

## REPORT FROM *THE CZECH-CROATIAN COLLOQUIUM IN LEGAL THEORY*<sup>1</sup>

On May 24, 2024, the Czech Association for Legal and Social Philosophy (Czech section of the IVR), organized an event titled *Czech-Croatian Colloquium in Legal Theory*. The event took place at the Faculty of Law, Charles University, and was co-organized by its Department of Legal Theory and Legal Doctrines. This pilot meeting initiated the collaboration between leading Czech and Croatian academic institutions engaged in legal theory.

The colloquium was initiated by Ph.D. student Tomáš Koref and Professor Karel Beran, who both held an introductory speech and thanked the participants for attending. After the initiation of the seminar, an introductory block followed, where the participating experts from the law faculties of universities in Zagreb, Osijek, Split, Prague, Brno, and Pilsen shortly introduced their faculties and departments.

Following the introductions, the main program started. The colloquium was divided into four thematic blocs – Law and Responsibility; Application of Law, Legal Argumentation and Doctrinal Research; Functions and Challenges of Law; and Human Rights and Balancing.

The first block was titled “Law and Responsibility” and was chaired by Ph.D. student Matěj Czinege from Faculty of Law, Charles University.

The first contribution titled “Rethinking Group Rights” was presented by Professor Ivana Tucak from Faculty of Law, University of Osijek. The contribution was centered around group equality rights and the *Sejdic and Finci v. Bosnia and Herzegovina* judgment of the ECtHR.<sup>2</sup> In her contribution, Tucak focused on the specifics and importance of group rights in the Balkan region.

The following contribution, which was titled “Liability based on fault and no-fault liability in the Czech private law (Why do we need ‘unlawful state of affairs’)” was presented by Professor Karel Beran from Faculty of Law, Charles University. In his contribution, Beran asked the question of whether an insane wrongdoer could be legally liable. He put forward a real-life case from the USA and explained on its basis the need for the concept of an unlawful state of affairs in the Czech legal system, which is vital for solving similar cases.

The second block was titled “Application of Law, Legal Reasoning and Doctrinal Research” and was chaired by Professor Karel Beran.

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<sup>2</sup> *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, ECHR 2009.

The first contributor was Ph.D. student Svan Relac from Faculty of Law, University of Zagreb with his contribution titled “Errors in judicial application of law: errors in law”. Relac explained that he was mainly focused on errors in law, that can be used as a ground for appeal in criminal proceedings. He presented his research, methodology, and the categorization of defined errors into different schemes.

The second contribution was made by Ph.D. student Tomáš Koref from Faculty of Law, Charles University and was titled “A tale of two courts”. Koref explained that the supposed tale of two courts is a prevalent view in Czech legal doctrine, and it states that the Supreme Court is formalistic, and the Supreme Administrative Court is not. Koref presented his own study, where he analysed if the judgements of the Supreme Court are formalistic, and concluded, that both courts seem to actually be quite similar concerning formalism and thus the tale of two courts needs to be revised.

The final contribution of the second block was made by Ph.D. student Matěj Czinege and was titled “Comparative doctrinal legal research: example of doctrinal research of usufruct in European legal systems”. In his contribution, Czinege outlined comparative methods in general and stated how they can be used as a distinctive doctrinal research method. He supported this use of the comparative method by his recent experiences with it, as he is currently writing a monograph about the institute of usufruct, where he uses this method. He concluded that comparative research methods are very viable, as they can not only help to understand a legal problem or an institution, but also serve as a useful tool for broadening academic discussion and as a method of teleological interpretation.

After a short lunch break, which also served as an informal forum for continued discussion, the third block with the title “Functions and Challenges of Law” chaired by Ph.D. student Tomáš Koref followed.

The first contribution titled “Functions of law” was made by Associate Professor Mario Krešić. Krešić spoke about various theories and stages related to the concept of legal functions. He mentioned the foundational ideas and explained the axiomatic, methodological, classificatory, and analytical stages of law. Krešić also touched on the theory of artifacts and functions, distinguishing between real and phantom functions and addressing the ambiguity of the term function. Later in the contribution he presented the conflict between essentialism and conventionalism, the analytical and folk concepts of law, and the responses to the contingency problem, including scientific and historical approaches.

The following contribution was presented by Assistant Professor John Gealfow from Faculty of Law, Masaryk University in Brno and was titled “Limits of Effectiveness of the Law: Effectiveness, Efficiency and Cases of Legal Inefficiency” In his contribution, Gealfow utilised his perspective as a practicing attorney and presented how different views of the effectiveness of law from the point of an attorney and a client can be. He demonstrated it on several practical examples, where a certain thing was against the law, but it was very difficult to act on it, because of limited legal effectiveness.

The third contribution was put forward by Ph.D. student Jan Pokorný from Faculty of Law, Charles University and was titled “Is the law getting too fragmented for us to understand?”. Pokorný presented his research, which is aimed at fragmentation and is

still in progress. He explained why fragmentation of law is undesirable and also noted the soviet legacy of fast-paced novelisations, which further fragment the legal system and are common in Central and Eastern European countries.

The final contribution was presented by Ph.D. student Zsófia Folková from Faculty of Law, Charles University with the title “Legal Personhood: current challenge”. The main point of the contribution, and Folková’s Ph.D. research, was whether human rights can expand to non-human subjects like organisations or nature. She covered the genesis of the modern understanding of legal personhood, which developed in the 19th century, and other competing theories.

Followed by a short coffee break, the fourth block with the title “Human Rights and Balancing” chaired by Jan Pokorný began.

The first contribution was presented by Associate Professor Pavel Ondřejek from Faculty of Law, Charles University and was titled “What Has the COVID-19 Pandemic Taught Us about the Constitutional Imperatives of Proportionality and Justification of Regulation in Times of Crisis?”. The Czech government dealt with the COVID-19 pandemic via emergency regulations, which were at the beginning often contradictory, unclear, unjustified and sometimes even unsanctionable. In 2021 the Czech Pandemic Act came into force, which required that the emergency measures be properly justified and proportional. Ondřejek further presented his original analysis of the case law of Czech administrative courts that imposed these requirements. The paper showed how this case-law eventually led to the government changing its practice with drafting emergency regulations and thus to an increase in the quality of the emergency measures.

The second contribution with the title “Alternatives to judicial balancing: interpretative-subsumptive method” was made by Marin Keršić from, Faculty of Law, University of Split. Keršić introduced Juan Antonio García Amado’s interpretative-subsumptive method as an alternative to judicial balancing for resolving fundamental rights conflicts. This method promotes a procedural approach based on inclusive legal positivism and opposes neoconstitutionalist legal moralism. The interpretative-subsumptive method involves justified, non-arbitrary interpretations of normative sentences and distinguishes four types of rights. Keršić presented the application of this method on the 1997 Spanish Supreme Court case *El Toro de Osborne*.

The final contribution of the colloquium was made by Ph.D. student Daniel Barták from Faculty of Law, Masaryk University in Brno and was titled “Bentham’s critique of natural rights”. Barták explained how Bentham’s critique of natural rights centers on the belief that rights are not innate but are rather constructs of legal systems designed to maximize societal welfare. He explained that Bentham viewed natural rights as speculative and devoid of practical utility, advocating instead for a legal framework grounded in utilitarian principles. Barták also stated his view and reservations on Bentham’s critique.

After closing remarks and the official conclusion of the colloquium, the participants were invited to a dinner.

This event was a unique opportunity for academic cooperation between our two countries, due to the fact, that complex discussions followed the contributions, where the Czech and Croatian participants brought the perspective of their national laws into

the debate. The organizers believe that this successful event will lay the foundations for new collaborations between members of the Czech and Croatian IVR, as well as between academic institutions of both countries and their members. The Czech IVR looks forward to future joint activities and further opportunities for cooperation.

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