordance with Section 3.3 of the Code of Conduct of the Annals of the Faculty of Law in Belgrade, the Editorial Board hereby retracts the article by Nataša Petrović Tomić and Mirjana Glintić, "Principles of Reinsurance Contract Law – Between Tradition and Legal Certainty in a Changing Global Order", published in the Annals of the Faculty of Law in Belgrade, 2026, Vol. 74, No. 2, pp. 295–321.

The decision was taken following consideration of Dr Franziska Arnold-Dwyer's request for an investigation into allegations concerning the manner in which her paper "PRICL and the Long Shadows of Domestic Laws and Linked Contracts: Is Soft Law Effective?" was used and cited, as well as the authors' joint request for retraction.

The procedure conducted pursuant to Section 3.1 of the Code of Conduct identified deficiencies in the article's scholarly apparatus concerning the inadequate identification and attribution of passages and positions drawn from scholarly literature, the reproduction of passages from other authors' texts, and the incomplete and imprecise citation of the sources used. In view of the nature and extent of the amendments required, the Editorial Board concluded that these deficiencies could not be remedied by the publication of a correction and therefore retracted the article.

/VARIA

УПУТСТВО ЗА АУТОРЕ

Анали Правног факултета у Београду објављују текстове на српском и енглеском језику.

У Аналима се објављују научни чланци, критичке анализе, коментари судских одлука, прилози из међународног научног живота и прикази. Прихватају се искључиво аналитички, а не дескриптивни прикази научних и стручних књига.

Предајом текста, аутор изјављује да текст није ни објављен ни прихваћен за објављивање те да неће бити предат за објављивање било ком другом медију. Аутор такође изјављује да је носилац ауторског права, да је обавештен о правима трећих лица и да је испунио захтеве који произлазе из тих права.

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– Према Милошевићу (2014, 224–234)...
– Римски правници су познавали различите класификације ствари (Милошевић 2014, 224–234)

Страна имена која се помињу у реченици треба да буду транскрибована, а у заградама их треба поновити и оставити у оригиналу. У списку литературе страна имена се не транскрибују:

– Према Коциолу (Koziol 1997, 73–87)...
– О томе је опсежно писао Коциол (Koziol 1997, 73–87).
– Koziol, Helmut. 1997. *Österreichisches Haftpflichtrecht*, Band I: Allgemeiner Teil. Wien: Manzsche Verlags– und Universitätsbuchhandlung.

Пожељно је да у цитатима у тексту буде наведен податак о броју стране на којој се налази део дела које се цитира.

Исто тако и / Исто / Као и Константиновић (1969, 125–127);

Према Бартошу (1959, 89 фн. 100) – *тамо где је фуснота 100 на 89. страни*;

Као што је предложио Бартош (1959, 88 и фн. 98) – *тамо где фуснота 98 није на 88. страни*.

Пре броја стране не треба стављати ознаку „стр.“, „p.“, „f.“ или слично.

Изузетно, тамо где је то прикладно, аутори могу да користе цитате у тексту без навођења броја стране дела које се цитира. У том случају аутори могу, али не морају да користе неку од назнака као што су: *видети, посебно видети, видети на пример и др.*

(видети, на пример, Бартош 1959; Симовић 1972)

(видети посебно Бакић 1959)

(Станковић, Орлић 2014)

Један аутор

Цитат у тексту (Т): Као и Илај (Ely 1980, број стране), тврдимо да...

Навођење у списку литературе (Л): Ely, John Hart. 1980. *Democracy and Distrust: A Theory of Judicial Review*. Cambridge, Mass.: Harvard University Press.

Т: Исто као и Аврамовић (2008, број стране), тврдимо да...

Л: Аврамовић, Сима. 2008. *Rhetorike techne – вештина беседништва и јавни наступ.* Београд: Службени гласник – Правни факултет Универзитета у Београду.

Т: Васиљевић (2007, број стране),

Л: Васиљевић, Мирко. 2007. *Корпоративно управљање: правни аспекти*. Београд: Правни факултет Универзитета у Београду.

Два аутора

Т: Као што је указано (Daniels, Martin 1995, број стране),

Л: Daniels, Stephen, Joanne Martin. 1995. *Civil Injuries and the Politics of Reform.* Evanston, Ill.: Northwestern University Press.

Т: Као што је показано (Станковић, Орлић 2014, број стране),

Л: Станковић, Обрен, Миодраг Орлић. 2014. *Стварно право.* Београд: Номос.

Три аутора

Т: Као што су предложили Сесил, Линд и Бермант (Cecil, Lind, Bermant 1987, број стране),

Л: Cecil, Joe S., E. Allan Lind, Gordon Bermant. 1987. *Jury Service in Lengthy Civil Trials.* Washington, D.C.: Federal Judicial Center.

Више од три аутора

Т: Према истраживању које је спровео Тарнер са сарадницима (Turner *et al*. 2002, број стране),

Л: Turner, Charles F., Susan M. Rogers, Heather G. Miller, William C. Miller, James N. Gribble, James R. Chromy, Peter A. Leone, Phillip C. Cooley, Thomas C. Quinn, Jonathan M. Zenilman. 2002. Untreated Gonococcal and Chlamydial Infection in a Probability Sample of Adults. *Journal of the American Medical Association* 287: 726–733.

Т: Поједини аутори сматрају (Варади *et al*. 2012, број стране)...

Л: Аради, Тибор, Бернадет Бордаш, Гашо Кнежевић, Владимир Павић. 2012. *Међународно приватно право*. 14. издање. Београд: Правни факултет Универзитета у Београду.

Институција као аутор

Т: (U.S. Department of Justice 1992, број стране)

Л: U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. 1992. *Civil Justice Survey of State Courts.* Washington, D.C.: U.S. Government Printing Office.

Т: (Завод за интелектуалну својину Републике Србије 2015, број стране)

Л: Завод за интелектуалну својину Републике Србије. 2015. *95 година заштите интелектуалне својине у Србији*. Београд: Colorgraphx.

Дело без аутора

Т: (*Journal of the Assembly* 1822, број стране)

Л: Journal of the Assembly of the State of New York at Their Forty-Fifth Session, Begun and Held at the Capitol, in the City of Albany, the First Day of January, 1822. 1822. Albany: Cantine & Leake.

Цитирање више дела истог аутора

Клермонт и Ајзенберг сматрају (Clermont, Eisenberg 1992, број стране; 1998, број стране)...

Баста истиче (2001, број стране; 2003, број стране)...

Цитирање више дела истог аутора из исте године

Т: (White 1991a, број стране)

Л: White, James A. 1991a. Shareholder-Rights Movement Sways a Number of Big Companies. *Wall Street Journal*. April 4.

Истовремено цитирање више аутора и дела

(Grogger 1991, број стране; Witte 1980, број стране; Levitt 1997, број стране)

(Поповић 2017, број стране; Лабус 2014, број стране; Васиљевић 2013, број стране)

Поглавље у књизи

Т: Холмс (Holmes 1988, број стране) тврди...

Л: Holmes, Stephen. 1988. Precommitment and the Paradox of Democracy. 195–240. *Constitutionalism and Democracy*, ed. John Elster, Rune Slagstad. Cambridge: Cambridge University Press.

Поглавље у делу које је издато у више томова

Т: Шварц и Сајкс (Schwartz, Sykes 1998, број стране) тврде супротно.

Л: Schwartz, Warren F., Alan O. Sykes. 1998. Most-Favoured-Nation Obligations in International Trade. 660–664. *The New Palgrave Dictionary of Economics and the Law*, Vol. II, ed. Peter Newman. London: MacMillan.

Књига са више издања

Т: Користећи Гринов метод (Greene 1997), направили смо модел који...

Л: Greene, William H. 1997. *Econometric Analysis.* 3rd ed. Upper Saddle River, N.J.: Prentice Hall.

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Л: Поповић, Дејан. 2018. *Пореско право*. 16. издање. Београд: Правни факултет Универзитета у Београду.

Навођење броја издања није обавезно.

Поновно издање – репринт

Т: (Angell, Ames [1832] 1972, 24)

Л: Angell, Joseph Kinniaut, Samuel Ames. [1832] 1972. *A Treatise on the Law of Private Corporations Aggregate.* Reprint, New York: Arno Press.

Чланак

У списку литературе наводе се: презиме и име аутора, број и година објављивања свеске, назив чланка, назив часописа, година излажења часописа, странице. При навођењу иностраних часописа који не нумеришу свеске тај податак се изоставља.

Т: Тај модел користио је Левин са сарадницима (Levine *et al*. 1999, број стране)

Л: Levine, Phillip B., Douglas Staiger, Thomas J. Kane, David J. Zimmerman. 1999. *Roe v. Wade* and American Fertility. *American Journal of Public Health* 89: 199–203.

Т: На то је указао Васиљевић (2018, број стране)

Л: Васиљевић, Мирко. 2/2018. Арбитражни уговор и интеркомпанијскоправни спорови. *Анали Правног факултета у Београду* 66: 7–46.

Т: Орлић истиче утицај упоредног права на садржину Скице (Орлић 2010, 815–819).

Л: Орлић, Миодраг. 10/2010. Субјективна деликтна одговорност у српском праву. *Правни живот* 59: 809–840.

Цитирање целог броја часописа

Т: Томе је посвећена једна свеска часописа *Texas Law Review* (1994).

Л: Texas Law Review. 1993–1994. *Symposium: Law of Bad Faith in Contracts and Insurance*, special edition 72: 1203–1702.

Т: Осигурање од грађанске одговорности подробно је анализирано у часопису *Анали Правног факултета у Београду* (1982).

Л: Анали Правног факултета у Београду. 6/1982. *Саветовање: Нека актуелна питања осигурања од грађанске одговорности*, 30: 939–1288.

Коментари

Т: Смит (Smith 1983, број стране) тврди...

Л: Smith, John. 1983. Article 175. Unjust Enrichment. 195–240. *Commentary to the Law on Obligations*, ed. Jane Foster. Cambridge: Cambridge University Press.

Т: Према Шмаленбаху (Schmalenbach 2018, број стране), јасно је да...

Л: Schmalenbach, Kirsten. 2018. Article 2. Use of Terms. 29–55. Vienna Convention on the Law of Treaties: A Commentary, eds. Oliver Dörr, Kirsten Schmalenbach. Berlin: Springer-Verlag GmbH Germany.

Л: Томић, Јанко, Саша Павловић. 2018. Упоредноправна анализа прописа у области радног права. Радни документ бр. 7676. Институт за упоредно право, Београд.

Т: (Glaeser, Sacerdote 2000)

Л: Glaeser, Edward L., Bruce Sacerdote. 2000. The Determinants of Punishment: Deterrence, Incapacitation and Vengeance. Working Paper No. 7676. National Bureau of Economic Research, Cambridge, Mass.

Лична кореспонденција/комуникација

Т: Као што тврди Дамњановић (2017),

Л: Дамњановић, Вићентије. 2017. Писмо аутору, 15. јануар.

Т: (Welch 1998)

Л: Welch, Thomas. 1998. Letter to author, 15 January.

Стабилни интернет протокол (URL)

Т: Према Заводу за интелектуалну својину Републике Србије (2018),

Л: Завод за интелектуалну својину Републике Србије. 2018. Годишњи извештај о раду за 2017. годину. *http://www.zis.gov.rs/o-zavodu/godisnji-izvestaji.50.html*, последњи приступ 28. марта 2018.

Т: According to the Intellectual Property Office (2018)

Л: R.S. Intellectual Property Office. 2018. Annual Report for 2017. *http://www.zis.gov.rs/about-us/annual-report.106.html*, last visited 28 February 2019.

У штампи

Т: (Богдановић 2019, број стране)

Л: Богдановић, Лука. 2019. Економске последице уговарања клаузуле најповлашћеније нације у билатералним инвестиционим споразумима. *Номос*, том 11, у штампи.

Т: (Spier 2003, број стране)

Л: Spier, Kathryn E. 2003. The Use of Most-Favored-Nations Clauses in Settlement of Litigation. *RAND Journal of Economics*, vol. 34, in press.

Прихваћено за објављивање

Т: У једном истраживању (Петровић, прихваћено за објављивање) посебно се истиче значај права мањинских акционара за функционисање акционарског друштва.

Л: Петровић, Марко. Прихваћено за објављивање. Права мањинских акционара у контексту функционисања скупштине акционарског друштва. *Правни живот*.

Т: Једна студија (Joyce, прихваћено за објављивање) односи се на Колумбијски дистрикт.

Л: Joyce, Ted. Forthcoming. Did Legalized Abortion Lower Crime? *Journal of Human Resources*.

Судска пракса

***Ф(усноте)**:* Врховни суд Србије, Рев. 1354/06, 6. 9. 2006, Paragraf Lex; Врховни суд Србије, Рев. 2331/96, 3. 7. 1996, *Билтен судске праксе Врховног суда Србије* 4/96, 27; CJEU, case C-20/12, Giersch and Others, ECLI:EU:C:2013:411, пара. 16; Opinion of AG Mengozzi to CJEU, case C-20/12, Giersch and Others, ECLI:EU:C:2013:411, пара. 16.

Т: За референце у тексту користити скраћенице (ВСС Рев. 1354/06; CJEU C-20/12 или Giersch and Others; Opinion of AG Mengozzi) конзистентно у целом чланку.

Л: Не треба наводити судску праксу у списку коришћене литературе.

Закони и други прописи

Ф: Законик о кривичном поступку, *Службени гласник РС* 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 и 55/2014, чл. 2, ст. 1, тач. 3; Regulation (EU) No. 1052/2013 establishing the European Border Surveillance System (Eurosur), OJ L 295 of 6/11/2013, Art. 2 (3); Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast), OJ L 180 of 29/6/2013, 60, Art. 6 (3).

Т: За референце у тексту користити скраћенице (ЗКП или ЗКП РС; Regulation No. 1052/2013; Directive 2013/32) конзистентно у целом чланку.

Л: Не треба наводити прописе у списку коришћене литературе.

4. ПРИЛОЗИ, ТАБЕЛЕ И СЛИКЕ

Фусноте у прилозима нумеришу се без прекида као наставак на оне у остатку текста.

Нумерација једначина, табела и слика у прилозима почиње са 1 (једначина А1, табела А1, слика А1 итд., за прилог А; једначина Б1, табела Б1, слика Б1 итд., за прилог Б).

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Табеле имају кратке наслове. Додатна објашњења се наводе у напоменама на дну табеле.

Треба идентификовати све количине, јединице мере и скраћенице за све уносе у табели.

Извори се наводе у целини на дну табеле, без унакрсних референци на фусноте или изворе на другим местима у чланку.

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Не треба користити сенчење или боју на графичким приказима. Ако је потребно визуелно истаћи поједине разлике, молимо вас да користите шрафирање и унакрсно шрафирање или друго средство означавања.

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34(497.11)

АНАЛИ Правног факултета у Београду : часопис за правне и друштвене науке = The Annals of the Faculty of Law in Belgrade : Belgrade law review / главни и одговорни уредник Марија Караникић Мирић. – [Српско изд.]. – Год. 1, бр. 1 (1953)–. – Београд : Правни факултет Универзитета у Београду, 1953– (Нови Сад : Сајнос). – 24 cm

Тромесечно. – Преузео је: Annals of the Faculty of Law in Belgrade. – Друго издање на другом медијуму: Анали Правног факултета у Београду (Online) = ISSN 2406-2693.

ISSN 0003-2565 = Анали Правног факултета у Београду

COBISS.SR-ID 6016514

Факултетски научни часопис *Анали Правног факултета у Београду* излази од 1953. године (ISSN: 0003-2565) као потомак часописа *Архив за правне и друштвене науке* који је излазио од 1906. године.

Главни уредници *Архива за правне и друштвене науке* били су: Коста Кумануди и Драгољуб Аранђеловић (1906–1911), Коста Кумануди (1911–1912), Чедомиљ Митровић (1920–1933), Михаило Илић (1933–1940), Ђорђе Тасић (1940–1941) и Јован Ђорђевић (1945).

Главни уредници *Анала Правног факултета у Београду* били су: Михајло Константиновић (1953–1960), Милан Бартош (1960–1966), Војислав Бакић (1966–1978), Војислав Симовић (1978–1982), Обрен Станковић (1982–1995), Дејан Поповић (1996), Миодраг Орлић (1997–2004), Данило Баста (2004–2006), Сима Аврамовић (2006–2012), Мирољуб Лабус (2013–2015) и Мирко Васиљевић (2016–2018).

У часопису се објављују научни чланци, критичке анализе, коментари судских одлука, прилози из међународног научног живота и прикази књига. Часопис излази и у електронском облику (eISSN: 2406-2693).

Радови објављени у часопису подлежу анонимној рецензији двоје рецензената, које одређује редакција.

Ставови изражени у часопису представљају мишљење аутора и не одражавају нужно гледишта редакције. За те ставове редакција не одговара.

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