CPLJ
Comparative
Procedural Law and Justice

PART II

ORGANIZATION OF THE CIVIL JUSTICE SYSTEM AND JUDICIAL INDEPENDENCE

CHAPTER 1

THE MEANING OF 'COURT'

Alan Uzelac

https://www.cplj.org/publications/2-1-organization-of-the-civil-justice-system-and-judicial-independence

TABLE OF CONTENTS

1 INTRODUCTION – ETYMOLOGY AS CONTENT DETERMINATION?

1 Any comparative research must start with the identification of common notions that form the basis of comparison. This chapter examines the multiple facets of the meaning attributed to the notion of a *court* as a fundamental constituent unit of any justice system. The CPLJ project uncovers, in the following chapters, a multitude of information on the main institutions and players within national civil justice systems. But do we have a common ground when we talk about courts and judges? Before delving into the colourful landscape of various national and supra-national jurisdictions, it is necessary to ask whether the basic components in all the analysed civil justice systems have roughly the same, or at least comparable, meaning and structure.[1]

2 Civil justice systems are generally understood as systems that deal with the resolution of civil disputes across a wide range of matters, including contracts, torts, property, family relations, and employment. However, the list of matters addressed by civil justice differs from country to country and often extends beyond the *core* field of conventional civil litigation. In a comparative context, it is difficult to define civil justice by enumerating its specific tasks, although some tasks are more or less typical. This makes examining its main organizational elements even more important, as a national civil justice system is often understood to be defined by all the matters assigned to its main bodies and organizational units. These main bodies, the primary organizational units of any justice system, are *courts*.

3 Courts are essential constituent elements of any justice system, both in the present and in the past. However, their understanding is inevitably shaped by different legal traditions and cultures.[2] Asking, 'What is a court?' both historically and in the present time, presents us with a dilemma: does the notion of a *court* have a cross-cultural and universal meaning, or is it intrinsically tied to local and regional history and culture? In this introductory sub-chapter, the discussion will be limited to general deliberations that attempt to uncover the various connotations encapsulated in the notion of a *court*. These connotations, formulated as seven distinct layers of the *court* notion, are admittedly different and sometimes even contradictory. However, they are, at least partly, simultaneously present in each legal system, allowing for cross-cultural and cross-jurisdictional comparisons.

4 Indeed, this examination cannot escape linguistic and etymological differences. The notion of a *court* cannot be examined solely within one language or tradition but should also take into account diverse linguistic backgrounds and traditions. Of course, limited

[1] Some parts of the CPLJ project which complement this paper may be found in Part 5 on jurisdiction, in which chapters 1 and 2 (by Scott Dodson and Peter Chan) present rich comparative material on allocation of judicial authority.

[2] On legal traditions see J H Merryman, *The Civil Law tradition* (Stanford 1985) 2. For an updated view on civil and common law traditions, see O G Chase and J Walker (ed), *Common Law, Civil Law and the Future of Categories* (Lexis Nexis 2010).

space and time do not allow us to check the legal terminology of every language. Here, we will refer to expressions for *court* in a few world languages, with a particular emphasis on classical languages — especially Latin, from which many languages have borrowed their legal terminology. As Roman law substantially contributed to the formation of contemporary legal traditions[3], Latin phrases and proverbs, which encapsulate complex ideas in a compressed form, are particularly useful for understanding the different layers of meaning contained in the notion of a *court*. Various expressions for what we nowadays perceive as a *court* originated in classical languages, signifying different aspects of courts and their basic functions. To simplify the analysis and highlight expressions that can serve as common denominators for the different layers of *court* notions, the closest Latin expression is associated with each of the seven layers of meaning described in this sub-chapter.

5 These different layers present diverse connotations contained in the notion of a 'court'. They are: court as a place (*forum*), court as a community (*cohors*), court as state power (*imperium*), court as adjudicator (*iudex* or *tribunal*), court as independent legal authority (*auctoritas*), court as a public service (*officium*), and court as equilibrium (*iustitia* and *aequitas*). All these layers of meaning (and possibly more) can be identified in contemporary systems of civil justice, though they often pose challenges and may appear in different forms. Nevertheless, these elements allow us to find common language (and common topics) in comparative and transnational debates on current problems of national civil justice systems.

2 WHAT IS A *COURT*: SEVEN LAYERS OF MEANING

2.1 Court as a Place (*Forum*)

6 Traditional civil justice is closely connected to spatial categories—to a justice system that exists in a particular location or place. Courts have served people who inhabit a particular territory or have a close connection to such territory. The right to *pronounce the law* (jurisdiction, *iuris-dictio*) has also been traditionally associated with a place from which the law was spoken—the *court venue* or a judicial *forum*.

7 Therefore, it comes as no surprise that the word *court* originates from expressions with spatial connotations, indicating a judicial institution situated in a particular location (*locus*). Spatial connotation is almost universally present in legal terms for courts. English, Spanish, French, and Italian use the expressions *court* (Eng), *corte* (Sp), *cour* (Fr), and *corte* (It) to designate judicial authority, but also to describe a specific place. Outside

[3] This influence can be attributed in part to the profound impact of Roman law on Civil law traditions and its role in shaping legal terminology in common law countries, where Latin was often used to clarify legal concepts. These Western legal concepts exerted influence in the rest of the world as they were exported to countries conquered during the age of colonialism. As Shapiro points out, 'the origin of judicial systems in many parts of the world is to be found in conquest'. M Shapiro, *Courts. A Comparative and Political Analysis* (Chicago UP 1981) 32.

of legal language, the term *court* designates an open space within a building (courtyard), often enclosed by walls. It is also an area where certain sports are played (eg, tennis court). Additionally, it can refer to a place where royals or nobles reside (the royal court), along with their servants and advisors. Historically, the king and feudal lords also exercised judicial functions, which provides another link between the 'royal court' and the justice system.[4]

8 The spatial connotation in expressions used to designate courts is not limited to Indo-European languages. As an illustration, the Chinese word for courts of law is 法院 (*fǎ yuàn*), where the second character (*yuàn*) historically carried a meaning similar to *courtyard*, describing a place surrounded by walls. Today, the same Chinese expression is also used more generally to denote a *place* or *building*.

9 In internationally common legal language, the Latin word *forum* is often used to denote a court that has jurisdiction to deal with a particular matter (*a competent forum*). Originally, the Latin word *forum* referred to a public square or marketplace in ancient Roman cities. This expression is also spatial, as *forum* designated open space. However, what makes this expression relevant to both ancient and modern civil justice systems is its additional connotation of publicity. For instance, the *Forum Romanum* was an important public place where people gathered to debate important issues and where judicial proceedings also took place.[5] In this context, the term *forum* also adds a significant layer to the contemporary justice system: the concept that justice must be administered in public, in a setting where an open public hearing can occur in the presence of other community members who have an interest in the matter.

10 The spatial connotation inherent in the word *court* remains relevant today. In most countries worldwide, the common perception of a *court* associates it with a specific place, typically a court building. Colloquial phrases such as *going to court* or *see you in court* reflect this understanding. Many organizational laws pertaining to the judiciary[6] use the term *court* to designate courts as organizational and administrative units operating at specific geographical locations. However, this is not universal[7], and current transformations in civil justice generally move away from this traditional spatial orientation.

---

[4] In England, a close connection between judiciary and the place where royal power is situated may be seen in the fact that the main court building for both the High Court and the Court of Appeal of England and Wales is called 'The Royal Courts of Justice'. Another spatial component is the fact that the 'judicial quarter' in London describes a relatively small area which also holds other main legal institutions of England and Wales, such as The Law Courts, Inns of Court and Supreme Court of the UK.

[5] As the most important public place in ancient Rome, *Forum Romanum* 'was the scene of public meetings, law courts, and gladiatorial combats in republican times'. Encyclopaedia Britannica, *Roman Forum,* https://www.britannica.com/topic/Roman-Forum accessed 4 July 2024.

[6] For instance, Croatian Law on Courts (*Zakon o sudovima,* Off Gaz 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23, 155/23, 36/24).

[7] Compare other layers of the meaning of the word *court* described in this chapter.

11 Even if we limit our examination to a traditional context, courts are not always confined to a single location. The number of courts rarely matches the number of court buildings within a jurisdiction. One court building can accommodate multiple courts. In hierarchical judicial systems, it is common in larger cities for the same court building to host courts of different ranks[8], often alongside other judicial services such as legal aid offices or public prosecution. Civil and criminal courts may also share the same facilities, although this is not universal.[9] In some cases, very large courts may occupy several independent or interconnected court buildings within the same city. Some very large courts may occupy several independent or connected court buildings in the same city.[10]

12 In some legal systems, due to different legal traditions and procedural styles, courts are not identified with a specific location but rather with an individual judge (a *tribunal*) to whom a group of cases is assigned (see more below at 2.4). This situation caused confusion in the early 2000s when the first systematic attempts to collect facts and figures on the number of courts took place. In the pilot evaluation of the 40 countries of the Council of Europe, data collected by the CEPEJ for one country (Spain) indicated a number of courts several times higher than the average values, despite a relatively low number of judges per capita.[11] For this reason, European official statistics currently track data on both the number of courts as individual jurisdictions (legal entities responsible for settling disputes submitted by citizens) and on the number of courts as 'geographic locations' (a figure based on the premises where judicial activities take place).[12]

13 The new trends aimed at improving efficiency through enhanced court administration and case management have led to a reduction in the number of courts as administrative units.[13] An older form of this optimization involves merging courts while maintaining field offices outside of the main seat (the principal *court*) to provide convenient access for users. Alternatively, instead of permanent external offices, courts may organize intermittent 'judicial days' or external sessions held in select locations periodically (eg,

---

[8] For instance, the building of the Supreme Court of Chile in Santiago also hosts the higher appellate courts. See https://www.pjud.cl/tribunales/corte-suprema accessed 4 July 2024.

[9] Eg, civil and criminal cases in Croatia are processed by the same courts (municipal courts), but in the country's capital two semi-specialized municipal courts, situated on different sides of the city, are established: Civil Municipal and Criminal Municipal Court in Zagreb.

[10] The biggest court in Russia, *Московский городской суд* (City Court of Moscow), before its relocation into a single building, used to consist of three buildings constructed between 1988 and 2012, occupying a compound of 29,677.7 square meters, of which 4,340 square meters were underground. See http://www.gvozdik.ru/news/2649.html accessed 4 July 2024.

[11] See CEPEJ, *European Justice Systems 2002* (CoE 2005), https://rm.coe.int/european-judicial-systems-2002-facts-and-figures-on-the-basis-of-a-sur/1680747c73 accessed 4 July 2024, 3.1, Table 9 and 3.2, Table 12. According to the collected data, Spain had 66,78 courts (main seats) per 1 million inhabitants (compared to 13,2 in Germany) and only 9,82 professional judges per 100,000 inhabitants (compared to 25,3 in Germany).

[12] CEPEJ, *European Judicial Systems 2006 (2004 data)* (Strasboug 2006) 61, 5.2. In the new scheme, Spain had only 1.6 court locations per 100,000 inhabitants, roughly the same figure as Germany (1.4) – see ibid Graph 15.

[13] The latest CEPEJ evaluation report confirms the 'declining trend in the number of geographic locations of courts per 100 000 inhabitants'. See CEPEJ, *Evaluation Report 2022 (2020 data)* 95.

in the form of 'quarter sessions').[14] A newer approach involves organizing courts as large organizational units with multiple locations. In its most radical form, this approach can be seen in the Netherlands, where only eleven first-instance 'courts' of general jurisdiction (each with multiple legal 'seats') serve approximately 17.5 million inhabitants.[15]

14 The digitization of civil justice further diminishes the connection between the notion of a *court* and physical space. The experience of the COVID-19 pandemic demonstrated that many court activities can and, in emergencies, must be conducted in a virtual space. Electronic communication between courts and their users occurs solely online, often through e-justice platforms that handle judicial procedures entirely digitally.[16] Court files are increasingly stored in secure virtual spaces, spanning multiple servers or electronic cloud services. We may soon witness the emergence of fully virtual *digital courts* (see more below at 2.3).

2.2 Court as Community (*Cohors*)

15 The next layer of meaning inherent in the notion of a *court* is partly connected to the first but distinct in its own right. This layer shifts from a spatial to a teleological concept of a *court*. As noted earlier, a *court* in its basic sense is not merely an empty space. Similar to the Roman forum or the Greek ἀγορά (*agora*), courts are places where members of the community gather to interact, addressing issues of common interest. This notion inherently reflects that courts are institutions that operate for the benefit of the community, expressing shared views and value judgments on the behaviour of individual members of society.

16 The element of group gathering, or community is embedded in the origin of the word *court*, which originally did not only refer to an enclosed space or courtyard but to a place where people would regularly convene. The etymology of the word *court* traces back to the Latin expression *cohors* (in accusative case: *cortem*), which denoted the inhabitants or occupants of a space rather than the space itself. While *cohors* initially referred to a military unit in ancient Rome, the term '*cohort*' later evolved to signify a group of people

[14] The tradition of 'Quarter Sessions' – holding of court sessions four times a year in each county and county borough in England of Wales, existed from Middle Ages, to be abolished only in 1971. See http://legislation.gov.uk accessed 4 July 2024 (Courts Act 1971).

[15] See CEPEJ, *European Judicial Systems 2022* (2020 data) https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279 accessed 4 July 2024 92 (Map 4.1.1) and National Report Netherlands https://rm.coe.int/netherlands-2020-en/1680a85c8f accessed 4 July 2024. For instance, District Court Limburg has locations in Maastricth and Roermond, the DC Gelderland locations in Arnhem, Apeldoorn, Zutphen and Nijmegen etc. See https://www.rechtspraak.nl/ accessed 4 July 2024.

[16] See F Contini and D Reiling, 'Double normalisation: when procedural law is made digital' (2022) 12 (3) *Oñati Socio-legal Series*, 654-688, 7; D Reiling, 'Court Information Technology: Hypes, Hopes and Dreams' in X Kramer et al (ed), *New Pathways to Civil Justice in Europe* (Springer 2021) 43-60.

bound together by shared views, interests, or circumstances, such as soldiers, students, or supporters of the same ideals.[17]

17 In that sense, the 'court' as a legal institution signifies a place where the law is upheld as an expression of the collective views of the community, and decisions are made on behalf of the people who constitute that community.[18] In history, the notion that law should be harmonized with local customs and pronounced by local courts was a part of *ius commune*, a body of law common across Europe in the medieval and early modern periods.[19] The principle that courts should reflect social values and enjoy public trust persists in contemporary justice systems at various levels.

18 At the procedural level, in some countries, state courts pronounce judgments 'in the name of the people'.[20] This underscores the concept that justice is administered on behalf of the community, rather than solely by the state apparatus – emphasizing that judicial authority derives from the people.

19 Another, more essential method to ensure that courts align with popular beliefs and convictions is in various forms of lay participation in the judicial process.[21] The participation of non-professional and legally untrained members of the community can occur through jury trials or mixed and lay courts. The jury system ensures that in specific cases, issues are assessed by jurors who are lay members of the community. They collectively deliberate on the case, focusing on key issues—primarily factual but sometimes also legal—free from external influence. Their decision (verdict) is part of a process where a professional judge ensures the trial's fairness and adherence to the law. In contrast, in mixed or lay tribunals, lay members may serve as judges, comprising the entire court (eg, as justices of the peace or lay magistrates), or as part of a panel where both professional and lay judges collectively deliberate and decide all relevant case issues. In the civil justice systems of many states today, lay participation is marginalized

[17] D Harper, *Online Etymology Dictionary* (2024) https://www.etymonline.com/word/court accessed 6 July 2024.

[18] Cardozo described the judge as 'the interpreter for the community of its sense of law and order'. B N Cardozo, *The Nature of the Judicial Process* (Yale UP 1921) 16.

[19] On historical aspects see more in R C van Caenegem, *European law in the past and the future. Unity and diversity over two millennia,* (Cambridge UP 2002); R Lesaffer, *European Legal History: A Cultural and Political Perspective* (Cambridge UP 2002); J W Cairns and P J du Plessis (ed), *The Creation of the Ius Commune: From Casus to Regula* (Edinburgh University Press 2010); G Mousourakis, *Roman Law and the Origins of the Civil Law Tradition* (Springer 2015).

[20] See eg, in Germany: '*Im Namen des Volkes*'; in Italy '*In nome del popolo italiano*'. In the United States, state courts frequently use 'The People of [State]' in their judgments eg, in California or Texas. However, in other countries, like Austria, Hungary or China, courts typically pronounce judgments in the name of the 'State' or 'Republic'.

[21] See more on lay participation in Chapter 6.

or even non-existent,[22] contributing to a crisis of legitimacy characterized by low trust in the judiciary in numerous contemporary states.

20 At a lower level, the notion that a *court* represents a community can be interpreted outside a broader social context, suggesting only that decisions made by legal authorities should not reflect the individual and arbitrary will of a single adjudicator. In this context, the *community* is limited to a collective of legal professionals involved in the decision-making process.

21 Such a community can manifest itself both horizontally and vertically. Gaining approval from peers, known as *communis opinio doctorum*, can take the form of scrutiny through various means of recourse, often involving several echelons of higher tribunals. In a multi-level hierarchical appeal procedure, a case is inevitably reviewed by several instances, involving multiple members of the legal community. More significantly, the community element also materializes through the principle of collegiality – the conduct of the process and decision-making by a tribunal composed of more than one person.[23] An appellate judge and law professor emphasized that collegiality allows members of the judiciary, who share 'a common interest in getting the law right', to be 'willing to listen, persuade, and be persuaded, all in an atmosphere of civility and respect'.[24] Another judge referred to a 'warm and fuzzy' concept of sensitive, collaborative production aimed at optimizing results.[25] All these elements contribute to the perception of objectivity, as court decisions are ultimately collaborative results of deliberations and consultations among multiple members of the community of legally trained professionals.

22 For all these reasons, just like lay participation, collegiality is also an inherent element contained in the notion of a 'court'.[26] Of course, collegiate procedures and collegial decision-making require more time, and resources compared to individual processes, which may conflict with other aspects of court functions. Processes involving more members of the community can challenge the goal of providing quick, effective, and cost-efficient resolution for parties in civil disputes. Therefore, some countries have significantly reduced the collegiate nature of judicial processes in an effort to enhance the efficiency of court procedures.[27] However, it is important to recognize that reducing

[22] For instance, all forms of lay participation have been systematically eliminated from Croatian civil justice system in the early 2000s.
[23] Compare F B Cross and E H Tiller, 'Understanding Collegiality on the Court' (2008) 10 Journal of Constitutional Law, 257-271.
[24] H T Edwards, 'The Effects of Collegiality on Judicial Decision Making' (2003) 151 University of Pennsylvania Law Review 1639, 1639.
[25] F M Coffin, *On Appeal: Courts, Lawyering, and Judging* (New York and London 1996) 215.
[26] See B Häcker and W Ernst (ed), *Collective Judging in Comparative Perspective* (Intersentia 2020).
[27] For instance, the principle of collegiality was removed from the Croatian Code of Civil Procedure in 2003. Ever since, all civil litigation proceedings in the first instance take place before a sole (professional) judge. Subsequently, collegial decision-making is also substantially reduced in the appellate proceedings.

collegiality removes a crucial component inherent in the fundamental meaning of the *court* concept. Interpersonal discourse and deliberations among representative members of the community play a significant role in producing well-considered decisions through the complex processes of human interaction and communication. This aspect remains one of the few inherently human elements of court activities that cannot be replaced by digital algorithms or artificial intelligence.

23 The concept of the *court* as an institution that serves and supports the community through collegiate processes, which can lead to prudent compromises beneficial for all its members, introduces another layer of meaning. While the primary function of courts is adjudication (see more below at 2.4), it is not the sole means through which courts can fulfil their societal role. Courts, as places that foster discussion and dialogue, can effectively promote consensual and autonomous resolution of civil disputes in civil litigation. In this sense, amicable dispute resolution aligns with the notion of *court*. This is supported by modern developments advocating for the concept of a 'multi-door courthouse'[28], which emphasizes a holistic and flexible approach to dispute resolution. It offers multiple pathways to justice, promoting settlements and incorporating negotiated solutions, mediation, and other alternative dispute resolution processes.

24 The support for autonomous methods of dispute resolution as an integral element of the court's obligation to collaborate with the parties on the joint and shared task of securing quick, effective, inexpensive, proportionate and fair dispute resolution is recognized in the leading contemporary standards of civil procedure. The Rules of European Civil Procedure adopted in 2020 by the European Law Institute (ELI) and Institute for the Unification of Private Law (UNIDROIT) oblige the court 'to facilitate settlement at any stage of the proceedings' and provide the duty of the parties 'to co-operate in seeking to resolve their dispute consensually, both before and after proceedings begin'.[29]

2.3 Court as a State Power (*Imperium*)

25 For most contemporary states, the notion of a *court* is closely linked to institutions of state power. As legal entities, courts today (still?) predominantly function as institutions established by state governments to adjudicate legal disputes and administer justice. This understanding of a *court* contrasts with the previous one: while the court as a *cohors* belongs to the (local) community, the court as *imperium* operates on behalf of (central) state authority.

26 In history, the notion of a court did not originally imply that courts functioned as organizations established by central authorities. In early tribal societies, dispute

[28] This concept was originally introduced by F Sander in his address at a Pound Conference in 1976. See F E A Sander, 'Varieties of Dispute Processing' in *The Pound Conference: Perspectives on Justice in the Future* (West Publishing 1979).

[29] See Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT), Art 9 and 10.

resolution occurred within families, clans, or tribes. Prominent community members such as chiefs or elders served as judicial authorities based on tradition and their social standing.

27 The gradual transformation of courts from local grassroots organizations applying local rites and customs into state bodies enforcing universal rules imposed by a central authority is a global phenomenon. This transformation can be illustrated through a brief overview of developments within Western legal systems[30], many of which have also influenced global practices. The process of colonization often exported Western legal models, leading to the abolition of traditional courts in colonized territories or their incorporation into state-run courts modelled after European and other Western systems.

28 In ancient Greece, the birthplace of European culture, courts existed within city-states (πόλις) like Athens or Sparta but were not conceived as state bodies in the modern sense. Similarly, in the early and classical Roman periods, courts were not perceived as emanations of central power. Classical Roman legal procedure distinguished between two phases: *in iure* and *apud iudicem*. In the first phase, state authority was represented by a *praetor*, a state official who formulated the necessary legal actions (*actio*) acceptable to both parties. The *court* would convene in the second phase. Since there were no permanent civil courts, judges were 'private individuals appointed either by the parties in mutual agreement or upon consultation with the praetor based on his list of suitable persons'.[31]

29 However, beginning with the late Roman Empire, at least some courts became increasingly tied to central authorities. As the Roman state centralized over time, the courts evolved into an integral component of the state apparatus under the emperor's leadership.[32] In medieval times, the particularization of central power led to a resurgence of local elements, though still associated with institutions of authority but in a more dispersed manner. Courts during this period operated as royal courts (under the authority of the king), manorial courts (under feudal lords), or ecclesiastical courts (for canon law of the Church).

30 The renewed centralization of judicial power under the auspices of the state occurred gradually, starting with the establishment of King's courts in England in the late 12th century. In Continental Europe, this process occurred later, influenced by the reception of Roman law and the development of *ius commune*, but it was essentially solidified with

[30] More on this development see in H J Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard UP 1983). See also J H Langbein, R Lettow Lerner and B P Smith, *History of the Common Law: The Development of Anglo-American Legal Institutions* (Aspen Publishers 2009).
[31] D Tamm, *Roman Law and European Legal History* (Copenhagen 1997) 62.
[32] In the late Roman Empire, the two phases (*in iure* and *apud iudicem*) merged under *extraordinaria cognitio* procedure, and the judge became an official who exercised his power as a delegate of the emperor. See D Tamm (n 31) 64.

the rise of absolutist monarchies that sought to centralize state power. The formation of courts as integral components of state power in Continental Europe was further solidified by the emergence of nation-states in the eighteenth and nineteenth centuries. The French Revolution had a particularly significant impact as it reshaped the role of courts, abolishing feudal privileges and royal authority.

31 Simultaneously with the centralization of state powers, there were movements striving to secure an independent role for the courts, ensuring that even the king was subject to the law. Starting with the *Magna Carta Libertatum* in 1215, through the constitutionalization of legal institutions, courts acquired the status of separate state entities with the right and obligation to apply the law independently, objectively, and neutrally (see more on this below at 2.7). This laid the foundation for the development of the Western concept of separation of powers, famously articulated by Montesquieu in his treatise on the spirit of the laws.[33]

32 Today, many countries embrace the doctrine of separation of powers as a fundamental tenet of the rule of law—a cornerstone principle of modern governance ensuring that all members of society, including the government itself, are equally subject to the law.[34] According to this doctrine, the state government is divided into three distinct branches—legislative, executive, and judicial—each with specific powers and responsibilities. This division aims to prevent any single branch from becoming too powerful and establishes a system of mutual oversight, known as checks and balances. Within this framework, the judiciary, as part of the judicial branch, is often empowered with judicial review, allowing courts to interpret the constitution and assess the constitutionality of actions taken by the legislative and executive branches. In some systems, this review is conducted by a dedicated Constitutional Court.[35] In all cases, independent courts are essential to ensuring impartial and fair adjudication of disputes and safeguarding individual rights and liberties, thereby constituting a vital component of democratic governance based on the rule of law.

33 The predominant role of the notion of courts as state bodies is affirmed at the constitutional level in many contemporary states, where courts are defined as the

[33] C de Secondat, B de Montesquieu, *De l'Esprit des Lois* (1748). On the recent discussion of the division of powers see C Möllers, *The Three Branches. A Comparative Model of Separation of Powers* (Oxford 2013).

[34] This doctrine is adopted in many, but not in all countries. In some large and influential countries, like China, Russia, Iran or Saudi Arabia, the government is centralized, and their courts are generally conceived as a part of the unitary central state power dominated by one state authority (political party, president, religious authority or an absolute monarch).

[35] Constitutional courts are often special courts which have different statuses and compositions and regularly do not belong to the ranks of regular judiciary. Some countries consider them as separate, *sui generis* state bodies which belong to neither judicial, executive or legislative branches of government.

principal institutions of the judicial branch of state power.[36] An additional reason for this arrangement is the modern nation-state's monopoly on coercive power within its territory. This monopoly is fundamental to state sovereignty, asserting that only state authorities have the mandate and capability to enforce compliance with laws, regulations, and policies, even through force if necessary. Therefore, decisions rendered by courts as state authorities have a direct way to be effective. They are supported by coercive measures that can be applied if individuals subject to final and enforceable judicial judgments fail to comply voluntarily.

34 Despite the predominance of courts as organs of state power, many contemporary jurisdictions include other tribunals that do not fit into this framework. Some of these entities also bear the designation of *courts*, yet they are not integrated into the state's structure of power. Examples include tribal courts in the United States and Indigenous courts in Australia, which apply customary law and operate independently from state and federal courts, handling a broad spectrum of civil and criminal matters within their jurisdictions.[37]

35 Another category rooted in tradition and culture comprises religious courts, such as Islamic Sharia Courts, Jewish Beth Din, or ecclesiastical courts of various Christian communities.[38] While their role historically and presently varies, these courts generally hold jurisdiction over family law matters (eg, divorce) and occasionally resolve disputes related to status within the religious community or even business disputes among members of specific religious denominations.

36 Sometimes, private or semi-private organizations with recognized autonomy, such as professional chambers, universities, trade associations, or even stock exchanges, establish adjudicative bodies referred to as *courts*. In a limited scope of matters, these bodies operate outside the regular state judiciary and may decide on significant issues such as professional rights or membership in particular organizations. While they do not qualify as state institutions, their substantive tasks often resemble those of courts (see more in section 2.4 below). If they decide on civil rights and obligations, they must

[36] See for instance German Basic Law (Constitution), Art 92 which provides that judicial power is 'exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law, and by the courts of the Länder'. Similarly, the Croatian Constitution in Art 4 provides that the state power is separated into legislative, executive and judicial, further specifying that 'judicial power is exercised by courts' (Art 115).

[37] See eg, S J Brakel, *American Indian tribal courts: the costs of separate justice* (Chicago ABF 1978); E Marchetti and K Daly, 'Indigenous courts and justice practices in Australia' (2004) 277 Trends & issues in crime and criminal justice (Canberra Australian Institute of Criminology) https://www.aic.gov.au/publications/tandi/tandi277 accessed 4 July 2024.

[38] Cf (both for current and historical forms) M Feener, *Shari'a and Social Engineering* (Oxford 2013), Ch 6 ('The Jurisdiction and Jurisprudence of Shari'a Courts'); M Waxman, *Civil and Criminal Procedure of Jewish Courts* (Chicago UP 1914); W Harmann and K Pennington, *The History of Courts and Procedure in Medieval Canon Law* (Washington 2016).

function like courts (*tribunals*), adhering to essential requirements such as independence and due process (see further discussion in sections 2.5 and 2.7).

37 The dominance of the state court system in dispute resolution is currently being challenged by the trend towards privatization of civil justice. Many civil disputes are now being resolved outside the state court system, both at the high and low ends.

38 At the high end, complex international commercial disputes are increasingly being handled through arbitration. Arbitration 'courts' (arbitrators and arbitral tribunals), whose jurisdiction is agreed upon by the parties, often operate within institutions that have established permanent administrative services for international arbitration, also referred to as 'courts of arbitration'.[39] However, privatization also occurs through the *de facto* transfer of certain types of disputes to adjudicative bodies that do not carry the *court* label. An example is construction disputes, where so-called 'dispute review boards' (DRBs) have become a de facto standard due to the use of the FIDIC Rules.[40]

39 At the lower end, the relative monopoly of the state judiciary is currently being questioned by several trends. These include the use of alternative dispute resolution, the establishment of various consumer dispute resolution services such as ombudsmen in the private or administrative sectors[41], the outsourcing of summary proceedings for debt collection like payment orders to non-judicial actors (bailiffs and notaries), and mandatory pre-trial settlement attempts. The rising costs of litigation and the growth of collective redress also contribute to the perception that *courts* are not necessarily the only bodies vested with state-based *imperium*. On the contrary, in countries once known for litigiousness (like the United States) or for the tradition of effective public dispute resolution services of state courts, trends such as the 'demise of civil trials'[42] or the 'low tide of court litigation'[43] are observed. With the rise of social platforms, certain types of disputes are almost entirely managed outside the purview of public courts and left to

[39] For instance, the International Arbitration Court at the International Chamber of Commerce, London Court of International Commercial Arbitration, Permanent Arbitration Court in the Hague etc.

[40] FIDIC is the International Federation of Consulting Engineers (see https://www.fidic.org accessed 4 July 2024). Their standard contract forms (so-called Red, Yellow, Silver, Green and White Book) are broadly used in construction and engineering projects, and in standard form provide for DRBs and arbitration as dispute resolution methods.

[41] For CDR landscape in Europe see more in C Hodges et al (ed), *Consumer ADR in Europe* (Beck-Hart-Nomos 2012).

[42] J Langbein, 'The Disappearance of Civil Trial in the US' (2012), 122 Yale Law Journal 522; J Langbein, 'The Demise of Trial in American Civil Procedure: How it Happened, is it Convergence with European Civil Procedure?' in van Rhee CH and Uzelac A, *Truth and Efficiency in Civil Litigation. Fundamental Aspects of Fact-finding and Evidence-taking in a Comparative Context* (Intersentia 2012) 109-154; M Galanter, 'The Hundred-Year Decline of Trials and the Thirty Years War' (2005) 57 Stanford Law Review 1255-1274.

[43] S Ekert et al, 'Exploring the causes of the decline in the number of first-instance proceedings before the civil courts' (BMJ 2023) https://www.bmj.de/ accessed 4 July 2024.

unregulated private mechanisms of content moderation.[44] The overwhelming trend of privatization of dispute resolution, while not uncontroversial, is particularly noticeable in the area of Consumer Dispute Resolution (CDR).[45]

2.4 Court as Adjudicator (*Iudex*, *Tribunal*)

40 Moving from the spatial, teleological, and organizational aspects of the notion of *court*, we delve into the substantive issue: what constitutes the essence of *court* activities? In essence, what is the fundamental purpose that qualifies a particular body or organization as a *court*, regardless of its official designation or affiliation to a specific organization?

41 In a substantial sense, a *court* in the context of civil justice is the institution that adjudicates civil disputes. Adjudication involves the application of legal rules to established facts of the case, resulting in a judgment that determines the legal rights and obligations of the parties. Civil judgments typically resolve legal disputes entrusted to a *court* through a binding decision on the merits of the claims and defences presented in civil litigation. Treatises that explore court functions often concentrate on judicial decision-making and the diverse factors that influence it.[46]

42 In some languages, the etymology of the word used to denote a *court* is closely associated with adjudication. For instance, in Japanese, a *court* is referred to as 裁判所 (*saibansho*), which literally translates to 'place of judgment'. [47] In Slavic languages, the expression used for a *court* is *sud*[48], which refers to a body that adjudicates (*sudi*).

43 Latin legal proverbs, when used to address substantive aspects of court activities, often equate the *court* with a judge (*iudex*) ie, with the person who adjudicates (*iudicare* means 'to adjudicate').[49] The idea that adjudication is essential element of judicial function is expressed in the proverbs like *ubi iudex, ibid iudicium* (where there is a judge, there is a judgment).

44 The substantive meaning of a *court* best comes to light in the use of this term in civil procedural legislation. Unlike organizational statutes that categorize *courts* as

[44] Cf C Goanta and P Ortolani, 'Unpacking Content Moderation: The Rise of Social Media Platforms as Online Civil Courts' in X Kramer et al (ed), *Frontiers in Civil Justice: Privatisation, Monetisation and Digitisation* (Elgar 2022) 192-216.

[45] See A Biard, J Hoevenaars, X Kramer and E Themeli, 'Introduction: The Future of Access to Justice – Beyond Science Fiction', in X Kramer (n 16) 6-8.

[46] See eg, N MacCormick, *Legal Reasoning and Legal Theory* (Oxford 1978), a fundamental treatise focusing on legal arguments, reasoning and justification needed to reach the decisions of courts, or, more recently, J McIntyre, *The Judicial Function. Fundamental Principles of Contemporary Judging* (Springer 2019).

[47] From 裁 (sai): 'to judge', 判 (ban): 'judgment' or 'decision' and 所 (sho): place.

[48] From ancient Slavic sǫdъ (Russian, Serbian: *суд*; Croatian: *sud*; Polish: *sąd*).

[49] In this sense, various well-known Latin proverbs used in textbooks of civil law countries translate *iudex* as *court* (for instance: *nemo iudex sine actore; iudex iudicare debet secundum allegata et probata partium* etc).

components of the administrative structure of the justice system, civil procedural laws define a *court* as a specific entity responsible for adjudicating cases. This entity can either be a single judge (*iudex*) or, in the case of collegiate judicial bodies, a panel composed of two or more adjudicators.

45 The intrinsic connection between the substantive notion of a *court* and its adjudicatory functions in resolving civil disputes is underscored in an international and transnational context by procedural human rights guarantees. These guarantees, upheld under the concept of a fair trial, entitle everyone to have their civil disputes adjudicated in a fair and public hearing by an independent and impartial tribunal established by law.[50]

46 The notion of 'tribunal' used in international human rights documents to designate a 'court' is derived from Latin, rooted in the ancient Roman term for an official, *tribunus*.[51] In later usage, it became synonymous with the *court* in some languages such as Spanish and Portuguese, where courts of law are referred to as *los tribunales de justicia* or *los tribunais de justiça*.

47 However, in the context of international human rights, the term *tribunal* carries a specific association with the challenging and socially significant task of courts to adjudicate civil disputes. In this, substantive sense, the notion of *tribunal* is also used in the case law of international courts. In this substantive sense, the notion of *tribunal* is also employed in the case law of international courts. For example, in the jurisprudence of the European Court of Human Rights, the term 'tribunal' used in Article 6 of the European Convention on Human Rights has been consistently interpreted to denote an entity that performs a judicial function[52], from early decisions[53] until the most recent cases[54].

48 The ECtHR examines autonomously whether a particular body meets this criterion, irrespective of its designation or performance of other functions. The position and characterization in the overall system of national civil justice ie, whether the body is designated as body of judicial powers, and the fact that the body may also perform other functions as well (administrative, regulatory, adjudicative, advisory or disciplinary) cannot in itself preclude an institution from being a 'tribunal'.[55] For further essential

[50] See Art 10 of the Universal Declaration of Human Rights; Art 14(1) of the International Covenant on Civil and Political Rights; Art 6(1) of the European Convention on Human Rights; Art 8(1) of the American Convention on Human Rights; Art 47 of the EU Charter of Fundamental Rights, etc.

[51] In one of its meanings, *tribunal* in Latin also had a spatial connotation, as it can be used to describe the seat or bench where judges or magistrates sit to conduct judicial business.

[52] As stated in the ECtHR Guide on Article 6 (last updated 31 August 2023) 48, 'a power of decision is inherent in the very notion of „tribunal"' which 'must provide the „determination […] of the matters in dispute"'.

[53] *Benthem v the Netherlands* (ECtHR), Judgment of 23 October 1985, Series A no 97 [ECLI:CE:ECHR:1985:1023JUD000884880], para 40.

[54] See *Guðmundur Andri Ástráðsson v Iceland* [GC] (ECtHR), Judgment of 1 December 2020, 26374/18 [ECLI:CE:ECHR:2020:1201JUD002637418], para 219 ff.

[55] *H v Belgium* (ECtHR), Judgment of 30 November 1987, Series A no 127-B [ECLI:CE:ECHR:1987:1130JUD000895080], para 50.

requirements regarding the substantive notion of courts as *tribunals* (including independence, impartiality, etc), see sections 2.5 and 2.7 below. The power of the court to adjudicate implies that the court has the power to evaluate both legal and factual side of the case. As stated in *Beaumartin,* only an institution that has full jurisdiction and satisfies a number of requirements, such as independence of the executive and also of the parties, merits the designation 'tribunal'.[56]

49 While adjudicating civil disputes is central to the substantive notion of a *court*, contemporary court systems also assume diverse administrative roles. Across various jurisdictions, courts function to a larger or smaller extent as *sui generis* administrators in numerous non-contentious matters, governed by specific rules of extra-contentious procedure (sometimes termed *voluntary jurisdiction - freiwillige Gerichtsbarkeit*). These roles encompass uncontested probate cases, certain aspects of family law such as uncontested divorces or adoptions, appointment of guardians, and administration of estates when there is no legal dispute among heirs.

50 Additionally, in many countries, courts are vested with extensive authorities in enforcement proceedings, obligating them and their judges to oversee the enforcement of their own decisions and ensure effective enforcement of other enforceable titles. Furthermore, courts in some countries manage public registers that document real property rights, such as the *Grundbuch* (land register) in Germany and Austria, or keep company registers containing information about businesses and corporate entities within their jurisdiction.

51 While engagement of courts and judges brings benefits like transparency, publicity, and professional oversight when performing these essentially non-judicial tasks, disparities in their scope of responsibilities across jurisdictions pose challenges. National civil courts burdened with a wide array of non-essential tasks often face issues like case backlogs and lengthy proceedings. Moreover, their expansive subject-matter jurisdiction can obscure the essential role of courts, causing the system to focus on matters external to the main tasks of the civil justice system. The diverse portfolios of similar courts in different countries also complicate comparisons and may lead to erroneous conclusions in comparative debates.

2.5 Court as an Independent Legal Authority (*Auctoritas*)

52 Courts adjudicate based on facts and law. They are authorised to apply and interpret the law in an authoritative and final way. This empowerment to interpret (and, in some jurisdictions, make) the law is the most fundamental power vested in courts. Their only authority, or *auctoritas*, lies in their right to dispose of legal matters. Alexander Hamilton once wrote that 'the judiciary […] has no influence over either the sword or the purse',

[56] *Beaumartin v France* (ECtHR), Judgment of 24 November 1994, 15287/89 [ECLI:CE:ECHR:1994:1124JUD001528789], para 38.

highlighting that the judiciary lacks coercive force (sword) and financial power (purse).[57] However, courts are uniquely empowered to be right institutionally: their interpretation of the law typically cannot be overturned by any other authority.

53 The power of courts to serve as ultimate interpreters of the law is intrinsic to their role. As far back as ancient Rome, it was affirmed that 'pronouncing the law is the authority given to the judges' (*iurisdictio est etiam iudicis dandi licentia*). This role is also closely tied to the functional division of labour among different state authorities. Legislative bodies have the power to make the laws; executive bodies enforce the law; courts, as judicial bodies, have the power to interpret the law. Unlike executive bodies, courts must maintain independence to effectively carry out their function. According to the ECtHR, the authority to issue a binding decision that cannot be overturned by non-judicial authorities to the detriment of any party is inherent in the very concept of a court ('tribunal').[58] Judicial decisions can only be altered in a legally regulated process by other judicial bodies which act upon lawful means of recourse. When a court decision reaches finality, the principle of legal certainty, fundamental to the rule of law, dictates that court rulings should no longer be subject to questioning.[59]

54 The independence of courts as legal authorities is the attribute of courts in substantive meaning – it belongs to judges and judicial panels which decide, rather than to courts in an administrative sense. Internal independence refers to the right of individual judges or panels within a court to make decisions free from external pressures, including those from non-judicial bodies. It also prohibits directives or influences from fellow judges, court presidents, judicial councils, or other administrative authorities within the judiciary.[60]

55 While exercising their authority to interpret the law, courts are generally bound only by their own conscience. Courts must uphold the fundamental values of the legal system, observing the constitution and applying relevant legal norms conscientiously and professionally. This includes a thorough assessment of all pertinent arguments, evidence presented by the parties, and opinions from other members of the judicial panel. When necessary, judges should also consider additional legal sources and doctrines. Imposing other forms of loyalty, such as allegiance to holders of state power, may conflict with the core responsibilities of courts to apply the law independently and authoritatively.

---

[57] A Hamilton, 'Federalist No 78' (The Federalist Papers, 28 May 1788) https://avalon.law.yale.edu/18th_century/fed78.asp accessed 7 July 2024.

[58] *Van de Hurk v the Netherlands* (ECtHR), Judgment of 19 April 1994, Series A no 288 [ECLI:CE:ECHR:1994:0419JUD001603490], para 45.

[59] See for instance *Guðmundur Andri Ástráðsson v Iceland* (n 54), citing *Brumărescu v Romania [GC]* (ECtHR), Judgment of 28 October 1999, 28342/95, ECHR 1999-VII [ECLI:CE:ECHR:1999:1028JUD002834295], para 61.

[60] Cf *Agrokompleks v Ukraine* (ECtHR), Judgment of 6 October 2011,23465/03 [ECLI:CE:ECHR:2011:1006JUD002346503], para 137; *Parlov-Tkalčić v Croatia* (ECtHR), Judgment of 22 December 2009, 24810/06 [ECLI:CE:ECHR:2009:1222JUD002481006], para 86. See also below, para 60.

However, this ideal remains contested in many contemporary jurisdictions by the rise of authoritarian and illiberal regimes.[61]

56 Obligation of the courts to follow and respect the binding legal acts and decision of other courts in principle is not contrary to the status of courts as authorities which authoritatively and independently interpret the law. Everybody is bound to obey and interpret the law. But only courts, in particular the highest courts, may interpret law with authoritative, and sometimes even binding force.

57 In common law countries, judicial precedents are considered to be *law*. In Civil law countries, the requirement of legal certainty and the wish to secure *jurisprudence constante,* standard and accepted interpretation of law, leads to a *de facto* situation in which lower courts in the large majority of cases accept legal arguments and essential reasoning (*ratio decidendi)* contained in the decisions of the higher tribunals. Whether they have a formally binding force or not, is in most cases of only secondary importance.[62]

58 However, some methods of institutional imposing of binding legal interpretations upon courts by other bodies, whether they belong to legislative or judicial power, may run against the independence of courts and their authority to autonomously interpret law.

59 The courts are generally bound to apply statutory law passed by the legislature. But such laws need to conform to substantive criteria which apply to legislation in jurisdictions which respect rule of the law. Laws need to be clear, specific and applicable to future cases. Retrospective legislation issued with a view to alter judicial decisions in already pending concrete cases is contrary to the guarantee of access to a court as an independent interpreter of law contained in the right to a fair judicial procedure. In the case-law of the ECtHR, the Court showed that it is especially mindful of the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party.[63] It is emphasized that the right to a fair trial precludes any interference by the legislature with the

[61] For instance, in a Polish case the ECtHR discussed a requirement of 'special trust and loyalty' that judges elected to high positions in the judiciary need to have in respect of the holders of political power, observing that 'the employment relationship of judges with the State must be understood in the light of the specific guarantees essential for judicial independence' which 'makes it necessary for members of the judiciary to be sufficiently distanced from other branches of the State in the performance of their duties, so that they can render decisions *a fortiori* based on the requirements of law and justice, without fear or favour'. *Grzęda v Poland [GC]* (ECtHR), Judgment of 15 March 2022, 43572/18 [ECLI:CE:ECHR:2022:0315JUD004357218], para 264.

[62] On judicial precedents in comparative perspective see L Passanante, 'Judicial Precedents in Comparative Perspective' in A Uzelac and S Voet, *Judicial Precedents* (upcoming 2025).

[63] See *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v the United Kingdom* (ECtHR), Judgment of 25 June 1996 [ECLI:CE:ECHR:1996:0625REP002131993], para 112.

administration of justice designed to influence the judicial determination of a dispute – except on 'compelling grounds of the general interest'.[64]

60 The right to independently apply and interpret the law belongs to the court as the *iudex* (*tribunal*) – see above at 2.4 – ie, to the judicial formation expressly authorized to decide individual cases based on applicable procedural legislation. The court as an administrative organization (an abstract legal entity represented by its administrative bodies such as court presidents, judicial managers, heads of sections, court registrars or even collegiate administrative bodies such as general court assemblies or judicial meetings) cannot influence judges or panels, nor can it force them to reconsider or alter their judgments once they have concluded their deliberations and agreed on the judgment's content. This was reconfirmed in the landmark *Hann-Invest* judgment of the CJEU[65], which ruled that guarantees of a fair trial require that only the judicial panel responsible for a case can determine its outcome.[66]

61 The inherent power of the court to act as an independent legal authority needs to be revisited in light of technical advancements that allow courts to use artificial intelligence (AI) to assist in reaching factual and legal conclusions in cases under the court's jurisdiction. While using AI as an advisory tool in a process still firmly controlled by human judges is less problematic from the perspective of the constitutive elements of the notion of a *court*, the opportunity to fully automate the decision-making process and leave it in the hands of *algorithmic justice* poses new challenges. Although there is still no uniformly recognized *right to a human decision*, algorithmic decision-making may be controversial. While it has undisputed advantages in terms of speed and efficiency, several issues still need to be resolved regarding the admissibility and architecture of fully automated systems, such as the standards of 'well-calibrated machine decisions', admissibility, opt-out schemes, and compatibility with privacy protection.[67]

62 In Europe, the General Data Protection Regulation (GDPR) vests natural persons with a 'right not to be subject to a decision based solely on automated processing […] which produces legal effects concerning him or her'[68], but the prohibition of automatic

---

[64] See *Zielinski, Pradal, Gonzalez and Others v France* [GC] (ECtHR), Judgment of 28 October 1999 [ECLI:CE:ECHR:1999:1028JUD002484694], para 57; *Scordino v Italy (no. 1)* [GC] (ECtHR), Judgment of 29 March 2006 [ECLI:CE:ECHR:2006:0329JUD003681397], para 126.

[65] *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21 (CJEU), Judgment 11 July 2024 [ECLI:EU:C:2024:594].

[66] In this decision, the practice of appellate courts in Croatia, where a registration judge had the right to force the acting panels of the court to reconsider their legal views expressed in the draft judgments, was ruled incompatible with Art 19(1) TEU. The registration judge, who was not a member of the panel, was authorized to stay the delivery of the judgment to the parties if the legal conclusions reached in the case diverged from the settled case law of that court. In such instances, the registration judge would request the assembly of the court or the court department (both defined as administrative bodies of the court) to issue a 'legal position' binding on the members of the panel.

[67] See more in A Huq, 'A Right to a Human Decision' (2020) 106 Virginia Law Review 611.

[68] See Art 22(1) GDPR.

decision-making is not absolute and can be overruled if suitable measures to safeguard individual rights and freedoms are provided.[69] Insofar, the future of Automatic Decision Making (ADM) in the courts will revolve around the definition and enforcement of suitable protections for the integrity of such automated 'adjudication'.[70]

63 The role of courts as final legal authorities also calls for a clear delineation between issues reserved for political decision-making and those within the ambit of court jurisdiction. The steady broadening of human rights through the evolutionist case law of international tribunals, as well as through prolific normative activity by national and supranational legislative bodies, has reduced the space for discretionary and arbitrary decision-making by politically elected bodies. However, there is a backlash in the form of continuing calls to escape the jurisdiction of established juridical *fora* arguing that national sovereignty and democratically accountable bodies should prevail over the 'tyranny of lawyers and judges'. For instance, the demands for the UK to leave the European Convention for Human Rights[71] intensified after recent climate change decisions of the ECtHR and the rulings on human rights violations related to Rwanda deportations, and the US sanctions against the International Criminal Court (ICC)[72] are examples of this troubling trend of questioning the legal authority of courts to act as independent, final, and binding interpreters of the law.

2.6 Court as a Public Service (*Officium*)

64 Another aspect of the notion of courts belongs to both the past and the present of civil litigation. Since ancient times, judges have been regarded as holders of positions with particular responsibilities within society. Participation in the work of the courts was considered an *officium*, a role that carries special authorities as well as significant moral and legal obligations. In Roman culture, *officium* had a strong connotation of fulfilling one's duties and responsibilities, whether to family, society, or the state. In this sense, courts were conceived from the earliest times of civil justice systems as bodies that serve society.

65 In contemporary societies, there is a growing awareness that civil justice is among the various public services provided by the state, similar to health or education services.

---

[69] See Art 22(2)(b) GDPR.

[70] More on ADM see in T Rodríguez de las Heras Ballell, *ELI Innovation Paper. Guiding Principles for Automated Decision-Making in the EU* (ELI Vienna 2022).

[71] See C Hymas, 'Tory backlash against European Court of Human Rights climate ruling' (2024) The Telegraph https://www.telegraph.co.uk/politics/2024/04/09/tory-backlash-european-court-human-rights-climate-echr/ accessed 31 October 2024; J Sumption, 'Judgment call: the case for leaving the ECHR' (2023) The Spectator https://www.spectator.co.uk/article/judgment-day-the-case-for-leaving-the-echr/ accessed 31 October 2024.

[72] See Human Rights Watch, 'US Sanctions on the International Criminal Court' (2020) https://www.hrw.org/news/2020/12/14/us-sanctions-international-criminal-court and R Looker, 'US House passes legislation to sanction ICC over Gaza warrants bid' (2024) BBC https://www.bbc.com/news/articles/cm5512l7yero (sanctions of 2024).

Courts have a mission, and this mission— their *officium*— is to serve their users. This perspective emphasizes that courts, in many aspects of their work, should focus not only on ruling but also on serving society. To justify their *raison d'être*, courts need to provide valuable services to their clients, who should be treated as users rather than mere subjects of court actions and activities. Currently, high judicial officials in various jurisdictions acknowledge that civil justice is a public good.[73]

66 To serve their users, courts need to perform effectively and meet pressing social needs. Courts are not established for the benefit of judges and lawyers but to provide services to their ultimate users. However, while *officium* is a fundamental element of the notion of a *court*, many civil justice systems have primarily focused on technical aspects that interest only legal professionals. By the end of the last millennium, the lack of transparency, efficiency, and user-friendliness in courts contributed to a general perception that civil justice was in crisis.[74] This change in perspective is one of the main global achievements of civil procedure in the twenty-first century.[75]

67 The growing awareness that courts must provide quick, effective, and affordable redress to fulfil their essential purpose has triggered numerous reforms across the globe. The main challenges that need to be addressed are that court systems in many countries have become too costly to deliver justice for all but a few, and too slow to meet the needs of those who can afford to pay for their services.

68 With the rising digitization and virtualization of civil justice, the element of *officium* as a key component of the court's role gains even more importance. As noted by Susskind[76], instead of being a physical place, courts are becoming a service. The experience of COVID-19 has accelerated this process, though much remains to be done to fully exploit the potential of new technologies.[77] Digitization is not a universal cure for the problems of modern civil justice systems. It does not automatically provide quick and user-friendly access to justice. On the contrary, hasty digitization undertaken without careful thought and thorough consideration may produce further problems. While virtualization may

---

[73] L J Gross, 'The Civil Justice System in a Time of Change' (January 2019) LCLCBA Annual Lecture https://www.judiciary.uk/wp-content/uploads/2019/01/lclcba-lecture-jan-2019.pdf accessed 4 July 2024, 6; compare (with a critical stance) R E Lee, 'The American Courts and Public Goods: Who Should Pay the Costs of Litigation' (1985) 34 The Catholic University Law Review 267, 268.

[74] A A S Zuckerman (ed), *Civil Justice in Crisis* (Oxford UP 1999).

[75] See more in A Uzelac, 'Turning Civil Procedure Upside Down: From Judges' Law to Users' Law', in X Kramer and C H van Rhee (ed), *Tweehonderd jaar/Bicentenaire Code de Procédure civile* (Kluwer 2008) 297-309.

[76] R Susskind, in A Kaplan, 'Online courts, the future of justice and being bold in 2020' (January 2020), ABA Journal, https://www.abajournal.com/news/article/online-courts-the-future-of-justice-and-being-bold-in-2020 accessed 31 October 2024; see also R Susskind, *Online Court and the Future of Justice* (Oxford UP 2021).

[77] Compare B Krans and A Nylund (ed), *Civil Courts Coping with COVID-19* (Hague 2021).

bring benefits, it may also result in courts providing even poorer and less user-friendly services than before the change.

2.7 Court as Equilibrium (*Iustitia*, *Equitas*)

69 The last, but perhaps most essential, layer of meaning associated with any *court* is its connection to the concept of justice (*iustitia*). Courts are a fundamental element of the civil justice system, which is, after all, a system of *justice*. Courts are expected to render decisions that are substantially just and fair. The perception of justice is essential for the legitimacy of courts. Without justice, courts in any society cease to be respected legal institutions and are no longer *courts of law* in a substantive sense. To paraphrase Augustine, courts without justice are merely instruments of oppression in a tyrannical and lawless society.[78]

70 While it is undeniable that courts are expected to deliver justice, the definition of *justice* varies. However, some universally accepted principles exist in any legal system. First, courts must make substantively correct decisions (*right judgments*). Second, courts must follow predictable and clear procedures that guarantee equal treatment and a full hearing of the parties (*due process*, *fairness*). Third, judicial decisions should provide effective and equitable solutions for the underlying social problems (*equity*, *aequitas*).

71 Substantively correct decisions, as a component of substantive justice, generally embody the notion that adjudication, a fundamental court function (see above 2.4), aims to achieve accurate outcomes. As Sorabji articulates, '[a]ll civil justice systems are committed, to varying degrees, to determining civil disputes through ascertaining true facts and applying it to right law in order to secure an accurate decision'.[79] Methods of ascertaining facts and the concept of what constitutes *law* can vary widely. Historically, courts have established facts perceived to be true through various means, ranging from *judgments of God* (such as ordeals or trials by combat) to the application of elaborate systems of presumptions and evidentiary rules, and now to modern systems of free evaluation of evidence. The law can derive from customary practices within a community (customary law), formal legislative enactments (statutory law), or judicial decisions (precedents). But regardless of how law and facts are perceived, the notion of a *court* always requires that facts are correctly established and that the law is correctly applied.

72 In civil justice systems, there is no external guarantee for the correctness of court outcomes. The court itself, through its role as an institution that issues final decisions (see above at 2.4), is responsible for ensuring the perception of correct results. This perception relies on internal elements, specifically the correct application of established

[78] Saint Augustine, '*Remota itaque iustitia quid sunt regna nisi magna latrocinia?*' in *De Civitate Dei* (Henry Bettenson tr, Penguin Books 1984) IV, 4.
[79] J Sorabji, *English Civil Justice after the Woolf and Jackson Reforms: A Critical Analysis* (Cambridge UP 2013) 31.

procedures. These procedures must be transparent, known in advance, and generally accepted by society and the parties involved. To ascertain that procedures which guarantee the accurateness of the results are properly followed, court proceedings must be public: justice can only be achieved if it is not only done, but also seen to be done.[80] Therefore, it can be stated that the publicity of judicial processes, and more broadly, the concept of 'open justice', are inherent in the notion of 'court'.[81]

73 Court procedures must be *fair.* The notion of *fairness* is a complex one. It is inextricably connected to notions of justice, equity and impartiality. At the core of all of these notions is the ideal of *equilibrium,* a state of balance between opposing forces. Equilibrium is stability, a condition in which the sum of all forces and torques acting on it is net zero. As such, equilibrium tends to create a state in which all competing forces or factors are in harmony. The equilibrium etymologically originates from the merger of two notions that are intrinsically connected to the notions of justice: from the word *aequus* (equal) which implies equality and uniformity, and *libra* (scales), a device for weighing (evaluating) in the pursuit of balance.

74 *Justitia*, the Roman goddess of justice, is in common iconography depicted as a regal, matronly figure, typically standing or sitting while holding the scales.[82] Such statues or pictures are a common decoration of many courthouses and courtrooms in the world and point to the fact that the essence of the court activities is to find a balanced and impartial view on the claims and defences of two sides in the conflict, which submit, each on one side, conflicting arguments on the scales of justice. The artistic figure of Justice is in art depicted blindfolded[83] to indicate that, figuratively, justice is blind – blind to irrelevant and external factors such as wealth, power, or identity. Blindness signifies objectivity and impartiality, and the idea that while adjudicating, the court should not take sides based on personal characteristics like race, gender, or social status. In the same vein, in order to evaluate properly the arguments of the parties, the court needs to be impartial and administer justice without bias or prejudice, discarding personal feelings, emotions, and subjective views.

75 Equidistance to both parties and their interests is the constitutive element of a fair and equitable legal process in which the court is positioned between the two sides, without taking sides. Emphasizing that civil justice regularly presupposes that the court is acting in the dispute as a third, impartial element, some authors argue that the 'root concept

[80] The often-cited statement that 'justice should not only be done but should manifestly and undoubtedly be seen to be done' originates from an English judge, Lord Chief Justice Hewart in *R v Sussex Justices, Ex parte McCarthy* (High Court of Justice, UK) [1924] 1 KB 256, 259.

[81] For a contemporary discussion of 'open justice' concept see B Hess and A Koprivica Harvey (ed), *Open Justice. The Role of Courts in a Democratic Society* (Nomos 2019).

[82] See for instance Raphael's fresco 'The Cardinal and Theological Virtues' in the Vatican where the Goddess of Justice is displayed as the fourth cardinal virtue in a medallion on the ceiling of the *Stanza della Segnatura*.

[83] In some historical depictions, Justice is not blindfolded, emphasizing the ability to discern truth with clarity. Cf A Prosperi, *Justice Blindfolded. The Historical Course of an Image* (Brill 2018).

of "courtness" […] is a simple one of conflict structured in triads'.[84] The real challenge in this, conventional concept of court, is to maintain the equilibrium until the end of the proceedings, preventing that the result – whether more favourable for one side or not – is not perceived by anyone (including the 'loser') as two against one – as the outcome that is grounded either in consent of all parties or in objective and fact-based deliberations.[85] This state of equilibrium and equidistance, when viewed from the judicial perspective, is epitomized in the notion of judicial impartiality.

76 Impartiality is closely linked with independence, though the two notions are not identical. In the practice of international courts, impartiality normally denotes the absence of prejudice or bias. It is tested by a subjective and an objective test, examining first whether the court (ie, the adjudicating judge) displayed a personal conviction or behaviour which indicates personal prejudice or bias in a given case, and second, whether the composition of the court or tribunal offers sufficient guarantees for exclusion of legitimate doubts in respect of court's impartiality.[86] The latter test implies what is called a 'doctrine of appearances': to secure public confidence that courts should inspire in a democratic society, account must also be taken of various issues regarding internal organisation and court procedure. *Inter alia*, circumstances relevant for the assessment of impartiality include the exercise of several functions in the same cases (eg, advisory and judicial functions), past participation of judges in the same or connected proceedings (eg, acting in any role in previous instances of the same process), declared personal interest in the case (which includes public expression of opinions by a judge's family members) and various professional, financial or personal links between a judge and a party or party's advocate.[87]

77 Justice must not only be independent and impartial, but it should also provide the opportunity to all those who consider that their civil rights are harmed to access fair and equitable mechanisms of dispute resolution. The right to a court, albeit not absolute, is one of the fundamental procedural guarantees of access to justice. This right is an inherent aspect of fair trial rights and plays a prominent role in contemporary democracies.[88] To guarantee the 'right to a court' means that everyone who has a disputed claim relating to his civil rights and obligations may count on a possibility to have this claim if all other options fail, brought before, heard and decided by a body that

[84] Shapiro (n 3) 5.
[85] Ibid.
[86] See more on the interpretation of impartiality notion in cases before the ECtHR in *Micallef v Malta* [GC], 2009, para 93; *Wettstein v Switzerland*, 2000, para 43; *Nicholas v Cyprus*, 63246/10, para 49, Judgment 9 January 2018.
[87] See more in P Hirvelä and S Heikkilä, *Right to a Fair Trial. A Practical Guide to the Article 6 Case-Law of the European Court of Human Rights* (Intersentia 2021); for a broader presentation and comparison with criminal justice see A Clooney and P Webb, *The Right to a Fair Trial in International Law* (Oxford 2020) 66-135.
[88] See *Golder v the United Kingdom* (ECtHR), Judgment of 21 February 1975 [ECLI:CE:ECHR:1975:0221 JUD000445170], para 28-36; *Zubac v Croatia [GC]* (ECtHR), Judgment of 05 April 2018 [ECLI:CE:ECHR:2018:0405JUD004016012], para 76 ff.

deserves the designation of a 'court'. While the right to a court may be subject to limitations, they must not restrict or reduce the access in such a way or to such an extent that the very essence of the right is impaired.[89]

78 The purpose of postulating the 'right to a court' as a human right is among others to provide individuals with their right to a 'day in the court': the right to have the opportunity to present the contested case to the court and the public and be heard by a judicial authority. The right to a (fair, public) *hearing* is a cornerstone of the justice system in many countries and is considered to be a fundamental component of the broader principle of due court process.

79 Optimally, it should be ensured that the parties involved in a legal dispute have the full opportunity to present their arguments, evidence, and testimony to the court, and to hear and respond to the arguments, evidence, and testimony of the opposing party. Essentially, the right to a hearing upholds the idea that everyone has the right to seek justice in courts and defend their rights in fair and equitable legal proceedings. In this sense, an adversarial construction of the hearing—where each side has the right to respond to the other side's allegations and evidence, as well as to supplement them with its own factual and legal arguments—is at the core of fair trial guarantees.

80 Another aspect of adversarialism is the need to allow parties to comment on all evidence presented or observations filed by any other participant in the process, with the aim of influencing the court's decision. This includes material submitted by an independent member of the national legal service (eg, public prosecutors or general attorneys) or internal communications between higher and lower courts. Similarly, the ECtHR emphasized in several key decisions that litigants' confidence in the justice system stems from knowing they have had the chance to express their views on every document in the file, including those obtained by the court on its own initiative.[90]

81 However, the fundamental right to adversarial proceedings must be carefully weighed and made compatible with another aspect of civil justice objectives: the requirement that judicial decisions provide effective redress to litigants. Adversarial proceedings require time and resources. Allowing replies, rejoinders, and replicas to every move of the other side and third parties can lead to a long and tedious process, while time and money run out. There is a perpetual tension between the desire to provide as much time

[89] *De Geouffre de la Pradelle v France* (ECtHR), Judgment of 16 December 1992, Series A no 253-B [ECLI:CE:ECHR:1992:1216JUD001296487], para 28; *Stanev v Bulgaria [GC]* (ECtHR), Judgment of 17 January 2012, 36760/06 [ECLI:CE:ECHR:2012:0117JUD003676006], para 229.

[90] See *KS v Finland* (ECtHR), Judgment of 31 May 2001, 29346/95 [ECLI:CE:ECHR:2001:0531JUD002934695] para 22; *Nideröst-Huber v Switzerland* (ECtHR), Judgment of 18 February 1997 [ECLI:CE:ECHR:1997:0218JUD001899091, Reports of Judgments and Decisions 1997-I], para 29; *Pellegrini v Italy* (ECtHR), Judgment of 20 July 2001, 30882/96 [ECLI:CE:ECHR:2001:0720JUD003088296, ECHR 2001-VIII], para 45.

and opportunity to respond as possible and the awareness that only effective justice fulfils its social purpose.

82 In the past, the emphasis was often on thoroughness; it was argued that the desire to save time and speed up proceedings does not justify ignoring such a fundamental principle as the right to adversarial proceedings.[91] But in the past few decades, the overwhelming perception of a crisis in civil justice has swung the pendulum in the other direction, seeking to find a compromise between the requirements of fairness and the need for speed and cost-efficiency in civil litigation.[92]

83 The solution lies in the principles of procedural cooperation and procedural proportionality. These principles advocate that courts should intervene only when absolutely necessary (litigation as *ultimum remedium*), and only after other means of dispute resolution, particularly those aimed at autonomous resolution, have failed. When handling civil cases, courts should act proportionately to the social importance and value of each specific case, adjusting the time and resources accordingly. This ensures effective and proportionate legal protection for all cases within the court's caseload.[93]

84 As this task becomes increasingly challenging, especially within the context of inert and underfunded national civil justice systems, the emphasis in current debates is shifting towards effective case management and court administration, supported by modern digital tools.[94]

85 Contemporary challenges to the fragile equilibrium which is so essential for the notion of court also include massification and collectivization of civil procedure. The neat and logical scheme of triads which has dominated the cultural landscape is being put to the test by the rise of collective proceedings. Especially in situations where hundreds and thousands of plaintiffs sue multiple defendants, the simple scheme with two sides / two litigants who present their dispute to the neutral third party seems to be outdated. Balancing multiple conflicting interests presupposes new skills and new means to persuade the public that the scales of justice are even. In the context of representative actions where many affected parties are passive and absent from the proceedings, a

[91] So eg, *Nideröst-Huber v Switzerland* (n 90) para 30.
[92] On the 'three-dimensional' approach to civil procedure which seeks a compromise between the goals which are not 'entirely complementary' see A A S Zuckerman, *Justice in Crisis: Comparative Dimensions of Civil Procedure,* in Zuckerman (ed) (n 71), 2-52.
[93] See eg, the Model European Rules of Civil Procedure 2020 (ELI/UNIDROIT), Art 2-10 and their commentary in *ELI-UNIDROIT Model European Rules of Civil Procedure. From Transnational Principles to European Rules of Civil Procedure* (Oxford UP 2021) 27, 34-39.
[94] See eg, R García Odgers, *El Case Management en perspectiva comparada. Teoría, evolución histórica, modelos comparados y un caso en desarrollo* (Valencia 2020).

special challenge to the role of the court is present with respect to the right to be heard as a substantial element of justice.

86 Finally, the notion of a *court* as *aequilibrium* implies that courts must provide equitable solutions for the cases they handle, considering the broader social problems underlying the litigation. In this sense, the equilibrium notion is connected to the concept of *equity* (*aequitas*) in a procedural context. This notion expresses the idea that courts should not only provide decisions that are mechanically correct applications of the law to the facts. Technically correct decisions at any cost have been discarded as outcomes that defy their main purpose, as vividly expressed in the proverb *fiat iustitia, pereat mundus* (let justice be done, though the world perish). Courts are expected to provide more than mechanical justice; they are not mere 'loudspeakers of law' in the sense of Montesquieu's judge, who was described as the *bouche de la loi* (mouth of the law). Contemporary courts are socially relevant as providers of functional, efficient, and quick decisions that deliver equitable solutions to the problems they are meant to resolve. The element of *aequitas* as a constitutive part of the *court* notion is even more important today, as it underpins the belief that, regardless of technological advances, courts will always remain human institutions that provide human solutions for human problems.

3 CONCLUSION

87 The purpose of this chapter was to provide a bridge between the main organizational unit of every civil justice system, the notion of *court*, and the other substantive topics of the CPLJ project. Comparative law and justice must always be sensitive to cultural and traditional divergences while seeking common ground for mutual understanding. The analysis of the multiple layers and connotations of the *court* notion in this chapter aims to reveal the core social and anthropological components present, to varying extents, in all national civil justice systems. The need for effective and just dispute resolution mechanisms is ubiquitous, and therefore the idea of courts as venues that provide such key services has universal and transcultural elements. Their commonality stems from the shared goals of civil justice present in almost every national jurisdiction.[95]

88 Contemporary national civil justice systems are evolving at a fast pace. Faced with common challenges, courts are changing their forms, organization, and methods of work. Consequently, the notion of *courts*, while maintaining certain common elements derived from the shared goals of civil justice systems, is also undergoing a transformation. The balance among the seven layers identified in the *court* notion is inevitably shifting as a result of social and technological changes and the overall

[95] More on such goals see in A Uzelac (ed), *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems* (Springer 2014).

transformations of civil justice, though this process in most jurisdictions only occurs slowly and gradually.[96]

89 In this chapter, some identified changes point to the weakening of the spatial understanding of courts, ie, the relativization of the link between the 'court' and a single physical location, partly due to the virtualization of the 'court' concept through digitization;[97] difficulties in maintaining collegiality and lay participation as connecting elements between courts and local and broader communities;[98] the promotion of autonomous methods of dispute resolution as an important collaborative element of courts' activity;[99] challenges to the dominance of the state court system as the principal venue for dispute resolution;[100] challenges arising from providing courts with extensive authorities in non-adjudicatory spheres (eg, enforcement, various non-contentious proceedings);[101] dangerous attacks on adjudicatory independence and the questioning of courts' final authority to interpret and apply the law, caused by internal and external pressures;[102] struggles to keep civil courts as accessible and affordable public service for their users;[103] and difficulties in adhering to the ideals of open justice and full hearings in the context of scarce resources, pressures to provide quick and effective redress, and the growing collectivization of dispute resolution mechanisms.[104]

90 Nevertheless, despite all challenges, civil courts remain the cornerstone of state dispute resolution services. Comparative research of civil justice should help find adequate solutions for transformations that will allow courts to respond to the multiple challenges of the present and future.

[96] See A Uzelac and C H van Rhee, 'The Metamorphoses of Civil Justice and Civil Procedure', in A Uzelac and H van Rhee (ed), *Transformation of Civil Justice. Unity and Diversity* (Springer 2018) 3-21.
[97] See above, para 11-14.
[98] See above, para 19-22.
[99] See above, para 23-24.
[100] See above, para 37-39.
[101] See above, para 49-51.
[102] See above, para 55, 58-63.
[103] See above, para 66-68.
[104] See above, para 81-85.

ABBREVIATIONS AND ACRONYMS

ABF	American Bar Foundation
ADM	Automated Decision-Making
AI	Artificial Intelligence
ALI	American Law Institute
Art	Article/Articles
BMJ	*Bundesministerium der Justiz* (German Ministry of Justice)
CDR	Consumer Dispute Resolution
CEPEJ	*Conseil de l'Europe Commission européenne pour l'efficacité de la justice* (Council of Europe European Commission for the efficiency of justice)
CoE	Council of Europe
CPLJ	Comparative Procedural Law and Justice
cf	*confer* (compare)
ch	chapter
CJEU	Court of Justice of the European Union
DRBs	Dispute Review Boards
edn	edition/editions
ed	editor/editors
etc	et cetera
ECtHR	European Court of Human Rights
ECLI	European Case Law Identifier
eg	*exempli gratia* (for example)
ELI	European Law Institute
Eng	English (language)
EU	European Union
ff	following
FIDIC	International Federation of Consulting Engineers
fn	footnote (external, ie, in other chapters or in citations)
Fr	French (language)
GC	Grand Chamber
GDPR	General Data Protection Regulation (EU)
ibid	*ibidem* (in the same place)
ICC	International Criminal Court
ie	*id est* (that is)
It	Italian (language)
LCLCBA	London Common Law & Commercial Bar Association
n	footnote (internal, ie, within the same chapter)
no	number/numbers
Off Gaz	Official Gazette

OAS	Organization of American States
para	paragraph/paragraphs
pt	part
Sec	Section/Sections
Sp	Spanish (language)
supp	supplement/supplements
TEU	Treaty on European Union
UK	United Kingdom
UNIDROIT	*Institut international pour l'unification du droit privé* (International Institute for the Unification of Private Law)
UP	University Press
US / USA	United States of America
v	versus
vol	volume/volumes

LEGISLATION

International/Supranational

American Convention on Human Rights (OAS)

Charter of Fundamental Rights (EU)

European Convention on Human Rights 1950 (Council of Europe)

International Covenant on Civil and Political Rights (UN)

Model European Rules of Civil Procedure 2020 (ELI / UNIDROIT)

Universal Declaration of Human Rights (UN)

National

Basic Law (Constitution) 1949 (Germany).

Constitution 1990 (Croatia).

Code of Civil Procedure 1976 (Croatia).

Courts Act 1971 (UK).

CASES

International/Supranational

Agrokompleks v Ukraine, Case *23465/03* (ECtHR), Judgment of 6 October 2011

Beaumartin v France, 15287/89 (ECtHR), Judgment of 24 November 1994

Benthem v the Netherlands, Case 8848/80, Series A no. 97 (ECtHR), Judgment of 23 October 1985

Brumărescu v. Romania [GC], Case *28342/95, ECHR 1999-VII* (ECtHR), Judgment of 28 October 1999

De Geouffre de la Pradelle v France, Series A no. 253-B (ECtHR), Judgment of 16 December 1992

Golder v the United Kingdom [GC], Series A no. 18 (ECtHR), Judgment of 21 February 1975

Grzęda v Poland [GC], Case 43572/18 (ECtHR), Judgment of 15 March 2022

Guðmundur Andri Ástráðsson v Iceland [GC], Case 26374/18 (ECtHR), Judgment of 1 December 2020

Hann-Invest, Mineral-Sekuline and Udruga KHL Medveščak, Cases C-554/21, C-622/21 and C-727/21 (CJEU), Judgment of 11 July 2024

H. v Belgium, Case 8950/80, Series A no. 127-B (ECtHR), Judgment of 30 November 1987

Micallef v Malta [GC], Case 17056/06 (ECtHR), Judgment of 15 January 2008

National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom, Reports of Judgments and Decisions 1997-VII (ECtHR), Judgment of 23 October 1997

Nicholas v Cyprus, Case 63246/10 *(ECtHR),* Judgment of 9 January 2018

Nideröst-Huber v Switzerland, Reports of Judgments and Decisions 1997-I , Judgement of 18 February 1997

Parlov-Tkalčić v Croatia, Case *24810/06, (ECtHR),* Judgement of 22 December 2009

Pellegrini v Italy, Case 30882/96 (ECtHR), Judgment of 20 July 2001, *ECHR 2001-VIII*

Stanev v Bulgaria [GC], Case 36760/06, ECHR 2012, Judgment of 17 January 2012

Van de Hurk v the Netherlands, Case 16034/90, Series A no. 288, ECtHR, Judgement of 19 April 1994

Wettstein v Switzerland, Case 33958/96, ECHR 2000-XII (ECtHR), Judgment of 21 December 2000

Zubac v Croatia [GC], Case 40160/12 (ECtHR), Judgment of 5 April 2018.

National

R v Sussex Justices, Ex parte McCarthy (High Court of Justice, UK) [1924] 1 KB 256.

BIBLIOGRAPHY

Augustine S, *De Civitate Dei* (Henry Bettenson tr, Penguin Books 1984).

Berman H J, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard UP 1983).

Biard A, Hoevenaars J, Kramer X and Themeli E, 'Introduction: The Future of Access to Justice – Beyond Science Fiction', in X Kramer et al (ed), *New Pathways to Civil Justice in Europe* (Springer 2021) 6-8.

Brakel S J, *American Indian tribal courts: the costs of separate justice* (Chicago ABF 1978).

Cairns J W and du Plessis P J (ed), *The Creation of the Ius Commune: From Casus to Regula* (Edinburgh UP 2010)

Cardozo B N, *The Nature of the Judicial Process* (Yale UP 1921)

CEPEJ, *European Justice Systems 2002* (CoE 2005), https://rm.coe.int/european-judicial-systems-2002-facts-and-figures-on-the-basis-of-a-sur/1680747c73 accessed 4 July 2024.

Chase O G and Walker J (ed), *Common Law, Civil Law and the Future of Categories* (Lexis Nexis 2010).

Coffin F M, *On Appeal: Courts, Lawyering, and Judging* (New York and London 1996).

Contini F and Reiling D, 'Double normalisation: when procedural law is made digital', *Oñati Socio-legal Series* (2022) 12 (3), 654-688.

Cross FB and Tiller EH, 'Understanding Collegiality on the Court' (2008) 10 Journal of Constitutional Law 257-271

Rodríguez de las Heras Ballell T, *ELI Innovation Paper. Guiding Principles for Automated Decision-Making in the EU* (ELI Vienna 2022), https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Innovation_Paper_on_Guiding_Principles_for_ADM_in_the_EU.pdf

Edwards H T, 'The Effects of Collegiality on Judicial Decision Making' (2003) 151 University of Pennsylvania Law Review 1639

Ekert S et al, 'Exploring the causes of the decline in the number of first-instance proceedings before the civil courts' (BMJ 2023) https://www.bmj.de/ accessed 4 July 2024.

ELI-UNIDROIT, *ELI-UNIDROIT Model European Rules of Civil Procedure. From Transnational Principles to European Rules of Civil Procedure* (Oxford UP 2021).

Feener M, *Shari'a and Social Engineering* (Oxford UP 2013).

Galanter M, 'The Hundred-Year Decline of Trials and the Thirty Years War' (2005) 57 Stanford Law Rev 1255-1274.

García Odgers R, *El Case Management en perspectiva comparada. Teoría, evolución histórica, modelos comparados y un caso en desarrollo* (Valencia 2020).

Goanta C and Ortolani P, 'Unpacking Content Moderation: The Rise of Social Media Platforms as Online Civil Courts' in Kramer X et al (ed), *Frontiers in Civil Justice: Privatisation, Monetisation and Digitisation* (Elgar 2022) 192-216.

Gross L J, 'The Civil Justice System in a Time of Change', LCLCBA Annual Lecture (January 2019), https://www.judiciary.uk/wp-content/uploads/2019/01/lclcba-lecture-jan-2019.pdf accessed 4 July 2024.

Hamilton A, 'Federalist No 78' (The Federalist Papers, 28 May 1788) https://avalon.law.yale.edu/18th_century/fed78.asp accessed 7 July 2024.

Harmann W and Pennington K, *The History of Courts and Procedure in Medieval Canon Law* (Washington CUP 2016).

Hess B and Koprivica Harvey A (ed), *Open Justice. The Role of Courts in a Democratic Society* (Nomos 2019).

Hodges C et al (eds), *Consumer ADR in Europe* (Beck-Hart-Nomos 2012).

Huq A, 'A Right to a Human Decision', (2020) 106 *Virginia Law Review* 611-688.

Kaplan A, 'Online courts, the future of justice and being bold in 2020' (January 2020), *ABA Journal,* https://www.abajournal.com/news/article/online-courts-the-future-of-justice-and-being-bold-in-2020 accessed 4 July 2024.

Krans B and Nylund A (eds), *Civil Courts Coping with COVID-19* (Hague 2021).

Langbein J, 'The Demise of Trial in American Civil Procedure: How it Happened, is it Convergence with European Civil Procedure?', in van Rhee CH and Uzelac A (ed), *Truth and Efficiency in Civil Litigation. Fundamental Aspects of Fact-finding and Evidence-taking in a Comparative Context* (Intersentia 2012) 109-154.

-------- , 'The Disappearance of Civil Trial in the US' (2012), 122 *Yale Law J* 522

-------- ,Lettow Lerner R and Smith BP, *History of the Common Law: The Development of Anglo-American Legal Institutions* (Aspen Publishers 2009).

Lee R E, 'The American Courts and Public Goods: Who Should Pay the Costs of Litigation' (1985) 34 Cath. U. L. Rev. 267.

Lesaffer R, *European Legal History: A Cultural and Political Perspective* (Cambridge UP 2009)

MacCormick N, *Legal Reasoning and Legal Theory* (Oxford UP 1978).

Marchetti E and Daly K, 'Indigenous courts and justice practices in Australia' (2004) 277 *Trends & issues in crime and criminal justice* (Canberra Australian Institute of Criminology). https://www.aic.gov.au/publications/tandi/tandi277 accessed 4 July 2024.

McIntyre J, *The Judicial Function. Fundamental Principles of Contemporary Judging* (Springer 2019).

Merryman J H, *The Civil Law tradition* (Stanford 1985).

Montesquieu, *The Spirit of the Laws* (Cambridge UP 1989).

Mousourakis G, *Roman Law and the Origins of the Civil Law Tradition* (Springer 2015)

Prosperi A, *Justice Blindfolded. The Historical Course of an Image* (Brill 2018).

Reiling D, 'Court Information Technology: Hypes, Hopes and Dreams' in X Kramer et al (eds), *New Pathways to Civil Justice in Europe* (Springer 2021) 43-60.

Sander F E A, 'Varieties of Dispute Processing' in *The Pound Conference: Perspectives on Justice in the Future* (West Publishing 1979).

Shapiro M, *Courts. A Comparative and Political Analysis* (Chicago UP 1981).

Sorabji J, *English Civil Justice after the Woolf and Jackson Reforms: A Critical Analysis* (Cambridge UP 2013).

Susskind R, *Online Court and the Future of Justice* (Oxford UP 2021).

Tamm D, *Roman Law and European Legal History* (Copenhagen 1997).

Uzelac A (ed), *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems* (Springer 2014).

-------- 'Turning Civil Procedure Upside Down: From Judges' Law to Users' Law', in Kramer and van Rhee (eds), *Tweehonderd jaar/Bicentenaire Code de Procédure civile* (Kluwer 2008) 297-309.

Uzelac A and van Rhee CH, 'The Metamorphoses of Civil Justice and Civil Procedure', in: Uzelac/Van Rhee (eds), *Transformation of Civil Justice. Unity and Diversity* (Springer 2018) 3-21.

van Caenegem R C, *European law in the past and the future. Unity and diversity over two millennia,* (Cambridge UP 2002).

Waxman M, *Civil and Criminal Procedure of Jewish Courts* (Chicago UP 1914).

Zuckerman A A S (ed), *Civil Justice in Crisis* (Oxford UP 1999).