International Empirical Legal Studies Conference

1 & 2 September 2022 Amsterdam

Organized by the Netherlands Academy for Empirical Legal Studies

Programme booklet
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Foreword

Dear participants of the 2022 Amsterdam International Empirical Legal Studies conference!

It is with great pleasure that I welcome you to our conference. We are looking forward to one and a half days packed with interesting presentations across a wide variety of substantive legal areas, showcasing qualitative and quantitative methodologies, by scholars from countries from all across Europe and other continents.

Last year, the Netherlands Academy for Empirical Legal Studies was founded by a group of Dutch universities. When we first started nurturing the idea of an ELS conference in Europe and then taking concrete steps, we set a minimum number of participants for the conference to go ahead. We were in fact a bit anxious that we would not meet that threshold. Our fears turned out to be completely unfounded. In fact, plans have already been put forward to organize next year’s conference somewhere else in Europe, and to set up a European Society for Empirical Legal Studies (with perhaps even its own journal). It shows that empirical research in the field of law is gaining momentum, also in Europe.

But before such plans materialize, we hope you enjoy the Amsterdam conference, the poster session, the conference dinner with a view on the scenic ‘Amsterdamse bos’, our inspiring cast of plenary speakers - and we hope that of course you are able to sample some of the city-life of Amsterdam with its canals, its many historical landmarks and world-famous museums.

On behalf of the local and scientific organizing committees,

Catrien Bijleveld.
Conference Organization

Many thanks to all involved

Local Organizing Committee
Anja Eleveld
Arno Akkermans
Catrien Bijleveld
Marin Coerts
Maryam El Kaddouri
Helen Pluut
Milo van Wierst
Roos Nieuwboer

Scientific Organizing Committee
Anja Eleveld
Arno Akkermans
Catrien Bijleveld
Elena Kantorowicz
Helen Pluut
Kees van den Bos
Marc Hertogh
Pieter Desmet
Paulien de Winter
Sonja Bekker
The Venue

Location

The venue is located at the Initium building on the Vrije Universiteit campus. Figures 1.1 and 1.2 show the Initium building. Two travel routes by public transportation from Schiphol Airport to Initium are provided in the Accessibility section.

The address of Initium is:
De Boelelaan 1077
1081 HV Amsterdam

Some panels may be located at the BelleVUe building. This building is also located on the Vrije Universiteit campus. Below in figure 2 and figure 3 you can see a map of the VU campus and the BelleVUe building respectively.
Accessibility

Travel information
We recommend all attendees to download the 9292 app. 9292 provides the most accurate and up-to-date travelling information for public transport in The Netherlands. For the attendees who arrive at Schiphol we provide travelling information on how to reach the venue.

Public transportation:
There are multiple ticket options for public transportation. See which ticket is the right one for you. It is common in The Netherlands to use an ‘OV-chip card’. This is a rechargeable ticket which works for virtually all modes of public transportation.

It is also possible to buy a single journey paper ticket or an Amsterdam Travel Ticket in Schiphol at the blue-grey ‘Public Transport’ ticket machines. However, the Amsterdam Travel Ticket can be the cheapest option for visitors that will make a lot of use of public transport in Amsterdam for 1-3 days.

Train
• Take the intercity/sprinter to Nijmegen at Schiphol train station (all trains to Zuid depart from platforms 1-3).
• Get off at the stop Amsterdam Zuid.
• Walk 11 minutes.

Bus
• Take the 341 bus to AMS Station Zuid at the Schiphol Airport bus stop.
• Get off at the Amsterdam De Boelelaan/VU.
• Walk 3 minutes.

Taxi:
At Schiphol Airport, taxis are available at the airport’s exit. Depending on the traffic, a taxi can take you to the Initium building about 20 minutes. A taxi from Schiphol to Amsterdam Zuid will cost you roughly €30.

Parking
VU Amsterdam offers various parking options. You can park in one of our parking garages: P1, P2 and P3. P1 and P2 but also parking for the disabled are visible on figure 2 on the previous page. You can find more information about the rates and where the remaining parking garages are located on the VU website. You can also use public parking near the VU campus in Buitenveldert at municipal parking rates or private parking garages (for example: ParkBee or Q-park). Please note that for some parking garages you need to reserve and on certain streets there is a maximum time limit of three hours. More information about the maximum time limit can be found on the website of the City of Amsterdam.

Wheelchairs
The Initium building has two elevators that can be used to access all floors (see Floor Plan). All lecture halls that will be used during the
Practical Information

Reception and Check-In

The reception will be open from 09:00-17:00 and from 08:30-17:00 on the 1 and 2 September respectively. Attendees are welcomed downstairs at the main entrance of the Initium building. The reception is located on the second floor, where you can check-in. Please bring a valid means of identification. After check-in you can pick up your conference kit.

Those that were not able to transfer the conference fee before arrival can pay in person. Payment by card is greatly preferred.

Conference Package

All attendees shall receive a Conference Package. It includes a badge, a pen and a notepad. For security purposes, we kindly request all attendees to wear their badges during the conference. The package will also include a dinner ticket for those who signed up.

Lunch and Dinner Information

On 1 September the lunch break will be from 12:00-13:00. On 2 September lunch is served from 12:30 until 13:45. Lunch is included for all conference attendees. Attendees are also allowed to bring their own lunch if desired. The lunch that we provide will be vegetarian.

The Conference Dinner will also be entirely vegetarian. As can be found in the General Programme, the Conference Dinner is from 19:00-23:00 on 1 September. The address of Restaurant de Bosbaan is Bosbaan 4, 1182AG Amstelveen.

If you have any dietary restrictions or allergies please let us know latest Wednesday 31 August by 1700 hrs.

Technical Information

All rooms are equipped with a computer and a beamer. The computer will be on at all times and no login is required. Speakers can plug in their USB stick and display their presentations. It is also possible to plug in your laptop with either an HDMI or USB-C cable.

We also recommend that you have a back-up at hand in your e-mail or cloud storage.

Furthermore, please note that the Netherlands uses a 230 V power network. If you come from abroad it may be necessary for you to bring an adaptor.

Hotels

We have arranged a selection of hotels with discount rates. Please mention the ‘Vrije Universiteit Amsterdam’ to receive the discount when booking:

- **Apollofirst Boutique Hotel Amsterdam**
  - Apollolaan 123, 1077 AP Amsterdam.
  - €10 discount for Conference attendees using the code: AFF-VU22

- **The Delphi – Amsterdam Townhouse**
  - Apollolaan 105, 1077 AN Amsterdam.

Luggage, Belongings and Lost Property

At the conference we will not be able to offer a temporary storage location for your luggage or other belongings. We recommend to leave your luggage at your accommodation if possible. Otherwise, you will have to bring it along with you.

Lost belongings and property will be brought to and stored at the Welcome Reception. You can stop by or call the conference number for urgent matters (see Emergency numbers) to ask whether any lost belongings have been found.

Emergency Numbers

The Netherlands has one number for emergencies: 112. This number covers police, ambulance and fire brigade.

Registration Fees

<table>
<thead>
<tr>
<th></th>
<th>Early Bird Fee</th>
<th>Normal Fee</th>
<th>Dinner</th>
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<tbody>
<tr>
<td>PhD Student</td>
<td>€75</td>
<td>€125.00</td>
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<tr>
<td>Full Fee</td>
<td>€125.00</td>
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</table>
Recreation in Amsterdam

The entire city of Amsterdam is filled with fascinating museums, attractions, and sights. You can walk or cycle around historic neighbourhoods like the Jordaan, relax at the Vondelpark, go shopping in De Negen Straatjes or the Albert Cuypmarkt and explore culture park Westergasfabriek.

Another exciting way to explore the city is to discover the city’s sights and attractions while relaxing on the water. Often it is possible to simply approach the captain of a boat tour while they’re docked at the side of the canal. If you’re interested the different boat tours that are offered have a look on TripAdvisor.

Anne Frank House
Anne Frank is one of Amsterdam’s most well-known former residents. She lived in a Secret Annex at the Prinsengracht with her family for more than two years during World War II. The building at the Prinsengracht has been converted into a museum, which contains a sobering exhibition about the persecution of the Jews during World War II.

More information and tickets: https://www.annefrank.org/en/

Rijksmuseum
The Rijksmuseum is one of the most impressive and popular museums of Amsterdam. The collection of the Rijksmuseum contains some of the masterpieces by Rembrandt van Rijn and Johannes Vermeer.

More information and tickets: https://www.rijksmuseum.nl/en

Van Gogh Museum
The Dutch Post-Impressionist Vincent van Gogh is one of the most famous Dutch painters to date. Most of van Gogh’s work dates from the last two years of his life and includes landscapes, portraits, self-portraits and still lives. The Van Gogh Museum houses the largest collection of works by Vincent van Gogh: over 200 paintings, 500 drawings and 700 of his letters.

More information and tickets: https://www.vangoghmuseum.nl/en

We recommend that you reserve your tickets early if you plan to visit one these museums. In particular for the Anne Frank House, where tickets can be sold out months in advance.

For further information of recreation in Amsterdam consult the city’s website.
Instructions for Presenters

Please be in your room on time, 10 minutes before the panel starts. This gives you time to upload your PowerPoint if necessary. Keep in mind that there should be some room for discussion. Hence, presenters in panels consisting of five panellists should not speak for more than 12 minutes; e.g. presenters in panels consisting of three panellists can have 20 minutes each. Usually the last presenter on the list will also be the chair of the panel.

To avoid complications we recommend everyone brings their presentation on both a cloud storage and a USB stick.
<table>
<thead>
<tr>
<th>Time</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>09:00</td>
<td>Reception Open for Registration</td>
</tr>
<tr>
<td>10:00-12:00</td>
<td>Pre-conference Meeting European Society of Empirical Legal Studies (by invitation)</td>
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<tr>
<td>12:00-13:00</td>
<td>Lunch</td>
</tr>
<tr>
<td>13:00-14:00</td>
<td>Opening followed by Plenary lectures</td>
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<tr>
<td>14:15-15:45</td>
<td>Panel Sessions I</td>
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<tr>
<td>15:45-16:15</td>
<td>Coffee, Tea and Sweets</td>
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<tr>
<td>16:15-17:45</td>
<td>Panel Sessions II</td>
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<tr>
<td>17:45-18:45</td>
<td>Poster Session with Drinks &amp; Snacks, sponsored by BoomEleven publishers</td>
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<tr>
<td>19:00-23:00</td>
<td>Conference Dinner at Restaurant de Bosbaan (for registered attendees)</td>
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**Friday 2 September**

<table>
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<tr>
<th>Time</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>09:00-10:30</td>
<td>Panel Sessions III</td>
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<tr>
<td>10:30-11:00</td>
<td>Coffee, Tea and Sweets</td>
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<tr>
<td>11:00-12:30</td>
<td>Plenary Lectures</td>
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<tr>
<td>12:30-13:45</td>
<td>Lunch</td>
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<tr>
<td>13:45-15:15</td>
<td>Panel Sessions IV</td>
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<tr>
<td>15:30-15:45</td>
<td>Closing Ceremony with Drinks and Farewell Words</td>
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</tbody>
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## Detailed Programme

### 1 September

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td><strong>9:00 /</strong></td>
<td><strong>Reception Open for Registration</strong></td>
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<tr>
<td>10:00-12:00</td>
<td><strong>Pre-conference Meeting European Society of Empirical Legal Studies for Invitees</strong></td>
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<tr>
<td>IN-3B59</td>
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<tr>
<td><strong>12:00-13:00</strong></td>
<td><strong>Lunch</strong></td>
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<tr>
<td>Concilium, second floor</td>
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<tr>
<td><strong>13:00-14:00</strong></td>
<td><strong>Opening and Plenary Lectures</strong></td>
</tr>
<tr>
<td>IN-0B60</td>
<td>Catrien Bijleveld, Professor research methods ELS and Criminology, VU University (Opening)</td>
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<tr>
<td>Dineke de Groot, President of the Dutch Supreme Court (Keynote)</td>
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<tr>
<td>Dame Hazel Genn, Professor of Socio-Legal Studies, UCL (Keynote)</td>
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<tr>
<td><strong>14:15-15:45</strong></td>
<td><strong>Panel Sessions I</strong></td>
</tr>
<tr>
<td>A</td>
<td>Judicial Decision-Making 1</td>
</tr>
<tr>
<td>IN-3B 44</td>
<td>Anna Goldberg</td>
</tr>
<tr>
<td>Jadwiga Królikowska &amp; Jarroslaw Urat-Milecki</td>
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<tr>
<td>Jakub Drápal &amp; Libor Dušek</td>
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<tr>
<td>B</td>
<td>Legal Profession</td>
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<tr>
<td>IN-3B 58</td>
<td>Johan Lindholm et al.</td>
</tr>
<tr>
<td>Nina Holvast &amp; Willem Kortleven</td>
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<tr>
<td>C</td>
<td>ELS Research in Family, Youth and Elder Law (Pre-arranged Panel)</td>
</tr>
<tr>
<td>IN-3B 52</td>
<td>Masha Antokolskaia (introduction)</td>
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<tr>
<td>Loran Kostense</td>
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<td>Machteld Vonk &amp; Geeske Ruitenber</td>
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<td>Roos Nieuwboer</td>
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<td>Rieneke Stelma-Roorda</td>
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<tr>
<td>D</td>
<td>Criminal Law I</td>
</tr>
<tr>
<td>IN-3B50</td>
<td>Arthur Dyevre et al</td>
</tr>
<tr>
<td>Deborah Antony</td>
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<tr>
<td>Niek Strohmaier &amp; Sofia de Jong</td>
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<tr>
<td>Tessa van der Rijst</td>
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<tr>
<td>E</td>
<td>Data and Databases for ELS: Possibilities, Challenges and Limitations</td>
</tr>
<tr>
<td>IN 3B 45</td>
<td>Mikolaj Barcentewicz</td>
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<td>Veronika Fikfak</td>
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<td>Yuliya Chernykh</td>
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<tr>
<td>F</td>
<td>Competition and Consumer Law</td>
</tr>
<tr>
<td>IN 3B 59</td>
<td>Jasper Sluijs</td>
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<tr>
<td>Leon Xiao</td>
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<td>Vasiliki Yiatrou</td>
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<tr>
<td>G</td>
<td>European Law</td>
</tr>
<tr>
<td>IN 3B 39</td>
<td>Adriani Dori</td>
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<tr>
<td>Eva Grosfeld</td>
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<td>Jesse Claasen</td>
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<td>Sonja Bekker</td>
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<tr>
<td><strong>14:45-16:15</strong></td>
<td><strong>Coffee, tea and sweets</strong></td>
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</tbody>
</table>
Concilium (second floor)

16:15-17:45 / Panel Sessions II

A  Judicial Decision-Making 2
   IN 3B 44
   Luciana Romano Morilas et al.
   Peter Mascini et al.
   Marlou Overheul et al.
   Rachel Dijkstra

B  Company Law
   IN 2B 59
   Sally Wheeler & Victoria Barnes
   Suren Gomtsian

C  Queer Theory Approaches to International Law (Pre-arranged Panel)
   IN 3B 39
   Irene Manganini
   Samuel Balin
   Janna Wessels

D  Criminal Law 2
   IN 3B 50
   Cale Davis
   Christiaan Lucas et al
   Henk Elffers et al
   Nicolle Zeegers

E  Algorithm / Experiments
   IN 3B 58
   Lucas Haitsma
   Marie-Therese Sekwenz & Ben Wagner
   Franziska Weber et al

F  Administrative Law / Access to Justice
   IN 3B 52
   Kaijus Ervasti
   Marc Wever
   Bert Marseille
   Marcella Santoso

G  Consumer Law
   IN 3B 45
   Amit Zac et al
   Josje de Vogel
   Mihaele Gherghe
   Omar Vasques Duque

H  Environmental Law / Protection
   IN 3B 59
   Anna Kovács et al
   Jessica Hill et al
   Josua Hari
   Julien Bétaille

17:45-18:45 / Poster Sessions with Drinks and Snacks

Concilium (second floor)

Poster Presentations
Federica Casano
Lisette Dirksen
Katarzyna Witkowska-Rozpara et al.

Student Posters
Maria-Lucia Rebrean; Mauryn Jonkhout; Homa Golestani et al.; Myra Collis et al.; Yusuf Abassi et al

19:00-23:00 / Dinner
Bosbaan 4 Amstelveen (15 minutes’ walk from the VU Campus)
## 2 September

### 09:00-10:30 / Panel Sessions III

**A  Judicial Decision-Making 3**  
*IN 3B 44*  
Anne van Aaken & Roee Sarel  
Diederik Meijer et al  
Johan Lindholm et al  
Machteld Geuskens & Eva Hilbrink  
Lucía López Zurita & Stein Arne Brekke

**B  Law and Economics**  
*IN 3B 45*  
Bashar Malkawi  
Marin Coerts & Florian Heine  
Marin Coerts et al  
Stavros Pantos

**C  Institutional Challenges to Address Transgender and Intersex Needs (Pre-arranged Panel)**  
*IN 3B 59*  
Gijs Hablous  
Lorena Sosa  
Marjolein van den Brink et al  
Pauline Jacobs

**D  Criminal Law 3**  
*IN 3B 50*  
Ana Belén Gómez-Bellvis et al  
Csaba Győry et al  
Mahdi Kehsali & Yoan Hermstrüwer  
Nienke Elbers et al  
Samantha Bielen

**E  Methodology 1**  
*IN 3B 52*  
Gareth Davies  
Hanja Hamann  
Mateusz Stepień  
Rick Maas

**F  Corporate Social Responsibility: Shared Responsibility is No Responsibility? (Pre-arranged Panel)**  
*BV-1H50 (BelleVue Building)*  
Alette Jansen  
Sarah Vanderbroucke  
Helen Pluut & Merel Cornax  
Jessie Pool

**G  European Law 2**  
*IN 3B 39*  
Erin Jackson  
Przemyslaw Palka & Katarzyna Wisniewska  
Ula Aleksandra Kos  
Aysel Küçüksu  
Sophie van ‘t Klooster & Sanne Buisman

**H  Comparative Law**  
*BV-1H26 (BelleVue Building)*  
Bertha Prado  
Lidia Bonifati & Alberto Nicotina  
Mariia Domina  
Virginia Passalacqua
### 10:30-11:00 Coffee, tea and sweets

*Concilium (second floor)*

### 11:00-12:30 Plenary lectures

*IN 0B 60*

Fernando Miró- Llinares, Professor of Criminal Law, Miguel Hernández University of Elche (Keynote)
Urška Šadl, Professor, University Institute, Florence (Keynote)

### 12.30-13:45 Lunch

*Concilium (second floor)*

### 13:45-15:15 / Panel Sessions IV

<table>
<thead>
<tr>
<th>Panel</th>
<th>Title</th>
<th>Location</th>
<th>Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>The Police Interview of Suspects with Intellectual Disability (Pre-arranged Panel)</td>
<td>IN 3B 39</td>
<td>Marigo Teeuwen, Xavier Moonen, Robin Kranendonk, Imke Rispens</td>
</tr>
<tr>
<td>C</td>
<td>Human Rights / Gender</td>
<td>IN 3B 58</td>
<td>Adriaan Bedner, Sofie Karlsson</td>
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<tr>
<td>D</td>
<td>Barriers in/to Empirical Legal Studies (Pre-arranged Panel)</td>
<td>IN 3B 50</td>
<td>Yanick van den Brink, Gabriele Chlevickaitė, Tasniem Anwar, Anna Pivaty, Anna Goldberg</td>
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<tr>
<td>E</td>
<td>European Consumer Protection 2.0 (Pre-arranged Panel)</td>
<td>IN 3B 45</td>
<td>Vanessa Mak, Gitta Veldt, Kimia Heidary</td>
</tr>
<tr>
<td>F</td>
<td>Methodology 2</td>
<td>IN 3B 52</td>
<td>Anna de Hingh, Cecily Rose, Douglas Castro, Ewa Radomska, Mitja Kovac et al</td>
</tr>
<tr>
<td>G</td>
<td>Constitutional Law / International Law</td>
<td>IN 3B 59</td>
<td>Anne van Aaken et al, Oluseyi Olayanju, Péter Sólyom</td>
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<tr>
<td>Time</td>
<td>Event</td>
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<tr>
<td>15:30 – 15:40</td>
<td>Closing Ceremony</td>
<td>IN 0B 60</td>
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<td></td>
<td>Helen Pluut, Associate Professor,</td>
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<tr>
<td>15:40-16:30</td>
<td>Drinks and Snacks</td>
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<td>Concilium</td>
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Abstracts

Below you find the abstracts of the Keynotes, panel presentations and posters.

13:00-14:00 Opening and Plenary Lectures

Dineke de Groot

Dineke de Groot (1965) is president of the Supreme Court of the Netherlands. She studied Law and Arts at the Vrije Universiteit Amsterdam and the University of Vienna, Austria. Since 1990 she is a member of the Dutch judiciary. In 2011 she became an endowed professor at the Vrije Universiteit Amsterdam (chair: Judiciary and conflict resolution, established by the Court of Amsterdam). She participated in several initiatives to further empirical legal studies in the Netherlands.

Title Keynote:

‘Some observations on the integration of empirical legal studies in mainstream legal practice’

Abstract:

This key note speech will be about opportunities of empirical legal studies to contribute to judicial decision making as a component of people’s trust in the judiciary. How do lawyers in the Netherlands, and especially judges, currently use evidence-based facts in developing, interpreting or applying the law? Why is it important that they are able to make use of results of empirical legal studies? What could be done to better enable them to make proper use of such results?

Hazel Genn

Dame Hazel Genn is a leading authority on access to civil and administrative justice. She has conducted numerous empirical studies on public access to the justice systems and has published widely in these areas. In 2013 she established the UCL Faculty of Laws Centre for Access to Justice.

Title Keynote:

‘The importance of Empirical Legal Studies’

Abstract:

Referencing the conclusions of the Nuffield Inquiry into Empirical Legal Studies in 2006, the presentation will consider the distinctive contribution and impact of ELS over the past 15 years to our understanding of law, legal processes, social issues and global challenges. It will highlight the value of ELS to broadening the appeal and contribution of legal scholarship to other disciplines and perspectives on social challenges and its value to the development and evaluation of legal doctrine, justice system policy and practice. It will conclude with a reflection on future opportunities – not least those offered by technological development and data sharing – and the continuing challenge of accelerating capacity-building and improving the quality of ELS research methods.

14:00-15:30 / Panel Sessions

A. Judicial Decision-Making 1

Room: IN-3B44

1. ‘Consequences of different addiction perspectives on the assessment of criminal responsibility’

Author:

Anna Elisabeth Goldberg (a.e.goldberg@vu.nl)

Abstract:

Background & Research Question. Discussions on the conceptualization of addiction are ongoing, most commonly by presenting a dichotomy between the Brain Disease Model and the Choice Model. In practice, this debate may extend beyond the social sciences onto the field of law. The central research question addresses what the consequences are of presenting two different perspectives on addiction on criminal liability, by using vignettes of an addicted offender, who committed either a property or a violent offence.

Hypotheses. The cases with a behavioural report stressing the neuroscientific side of addiction was expected to result in a lower perspective of criminal liability. This effect is expected to be particularly pronounced in the violent offence condition.

Method. The vignettes were presented to 171 criminal law students and 109 active public prosecutors from the Netherlands, who had to judge the degree of accountability (the Dutch insanity defence equivalence), the sentence length and recidivism risk of the offender.

Results. This study found that accountability was judged significantly lower when participants were presented with a neuroscientific perspective on addiction as opposed to a choice-centred explanation. No differences were found for the other outcome variables. Exploratory analysis suggested that students are generally more lenient than professionals.

Conclusions. The findings confirmed the hypothesis that a neuroscientific explanation of addiction may have exculpatory effects, although this effect is limited to the assessment of excuses. This has practical implications for legal professionals. The potential difference between samples has implications for future research using students as main participants.

Keywords: legal decision-making; neurolaw; criminal responsibility; addiction debate; insanity defence.

2. ‘Criminal Punishment. A Socio-Legal Research on Judicial Sentencing’

Authors:

- Jadwiga Królikowska (j.krolikowska@uw.edu.pl);
- Jarroslaw Urat-Milecki

Abstract:

The paper discusses the results of the socio-legal research „Penal cultures. Cultural context
of criminal policy and criminal law reforms. Legal, penological, historical, sociological, and cultural analysis of criminal reforms in Poland against the background of European trends” was carried out in 2012-2014 by the European Centre for Penological Studies operating at the University of Warsaw. The sociological part of the research devoted to the phenomenon of the punishment was based on the methodology and the theory defined as culturally integrated studies.

Research questions:
1. What value system underlies the practice of sentencing by judges when sentencing?
2. To what extent do judges orient themselves to legal provisions and to what scientific knowledge from various disciplines that also deal with punishment?
3. Is affiliation to the autopoietic system of law essential in the professional activities of judges and in their social functioning?
4. What are the differences in the perception of social reality by judges and other members of society?
5. Is there an ordering of these phenomena into a specific theory behind the statements of judges on punishment and punishing?

Mixed methods of the research were applied: quantitative and qualitative. 160 judges from criminal courts who performed their duties in district, regional, and appeal courts took part in the survey. Twelve judges answered 60 questions during interviews.

The research confirmed the unique culture of the legal autopoietic system. Conducting of the analysis devoted to legal phenomena – including criminal punishment – was the most inspiring experience.

Key words: sentencing, judges, punishment, autopoietic system

3. ‘Law or Policy? The Role of Authority in Criminal Sentencing’

Authors:
• Jakub Drápal (drapalja@prf.cuni.cz)
• Libor Dušek (dusekl@prf.cuni.cz)

Abstract:
Background: We study the probability of imposing a fine in criminal cases in the Czech Republic, where legislation allows their broad use yet the actual use had been historically low. In 2016 and 2017, the Supreme Court and the Supreme Prosecution ran a campaign aimed at increasing the probability to impose fine, which consisted of seminars for judges and prosecutors and of policy meetings of chief prosecutors.

Research questions: To what extent can non-binding recommendations of authority of the supreme institutions shape sentencing policy within the limits of an existing legislation? We estimate the effects of these soft interventions on the probability to impose fines and investigate for spillover and substitution effects.

Methodology: The dataset covers all criminal cases adjudicated between 2014 and 2018. We use the difference-in-differences research design to estimate the effect of seminars and the before-after design to estimate the effects of policy meetings of the chief prosecutors.

Results: The meetings of the chief prosecutors increased the probability to impose fines by 7 percentage points, while participation by the judge in a seminar increased the probability to impose fines of that judge by 6 percentage points. The interventions were identified to have strongly heterogeneous effect both at court and judge level. The increased imposition of fines substituted for suspended prison sentences without probation.

Conclusions: Authority of penal elites, albeit non-binding, can be highly effective in changing the sentencing policy in the absence of any legislative changes.

B. Legal Profession
Room: IN-3B58
1. ‘A Very Swedish Illusion: Existence and Efficacy of Political Strategic Judicial Appointments’

Authors:
• Mattias Derlen (mattias.derlen@umu.se.)
• Johan Lindholm (johan.lindholm@umu.se.)
• Daniel Naurin (daniel.naurin@arena.uio.no.)

Abstract: The international literature has for a broad range of contexts shown that political actors tend to use their power over judicial appointments in a politico-strategic manner. Along similar lines and for the purpose of enhancing judicial independence, international best-practice strongly recommends implementing checks against political abuse of appointment power. By contrast, the prevailing view is that ideological and strategic factors did not affect how Swedish governments used their effectively unchecked power to appoint Supreme Court and Supreme Administrative Court Justices between 1911 and 2011. In our paper, we empirically test this view asking two questions to a novel data set: (i) do governments of different political leanings tend to appoint Justices with certain characteristics and (ii) do Justices decide on outcomes that align with the interests of the appointing government? In addition to ideological-coded outcomes commonly used (e.g. left-right), we consider the variance in the political interest in court deference to political institutions.

2. ‘Professional Identity formation in law school: How law students cope with identity or dissonance during legal education’

Authors:
• Dr Nina Holvast (holvast@law.eur.nl)
• Dr Willem J. Kortleven (kortleven@law.eur.nl)

In law school students become socialized in the norms, values and reasoning practices of the legal profession (Mertz, 2007). In this
Abstract

Empirical legal research is becoming increasingly popular in the field of family law. Both large-scale, multidisciplinary research projects and small-scale doctoral research projects increasingly use ELS methods. This panel session presents an overview of the latest ELS research in family law, conducted in the Netherlands. Each presentation not only presents a different topic, but also showcases a different research method. The session will be moderated by Masha Antokolskaia. She will open the session with a brief introduction on how theoretical, empirical and comparative law research is combined in large-scale research projects at the Amsterdam Centre for Family and Law (ACFL).

Where legal scholars often confine themselves to ‘snowballing’ when it comes to literature reviews, Loran Kostense has adopted a more systematic approach by conducting a scoping review. She discusses this method in connection with her PhD-research on relocations in the context of divorce cases. In their study on (simple) adoption of long-term foster children, Machteld Vonk and Geeske Ruitenberg used questionnaires and in-depth interviews to explore the views of both children, foster parents and original parents. Roos Nieuwoer presents the findings of a case file study looking at guardianship cases at four district courts in the Netherlands. Although mainstream in the social sciences, the life course perspective is rather new within the legal discipline. Rieneke Stelma-Roorda explores the value of this perspective within her research looking at the static nature of anticipatory decision-making documents compared to the dynamic nature of life.

C. ELS Research in Family, Youth and Elder Law (PA)
Room: IN-3B52

1. Introduction
Author: Masha Antokolskaia
(m.v.antokolskaia@vu.nl)

Abstract: Empirical legal research is becoming increasingly popular in the field of family law. Both large-scale, multidisciplinary research projects and small-scale doctoral research projects increasingly use ELS methods. This panel session presents an overview of the latest ELS research in family law, conducted in the Netherlands. Each presentation not only presents a different topic, but also showcases a different research method. The session will be moderated by Masha Antokolskaia. She will open the session with a brief introduction on how theoretical, empirical and comparative law research is combined in large-scale research projects at the Amsterdam Centre for Family and Law (ACFL).

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2. ‘A Scoping Review on the Empirical and Legal Consequences of Relocation Cases’

Author: Loran Kostense
(L.kostense@vu.nl)

Abstract: Background
Relocation disputes are among the most challenging cases for judges in family law. In these cases, one of the parents wants to move with his/her child(ren) to another region within a country in the context of separation and the other parent does not consent to this move. Relocation cases have been the cause of heated debate in many jurisdictions worldwide, and the empirical consequences for the involved children are not clear. The various legal frameworks which are used in these cases are sometimes based on empirical studies. However, the outcomes and interpretation of the empirical studies do not seem to provide consensus on the consequences of relocation after separation.

Research Questions

Therefore, the research question is: In what way is the impact on children of relocation related to divorce taken into consideration in court cases?

Methodology

By implementing an innovative and systematic research method in the legal sciences, a so called scoping review, a comprehensive overview of the English and Dutch scientific articles on parental relocation after separation is established. The scoping review aims to include all available and relevant studies related to the subject by following certain systematic research steps. This resulted in an extensive review of the relevant legal and empirical research on the consequences of relocation after separation and the legal implications thereof.

Results and Conclusions

The use and relevance of this systematic method in legal sciences will be presented on the ELS-conference in September 2022, based on the conducted scoping review on relocation cases.

Keywords: Relocation, Divorce, Scoping Review, Family Law.

3. ‘Gathering Views on Simple Adoption of Long-term Foster Children’

Authors:
• Machteld J. Vonk (m.j.vonk@vu.nl)
• G.C.A.M. Ruitenberg (g.c.a.m.ruitenber@vu.nl)

Abstract: Background
In the Netherlands foster parents may adopt their foster child, though this rarely happens. In case of adoption the foster parents and their family become the child’s new legal family and the legal ties with the child’s original parents and their family are severed. However, there are plans to introduce a new form of adoption, known as ‘simple adoption’. In this form of adoption, the legal ties with the original parents and family are retained and, in addition, new legal ties with the foster parents are established.
Research Questions
The central question is what are the legal consequences, advantages and disadvantages of this form of simple adoption in the context of foster care in Dutch family law? Is there a need for some form of simple adoption among foster parents, foster children and their original parents and if so, under what conditions should this be made possible?

Methodology
In our study on simple adoption of long-term foster children we used questionnaires and in-depth interviews to gather the views of both children, foster parents and original parents about this subject.

Results and Conclusions
The use and relevance of the use of questionnaires and in-depth interviews will be presented on the ELS-conference in September 2022. In addition, we will discuss the substantive results of our research by showing the views of children, foster parents and original parents regarding simple adoption.

Key words: adoption, foster care, questionnaires, interviews, family law

4. ‘The Dutch Legal Practice of Elderly Protection Measures: A Case File Study’

Author: Roos Nieuwboer (LL.M., r.nieuwboer@vu.nl)

Abstract:
Background
The Dutch population is ageing rapidly, and a considerable amount of the increasing number of older persons will, at some point, develop conditions that result in impaired cognitive functioning. Dementia is such a condition, characterised by impairments in memory and decision-making ability. The Dutch statutory measures aimed at the support and protection of people with conditions like dementia – mentorship (personal guardianship), beschermingsbewind (financial guardianship or protective trust) and curatele (plenary guardianship) – result in a limitation of legal capacity and are increasingly regarded as inconsistent with the right to autonomy and self-determination of persons with disabilities, protected under the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Extensive research is necessary to map out the current legal practice of elderly protection and design a new system of legal provisions that both supports and protects older persons and respects their human rights.

Research question
What does the Dutch legal practice of elderly protection look like and to what extent do problems arise in terms of support, supervision, and procedural safeguards?

Methodology
In this case file study, we are going to analyse curatele, beschermingsbewind and mentorship case files, spread across four district courts in the Netherlands. In total, we aim to analyse 1200 case files (100 per measure per court). We are going to collect and analyse both quantitative and qualitative data.

Results and conclusions
First results and conclusions will be presented during the ELS Conference, as the research will be conducted in the spring of 2022.

Key words: Case file study, older persons, protection measures, private law, Dutch practice

5. ‘The Views and Experiences of Adults and their Attorneys with Anticipatory Decision-Making instruments - A Cohort Study’

Author: Rieneke Stelma-Roorda (h.n.roorda@vu.nl)

Abstract:
Background
The value of instruments such as the levenstestament play in the decision-making process in enabling decision-making for both the adult at a time when the adult is still able, with support, to make his own decisions and the attorney at a time when decisions are made on behalf of the adult?

Methodology
A cohort study was conducted to explore the experiences with the levenstestament over time. Interviews were conducted with adults who had recently made a levenstestament, and their nominated attorneys. In addition, interviews were conducted with acting attorneys, ranging from attorneys who had recently started to attorneys who had been active for quite some time.

Results
The value of instruments such as the levenstestament can be enhanced, when they are embedded in and accompanied by ongoing conversations between adults and attorneys about the adult’s (changing) wishes, preferences and instructions.

Key words: capacity law, cohort study, adults with impaired capacity, anticipatory decisionmaking instruments, levenstestament

D. Criminal Law
Room: IN-3B50

1. ‘Are Female Victims Perceived to be Less Credible?’

Author: D. (Criminal Law 1)
Abstract: How do the gender of adjudicators, victims and perpetrators affect the perception of credibility? We report the results of three vignette experiments conducted with law students. We find evidence that the credibility of hypothetical victims is influenced by the gender of hypothetical victims and perpetrators as well as by the gender of student subjects.

2. ‘Law as a Sword or Shield: Prosecuting Mothers whose Children are Harmed by Another’

Author: Deborah Anthony (danth2@uis.edu)

Abstract: Background
Many states employ a legal mechanism that allows a criminal defendant to be convicted of a crime that they did not actually commit. “Accountability theory” is used against accomplices where there existed a common “criminal design” or plan, or where the accomplice purportedly shared the criminal intent of the perpetrator. When a child is injured or killed by a parent, a marked gender division appears in the application of this rule.

Research Questions
While states regularly use the theory to prosecute mothers for the harm perpetrated by a male partner, how often do men face charges when the roles are reversed? Although the statutory law underlying such prosecutions is gender-neutral, when and why is the application of the principles gender-dependent? How is the application of the legal principle, in both prosecutorial decision-making and trial strategy, contingent on gendered stereotypes, roles, and expectations?

Results & Conclusions
This paper will analyze cultural and legal expectations of mothers that create increased responsibility for the safety of their children. It critiques the “reasonable person” standard, which morphs into a “reasonable mother” standard that is more stringent and punitive than expectations of a “reasonable father.” This places disproportionate burdens and punishments on mothers, twists the legal concepts of foreseeability, intent, and parental duty while making them contingent upon the parent’s gender, and holds mothers and fathers to disparate standards of care. This theory applied against mothers sometimes stretches the standard requirement of criminal intent beyond recognition. The absence of overt gender distinctions in the law disguises the operation of the criminal justice system as deeply informed by and in service to stereotyped social demands of women while masquerading as a system of neutral, even-handed justice.

3. ‘Character Evidence Revisited: A Source of Bias or of Procedural Justice?’

Authors: Niek Strohmaier (n.strohmaier@law.leidenuniv.nl)
Sofia de Jong (s.w.m.de.jong@law.leidenuniv.nl)

Abstract
Background
Recent research suggests that the potential biasing effect of character information in legal proceedings is overstated and that the general public believes it is fair to allow character evidence to be admitted, as it would increase the perceived legitimacy of court rulings. Given the important policy implications, we believe these findings deserve further scrutiny.

Research questions
Based on theories of motivated moral cognition, we investigate whether assessments of a defendant’s moral character can in fact bias judgments of legal decision makers disproportionately, as well as the public’s perceived procedural justice.

Method
Across two experimental studies, we vary the moral character of the defendant (good/bad), as well as legally relevant factors such as prior record information (convicted/acquitted) and the probative value of the character information (weak/strong). Lay people and experts are asked to judge the likelihood the defendant committed the crime and to give ratings for blame, punishment, and perceived procedural justice.

Expected results
We expect that in both experiments, legal judgments and perceived procedural justice will be driven by character information rather than by legally relevant factors, such that participants consider it more likely that the defendant committed the crime when he is portrayed as having a bad (vs. good) moral character.

Conclusions.
Our findings will shed important light on the debate surrounding the admissibility of character information in legal proceedings and have important policy implications, also outside the context of criminal law and for jurisdictions where admissibility of character evidence remains unregulated.

Key words: Character evidence, Motivated reasoning, Procedural law, Cognitive bias, Moral psychology

4. ‘Analyzing silence: Can anything you don’t say be used against you?’

Author: Tessa J. van der Rijst (t.j.vander.rijst@vu.nl)

Abstract:
The right to remain silent and the privilege against self-incrimination are internationally recognized standards that lie at the heart of fair trial. However, these standards are not absolute: judges may draw adverse inferences from the silence of an accused. To date, it remains disputed how a criminal law judge uses the silence of accused in evidentiary constructions and factual
inferences. Some authors argue that in certain situations, such as money laundering, silence is even used as evidence, by bridging an "evidentiary gap" from the (insufficient) evidence present to a conviction. The research question of the paper that I would like to present is: how is the silence of the accused used by Dutch criminal law judges in the evidentiary construction of theft, is there a difference with money laundering cases and, if so, what constitutes that difference? To answer this question, I have systematically analyzed evidentiary reasoning in 96 Dutch cases on theft and compared my outcomes to my previous analysis of 98 cases on money laundering. I found that the absence of a statement was not used to fill an evidentiary gap, but that the role of silence did vary between these two crimes. The crime description stipulated by the law seems to be an important factor constituting this difference. If this description requires more and more specific elements to be proven, this leads to more specific evidence, rendering less room for an alternative explanation by the accused. In those cases, the risk of remaining silent is therefore lower.

Keywords: Dutch criminal law, judicial decision-making, law in practice

E. Data and Databases for ELS: Possibilities, Challenges and Limitations (PA)
Room: IN-3B45

1. ‘Computational research using court decisions: practical limitations and ways to overcome them’

Author:
Mikolaj Barczentewicz
(m.barczentewicz@surrey.ac.uk)

Abstract:
Having undertaken several computational research projects on UK court decisions, I would like to reflect on what insights this kind of research can deliver, but also on what makes it difficult and limits it, and how such challenges can be overcome.

First: the data. The biggest issue in many jurisdictions is that not all court decisions are available to researchers in an electronic database. And even when court decisions are available, they are unstructured, lacking potentially significant meta-data. This can be to some extent addressed in research by partnering with commercial court data publishers or by pushing state institutions to do better (e.g., the new UK database). But there may also be quite a lot that a researcher can achieve by combining data from otherwise deficient or non-obvious sources.

I will discuss how I approached this in my research on gender and seniority of lawyers appearing before the UK’s highest court.

Second: the tools. Computational study of the courts could be more robust and more efficient with access to appropriate software tools or at least to well-developed methodologies. This could also contribute to reproducibility of research. In this context, I will discuss how in my own work, I design custom software (some with user interfaces) and use Jupyter (for Python) and R Studio notebooks.

2. ‘The Promises and Perils of ECHR Hudoc databases’

Author: Veronika Fikfak (veronika.fikfak@jur.ku.dk)

Abstract:
In recent years, a lot of empirical work has been undertaken in the area of human rights and public law in general, which has based its analysis on the European Court of Human Rights’ HUDOC database. Studies have scraped the information from the hudoc websites and drawn important conclusions about human rights law, the Court’s approach and the behaviour of states from this data. Some of these have been very controversial, not only because of the outcomes but because of the approaches adopted. Most have shown little understanding for the HUDOC database, the law it covers (or does not cover) and the broader ECHR system. In this paper, I will tackle the issue of the proper understanding of the HUDOC databases, what they can and what they cannot answer. In this context, I will address the most problematic aspects of current empirical studies in the area, including the tendency to base all analysis on English cases only (thus skewing the analysis), to rely on pre-coded keywords in the database (when HUDOC contains numerous errors), to draw conclusions about judges from database (when judges are not the ones writing judgments), etc.

I also argue for the need to complement any HUDOC analysis with other methodologies, especially interviews. These can explain the internal processes that lead to some of the decision, debunk the findings and clarify the inconsistencies in the decisions of the Court.

3. ‘Mining and studying State compliance with ISDS awards’

Author: Yuliya Chernykh (yuliyah.chernykh@jus.uio.no / yc@chernykh.legal)

Abstract:
Investor-state dispute settlement (ISDS) is a peculiar and dynamic dispute resolution system between foreign investors and States. Procedurally, it is premised on international arbitration rules and substantively – on public international law. This private-public combination raises interesting perspectives relating to compliance. Treaty mechanisms that are used for ensuring compliance in international arbitration do not represent the only available channel ensuring performance on the part of the States. In addition to the New York Convention or the ICSID Convention, political and diplomatic influences or processes may also lead to voluntary performance and/or post-award settlements. Because ISDS awards emerge from arbitral tribunals acting under institutional or ad hoc arbitration rules, there is neither complete transparency nor systematization of the information about State compliance. Neither of the existent ISDS databases
monitors or covers compliance. There is no authoritative count of how many cases there have been or how many awards have been complied with or not complied with. This presentation discusses the challenges of collecting data in the field and strategies used by the interdisciplinary and multimethod the Compliance Politics and the International Investment Disputes (COPID). As the project is ongoing until 2025, the presentation has chosen to bring at the forefront, as an illustration, a pilot process of data collection and verification for the Academic Forum Paper on Empirics of State Compliance with ISDS awards.

**F. Competition Law / Consumer Law Room: IN-2B59**

1. ‘Anticompetitive Behavior by State-Owned Enterprises: Experimental Evidence and Implications for Enforcement’

**Author:** Jasper Sluijs (j.sluijs@uu.nl)

**Abstract:**

Background: State-owned enterprises (SOEs) have received renewed interest of policymakers and academics in addressing societal challenges—drawing attention to the (potentially) catalyzing role of SOEs in reaching sustainability or inclusion targets, digital transformation or Covid-19 crisis relief. At the same time, little is known currently about the way SOEs compete with private firms on so-called mixed markets, what consequences and externalities they cause, and the adequate regulatory responses thereto. A theoretical literature on competition on mixed markets has been developing in industrial economics, but there is a lacuna in empirical research and in the application of economic insights in legal and governance research. The present research seeks to study experimentally the prevalence of specific anticompetitive behavior of SOEs on mixed markets, with the aim of informing competition authorities about appropriate enforcement action.

Research Questions
1. To what extent can predatory pricing by an SOE in an experimental mixed duopoly market be observed?
2. What implications for competition law enforcement follow from the findings under (1)?

Methodology: Experimental research in law has the potential to better inform regulating decisions, based on theory supplemented by observed behavior of market actors. Iterating on classic predatory pricing experiments, a mixed duopoly market is modelled in which 2 firms compete on price in 7-period repeat interaction. We design four treatments:
1. Baseline treatment with two private firms competing
2. SOE has an objective function consisting of a weighted sum of profit and social welfare
3. SOE will be protected against bankruptcy
4. Combination of treatments 2 and 3

Results: The experiment will be conducted before the Summer of 2022. We expect to find predation in case of bankruptcy protection (treatment 3), and aggravated predation when combined with the SOE objective function (treatment 4).

Conclusions: The findings of the experiment inform enforcement practice on three levels. First, the level of predation observed sheds light on the appropriate enforcement priority competition authorities should dedicate to SOEs. Second, as it has been mentioned in the literature that competition authorities may be subject to biases when enforcing against SOEs, a finding of predation in the experiment would open a debate on competition authorities independence. Third, when predation is indeed observed, this may give rise to conflicts between enforcement action and settled CJEU case law limiting competition law application to public entities.

Keywords: Mixed markets; State-owned Enterprises; Competition Law; Experimental Legal Research

2. ‘Breaking Ban: Assessing the Effectiveness of Belgium’s gambling law regulation of video game loot boxes’

**Author:** Leon Y. Xiao (lexi@itu.dk)

**Abstract:**

Background: Loot boxes are videogame mechanics that are purchased to obtain randomised rewards. These mechanics are conceptually and psychologically akin to gambling. Given consumer protection concerns, particularly to children, loot boxes are presently subject to significant regulatory scrutiny globally. Only one country has effectively banned loot boxes: the Belgian Gaming Commission opined that such mechanics constitute gambling under existing law and threatened criminal prosecution of non-compliant companies implementing them without a gambling licence.

Research questions: The effectiveness of this Belgian ban at influencing the behaviour of videogame companies has never before been assessed. Have loot boxes been eliminated from the Belgian market? Is the loot box prevalence rate in Belgium lower than previously observed in other Western countries with no regulation?

Methodology: The hypotheses will be tested through content analysis of the 100 highest-grossing iPhone games in Belgium to identify their Apple Age Rating and the presence/absence of paid loot boxes. Funded by ‘regulatory settlements applied for socially responsible purposes’ received by the UK Gambling Commission, fieldwork will be conducted at KU Leuven, Belgium. Adopting open science principles, this study will use the registered report format meaning that the research methodology will be peer-reviewed prior to the study being conducted.

Results: tbd Conclusions: tbd;
3. ‘How the Interaction between Prudential Financial Regulation and Consumer Law creates pro-bank national judicial biases’

Author: Vasiliki Yiatrou (vasiliki.yiatrou@eui.eu)

Abstract:
Background: In the countries with the highest percentage of non-performing loans (NPLs), there is an ever-growing number of private law court cases dealing with what would be classified in financial terms as NPLs. Yet a private law concept of NPLs is absent. NPLs as a term can only be found in prudential financial regulation. Research Question: To what extent national adjudicators of non-final courts in Greece, Cyprus, Portugal and Ireland, are affected in their decision-making of financial consumer law cases, by the policies and priorities of prudential financial regulation on NPLs?

Methodology: This paper compared the national approach of adjudicators in the four jurisdictions under review to the pro-consumer approach adopted by EU financial regulation. Conclusion: Factors that appear to have influenced this outcome are: (1) judicial reforms to increase efficiency; (2) general policies to maximise debt recovery; and (3) pre-existing national framework.

All three factors can be tight to the approach adopted by EU financial regulation.

Keywords: non-performing loans; prudential financial regulation; consumer protection; citation analysis; descriptive statistics; content analysis; linguistic analysis.

G. European Law
Room: IN-3B39

1. ‘Reforming Justice through the European Semester Process. An Empirical Analysis’

Author: Adriani Dori (dori@law.eur.nl)

Abstract:
Since 2012, the European Commission has incentivised and monitored justice reforms under the EU’s yearly economic governance coordination and budgetary preventive surveillance system, known as the “European Semester”. Based on a thorough assessment of the Member States’ judicial systems, the Commission proposes Country-Specific Recommendations (CSRs) as “politically (if not legally) binding guidelines”. The recommendations are then adopted by the European Council. Governments should consider these recommendations when drafting their budget and reform programmes for the following year and have less than twelve months to implement them. Despite their significance, CSRs in the policy area of justice remain uncharted territory. A political process that leads to top-down interventions and has silently been transforming national justice systems for almost a decade is conducted under the radar and largely escapes public and academic scrutiny.

Using a coding scheme developed by the author, the paper fills a gap in the literature by offering the first empirical analysis of Justice-CSRs based on variables such as legal basis, content, recipients, and effectiveness. While only focusing on correlations – as opposed to causations – the findings reveal some of the essential functions of Justice-CSRs and shed light on the Commission’s policymaking strategy to steer national justice policies. The paper also highlights the level of Member States’ responsiveness to reform recommendations.

Keywords: EU Justice Policy, Justice Reforms, European Semester, Country-Specific-Recommendation

2. ‘The moral foundations of EU law and perceived legitimacy of the European Union’

Author: Eva Grosfeld (e.grosfeld@law.leidenuniv.nl)

Abstract:
Background: The EU as a value-based community, which is premised on universally shared values and a common European identity, seems a promising strategy to secure EU legitimacy. However, drawing on psychological research, and Moral Foundations Theory specifically, this article makes the case that EU citizens rely on a diverse spectrum of moral foundations. Research questions: We investigate the question whether people’s moral foundations are represented in EU law (constitutional setup, general principles, freedoms and rights, policies) and what this means for legitimacy of the EU.

Methodology: An online survey study was conducted among 595 EU citizens to examine how their moral foundations translate to moral convictions about 40 rules of EU law and how these relate to EU legitimacy perceptions. Results: Although moral approval of most rules was on average high, EU law did not fully represent the diversity in citizens’ moral foundations. As hypothesized, people with individualizing foundations showed higher approval of EU rules and perceived the EU to be more legitimate, while people with group-binding foundations showed lower approval and had lower legitimacy perceptions. For some rules, people...
with opposing positions about a rule used the same moral arguments. This indicates that other factors, such as social identities, define how personal moral foundations are translated to support for EU rules. Conclusions: The denial of value plurality may have negative practical and normative consequences. Future research could investigate how the EU and national politicians communicate about rules and how these frames influence public perceptions of EU rules and legitimacy.

Key words: EU law, value plurality, moral foundations, legitimacy

2. ‘The diverging motives of national courts (not) to refer preliminary questions to the European Court of Justice’

Author: Jesse Claassen (jesse.claassen@ou.nl)

Abstract:
The diverging motives of national courts (not) to refer preliminary questions to the European Court of Justice. To ensure the uniform interpretation of EU law among the national courts of all 27 Member States, national courts may be obliged to refer preliminary questions to the European Court of Justice. It is, however, an open secret that this obligation is so strict, that it imposes a practically untenable burden upon the national courts. The consensus is therefore that this obligation cannot be upheld. Yet it is unclear which standards the national courts apply in practice. Against this backdrop, this paper examines what the national courts do apply in practice. Against this backdrop, this paper examines what the national courts do apply in practice.

Key words: EU law, National courts, Judicial decision-making, European Court of Justice, Europeanisation

3. ‘Ownership of national recovery plans: overcoming Europe’s crisis of legitimacy through Next Generation EU?’

Authors:
• Sonja Bekker (s.bekker@uu.nl)
• Brigitte Pircher
• Mario Munta

Abstract:
To tackle the socio-economic consequences of COVID-19, the EU devised the Recovery and Resilience Facility (RRF) as the new generation in EU economic governance. This article studies the democratic legitimacy of these recent changes compared to the institutional innovations created in the aftermath of the 2008 economic crisis. While the European Semester became an integral part of EU governance, the RRF aims – at least on paper – to reinforce the conditionality of social policy reforms and promises a more active role and inclusion of domestic stakeholders in defining reform priorities. However, evidence of substantive stakeholder participation in drafting the national recovery plans is inconclusive. Even more so, hard incentives to engage with social actors are missing from the RRF regulation itself, leading to varying Member States’ approaches to creating national ownership of reforms and investments. Against this backdrop, we study the extent to which EU’s revamped economic governance framework brought a qualitative improvement in the national ownership of social policy reforms among social actors compared to the ‘old’ European semester. We compare three small member states with varying levels of reliance on EU funding (Croatia, the Netherlands and Sweden) and identify key factors for explaining the levels of national ownership.

The methods we use are elite interviews and document analysis. We find that a county’s precarious fiscal position and governance incapacity in times of emergency inhibit engagement with social actors’, leading to lower legitimacy of reforms. Conversely, countries with already strong traditions of social dialogue record higher levels of national ownership.

Key words: national ownership, EU recovery fund, throughput legitimacy, social Europe, interviews, document analysis

16:00-17:30 / Panel Sessions

II

A. Judicial Decision-Making 2
Room: IN-3B44

1. ‘Empirical legal study of alternative dispute resolution methods in Brazilian judiciary’

Authors:
• Luciana Romano Morilas (morilas@fearp.usp.br)
• Evandro Marcos Saidel Ribeiro, (esaidel@usp.br)
• Ildeberto Aparecido Rodello (rodello@usp.br)

Abstract:
Background: The Brazilian judiciary included Alternative Dispute Resolution Methods, namely conciliation and mediation, as legally demanding alternative means of settling judicial disputes. Since 2010, the CNJ (Brazilian National Council For Justice) by means of Resolution N° 125, reinforced by the Code of Civil Procedure, from 2015, the first “hearing” (“session” would be more strict) of a lawsuit must be a
conciliation/mediation session.

Research questions: Is this obligation effective? Is the judicial system prepared to apply ADR?

Methodology: We interviewed 93 legal operators (judges, civil servants, conciliators and interns) in 37 cities of 5 Brazilian states (CE, PR, PI, RJ and SP) defined according to quantitative data collected from public lawsuits; and sought, via questionnaire, the opinion of 315 lawyers.

Results: The results indicate the main factors influencing the outcome of these sessions: the general lack of knowledge about the institutes; the characteristics of the session’s facilitators; the legal personality of the plaintiff parties - the big litigants (banks and the government) are the least conciliating; the subject of the claim - family, consumer and general indemnity issues favor reconciliation, while bank issues make it impossible; the lawyers of the parties.

Conclusions: Most legal practitioners are prepared for litigation, understanding the peaceful settlement of disputes as an ineffective legal filigree - or even relying on the slow pace of the Judiciary branch to ensure their advantages. The solutions must come from interna corporis policies in order to discourage litigation, especially of the large litigants that cram the system, and to promote social pacification.

Key words: ADR - Access to justice - mediation - conciliation

2. ‘Does delegating drafting-duties affect the writing style of judgments? A stylometric analysis’

Authors:
- Peter Mascini (mascini@essb.eur.nl)
- Nina Holvast (holvast@law.eur.nl)
- Jonathan Seib

Abstract:
Based on an analysis of all administrative court cases that have been published in the Netherlands in 2020, the hypothesis is tested that the more experienced judicial assistants are, the more confident they are in drafting judgments. Contrary to this confidence hypothesis, it is established that judgments co-signed by more experienced judicial assistants are longer, but in support of this hypothesis, results also show that these judgements are less standardized and contain fewer legal references. Our study puts into perspective the concerns expressed, particularly in studies on the US Supreme Court, about the delegation of drafting responsibilities. It shows that in jurisdictions where judicial assistants may be at least as experienced as judges because they have permanent jobs, the delegation of drafting duties is not necessarily accompanied by a writing style of judgments that allegedly differs substantially from judgments that judges write themselves. This proves once more that findings of the dominant research on the US Supreme Court cannot automatically be generalized to other jurisdictions.

Keywords: drafting duties, experience, judgment, judicial assistants, stylometric analysis, writing style

3. ‘Compensation Schemes for Occupational Diseases: The Role of Perceived Justice’

Authors:
- Marlou Overheul (a.m.overheul@uu.nl)
- Rianka Rijnhout (r.rijnhout@uu.nl)
- Kees van den Bos (k.vandenbos@uu.nl)

Presenter of the paper: Marlou Overheul

Compensation schemes offer a defined group of victims a standardized amount of compensation. Unlike liability law, these compensation schemes are said to offer a quick and fair procedure – aiming at enhanced levels of perceived procedural justice – through a standardized compensation – aiming at issues of outcome justice. Research shows that the fair process effect, which means that perceived procedural justice has a positive effect on how people react, occurs in Dutch courtrooms. However, whether this fair process effect also occurs in the case of compensation schemes for occupational diseases has not been investigated before. Also, participants of compensation schemes seem to desire an outcome that is fair and useful, which relates to issues of perceived outcome justice. Yet, it is unclear whether issues of outcome justice play a role in how important standardized compensation is for participants’ evaluations of compensation schemes. In light of the above, we examined whether participants of compensation schemes for occupational diseases experience perceived procedural and outcome justice. This paper discusses the result of an in-depth interview study with 60 participants and is the first to give insight in the functioning of compensation schemes for occupational diseases, while focusing on perceived procedural and outcome justice. Not only, it contributes to doctrinal legal research - is a compensation scheme a fair and just alternative for liability law? – but also to insights in social psychology, by gaining a better understanding of the role of perceived procedural justice and perceived outcome justice entailed in the eyes of the participants involved.

Keywords: Private law, liability law, Compensation

4. ‘Medical Dispute Committees in the Netherlands: A qualitative study of patient expectations and experiences’

Author: Rachel Dijkstra (r.i.dijkstra@uvt.nl)

Abstract:
Background & Research Question
Health care incidents, such as medical errors, cause tragedies all over the world. Recent legislation in the Netherlands has established medical dispute committees to provide for an appeals procedure to complaints processes and an alternative to civil litigation. Dispute committees incorporate a hybrid procedure where one can both file a complaint and a claim for damages, which results in a final verdict without going to court. It is unclear how patients and family members
experience this new form of dispute resolution. This study seeks to analyze to what extent patients and family members’ expectations and experiences with dispute committees match the goals of the new legislation.

Methodology
This qualitative research includes in-depth, semi-structured interviews with 30 patients or family members who filed a complaint with a dispute committee. The researchers conducted an inductive, thematic analysis of the qualitative data.

Results
The results show that participants felt the need to be heard, to make a positive impact on health care, and sometimes to be financially compensated. The results demonstrate the existence of unequal power relationships between participants and both the defendant and dispute committee members. Participants reported the added value of (legal) support.

Conclusions
Most of the patients’ needs are not met by the dispute committee proceedings and many of the legislative goals were experienced differently than envisioned. The unmet expectations of patients and family members and their experiences of unequal power relationships could be explained by existing epistemic injustice in this context: expert testimony by health care professionals was valued over experiential testimony by patients and family members.

Key words: Health care law; medical dispute committees; health care incident; patients; epistemic injustice.

Abstract:
This paper studies the interactions between corporate law and VC exits by acquisitions, an increasingly common source of VC-related litigation. We find that transactions by VC funds under liquidation pressure are characterized by (i) a substantially lower sale price; (ii) a greater probability of industry outsiders as acquirers; (iii) a positive abnormal return for acquirers. These features indicate the existence of fire sales, which satisfy VCs’ liquidation preferences but hurt common shareholders, leaving board members with conflicting fiduciary duties and litigation risks. Exploiting an important court ruling that establishes the board’s fiduciary duties to common shareholders as a priority, we find that after the ruling maturing VCs become less likely to exit by fire sales and they distribute cash to their investors less timely. However, VCs experience more difficult fundraising ex-ante, highlighting the potential cost of a common-favoring regime. Overall the evidence has important implications for optimal fiduciary duty design in VC-backed start-ups.

Keywords: Venture Capital, Fiduciary Duties, Trados, Fire Sales, Acquisitions, Liquidation Preferences, Corporate Governance

2. ‘Cases that made UK company law’

Authors:
- Sally Wheeler (sally.wheeler@anu.edu.au)
- Victoria Barnes (victoria.barnes@brunel.ac.uk)

Abstract:
Background
Company law is widely thought to be a creature of statute law because of the prevalence of codes, codifying Acts and legislation. However UK Company Law was shaped through the litigation efforts of private parties, notwithstanding the protestations of successive judges that Courts did not ‘make commercial decisions’. The common law played an understudied but central role in creating, establishing and influencing legal ideas that were later enshrined within legislation.

Research questions
Which cases are thought to be central to the development of UK Company Law? What socio-economic events prompted litigation and legal development?

Methodology
To identify important cases we turn to quantitative empirical legal studies. We develop a dataset of 6500 cases by extracting all the cases from five leading Company Law textbooks. These textbooks represent a diverse range of ideological views about what Company Law is as a field of law. We then contextualize these cases within time periods to show which socio-economic events were drivers for legal change.

Results
Leading cases, such as Salomon and Foss score universally highly, but the five leading textbooks have wildly different views on which cases were influential. By examining the author’s background, training and politics, we explain the distinctiveness of these individual patterns and bring together diverging views.

Conclusions
Overall, we find that cases heard during the Industrial Revolution were not meaningful, but events, such as the growth of big business circa 1900 and the big bang in the 1970/1980s, had a strong link to the making of modern Company Law.

Keywords: Company law; common law; legal history

3. ‘Investor Stewardship Preferences During Say on Pay Votes’

Author: Suren Gomtsian (s.gomtsyan@leeds.ac.uk)

Abstract:
The introduction of say on pay votes in many countries has reinforced the position of...
shareholders over the executive pay design. The question then is how shareholders use and what objectives do they pursue when using compensation-related voting rights. Shareholders may rely on say on pay rights (1) to rein in managerial power and control potential rent extraction by entrenched powerful executives, (2) they may aim for a better alignment of managerial interests with shareholder value, or (3) if we are to believe to the sustainability rhetoric of many institutional investors, shareholders can use pay-driven incentives as a means for promoting more responsible and sustainable business practices. In this paper, I analyse the voting records and accompanying voting rationales of institutional investors on around 1,500 remuneration-related proposals put for a vote by the FTSE 100 companies during 2013-2021 to identify shareholder stewardship preferences during say on pay votes and potential changes in these preferences over time. The dataset includes around 250,000 votes and 10,000 written explanations of these votes by more than 1,000 institutional investors. The findings show that institutional investors can be grouped into several clusters based on voting patterns. The largest cluster assembles around ISS (PLSA) recommendations and concentrates on the promotion of standard best pay practices through pre-dominant engagement via ISS on the topics of compensation structure and disclosure. Two other clusters form around the voting recommendations of Glass Lewis and Hermes EOS. The fourth cluster of primarily UK-based institutional investors takes a more firm-specific approach by engaging with companies individually and relying more evenly on a broader spectrum of topics for engagement, including the quantum of pay, the link between pay and performance, and the inclusion of ESG targets into the design of pay. These findings suggest that institutional investors with more individual approach, although lacking the voting power of the dominant ISS cluster, may have a bigger impact on redesigning executive remuneration for promoting more responsible business practices through a direct communication channel with corporate boards. They are also likely to set trends on compensation practices that will lead to changes in the standard best pay practices, thereby gradually gaining the support of other clusters with stronger standard governance mindset.

Keywords: corporate governance; executive compensation; shareholder voting; investor stewardship

C. Queer Theory Approaches to International Law (PA)

The researchers in this panel use queer theory in their work to construct a variety of different approaches to international law. Queer theory offers empirical legal scholars a unique set of tools and vocabulary to challenge and interrogate the social-cultural biases, norms and assumptions underlying international legal discourse. By threatening to destabilising some of the facts about the ‘real’ world in which international law and legal theory are anchored, queer theory can provide fresh perspectives and insights into diverse areas of research. Queer readings of the law can lead to analyses with implications far beyond the field of queerness per se, and its scope of interest and impact extends well beyond cases with an LGBTQIA+ element or claimant. These four papers consider the Refugee Convention, international human rights law and a methodology of discourse analysis from a queer perspective, and discuss the contribution of queer theory to empirical legal research from a variety of research areas and angles.

Key words: queer theory; international law; refugee law; international human rights law; qualitative analysis; feminist approaches.

1. ‘When “queer” became a verb: what does this mean for legal sciences?’

Author: Irene Manganini (irene.manganini@graduateinstitute.ch)

Abstract: Much like the word “gender”, which went from being understood only as a noun (“somebody’s gender”) to parallelly develop into a less used but widely accepted verbal form (“the gendering” of individuals), the word “queer” was firstly thought of merely as a noun (incidentally, a slur) and an adjective (“a queer person”), but is now increasingly being used also as a verb (“queering” a discipline). In other words, although far from being a common declination of the word and being mostly relegated to academic discussion, “(to) queer” has recently become something one can also “do” in a transitive form (you queer “something”). Such development has become increasingly evident in many socio-humanistic sciences in recent years, including in the study of the law, albeit in a slower fashion than in other disciplines such as international relations or philosophy. In fact, while the law was once unidirectionally understood as being applicable to queer matters, mostly in the exercise of legislating and adjudicating on queer people’s lives, now more and more scholars are inversely applying queer matters (and methods, concepts, sensibilities, histories) to the law. What does this shift imply for the discipline broadly intended? Can the extent of such change be measured, and if so, how? What is the exercise of queering, how do we do it, through which tools? What if we applied all of this to empirical legal studies? This paper purports to address these questions and suggest possible rudimentary answers, while at the same time aiming to serve a theoretical introduction to the present panel.

2. ‘Butler’s ‘double movement’ and the queer PSG’

Author: Samual Ballin (s.n.ballin@vu.nl)

Abstract: This paper considers ‘membership of a particular social group’ (PSG) under the Refugee Convention in relation to Judith Butler’s notion of a ‘double movement’ in identity discourses. Butler writes that “[i]t is necessary to learn a double movement: to invoke the category...
and, hence, provisionally to institute an identity, and at the same time to open the category as a site of permanent political contest.” The paper asks how this ambivalence to identity - to be once invoked and contested - is in tension with the requirements of the PSG, and how this tension can be resolved and/or productively employed to develop an asylum jurisprudence which is inclusive and sensible to the nuances of claimants’ sexual orientation and gender identity. The empirical focus of this queer reading comes from an interrogation of precisely what asylum law says and does in relation to wider social, political and psychoanalytical discourses of identity.

3. ‘Deconstructing doctrinal struggles: legal discourse analysis’

Author: Janna Wessels
(j.m.wessels@vu.nl)

Abstract:
When faced with a legal problem, sometimes we seem to get stuck: once there appears to be a doctrinal solution to the problem such that it would be settled, it reappears in a different form. Such perennial problems cannot be put down, every apparent solution seems unstable. This contribution explores legal discourse analysis as a means to confront the doctrinal struggles around this type of stalemate situation. This methodological approach analyses legal doctrine by identifying the underlying binary oppositions that are used in legal argumentation. It is inspired by critical legal and queer scholars, and draws on elements of deconstruction and discourse analysis. The approach can be broadly summarised as follows: first, it develops a typology of the doctrinal arguments that are employed in legal reasoning to address the given problem. In a deconstructive move, it then identifies the underlying system of tensions, and thus makes explicit the ‘deep structure’ that enables the production of these doctrinal arguments. Finally, laying bare the underlying contradictions does not resolve them, but bears critical potential to the extent that it opens up a possibility to develop alternative ways of arguing: resistance through ‘productive instability’. The paper will discuss legal discourse analysis and each of its elements in more detail, contrasting it from other approaches, and then use the example of the concealment controversy in refugee law to illustrate how it can work in practice.

D. Criminal Law 2
Room: IN-3B50

1. ‘Understanding the Use of Discretion in Law. An empirical methodology’

Author: Cale Davis (caledavis@me.com)

Abstract:
Background The exercise of discretion is the most fundamental aspect of legal practice. Nevertheless, it has been described as a ‘black box’. A shroud of mystery cloaks what lawyers consider when exercising discretion, and why. This paper articulates a methodology for opening this ‘black box’. It demonstrates how interviews can be used to explore how role-identities influence decision-making, using original interviews with high-ranking international criminal prosecutors.

Research Question Why do international criminal prosecutors consider any given factor to be relevant to any given decision-making exercise?

Methodology Semi-structured open interviews explored the factors that prosecutors considered when exercising discretion, and why they believed these factors to be important. A form of analysis inspired by critical discourse analysis was applied to explore the power relationships implicit in their responses, and the roles prosecutors adopted within these relationships.

Results Several core role-identities explain why international criminal prosecutors consider any given factor to be relevant to any given decision-making exercise.

Conclusions The methodology is successful in explaining why factors are considered in the exercise of discretion. It invites further research on how role-identities arise through socialisation; and gives rise to numerous other questions with regard to international criminal prosecutors specifically.

2. ‘Who’s looking in my phone? Seizure and investigation of digital data in practice’

Authors:
• Christiaan Lucas (christiaan.lucas@vu.nl)
• Jasper van der Kemp (j.vander.kemp@vu.nl)
• Lonneke Stevens (l.stevens@vu.nl)
• Christianne de Poot (c.j.de.poot@vu.nl)
• Marianne Hirsch Ballin (m.f.h.hirschballin@vu.nl)

Abstract:
Background The Dutch Code of Criminal Procedure (CCP) is being modernised and will codify and implement conditions for conducting forensic digital
investigations, based on the severity of the intrusion the investigation might pose on the privacy of the person(s) concerned. If an investigator anticipates a certain level of intrusion which his investigative legal competence, a higher authority is required to give a warrant for the investigation. The threshold is met when the investigator starts “systematic investigation” and if “a more or less complete picture of certain aspects of someone’s private life can arise.” The investigator assesses the severity in order to ask the public prosecutor, for permission for the digital investigation.

Research question and methodology
This paper aims to identify how digital investigation is conducted and how decisions are made. The questions are what methods are used by the police, to what extent is the investigation restricted and when is a public prosecutor or an investigative judge involved? Interviews are held using a semi-structured interview protocol with respondents from each group of practitioners (police officers, public prosecutors and investigative judges).

Results and conclusion
The preliminary results show there is little coherence in determining the level of intrusion of privacy when digital data is investigated. As such this study shows the usefulness of an empirical legal studies approach to understanding the practice of laws in action. In this paper the results will be discussed in light of the methodological approach taken and the next planned studies.

3. ‘Better argued punishment meted out by criminal judges is improving laypeople’s understanding and acceptance’

Authors:
- Henk Elffers (presenter, h.elffers@vu.nl)
- Eline Ernst
- Albert Klijn

Abstract:
Background and Research Question
Dutch criminal judges agree that better argumentation of the choice and severity of punishment meted out is called for. But does a better quality of arguing by a criminal judge why he/she metes out a certain punishment enhance the public’s understanding and endorsement of criminal verdicts?

Methodology
A sample of 235 Dutchmen got presented two verdicts in a within person design, one with a well-motivated meting out of punishment, one with a defective motivation. Subjects reported on understanding and endorsement.

Results and conclusion
Better motivated verdicts turn out to be better understood and are more endorsed.

Keywords Criminal law, meting out of punishment, understanding, acceptance

4. ‘The effectiveness of different prostitution policies in fighting human trafficking’

Author: Nicolle Zeegers (n.e.h.m.zeegers@rug.nl)

Abstract:
Research questions
1. What are the assumptions about the behavior of individuals and organizations involved in the detection and enforcement of the ban on human trafficking in the policies of licensing sex businesses and prostitution client criminalization?
2. How to establish the effectiveness of the two different policies.

Background
The assumptions behind the two policies strongly connect to the legalization approach and the neobylobitionist approach to prostitution, respectively. National and international political actors highly contest these approaches, resulting in some countries deciding to apply the one policy and other countries the other, or in the case of partial client criminalization to combine the two. Hence, research into the effects of the different policies applied is desirable as well as feasible. Desirable because decision making about prostitution policy tends to be highly ideology-driven instead of being based on facts and evidence. Feasible, because country cases of the two policies and of a combination of both have become available in the last few decades.

In between conclusion and discussion of methods Holders of licenses and clients of prostitution are assumed to be held to account by the authorities for either or not allowing victims of human trafficking to work in their business or to make use of their services. The paper will go into why they in practice fail to do so. With regard to the second research question, the author will discuss different possible methods/measures of establishing the effectiveness.

Key words: client criminalization (criminal law), licensing (administrative law), human trafficking ban (national and international law).

E. Algorithm / Experiments
Room: IN-3B45


Author: Lucas Haitsma (l.m.haitsma@rug.nl)

Abstract:
This paper seeks to consider the challenges to non-discrimination law that arise from the use of algorithmic decision-making in a law enforcement context, and how these challenges are experienced by citizens and responded to by Dutch supervisory and enforcement organizations. In the last decades there has been an increase in the use of algorithmic decision-making in supervision and enforcement agencies both in the Netherlands and outside. At the same time, there have been multiple scandals that have highlighted the risks of potential discrimination when using these technologies for the
The purpose of preserving public order and security. As a result of increased attention surrounding the use of these technologies and the risks of discrimination that may come with it, there is an increasing body of literature that assesses the adequacy of non-discrimination law in this context. In recent literature, it has increasingly been found that the use of these technologies in the aforementioned context leads to a number of challenges posed to the non-discrimination framework. These challenges result in difficulties for citizens seeking to bring discrimination claims and difficulties for organizations in knowing how to mitigate these risks and comply with the law. This paper uses empirical evidence in the form of unstructured interviews with academics, civil society organizations, law enforcement officials, lawyers, technical experts, and sociologists to explore these challenges and understand the impact that they have on citizens and organizations seeking to comply with the law.

2. ‘The Delete or not to Delete - Methodological Reflections on Content Moderation’

Authors:
- Marie-Therese Sekwenz (sekwenz@icloud.com)
- Ben Wagner

Abstract:
Content moderation is protecting human rights such as freedom of speech, as well as the right to impart and seek information. Online platforms implement rules to moderate content on their platforms through their Terms of Service (ToS), which provides for the legal grounds to delete content. Content moderation is an example of a socio-technical process. The architecture includes a layer that classifies content according to the ToS, followed by human moderation for selected pieces of content. New regulatory approaches, such as the Digital Services Act (DSA) or the Artificial Intelligence Act (AIA) demand more transparency and explainability for moderation systems and the decisions taken.

Therefore, this article answers questions about the socio-technical sphere of human moderation:
- How is certainty about content moderation decisions perceived within the moderation process?
- How does the measurement of time affect content moderator’s work?
- How much context is needed to take a content moderation decision?

A sample of 1600 pieces of content was coded according to international and national law, as well as on the Community Standards developed by Meta, mimicking a content moderation scenario that includes lex specialis for content moderation – the German Network

Keywords: Content Moderation, Digital Services Act, Artificial Intelligence Act, Human Rights, Explainability

3. ‘Keep Them Out of It! How Concerns for Other’s Privacy Influence the Willingness to Sell Personal Data’

Authors:
- Franziska Weber (weber@law.eur.nl)
- Tim Friehe (tim.friehe@unimarburg.de)
- Leonie Gerhards (leonie.gerhards@kcl.ac.uk)

Abstract:
Many individuals act rather naively when providing personal data online. When individuals share their personal data, this can allow third parties to learn more about others, too. Our large-scale online experiment reveals that individuals are less willing to sell personal data when sharing can compromise others’ privacy. Compared to a benchmark without data compromise, individuals’ willingness to sell personal data decreases in scenarios in which others’ data is compromised with 50% and 100%, respectively. By applying two well-studied interventions - peer effects and a social norm focus - we explore ways to mitigate excessive data sharing, laying the ground for the design of effective policies. While peer effects seem to increase individuals’ willingness to share personal data on average, making people reflect on the appropriate behavior appears a promising policy approach.

Keywords: Privacy; Information Externality; Social Norms; Peer Effects; Experiment.

F. Administrative Law / Access to Justice
Room: IN-3B52

1. ‘Access to Justice for Older People’

Author: Kaijus Ervasti
kaijus.ervasti@uef.fi

Abstract:
The number of older people in society is increasing in all western countries. Changing demographics that will lead to a larger proportion of vulnerable older people also mean that a larger number of people will have problems with access to justice. This development will entail great challenges within the judicial as well as welfare system.

The basic premise of the access to justice approach is that citizens’ rights must be effective and accessible. People can have many kinds of legal problems, that may raise legal issues in their everyday life.

In the beginning of the 2021 we conducted a research project of access to justice for older people (65 +) in Finland. We published in different magazines a request for older people and their family members to send their experiences about legal needs and problems as well as the remedies used and the barriers to access to justice older people encountered. Project got experiences from 342 people.

We analyzed experiences by thematic analysis. The most common problems were in the field of social and health care, family relations and housing. Many had experiences of injustice. Experiences of injustice focused on society and the legal system as a whole, social and health care and the and close relationships. Many seniors found the legal system complex and
difficult to use in problem solving.

‘Procedural justice and the design of administrative dispute resolution procedures’

**Author:** Marc Wever
(markc.wever@rug.nl)

**Abstract:**
Are certain characteristics of dispute resolution procedures associated with higher levels of procedural justice? We address this question through a quantitative analysis of real world experiences of 194 professional legal representatives with the objection procedures of 81 Dutch administrative authorities. In our analysis, two general procedural characteristics are taken into account: the ‘distance’ between the original decision-maker and the reviewer and the extent to which the procedure is focused on the conciliation of competing interests. The paper shows that one of the cornerstones of the traditional approach to dispute resolution procedures – the involvement of an independent third-party – is not associated with higher levels of procedural justice. Procedures that were perceived to be more focused on the conciliation of competing interests were evaluated as more procedurally just, even more so in disputes where the administrative authority was perceived to have a higher degree of discretion and in disputes that ended in a negative result for the litigant.

2. ‘The administrative judges: biased towards the government?’

**Authors:**
- Bert Marseille
  (a.t.marseille@rug.nl)
- Marc Wever
  (marc.wever@rug.nl)

**Abstract:**
Administrative judges make a large number of procedural decisions when handling appeals. An example is the decision to resume the investigation after the hearing is concluded in order to give one of the parties the opportunity to provide further evidence to support their case. The procedural decisions made by administrative judges can be in favour of the citizen or in favour of the administrative authority. In legal literature, it is generally assumed that administrative judges more often make procedural decisions in favour of the administrative body than in favour of the citizen, with the consequence that the probability increases that the court will rule in favour of the party for whom it has reopened. But is this assumption correct? And if that assumption is correct: does this mean there is a bias towards the administrative body, in the sense that the judges unjustifiably offer the administrative body more opportunities than the citizen to win the procedure? Based on an analysis of a representative sample of more than 400 decisions of Dutch administrative courts, we try to answer this question. The data we collected shows that procedural decisions are more often in favour of the government than in favour of the citizen. However, the often drawn conclusion that this means that the administrative courts are biased towards the government deserves to be nuanced.

3. ‘Attestation Letter as Valid Document to Prove the Ownership of the Land in Indonesia: Study on 68 Court Decisions concerning Valid Proof of Ownership of the Land’

**Author:** Marcella Santoso (marcella.santoso@gmail.com)

**Abstract:**
The highest proof of land ownership according to the prevailing laws and regulations in Indonesia is a Sertipikat (land ownership certificate). However, in practice it was found that other documents such as: Surat Keterangan Desa – SKD (village land attestation letter) that is supporting document used to complete the land certificate application procedure is used to prove ownership of land. What is more interesting is that the document has been an evidence in land ownership disputes in the Court and accepted by the Judges. In practice such supporting document has the same position with Sertipikat (formal land certificate).

I conducted a research that tried to uncover the practice in Courts that recognize SKD as document to prove land ownership. In practice, SKD has been used by the land owner as evidence of land ownership that is recognized and accepted by the land buyer. There are 68 decisions on land ownership disputes that I examined from various judicial jurisdictions, namely civil, criminal and state administrative courts affirming that SKD can be used as evidence of land ownership. There are conditions that must be fulfilled in order to become a valid document to prove the land ownership. Through the study of the 68 decisions that I conducted, I found the conditions that must be met in order to be used as a document of proof of land ownership which is equivalent to a Sertipikat (land ownership certificate).

**Keywords:** land ownership certificate, village land attestation letter, court decisions on land ownership disputes and evidence of land ownership.

**G. Consumer Law**

**Room:** IN-2B59

1. ‘Dark Patterns and Consumer Vulnerability’

**Authors:**
- Amit Zac (amit.zac@gess.ethz.ch)
- Yu-Chun Hung
- Amédée Von Moltke (amedee.vonmoltke@seh.ox.ac.uk)
- Chris Decker (christopher.decker@csls.ox.ac.uk)
- Ariel Ezrachi (ariel.ezrachi@law.ox.ac.uk)

*Abstract is kept private*

2. ‘EU Consumer law: the brake pedal for sustainable mobility usership?’
**Author:** Josje de Vogel (devogel@law.eur.nl)

**Abstract:**
Background
Attitudes towards mobility consumption shifts, which brings increasing concern for ecological impact. Therefore, there is a growing necessity to support the transition from ownership to (mobility) usership. However, this mobility usership model needs to be constructed in a way that safeguards the consumer’s rights. Evidence in current literature has resulted in ample information regarding circular business models, but questions related to the impact on the consumers’ rights and have not yet been addressed.

Research questions
To what extent is the EU consumer law framework adequate to provide equivalent protection to MUCs relationships in comparison to traditional consumers? Does the sector provide equal consumer protection in practice due to the application of general terms and of mobility usership providers?

**Methodology**
In this research, I conduct qualitative research, more specifically a document analysis, and doctrinal research.

**Results**
This paper addresses the impact on the consumers’ rights and obligations in mobility usership compared to traditional (sales-based) models. This is illustrated by the inequivalence in the level of protection under the Consumer Credit Directive, and a (provisional) document analysis of the GT&C of mobility usership providers. Furthermore, it shows that the sector sometimes raises the level of protection without being legally obliged to do so and that this could become a -so-called- race to the bottom or race to the top.

**Conclusions**
There exists a difference in legal protection between the traditional consumer and the mobility usership consumer but sometimes the sector voluntarily raises the level of protection.

**Keywords:** EU Consumer Law, Mobility, Circular economy

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3. ‘Agree and continue? Consumer lending rules and their struggle in the digital landscape’

**Author:** Mihaela Gherghe (mihaelagherghe@drept.unibuc.ro)

**Abstract:**
Recent years have seen a significant
increase in the appeal of online services. The new decade debuted with a pandemic and a war, both of which have the potential to create a “perfect storm” where consumers and suppliers struggle to gain and, respectively, to provide access to financial services. Even before these obstacles, online services were known for being underperforming, with several Consumer Markets Scoreboards noting a low level of trust. This lack of trust is somewhat justified – in 2011, only 30% of the websites included in the Consumer Credit Sweep had passed the sweep test for compliance with the EU consumer rules. This study aims to determine possible obstacles originating in the consumer rules themselves. To identify these obstacles, we reviewed some notable rules on the credit underwriting and application process in the EU rules and their Romanian transposition and compared the manner in which they are applied in practice in the Romanian market. We also conducted a quantitative survey of applicable case law concerning enforcing distance loans. The results showed that certain rules are difficult to implement in distance transactions and that the rules themselves sometimes lead to decreased accessibility of the service. On this basis, the particularities of the digital market should be taken into account when establishing rules concerning consumer lending.

Key words: contract law; consumer protection; distance contracts; standard terms; consent.

4. ‘The Anticompetitive Stickiness of Default Applications: Addressing Consumer Inertia with Randomization’

Author: Omar Vasquez Duque (omarvd@stanford.edu)

Abstract: Preinstalled applications are pervasive in both computers and mobile devices. Recent antitrust cases in the U.S. and Europe have scrutinized the defaults’ potential to foreclose competing applications. So far, enforcers and analysts have tended to assume that default (or stickiness) effects exist, and that forced choice strategies are the best way to overcome the users’ inertia and consequently level the field among competitors. This article uses experimental methods to test the stickiness hypothesis and the effectiveness of potential remedies. With a series of experiments ran on Amazon Mechanical Turk, this work evaluates whether current market shares reflect what consumer would choose if they were forced to choose; or whether default effects exist and why. Due to the difficulty of resembling the choice environment in which people use a search engine, this study focused exclusively on the desktop segment of the market. Yet the conclusions should apply to the mobile segment as well with some nuances. When facing a task for which a search engine must be used, most of the experiment participants choose Google, and the preference for Google resembled current market shares. Nonetheless, many participants who were forced to use Bing at the beginning of the task continued using Bing until the end. My data suggest this was due to the consumers’ misperception about Bing’s quality. After updating their view, the participants found Bing satisfied their quality expectations. Yahoo, however, did not benefit from this effect. This may suggest that only defaults that users regard as a high-quality option may stick. The preceding findings suggest that the main anticompetitive effect of Google’s strategy is to prevent users from exploring competing search engines that may be good enough to stick. Thus, choice screens are limited by the consumers’ lack of information about their alternatives.

H. Environmental law / Protection Room: IN-3B59

1. ‘Beyond Courts: Does (information on) Strategic Litigation Affect Climate Change Policy Attitudes?’

Authors: Anna Kovács (kovacs@law.eur.nl)  
Katharina Luckner (katharina.luckner@uni-hamburg.de)  
Anna Sekula (an.sekula@gmail.com)  
Jaroslaw Kantorowicz (j.j.kantorowicz@fgga.leidenuniv.nl)

Abstract: Background: NGOs and other interest groups increasingly use strategic litigation (i.e., a type of activism aiming to influence public policy through the judicial system) in the climate policy sphere. Examples of this can be seen, e.g., in the Netherlands, Portugal and Ireland. Despite the increase in use, the impact of strategic climate litigation on the public opinion is debated and understudied. The literature has yet to provide an empirical examination of the relationship between a court’s decision and public opinion, of whether this advocacy tool itself can affect wider public attitudes, and through what mechanisms.

Objective / Research question: To fill the gap identified above, we study whether information on strategic litigation affects climate change policy attitudes. To this end, we suggest a novel theoretical approach to conceptualizing the effects of strategic litigation on people’s attitudes. We argue that it provides a “legal cue” akin to an “elite cue” that is often found to work in studies of elite influence on people’s policy attitudes.

Methodology: The project uses a partially incentivized randomized online survey experiment, consisting of three parts: 1) vignette treatment; 2) measurement of stated preferences; and 3) measurement of revealed preferences through a willingness-to-pay exercise.

Results & Conclusions: This is an ongoing project. Based on the project timeline, the results will be available before 1 September

2. ‘Empirical Legal Activism’

Authors: Jessica Hill (j.m.hill@vu.nl)  
Clemens Kaupa (c.kaupa@vu.nl)  
Nathalie Verkade

Abstract: Research that falls under the
umbrella term of ELS is varied in nature. In this presentation, I will present two projects that might arguably fall under the ELS umbrella. The term greenwashing was famously coined by environmental activist Jay Westerveld in 1986 (Becker-Olsen, 2013). Originally used to refer to the hotel industry’s promotion of reusing towels as a sustainability tactic, rather than the cost-saving measure that it was, it has come to refer to any organization making unsubstantiated environmental claims for marketing purposes. One way to tackle greenwashing is to lodge a complaint with the advertising standards board (in the Netherlands: Reclame Code Commissie), setting out the evidence for misleading claims. Complaints can rest upon the argument that the claims made are vague and or that the public interpret the claim differently to how it is technically intended. Empirical survey data on public perceptions of sustainability claims can, therefore, be used to strength complaints. This presentation will talk about two projects in which we use empirical data collected with surveys to strength legal arguments in complaints to the advertising standards board in The Netherlands.

3. ‘Environmental Law and Democracy in National Strategic Development Project: Economic Growth or Reduction in Public Participation’

**Author:** Josua Hari (josuaharimm@gmail.com)

**Abstract:**
The Rule of Law has four principles: accountability, just law, open government, accessible justice. It contains procedural elements, substantive elements, and controlling mechanism. It is shown that there are relations between political configuration and regulations (policy) that is also linked to judicial power. Access to Justice is a fundamental element of The Rule of Law. In environmental law, democracy is represented through public participation in the decision making for any projects that have impact to environmental and the society as well. Public participation is divided into three categories: the society that gets direct impact, the society which affected by impact indirectly, and the society who has interests in the environmental field (peer-groups, pressure groups, non-governmental organizations).

Government in developing country tends to use constitutional law as a legitimation for development that uses natural resources but do not consider the rights of marginalized-people in society. It lacks of information and access to participate for the marginalized. How government do a project for development democratically and establish genuine public participation?

This article uses comparative law method with functional equivalent approach. Functional equivalent does not based on terminology but it emphasizes the important of substantive and structure function in environmental legal system between developed and developing country. In conclusion, through functional equivalent, the government should make policy based on risk (Regulatory Impact Assessment) in the environmental decision making through Regulatory Impact Assessment for genuine public participation to protect and manage the environment according to sustainable development principles.

Keywords: access to justice, public participation, functional equivalent, regulatory impact assessment.

4. ‘Legal research in the 6th IPCC report: A quantitative descriptive study’

**Author:** Julien Bétaille (julienbetaille@gmail.com)

**Abstract:**
Background: The extensive work of the Intergovernmental Panel on Climate Change (IPCC) made it possible to highlight the anthropogenic causes of climate change. As climate change accelerate, the scientific stakes of the IPCC’s work broaden. Beyond the technological solutions, it is also about understanding how to change society quickly and radically. This is the reason why the IPCC focuses inter alia on governance in its last and sixth assessment report (AR6), notably on implemented policies.

Law is inherently a tool for directing human behavior and can as such be useful for climate change mitigation. It is therefore interesting to look at how the IPCC uses and synthesizes research on legal issues relating to climate change, since its mission is to provide comprehensive assessments of the state of scientific, technical, and socio-economic knowledge. This study aims to examine how the IPCC appropriates legal research. By convention, “legal research” is understood here as research that takes the law as its object, regardless of whether it is carried out by legal scholars or according to classical legal methods.

Research questions: There is now a considerable amount of legal research on climate change. Legal acts are analyzed by legal scholarship and by many social sciences, using various methods. This raises essentially two sets of questions about how the IPCC synthesizes this research.

Firstly, what type of legal research is used in the IPCC report? Are they doctrinal or empirical approaches? To what extent? Secondly, regarding empirical research, are they qualitative or quantitative studies? Are they descriptive or do they seek to test hypotheses statistically? If so, to what extent are they experimental or quasi-experimental designs?

Methodology: This is a cross-sectional observational study, aiming to provide descriptive statistics on the type of legal research used in the IPCC report. The data used are the scientific publications referenced in the “climate laws” section (section 13.2.1) of chapter 13 of the working group III report on Mitigation of Climate Change (AR6). I analyze a dataset including the 29 scientific publications cited by the IPCC. I use a table with columns describing each publication.
goals, results), the type of approach (doctrinal or empirical), the type of empirical study (qualitative or quantitative), the type of data used (legal and/or non-legal), the type of quantitative study (descriptive or including a statistical hypothesis test), and the type of design (experimental or quasi-experimental).

Results: Since the IPCC report was just released on 4 April 2022, I am still filling in and coding the data. In reading the report and the publications cited, I expect a large majority of empirical studies, most of them being quantitative. Well beyond the knowledge of the content of legal rules provided by doctrinal approaches, it seems that it is the law’s ability to contribute to fix the climate issue that is of interest to the IPCC.

Keywords: Environmental Law, Climate Laws, Doctrinal approach, Empirical approach, Impact studies

17:30-18:30 / Poster Sessions

with Drinks and Snacks

Room: Concillium

1. ‘The EU Tax Haven Blacklist’

Author: Federica Casano (f.casano@law.leidenuniv.nl)

Abstract: Often we hear about multinationals paying little income tax, with serious doubts on the fairness and sustainability of this trend. The latter seems to be encouraged by harmful tax competition, which is when countries offer special tax regimes to multinationals in order to attract new investments at the cost of lower tax revenues. To limit harmful tax competition, the European Union established the EU tax haven blacklist.

My PhD research assesses to what extent the EU tax haven blacklist is effective in tackling harmful tax competition among countries. The investigation is based on empirical and doctrinal research methods.

The empirical component builds on the study of the work done by the European Union on twenty-five third countries in the context of the EU blacklist. Primary data is collected from EU institutions’ official documents—also obtained by freedom-of information requests—and OECD papers. New data is collected from interviews with policymakers involved in the EU blacklist. Collected data will be analysed through process tracing. The legal doctrinal part builds on the analysis of relevant literature, EU law and national law of EU Member States and the twenty-five selected countries.

Some interesting preliminary trends have been identified so far, including the high political involvement in the USA’s and Turkey’s scrutiny; procedural transparency issues; ineffective reforms of Cayman Islands and Mauritius.

This study is of interest for academics and policymakers since it contributes to the creation of a framework for well-based initiatives against harmful tax competition and promotes further interdisciplinary empirical research into the effectiveness of anti-tax avoidance instruments.

Keywords: anti-harmful-tax-competition blacklist, effectiveness, documents analysis, interviews, process tracing

2. ‘Risky or at risk? An empirical legal study of the prevention of intergenerational transmission of violent extremist ideologies through child protection measures’

Author: Lisette Dirksen (l.t.dirksen@vu.nl)

Abstract: Recently, governments throughout Europe have taken far-reaching measures within the realm of private and family life, such as out-of-home placement, to prevent the intergenerational transmission of violent extremist ideologies. Sometimes in the absence of concrete actions or risks for the child’s physical and/or emotional well-being. This leads to questions pertaining to the boundaries of family law and its use in the prevention of child radicalization.

Research Questions:

Regarding the abovementioned, the question is on which legal basis measures can be taken. A second question is whether the assumptions underlying these measures find support in empirical reality regarding intergenerational transmission of extremist ideologies.

Methodology:

The PhD project combines an empirical legal study examining the legal basis underlying, and motivations for, state interventions in the family sphere with a criminological empirical study on the risk of intergenerational transmission of extremist ideologies. First, a detailed analysis of literature, policy documents, legislation and case law will be conducted. Next, using a representative household-panel and data from the Dutch Probation Service and the Child Care and Protection Board, I will examine the occurrence and transmission of extremist ideologies within families.

Expected results:

Together, findings will lay the foundation for a legal and policy framework for the prevention of child radicalization within the family-domain. Additionally, the aim is to develop a tool assessing the risk of intergenerational transmission of radicalization.

Area(s) of law: family law – youth law (child protection) - international (human rights) law

3. ‘Labour law enforcement in the 21st Century. Strengthening the enforcement of labour law standards by trade unions?’

Author: Cara van den Bor (c.vanden.bor@vu.nl)

Abstract:

The rise of flexible and atypical working relationships leads to precarious working conditions for an increasing number of workers. Their problem is not the absence of
protective legislation, but the lack of means for successful enforcement. To ensure effective protection of labour laws, the legislator increasingly relies on enforcement by trade unions. This can be called the “industrial enforcement mechanism”. Exactly how this mechanism works in law and actual practice is under-investigated. This research will produce insight in the justifications, possibilities, requirements and restrictions of the industrial enforcement mechanism in ensuring compliance with labour standards, especially for flexible workers.

The first part of the study is legal-dogmatic. The first sub-question is aiming to prepare a description of a ‘labour law enforcement allocation system’. The second part of the study is empirical. The first empirical part of the study aims to clarify to what extent the industrial enforcement mechanism works in law and actual practice is under-investigated. This research will produce insight in the justifications, possibilities, requirements and restrictions of the industrial enforcement mechanism in ensuring compliance with labour standards, especially for flexible workers.

4. ‘Offenders and victims of sexual crimes in Poland - the law and its practical implications’

Authors:
- Katarzyna Witkowska-Rozpara (kwitkowska-rozpara@uw.edu.pl)
- Barbara Blonska (b.blonska@uw.edu.pl)
- Beata Gruszczyńska (b.gruszczyńska@uw.edu.pl)

Abstract:
Background: Public policies regarding sexual crime in Poland are not rational, often they are influenced by penal populism. Legislators have no reflection on the actual possibilities of its application and its practical consequences for offenders and victims of sexual crimes. Research questions: Does the legislator achieve the planned goals in public policy towards sex offenders and their victims?

Methodology:

Quantitative research: analysis of the Ministry of Justice’s statistical data on punishments, selected penal measures adjudicated on perpetrators of sexual offenses in 2011-2019

Qualitative research: an analysis of complaints received by the Ombudsman regarding the Sex Offenders Register, in particular those brought by victims of sexual offenses.

Victimization survey: percentage of sexual crime victims including sexual harassment based on the latest research available.

Results:
Polish judges impose penalties for sexual offenses within the lower and medium limits of the statutory threat, thus limiting the increasingly punitive tendencies of the legislator. Adjudication of selected penal measures and obligations, such as profiled therapy, creates problems at the executive stage. Putting intrafamilial offenders in the Sex Offenders Register is a huge problem for victims, in particular for the perpetrator’s children. They are stigmatized by local communities and suffer from secondary victimization.

Conclusions:
Tougher penalties for sexual offenses will not solve the existing problems in dealing with offenders and victims of these offenses. There is also a need for a change to ensure that certain measures, especially therapies, can be performed.

The Sex Offenders Register should be transformed in such a way as to protect the privacy of victims, especially minors. It is also important that the police, prosecutors and judges behave properly in order to avoid revictimization. In Poland, there is a need for regular victimization surveys to estimate the scale of sexual offenses and to diagnose the problems faced by victims. There is also a need for victimization research to be carried out in all EU countries. Comparison of results, exchange of experiences gives always good results.

5. ‘The Dynamic Effects ofrenumeration Laws in the South African Domestic Work Sector’

Author: Sufia Singlee (sufinnah.singlee@durham.ac.uk)

Abstract:
One of the central challenges confronting the labour law discipline is the expansion of the reach of formal labour standards to a growing proportion of the workers in the global economy. Recent research has highlighted the potential of ‘institutional dynamism.’ This refers to the capacity of labour regulation to extend beyond their formal parameters, including to work settings configured as ‘informal’, and to interact with other labour market institutions and regulations in ways that lead to improved labour outcomes for workers. While the existing research on minimum wage laws particularly provides some insights into the dynamic effects of labour regulation in informal work settings, the mechanics of ‘institutional dynamism’ remains under-examined. The project combines doctrinal and socio-legal analyses to investigate the potential dynamic effects of recent reforms to the minimum wage dispensation in South Africa, with a specific focus on the domestic work sector. The preliminary findings highlight the limited role that minimum wage laws play in determining wage conditions. More significantly, the data findings underscore the existence of and primacy of informal norms and practices which govern the interactions between the employer and domestic worker. The obstacles to ‘institutional dynamism’ are identified through an examination of the operation of these norms and practices, and their interaction with formal laws. Moreover, the research identifies the strategies and mechanisms that orientate employers and domestic workers towards cultivating normative standards and practices that meet the protective outcomes of labour law.
The research aims to contribute to the global discourse on decent work, effective labour regulation and regulatory innovation through an examination of the process of ‘institutional dynamism’, the role of informal regulation, and their effects on wage conditions and labour relationships in informal settings.

Student Posters

1. ‘Giving my data away – study of legal consent and digital rationality’

Author: Maria-Lucia Rebrean (m.rebrean@umail.leidenuniv.nl).

2. ‘Interpretation of prenuptial agreements under Dutch law: a systematic case law analysis’

Author: Mauryn Jonkhout (m.jonkhout@umail.leidenuniv.nl)

3. ‘The reality of platform work’

Authors:
• Homa Golestani
• Luna Leenaers
• Nienke Heijne Makkreel
• Natalia Robledo Contreras
• Bente Heilig

4. ‘Legal recognition of same-sex parenthood’

Authors:
• Myra Colis
• Kazaya Vos
• Gergely Szücs
• Melissa van der Walle
• Delores Verhaak

5. ‘The fashion conundrum: Fast fashion vs. sustainable fashion’.

Authors:
• Yusuf Abassi
• Zuzanna Grochulska
• Piet Botter
• Rezai Parwana
• Britte Dam

2 September

09:00-10:30 / Panel Sessions

III

A. Judicial Decision-Making

3 Room: IN-3B44

1. ‘Framing Effects in Proportionality Analysis: Experimental Evidence’

Authors:
• Anne van Aaken (anne.van.aaken@uni-hamburg.de)
• Roee Sarel (roee.sarel@uni-hamburg.de)

Abstract: Proportionality analysis (PA), which is widely used by national and international courts, is typically considered to be a rational process. But is it? Does the framing of the legal case affect the decision-making of (judicial) actors? And if so, are legal professionals more or less likely to be affected by the framing? We analyze theoretically and experimentally via vignette studies how features of PA might influence the outcome of the decision through behavioral effects, such as biases, heuristics, and framing. In the experiment, subjects conduct a PA for legal cases that vary only in their framing (on gains and losses as well as certainty and uncertainty), where the wording is designed to nudge subjects to either support or oppose the legal act that is challenged as disproportional. We contrast three groups of subjects in 2021 and 2022: German administrative judges, law students, and non-law students. Our analysis yields two key findings. First, we find clear evidence of framing effects in PA in some (but not all) contexts, suggesting that behavioral effects matter. Second, preliminary evidence on judges suggest that the effect of the framing weakens as one moves from non-law students to judges—the more expert the subjects, the less they are prone to succumb to biases. Our findings thus highlight the importance of framing effects but also the potentially debiasing effect of legal training.

Keywords: Proportionality, cognitive psychology, experiments, experts vs lay persons

2. ‘Towards meaningful categorizations of case law on open-ended legal concepts’

Authors:
• Diederek Meijer (tenhorsesmobile@gmail.com)
• Alessandra Palmigiano (alessandra.palmigiano@vu.nl)
• Esra Tunruc

Abstract: Background
This empirical legal study is part of a broader project to develop a methodology to create meaningful categorizations in large bodies of case law on open-ended legal concepts. The growth of open legal data makes it increasingly difficult for legal scholars and practitioners to find cases that are relevant to their research on open-textured legal concepts. As a result, a significant part of the knowledge about these concepts remains undiscovered and the legal doctrine is unsettled in these parts of the law.

Research questions
The broader project’s research question is: how can large bodies of case law on open-ended legal concepts be categorized in a meaningful way. Throughout the project we use the concept of misconduct, an open-textured legal concept of Dutch labor law, as a case study.

Methodology
In the current paper we use systematic content analysis to categorize 1135 incidents of misconduct found in 735 cases by type of misconduct and calculate win/loose ratios per category.

Results
Our research produced a comprehensive list of categories of misconduct and we present types of misconduct sorted by win/loose ratios.

Conclusions
Our study complements existing
doctrinal knowledge of the concept of misconduct, adding important insights to understanding it. We also find that a categorization by facts alone cannot fully describe the concept. Therefore, follow-up work includes a categorization by principles discussed in the courts’ reasoning underlying their decisions and analyzing how these principles interact.

3. ‘Legal reasoning and Legal Methodology on the Swedish Supreme Court: Not Your Grandfather’s Court’

Authors:
- Johan Lindholm (johan.lindholm@umu.se)
- Mattis Derlén (mattias.derlen@umu.se)
- Daniel Naurin (daniel.naurin@arena.uio.no)

Abstract:
Existing research acknowledges that judges need to justify their decisions using legal arguments that are considered legitimate and acceptable in the legal community and that law in this way acts as a constraint on judicial behavior. Despite this, there is no established method for capturing legal methodology. Consequently, many empirical studies of judicial behavior fail to properly include legal methodology in their models, thereby risking over-emphasizing other factors such as personal attitudes and strategic concerns. In this paper, we argue that legal methodology is strongly connected to legal philosophy and theorize that this connection can be used to model legal methodology effectively, systematically, and on a large scale. Using the Swedish Supreme Court and a novel data set of legal reasoning in 2,380 Supreme Court decisions as a case study, we empirically demonstrate the viability of this approach.

Keywords: judicial behavior; methodology; legal reasoning; legal methodology; Swedish Supreme Court.

4. ‘Epistemic justice through systematic content analysis of case law’

Authors:
- Machteld Geuskens (m.c.m.geuskens@vu.nl)
- Eva Hilbrink (e.hilbrink@vu.nl)

Abstract:
In this paper we discuss the value of systematic content analysis of case law as a research method in relation to the theoretical notion of epistemic injustice. We explain that a systematic content analysis of case law (i.e. a systematic, empirical analysis of judicial reasoning) as a research method satisfies the demands of epistemic justice. In addition, the result of a systematic content analysis, informed by the demands of epistemic justice, can be used to shed light on the existence of epistemic injustices in the legal framework under investigation. Finally, we explain how the knowledge produced by the analysis can contribute to repair these injustices. The insight in the nature of this structural injustice can serve as a convincing argument for the decision-maker to change course.

In the paper we first discuss the content of the notion of epistemic justice. Then we explain how the requirements of epistemic justice can help determine which aspects in a body of case law are relevant for conducting the systematic analysis, and how, on the basis of this analysis, conclusions can be drawn about the possible occurrence of epistemic injustices. On the basis of, literally, a case study, we show how systematic content analysis of case law, informed by the requirements of epistemic justice, indeed has resulted in shedding light on epistemic injustice, and how this insight has contributed to repair this injustice.

5. ‘Deferece at the European Court of Justice’

Authors:
- Lucia López Zurita (lucia.lopez.zurita@jur.ku.dk)
- Stein Arne Brekke (stein.brekke@eui.eu)

Abstract:
In the procedure for a preliminary ruling (PPR) in Article 267 TFEU, the European Court of Justice holds a dialogue with the referring national courts. In that dialogue, the Court might defer all or part of the final decision to the national court. The paper looks at the use of deference as the Court as a tool to avoid or reduce criticisms and challenges to its legitimacy. Deference is not as such a method of interpretation, but we argue that the Court uses deference in combination with expansive interpretations to make strong doctrinal outcomes or the reduction of the regulatory autonomy of the Member States more palatable.

We formulate three hypotheses. First, we expect the Court to ‘sugarcoat’ strong doctrinal outcomes to make the pill easier to swallow whenever the Court issues legally innovative judgments. Second, we expect the Court to seek to shelter itself from political backlash by deferring decisions, which reduce the regulatory autonomy of Member States. Finally, deference might be used to ‘disguise’ expansive interpretations of EU law.

The paper uses a quantitative analysis of the Court’s judgments in PPR in the areas of free movement of persons and goods over the last 40 years to assess how the Court uses deference. The use of deference is observed as binary variables in two analyses, which observe whether the decision contains deference in the reasoning and/or the operative part. Our preliminary analyses indicate a positive relationship between the use of deference and expansive interpretations of EU law, and shed new light on the use of deference as a means to avoid backlash.

B. Law and Economics
Room: IN-3B45

1. ‘Jurisprudence of compulsory patent licensing in patents in the U.S.’
Author: Bashar Malkawi (bmalkawi@arizona.edu)

Abstract:
The United States has traditionally held a dim view of compulsory patent licensing, in which a government mandates the licensing of privately-held patents to a third party in order...
to advance a public purpose. Yet following the U.S. Supreme Court’s 2006 decision in eBay v. MercExchange, federal courts have denied a substantial number of requests for permanent injunctions following a finding of patent infringement. Without an injunction in place, an infringing party may continue to practice a patent, subject, in most cases, to the payment of a court-approved ongoing royalty. In the years following eBay, scholars debated the precise legal nature of the infringer’s unenjoined activity. Now, more than fifteen years after eBay, the result is clear: a compulsory license to practice the infringed patent has been granted by judicial fiat. In this study we reviewed a large sample of post-eBay cases in which a patent injunction was denied. We analyzed the language used by the court in establishing the right of the infringer to continue to operate under the infringed patent(s) and its obligation to compensate the patent holder for unenjoined practice of the infringed patent.

This language suggests that federal district courts have, both tacitly and expressly, been granting compulsory patent licenses upon the denial of injunctions. Further evidence for the granting of such compulsory licenses is found when the implications of not granting a license is considered in view of the patent exhaustion doctrine and following the transfer of the underlying patents. Accordingly, we call on the Federal Circuit to acknowledge that a district court that declines to enjoin the infringement of a valid and enforceable patent, and concurrently orders the infringer to compensate the patent holder for acts of future unenjoined infringement, has authorized a compulsory license of the patent. Such an acknowledgement would have several benefits. First, it would eliminate the courts’ embarrassing reliance on an erroneous definition of compulsory licensing drawn from the public licensing schema authorized under the Copyright Act. Second, it would encourage courts to focus greater attention on the non-royalty terms of such licenses, which are currently missing key terms such as license scope, field of use, duration and termination. Finally, it would inform U.S. foreign policy regarding compulsory licensing by other countries and encourage a more nuanced approach to such proposals by other countries.

**Key Words:** United States, patents, compulsory licensing.

2. ‘Single and Multi-Winner Auctions with Performance Obligation’

**Authors:**
- Marin Coerts (m.coerts@vu.nl)
- Florian Heine (F.A.Heine@tilburguniversity.edu)

**Abstract:**
Public law and behavioral economics are two worlds that rarely meet, but come together in this study. Gas stations, airport slots, and telecommunication frequencies have been put up for bid, mostly using some variant of an auction. To ensure that the successful parties adequately and satisfactorily provide the services that come with the license, governments often attach performance obligations to the bid in question. This means that license holders will have to comply with concrete obligations and become commercially active within a certain period of time. Despite the trend towards the use of auctions for government tendering, we only know little about the legal boundaries that the government faces when implementing these obligations and about the effects of these implementation requirements. Our study responds to this knowledge gap by combining legal rules and empirical data about the use of performance obligations in markets. We conduct an auction experiment in our methodology to investigate the effect of performance obligations in the context of market access auctions for a monopolistic or a duopolistic market in a 2×2 design. We hypothesize that the effect of a performance obligation in the bidding procedure differs significantly depending on market structure. If a performance obligation increases the output in market structures, it becomes more expensive to be active in the market. Accordingly, participants will place lower bids in auctions with performance obligations, as it will be relatively less attractive to produce in the market. The results of this study will therefore bring us more information about the effect of performance obligations, giving more clarity on how a performance obligation should be implemented within markets and within legal systems.

**Keywords:** Administrative law, public procurement law, auction experiment, market.

3. ‘Behavioural law and economics’

**Authors:**
- Marin Coerts (m.coerts@vu.nl)
- Jacobien Rutgers (j.w.rutgers@vu.nl)
- Wolf Sauter (w.sauter@vu.nl)
- Arjen van Witteloostuijn (a.van.witteloostuijn@vu.nl)

**Abstract:**
**Background**
Behavioural law and economics has existed for some time in nascent form. In this position paper we propose to develop it as a standard approach to legal studies, complementing the pre-existing law and economics. Behavioural economics builds on insights from behavioural sciences, primarily psychology, and aims to explain the behaviour of (groups of) individuals under conditions of scarcity. It applies an empirical methodology grounded in econometrics and based on experimental research.

**Hypothesis**
We hypothesize that behavioural law and economics grounded in experiments is a valuable approach. Experiments maximise the opportunity to identify causal links and norms as building blocks of the law as interventions in human behaviour are well suited to experimental research.

**Methodology**
The experimental approach is key. The design includes variable such as
hypothesis, macroprudential policies are designed, how they work and are applied to UK banks, contributing to the relevant legal theory in banking law and financial regulation. Stress testing for pandemic related risks is critically discussed, capturing how to design macroprudential measures and policies to ensure that. Building on prior work on stress testing for the Great Depression scenario, the implications of the “Great Lockdown” scenario are examined, commenting on regulatory responses to ensure the resilience of the UK banking sector and systemic institutions. The supervisory review and evaluation process during Covid19 is analysed, presenting proposals in extending the risk assessment analysis towards the ICAAP and ILAAP practices and macroprudential stress tests. This examination attempts to provide empirical evidence to the early lessons from the coronavirus pandemic on the Basel reforms, capturing a critique to the Basel III. The underlying objective is to comment on evidence-based policy making on the design, governance and implementation of macroprudential measures and tools in safeguarding the stability of the UK banking system in preparation to the next similar systemic event or crisis.

Conclusion
In conclusion the paper sets an agenda for future behavioural law and economics research and collaboration.

Key words: behavioural economics, private law, administrative law, economic law

4. ‘Passing the “Great Lockdown” scenario: Evidence from macroprudential responses to Covid-19 for the UK banking sector’

Author: Stavros Pantos (s.pantos@pgr.reading.ac.uk)

Abstract: This quantitative empirical legal research captures the evaluation of macroprudential policies and measures as a response to Covid-19, examining how to prepare the UK banking system for the next financial/systemic crisis. It composes a critical examination of the effectiveness of macroprudential policy responses by the PRA and the BoE, based on empirical evidence from the UK banks’ financial disclosures (capital and liquidity measurements). Specifically, the focus is placed on how macroprudential stress testing.

C. Institutional Challenges to Address Transgender and Intersex Needs (PA)

Room: IN-3B59

Abstract: The last decade, sensitivity for LGBQTI-issues in society has increased. On the European and international level, human rights norms have been developed for the treatment of this specific group by State authorities. In this panel, we focus on issues surrounding transgender and intersex persons. On the basis of the European and international human rights norms, State authorities are obliged and requested to establish appropriate procedures to guarantee people’s human rights regardless of gender, which includes obligations to respect human dignity and people’s gender identity, to arrange for adequate health care and to protect them against violence. Still, it is evident that State authorities are struggling with these new requirements, as in many decision making processes, policies and practices (for example in the prison system and also in the health care system) binary genders are still assumed. This panel will explore emerging human rights obligations regarding trans and intersex people, the different ways states respond to these developments, and how these developments and responses are valued by individuals.

1. ‘Amplifying Activist Voices or Defending Doctors? How the Dutch Government Privileges Medical Expertise and Marginalizes Intersex Advocacy’

Author: Gijs Hablois (gijs.hablois@ru.nl)

Abstract: United Nations (UN) and NGO calls to prohibit non-consensual genital surgeries on intersex babies have not led to legislative change at the national level in the Netherlands. As in most states, these surgeries remain legal. If not by changing the law, how has the Dutch government responded to activist demands and UN reprimands? I employ a discursive approach to answer this question. Based on a Critical Frame Analysis (CFA) of UN, NGO, medical, governmental, and parliamentary documents and original interview data, I show how the government – specifically the Ministry of Health – privileges medical expertise and marginalizes intersex advocacy. This is done, first, through relying on input from medical professionals and using medical classifications and definitions. Second, activist and UN credibility concerning what are deemed medical matters is called into question by the Ministry.
Claims made and issues raised by the UN and activists are dismissed as unproven at best and fictional at worst: more research has been commissioned by the government to establish whether and to what extent non-consensual surgeries actually take place. And third, the government reinforces the status of doctors as experts. The apparent necessity of highly specialist knowledge is emphasized and doctors are defended based on their good intentions. My analysis sheds light on contestation concerning human rights norms such as bodily integrity. Additionally, it demonstrates how discursive power may serve to challenge the institutional weight of international organizations such as the UN.

**Keywords:** intersex; human rights; discourse; activism; medical practice.

2. ‘*Gender-based violence protection in Europe: Institutional challenges for including trans and intersex persons*’

**Author:** Lorena Sosa (L.P.A.Sosa@uu.nl)

**Abstract:**

Trans persons, whose gender identity differs from the sex assigned to them at birth, face frequent harassment and violence, often forcing them to hide their true selves. Similarly, intersex individuals, born with sex characteristics that differ from typical notions of male or female bodies, are often stigmatized and subjected to multiple human rights violations, including their right to health, physical integrity, and to be free from torture. In essence, violence against individuals who challenge traditional gender norms and expectations, such as trans and intersex persons, constitutes gender-based violence (GBV), yet to what extent are they protected by current GBV normative frameworks? How is their inclusion/exclusion determined by the norms’ design and/or implementation? This paper explores the scope of protection granted by GBV frameworks in Europe by examining the regulation and implementation of the Istanbul Convention and the breadth of domestic criminal legislations. Firstly, the paper introduces the main forms of violence traditionally considered as ‘gender-based’ and a discussion of how these affect trans and intersex persons. Secondly, it describes the current normative approach to those forms of violence, based on a close reading of the Convention and a comparative analysis of domestic criminal legislations as delineated in questionnaires filled by experts. Then, drawing from a systematic analysis of state and evaluation reports of the monitoring procedure of the Convention, the paper provides an overview of the level of inclusion of trans and intersex persons resulting from the implementation of the Convention by states parties. The paper concludes with final observations.

**Keywords:** Gender-based violence; Trans; Intersex; GREVIO; Istanbul Convention

3. ‘*Trans challenges to legal gender markers - legal challenges to non-binary identities*’

**Authors:**

- Marjolein van den Brink (M.vandenBrink@uu.nl)
- Peter Dunne (pd17563@bristol.ac.uk)
- Christine Quinan (christine.quinan@unimelb.edu.au)

**Abstract:**

Increasingly countries recognise gender identities outside the binary of male and female, often referred to as ‘X’. However, the introduction of such alternative markers often appears to occur in a legislative vacuum. Legislative and other initiatives to actually accommodate such alternative markers appear to be mostly absent, despite the fact that binary gender as an organisational principle is deeply engrained in national and international legal and policy frameworks. This research aims at obtaining a better insight into lived experiences of people with and without an alternative gender marker in Europe, and asks whether and how European countries can expand the legal classification of gender, to better accommodate all, i.e. it also looks into the impact and potential benefits for people irrespective of gender identity. For this purpose a survey will be launched across Europe. The results of a survey conducted by two of the authors in 2016-2017 on people’s views on gender markers on official documents and on gender registration more generally, will be used to provide context and depth. The current survey, which is expected to be launched early May, will be coupled with doctrinal research into the various European legal frameworks regarding legal sex. At the conference the first, tentative results of the survey will be discussed, focusing in particular on institutional, legal challenges to the accommodation of less rigid and sex-stereotypical legal gender markers.

**Keywords:** legal gender classification, non-binary gender, legal gender markers, identity documents, sex registration

4. ‘*Transpersons in prison. Different but equal?*’

**Author:** Pauline Jacobs (p.jacobs@uu.nl)

**Abstract:**

In recent years, support for the classic idea that gender is binary has been declining. Within the prison system, however, binary genders are still assumed. Questions surrounding the (legal) position of transgender prisoners are emerging, not only around the placement in a male or female facility, but also with regard to the treatment and treatment of this group. The present time demands institutions that are able to respond to developments in society. This means that the prison system is asked to respond to developments in the detention population, and new vulnerabilities that come with it.

Relevant research questions that will be addressed in this study are as follows: 1. What is the size of the group of transgender prisoners in the Netherlands? 2. What problems do transgender prisoners face? 3. Is the treatment of this group in line
with the relevant human rights standards? 4. What improvements are necessary and/or desirable with regard to the treatment of transgender prisoners in the light of these standards?

To answer the central questions of this project, traditional legal research methods are combined with empirical research methods. The empirical research will consist of (at least) 15 semi-structured interviews with, among others, prison directors, lawyers, members of supervisory committees and (former) transgender prisoners. During the presentation results and conclusions will be presented (expected: July 2022).

Keywords: criminal law, human rights, transgender, prison.

D. Criminal Law 3
Room: IN-3B50

1. ‘Expressive crimes in social media considering the effects of criminal sanction: deterrence or defiance effect?’

Authors:
- Ana Belén Gómez-Bellvis (abgb93@gmail.com)
- Francisco Javier Castro-Toledo (fcastro@umh.es)
- Fernando Miró-Llinares (fmiro@umh.es)

Abstract:
Although expressive crimes have always troubled the criminal law scholars, since the popularization of social networks and the significant increase in the number of Twitter and Facebook users convicted of this type of crime, criticism has intensified considerably. Not only those related to ethical dimension of criminalization, but also those related to the possible perverse effects of criminal sanctions, such as the chilling effect or the erosion of legitimacy. The present study empirically analyzes the issue of the «defiance effect» that can occur in the field of speech offences in social networks with a sample of 400 subjects. The results indicate that the subjects would defy the criminal norm if they were convinced of these ideas, would tend to reoffend in case of imposition of a penalty and would support a protest for its decriminalization.

Key words: deterrence, defiance, freedom of speech, political speech, legitimacy

2. ‘The impact of the changes in sentencing rules on prison population - the case of Hungary’

Authors:
- Csaba Györy (csaba.gyory@ajk.elte.hu)
- Balázs Váradi (balazs.varadi@budapestinstitute.eu)
- Lilli Máň (mark.lili@krtk.mta.hu)

Abstract:
Background Since 2010, Hungary has been experiencing the coincidence of falling crime rates and rising prison population. Our study aims to explore the causes of this seemingly contradictory development.

Research Questions
Our project is based on three distinct hypotheses: 1. Recent changes in the Hungarian criminal law have led to ceteris paribus longer sentence lengths; 2. Longer sentence lengths cannot be contributed to the change of a single sentencing rule; they rather emerge due to the total effect of several, interacting changes; 3. Recent changes in the Hungarian criminal law have resulted in longer prison spells, and more perpetrators receiving custodial sentence instead of non-custodial sanctions.

Methodology
We use standard quasi-experimental econometric techniques to measure the effect of changes in the Hungarian criminal law. Especially, we estimate nearest neighbour matching models where we also exactly match on some key variables such as gender, crime group, duration between committing the crime and the final judgement and judgement year.

The analysis is based on case-level data from the (non-public) sentencing database of the National Office of the Judiciary.

Results
We found no additional effect of the new criminal code once we take out the general time trend from the data in our full sample upon either convictions or sentencing, albeit we do detect some evidence of longer prison sentences in a subset of cases where the range of sanctions shifted to lengthier spells in prison. Our results thus suggest that rising prison population despite falling crime rates is due to a general increase in punitivity insentencing.

3. ‘Democracy versus morality: An experiment’

Authors:
- Mahdi Khesali (khesali@collmpg.de)
- Yoan Hermstrüwer (hermstruewer@collmpg.de)

Abstract:
The outcomes of democratic procedures do not always correspond to our moral convictions. Iconic examples of this conflict between democratic and moral norms can be found in the Apology of Socrates, divorce law or the rise of populist movements. While moral norms may prescribe one type of behavior, democracy may impose a different kind of behavior. One illustrative example is the erosion of moral norms under democratically elected populist leaders. Our study is intended to shed light on the dark side of democracy. Using a controlled lab experiment, we explore how people behave in face of this conflict, whether democracy can change adherence to moral norms, and whether third parties are willing to punish those in violation of democratically legitimized norms. We implement an one-shot stealing game, inducing a normative conflict between two different norms: “Thou shalt not steal” and “Fair sharing”.

Using a 2 x 2 between-subjects design, we implement treatment variations on two dimensions. In the first, we manipulate the acceptability of stealing (and the degree of conflict in consequence) in two steps by offering participants the opportunity to vote about the a norm for stealing up to the point of equal distribution in one treatment and revealing an outcome of voting process in another. In the second, we include an enforcement mechanism by introducing third-
party punishment. We expect our democratic procedure to decrease the cost of violating the moral principle, thus leading to more immoral behavior. We also hypothesize that democratic legitimacy will decrease the probability and magnitude of third-party punishment on one hand and introduce a new punishing behavior for the democratic norm on the other hand.

Keywords: moral norms, democratic norms, conflict of norms, legitimacy

4. ‘Reducing short-term prison sentences by means of an intervention’

Authors:
- Nieke Elbers (n.elbers@vu.nl)
- Sven Zebel (s.zebel@utwente.nl)
- Malini Laxminarayan (mslaxminarayan@gmail.com)
- Sonja Meijer (s.meijer@vu.nl)
- Jacques Claessen (jacques.claessen@maastrichtuniversity.nl)
- Anneke van Hoek (anneke.vanhoek@gmail.com)

Abstract:
Background: Short-term prison sentences (<6 months) - being applied to 80% of prison population - are considered criminogenic. Alternative sanctions are better at reducing the recidivism than imprisonment. The aim of this project was to reduce short-term prison sentences by raising awareness about the positive effects of alternative sanctions, the importance of rehabilitation and restorative sanctioning goals as compared to retribution, deterrence and incapacitation; and to use and expand the available alternative sanctions.

Participants had to determine a sentence (e.g. prison, home detention, community service, compensation, including length or sum) and provide their reasoning.

Results. The intervention group was less likely to give a prison sentence than the control group. Groups did not differ in the length of the prison sentence. The intervention group considered restoration and rehabilitation to be more important sanctioning goals than retribution, deterrence and incapacitation; in the control group there was no difference. The intervention group did make use of new alternative sanctions.

Conclusions. It seems possible to reduce the number of short-term prison sanctions with our intervention. Next, we want to replicate our findings with Public Prosecutors and judges, and we also aim to determine what elements of the intervention are effective.

Keywords: criminal law, restorative justice

5. ‘Can Interventions in the prosecution process improve deterrence? Evidence from a Belgian Reform’

Author: Samantha Bielen (samantha.bielen@uhasselt.be)

Abstract:
Background: The Belgian prosecutor office has introduced a reform aimed at reducing recidivism. To improve deterrence, alternative disposition modes are used, collaboration with partners incentivized, and disposition times shortened. The interventions are expected to improve certainty and immediacy of punishment (key concepts embedded in theories of deterrence), hence decreasing offenders’ future proclivity for crime. The reform was introduced in a staggered fashion by means of a pilot program in two policezones.

Research questions: The main research question is whether the reform impacted the propensity for reoffending. I further analyze temporality of effects, mechanisms (to what extent are lower recidivism rates caused by accelerated procedures and alternative sanctioning possibilities?), heterogeneity among subsamples, and impact on total crime numbers.

Methodology: The staggered implementation provides an excellent opportunity to analyze changes in recidivism rates in treatment policezones relative to non-treated policezones before and after reform implementation. I use a classic differences-in-differences model and event-study model to assess the evolution of relative recidivism rates while controlling for fixed differences across police zones and time trends.

Results: I find that, on average, offenders from treated police zones are about 5% less likely to recidivate as a result of the reform.

Conclusion: The empirical results show that interventions at the level of the prosecution office that reduce feelings of impunity and provide swift reactions to criminal behavior, can impact probability of recidivating. The results are important in the context of delayed courts and prison overcrowding, but also contribute to the discussion on the efficacy of noncustodial sanctions.

Keywords: Criminal law, recidivism, prosecution

E. Methodology 1
Room: IN-3B52

1. ‘When Empiricists meet Lawyers, Neither will be the Same Again’

Author: Gareth Davies (g.t.davies@vu.nl)

Abstract:
Background: As ELS grows within law faculties, this paper considers how empirical methods and traditional doctrinal analysis may influence each other, via contact, co-operation and competition between their practitioners. The normative background question is how such changes affect legal research’s contribution to society: which
knowledge is encouraged, and which is diminished?

Research questions
How will empirical legal scholars and doctrinal scholars adapt or develop their research methods as a result of contact with each other? How will these changes affect the power relations between those conducting different kinds of legal research?

Methodology
This is a theoretical analysis. Starting from uncontested factual premises about research patterns, institutional choices, and funding, I argue towards a plausible predictive framework which could, in principle, be tested (although perhaps not yet).

Results
Given prevailing ideological, institutional and funding dynamics, ELS scholars will move away from (over) quantification and embrace qualitative and normative methods to a greater extent than their peers in other faculties, while doctrinal analysts will move towards clear, focussed and empirically testable research, and away from more social-theoretical or wide-ranging arguments.

Conclusions
Frustration with the limits and arguably unscientific nature of positivist doctrinal analysis is not new. One response was to move towards more social-theoretical analysis of law. Another response is now to combine doctrine with empirical methods. Those responses are now – ironically - competitors for funding and status. Each has distinct strengths and limitations regarding their contribution to knowledge, society and students.

2. ‘Diving the Judicial Deep Seas. Selection Biases in Court Decision Coverage as a Challenge to Empirical Legal Studies (ELS)’

Author: Hanjo Hamann (hanjo.hamann@ebs.edu)

Abstract:
Background: Empirical approaches to legal text-mining – such as Computer-Assisted Legal Linguistics (CAL²) and the “Law as Data” movement – are changing jurisprudence and legal scholarship. Yet, there is increasing concern about the dearth of texts available for such research, both in the US (e.g., Boyd/Kim/Schlarger 2020; Carlson/Livermore/Rockmore 2020; McAlister 2021) and Europe (Coupette/Fleckner 2018; Hamann 2021; 2022).

Research Question: How can court decision coverage be quantified and measured, and what prospects does this suggest for Empirical Legal Studies?

Methodology: Using Germany as an example, I developed a metric to quantify the digital availability of court decisions in relation to reported numbers from official statistics. I compared my metric diachronically by collecting time-series data across all tiers of the judiciary from 1971 through 2019.

Results: I find that despite fifty years of technological progress, German courts today publish no higher a proportion of their rulings than half a century ago: Never has this proportion been higher than 1 in 100, so even legal professionals cannot reliably assess the current state of legal practice.

Conclusion: Our best digital tools cannot help us make sense of a text corpus that is so selective and intransparent. Selection biases are bound to be a major issue, so the legal academy needs to address the problem that only the most exceptional, unusual exemplars of legal disputes are available for research.

3. ‘Wrestling with the suboptimal methodological solutions. Report from an empirical study of judicial empathy in Poland’

Author: Mateusz Stępień (mateusz.stepien@uj.edu.pl)

Abstract:
The paper provides insights raised from the currently conducting project that aims at empirically researching judicial empathy. The employed research protocol contains: (1) the conceptualization phase, (2) conducting intense, in-depth interviews with judges, and (3) performing the focus groups with selected categories of judges. During the designing of the details of each of these phases, the research team faced plenty of (1) terminological, (2) ideological, and (3) technical problems related to the methodology. For example, during designing the interviews with judges we struggled with the basic issue of whether the interviewer should directly appeal to the notion of empathy or judicial empathy or, due to the possible judges’ presupposition against empathy understood as close to compassion, it is better to ask about concrete judicial behavior and judges’ experiences that are relevant to empathy. This report contains plenty of such concrete pre- as well as post-research methodological insights.

4. ‘Empirical Research Methods and the is-ought conundrum: Analysis and reflection’

Author: Rick Maas (r.maas@vu.nl)

Abstract:
With the growing influence of ELS on legal research, the question how conducted empirical research relates to the traditionally normative domain of law becomes relevant. Two examples of legal research in which ELS plays a role are the rise of victim rights and the – in some cases forced – offering of an apology in civil procedures. In the case of victim rights, empirical-legal concepts such as procedural justice and secondary victimisation are used to argue in favour of an increase of victim rights, such as a right to deliver a victim impact statement. In the case of apology laws, psychological research invoked to argue that offering apologies leads to fewer procedures or that a lack of sincerity of the apology does not diminish the apology’s value for the legal procedure.

This paper examines the question how in the examples mentioned above, empirical research findings are translated into legal-
normative recommendations. To answer this question, firstly a qualitative linguistic analysis is provided to show how authors translate empirical findings to legal recommendations in their texts. Secondly, qualitative interviews are conducted with the authors of these texts, to give them the opportunity to reflect on the findings of the analyses and on their research methodology used.

The results of the analyses and interviews show that the is-ought gap is often bridged implicitly instead of explicitly: in many of the analysed articles, authors do not explicitly reflect on the way empirical concepts are translated to normative legal recommendations. However, authors do express strong ideas on a preferred research methodology. On the basis of these results, it is concluded that more explicit reflection on research methodology is advisable. For that purpose, concrete suggestions are given.

Keywords: legal philosophy, legal methodology, victim rights, apology laws, victim impact statements, is-ought gap

F. Corporate Social Responsibility: Shared Responsibility Is No Responsibility? (PA)
Room: BV-1H50

Abstract: The concept of shared responsibility has been put at the forefront of many societal, political and legal debates. The idea of shared responsibility, rather than diffused responsibility, lies at the core of various organizational policies and practices, such as corporate social responsibility, socially responsible HRM and due diligence. There is a widespread assumption that shared responsibility is required to balance the interests of actors in dependency relationships, such as employers and employees, organizational share-and-stakeholders, and actors in a supply chain. However, the practice of shared responsibility is highly complex and raises many fundamental questions – especially when observed from different perspectives. Often, it is unclear what shared responsibility could and should look like, and moreover, how it could and should be achieved. Moreover, the practice of shared responsibility is faced with dynamics that constitute severe obstacles, such as unequal division of power and pluralism of interests. The central question that we want to address is as follows: To what extent is shared responsibility achievable among different actors, and which factors contribute to effectively allocate responsibility? We aim to develop a discussion built on four different empirical-legal studies (all currently being conducted). Throughout the presentation of these studies, three sub-questions will be the common thread:
- Who are the stakeholders?
- What are the interests at stake?
- How (and to what extent) is responsibility regulated (e.g. by law)?

The envisaged goal of this panel discussion is, by integrating multiple perspectives, to gain insight into the mechanisms that require attention and consideration in policy, practice, and study of shared responsibility.

1. ‘The Position of stakeholders (other than shareholders) in Dutch company law’

Author: Alette Jansen (a.c.jansen@law.leidenuniv.nl)

Abstract: More and more, the consensus is starting to emerge that companies have a much broader responsibility than simply generating profit. We need to move towards a new social contract. Thinking in terms of ‘financial gain’ and ‘shareholder value’ must make way for thinking in terms of ‘stakeholders’ (e.g. employees, suppliers, the government and society at large). Nevertheless, most company law systems have traditionally focused on profit generation, with shareholders holding a strong position in company law, and therefore offers no or too little space to pursue social interests.

Although stakeholder-oriented company law systems give room to pursue social interests in itself - since management board members and supervisory board members should not only pursue the interests of shareholders, but of all stakeholders according to their task (pluralism of interest) - practice shows that the shareholders’ interests often still prevail. After all, it is the shareholders who have the legal rights (e.g. appointing and dismissing board members, approval annual accounts) and can therefore exercise significant influence on the company’s strategy.

The question arises why board members do often choose the interests of shareholders when weighting up the different interests and what obstacles they do see when they are not doing so. Results of interviews will give insight into obstacles of company law to considering the interests of other stakeholders than shareholders and what possible reforms in law are necessary to give this more shape. Do stakeholders for example need to have a stronger position in company law next to shareholders (stakeholder participation)?

Keywords: Company law; corporate social responsibility; corporate governance; stakeholder participation; pluralism of interests

2. ‘Supplier codes of conduct: what expectations for multinationals?’

Author: Sarah Vandenbroucke LLM (s.e.m.vandenbroucke@law.leidenuniv.nl)

Abstract: Background.

When drafting supplier codes, multinationals create a set of labor standards to be complied with by their suppliers, with the intention of ensuring decent labor conditions to supply chain workers. A central point of focus in the field of business and human rights is to make sure that multinationals act upon these codes and take a share of responsibility in their implementation, instead of relying solely on suppliers’ compliance. After an analysis of the legal framework of code’s enforcement, we consider that codes may lead to multinationals’ legal accountability only if, at the bare minimum,
expectations for multinationals are formulated in the code. The corpus of codes is crucial in understanding the extent to which multinationals take up a share of responsibility in the implementation of codes. Research questions. To what extent are companies committing to protecting minimum labor standards when drafting codes of conduct?

Methodology. Using automated text analysis on a sample of 901 supplier codes of conduct from multinationals worldwide, this study investigates the formulation of codes’ provisions to describe its content; classify and quantify this textual data.

Results. The study will ultimately give an overview of the content of codes to identify whether they formulate provisions expecting an active engagement from the multinational, or only create expectations for suppliers.

Conclusions. We expect that most codes include minimum labor standards to be complied with, but that few formulate monitoring and implementation mechanisms to be performed by the company, hence limiting the level to which companies endorse their responsibility in codes’ enforcement.

Keywords: Corporate social responsibility; business and human rights; codes of conduct; self-regulation; global supply chain labor conditions.

3. ‘The Responsibility of ‘being a good employer’’

Authors:
• Merel Cornax (m.m.cornax@law.leidenuniv.nl)
• Helen Pluut (h.pluut@law.leidenuniv.nl)

Abstract: Background. The Dutch Civil Code prescribes a general standard for ‘being a good employer’ (‘goed werkgeverschap’, art. 7:611). Whereas the ‘open norm’ leaves room for discussion from different perspectives, it also causes ambiguity and uncertainty regarding the rights and obligations of both employers and employees. Yet social scientific research may inform the development of legislation. Research questions. Who should be responsible? To what extent should care for the psychological, physical, and professional well-being of employees be part of ‘goed werkgeverschap’? How could/should actors be made responsible? Does legislation hold the potential to regulate behavior of employers and employees and lead to ‘better work’? What should be the responsibility? If ‘goed werkgeverschap’ could and should be legislated, what should this look like?

Methodology. Our study systematically reviews the body of empirical social scientific research on organizational factors and aspects of employment relationships that affect (a) the well-being of employees, (b) organizational outcomes, and (c) stakeholders outside the organization. We explore how this body of research can inform the interpretation and development of legislation on ‘goed werkgeverschap’. We also plan to do empirical research ourselves on the above questions, employing a variety of quantitative and qualitative methods.

Conclusions. Examining questions that center around responsibility contributes to further development of a norm on ‘goed werkgeverschap’, which holds the potential to contribute to a healthy and safe work environment in which employees perform better and there is lower absenteeism, presenteeism and turnover.

Key words: Labor law; good employment practices; employer responsibility

4. ‘Pluralism interests in insolvency proceedings: who is responsible for sustainable liquidation?’

Author: Jessie Pool (j.m.w.pool@law.leidenuniv.nl)

Abstract: The emerging field of sustainability is one of the most topical areas of law. In particular in the area of company law, balancing the interests of shareholders (i.e. maximizing profits) and the interests of other stakeholders (e.g. employees, the environment or other societal interests) to promote sustainability has been subject of concern. The need to reform the legal system to promote the interests of all stakeholders has become apparent.

The balancing act between conflicting interests of stakeholders is challenging, even more so in insolvency proceedings. Traditionally, the purpose of insolvency proceedings is to maximize value for creditors. Bankruptcy trustees, therefore, are expected to achieve the highest possible yield at the lowest possible cost. Consequently, legal systems seem to discourage trustees to take other interests into account, because this usually impedes value maximization. Recently, however, trustees are increasingly being confronted with obligations that focus on promoting societal interests, such as cleaning up hazardous waste sites or combatting fraud. Despite these obligations, the traditional purpose of insolvency proceedings has remained unchanged.

As societal interests become more important and more diverse, the question arises how bankruptcy trustees balance the interests of all stakeholders in insolvency procedures.

In this presentation, the speaker will provide insight in how bankruptcy trustees cope with the pluralism of interests in insolvency proceedings based on interviews and a survey study. She will give insight in potential conflicting interests in insolvency proceedings. The presentation will shed light on what fundamental changes in the legal system may be deemed necessary in the near future to promote sustainable liquidation.

Keywords: Insolvency law; corporate social responsibility; pluralism of interests; sustainable liquidation
1. ‘Judicial Networks: A European-level voice for the judiciary in times of rule of law crises?’

Author: Erin Jackson (e.e.jackson@uu.nl)

Abstract:
Rule of law backsliding in Member States of the EU has spurred European-level institutions to denounce interference with the judiciary and demand restoration of judicial independence. Through the European courts, legislation introduced in Poland as part of judicial reforms have been assessed in lieu of the right to fair trial (Article 6 ECHR) as well as in terms of European values (Article 2 TEU). But is there a European-level voice for the judiciary outside of the courts? And what collective action, if any, have European judges taken to quell rule of law crises and speak up for national judges under pressure? Beyond the Luxembourg and Strasbourg courts, and the cross-referral of national courts, the potential for a European-level judicial voice exists at the European level as part of cooperation among judges and judicial institutions (such as Councils for the Judiciary) in judicial networks. Such networks facilitate internal dialogue on judicial functions and lead to the creation of documents for European-wide guidance and standard setting. In light of Poland and other rule of law crises, they also serve an emerging external function. Networks release statements to express solidarity with their fellow judges and to reinforce the shared values on which their work is based. This paper uses in-depth semi-structured interviews with European network participants and leaders, participation observation of high-level network meetings and document analysis to investigate the response of three judicial networks to the continuing rule of law crisis in Poland. It compares the stance taken by each network and concludes that there is an evolving ‘network of networks’ that is well placed to gather informal information and show solidarity at the European level, however with several notable limitations.

2. ‘The Impact of the Digital Content Directive on Online Platforms’ Terms of Service’

Authors:
• Katarzyna Wiśniewska (kat.wisniewska@doctoral.uj.edu.pl)
• Przemysław Pałka (przemyslaw1.palka@uj.edu.pl)

Abstract:
On January 1, 2022, the Digital Content Directive became applicable. This project aims to verify, by conducting an empirical analysis of online platforms’ terms of service, to what extent the Directive has genuinely influenced market practices and improved consumer protection.

This project aims to answer the following questions: what kind of provisions are stipulated in various terms of service, what kinds of activities do corporations engage in while trying to circumvent the consumer protection requirements, and what is the place of these activities in the broader context of the digital market?

The project follows an interdisciplinary approach, combining doctrinal analysis of the Digital Content Directive with qualitative and quantitative analysis of one hundred terms of service of online platforms, representing fifteen sectors and four legal environments, as well as normative evaluation of both the state of the market and the Directive itself.

The hypothesis is that the introduction of the Directive has not effectively tackled the problems of provisions’ vague formulation and the practice of giving more rights to service providers while not allowing consumers to make use of the measures provided for them in the EU law. The contribution of the piece will be twofold. On the one hand, by pairing the doctrinal analysis with empirical studies, it adds to the state of knowledge about the normative environment governing online consumer relations. On the other, by demonstrating where the Directive came short of realising its aims, it provides insights for policymakers and normative scholars of the EU consumer law.

3. ‘Mixed-methods: Overcoming limitations of empirical research in the study of compliance with the European Court of Human Rights judgements in Slovenia and Hungary’

Author: Ula Aleksandra Kos (ula.kos@jur.ku.dk)

Abstract:
Background: Whilst quantitative methods bring an intriguing new approach to compliance studies, they may – due to socio-political embeddedness of law – narrate unreliable conclusions. For example, a statistical analysis of Hungary’s ECtHR judgements shows a striking peak in closed cases in 2017. A deeper look, however, uncovers that this was in fact a consequence of optimising the supervision process. Quantitative methods may also fall short in explaining a phenomenon, such as Slovenia’s closing of more than 70% of its caseload in 2016, where only the interviews finally uncover a personal engagement of a particular Minister in transforming Slovenia’s implementation apparatus. Equally, employing merely qualitative methods may lack objectivity and can be difficult to replicate. In this context, mixed-methods seem to offer a solution.

Research questions:
Why do states (fail to) comply with ECtHR judgments?

Methodology:
First, I statistically analyse (using e.g. regression, survival analysis) all adverse ECtHR judgments against the two states, extracted from HUDOC. Second, I analyse documents that were submitted internationally (e.g. all documentation submitted in the supervision process) and domestically (Parliamentary discussions, media reports,
scholarly work, etc.). Third, I test and complement the results with semi-structured interviews with domestic participants in the execution of ECtHR judgments.

Results:
Mixing the two methods overcomes their individual limitations and comprehensively explains state behaviour.

Conclusions:
Although a solely quantitative analysis can—particularly in natural sciences—offer reliable results, the qualitatively-oriented legal studies until recently avoided it. Yet, if applied simultaneously, the two methods prove to be a valuable tool for studying compliance.

4. ‘The Blind Spots of ECtHR Compliance Data: Empirical Lessons from Denmark and Norway’

Author: Aysel Küçüksu
(aysel.eybil.kucuksu@jur.ku.dk)

Abstract:
When it comes to compliance with the adverse judgments of the European Court of Human Rights (ECtHR), scholarly interest has overwhelmingly focused on states that have trouble in that department. Yet, with half of the Court’s leading judgments from the past ten years remaining unenforced, the time is nigh for a change of focus. Directing the spotlight to Denmark and Norway—two states that have led the statistics on compliance with ECtHR decisions—this research seeks to uncover the secrets to successful and prompt compliance. To do so, it employs a mixed-method study of quantitative and qualitative compliance and implementation data from both the domestic and the international levels. Whilst offering valuable clues as to what nudging other states in the right(s) direction could look like, Denmark and Norway’s case studies also help highlight the blind spots of using compliance data as a proxy for representing the human rights’ sentiments of states with good a international reputation.

Research questions:
What can we learn about compliance from in-depth studies of “good complier” states? How do mixed method studies nuance the idea of “good” and “bad” compliers?

Methodology:
I employ a mixed-methods approach. I study the quantitative data on all adverse judgments against Denmark and Norway, extracted from HUDOC. I analyse the documentation related to each adverse judgment on the international (e.g. Action Plans and Action Reports submitted to the Committee of Ministers during the supervision process) and the domestic (e.g. parliamentary discussions and media reports) levels. I triangulate my findings by undertaking semi-structured interviews with international and domestic actors that are relevant to ECtHR judgment implementation.

Results:
There are lessons to be learnt from studying Denmark and Norway’s compliance strategies. Diving into their domestic compliance architectures also reveals that there are also blind spots to the internationally available compliance data which allows for ranking Council of Europe member states according to their “compliance” records. Neither Denmark nor Norway represent straightforward cases of “good compliers”, with each one’s good reputation eclipsing diverse domestic dynamics that significantly nuance that narrative.

Keywords: compliance, implementation, human rights, European Court of Human Rights, Denmark, Norway

5. ‘Human Rights Protection under EU Criminal Law’

Authors:
• Sophie van’t Klooster (s.a.a.vant.klooster@vu.nl)
• Sanne S. Buisman (s.s.buisman@vu.nl)

Abstract:
Since the Lisbon Treaty, European Union law, more specifically European criminal law, has been used for normative integration, aimed at the purposes described in art. 2 TFEU. Art. 83 TFEU provides the basis for harmonising national criminal laws, by adopting minimum rules by means of directives. We argue that, in line with this normative integration, EU criminal law could be used to protect the rights and principles set out in the EU Charter of Fundamental Rights. We will conduct research to illustrate that this further normative integration through EU criminal law is already visible in EU legislation since the enactment of the EU Charter as EU primary law in 2009. Qualitative and quantitative research will be conducted into existing and proposed directives which harmonise aspects of substantive criminal law in order to appreciate the scale on which normative integration is happening. The EU lex database will be searched on the following terms: “art. 83 TFEU”, criminal law, Directives and COM documents from 2009-2022. We will analyse the dataset on the implicit and explicit use of criminal law to protect the rights and principles of the EU Charter.

We expect the preliminary results to show an increase in the use of EU criminal law to protect the rights and principles as enshrined in the EU Charter. Our conclusion will consequently be that there is a greater normative integration of criminal law on EU level.

Keywords: EU criminal law, human rights protection, normative integration

H. Comparative Law
Room: BV-1H26

1. ‘Social exclusion and legal safeguards: Application of the RIMES instrument’

Author: Bertha Prado
(bprado@uma.es)

Abstract:
Comparative criminal policy studies usually analyse penal intervention based on its greater or lesser punitivism. With the intention of enriching the debate in this area of
knowledge, the welfarist penal model proposes to evaluate the effects of penal intervention through the social inclusion/social exclusion dimension. This analytical dimension has been developed from its social exclusionary perspective, which seeks to identify the exclusionary effect that the penal intervention produces on suspected, prosecuted, convicted and ex-convicted persons. To do that, we apply the RIMES, a political-criminal instrument validated to measure the social exclusion of punitive rules and practices included in nine pools or dimensions of the penal system, with the ultimate purpose of creating a continuum of socially exclusive penal systems. The aim of this presentation is to discuss the results obtained in the pool of legal safeguards after the application of the RIMES instrument in six jurisdictions: four European (Spain, England and Wales, Italy, and Poland), and two American (New York, California).

Keywords: RIMES, social exclusion, criminal justice system, legal safeguards, criminal policy

2. ‘Abuse of Rights: A comparative Empirical-Legal Study’

Author: Emanuel van Dongen (e.g.d.vandongen@uu.nl)

Abstract:
Sometimes people who have rights take advantage thereof and use them excessively, in ways that are harmful to others. Most current continental legal systems provide that absolute rights - e.g., the right to do whatever one wishes with their own property - do not entitle anyone to harm others. This is called ‘abuse of rights’. However, the exact limits of the use of rights are different in various European jurisdictions. One wonders whether this is related to differences in culture.

My research question is: What role does the cultural factor of abuse of rights play, taking different current views on philosophies of ethics into account? My preliminary hypothesis is that, considering the differences mentioned by Hofstede (1980), cultural factors will lead to different outcomes.

I will compare the legal solutions to abuse of rights in Italy, Germany, the Netherlands and the UK in three areas of law (contractual obligations, property rights and procedural law). As a rule, in order to be effective, a rule must represent the ideas of society. Therefore, current societal views are compared with the actual legal boundaries of ‘abuse of rights’.

To study these views I designed a vignette study: one scenario for each area of law. In order to measure views on abusive behaviour, I used an adapted form of the Multidimensional Ethics Scale (Reidenbach/Robin 1990) containing dimensions of culture, duty and morals. In my presentation I present the outcomes of the comparative study, the methodology and the preliminary (pilot) results of the vignette study.

Keywords: Abuse of rights, property law, civil procedure, contract law

3. ‘The role of causality in comparative legal research and the use of qualitative comparative analysis (QCA)’

Authors:
• Lidia Bonifati (lidia.bonifati@uantwerpen.be)
• Alberto Nicotina (alberto.nicotina@uantwerpen.be)

Abstract:
Background
In the last century, comparative legal research has become rather popular among legal scholars. However, the lack of a precisely defined comparative method is widely acknowledged in literature, and comparative inquiries seem unable to deal with causal assessments. Recently, empirical legal methods are gaining traction in legal scholarship, and researchers have started to carry out causality studies through both quantitative and qualitative methods. Our contribution focuses on Qualitative Comparative Analysis (QCA), in our view the most fitting method for exploring causality in the legal field.

Keywords: Comparative constitutional law, Qualitative comparative analysis, Causality, Comparative method, Methodology

4. ‘Professional versus retail investors: A need for an intermediate category?’

Author: Mariia Domina (mariia.domina-repiquet@univ-lorraine.fr)

Abstract:
Background. EU financial markets law divides investors into two categories: professional and retail clients. The regulatory law protection of these two groups differs significantly. EU policymakers assume that professional investors have necessary knowledge and experience to invest in volatile assets. As such, the obligations of financial services providers (“FSP”) are limited to the duty of care mainly. In contrast, when retail investors are
involved, FSP need to comply, amongst others, with an obligation to “know your customer”, i.e. advise on the appropriate investment products based on the risk-taking profile of retail clients. Yet, retail investors may elect to be treated as professional ones to have access to more sophisticated types of investment. This implies that they will no longer benefit from the different mechanisms of protection offered to retail clients.

Research question. Does the binary division of investors in EU financial markets law – professional and retail – corresponds to the market’s realities? Should an intermediate category of investors be introduced in EU law?

Methodology. We use the methods of behavioural theory and comparative legal analysis. By analysing cases involving retail clients that elect to be treated as professional (the UK, France and Luxembourg) we strive to evaluate whether they make rational investment choices that correspond to their risk-aversion profile.

Results. Binary division of investors in EU law does not allow for a sufficient protection of those retail investors that are assimilated to professional ones.

Conclusions. A third category of investors should be introduced in EU law to offer a higher level of protection as compared to professional clients.

Key words: financial markets law, comparative law, EU law

5. ‘Unmobilized rights. Explaining the absence of EU litigation for migrant rights’

Author: Virginia Passalacqua (v.passalacqua@uu.nl)

Abstract:

Background: The EU Court of Justice (ECJ) is increasingly central to the interpretation and enforcement of migrant rights in Europe. Having understood this, cause lawyers, social movements, and NGOs often rely on EU litigation to challenge national anti-migration policies. However, cases of supranational litigation come prominently from the same few countries, while nine Member States have never mobilized the rights of migrants before the ECJ.

Research questions: How can we account for this absence? What factors hamper legal mobilization before the ECJ?

Methodology: To answer these questions, this research engages in qualitative research of two EU countries (Greece and Poland) where the EU rights of migrants remained “unmobilised”. By drawing on theories on EU judicial politics and legal mobilization, this paper investigates whether the absence of EU litigation can be explained by a lack of mobilizing actors or by factors external to these actors that prevent them from effectively mobilizing the law. I will therefore test two alternative hypotheses: i) pro-migrant movements are missing or lacking essential resources for legal mobilization; ii) the “legal opportunity structure” is close, meaning for instance that there are obstacles in access to courts.

Conclusion: Non-mobilization is understudied in the legal mobilization field due, in part, to a selection bias: scholars tend to focus on successful cases of courts-induced social change, disregarding instances in which groups fail to bring claims against their government. By closely studying EU countries that experienced immigration but lack preliminary references in their support, this research deepens our understanding of the role and limits of civil society in contexts where minorities’ rights and the rule of law are under threat.

Social Sciences and is currently Director of the Centro Crímina as well as President of the Spanish Society of Criminology. He began his career in the field of Criminal Law studying the response of the penal system to new technological developments and from there he moved on to criminology. Although in the Anglo-Saxon international arena he is especially known for his criminological work related to the interaction between crime and technology, he has always maintained his dedication to criminal law and in the Hispanic sphere he is especially recognized for being one of the promoters, together with his collaborators in the Crímina center, of the adoption of an empirical perspective in the study of criminal law and criminal policy. Among other issues, he has analyzed, from a theoretical perspective, the significance and relevance of “the empirical” for criminal justice, but he has also launched multiple empirical research, especially quantitative research on various topics such as economic crime, road crime, cybercrime, disinformation or artificial intelligence in the criminal justice system, among others


Abstract:

In a context where the academic study of law focuses almost exclusively on normative analysis on how criminal law should be interpreted, the prevalence, scope and typology of other studies carried out with empirical methodologies will be presented and will reflect on the causes of this shortage in the past and the current growing trend. In doing so, we will focus on academic legal studies in Spain, and describe the state of the art based on an empirical review of all articles published in Spanish criminal law journals and on an analytical study of the characteristics of those papers that use empirical methodologies. This will be contrasted with the possibilities offered by the discipline of “empirical legal studies” to raise both a reflection on the difficulties
for empirical legal research in Spain and on the enormous possibilities that this approach offers to improve the study of law.

Urska Sadel

Urska Sadel is a full-time Professor at the department of law of the European University Institute in Florence. Her primary research interests include the empirical study of European Courts and their jurisprudence.

Title Keynote:
MORE LESLAW

Abstract:
In this keynote, I would like to propose a research agenda for a legal empirical study of law – LES LAW. LES LAW is characterized by asking legal questions and using empirical methods calibrated to answer them. It is an endeavor which treats law as a point of departure rather than as a final destination.

I plan to lay out concepts and methods (an analytical framework) for a systematic and legally informative analysis of context-conscious judging. The term refers to the mode of judicial decision making that seeks to reconcile legal rules with extra-legal demands, at times resulting in discreet judgments. Discreet judgments are a signal that a court might be avoiding a forthright ruling potentially creating an unpopular precedent or frustrating vital interests of a powerful party. The main observable trait of such judgments is an asymmetry in the justification, arising between the final decision about the legal claim (the ruling), the meaning of the rule (the interpretation), and the terms of its application (the precedential scope). These judgments can thus be studied systematically as departures from the typical structure of rational justification, suggesting that courts are trying to uphold conflicting claims or protect competing interests. Finally, I will demonstrate the application of the framework on a selection of judgments of the Court of Justice of the European Union.

13:45-15:15/Panel Sessions

IV

A. Judicial Decision-Making 4 Room: IN-3B44

1. ‘Public perception of Judicial Impartiality: Evidence from a Survey experiment’

Authors:
• Aylin Aydin-Cakir (a.aydincakir@vu.nl)
• Amanda Discoll(adriscoll.fsu@gmail.com)

Abstract:
With the global rise of populism, we often witness that right-wing populist parties verbally attack judges for being corrupt, biased, or political. Usually, these verbal attacks target the ascriptive traits of the judges (i.e., ethnic origin, race, religion, or gender). However, we do not know much about how the demographic characteristics of the judges affect the citizens’ perception of judicial impartiality. Focusing on the gender and ethnic origin of the judges, in this study, we aim to understand under which conditions European citizens think that female and ethnic minority (non-European) judges will be biased and whether this will differ from their perception of European male judges. We argue that individual-level characteristics of the respondents (education, gender, political ideology) and case-level characteristics will moderate the effect of the identity of judges on the respondents’ perception of impartiality.

Keywords: Public opinion, judicial impartiality, immigration, ethnic minority, survey-experiment

2. ‘Does it matter which judge handles your case?’

Author: Elke Olthuis (e.h.olthuis@uva.nl)

Abstract:
Early 2021 the Netherlands saw a wave of riots due to the Covid-19 imposed curfew, which also led to a wave of arrests. The Dutch Council for the Judiciary stated that judges deciding these cases were trying to ensure unity of law, however, there were differences in sentencing. For example, judges gave different weight to similar personal circumstances, such as ADHD (Driessen, 2021). This implies that differences might be more present among judges than unity. Which gives rise to the question whether a different judge – or a different panel of judges – would have come to a different decision when deciding in the same case. Judges are expected to be unbiased, to be impartial (at 2.1 Bangalore Principles of Judicial Conduct) and expected to steer away from arbitrariness (para. 1.1; 2.2 NVV(rechtscode)). The question is, however, whether it matters in practice for litigating parties which judge (or panel of judges) handles their case. Semi-structured interviews with 78 judges from all areas of law at three courts of first instance in the Netherlands reveal that all of them think it does matter which judge (or panel of judges) handles the case. Differences brought forward by participants relate to (perceived) procedural justice, obtained information during a hearing and the outcome. Some judges see these differences as problematic, some see them as valuable and some see them as inevitable. The place for these differences, the role personal attitudes play and how it affects impartiality is discussed in this paper.

Keywords: professional judicial decision-making, personal attitudes,
3. ‘Judicial independence and judge tenure: a mixed methods empirical study’

Authors:
• Helga Molbæk-Steensig (helga.molbaek-steensig@eui.eu)
• Alexandre Quemy (alexandre.quemy@gmail.com)

Abstract:
Judges are supposed to be impartial, making their decisions based solely on the law. Conventional wisdom suggests that judicial independence is necessary to secure this impartiality, and that independence in turn is best secured by insulating the judge’s decisions from his or her job security through secure salaries and lifelong or at least non-renewable tenures. At the European Court of Human Rights (ECtHR), judge tenures were amended in 2010 from renewable six-year terms to non-renewable nine-year terms, explicitly to secure judicial independence. This paper asks whether the change from renewable to non-renewable, but still not lifelong tenures is enough to change judicial behaviour? There have been other empirical studies focused on judicial behaviour at the ECtHR, but they have generally focused on the votes of judges to a greater extent than their arguments, which shows only part of the picture of a Court which is still developing its jurisprudential doctrines. This paper therefore applies a mixed quantitative and qualitative study of human rights judges’ separate opinions in cases against their appointing states to discover whether the voting patterns or the arguments have changed with the 2010 change to the length of judge tenures. The relevant opinions have been found using the ECtHR-OD-project’s Machine Learning algorithms, and the analysis relies on a mix of qualitative coding and doctrinal analysis. It finds that judge behaviour has changed, and that judges have increased both their general tendency to write separate opinions in cases against their appointing states as well as the number of opinions criticising their home states. It also discovers however that the most common type of separate opinion remains the conscientious type which aims to get the judgment ‘just right’ rather than addressing which state the case is against.

4. ‘Synergy or competition? Case heterogeneity and judicial performance in Polish first-instance courts’

Authors:
• Jarek Beldowski (jbledowski@yahoo.com)
• Lukasz Dabros
• Wiktor Wojciechowski

Abstract:
In this study, we use data on Polish civil and commercial courts of first instance to examine the determinants of the number of cases they adjudicate. We draw particular attention to the problem of the heterogeneity of cases on the court docket - both types of Polish courts hear different types of cases. Using panel models, we test whether this variation promotes court performance (as measured by the number of cases adjudicated) or, on the contrary, reduces it. Our results show that synergies between different types of cases can occur for civil courts, but in commercial courts heterogeneity has a negative impact on court performance. Based on the results obtained, recommendations can be put forward for the optimal organisation of the justice system.

Keywords: judicial performance, fixed effect panel models, case heterogeneity.

5. ‘The role of a Judge’s Professional Experience and Gender in Decision-Making’

Authors:
• Jonathan Hasson (jon1303@gmail.com)
• Oren Gazal-Ayal

Abstract:
Extra-legal factors can affect not only the verdict or arrest, but any judicial decision in exclusionary rule hearings. Despite the importance of interim decisions in protecting human rights, deterring state misconduct, and promoting equality, their study in the literature has been limited. We filled this gap by testing the effect of legal and extra-legal factors on four different case processing outcomes in criminal cases decided in Israeli trial courts from 2006 to 2021 (N=689 cases). Mixed-effects logistic regressions and structural equation models were applied to identify the variables affecting an outcome of exclusion of evidence, breach of rights, acquittal and scolding of the authorities. We found that judges’ gender and occupational experience (both number of years and type of profession) directly affect case outcomes and how they write legal decisions. First, former public defenders and private criminal defense attorneys are more lenient than former prosecutors, while judges who were both were right in the middle between these groups. Second, former law clerks were more likely to determine that breaches occurred and exclude evidence than former prosecutors, though the direct effect is non-significant when certain mediator variables are introduced. Third, female judges tended to be harsher than males. A second study utilizing a dataset of 231 Israeli judicial decisions of a different evidentiary rule (exclusion of confessions) affirmed these results. Our findings are important for research on the judicial selection process considering last century’s efforts to diversify the Israeli judiciary.

Key Words: Judicial Decision-Making; Exclusionary Rule; Cognitive Biases; Gender; Empirical Legal Studies.

C. The Police Interview of Suspects with Intellectual Disability (PA)
Room: IN-3B39

Abstract:
In this panel, research on key-concepts regarding (mild and borderline) intellectual disabilities in police interviews are discussed from a research- and practical perspective. Teeuwen provides insights into the underlying causes of the overrepresentation and recidivism of persons with intellectual disability in the criminal justice system, based on a life-course study. Despite their high...
Research questions. Until now, it was unknown what consequences contacts with the criminal justice system might have on the life-course of persons with MID. Therefore, the NSCR carried out a ‘MID Life-Course’ study (2020), a follow-up study on ‘Verraderlijk Gewoon’ (Teeuwen, 2012).

Methodology. Information was collected on the period 2009-2018 from five different sources: 1) Judicial Documentation (JD; N = 116); 2) Personal Data Base Registration (N = 107) and 3) Probation files of three probation organizations (N = 72).

Results. Based on JD-registrations, this study showed that two-thirds of the research population reoffended. Therefore, one of the goals of criminal law – to prevent recidivism – appears to be unattained for two-thirds of the research group. Causes of (re-)offending are discussed.

Conclusion. This life-course study showed an imbalance between the government’s ‘assignment’ to make persons with MID participate in society, their desired autonomy, and what this group is actually able to do. We see indications of a possible connection between contacts with the criminal justice system and an increase in multi-problems. All in all, the research results raise the question of whether criminal law is the most appropriate route for the MID-suspect.

Keywords Empirical sociology of law
Mild intellectual disability, Life-course study, Recidivism

1. ‘Persons with mild intellectual disability and crime: Life-course and recidivism’

Author: Marigo Teeuwen
(MTeeuwen@nsr.nl)

Abstract:
Background. Over the past decade, an overrepresentation of mild intellectually disabled (MID) people in the criminal justice system has been regularly pointed out, both by professionals in the criminal justice system as policymakers and scientists. Previous research shows a prevalence rate of 30 - 50%. This percentage increases among recidivists.

Keywords Legal Psychology, Suspects with mild and borderline, intellectual disabilities, Life-course, Screening, Police interviewing methods and techniques

2. ‘The Importance of Recognizing Mild Intellectual Disabilities by Police- and Justice Officials’

Author: Xavier Moonen
(x.m.h.moonen@uva.nl)

Abstract:
Background. It is not easy for police- and justice officials to recognize a person’s mild intellectual disability. But early recognition is of the utmost importance. Research shows that when in police interviews the mild intellectual disabilities are not taken into account, a person, because of the special characteristics associated with the disability, is at risk to not fully understand questions and the consequences of declarations. This can lead to self-incrimination and wrong convictions.

Research questions. How can police- and justice officials recognize a person’s mild intellectual disability and what characteristics associated with mild intellectual disabilities are especially important to recognize by police- and justice officials?

Methodology. Research into 2 screeners to quickly recognize a person’s mild intellectual disability (SCIL (Screener on intelligence and mild intellectual disabilities) and SCAF (Screener on adaptive function)) will be presented as well as research regarding key-concepts of mild intellectual disabilities which are important in police interviews.

Results/ conclusion. Research shows that SCIL and SCAF are valid instruments to quickly detect a person’s mild intellectual disability by not specially trained professions and that using SCIL and SCAF together shows even better results. Furthermore research shows a variety of key-concepts regarding mild intellectual disabilities that are essential in police interviews.

Keywords Mild intellectual disabilities, Police interview, Screening

3. ‘Obtaining (in)accurate information from intellectually disabled suspects’

Author: Robin Kranendonk
(p.r.kranendonk@vu.nl)

Abstract:
Background. A large proportion of unreliable statements in police interviews are made by suspects with intellectual disability. Little is known about the way this vulnerable group is interviewed by the police. Certain high-risk and protective factors may influence the content and accuracy of their statements. Knowledge on these techniques is therefore of great importance in order to obtain more
detailed and accurate information and to increase the suspects’ willingness to declare. Research questions. To what extent do high-risk and protective interviewing techniques used by the Dutch police influence the content and accuracy of statements made by intellectually disabled suspects?

Methodology. Through 53 interviews with experts on intellectual disability and practitioners in the criminal justice system, the question as to how this group should be interviewed was explored. These results were linked to the current interview practice, by analyzing 92 audio(visual) recordings of Dutch police interviews. By identifying both high-risk and protective factors occurring in police interviews, the influence of used interviewing techniques on the content of suspects’ statements was examined.

Results. Respondents indicated a variety of connections between applied techniques and the subsequent type of suspect statement. There is little awareness of possible vulnerabilities, especially in common crime interviews where due to time pressure and a lack of education a more risky approach is utilized, sometimes well-intended.

Conclusion. Responding to the person and needs of intellectually disabled suspects requires a tailored approach, which seems to be essential in the context of information gathering. This requires awareness and knowledge.

Keywords
Legal psychology, Mild and borderline intellectual disability, Interviewing methods and techniques, Accurate statements, False confessions

4. ‘Educating police interviewers in interviewing intellectually disabled suspects’

Author: Imke Rispens (Imke.rispens@politieacademie.nl)

Abstract:
While registration of citizens has been a key prerogative of modern states, the former have become increasingly vocal in demanding that such registration matches their self-ascribed identity. This movement in favour of autonomy has grown in parallel with the involvement of states in their citizens’ lives in the form of imposing duties as well as in providing services. The movement has been quite successful: during the past decades many countries have provided more freedom to their citizens in this matter, in particular acknowledging their right to determine themselves what state documents say about their belief and/or their gender. However, most states continue to set certain limits to such freedom in the form of conditions or obligatory categories, and interest groups have continued to mobilise against such limits.

The paper discusses how adherents of non-recognised religions in Indonesia have tried to promote this cause and compares this with the advocacy of trans-people in Europe. It finds remarkable similarities in how these activists have operated, in how states have initially resisted their claims to later become more amenable, and in the role courts have played. We argue that despite the different contexts, the similarity in legal repertoire, legal reasoning and legal institutions has favoured such convergence in outcomes. However, an important difference is that in Indonesia resistance has continued at the level of those who have to implement the law, demonstrating the greater fragmentation of the state bureaucracy. Likewise, at present a similar development regarding gender seems impossible in Indonesia, despite its originally rich tradition of gender fluidity.

Keywords: legal identity, legal mobilisation, gender, religion, human rights

2. ‘We are here, we don’t fear’ - Feminism and violence against women in Turkey from a secular, Turkish-, Kurdish- and Islamic feminist standpoint’

Author: Sofie Karlsson (sofie.ida.leidenuniv.nl)
Abstract: In March 2021 Turkey announced that they are withdrawing from the Istanbul convention (BBC, 2021). Ten years prior, in 2011, Turkey signed the convention as a result of feminist legal mobilization (Altan-Ocay & Oder, 2021). The feminist movement in Turkey is divided but what unites feminists is the objective of ending violence against women which is an acute and extensive issue. Hence, the following research questions are interesting to answer:

- How is feminism in Turkey constituted and what challenges does different feminists face under the ruling AKP party?
- How does secular Turkish-, Kurdish- and Islamic feminists experience and mobilize against violence against women?

These questions have been investigated in a field study through interviews and observations. The key results and conclusions is as follows:

- History is repeating itself in terms of the Turkish state enforcing state feminism and prohibit independent women’s right movements.
- There is a discrepancy between the secular Turkish legal system and legal culture which is influenced by patriarchal readings of Islam. This entails struggles in for example cases of violence against women. Turkey’s withdrawal from the Istanbul convention has affected women’s situations negatively. More women are disappearing, getting subjected to violence and murdered while the legal framework is weakening.
- Secular Turkish, Kurdish and Islamic feminism has different approaches to feminist issues but unite in the objective of ending violence against women.

Key words: Feminism, violence against women, Turkey, legal culture, legal mobilization

E. Barriers in/to Empirical Legal Studies (PA)

Room: IN-3B50
Panel conveners: Tasniem Anwar, Anna Goldberg
Panel moderator: Joke Harte
Theme of the panel: Reflecting on methodological and practical difficulties when conducting empirical legal research

Abstract: The popularity of Empirical Legal Research (ELR) is on the rise, and increasingly (legal) scholars turn to empirical research to provide additional perspectives and findings to traditional legal studies. At the same time, empirical legal scholars are often faced with barriers, methodological challenges and limitations when conducting research. Access to legal sites might be disrupted, delayed or impossible. Researchers may face issues of secrecy or distrust from respondents, and access to information might not always be a linear process. Furthermore, scholars might face difficulties or challenges translating their empirical findings to more normative or theoretical contributions. Precisely due to the novelty of the discipline, there has been limited engagement among ELR scholars on these methodological challenges. This panel brings together empirical legal scholars to share their fieldwork experiences and methodological practices. The aim is to create an interactive and reflective panel where researchers can discuss how to engage methodologically and ethically with disruptions and barriers during their empirical research. Furthermore, our interdisciplinary approach invites attendees from different disciplines to exchange methodological designs common to their area of expertise. Overall, we aim to formulate practical solutions to these barriers, as well as contribute to the emerging methodological debates within empirical legal studies.

1. ‘Challenges in Empirical Legal Research: Bridging the Normative and Empirical’

Panel moderator: Joke Harte
Theme of the panel: Reflecting on methodological and practical difficulties when conducting empirical legal research

Abstract: The rise of Empirical Legal Research (ELR) reflects a shift in legal scholarship from being a predominantly normative discipline focused on ‘law in the books’ towards a discipline that also engages in empirical approaches to study ‘law in action’. This shift in legal scholarship brings along opportunities to further our understanding of how the law operates in practice, but also comes with conceptual, methodological and practical challenges. Informed by my experiences conducting qualitative empirical research – observations and interviews – in youth courts in the Netherlands and the UK and participating in research collaborations with scholars from law, criminology and psychology, this paper discusses three key challenges in conducting empirical legal research. The paper first addresses the challenge of how to gain access to your research site and how to present and position yourself as a researcher during fieldwork in, for example, a court of law. Thirdly, the paper touches upon the fundamental question if, when and how empirical findings can be ‘translated’ into normative positions and recommendations on how the law ought to be. Ultimately, this paper shares ideas and experiences as to how to address these challenges and aims to open the floor for debate.

2. ‘On Ethical and Practical Challenges of Engaging/Researching Legal Professionals’

Author: Gabriéel Chlevickaitė (g.chlevickaite@vu.nl)

Abstract: Successful Empirical Legal Research necessitates sufficient access to legal sites, raising questions of available jurisprudence, as well as availability of practitioners as respondents. While confidentiality of legal decisions is relatively
unchallenged, the confidentiality of individuals making those decisions is a more complex matter. On the one hand, relying on jurisprudence to make empirical conclusions about legal decision-making, without involving practitioners in providing potential (invisible) explanations, might produce findings that are, at best, incomplete, and, at worst, unfair to the legal practice. On the other hand, practitioners have strict limitations regarding their involvement in research projects, and the extent to which they can comment on legal developments is restricted. This creates a dichotomy between researchers, confined to jurisprudence out of necessity, and practitioners, who might feel that their work is criticised unfairly. In this presentation, the author reflects on experiences in conducting a vignette study with practitioners of international criminal justice during the Covid-19 pandemic, reflecting on the ethical and practical challenges inherent to this work.


Author: Tasniem Anwar (t.anwar2@vu.nl)

Abstract
Conducting empirical legal research attunes researchers to the importance of studying how the law is done in practice. It therefore provides important insights into daily legal dilemma’s, developments of new legislation, and the materiality of the law. Indeed, in the field of counterterrorism, methods such as court room observations have gained more prominent attention as a tool for empirical legal research. Nevertheless, there is little discussion among empirical legal scholars how to deal with the methodological challenges of doing court room observations and interviews on legal developments that are highly sensitive and securitized. In this paper, I discuss the methodological challenges that arise from studying court cases and legal developments related to counterterrorism. I elaborate specifically on issues of secrecy and access, centering on the question: ‘What are methodological tools and reflections for conducting empirical legal research in areas characterized by secrecy and security?’ Drawing from critical security studies and socio-legal studies, the paper proposes methodological reflections on how to navigate enclosed or secretive environments as a legal researcher. Empirically, the paper builds on four years of fieldwork in several European countries on counter-terrorism trials and legislation, including interviews with legal practitioners, court room observations and expert meetings. From this empirical data, I formulate concrete tools and reflections that are useful for empirical legal scholars who conduct research in secretive and securitized legal sites.

4. ‘Empirical Research and Legal Research: An Unhappy Marriage?’

Author: Anna Privaty (anna.pivaty@ru.nl)

Abstract:
This presentation will focus on the challenges of situating results of empirical research, and particularly research using qualitative methods (participant observations, qualitative interviews) within the normative context of the law. The following challenges will be discussed: a) those related to competing research paradigms; b) those related to differing research objectives; and c) those related to the different framing of theory. Whilst law traditionally gravitates towards a ‘positivist’ research paradigm, where ‘representativeness’ and ‘objectivity’ are of crucial importance, qualitative research gravitates towards an ‘interpretivist’ paradigm where the goal of achieving ‘representativeness’ is subdued to the goal of achieving nuanced understanding and authentic expression of meaning. Secondly, empirical research and particularly qualitative research may be ill-fitted to achieve the objectives of legal research in its ‘traditional’ meaning, namely informing ‘what the law regulating a certain issue should be’. The concepts of ‘theory and ‘theoretical framework’ are also conceived of differently in qualitative research and legal studies. The author will argue, on the example of her own socio-legal research and other similar research, that these differences can reconcile with: a) adoption of a particular (realist) research paradigm; and b) revisiting the ‘traditional’ objectives of legal research.

5. ‘Embedding Empirical Results into the Normative Reality of the Law’

Author: Anna Goldberg (a.e.goldberg@vu.nl)

Abstract:
Traditional legal research has a strong tradition of case law analysis. Empirical Legal Studies (ELS) scholars have been interested in quantifying case law, and empirical designs are seen to add to — or sometimes even replace — more traditional methods. A discussion on the added benefits and the potential limitations of this methodological shift is necessary. Specifically, this paper addresses challenges that underlie the empirical and quantitative assessment of case law: practically, as well as fundamentally. Practically, this results in a discussion on, amongst others, the categorization of case law elements into demarcated variables. Theoretically, this paper addresses the necessity thereof and the consequences of reducing complex normative arguments into quantifiable bits of data. What do the practical challenges to conducting empirical case law research imply for the more fundamental role of empirical methods in traditional legal research? This research question is addressed by discussing a quantitative research design employed to study 70 criminal cases and the challenges that arose therein. These findings are consequently applied onto the underlying and principal discussion regarding the relevance of ELS to normative legal research. The paper contends that although ELSinspired designs add insights that could not have been achieved without empiricism, the danger lies in reductionism and a simplification of complex legal matters, overlooking the nuances that courts make.
F. European Consumer Protection 2.0 (PA)
Room: IN-3B45

Abstract:
The modern consumer market, influenced by digitalization, platformisation and sustainability demands a reassessment of existing consumer regulation. An empirical-legal deep-dive is needed into the assumptions on which the current legal framework is based, the way in which that law (mal)functions in practice and the effects that the law exerts in this new landscape. In this panel, we address some new challenges that current markets bring for consumer law. Consumer identities are increasingly diffuse, companies are increasingly experimenting with big data and ecommerce challenges the way in which the EU used to regulate product safety and liability. We discuss the added value of empirical-legal research with respect to these subjects, as well as the insights that the research can offer for the reassessment for the existing legal framework surrounding the modern consumer market.

1. ‘Transformation of the Consumer image. How can consumer interests be protected when consumer identities are increasingly diffuse?’

Author: Vanessa Mak (v.mak@law.leidenuniv.nl)

Abstract:
While the existing framework served consumer protection goals well, the complexities of modern consumer markets influenced by digitalization, platformisation and sustainability demand a reassessment of existing regulation. My NWO Vici project (2022-2027) will examine how images of the consumer should be adapted to fit the needs of businesses and consumers.

The project aims to test three related hypotheses: 1. that a consumer of digital services may require a different level of protection than a consumer in a physical store, 2. that the regulation of the platform economy requires the introduction of a ‘prosumer’ category and rules tailored to it, and 3. that consumers should be jointly responsible for the pursuit of ecological sustainability and that in this role, as consumer-citizens, they may have to give up some consumer protection. Focusing on three ideal types of consumers – the digital consumer, the prosumer and the consumer-citizen – the project will examine whether existing consumer laws can sufficiently protect the interests of consumers in these different contexts, and whether tailormade rules should also be developed to accommodate consumers who move to the supply side as ‘prosumers’.

It will do so through a combination of comparative legal research, identity philosophy, insights from behavioural studies, and empirical research through stakeholder surveys and interviews. The project focuses on consumer laws in Europe, using Germany, France, Poland, the Netherlands and Sweden as representative systems in the EU. Findings may be transposed to other parts of the world.

Keywords: consumer law, European law, contract, liability, digital markets, sustainability

2. ‘Product Safety law in E-Commerce: A sense of “fulfilment”?‘

Author: Gitta Veld (g.m.veldt@law.leidenuni.nl)

Abstract:
Online market places like Amazon, Ebay and Alibaba offer products from third party sellers from outside the Union on their website that often do not live up to the existing EU product safety standards, therefore putting the safety of European consumers at risk. The business model of online platforms – working as mere intermediaries for third party sellers that are often situated outside the EU territory – makes it hard for market surveillance authorities to take enforcement measures. In an attempt to tackle this problem, the European legislator included the fulfilment service provider as a new responsible entity in the new Market surveillance Regulation((EU) 2019/1020, ‘MSR’). This actor is the responsible economic operator for product safety, where no other economic operator is established in the Union. This study explores how the introduction of the fulfilment service provider in the MSR has been received by the market and what its possible effects are on the behaviour of this actor, also in contractual relationships, by interviewing staff and legal advisors of several online market places and key logistic service providers that operate in the handling and distribution of online products for online market places that now (possibly) qualify as fulfilment service providers. Data is not available yet, but we expect that introduction of this provision has resulted shifts in corporate behaviour and the existing contractual frameworks. A further aim of this study is to form a basis to further test assumptions underlying this provision and from legal theory with regard to the possible effects of public law provisions in product safety, their enforcement and their effects in private law relationships through quantitative research.

Keywords: consumer protection law, product safety, enforcement, contract law, e-commerce

3. ‘Not all prices are created equal: consumer responses to online personalized pricing’

Author: Kimia Heidary (k.heidary@law.leidenuniv.nl)

Abstract:
This paper presents an empirical analysis of consumer perceptions and corresponding behavior surrounding personalized pricing scenarios. This method of pricing has gathered increasing attention, including a first regulatory attempt in Directive (EU) 2019/2161. The underlying assumption of the legislator is that companies will engage in the practice if they are not doing so already, since personalized pricing can offer many (economic) benefits for companies. However, research has shown little empirical
evidence of companies engaging in said practice, mainly due to the fear of consumer backlash. In the context of personalized pricing, there has been little research on consumers’ fairness perceptions, what lies at the root of such fairness perceptions and the consequences of these fairness perceptions. Using an online experiment and survey, we analyze consumers’ fairness perceptions of personalized pricing, using different segmentation bases and differentiating between advantaged (lower price) and disadvantaged (higher price) consumers. In addition, we analyze consumers’ behavioral and attitudinal responses. We expect that consumers who are offered a lower price will perceive the outcome to be fairer, but will still perceive the procedural fairness – the way in which the prices are set– to be relatively unfair. Moreover, we expect to find that unfairness perceptions will lead to a negative attitude towards the store and high intentions to complain in their close circle, but that consumers are not likely to take action publicly, e.g., by reporting the practice to an authority. All in all, this study will contribute to the larger discussion on the fairness perceptions of consumers when it comes to personalized pricing, adding nuance to the existing debate on consumer perceptions of the practice.

Keywords: consumer protection law, non-discrimination law, e-commerce law

6. Methodology

2 Room: IN-3B52

1. ‘Fears and Fascinations. 75 years of legislative struggle with Information Technology’

Author: Anne de Hingh (a.e.de.hingh@vu.nl)

Abstract:

Background

Information technologies are often welcomed in an ambivalent way: as a promise of future prosperity and – at the same time - as a threat to fundamental rights and social justice. The majority of IT-legislation tends to suffer from this same ambiguity, aiming at mitigating future risks, but only in a half-hearted way in order not to hamper economic growth.

Research question

In my paper I will shed a light on the ambivalence in current debates on IT by conducting historical research into the views and expectations that have guided the absorption of IT since the first advent of computers in the Netherlands (1950’s), the rise of the information society (1970’s) and the internet (1990’s). The research questions are: how have Dutch parliament and government debated IT since the first advent of computers? Which fears and fascinations can be found in the preparatory works on early Dutch IT legislation, how should these fears and fascinations be evaluated, and what could they teach us for the regulation of new technologies like AI?

Methodology

I focus on one specific thread of historical research, viz. the tradition of legislative responses to technology. The backbone of this study is the detailed study of Dutch parliamentary documents. I make use of the so-called appraisal analysis, a method of discourse analysis developed by Martin & White (The Language of Evaluation 2005).

Results

This study is among the first to empirically assess the history of the technology-law nexus in the Netherlands by analysing the parliamentary discourse. The urgency of the proposed research is found in the current debates on new technologies like AI. The outcome of our research could contribute to this debate and give direction to political decision-making on technological innovations in the future.

Keywords: IT law; ambivalence; historical parliamentary discourse; appraisal analysis; AI regulation

Author: Cecily Rose (c.e.rose@law.leidenuniv.nl)

Abstract:

How do social scientists view the research produced by international legal scholars? This question has motivated our study of the international law projects selected for funding by national and regional funding bodies. This study focuses in particular on funding schemes for individual researchers which are run by the Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO) and the European Research Council (ERC). On the basis of data covering nearly 20 years, we examine whether NWO and ERC panels have demonstrated a preference for projects that have an interdisciplinary character or that use social science methods, as opposed to projects that solely employ doctrinal legal research methods. We further examine the possible influence of the composition of the funding bodies’ panels, in which social scientists outnumber legal scholars. We hypothesize that social scientists tend to prefer international legal projects that employ empirical methods and echo the disciplinary approaches of social scientists. We will employ regression analysis in order to test possible correlations between panel composition and the character of selected projects. We hope that our project will contribute to larger debates about the role of empirical legal research and interdisciplinary or multidisciplinary research in law faculties in the Netherlands and elsewhere. Our project also aims to prompt reflection by social scientists on how they view and evaluate legal research, and vice versa—how legal scholars view social science research and adopt social science perspectives and methods.


Author: Douglas Castro (douggcastro@gmail.com)

Abstract:
In Star Trek: Discovery, season 1, episode 3, Capitan Gabriel Lorca uttered the emblematic phrase, “Universal law is for lackeys.” Context is for kings.” The term is representative of the imperialist logic of the modern International Law: the relationship between “us” (Federation of planets) against “they” (Klingons); the expansionist and colonialist project for the countries that have access to the space, and the use of metanarratives for exclusionary purposes. In other words, “[...] international law’s spread across the world is the result of colonialism: it is that international law is colonialism” (China Miéville).

This paper argues that the colonial history and mercantile and proselytizing justification of International Law hidden in the books of the discipline is also hidden in the imaginary of Western science fiction. The methodological path to conduct the investigation includes the content analysis using the Voyant Tools (version online) of the book Star Trek 1 (1967) in search of hermeneutical unities or codes that can be compared to the language of International Law. Our theoretical framework in the paper is the Third World Approaches to International Law (TWAIL). Finally, we expect to find the hidden ontological and epistemological dimensions of International Law in science fiction literature, which indicates that the Western colonial venture is embedded in deeper social structures that utilize the discipline to provide the mantle of legitimacy.

Keywords: International Law; ScienceFiction; Colonialism; Content Analysis

4. ‘Hegemonic character of the copyright on the example of Polish discourse on copyright’

Author: Ewa Radomska (ewa.radomska@doctoral.uj.edu.pl)

Abstract: In 2012 young Poles took to the street in protest against ACTA. Their dominant motivation was to safe in the internet from further copyright regulation. As the result of the protests, the polish discourse on copyright was activated. The main aim of conducted research was to examine the nature and structure of this discourse. Assuming that there is an intrinsic conflict in copyright system between right owners, users and intermediaries, the research question was posed, whether and how such conflict of interest is visible within the Polish discourse. As part of the research, nationwide survey, discourse analysis, in-depth interviews and focus group interviews with representatives of particular groups of interest were conducted. Collected data have shown that the Polish discourse on copyright is incidental, fragmentated and to a large extent institutionalized. One of the most important social actors involved in the discourse are two types of social organizations pursuing copyright policy: organizations representing the interests of the creative industry (e.g. collective societies) and organizations representing citizens’ interests (e.g. organizations associated with the creative commons movement). These organizations have a very strong influence on the overall dynamics of the copyright debate. The discourse conducted by them can be described as structured by alternating sequence of discursive hegemonic practices and discursive counter-hegemonic practices with the reference to Laclau and Mouffe’s discourse theory. At the same time, the hegemonic character of the copyright is also visible in debates in Polish creative industry and discussions in the artistic communities.

Keywords: copyright, Poland, hegemony, discourse

5. ‘Quality of Local Legal Institutions, Productivity and Firm- Level innovation’

Authors:
- Mitja Kovac (mitja.kovac@ef.uni-lj.si)
- Chiara Natalie Focacci (chiara.focacci@gess.ethz.ch)
- Rok Spruk (rok.spruk@ef.uni-lj.si)

Abstract: Institutional quality is crucial for long-term development, including productivity growth and innovation. In this article, we exploit historical linguistic differences across Slovenian municipalities between the Italian, German, and Slovenian- speaking population prior to World War 1, as an exogenous source of variation in firm-level innovation to isolate the effect of legal institutions on innovation. Employing a set of limited dependent variable and instrumental variable models, we show that more ethnolinguistically diverse local population is associated with markedly better local institutional quality, more impartial local government administration, and lower prevalence of corruption, which in turn predicts systematically more vibrant economic activity, greater complexity and higher rates of firm-level innovation at the locallevel. The estimated effects are robust to a variety of specification checks and do not appear to be sensitive to the choice of ethnic and linguistic diversity measures.

Keywords: Corruption, Economic History, Firms, Innovation, Productivity, Institutions

H. Constitutional Law / International Law

Room: IN-3B59

1. ‘A Behavioral Analysis of Humanitarian Negotiations’

Authors:
- Anne van Aaken (anne.van.aaken@uni-hamburg.de)
- Tomer Broude (tomerbroude@gmail.com)
- Christoph Engel (engel@coll.mpg.de)
- Katharina Luckner (Katharina.Luckner@ile-hamburg.de.)

Abstract: The United Nations have started to use behavioral sciences in order to achieve their policy goals, including peace and security. For the actions on the ground, humanitarian action is crucial. Yet, understanding the decision-making using behavioral sciences, focusing on cognitive psychology of humanitarian negotiators (HN), is only starting. This line of research is well established in other fields
of (international) law and has produced well settled insights showing that people tend to be only boundedly rational showing biases and heuristics when making decisions. Do those insights apply in the humanitarian context and do they apply not only to lay persons but also the humanitarian professionals? Understanding this is crucial not only for theory building but also for giving advice and designing adequate training for HNs. It also contributes more generally to the problem of external validity of experimental research concerning the difference between professionals and lay persons.

We conducted vignette studies with HNs, students and lay persons in 2021, asking two research questions, namely: 1. Are humanitarian negotiators equally subject to cognitive biases as lay people? 2. Do their biases depend on the context of decision making (neutral vs humanitarian context)? Whereas lay persons tend to exhibit the classical heuristics and biases to a larger extent, HNs tend not to show them, especially in the humanitarian context. That suggests that when acting in the humanitarian context, HNs are far less boundedly rational than lay persons. But they act more similar to lay persons when in a neutral context.

Keywords: international humanitarian law, negotiators, experiments, cognitive psychology

2. ‘Impediments to Empirical Legal Research in Relation to Health Related Laws and Policies in Nigeria’

Abstract:
The engagement of lawyers in Nigeria with empirical research is still developing and presently common in more traditional areas like criminal law. As part of a PhD research, the present researcher sets out to appraise the ethical guidance on conducting empirical (legal) research in Nigeria in relation to legal interventions to give effect to the right to health and, also their implementation.

Methodology: A review of the National Guiding Documents and the documented experiences of researchers. The National Code of Health Research Ethics and the National Health Act were reviewed. The websites of the National Health Research Ethics Committee and other Health Research Ethics Committees were visited for guidance on non-medical health research. Then a search of various electronic databases using phrases like ‘health law research in Nigeria’ ‘legal empirical research in Nigeria’ and so on was done and only papers that discussed the health research ethics or governance of research involving human subjects were reviewed.

Result: It was found that in both the law and the ethical regulations, there is a gap in relation to human subject research (on health-related issues) conducted by non-physicians. This lack of guidance may prejudice such researchers during the ethics review process. In fact, no health-related empirical research paper on Nigeria was found in which a lawyer or law academic was listed as author!

Conclusion: Clearly, in Nigeria, there is a worrisome impediment to empirical legal research on health-related issues, involving human participants, and could even include when the humans are public officials who implement health related laws and policies.

Key words: health law research, empirical research involving human subjects, Nigeria, right to health

3. ‘Weakening authority and political bias? The Jurisprudence of the Hungarian Constitutional Court during the autocratic turn - an empirical study’

Author: Péter Sólyom
(solyomp@gmail.com)

Abstract:
Background
The background of the research is the HUNCONCOURTDATABASE, a database created together with my colleagues, which is available at: hunconcourtdatabase.hu

Research Question:
To what extent can the empirical data on the jurisprudence of the Constitutional Court support public political criticisms of the weakening and bias of the Constitutional Court?

Methodology:
The database contains comprehensive data on the substantive decisions of the entire session in the period 2005-2017, related to the powers of the court, the legal consequences of the decisions, their relations with the government, the legal content of the decisions, which can also be used to evaluate the adjudicative activity of individual judges.

Results:
The declining number of decisions on the merits and the declining proportion of decisions involving the public administration parallel the descriptions of the court’s weakening authority. In terms of the judges’ relationship with the government after the change of power in 2010, the uniform practice of the five judges who were packed into the court is clearly distinct from the other judges. However, a distinction needs to be made between a judicial role perception and bias.

Conclusion:
The jurisprudence data cannot refute, but rather confirm, the criticisms of the weakening authority and bias of the Constitutional Court.

Keywords: constitutional law, constitutional court, autocratic turn
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