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The Minimum Wage and Transparent Wages in the EU: Means to Address Multidimensional Inequalities

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Abstract: This paper explores the role of minimum wage policies and transparent wage practices in the European Union as instruments to mitigate multidimensional inequalities. It situates wage regulation within the broader framework of social justice and solidarity, emphasizing its potential to reduce disparities not only in income but also in gender, sectoral, and regional dimensions. By examining EU directives and national implementations, the study highlights how minimum wage standards contribute to safeguarding workers against in-work poverty, while transparency mechanisms foster accountability and narrow wage gaps. The analysis underscores the interplay between legal frameworks, institutional capacity, and cultural attitudes toward fairness, revealing both opportunities and limitations in current approaches. Ultimately, the paper argues that strengthening minimum and transparent wage policies is essential for advancing equitable labour markets and reinforcing the EU's commitment to social cohesion.

Keywords: multidimensional inequalities; income disparities; gender pay gap; in-work poverty; minimum wage; wage transparency.

I. Introduction

The concept of *social exclusion* has become a central theme in European social policy debates since the late 20th century. It refers not only to material deprivation but also to the denial of participation in civic, economic, and cultural life[1]. In contrast, *social inclusion* is understood as the active creation of opportunities for individuals and groups to engage fully in society, thereby ensuring dignity and equality[2]. Within this framework, the *minimum wage* has emerged as a crucial instrument of social protection. Initially conceived as a temporary economic measure to safeguard vulnerable workers, it has evolved into a cornerstone of European solidarity and a symbol of the Union's commitment to social justice[3].

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1 R LEVITAS, *The Inclusive Society? Social Exclusion and New Labour* (Palgrave Macmillan 1998).

2 A SEN, *Development as Freedom* (Oxford University Press 1999).

3 A B ATKINSON, *Inequality: What Can Be Done?* (Harvard University Press 2015).

The European Union's recent reforms underscore this transformation. The *Directive on Adequate Minimum Wages (EU 2022/2041)* establishes a legal framework to ensure that wages across Member States provide workers with a decent standard of living[4]. Complementing this, the *Directive on Pay Transparency (EU 2023/970)* seeks to eliminate discriminatory practices mandating disclosure of wage structures and gender pay gaps[5]. Together, these instruments reflect a broader recognition that wage fairness is not merely an economic issue but a matter of *human rights and democratic participation*.

The introduction of these directives must be situated within the wider context of *multidimensional inequality* in Europe. Income disparities intersect with inequalities in education, health, housing, and access to labour markets[6]. Vulnerable groups, including women, young people, ethnic minorities, and persons with disabilities, are disproportionately affected. The minimum wage, therefore, functions not only as a mechanism of economic redistribution but also as a tool of *social cohesion*, designed to bridge divides and foster inclusion.

Moreover, the *historical evolution* of wage regulation illustrates the shifting priorities of European societies. From early debates on poverty and social Darwinism to contemporary concerns about globalization and technological change, the minimum wage has consistently been framed as a response to exclusionary dynamics[7]. Today, it is increasingly understood as a *pillar of social dignity*, ensuring that work translates into meaningful participation in civic life.

This essay will explore the role of adequate and transparent wages in addressing multidimensional inequalities within the EU. By examining theoretical perspectives, international frameworks, and comparative case studies (including Romania, Germany, France, Poland, and Sweden) it will argue that wage fairness is essential to building inclusive societies in the twenty-first century. The guiding principle is clear: "*Nobody is left behind*".

The persistence of inequality within the European Union is multidimensional, extending beyond income disparities to encompass education, health, housing, and access to labour markets[8]. These inequalities are not evenly distributed; rather, they disproportionately affect vulnerable groups such as women, young people, ethnic minorities, and persons with disabilities. The European Commission has repeatedly emphasized that such disparities undermine the Union's commitment to social cohesion and solidarity.

Wage policies, particularly minimum wage legislation and collective bargaining, are therefore not merely economic instruments but mechanisms of *social integration*. By establishing a wage floor, governments seek to ensure that employment translates into a decent standard of living. Collective bargaining, meanwhile, empowers workers to negotiate fairer conditions, thereby

[4] Directive (EU) 2022/2041 of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L275/33.

[5] Directive (EU) 2023/970 of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms [2023] OJ L132/21.

[6] Eurostat, *Key figures on European living conditions – 2025 edition* (Publications Office of the European Union 2025), https://data.europa.eu/doi/10.2785/1105614.

[7] K POLANYI, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press 1944).

[8] Commission, 'European Pillar of Social Rights Action Plan' (Communication) COM (2021) 102 final; Commission, *2022 Report on Gender Equality in the EU* (Publications Office of the European Union 2022), https://data.europa.eu/doi/10.2838/94579; R FREEMAN and J MEDOFF, *What Do Unions Do?* (Basic Books 1984).

reinforcing democratic participation in the workplace[9]. The significance of these policies becomes evident when viewed against the backdrop of *European social models*. In Nordic countries, collective bargaining predominates, while in Central and Eastern Europe statutory minimum wages play a more prominent role. Despite these differences, the underlying objective remains consistent: to reduce inequality and foster inclusion. The minimum wage thus functions as a bridge between economic policy and social justice, ensuring that the benefits of growth are more equitably shared.

II. Conceptual Foundations

The intellectual foundations of social exclusion and inclusion are deeply rooted in both philosophical and economic traditions. The notion that individuals may be marginalized from the mainstream of society has long been present in European thought. Shakespeare's reflections on human dignity in *King Lear* and *The Merchant of Venice* illustrate the moral consequences of exclusion, while Ferdinand de Saussure's structuralist insights highlight how language itself can reinforce social boundaries[10]. These cultural references underscore the idea that exclusion is not merely material but also symbolic, shaping identities and perceptions.

Economically, Joseph Schumpeter's theories of development and "creative destruction" provide a framework for understanding how capitalist systems generate both opportunities and inequalities[11]. While innovation drives growth, it simultaneously displaces workers and communities, creating new forms of exclusion. This duality reflects the dynamic nature of social integration: inclusion is never permanent but must be continually renegotiated in response to structural change.

Historically, debates on poverty and exclusion have evolved significantly. In the nineteenth century, *social Darwinism* framed poverty as a natural consequence of individual weakness, legitimizing exclusionary practices[12]. During the Cold War, propaganda often contrasted capitalist prosperity with socialist poverty, reinforcing ideological divisions[13]. More recently, the discourse has shifted toward recognizing poverty and exclusion as systemic failures rather than individual shortcomings. This evolution reflects a growing consensus that social justice requires collective responsibility.

The conceptual distinction between exclusion and poverty is particularly important. Poverty refers to a lack of material resources, while exclusion encompasses the denial of participation in civic, economic, and cultural life[14]. Thus, exclusion is multidimensional, involving not only income but also access to education, healthcare, housing, and political representation. Inclusion, conversely, requires proactive measures to dismantle barriers and create pathways for

[9] R Plasman and F Rycx, 'Collective Bargaining and Poverty: A Cross-National Perspective' (2001) 7(2) *European Journal of Industrial Relations* 175-202; J Visser, 'What happened to collective bargaining during the great recession?' (2016) 5(9) *IZA Journal of Labor Policy* 1-35; Eurostat, *Key figures on European living conditions* (n 6).

[10] W Shakespeare, *King Lear* (ed. RA Foakes; Arden Shakespeare 1997); F de Saussure, *Course in General Linguistics* (trans. R Harris; Duckworth 1983).

[11] J A Schumpeter, *Capitalism, Socialism and Democracy* (Harper & Brothers 1942).

[12] R Hofstadter, *Social Darwinism in American Thought* (Beacon Press 1955).

[13] DC Engerman, *Know Your Enemy: The Rise and Fall of America's Soviet Experts* (Oxford University Press 2009).

[14] R Levitas, *The Inclusive Society? Social Exclusion and New Labour* (n 1).

marginalized groups. In this sense, minimum wage policies are not simply economic tools but instruments of inclusion, ensuring that work translates into dignity and participation.

2.1. Defining Social Exclusion

The concept of social exclusion has become a defining lens through which European policymakers and scholars analyse inequality. Unlike poverty, which is primarily understood as a lack of material resources, exclusion encompasses the broader denial of participation in civic, economic, and cultural life[15]. It is a multidimensional phenomenon that manifests in failures of integration into democratic institutions, labour markets, welfare systems, and community networks[16].

This distinction is crucial. A person may not be poor in absolute terms yet still experience exclusion if they are denied access to education, healthcare, or political representation[17]. Conversely, poverty without exclusion may occur when individuals retain strong social ties and civic participation despite limited resources. The European Union's adoption of "social exclusion" as a policy category in the late 1980s reflected this broader understanding, moving beyond narrow economic definitions to embrace a more holistic view of inequality.

Exclusion is also relational: it is not simply the absence of resources, but the result of barriers erected by institutions and social attitudes[18]. These barriers can be legal, such as discriminatory hiring practices; structural, such as inadequate welfare systems; or cultural, such as stigmatization of minority groups. The cumulative effect is to prevent individuals from achieving full membership in society. Inclusion, by contrast, requires proactive measures to dismantle these barriers and create pathways for marginalized groups. This involves not only redistributive policies but also recognition of dignity and rights. Minimum wage legislation exemplifies such measures, ensuring that work provides not only income but also a foundation for civic participation. By guaranteeing a wage floor, states affirm the principle that labour must translate into social dignity.

The multidimensional nature of exclusion has led to the development of composite indicators that measure not only income but also access to services, participation in education, and health outcomes[19]. These indicators reveal that exclusion is often concentrated among specific groups - such as ethnic minorities, migrants, and persons with disabilities – highlighting the need for targeted interventions. Wage policies, when combined with broader social measures, can therefore serve as instruments of inclusion, bridging divides and fostering cohesion.

[15] A Sen, *Social Exclusion: Concept, Application, and Scrutiny* (Asian Development Bank 2000).

[16] H Silver, 'Social Exclusion and Social Solidarity: Three Paradigms' (1994) 133(5-6) *International Labour Review* 531-578.

[17] A B Atkinson and T Piketty, *Top Incomes. A Global Perspective* (Oxford University Press 2010); Resolution of the Council and of the Ministers for Social Affairs meeting within the Council of 29 September 1989 on Combating Social Exclusion [1989] OJ C277/1.

[18] P Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (trans. R. Nice; Harvard University Press 1984); N Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (Routledge 1997).

[19] See, in this regard: Eurostat, *EU Statistics on Income and Living Conditions (EU-SILC)* (European Commission, updated 2025) https://cros.ec.europa.eu/topic/eu-statistics-income-and-living-conditions-eu-silc-0; Eurostat, *Income and Living Conditions Overview (EU-SILC)* (European Commission, updated 2025) https://ec.europa.eu/eurostat/web/income-and-living-conditions.

2.2. Intersectionality and Attitudes

The phenomenon of social exclusion cannot be understood in isolation from the intersecting identities and social positions that shape individual experiences. The concept of *intersectionality*, first articulated by Kimberlé Crenshaw, highlights how overlapping systems of discrimination - such as gender, race, class, and migration status - compound disadvantage[20]. Within the European Union, intersectionality is particularly relevant in analysing labour market inequalities, where women, ethnic minorities, and migrants often face multiple barriers simultaneously.

For example, women are disproportionately represented in low-wage sectors such as care work, retail, and hospitality[21]. When combined with ethnic or migrant status, these disadvantages are magnified, leading to systemic exclusion from higher-paying and more secure employment. The persistence of the *gender pay gap* – which remains significant across Member States despite decades of policy interventions – illustrates how structural discrimination continues to shape wage outcomes. Social attitudes further reinforce exclusion. Negative stereotypes about ethnic minorities, migrants, or persons with disabilities contribute to discriminatory hiring practices and workplace cultures. These attitudes not only limit access to employment but also affect health, education, and overall, well-being. The stigmatization of Roma communities in Central and Eastern Europe, for instance, perpetuates cycles of exclusion that wage policies alone cannot resolve.

The EU's *Directive on Pay Transparency (2023/970)* directly addresses these challenges by mandating disclosure of wage structures and gender pay gaps[22]. By requiring employers to provide clear information on remuneration, the directive seeks to dismantle discriminatory practices and promote fairness. Transparency thus becomes a tool not only of accountability but also of cultural transformation, challenging entrenched attitudes and fostering inclusion.

Ultimately, intersectionality underscores the need for *integrated policy approaches*. Wage policies must be complemented by measures addressing education, healthcare, housing, and anti-discrimination enforcement. Only by tackling the overlapping dimensions of exclusion can the EU achieve meaningful inclusion and ensure that wage fairness translates into broader social justice.

2.3. Technological and Rural-Urban Divide

The advent of the *Fourth Industrial Revolution* has introduced new dimensions of social exclusion, particularly through disparities in digital literacy and technological access[23]. As economies and societies become increasingly digitized, the ability to participate fully in civic and labour markets depends on access to technology and the skills to use it effectively. This shift has created a new form of inequality: the *digital divide*, which often overlaps with existing

[20] K Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43(6) *Stanford Law Review* 1241-1299; European Institute for Gender Equality, *Intersectional Gender Inequalities in the European Union* (2022).

[21] J Rubery and D Grimshaw, '*Gender and the Minimum Wage*', in S Lee and D McCann (eds), *Regulating for Decent Work* (Palgrave Macmillan 2011), 226-254; European Commission, *Report on Equality Between Women and Men in the European Union* (n 20).

[22] Directive (EU) 2023/970 (n 5).

[23] K Schwab, *The Fourth Industrial Revolution* (World Economic Forum 2016).

socioeconomic and geographic disparities[24]. Rural communities across Europe are disproportionately affected by this divide. Limited infrastructure, slower internet connectivity, and fewer educational opportunities in digital skills contribute to a recognition gap between rural and urban populations[25]. This gap is not merely technical but also symbolic, as rural communities are often perceived as "lagging behind" in modernization. Such perceptions reinforce exclusion, diminishing the political and social voice of rural populations.

The consequences of this divide extend beyond economics. Scholars have noted that technological exclusion contributes to *political polarization*, as marginalized groups may feel alienated from mainstream institutions and more susceptible to populist narratives[26]. In Central and Eastern Europe, for instance, rural exclusion has been linked to the rise of populist movements that capitalize on grievances related to inequality and perceived neglect[27].

Adequate and transparent wage policies can play a role in mitigating these divides. By ensuring that rural workers receive fair compensation, governments can strengthen the economic foundations of communities that might otherwise be left behind. Moreover, wage fairness can support investment in education and infrastructure, enabling rural populations to participate more fully in the digital economy[28].

The EU has recognized the importance of addressing technological exclusion through initiatives such as the *Digital Education Action Plan (2021-2027)*, which seeks to promote digital literacy and bridge rural-urban divides[29]. However, wage policies remain a critical complement to these efforts. Without adequate remuneration, rural workers may lack the resources to access technology or invest in skills development. Thus, the intersection of wage fairness and digital inclusion highlights the multidimensional nature of contemporary inequality.

2.4. International Frameworks

The discourse on social exclusion and wage fairness in the European Union cannot be separated from the broader *international frameworks* that shape policy and practice. Global institutions such as the United Nations (UN), the Organisation for Economic Co-operation and Development (OECD), and the World Bank have long emphasized the importance of human rights, non-discrimination, and poverty reduction as essential components of sustainable development[30]. These frameworks provide both normative guidance and empirical benchmarks for Member States, reinforcing the idea that wage adequacy and transparency are not merely national concerns but part of a global agenda for social justice.

The UN's Universal Declaration of Human Rights (1948) established the principle that

[24] J VAN DIJK, *The Digital Divide* (Polity Press 2020).

[25] European Commission, Directorate-General for Communications Networks, Content and Technology, OMDIA and Point Topic, *Broadband Coverage in Europe 2023 – Mapping Progress Towards the Coverage Objectives of the Digital Decade – Final Report* (Publications Office of the European Union 2024) https://data.europa.eu/doi/10.2759/094495.

[26] P NORRIS and R INGLEHART, *Cultural Backlash: Trump, Brexit, and Authoritarian Populism* (Cambridge University Press 2019).

[27] C MUDDE and C ROVIRA KALTWASSER, *Populism: A Very Short Introduction* (Oxford University Press 2017).

[28] A B ATKINSON, *Inequality: What Can Be Done?* (n 3).

[29] Commission, *Digital Education Action Plan 2021–2027 — Resetting Education and Training for the Digital Age* (Communication), COM (2020) 264 final, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020DC0624.

[30] OECD, *Employment Outlook 2023: Artificial Intelligence and the Labour Market* (OECD Publishing 2023), https://doi.org/10.1787/08785bba-en.

"everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity"[31]. This foundational statement continues to inform international labour standards, including those promoted by the International Labour Organization (ILO), which has consistently advocated for minimum wage policies as instruments of fairness and inclusion[32].

The OECD has contributed to this discourse by developing comparative indicators on income distribution, wage levels, and labour market participation. Its reports highlight the persistence of inequality even in advanced economies, underscoring the need for coordinated policy responses[33]. Similarly, a World Bank discussion paper has emphasized the multidimensional nature of poverty and exclusion, advocating for wage policies that are integrated with education, healthcare, and social protection systems[34].

Within the EU, the concept of "social exclusion" gained prominence in the late 1980s, replacing narrower notions of poverty[35]. This shift reflected a recognition that inequality is not solely about income but also about access to opportunities and participation in society. The Laeken European Council (2001) formalized this approach by adopting a set of indicators to measure social inclusion, including income distribution, poverty persistence, unemployment, and educational attainment[36]. These indicators provided a framework for monitoring progress and informed subsequent policy initiatives, including the European Pillar of Social Rights.

By situating wage adequacy and transparency within these international frameworks, the EU underscores its commitment to aligning national policies with global standards. This alignment strengthens the legitimacy of wage reforms and ensures that they contribute to broader objectives of human dignity, equality, and sustainable development.

III. Adequate Minimum and Transparent Wages

The concept of an *adequate minimum wage* has become central to European debates on social justice and labour market regulation. A minimum wage is not merely a statutory floor for remuneration; it is a mechanism designed to ensure that workers can achieve a *decent standard of living*[37]. Adequacy, therefore, implies more than subsistence—it requires wages sufficient to cover essential needs such as food, housing, healthcare, and education, while also enabling participation in cultural and civic life[38].

The Directive on Adequate Minimum Wages (EU 2022/2041) represents a landmark in EU social policy. It establishes criteria for assessing adequacy, including purchasing power, productivity

[31] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 23.

[32] International Labour Organization, *How to Define a Minimum Wage*, https://www.ilo.org/topics/wages/minimum-wages/how-define-minimum-wage.

[33] OECD, *Income Distribution Database*, https://data-explorer.oecd.org/s/fx.

[34] M Marzi, A Marini, L Cherchi and F Cenedese, *Minimum Income and Social Inclusion Pathways – A review of selected European Union programs*, Social Protection Discussion Paper no. 2408 (The World Bank 2024).

[35] Resolution on Combating Social Exclusion (n 17).

[36] European Council, *Laeken European Council Conclusions* (2001).

[37] ILO, *Minimum Wage Policy Guide* (n 32).

[38] A Sen, *Development as Freedom* (n 2).

levels, and wage distribution across Member States[39]. Importantly, the directive emphasizes the role of *collective bargaining*, urging governments to strengthen social dialogue and ensure that wage setting reflects the realities of diverse labour markets[40]. This approach acknowledges that statutory minimum wages alone cannot guarantee fairness; they must be embedded within broader institutional frameworks that promote worker participation and employer accountability.

Complementing this, the Directive on Pay Transparency (EU 2023/970) addresses the structural inequalities that undermine wage adequacy. By mandating disclosure of wage structures, gender pay gaps, and prohibiting confidentiality clauses, the directive seeks to dismantle discriminatory practices and promote equality[41]. Transparency is thus not only a matter of information but also a tool of empowerment, enabling workers to challenge unfair practices and demand accountability.

The adequacy of minimum wages must also be understood in relation to social consumption baskets (SCBs), which measure the cost of living in specific national contexts[42]. In Romania, for example, the SCB highlights the gap between statutory minimum wages and the resources required for a decent life. By linking wage adequacy to consumption baskets, policymakers can ensure that minimum wages reflect real economic conditions rather than abstract benchmarks.

Critics argue that raising minimum wages may lead to job losses or reduced competitiveness. However, empirical evidence from countries such as Germany and France suggests that well-designed wage policies can reduce in-work poverty without significant negative effects on employment[43]. Moreover, adequate wages can stimulate demand, enhance productivity, and foster social cohesion, thereby contributing to long-term economic stability.

Ultimately, adequate minimum wages and transparent wage structures are not merely economic instruments but *pillars of social dignity*. They affirm the principle that labour must translate into meaningful participation in society, ensuring that workers are not excluded from the benefits of growth and modernization.

3.1. Theoretical Perspectives

The debate over minimum wages and wage transparency is deeply informed by economic theory. Scholars have long sought to explain how wage regulation affects employment, productivity, and inequality. Three major theoretical perspectives – *efficiency wage theory* (A), the *monopsony model* (B), and *social conflict theory* (C) – provide valuable insights into the role of wage policies in shaping labour markets.

(A) *Efficiency wage theory* posits that higher wages can increase worker productivity by

[39] Directive (EU) 2022/2041 (n 4).

[40] European Commission, *Strengthening Social Dialogue in the European Union* (2021), ec.europa.eu.

[41] Directive (EU) 2023/970 (n 5).

[42] Eurostat, *Household Budget Survey - statistics on consumption expenditure*, https://ec.europa.eu/eurostat/statistics-explained/index.php/Household_budget_survey_-_statistics_on_consumption_expenditure.

[43] A Dube, 'Minimum Wages and the Distribution of Family Incomes' (2019) 11(4) *American Economic Journal: Applied Economics* 268-304.

reducing turnover, improving morale, and attracting higher-quality applicants[44]. Employers may therefore pay above-market wages not out of altruism but as a rational strategy to enhance efficiency. This theory challenges the classical assumption that wages are determined solely by supply and demand, suggesting instead that wage adequacy can generate positive externalities for firms and society.

(B) The *monopsony model* offers another perspective. In labour markets where employers hold disproportionate power - such as rural areas or sectors with limited mobility - workers may accept wages below their marginal productivity[45]. Minimum wage legislation can correct this imbalance by setting a floor that compels employers to share more equitably in the value created by labour. Alan Manning's work on monopsony demonstrates that wage regulation in such contexts can increase both fairness and efficiency, contradicting claims that minimum wages necessarily reduce employment.

(C) *Social conflict theory* situates wage debates within broader structures of inequality. From a Marxian perspective, low wages perpetuate stratification by maintaining a reserve army of labour and reinforcing class hierarchies[46]. Wage adequacy and transparency are therefore not merely economic adjustments but instruments of social justice, challenging entrenched power relations. This perspective underscores the political dimension of wage policy, highlighting its role in redistributing resources and reshaping social structures.

Empirical evidence supports elements of each theory. In Romania, for instance, increases in the statutory minimum wage have reduced in-work poverty without significant job losses, lending credence to efficiency wage and monopsony arguments. At the same time, persistent gender and regional disparities illustrate the relevance of social conflict theory, as wage policies alone cannot dismantle structural inequalities.

Together, these perspectives reveal that wage adequacy and transparency are multifaceted instruments. They operate not only at the level of economic efficiency but also as mechanisms of fairness, empowerment, and social cohesion. By integrating insights from diverse theoretical traditions, policymakers can design wage systems that balance competitiveness with dignity.

3.2. Multidimensional Inequality

Inequality in the European Union is not confined to income disparities; it is *multidimensional*, encompassing gender, regional differences, educational attainment, and ethnic identity[47]. This multidimensionality reflects the complex ways in which exclusion operates, often reinforcing itself across different domains of life. For instance, low income may limit access to education,

[44] L F KATZ, 'Efficiency Wage Theories: A Partial Evaluation' (1986) 1 *NBER Macroeconomics Annual* 235-290; E SCHLICHT, *Efficiency Wages: Models of Unemployment, Layoffs, and Wage Dispersion* (Princeton University Press 1990).

[45] J ROBINSON, *The Economics of Imperfect Competition* (Macmillan 1933); A MANNING, *Monopsony in Motion: Imperfect Competition in Labor Markets* (Princeton University Press 2003).

[46] E O WRIGHT, *Class Counts: Comparative Studies in Class Analysis* (Cambridge University Press 1997); Eurostat, *Minimum Wage Statistics in Romania* (Publications Office of the European Union 2024).

[47] A B ATKINSON and T PIKETTY, *Top Incomes. A Global Perspective* (n 17); A. SEN, *Development as Freedom* (n 2); European Institute for Gender Equality, *Gender Equality Index 2023* (EIGE 2023).

which in turn restricts employment opportunities, perpetuating cycles of disadvantage.

Gender inequality remains a persistent challenge. Despite decades of policy interventions, women continue to earn less than men on average, are overrepresented in precarious employment, and face barriers to career advancement[48]. The gender pay gap, which varies across Member States, illustrates how structural discrimination intersects with wage adequacy. Transparency measures, such as those mandated by Directive 2023/970, are designed to address these disparities by exposing discriminatory practices and empowering women to demand fairness.

Regional inequality is another dimension. In Central and Eastern Europe, wages remain significantly lower than in Western Member States, reflecting differences in productivity, investment, and institutional capacity[49]. Rural areas, in particular, face compounded disadvantages due to limited infrastructure, weaker labour markets, and reduced access to education and healthcare. These disparities contribute to migration flows, with workers seeking better opportunities in more prosperous regions, often at the cost of social cohesion in their home communities.

Educational inequality further reinforces exclusion. Individuals with lower levels of education are more likely to be employed in low-wage sectors, face higher unemployment rates, and experience limited upward mobility[50]. Minimum wage policies can mitigate some of these effects by ensuring that even low-skilled work provides a decent standard of living. However, without complementary investments in education and training, wage policies alone cannot dismantle structural barriers.

Finally, *ethnic inequality* remains a pressing issue, particularly for Roma communities and migrant populations[51]. Discrimination in hiring, housing, and access to services perpetuates exclusion, creating systemic barriers that wage policies cannot fully resolve. Addressing these inequalities requires integrated strategies that combine wage adequacy with anti-discrimination enforcement, social protection, and community development.

By recognizing the multidimensional nature of inequality, policymakers can design interventions that are both comprehensive and intersectional. Adequate and transparent wages are necessary but not sufficient; they must be embedded within broader frameworks that address education, healthcare, housing, and anti-discrimination. Only through such integrated approaches can the EU achieve meaningful inclusion and ensure that wage fairness translates into social justice.

3.3. EU Wage Policies

The European Union has progressively developed a framework for wage regulation that

[48] Directive (EU) 2023/970 (n 5).

[49] European Commission, *Labour Market and Wage Developments in Europe 2023* (Publications Office of the European Union, 2023), https://data.europa.eu/doi/10.2767/1277.

[50] European Commission, *Education and training monitor 2025 – Comparative report* (Publications Office of the European Union, 2025), https://data.europa.eu/doi/10.2766/2221794.

[51] European Union Agency for Fundamental Rights, *Roma and Travelers in Six Countries – Roma and Travellers survey* (Publications Office of the European Union, 2020), https://data.europa.eu/doi/10.2811/30472.

balances respect for national sovereignty with the pursuit of common social objectives. While competence in wage setting formally rests with Member States, the EU has sought to harmonize principles of *adequacy* and *transparency* across its diverse labour markets[52].

The Directive on Adequate Minimum Wages (EU 2022/2041) establishes clear criteria for assessing wage adequacy. These include purchasing power, productivity levels, and wage distribution within Member States[53]. The directive also emphasizes the importance of *collective bargaining*, urging governments to strengthen social dialogue and ensure that wage setting reflects the realities of different sectors and regions. This reflects the EU's recognition that statutory minimum wages alone cannot guarantee fairness; they must be embedded within broader institutional frameworks that empower workers and employers alike.

Complementing this, the Directive on Pay Transparency (EU 2023/970) addresses structural inequalities by mandating disclosure of wage structures and gender pay gaps[54]. Employers are required to provide clear information on remuneration, and confidentiality clauses that prevent workers from discussing pay are prohibited. These measures aim to dismantle discriminatory practices and promote equality, particularly in addressing the persistent gender pay gap across Member States.

Case law further illustrates the EU's evolving role in wage regulation. While the Court of Justice of the European Union (CJEU) has consistently affirmed that wage setting is primarily a national competence, it has also upheld principles of equal treatment and non-discrimination in employment[55]. This jurisprudence reinforces the idea that wage fairness is not merely an economic matter, but a fundamental right protected under EU law. The EU's wage policies must also be understood within the broader framework of the European Pillar of Social Rights, which enshrines the principle that workers have the right to fair wages that provide a decent standard of living. By linking directives to this pillar, the EU situates wage adequacy and transparency within its overarching commitment to social justice and cohesion.

Together, these policies represent a significant step toward harmonizing wage fairness across the Union. They demonstrate the EU's capacity to shape labour markets through normative guidance, even in areas where formal competence is limited. In doing so, the Union affirms its role as a guarantor of dignity and inclusion for all workers.

3.4. Case Studies

Examining the implementation of minimum wage and transparency policies across different Member States reveals the diversity of approaches within the European Union. These case studies illustrate how national contexts shape wage regulation and highlight both the opportunities and challenges of harmonization.

(A) Romania presents one of the most striking examples of reliance on statutory minimum wages. One-third of Romanian employees reportedly earn the minimum wage, reflecting

[52] European Commission, *EPSR Action Plan* (n 8).

[53] Directive (EU) 2022/2041 (n 4); European Commission, *Strengthening Social Dialogue in EU* (n 40).

[54] Directive (EU) 2023/970 (n 5); EIGE, *Gender Equality Index 2023*.

[55] Case C-43/75, *Defrenne v. Sabena* [1976] ECR 455; European Commission, *The European Pillar of Social Rights* (2017), ec.europa.eu.

both structural inequalities and limited collective bargaining coverage. While wage increases in recent years have reduced in-work poverty, they have also generated tensions between social protection and competitiveness[56]. Employers, particularly small and medium-sized enterprises (SMEs), often struggle to absorb higher labour costs, raising concerns about sustainability. Nevertheless, Romania's experience demonstrates that minimum wage policies can serve as powerful instruments of redistribution in contexts of high inequality.

(B) Germany introduced a statutory minimum wage relatively late, in 2015, after decades of reliance on collective bargaining[57]. The current rate of €12.41 per hour is reviewed biennially by a commission composed of representatives from employers, trade unions, and academia. This tripartite model ensures that wage setting reflects both economic realities and social considerations. Evidence suggests that the German minimum wage has reduced wage inequality without significant negative effects on employment, lending support to efficiency wage and monopsony theories.

(C) France's *Salaire Minimum Interprofessionnel de Croissance* (SMIC) is one of the oldest statutory minimum wages in Europe, indexed to inflation and adjusted annually[58]. While the SMIC has contributed to reducing poverty, it is accompanied by high employer contributions, which critics argue increase labour costs and discourage hiring. Nevertheless, France's model illustrates the importance of linking wage adequacy to inflation, ensuring that minimum wages maintain purchasing power over time.

(D) Poland has pursued rapid increases in its minimum wage, reflecting political commitments to social protection[59]. While these increases have improved living standards, they have also placed significant burdens on SMEs, particularly in sectors with low productivity. The Polish experience highlights the trade-off between wage adequacy and competitiveness, underscoring the need for complementary policies such as tax relief and investment in productivity.

(E) Sweden represents a contrasting model, relying exclusively on collective bargaining without a statutory minimum wage[60]. Wage levels are negotiated between employers and trade unions, resulting in relatively high coverage and wage adequacy. This model reflects the strength of Swedish institutions and the tradition of social dialogue. However, it also illustrates the limits of EU harmonization, as Nordic countries have resisted directives that might undermine their collective bargaining systems.

[56] For more details, see: OECD, *OECD Reviews of Labour Market and Social Policies: Romania 2025* (OECD Publishing 2025) https://www.oecd.org/en/publications/oecd-reviews-of-labour-market-and-social-policies-romania-2025_f0532908-en.pdf.

[57] T Müller, 'Collective bargaining and minimum wage regime in Germany' in T Müller (ed.), *Collective bargaining and minimum wage regimes in the European Union – The transposition of the EU Directive on Adequate Minimum Wages in the EU27* (European Trade Union Institute 2025) 47-50.

[58] Ministère du Travail, *Le salaire minimum de croissance (SMIC)* (République française) https://travail-emploi.gouv.fr/droit-du-travail/la-remuneration/article/le-salaire-minimum-de-croissance-smic.

[59] S Adamczyk, 'Collective bargaining and minimum wage regime in Poland' in T Müller (ed.), *Collective bargaining and minimum wage regimes in the European Union* (n 57) 91-94.

[60] A Fransson and A Kjellberg, 'Collective bargaining and minimum wage regime in Sweden' in T Müller (ed.), *Collective bargaining and minimum wage regimes in the European Union* (n 57) 118-122.

Together, these case studies demonstrate the diversity of wage regulation within the EU. While statutory minimum wages dominate in Central and Eastern Europe, collective bargaining remains central in Nordic countries. The challenge for the EU lies in balancing respect for national traditions with the pursuit of common principles of adequacy and transparency.

3.5. Comparative Analysis

A comparative analysis of minimum wage policies across the European Union reveals both convergence and divergence in approaches to wage adequacy and transparency. While statutory minimum wages dominate in Central and Eastern Europe, collective bargaining remains central in Nordic countries. These differences reflect historical traditions, institutional capacities, and economic structures, yet they also highlight the challenges of harmonizing wage fairness across the Union.

Romania illustrates the tension between social protection and competitiveness. With a standard consumption basket (SCB) estimated at €2,300–€2,400, the statutory minimum wage remains insufficient to guarantee a decent standard of living[61]. High inequality and limited collective bargaining coverage exacerbate these challenges. Projections suggest that Romania may converge with Poland by 2030 in terms of wage adequacy, but it will continue to lag behind Germany and France. *Germany and Sweden* demonstrate more balanced wage distribution. In Germany, the statutory minimum wage of €12.41 per hour, combined with strong collective bargaining institutions, ensures that wages align more closely with productivity and living costs. Sweden, despite lacking a statutory minimum wage, achieves similar outcomes through collective agreements that cover the vast majority of workers[62].These models illustrate how institutional strength can compensate for differences in regulatory frameworks.

France provides an example of indexing minimum wages to inflation, ensuring that purchasing power is maintained over time[63]. While employer contributions remain high, the French model underscores the importance of linking wage adequacy to real economic conditions. *Poland* highlights the risks of rapid wage increases. While these policies have improved living standards, they have also placed significant burdens on SMEs, raising concerns about competitiveness[64]. Nevertheless, Poland's trajectory demonstrates the political salience of wage adequacy, reflecting broader commitments to social protection.

Comparative analysis reveals that while Member States differ in their approaches, common principles of adequacy and transparency are increasingly shaping wage policy. The EU's directives provide a framework for convergence, but national contexts continue to determine outcomes. The challenge lies in balancing harmonization with respect for diversity, ensuring that wage fairness is achieved without undermining institutional traditions or economic competitiveness.

[61] Romania among countries with the lowest gross minimum wages in the EU, *ACT Media* (17 December 2024) https://www.actmedia.eu/daily/romania-among-countries-with-the-lowest-gross-minimum-wages-in-the-eu/111813.

[62] T MÜLLER, 'Collective bargaining and minimum wage regime in Germany' (n 57).

[63] Ministère du Travail, *Le salaire minimum de croissance* (n 58).

[64] S ADAMCZYK, 'Collective bargaining and minimum wage regime in Poland' (n 59).

3.6. Challenges and Limitations

Despite the progress achieved through EU directives and national reforms, significant *challenges and limitations* remain in the pursuit of wage adequacy and transparency. These challenges are both structural and political, reflecting the complexity of harmonizing wage policies across diverse Member States.

One major challenge is *resistance to transparency*. Employers in several Member States have expressed concerns that mandatory disclosure of wage structures could undermine competitiveness or create administrative burdens[65]. In practice, transparency requires robust institutional capacity to collect, monitor, and enforce wage data. Weak institutions, particularly in Central and Eastern Europe, often struggle to implement these requirements effectively.

Economic risks further complicate wage policy. Critics warn of *wage compression*, where increases in minimum wages reduce wage differentials between low- and medium-skilled workers, potentially discouraging skill acquisition[66]. Others highlight concerns about competitiveness, particularly for SMEs in low-productivity sectors. These risks underscore the need for complementary policies, such as tax relief for employers and investment in productivity, to ensure that wage adequacy does not undermine economic sustainability.

Finally, the broader challenge lies in ensuring that wage policies are integrated with other dimensions of social inclusion. Adequate and transparent wages are necessary but not sufficient; they must be complemented by measures addressing education, healthcare, housing, and anti-discrimination. Without such integration, wage reforms risk being isolated interventions that fail to dismantle structural inequalities. In sum, while EU wage policies represent significant progress, their effectiveness depends on overcoming institutional weaknesses, addressing inflationary pressures, respecting national traditions, and integrating wage adequacy into broader frameworks of social justice.

IV. Conclusions

The analysis of wage adequacy and transparency within the EU demonstrates that these policies are not merely economic instruments but *pillars of social justice and inclusion*. Adequate minimum wages ensure that work translates into dignity, while transparency dismantles discriminatory practices and empowers workers to demand fairness. Together, they embody the EU's commitment to solidarity and the principle that *"nobody is left behind"*.

The comparative case studies reveal both diversity and convergence. Romania and Poland illustrate the redistributive potential of statutory minimum wages in contexts of high inequality, while Germany and France highlight the importance of institutional strength and inflation indexing. Sweden demonstrates the effectiveness of collective bargaining, underscoring the need to respect national traditions while pursuing common principles. These examples confirm that wage adequacy must be tailored to national contexts yet guided by shared European

[65] European Commission, *Commission Staff Working Document, Executive Summary of the Impact Assessment on Pay Transparency Directive* SWD(2021) 42 final (4 March 2021) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021SC0042; World Bank, *Institutional Capacity in Central and Eastern Europe* (2022).

[66] R Freeman, 'The Minimum Wage as a Redistributive Tool' (1996) 106(436) *The Economic Journal* 639-649.

values.

Challenges remain. Inflationary pressures, employer resistance to transparency, and institutional weaknesses in certain Member States threaten the effectiveness of wage reforms. Nordic resistance to EU directives highlights the political sensitivities of harmonization, while concerns about competitiveness and wage compression underscore the need for complementary policies. Addressing these challenges requires integrated strategies that combine wage adequacy with investments in education, healthcare, housing, and anti-discrimination enforcement.

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The (Lack of) Responsibility of the Islamic State for the Destruction of Humanity's Intangible Heritage

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Abstract: The intentional destruction of cultural heritage undermines human dignity, identity, and intergenerational continuity and, when committed in armed conflict, constitutes a serious violation of international law. Between 2013 and 2019, the so-called Islamic State (Daesh) conducted a systematic campaign of cultural destruction in Iraq and Syria, targeting monuments, religious sites, museums, and archaeological remains while simultaneously exploiting antiquities trafficking to finance its operations. This article examines how international law responds to such acts when perpetrated by a non-state armed group lacking international legal personality. Drawing on the doctrine of the Common Heritage of Humanity, UNESCO's prohibition of intentional destruction, and developments in international criminal law, the paper analyses the allocation of responsibility between states and individuals for heritage crimes committed by Daesh. Using a doctrinal and case-law-based methodology, it assesses state obligations to prevent, protect, and repair cultural damage, alongside the emergence of individual criminal responsibility under the Rome Statute and domestic jurisdictions. The article argues that, notwithstanding Daesh's non-state character, contemporary international law provides a coherent accountability framework that integrates state responsibility, individual criminal liability, and post-conflict restorative measures, reaffirming cultural heritage as a collective interest of humanity and a core component of international legal protection.

Keywords: common heritage of mankind; cultural heritage; Islamic State; Daesh; state responsibility; individual criminal responsibility; International Criminal Court.

1. Introduction

Since cultural heritage belongs to humanity, its destruction impoverishes not only local communities, but also global society. From Palmyra and Aleppo to Mosul, heritage crimes demonstrate a deliberate and systematic effort to annihilate identities and interrupt the transmission

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of cultural knowledge across generations. Such acts are to be understood not as mere collateral damage in armed conflict, but as targeted assaults on the very fabric of civilisation, situating cultural heritage within the frameworks of human rights protection and atrocity-crime prevention.

Although international law has long recognized obligations to safeguard cultural property, enforcement has often lagged behind normative commitments. The territorial defeat of the so-called Islamic State at Baghuz in 2019 marked a significant turning point, shifting global attention toward the mechanisms of investigation and prosecution. Yet the threat persists, manifested through insurgent networks, transnational criminal trafficking, and the illicit antiquities market, highlighting the continuing urgency of robust state and individual accountability measures under international law.

This paper examines the destruction of cultural heritage by the Islamic State in Iraq and Syria and the interplay between non-state actors, state obligations, and international criminal responsibility. It employs a doctrinal and case-law-based methodology to assess how international law addresses the protection of cultural property and the prosecution of heritage crimes.

2. The Common Heritage of Mankind and the Prohibition of Intentional Destruction of Cultural Property

Contemporary protection of cultural heritage is grounded in the convergence of two mutually reinforcing frameworks: (2.1) the evolving doctrine of the Common Heritage of Mankind[1] and (2.2) UNESCO's normative articulation of the prohibition of intentional destruction of cultural property. Together, they provide the ethical justification and the legal architecture through which attacks on cultural heritage are understood not merely as property damage, but as violations of human dignity, identity, and the collective interests of humankind.

2.1. The Common Heritage of Mankind: An Evolving Doctrine

The concept of the Common Heritage of Mankind first emerged in international law during the mid-1960s and 1970s, initially in relation to the law of the sea and outer space[2]. Articulated most prominently by Arvid Pardo, the doctrine sought to regulate areas beyond national jurisdiction through a set of core principles[3], often described as non-appropriation, peaceful use, international cooperation, and equitable sharing of benefits. These principles were designed to prevent unilateral exploitation of shared resources, particularly underwater cultural artefacts, and to establish an international regime governing exploration and stewardship.

[1] On the concept of common heritage of mankind, see, more generally: MV WHITE, 'The common heritage of mankind: an assessment' (1982) 14 *Case Western Reserve Journal of International Law* 509-542; B LARSCHAN and BC BRENNAN, 'The common heritage of mankind principle in international law' (1983) 21 *Columbia Journal of Transnational Law* 305-337; R WOLFRUM, 'The Principle of the Common Heritage of Mankind' (1983) 43 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 312-337; CC JOYNER, 'Legal implications of the concept of the common heritage of mankind' (1986) *International and Comparative Law Quarterly* 190-199; AC KISS, 'Conserving the common heritage of mankind' (1990) 59 *Revista Juridica de la Universidad de Puerto Rico* 773-777.

[2] ED BROWN, 'Freedom of the high seas versus the common heritage of mankind: fundamental principles in conflict' (1983) 20 *San Diego Law Review* 521; MH NORDQUIST (ed), *United Nations Convention on the Law of the Sea 1982. A Commentary*, vol. 1 (Martinus Nijhoff 1985); G KNIGHT & H CHIU, *The International Law of the Sea: Cases, Documents, and Readings* (Elsevier 1991).

[3] EB WEISS, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity (Transnational Publishers 1989) 191.

Initially concerned with the sea and outer space, the doctrine gradually expanded into other domains, including the moon[4], intergalactic space[5], Antarctica[6], environmental protection[7], technology[8], and ultimately cultural heritage. Cultural heritage, in particular, came to be described as an "archetypal" expression of the common heritage of humanity, transcending state boundaries and embodying the cumulative achievements of human creativity, knowledge, and identity across generations[9]. Yet this expansion was neither linear nor uncontested. The doctrine developed against the backdrop of the Cold War and the debates surrounding the so-called "New International Economic Order", resulting in conceptual ambiguity and fragmented application.

By the mid-1980s, commentators such as Joyner acknowledged both the promise and the limits of the doctrine, characterising it as a philosophical notion rather than a binding rule of international law[10]. It lacked *erga omnes* status, had not crystallised into customary international law, and did not constitute *jus cogens*:

> "[as] to date, the common heritage of mankind is not a principle of international law 'erga omnes'. The common heritage of mankind today is neither the product of 'instant custom' nor 'jus cogens'. On the contrary, it is merely a philosophical notion with the potential to emerge and crystallise as a legal norm"[11].

Nevertheless, its normative influence persisted, particularly in shaping expectations of collective responsibility and in framing cultural heritage as a shared concern of humanity rather than an exclusively sovereign asset.

The Common Heritage of Humanity concept remains contested[12], but recent work aligns heritage protection with broader human rights concerns and international criminal law. Authors argue for a more capacious articulation of cultural heritage within atrocity frameworks, enabling prosecutors and judges to link attacks on heritage with persecution, identity destruction, and intergenerational harm. This development complements earlier debates concerning heritage as collective patrimony and reinforces the legal foundations of accountability[13].

[4] Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (opened for signature 27 January 1967, entered into force 10 October 1967) 610 UNTS 205 art I: "[t]he exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries … and shall be the province of all mankind".

[5] UNGA Res 1962 (XVIII) Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (13 December 1963) Principle I: "The exploration and use of outer space shall be carried out for the benefit of and in the interests of all mankind".

[6] See R LEFEBER, 'The Exercise of Jurisdiction in the Antarctic Region and the Changing Structure of International Law: The International Community and Common Interests' (1990) 21 *Netherlands Yearbook of International Law* 81-137.

[7] UN Conference on the Human Environment, Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972) UN Doc A/CONF.48/14/Rev.1, Principle 5: "[t]he non-renewable resources of the earth must be employed in such a way as to guard against the dangers of their future exhaustion and to ensure that the benefits from such employment are shared by all mankind".

[8] JOYNER, 'Legal implications of the concept of the common heritage of mankind' (n 2) 190.

[9] C FORREST, 'Cultural heritage as the common heritage of humankind: a critical re-evaluation' (2007) 40 *The Comparative and International Law Journal of Southern Africa* 124-151.

[10] S ERVIN, 'Law in vacuum: the common heritage doctrine in outer space law' (1984) 7 *Boston College International and Comparative Law Review* 424; K SUTER, *Antarctica: private property or public heritage?* (Zed Books 1991).

[11] JOYNER, 'Legal implications of the concept of the common heritage of mankind' (n 2) 199.

[12] Ibid.

[13] S WHITE, 'Heritage in War: International Criminal Responsibility for the Destruction of Cultural Heritage in Armed Conflict', in G MASTANDREA BONAVIRI, MM SADOWSKI (eds), *Heritage in War and Peace. Legal and Political Perspectives for Future Protection*, Springer, Cham, 2024, 267-285.

2.2. The Declaration on the Intentional Destruction of Cultural Property

This philosophical foundation was operationalised most clearly in UNESCO's 2003 Declaration on the Intentional Destruction of Cultural Property[14]. Adopted in the aftermath of the destruction of the Buddhas of Bamiyan, the Declaration marked a decisive shift from preservation-focused instruments toward accountability for deliberate acts of cultural eradication. It explicitly recognises that intentional destruction of cultural heritage undermines human dignity, social cohesion, and the identity of societies, groups, and individuals. In doing so, it bridges the conceptual gap between heritage protection and human rights law.

The Declaration further underscores the interdependence of tangible and intangible heritage, situating cultural destruction within broader processes of globalisation, social transformation, and intolerance. In its preamble, the Declaration states:

> "Considering the importance of intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development, as underscored in the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, in the UNESCO Universal Declaration on Cultural Diversity of 2001, and in the Istanbul Declaration of 2002 adopted by the Third Round Table of Ministers of Culture,
> Considering the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage,
> Recognising that the processes of globalisation and social transformation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage" [15].

This statement brings acts of destruction into the international sphere, emphasising the importance of awareness, education, and collective condemnation. In the case of the Buddhas of Bamiyan, non-governmental organisations, states and civil society all spoke out against the Taliban government's position, affirming that it violated the principles of international law and humanity. Although formal enforcement mechanisms failed and the destruction was not prevented, the global reaction to the Bamiyan case demonstrated that such acts are perceived as affronts to humanity as a whole.

The Declaration also contains measures designed to fight the intentional destruction of cultural property, which is unprecedented for an international instrument dedicated to cultural heritage protection. Normatively, the Declaration imposes affirmative obligations on states to prevent, avoid, stop, and suppress intentional destruction of cultural property through legislative, administrative, technical, and educational measures.

In turn, states that are responsible for ordering destruction may incur international

[14] UNESCO, *Declaration on the Intentional Destruction of Cultural Property* (Paris, 17 October 2003), available from https://unesdoc.unesco.org/ark:/48223/pf0000140289 accessed 14 November 2025.

[15] Ibid.

responsibility, irrespective of whether the affected property is inscribed on the World Heritage List[16]. Still, a loophole remains for states which have not accepted the optional clause of compulsory jurisdiction. In such cases, accountability has increasingly shifted from state responsibility to individual criminal liability.

This shift aligns with broader developments in international criminal law, including the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, which held that deliberate attacks on cultural and religious sites (i.e., the monasteries of Bosnia and Herzegovina) may constitute acts of persecution and crimes against humanity when carried out with discriminatory intent[17]. In fact, some authors argued that this rationale also applies to the Taliban crimes:

> "[…] this crime may constitute an act of persecution included in the concept of crimes against humanity [and] should also apply to the situation of the destruction of Afghan cultural heritage perpetrated by the Taliban. In this case, the discriminatory intention to destroy all signs of religions other than Islam was declared by the Taliban itself" [18].

The Rome Statute of the International Criminal Court, which was adopted in 1998 and came into force in 2002, subsequently codified intentional attacks against cultural and religious buildings as war crimes in both international and non-international armed conflicts, reinforcing the notion that cultural destruction is not legally neutral collateral damage but a prosecutable international crime.

The combined effect of the Common Heritage of Mankind doctrine and the UNESCO Declaration is therefore not the creation of a single, unified legal rule, but the consolidation of a powerful normative narrative. Cultural heritage is framed as a collective interest of humankind, while its intentional destruction is understood as an assault on identity, memory, and intergenerational continuity. This framing has strengthened the legal basis for individual accountability, even as state responsibility remains unevenly enforced.

Recent UNESCO initiatives further reflect this convergence. High-level dialogues with counter-terrorism bodies and member states have emphasised the persistent accountability gap in cases of terrorism-linked destruction, looting, and trafficking. Similarly, MONDIACULT 2022 and subsequent regional dialogues have linked restitution, ethical stewardship, and cooperative governance to deterrence and post-conflict repair. These developments signal an ongoing effort to translate the philosophical foundations of common heritage into operational mechanisms capable of addressing contemporary patterns of world-destruction.

In sum, while the Common Heritage of Humanity remains conceptually fluid and legally contested, its integration with UNESCO's prohibition of intentional destruction has significantly reshaped how international law understands and responds to cultural heritage crimes.

[16] However, as mentioned above, the State can only be tried in the context of civil liability, with criminal liability reserved for the individuals responsible for committing the act.

[17] *Prosecutor v Dario Kordić and Mario Čerkez* (Judgment) IT-95-14/2-T, International Criminal Tribunal for the former Yugoslavia, 26 February 2001, paras 422-431.

[18] F FRANCIONI and F LENZERINI, 'The Destruction of the Buddhas of Bamiyan and International Law' (2003) 14(4) *European Journal of International Law* 637.

Together, they anchor accountability not only in treaty obligations and criminal statutes, but in the shared responsibility of humanity to safeguard the cultural foundations of civilisation itself.

3. Daesh in Context: Emergence, Cultural Destruction, and Legal Status

The Middle East has historically functioned as a nexus of civilisation. It occupies a singular position in global history as the cradle of Judaism, Christianity, and Islam, a hub of transcontinental trade routes, as well as a recurring theatre of military and geopolitical conflict. While such factors continue to shape its centrality in international relations, the discovery of vast oil reserves further intensified its strategic and economic significance, transforming arid and desert territories into focal points of global energy markets and international investment.

The persistence of regional conflict, coupled with the erosion of state authority, has repeatedly facilitated the rise of organised non-state armed groups. Against this backdrop, the insurgent organisation known as the "Islamic State" emerged as a particularly violent manifestation of these dynamics, capitalising on instability to assert territorial control and advance an extremist ideological project. Originating from the remnants of al-Qaeda in Iraq, the group expanded into Syria during the civil war and declared itself a "caliphate" in 2014. The group has been designated under various names, including the Islamic State in Iraq and the Levant (ISIL) and the Islamic State in Iraq and Syria (ISIS). Nevertheless, the Arabic acronym of its original name (*Daesh*) has been widely and deliberately adopted by the international community to deny its claims to religious authority and statehood.

3.1. Systematic Destruction and Exploitation of Cultural Heritage

Daesh waged a systematic and well-documented campaign of cultural destruction during its rule in Iraq and Syria from 2013 to 2019. The group deliberately demolished historic shrines, religious sites, libraries, museums, and archaeological monuments. UNESCO and other observers reported the "systematic destruction of ancient religious and cultural artefacts and manuscripts" in Mosul, as well as the bombing of Assyrian sites at Nimrud[19]. Daesh famously destroyed the Roman-era temples of Baalshamin and Bel at Palmyra, executed archaeologists who resisted its rule, and razed mausoleums and mosques it deemed heretical. Overall, this iconoclastic campaign extended across Syria and Iraq[20]. Concurrently, the group organised the looting and illicit sale of antiquities to finance its operations. Following coalition air strikes against its oil revenues in 2014, reports indicate that the group increased its trafficking of cultural property, with museum pieces and temple reliefs cut up and smuggled abroad[21]. German UNESCO officials highlighted in 2015 that ISIS's illegal trade in cultural property "must be

[19] UNESCO World Heritage Centre, Minister of State Böhmer condemns destruction of Iraqi cultural sites in Nimrud by the ISIS terrorist group and calls for peace in Iraq (UNESCO World Heritage Centre, 9 March 2015) https://whc.unesco.org/en/news/1246 accessed 14 November 2025.

[20] T G Weiss and N Connelly, *Cultural Cleansing and Mass Atrocities: Protecting Cultural Heritage in Armed Conflict Zones* (Getty Publications 2017) https://www.getty.edu/publications/occasional-papers-1/ accessed 14 November 2025.

[21] A Hoffman and P Stokes, 'Digging In and Trafficking Out: How the Destruction of Cultural Heritage Funds Terrorism' (Combating Terrorism Center at West Point, 29 January 2016) https://ctc.westpoint.edu accessed 14 November 2025.

prevented and stopped," given its role in funding terrorism[22].

The heritage attacks of Daesh were never random; they served intertwined aims of religious iconoclasm, military control, and financial gain. On the one hand, such acts were part of a coherent politico-religious strategy, a form of "cultural genocide" aligned with the group's puritanical Salafi ideology[23]. This campaign "was integrated into a system combining religious ideology, political agenda and extreme violence"[24]. On the other hand, targeting cultural heritage demoralised local populations, erased markers of rival identity, and generated revenue through looting[25].

These realities situate the heritage crimes of Daesh squarely within the framework of international law. The deliberate destruction of monuments and cultural property at Palmyra, Mosul, and elsewhere constitutes precisely the type of offence prohibited under the 1954 Hague Convention, its Second Protocol, and condemned by the UN Security Council. While Daesh itself lacks legal personality and cannot be treated as a state under international law, individual fighters and organisers can be prosecuted under war-crime statutes. At the same time, states are under the obligation to safeguard cultural property and to investigate, prosecute, and punish violations.

3.2. The (Lack of) International Legal Personality

No state or international organisation has ever recognised Daesh as a state, while its designation as a terrorist organisation has been nearly universal. The group has never satisfied the Montevideo criteria of statehood: a permanent population, a defined territory, an effective government, and the capacity to enter into foreign relations[26]. In practice, its purported population was subjected to coercive rule, its borders were unstable, and its authority remained fragmented and persistently contested. These faults were stressed by the collapse of the "caliphate" in March 2019, when the fall of its final territorial enclave in Baghuz, Syria, marked the end of its claims to effective territorial control. Following this defeat, Daesh reverted to a pattern of low-intensity insurgency, operating through dispersed guerilla cells and transnational criminal networks. Although affiliated groups, also known as "provinces" (*wilayat*) remain active in parts of Iraq, Syria, and beyond, including Sinai, Sahel, and Libya, none has been successful in reestablishing a centralised state structure[27].

Consequently, the "Islamic State" cannot be regarded as a subject of international law, as it lacks the factual or legal standing to exercise state rights or assume treaty duties. While the absence of international legal personality might appear, at first glance, to risk displacing responsibility for cultural heritage protection onto territorial states alone, this does not create

[22] UNESCO World Heritage Centre, Minister of State Böhmer condemns destruction of Iraqi cultural sites in Nimrud (n 29).

[23] G J STEIN, 'Performative Destruction: Da'esh (ISIS) Ideology and the War on Heritage in Iraq' in J CUNO and T G WEISS (eds), *Cultural Heritage and Mass Atrocities* (Getty Publications 2022) https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-2/09-stein/ accessed 14 November 2025.

[24] Ibid.

[25] HOFFMAN and STOKES, 'Digging In and Trafficking Out' (n 21).

[26] For a general overview of the statehood requirements, see A MURPHY and V STĂNCESCU, 'State formation and recognition in international law' (2017) 7(1) *Juridical Tribune* 7.

[27] C BUNZEL, 'Explainer: The Islamic State in 2021' (Wilson Center, 10 December 2021), available from https://www.wilsoncenter.org/article/explainer-islamic-state-2021 accessed 14 November 2025.

an accountability vacuum. Rather, responsibility of the crimes perpetrated by Daesh ought to be pursued through alternative and long-established legal mechanisms: the obligations of states to prevent, repress, and repair harm to cultural heritage, and the individual criminal liability of those who directly perpetrate such acts.

4. Responsibility for Cultural Destruction: State Duty and Individual Liability

Even where cultural destruction is perpetrated by non-state armed groups such as Daesh, international law does not suspend responsibility. Instead, it operates through two interrelated regimes: (4.1) the states' obligations to prevent, mitigate, and respond to such violations and (4.2) the individual criminal liability.

4.1. State Duties to Prevent, Protect, and Repair Cultural Heritage

International responsibility derives from customary law and, inevitably, from the jurisprudence of international courts, recognising state liability as a general principle of international law[28]. When a state breaches its international obligations, including the duty to protect cultural heritage, it incurs an obligation to provide reparation. As noted in the literature,

> "State responsibility has been consolidated in international law thanks to a series of international cases that have attested to the existence of a principle of international law recognised by States of accountability and reparation for internationally wrongful acts"[29].

International courts, recognising the general concept that the party responsible for breach of contract assumes the obligation to repair the damage caused, adopted by almost all national legal systems, have decided that the responsible state is subject to the same obligation to provide reparation[30]:

> "The international responsibility of the State is, as a rule, presented as an international obligation to make reparation for a prior violation of international law. In this sense, international responsibility is a genuine obligation to repair the damage caused by a violation of international law"[31].

This responsibility is objective: intention or motivation of state agents is irrelevant, as international accountability focuses on the causal link between the act or omission and the resulting harm[32]. International courts have consistently held that failure to prevent, repress, or punish unlawful acts, including those by private individuals operating within the state's jurisdiction, triggers state liability. This principle has been affirmed across legislative, administrative,

[28] PG Ferreira, 'Responsabilidade Internacional do Estado' in JB Lima Jr (ed), *Direitos Humanos Internacionais: avanços e desafios no início do século XXI* (MNDH/GAJOP 2001) 22; F Braşoveanu, 'Considerations on Cultural and Natural Heritage and the Universal Obligation to Protect and Transmit It to Future Generations' (2024) 26(1) *Ovidius University Annals – Series: Civil Engineering* 111-118.

[29] AC Ramos, *Responsabilidade internacional por violação de direitos humanos: seus elementos, a reparação devida e sanções possíveis: teoria e prática do direito internacional* (Rio de Janeiro: Renovar 2004) 71.

[30] Ferreira, 'Responsabilidade Interancional do Estado' (n 28) 22.

[31] AC Ramos, Teoria geral dos direitos humanos na ordem internacional (Rio de Janeiro: Renovar 2005).

[32] Ramos, Responsabilidade internacional (n 29) 90.

and judicial spheres.

For example, the Inter-American Court in *La Última Tentación de Cristo* held that:

> "any act or omission by the State, on the part of any of the Powers – Executive, Legislative or Judicial – or agents of the State, regardless of their hierarchy, in violation of a human rights treaty, generates international responsibility for the State Party in question"[33].

Similarly, the International Court of Justice in the *Corfu Channel* case established state responsibility where Albania failed to disclose information about mined waters, leading to the destruction of a British ship[34]. Under these doctrines, a state's obligation to protect cultural property encompasses prevention, investigation, prosecution, and repair of damage caused by breaches of international norms.

Thus, even though Daesh cannot itself be held as a legal person under international law, the duty of states to safeguard heritage and provide reparation where harm occurs remains fully operative. Indeed, all states are bound under international law to prevent and punish the intentional destruction of cultural heritage. Treaty regimes, notably the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols[35], and UN resolutions, including Security Council Resolution 2347 (2017)[36], require States to respect protected cultural property and to prosecute or extradite persons responsible for such crimes. This framework ensures that the destruction of cultural property does not escape legal scrutiny and aligns individual criminal accountability with the broader architecture of state responsibility.

4.2. Individual Criminal Responsibility for Cultural Heritage

The development of international law and the regulation of armed conflicts have progressively established the principle of individual criminal responsibility, defining both the scope of prohibited conduct and the mechanisms through which offenders may be held accountable. In the twentieth century, this trajectory began at the Versailles peace settlement[37] and culminated in Rome with the adoption of the Rome Statute, which established the Permanent International Criminal Court (ICC). The Statute emerged after decades of scholarly debate and diplomatic negotiation, shaped by successive waves of global conflict and atrocity that underscored the necessity of universal accountability.

The Second World War marked a watershed in this evolution, with military tribunals instituted to prosecute war crimes, crimes against humanity, and other egregious violations[38]. These

[33] *La Última Tentación de Cristo (Olmedo Bustos y otros) v Chile* (Inter-American Court of Human Rights, Judgment of 5 February 2001) Serie C No 73.

[34] *Corfu Channel (UK v Albania)* (Merits) [1949] ICJ Rep 4, 22-23.

[35] Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956, UNTS No 3511); Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 26 March 1999, entered into force 9 March 2004).

[36] UN Security Council Resolution 2347 (24 March 2017) UNSC Doc S/RES/2347 (2017).

[37] Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles) (signed 28 June 1919, entered into force 10 January 1920) 225 CTS 188.

[38] See FM BUSCHER, *The U.S. War Crimes Trial Program in Germany, 1946-1955* (Greenwood Press 1989) (Contributions in Military Studies, No 86).

tribunals reinforced the principle that perpetrators could be charged regardless of nationality or domestic law, laying the groundwork for the modern international criminal justice system. In Germany, for example, Article 4 of the Weimar Constitution[39] recognized that generally accepted rules of international law were binding within domestic law.

From Versailles through the ad hoc tribunals for the former Yugoslavia and Rwanda, culminating in the Rome Statute, scholars and practitioners laboured over three-quarters of a century to construct a coherent international criminal justice framework. This system seeks to ensure that perpetrators of mass atrocities are held accountable while advancing the broader goals of justice, deterrence, and the preservation of peace. Today, the ICC and complementary domestic jurisdictions stand as the institutional embodiment of this long and arduous effort, providing mechanisms to prosecute offenders who commit crimes that shock the conscience of humanity.

Consequently, Daesh fighters and leaders can be prosecuted for international crimes (e.g., war crimes, crimes against humanity) before international or domestic courts. For example, the ICC and special tribunals have recognized the destruction of cultural heritage as a prosecutable war crime. The 2016 ICC conviction of Ahmad Al Mahdi for razing Timbuktu's mausoleums[40] served "as a warning to potential perpetrators that a reckoning may be at hand"[41]. Likewise, many states have since used their national courts to try returning ISIS members for war crimes and terrorism.

5. Conclusion

The destruction of cultural property that forms part of humanity's shared heritage constitutes a serious international crime. Deliberate attacks on monuments, religious sites, libraries, and archaeological treasures are recognized under international law as war crimes and, in some cases, as crimes against humanity. The campaign of destruction carried out by the so-called Islamic State in Iraq and Syria exemplifies the extreme consequences of such acts, combining ideological iconoclasm, military strategy, and illicit financial gain.

While international human rights organizations and UNESCO have condemned these acts, accountability has been complicated by the fact that Daesh is not recognized as a state or a subject of international law. Its non-state character means that responsibility cannot be assigned to it in the same manner as a sovereign state. However, international legal frameworks, including the Rome Statute, customary law, and UNESCO's normative instruments, allow for the

[39] Constitution of the German Reich (11 August 1919) art 4.

[40] ICC, Office of the Prosecutor, 'Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, Following the Transfer of the First Suspect in the Mali Investigation', 26 September 2015, available from https://www.icc-cpi.int/pages/item.aspx?name=otp-stat-26-09-2015 accessed 14 November 2025. Chief Prosecutor Bensouda remarked that: "Let there be no mistake: the charges we have brought against Ahmad Al Faqi Al Mahdi involve the most serious crimes; they are about the destruction of irreplaceable historic monuments, and they are about a callous assault on the dignity and identity of entire populations and their religious and historical roots. […] It is rightly said that 'cultural heritage is the mirror of humanity.' Such attacks affect humanity as a whole. We must stand up to the destruction and defacing of our common heritage".

[41] J Powderly, 'Prosecuting Heritage Destruction' in J Cuno, T G Weiss (eds), *Cultural Heritage and Mass Atrocities* (n 23) 442, https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/25-powderly/ accessed 14 November 2025.

prosecution of individual perpetrators and the imposition of state obligations to prevent, investigate, and punish heritage crimes.

The case of Daesh underscores the dual nature of accountability in international law: states retain a duty to safeguard cultural heritage and to ensure effective domestic prosecution, while individuals who plan, execute, or direct attacks on heritage sites can be held criminally responsible through domestic courts or the International Criminal Court. In this way, even when non-state actors commit widespread cultural destruction, the architecture of international law provides mechanisms to pursue justice, protect vulnerable heritage, and reaffirm the principle that cultural property is a collective patrimony of all humanity.

Ultimately, the ongoing struggle against the destruction of cultural heritage illustrates both the vulnerabilities of humanity's shared patrimony and the resilience of international legal norms. It demonstrates that, while non-state actors may exploit instability to commit egregious crimes, the combination of state responsibility, individual criminal liability, and cooperative international frameworks provides a pathway to accountability, deterrence, and the restoration of cultural memory.

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Intergovernmental Coordination in Crisis Governance

The Role of Pro-Defence Organizations in Polish and Lithuanian Responses to the Russia-Ukraine War

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Abstract: The Russian invasion of Ukraine has reshaped the security environment of Eastern Europe and highlighted the importance of civil-military cooperation. This paper aims to identify how the Lithuanian government coordinates actions with pro-defence organizations with particular attention to the efficiency and effectiveness of such collaboration. The Lithuanian case will be compared with Polish regulations and practices in order to highlight similarities, differences, and potential gaps. The analysis then extends to the sphere of Polish-Lithuanian cooperation in defending the eastern border of the European Union and NATO, a frontline region of strategic importance. The ultimate goal is to find examples of good practices and patterns that can serve as models for effective functioning of state-civil society cooperation in crisis conditions. By combining Lithuanian and Polish experiences, the study contributes to a broader understanding of resilience-building in the face of hybrid threats and conventional military aggression.

Keywords: Poland; Lithuania; intergovernmental coordination; crisis; pro-defence organisations; Russia-Ukraine War; security.

1. Introduction

Almost every day since the beginning of full-scale Russia-Ukraine war, Poland and Lithuania experience Russian and Belarusian hybrid actions targeted on weaking security. It includes artificially caused migration crisis on Polish-Lithuanian-Belarusian border, arsons, cyberattacks on public authorities and bank systems, disinformation, spreading fake news, violations of an air space by drones, balloons and military aircrafts and recently even acts of sabotage which could lead to the catastrophe on railways in Poland.[1] This threats combined with a large-scale

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[1] S Rainsford, 'Poland says blast on rail line to Ukraine "unprecedented act of sabotage"' (BBC News, 18 November 2025) https://www.bbc.com/news/articles/cp85g86x0zgo accessed 27 November 2025.

conflict in Ukraine completely reshaped the security environment of Eastern flank NATO countries.[2]

During the NATO summit in Hague in June 2025, members agreed to gradually increase defence spending to 5% of GDP, of which at least 3.5% would be allocated to defence investments, while up to 1.5% would finance critical infrastructure protection, civil preparedness, innovation development, and industrial base strengthening.[3] In 2026 Poland and Lithuania plans to spend at least 5% of their GDP on defence. In the National Security Strategy from 2025 Polish government highlighted the role of civil society and civic education in strengthening a state defence system enabling the use of the state's potential to defend against external and internal threats.[4] Already existing example of civic organisation contributing national defence and community resilience could be found in Lithuania – which is the Lithuanian Rifleman Union – state supported para-military organisation.

2. The Lithuanian legal framework – The Lithuanian Rifleman Union

The Lithuanian Rifleman Union (LRU) has a long history dating back to the end of the first World War, fights for the independence of Lithuania in 1919-1920 and armed resistance against Soviet Union in 1944 to 1953. The legal status and functioning of the organisation are regulated by several legal acts[5]. The main legal regulation introduced by the Lithuanian government on the 2nd of July 1997 is the Law of the Republic of Lithuania on the Lithuanian Riflemen's Union. The act regulates the status and activities of LRU[6]. It is important to highlight that the LRU cooperates closely with the Lithuanian Armed Forces and Ministry of National Defence. Currently the organisation has around 17 000 members with the aim of recruitment of new members. The Union has a public legal entity of limited civil liability, and it operates in form of an association[7].

Within the organisation function 10 teams based in all 10 main districts in Lithuania. The Union maintains close cooperation with the Armed Forces, Police, Fire and Rescue Service, and Border Guard[8].

The LRU is a vital part of Lithuania's comprehensive defence system[9]. Its activities are fully

[2] NATO's Eastern Flank, also known as The Bucharest Nine (B9), is comprised of Estonia, Latvia, Lithuania, Poland, Czechia, Slovakia, Hungary, Romania, and Bulgaria. In September 2025, NATO launched Operation Eastern Sentry, aimed to protect its territory in response to hybrid actions. NATO's Forward Land Forces (FLF) are a key element of the Alliance's military presence along the eastern flank.

[3] NATO, The Hague Summit Declaration issued by the NATO Heads of State and Government participating in the meeting of the North Atlantic Council in The Hague (25 June 2025).

[4] National Security Strategy of the Republic of Poland (25 July 2025).

[5] For the purposes of the paper there are considered main three of them: Law of the Republic of Lithuania on the Lithuanian Riflemen's Union, Statute of the Lithuanian Riflemen's Union and Riflemen's Code of Ethics.

[6] Article 1, Lietuvos Respublikos Lietuvos šaulių sąjungos įstatymas (2 July 1997) Nr VIII-375 (Law on the Lithuanian Riflemen's Union).

[7] Article 5, *Ibidem*.

[8] Lietuvos šaulių sąjunga, 'Rinktinės' https://www.sauliusajunga.lt/rinktines accessed 27 November 2025.

[9] R Szynowski, 'Competences of the Republic of Lithuania Authorities in the Area of Defence' (2020) 1 *Security Forum* 102, https://doi.org/10.26410/SF_1/20/8.

compliant with the basics of ensuring the national security of Lithuania[10]. It is important to highlight also the positive public perception of the organization which results in more and more candidates of becoming the new members of the Union.

The LRU has significant successes in helping the government managing the polycrisis during last years, especially during the Covid-19 pandemic or migration crisis on the border with Belarus[11]. The Union also conducting educational activities and helps the authorities in fighting natural disasters. The organisation is subordinate to the Lithuanian Government[12]. The financing increased several times since 2020, and it was 13,6 million euro in 2024[13].

This legal approach is completely different comparing to the Polish regulations in this matter. While Lithuanian government decided to create centralised organisation directly subordinated to the Ministry of National Defence and functioning on legal act introduced by the parliament. Polish authorities leave the freedom for organisational issues to the entities. However, Polish regulations also include cooperation with civic organisations with pro-defence profile.

3. Polish Homeland Defence Act and cooperation with pro-defence organisations

In Poland, in April 2022 came into force the Homeland Defence Act from 11th of March 2022. The new act has been introduced right after the full-scale war in Ukraine has started. It replaced the previous act from 1967 originally introduced by the communists in Polish People Republic[14].

It is a complex legal act aimed on regulating the most important issues related to the state security such a general organisation of Polish Armed Forces, command system, development of the Army, recruitment and service and meeting the needs of the Polish Armed Forces, mainly in relations with the administration and by entrepreneurs[15].

It also consists of regulations related to the pro-defence organisation which are not part of the Polish Armed Forces. According to the Polish law, the pro-defence organisation is understood as a non-governmental organization with which the Minister of National Defence has concluded a pro-defence partnership agreement[16].

The Minister of National Defence may conclude a pro-defence partnership agreement with a non-governmental organization conducting socially useful activities aimed at strengthening

[10] Lietuvos Respublikos nacionalinio saugumo pagrindų įstatymas (19 December 1996) Nr VIII-49 (Act on the National Security of the Republic of Lithuania).

[11] See 'Šauliai ir pasieniečiai sutarė drauge valdyti nepaprastas padėtis, užaboti nusikalstamumą' (15min, 2025), available from: https://www.15min.lt/naujiena/aktualu/lietuva/sauliai-ir-pasienieciai-sutare-drauge-valdyti-nepaprastas-padetis-zaboti-nusikalstamuma-56-1646276 accessed 27 November 2025.

[12] Article 12 of the Law of the Republic of Lithuania on the Lithuanian Riflemen's Union states that the Minister of National Defence shall appoint, dismiss and remove the Commander of the LRU from office.

[13] See 'Šaulių sąjungoje už 200 tūkst. eurų bus steigiama 15 naujų pareigybių' (LRT, 2025), available from: https://www.lrt.lt/naujienos/lietuvoje/2/2278793/sauliu-sajungoje-uz-200-tukst-euru-bus-steigiama-15-nauju-pareigybiu accessed 27 November 2025.

[14] Act of 21 November 1967 on the universal duty to defend the Republic of Poland has been replaced by the Homeland Defence Act of 11 March 2022.

[15] Homeland Defence Act (Poland) (11 March 2022), art 1.

[16] Ibid., art 2.

national security and defence capabilities, at the request of that organization[17]. The direct consequence of concluding such an agreement in relation to members and volunteers of pro-defence organizations is the possibility of their being called up for 28 days of basic training as part of voluntary basic military service[18].

Under a pro-defence partnership agreement, the Minister of National Defence may undertake to organize training for members or volunteers of a pro-defence organization to become instructors, to make the resources and infrastructure of the Armed Forces available free of charge, and to provide material and financial support. Under the law, commanders of military units may cooperate with pro-defence organizations as part of their official duties[19].

As it is highlighted in the National Defence Strategy from 2025 the main threat to the state security still remains aggressive policy of Russian Federation[20]. In this context Polish states is facing significant challenges. Focusing on civil capabilities, Polish rescue units do not have the human and material resources to provide large-scale protection in the event of the unavailability of the Polish Armed Forces. Civil defence will probably have to become a separate uniformed formation, even in peacetime. Its key tasks in peacetime should include securing critical infrastructure, which is the main target of attacks in modern armed conflicts[21]. In current strategy Polish government focuses on strengthening the resilience of the state, with particular emphasis on civil protection and civil defence, as well as the resilience of critical infrastructure and services. Another goal is developing the potential and role of civil society, civic education, strengthening national identity and social cohesion, on which the determination to defend the country and protect the population depends.

All above mentioned challenges and priorities could be supported also by non-governmental pro-defence organisations. However, unlike the Lithuanian solutions most of the crisis in Poland are solved by the uniformed services. During the crisis on the border with Belarus, Border Guard was supported by the police and military. Right after the act of sabotage on the Polish railways in November 2025, to protect the important railway connection also was used military – Territorial Defence Forces (TDF)[22].

There are some similarities between Lithuanian Riflemen Union and Territorial Defence Forces such as a voluntary element of service however from the legal perspective counterpart of TDF's in Lithuania is a The National Defence Volunteer Forces[23].

In Poland there is already a plenty of pro-defence organisations who cooperates with Polish Ministry of National Defence. Pro-defence partnership agreements refer to the principles of

[17] Ibid., art 114.

[18] J Bulira, 'Commentary on Article 114', in H Królikowski (ed), *Homeland Defence. Commentary* (2nd edn, LEX/el 2024).

[19] Ibid., arts 116-117.

[20] National Security Strategy of the Republic of Poland (25 July 2025).

[21] See T Pawłuszko, 'Nowa strategia bezpieczeństwa narodowego RP. Założenia i wyzwania' (2020), 7–8, available from: https://doi.org/10.36735/AXLA7062 accessed 27 November 2025.

[22] One of the five branches of the Armed Forces of the Republic of Poland, alongside the Land Force, Air Force, Navy, and Special Forces.

[23] The National Defence Volunteer Forces or NDVF (Lithuanian: Krašto apsaugos savanorių pajėgos [KASP]). P Szymański, *The Baltic States' Territorial Defence Forces in the Face of Hybrid Threats* (OSW Commentary No 165, Centre for Eastern Studies 2015) 3.

subsidiarity, openness and transparency of action, effectiveness, equal treatment, and respect for the autonomy of organizations. The decisive factor in concluding an agreement with a given entity is its neutrality in political matters and its independence from political parties or other political organizations. On this basis, pro-defence organizations are involved in civil defence and broadly understood crisis management tasks and carry out activities for the security of the country and in the area of defence and cooperation with the Polish Armed Forces[24].

There are differences between Polish model of cooperation with such organisations comparing with Lithuanian regulations. There is no organizational structure imposed in advance by the Ministry, leaving considerable freedom to the organization itself. The agreement is voluntary. The apolitical nature of such organizations is required, which cannot be said about the LRU which is controlled directly by the Ministry. However also the level of cooperation in helping to resolve the crisis is different placing Lithuanian solutions more effective and efficient.

Polish Ministry of National Defence can support financially the pro-defence organisations which with has concluded agreement, however the support is limited and do not cover all costs. The law allows also material support[25]. The LRU is mostly financed by the Ministry of National Defence of Lithuania.

It is clear that the Polish legislator relies mainly on the uniformed services solving the crisis rather than on pro-defence organisations which is in contrast with Lithuanian solution where is strong state support for the LRU and participation of the Union in many activities. However, the strength and size of Polish Armed Forces cannot guarantee today full security[26], that is why is crucial to reconsider the contribution of pro-defence organisations in National Defence Strategy. Many Polish experts also highlight that nowadays Polish Armed Forces are used for the purposes which are not necessarily strictly military duties and are used to supplement the security system because other services are inefficient[27].

4. Intergovernmental coordination

The complex nature of the intergovernmental coordination, focused on outcomes or process itself[28], poses even greater challenges in analysing the issue. The focus in this paper is dedicated to horizontal, inter-organizational, as well as trans-boundary coordination. The main obstacles in trans-boundary coordination have been identified. They are divergent national regulatory frameworks and public expectations.

The Polish and Lithuanian governments strengthen the military cooperation. There are mutual meetings of the representants of both governments from Ministries of National Defence aimed on joint infrastructure and defence projects aimed at strengthening the security of NATO's

[24] 'Organizacje proobronne' (Wojsko Polskie), available from: https://www.wojsko-polskie.pl/zostanzolnierzem/organizacje-proobronne/ accessed 27 November 2025.

[25] Regulation of the Minister of National Defence of 5 May 2022 on support for pro-defence organisations.

[26] Currently it is 210 000 soldiers, the aim is 300 000.

[27] M KOZUBAL, 'Czego nie widać na horyzoncie: czy wojsko jest od ochrony torów' (Rzeczpospolita, 2025) https://www.rp.pl/komentarze/art43370301-marek-kozubal-czego-nie-widac-na-horyzoncie-czy-wojsko-jest-od-ochrony-torow accessed 28 November 2025.

[28] N BEHNKE and S MÜLLER, *Challenges and Opportunities of Intergovernmental Coordination* (Policy Brief No 1, November 2021) 7, available from https://igcoord.eu accessed 28 November 2025.

eastern flank[29]. There are bilateral agreements between the Polish and Lithuanian authorities for example in area of cybersecurity. Moreover, the Polish strategic defence project "East Shield" will be integrated with the "Baltic Defence Line", which is being built by Lithuania, Latvia, and Estonia. Cooperation between the two countries at the governmental level is carried out not only bilaterally, but also within the framework of membership in the European Union and, above all, within NATO.

However, when it comes to the inter-organizational level of the coordination in context of the pro-defence organisations in Poland and Lithuania there is a lack of formal cooperation. First of all, it is important to highlight that there are grassroots initiatives for the cooperation between Polish and Lithuanian pro-defence organisations. The three Polish pro-defence organisations began with letter of intent informal cooperation between Polish and the Lithuanian Riflemen Union, in particular with the Tadeusz Kościuszko Unit within the LRU structures[30]. The cooperation is based on democratic values and common history of Poland and Lithuania.

Secondly the different legal approach to the pro-defence organisations creates additional obstacles. The Polish entities are not subordinate to Ministry of National Defence, and their cooperation is based on agreements which they are not obliged to sign, they are requesting for concluding the agreement, the Ministry has discretional power to accept or refuse the proposal. In Lithuanian case is different, the LRU is regulated by an act introduced in the parliament, state supported and directly subordinated to the Ministry.

The third important issue is the public expectations. As in Lithuania, the LRU enjoys respect and widespread acceptance, which is reflected in the growing number of members of the formation, in Poland, pro-defence organizations are not well known by the majority of society, and there are no state mechanisms to encourage membership in such organizations. Citizens are more encouraged to join regular units of the Polish Armed Forces – such a Territorial Defence Forces.

5. Conclusions and recommendations

The role of civic organisations and civil capabilities in national defence system in both countries is significant however in Lithuania it is more highlighted. There are different legal approaches and public expectations related to pro-defence organisations. However, the threats are similar: acts of sabotage, arsons, migration crisis, cyberattacks and disinformation.

In context of intergovernmental coordination there are good practices on the governmental level such a bilateral meetings and agreements, cooperation within EU and NATO. However, there is a lack of coordination on inter-organisational level, which also comes from the nature

[29] 'Polska i Litwa wzmacniają współpracę wojskową' (TVP Wilno, 2025) https://wilno.tvp.pl/88112152/polska-i-litwa-wzmacniaja-wspolprace-wojskowa accessed 28 November 2025.

[30] Based on the interview with Mr Dariusz Litwinowicz, Commander of Kościuszko Unit, member of LRU and Dr Andrius Puksas, member of LRU, conducted on 16 September 2025 during a Short-Term Scientific Mission funded under Cost Action IGCOORD, CA20123, on the topic of: "Intergovernmental Coordination in Crisis Governance: The Role of Pro-Defence Organizations in Polish and Lithuanian Responses to the Russia-Ukraine War". The letter of intent from 10 June 2025 includes three Polish pro-defence organisations: Związek Strzelecki "Strzelec", Związek Strzelecki "Strzelec Józefa Piłsudskiego", Fundacja na Rzecz Obronności i Bezpieczeństwa Kraju "Combat-Alert".

of organisations, at least in the Polish security environment. Moreover, Polish solutions are more focused on development regular Armed Forces rather than supporting civic pro-defence organisations which is in contrast with Lithuanian approach.

There are initiatives such as joint training sessions, bilateral exchanges between Armed Forces and also pro-defence organisations however when it comes to the organisations, they have more informal based on private contacts of the commanders and they are not institutionalised.

The common challenges, direct neighbourhood with Russia and Belarus, the Suwałki Gap[31], hybrid threats and war in Ukraine intensified Polish-Lithuanian efforts on developing their defence system. Modern challenges emphasised the need of civil-military cooperation in order to protect the state, in particular the critical infrastructure and main transport routes.

The Lithuanian model of cooperation with pro-defence organisation – in particular with the Lithuanian Riflemen Union seems to be more efficient than the Polish solutions based on decentralisation and voluntary character of cooperation with the state. Polish legislator focused on developing one of the components of Polish Armed Forces which is the Territorial Defence Forces which they have quite similar tasks and obligations like LRU however they are part of the Armed Forces so we cannot qualify them as a civic organisation.

The threat of open conflict is escalating as enemy provocations grow increasingly frequent and severe. In any case, military and civilian cooperation between Poland and Lithuania should be strengthened within NATO and the European Union. It should also be based on bilateral agreements and informal cooperation, as it is currently.

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[31] The Suwałki Gap, or Suwałki Corridor is an area around the border between Lithuania and Poland, and centres on the shortest path between Belarus and the Russian exclave of Kaliningrad Oblast on the Polish side of the border. Named after the Polish town of Suwałki, this choke point has become of great strategic and military importance since Poland and the Baltic states joined the NATO.

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Where Soft Law is the Only Law: Digital Goods in Comparative Perspective

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Abstract: In the rapidly evolving digital economy, the legal qualification and regulation of digital goods remain ambiguous and fragmented. Despite their growing economic and societal relevance, digital goods are often governed not by binding legal norms (hard law), but by non-binding guidelines, private contracts, and platform-specific terms of service – the so-called soft law. This article explores the legal vacuum surrounding digital goods, analysing the challenges posed by the absence of uniform definitions, the reliance on private ordering, and the inconsistent application of existing legal categories across jurisdictions. Through a comparative and interdisciplinary lens, the study examines how current legal systems struggle to keep pace with technological innovation, resulting in legal uncertainty regarding ownership rights, consumer protection, taxation, and the cross-border transfer of digital goods. The paper argues for the development of a coherent national and European Union regulatory framework that transcends soft law approaches and provides clear, enforceable, and future-proof norms for the classification, use, and transfer of digital goods in a globalised environment.

Keywords: digital goods; digital assets; soft law; regulatory framework; European Union law.

1. Introduction

In the rapidly evolving global digital economy, the distinction between physical and intangible goods has become increasingly blurred. The emergence of digital goods, such as downloadable content, software, tokens (including NFTs) and virtual items has fundamentally reshaped the ways in which value is created, exchanged, and owned. However, while the economic and societal significance of digital goods continues to grow, their legal status remains ambiguous and fragmented. Existing legal systems, including the Romanian legal system, often fail to provide coherent frameworks for their classification, transfer, and protection.

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The current regulatory landscape is characterised by a predominance of soft law mechanisms: industry guidelines, platform-specific terms of service, private contracts, and non-binding policy instruments, such as the proposed *Global Code of Digital Enforcement*[1] or the *UNIDROIT Principles on Digital Assets and Private Law*[2]. These tools have stepped in where binding legal norms (or hard law) are either outdated, insufficient, or entirely absent. While soft law offers flexibility and adaptability, it also generates legal uncertainty, particularly in areas such as ownership rights, consumer protection, cross-border enforcement, and taxation.

This article addresses the resulting legal vacuum by analysing the lack of uniform definitions, the reliance on private ordering, and the inconsistent application of legal categories across jurisdictions. Through a comparative and interdisciplinary approach, the study examines how legal systems struggle to keep pace with technological innovation and identifies the normative gaps that remain unaddressed.

The subsequent sections are organised as follows: First, the paper introduces key concepts related to digital goods and law to establish the analytical framework (§2). Second, it critically reviews soft law and hard law approaches, assessing their strengths and limitations in regulating digital assets (§3). Third, it examines the need for a unified and enforceable regulatory framework that transcends the limitations of soft law (§4). Finally, it concludes by summarizing the findings and offering recommendations for future legislative development (§5).

2. Defining the Digital Realm: Key Concepts

A legal framework may be defined as a set of beliefs, ideas, principles and rules enforced by public authorities in order to regulate behaviour, thus ensuring social order and the protection of fundamental rights. The strength of a country's legal framework is thus closely linked to socio-political stability and directly impacts citizens' quality of life.

In economic theory, some authors differentiate between *goods* and *assets*. Assets represent items of long-term, relatively high economic value (i.e., real estate, exotic cars, works of art), whereas goods are defined as objects, tangible or intangible, of economic importance. However, for the purposes of this analysis, such a distinction will not be maintained. Given the semantic inconsistencies in the analysed literature and legal norms and the volatile nature of some digital goods (e.g., NFTs, cryptocurrencies), the terms goods and assets will be used interchangeably.

UNIDROIT briefly defines the concept of a *digital asset* as "an electronic record which is capable of being subject to control"[3]. Matthias Lehmann adopts an illustrative approach, stating that

> "the notion of 'digital assets' ... primarily covers crypto-assets ... Yet it also encompasses other assets recorded electronically, such as items in computer games ... which may be of significant economic value"[4].

[1] UIHJ, *Global Code of Digital Enforcement* (Brussels: Bruylant 2021).

[2] UNIDROIT, *UNIDROIT Principles on Digital Assets and Private Law* (UNIDROIT 2023).

[3] Ibid., 11.

[4] M Lehmann, 'Digital Assets in the Conflict of Laws' (2024) *Singapore Journal of Legal Studies* 198.

The European Law Institute (ELI) offers a more comprehensive definition, describing *digital assets* as

> "any record or representation of value that … is exclusively stored, displayed and administered electronically, … capable of being subject to a right of control, enjoyment or use, regardless of whether such rights are legally characterised as being of a proprietary, obligational or other nature; and … capable of being transferred from one party to another, including by way of voluntary disposition"[5].

Among the various categories of digital goods, *crypto-assets* (also known as *cryptocurrencies*) are among the most heavily regulated categories of digital assets, due to their prominent role in the decentralisation of financial services. This decentralised nature has made them highly relevant in both legitimate innovation and illicit activity, as the lack of governmental oversight can facilitate transactions associated with criminal conduct. In response to these challenges, the European Union adopted *Regulation (EU) 2023/1114 on Markets in Crypto-Assets* (MiCA), establishing a comprehensive legal framework aimed at enhancing transparency, consumer protection, and market integrity in the crypto-asset sector. In the preamble, MiCA defines *crypto-assets* as "digital representations of value or of rights that have the potential to bring significant benefits to market participants"[6], the value of the crypto-assets being *subjective and based only on the interest of the purchaser of the crypto-asset*[7]. MiCA also presents the importance of proper regulation of crypto-assets, stating that

> [the absence of a framework in this regard] "can lead to a lack of user confidence in those assets, which could significantly hinder the development of a market in those assets and lead to missed opportunities …, alternative payment instruments or new funding sources for Union companies"[8].

The term *token* has multiple meanings depending on the context. In general, a token represents a unit of value or utility on a particular blockchain network. However, the *Global Code of Digital Enforcement* defines a *token* as a "hardware or software device required for a user to access an application or network system more secure"[9].

Crypto-assets operate on *distributed ledger technology*, a "digital system for recording the transaction of assets in which the transactions and their details are recorded in multiple places at the same time"[10]. Most commonly, this is accomplished through *blockchain*, a "technology for storing and transmitting information without a control organ, in the form of a distributed database whose information sent by users (…) are verified and grouped at regular time intervals

5 ELI, *ELI Principles on the Use of Digital Assets as Security* (European Law Institute 2022) 17.

6 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 [2023] OJ L 150/40.

7 Ibid.

8 Ibid.

9 See Glossary, in UIHJ, *Global Code of Digital Enforcement* (n 1).

10 *Ibid.*

in blocks, thus forming a chain secured by cryptography"[11]. Given their singular architecture, blockchains can be implemented in different ways depending on the degree of decentralisation they pursue. In practice, four main types are distinguished: Public, Private, Hybrid and Consortium blockchains, each with specific advantages and disadvantages[12].

Cryptography, as defined by IBM in an online article, is the practice of developing and using coded algorithms to protect and obscure transmitted information so that it may only be read by those with the permission and ability to decrypt it[13]. One of the core tenets of modern cryptography is confidentiality, alongside integrity, authentication and non-repudiation, principles that ensure secure and trustworthy data exchange in digital environments.

3. Soft Law vs. Hard Law Approaches: A Critical Review

The concepts of *soft law* and *hard law* are generally examined within the framework of public international law. *Soft law* encompasses a variety of non-binding instruments, including guidelines, codes of conduct, recommendations and policy declarations, created by international or regional organizations, national governments, judicial and standard-setting bodies[14]. In the context of the European Union, documents such as recommendations and opinions serve as a precursor to future legislation and can contribute to the uniform application of EU principles across Member States. Despite its non-binding nature, soft law may significantly influence behaviour and normative expectations. By contrast, *hard law* refers to legally binding norms, such as statutes, treaties, regulations or judicial decisions, which create rights and obligations and are enforceable by public authorities.

This section aims to present the key instruments regulating digital assets to assess the current landscape. Subsections 3.1, 3.2, and 3.3. explore the most influential soft law instruments to date, highlighting their potential to shape the future of digital assets. In contrast, Section 3.4. examines examples of hard law approaches to provide a snapshot of the present regulatory framework.

3.1. The Global Code of Digital Enforcement

The *Global Code of Digital Enforcement* (hereinafter *Code*), presented during the UIHJ's 24th International Congress in Dubai (2021), aims to define universal principles applicable to key aspects of digital enforcement in civil matters and ethical obligations inherent in the use of AI. The authors of the Code believe that the principles underlined in the Code should serve as inspiration for legislators and a guide of good practices in the execution of enforceable titles.

Some of the most relevant principles for the matter at hand, included in the Code, are:

1. *Respect for fundamental rights (Article 1)* – as defined by national laws, constitutions, declarations and international conventions.
2. *Respect for the ethical principles of digital use (Article 2)* – including human dignity,

[11] Ibid.

[12] GeeksforGeeks, 'Types of Blockchain', available at https://www.geeksforgeeks.org/types-of-blockchain/ accessed 2 May 2025.

[13] IBM, 'What is cryptography?', available at https://www.ibm.com/think/topics/cryptography accessed on 17 April 2025.

[14] M Shaw, *International Law* (6th edn, Cambridge University Press 2008) 117-118.

non-discrimination, transparency, respect for personal data and privacy, social responsibility of developers.[15]

3. *Prevention of risks associated with the use of artificial intelligence* (Article 3)– through risk analysis and documentation resulting from the use of AI, certification and assessment procedures, and *regulatory frameworks*.
4. *Territorial jurisdiction of judicial officers or enforcement agents (Article 12)* – governed by the debtor's domicile or the place where it is identified and accessible[16].
5. Legal framework of digital assets and definition of seizure procedures (articles 37, 39) – the categories, the legal nature of digital assets and the seizure procedures adapted to digital assets should be defined by national law.
6. *Principles relating to access to crypto-assets (Articles 47-49)* – prior service or notification of the enforcement order, national crypto-assets databases or registers, the obligation for the debtor to declare crypto-assets and sanctions for non-declaration.
7. *Fate of seized crypto-assets (Article 57)* – seized crypto-assets should be transferred to the creditor or be the subject of a forced judicial sale.

Equally important is the *Glossary* section, that defines many technical terms related to digital assets and enforcement.

3.2. ELI Principles

The *ELI Principles on the Use of Digital Assets as Security* (hereinafter *ELI Principles*), published in 2022, are a set of guidelines developed by the European Law Institute to address the use of digital assets as collateral in securing obligations such as loans or debts. These principles clarify and facilitate *the position of those claiming an entitlement to digital assets*[17]:

1. Principle 1 specifies that the ELI Principles do not apply to the seizure of digital assets by public bodies, but rather to security interests created by agreement by private parties.
2. Principle 2 states that for a digital asset to be used as security, an agreement between a security provider and a secured creditor is required.
3. Principle 3 is more complex, addressing matters such as applicable law, the effects of creating a valid security interest and the right of the parties to make provisions for fluctuations in the value of the digital asset.
4. Principle 4 covers the effectiveness of security interests and applicable law. It introduces rules regarding statutory transaction fillings and notice filling systems, similar

[15] See PM Lourenço, 'The Judicial Officer and Digitisation – Delivering The Added Value: The Human Touch', in D Walker (ed), *Cyberjustice, de nouvelles opportunités pour l'huissier de justice. Cyberjustice, New Opportunities for the Judicial Officer: XXIVth International Congress of the International Union of Judicial Officers, Dubai, 22-25 November 2021* (Brussels: Bruylant 2021) 203; MG Păun, 'Digital Discipline: Upholding Ethical Integrity in the Judicial Officer's Engagement with Technology', in P Gielen (ed), *L'huissier de justice : le tiers de confiance. The judicial officer: the trusted third party* (Brussels: Bruylant 2024) 621.

[16] S van Erp, 'Digital Assets… The "Phantom Debtor', in Walker (ed), *Cyberjustice, de nouvelles opportunités pour l'huissier de justice* (n 15) 220.

[17] ELI, *ELI Principles on the Use of Digital Assets as Security* (n 5) 11.

to those governing real-world assets, as defined by national law.

5. Principle 5 oversees the enforcement and extinction of security interests. A security interest is extinguished when all secured obligations have been discharged.

In the *Sources and Final Notes* section, the authors note that, unlike the United States, which has the Uniform Commercial Code (UCC), the European Union does not yet have a common framework. The UCC, though soft law (as it is a recommendation), is a model followed by most U.S. states.

3.3. UNIDROIT Principles

Another such instrument, covering different topics, but not without its shortcomings[18], is the *UNIDROIT Principles on Digital Assets and Private Law* (hereinafter *UNIDROIT Principles*). These are applicable to digital asset transaction across legal systems, with the "aim to reduce legal uncertainty which practitioners, judges, arbitrators, legislators and market participants would otherwise face in the coming years in dealing with digital assets"[19]. UNIDROIT recommends states adopt legislation based on the presented principles to increase the predictability of such transactions, both nationally and internationally, thus decreasing the costs related to such transactions. It should be noted that the principles apply only to a subset of digital assets, that is, assets that are capable of being subject to control.

Section I defines the scope, key terms, general principles and the concept of linked assets. Similar to the ELI Principles, the UNIDROIT Principles focus on private law relating to digital assets (*Principle 1*). In the official commentary of *Principle 2*, it is interesting to take into consideration *Illustration 4*, regarding the fact that password protected social media pages are not digital assets, due to the fact that social media platforms involve *licensing arrangements* (Terms and Conditions) that do not grant the users ownership of such pages, and *Illustration 5*, which argues that even though Excel or Word files may be considered digital assets, Principles law may not have any material impact or utility. *Principle 3* establishes that digital assets can be owned and treated as property and that principles specific to digital assets will take priority. However, for all issues not specifically addressed by the principles (including whether a person has a proprietary right or the validity of transfers or the creation of security rights, etc.), general laws (property law, contract law) will apply. *Principle 4* links digital assets with other assets, the fate of the digital assets affecting the other assets.

Section II: Private International Law seeks to determine the applicable law governing proprietary issues related to digital assets. Primarily, the applicable law is the national law explicitly specified in the digital asset itself, the system on which it is recorded, or the issuer's statutory seat. If no such specification exists, fallback rules defer to the principles specified by the forum state and, ultimately, to the rules of private international law.

Section III, Principle 6 defines the control of a digital asset as the exclusive ability to prevent others from obtaining the benefits of the asset, the ability to obtain those benefits, and the exclusive ability to transfer these rights to another person. Additionally, the digital asset or

[18] M LEHMANN, 'Digital Assets in the Conflict of Laws' (n 4) 209.

[19] UNIDROIT, *UNIDROIT Principles on Digital Assets and Private Law* (n 2) 1.

system must allow the person to identify themselves as holding these abilities. Exceptions exist, where shared control is explicitly permitted by the asset's design or agreement.

Section IV, Principle 10 defines custody in the context of digital assets, requiring a custody agreement between the *custodian* and *client* (or *sub-custodian*). A custody agreement must meet the following criteria: the service is provided as part of the provider's business; the provider is obligated to obtain and maintain the asset for the client and the client lacks exclusive control over the asset. However, the asset may not be part of the provider's estate in the event of the provider's insolvency.

3.4. Hard Law Approaches

While not creating legal rights and obligations, the UCC is influential because most U.S. states model their legislation on it. The 2022 amendments of the UCC address emerging technologies (DLT, AI, NFTs, cryptocoins, Controllable Electronic Records etc.) in a manner similar to the UNIDROIT Principles (the UCC 2022 amendments precede the UNIDROIT Principles). According to the Uniform Law Commission, 38 out of 53 U.S. states have either introduced or enacted the 2022 UCC amendments[20].

The United Kingdom[21], Singapore and New Zeeland have yet to adopt specific legislation regarding digital assets. Courts are attempting to determine the applicable law to digital assets in the context of tort and restitution claims[22]. However, there is not a consensus regarding important legal issues. For example, in a decision noted by Sjef van Erp[23], the Court of Appeal of New Zeeland rejected ownership of what was qualified at the time as pure information (footage of an incident in a bar)[24]. This view was not embraced by the New Zeeland Supreme Court[25], reflecting ongoing judicial debate and uncertainty in the treatment of digital assets.

The *Regulation (EU) 2023/1114 on markets in crypto-assets*, while focused specifically on crypto-assets rather than digital assets in general, represents an important step in regulating digital assets within the European Union, especially since crypto-assets are among the primary applications of DLT. The regulation establishes uniform requirements for the issuance, public offering and trading of crypto-assets within the European Union. It specifies rules for transparency, governance, authorisation, market integrity and the protection of crypto-asset holders and service clients, including measures to prevent market abuses such as insider trading and unlawful disclosure of information. The regulation applies to natural and legal persons but excludes certain groups and types of crypto-assets. It categorises crypto-assets into three types: e-money tokens, asset-referenced tokens and other crypto-assets. Furthermore, the regulation includes provisions for future integration with the European Single Access Point

[20] Uniform Law Commission, *UCC 2022 Amendments* (Uniform Laws https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac) accessed 1 May 2025.

[21] UK Law Commission, *Digital Assets: Final Report* (Law Com No 412, 27 June 2023); UK Law Commission, *Digital Assets as Personal Property: Supplemental Report and Draft Bill* (29 July 2024) HC 188 of session 2024–25; for draft clauses consulted on, see UK Law Commission, *Digital Assets as Personal Property: Short Consultation on Draft Clauses* (February 2024) https://consult.justice.gov.uk/law-commission/digital-assets-as-personal-property-draft-clauses/ accessed 1 May 2025.

[22] LEHMANN, 'Digital Assets in the Conflict of Laws' (n 4) 201.

[23] S VAN ERP, 'Ownership of digital assets', (2016) 5(2) *European Property Law Journal* 74.

[24] [2014] NZCA 329 (CA 518/2013).

[25] [2015] NZSC 147 (SC 82/2014).

(ESAP) to enhance accessibility and transparency[26].

Article 477 paragraph (3) of the Civil Code of the Republic of Moldova gives us a legal definition of digital assets, stating that a person's *digital assets* consist of "the digital content to which they have a right" and "the email account, network account, or other online account to which they have a right"[27]. Article 477 paragraph (1) defines *digital content* as "the data produced and delivered in digital form, such as computer programs, applications, games, music, video recordings or texts, regardless of whether they are accessed by download or streaming, from a physical medium or by any other means"[28]. In contrast, the Romanian legislator, possibly reluctant to define such concepts, has refrained from incorporating such definitions into the Civil Code. Instead, Government Emergency Ordinance no. 141/2021 defines the concept of *goods with digital elements* as "any mobile tangible item that incorporate digital content or a digital service, or is interconnected with them, so that, in the absence of the respective digital content or digital service, the goods would not be able to perform their functions"[29]. Additionally, article 5 defines *digital content* as "data produced and provided in digital format"[30].

4. Beyond Soft Law: Bridging the Gap in Digital Goods Regulation

The rapid expansion and development of the digital economy have exposed significant shortcomings in the legal qualification and regulation of digital goods. These deficiencies primarily arise from the lack of cohesive, binding regulatory frameworks (hard law) and an overreliance on soft law instruments. This dependency fosters legal uncertainty, particularly concerning ownership rights, consumer protection, taxation, cross-border transfer of digital assets, conflict-of-laws etc.

While soft law mechanisms offer flexibility and adaptability, they lack the enforceability needed to effectively manage the complexities and risks posed by digital goods, especially in a globalised and interconnected economy. Initiatives like Regulation (EU) 2023/1114 on markets in crypto-assets illustrate the potential of targeted legal instruments to address the complexities and risks inherent in digital goods, enhancing transparency, consumer confidence and market integrity. However, such measures remain fragmented and narrowly focused on specific subsets of digital goods or addressing specific issues, such as digital assets as security, rather than addressing the broader spectrum of digital assets which, as Matthias Lehman suggests, is required for a so-called "ideal rule"[31].This study emphasises the need for a unified and coherent regulatory framework at both national and European Union levels, where it is possible to accomplish using directives and regulations. Such a framework must move beyond the limitations of soft law, establishing enforceable and future-ready norms to address the diverse

[26] For an overview, see European Union, 'European crypto-assets regulation (MiCA)' (EUR-Lex) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:4626998 accessed 1 May 2025.

[27] Civil Code of the Republic of Moldova, art 477(3), adopted by Law No 1107-XV of 6 June 2002, republished by Law No 133 of 15 November 2018, Official Gazette of the Republic of Moldova No 66–75, 1 March 2019 (Moldovan CC).

[28] Moldovan CC, art 477(1).

[29] Government Emergency Ordinance No 141 of 28 December 2021 on certain aspects related to contracts for the supply of digital content and digital services, art 2(1), Official Gazette of Romania No 1248, 30 December 2021 (GEO No 141/2021).

[30] GEO no. 141/2021, art 2(5).

[31] LEHMANN, 'Digital Assets in the Conflict of Laws' (n 4) 214.

challenges associated with the nature, classification, usage and transfer of digital goods. It should strike a balance between fostering technological innovation and ensuring robust legal protections, thereby facilitating the seamless and sustainable integration of digital goods into the national, trans-national and global economy.

The analysis further highlights the disparities in how jurisdictions approach digital assets. Where some states provide detailed definitions of digital assets, other states rely on a more fragmented and ad-hoc regulatory strategy.

Comparative evaluations of instruments like the UNIDROIT Principles, ELI Principles and the UCC 2022 amendments, combined with the opinions of scholars, underscore the importance of harmonizing national regulations to reduce legal ambiguity and support international trade.

The interplay of technology, law and commerce demands a proactive and forward-thinking legal strategy. Such an approach must settle and acknowledge the unique characteristics of digital goods while integrating them into existing legal frameworks. Developing a comprehensive and enforceable legal framework is not merely a regulatory necessity but a strategic imperative to align law with the realities of a digitalized world. Such a framework will pave the way for a resilient and equitable digital marketplace, fostering innovation while ensuring fairness, security and trust for all participants.

5. Conclusion

This article highlights the *ambiguity and fragmentation of the current legal framework* surrounding digital goods, a problem largely stemming from an over-reliance on soft law instruments. To overcome the inherent vulnerabilities of soft law, a robust hard law framework is essential, both at the national level and within the European Union legal framework. The analysis in Section 4 demonstrates the diversity of soft law approaches, which emphasize flexibility and innovation but remain insufficient in addressing the challenges of clear and predictable legal regulation and enforcement. A coherent legal framework is crucial to ensure consumer protection, legal circuit security, and transparency in cross-border transactions. As the digital goods market continues to evolve, *legislative intervention becomes increasingly necessary* to address its complexity and ensure a fair and stable digital economic environment.

To put these findings into practice, one may consider adopting the following principles for integrating digital goods into enforceable regulations:

1. *Legal definition and classification*. Digital goods should be clearly defined in national civil codes and EU instruments, ensuring consistency across jurisdictions.
2. *Ownership and transferability*. Establish enforceable rules recognizing digital goods as property capable of ownership, transfer, and security interests.
3. *Consumer protection and transparency*. Mandate clear contractual terms for digital goods transactions, including disclosure of rights and remedies for defects.
4. *Cross-border harmonization*. Adopt uniform conflict-of-law rules for digital goods transactions to reduce legal uncertainty in cross-border contexts.
5. *Integration with extant frameworks*. Ensure that digital goods regulation complements

existing hard law (e.g., MiCA) and incorporates soft law into binding norms.

Taken together, these principles aim to provide a foundation for future legislative efforts, ensuring that the regulation of digital goods evolves in step with technological innovation while safeguarding legal certainty and fairness in a globalized digital economy.

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Multi-level Elections in the European Union

Legal and Political Challenges Across Local, National, and European Levels

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Abstract: Periodically, individuals entitled to participate in elections are invited to vote; in some jurisdictions, electoral participation is regarded as a right, while in others it is considered a civic duty. Although all elections are formally important, their political weight and legal significance vary, as do the legal and political challenges associated with organising elections at different levels of governance. Electoral processes at the local, national, and European levels differ in terms of regulatory frameworks, institutional responsibilities, and democratic expectations. This article deliberately limits its scope to three levels of elections (i.e., local, national, and European) while acknowledging the existence of additional levels of governance that may also involve electoral processes. By focusing on these three levels, the article aims to explore the distinct challenges and interactions that characterise multi-level electoral governance.

Keywords: multilevel elections; electoral governance; local elections; national elections; European Parliament elections; electoral law.

1. Introduction

Elections are widely regarded as a powerful instrument for demonstrating that political processes are conducted democratically. In some jurisdictions, elections constitute a genuinely democratic process, while in others they function primarily as a formal mechanism used to legitimise predetermined outcomes and to create the appearance of democratic governance. In both fundamentally different contexts, the significance of elections is emphasised; however, this article focuses exclusively on cases in which elections function in the service of democracy.

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Democratic systems do not regard elections merely as procedural or justificatory events. Rather, elections constitute a primary mechanism through which compliance with democratic principles is expressed and the will of voters is translated into decisions regarding who is empowered to exercise political authority. The credibility of elections therefore depends not only on compliance with formal legal requirements, but also on broader democratic conditions, including political pluralism, public trust in electoral procedures and processes, and the fairness of electoral competition.

These elements are reflected in the Venice Commission's *Code of Good Practice in Electoral Matters*, which introduces the concept of 'European electoral heritage' and defines it as comprising

> "two aspects, the first, the hard core, being the constitutional principles of electoral law such as universal, equal, free, secret and direct suffrage, and the second the principle that truly democratic elections can only be held if certain basic conditions of a democratic state based on the rule of law, such as fundamental rights, stability of electoral law and effective procedural guarantees, are met"[1].

For organisers and other actors involved, every election presents numerous challenges. These challenges are not limited to technical or administrative issues, but raise fundamental legal and political questions and dilemmas, such as the stability of electoral law, voter participation, equality of competition for voters' support, and the legitimacy of electoral outcomes. These challenges become even more complex when elections are analysed across multiple levels of governance. Accordingly, this article is limited to examining selected key factors that arise in electoral processes at the local, national, and European levels.

In the case of elections, as opposed to referendums, one challenge is less prominent – namely, the need to reach a specific turnout threshold. Nevertheless, active voter participation remains an important concern for election organisers, as well as for political parties seeking support from voters who are sympathetic to their programmes and positions. Conversely, low voter turnout may lead to unexpected electoral outcomes and can create opportunities for less popular or even marginal parties to gain political power.

Distinct challenges arise at different electoral levels. These challenges differ as a result of variations in legal regulation, political salience, and the distribution of decision-making powers across levels of governance. While the article does not seek to provide an exhaustive account of all national specificities, it identifies recurring legal and political challenges that characterise multi-level elections across the European Union. The article applies an analysis of legal acts and relevant legal literature, complemented by an examination of institutional reports and electoral practices.

[1] European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines, Explanatory Report and Interpretative Declarations* (Council of Europe, Strasbourg, 2002) 17.

2. Legal and Political Challenges Across the Levels

The differences among EU Member States with regard to administrative structures, systems of governance, electoral systems, and levels of investment in electoral processes are substantial. These differences affect the comparability of electoral competition and shape voter expectations across jurisdictions, creating both legal and political challenges in the context of multi-level elections. Nevertheless, certain fundamental political principles remain constant across these diverse systems. The primary objective of every political party is to gain political power, as this enables the implementation of its ideas and policy objectives. At the same time, smaller or less established political actors often face significant structural and competitive disadvantages in electoral contests. These disadvantages typically stem from more limited organisational capacity, financial resources, and access to media visibility when compared to established political parties. Their electoral success therefore tends to emerge in situations of voter dissatisfaction with traditional parties, lower levels of voter participation, or when political agendas align with issues that are particularly salient or socially prominent at a given time, such as environmental protection and the green transition.

While legal challenges may arise from insufficient regulation or from legal provisions that restrict certain participants by imposing requirements that are difficult to meet, political challenges are often broader in scope. Legal challenges are typically related to the content, design, and enforcement of electoral rules, whereas political challenges concern the strategic behaviour of electoral participants as well as the perceptions of potential voters regarding the electoral process as a whole. As a rule, legislative amendments are restricted once a certain period before elections has commenced, and it is considered crucial not to introduce or apply substantive changes to electoral legislation during the electoral process, in order to preserve legal certainty, predictability, and electoral fairness. This principle has also been reflected in constitutional practice; for example, "in Czechia, constitutional limits have been applied to procedural techniques allowing late legislative amendments that are unrelated to the substance of a legislative proposal"[2]. Usually, the so-called one-year principle is applied in accordance with the standards developed by the European Commission for Democracy through Law (Venice Commission). According to the Venice Commission,

> "the one-year principle aims at ensuring legal certainty, which is a key element of the rule of law. In the electoral field, legal certainty means that confidence in democratic elections in line with international standards should not be undermined by late amendments to primary or secondary legislation, including regulations adopted by electoral bodies"[3].

The Commission further clarifies that once elections have been formally called, amendments to electoral legislation should be avoided and may be justified only in exceptional circumstances, such as the need to comply with binding decisions of constitutional, supreme, or

[2] European Commission, *2025 Rule of Law Report: The rule of law situation in the European Union* COM (2025) 900 final (Communication, 8 July 2025) 28.

[3] European Commission for Democracy through Law (Venice Commission), *Revised Interpretative Declaration on the Stability of Electoral Law* (adopted at the 139th Plenary Session, Venice, 21-22 June 2024).

international courts. Even in such cases, any changes introduced during the electoral period must ensure sufficient time for all stakeholders (i.e., electoral authorities, political actors, and voters) to become aware of and understand the new rules, so as not to compromise the fairness, transparency, and credibility of the electoral process.

In some cases, challenges imposed through legal regulation are therefore simultaneously legal and political in nature. For instance, a political decision embodied in law to establish specific financial requirements for participation in local elections may constitute a significant barrier for certain potential electoral participants, particularly smaller or less established political actors.

2.1. Local Level

At the local level, elections usually concern municipal or other sub-national authorities. Such elections typically cover a specific region or part of a country, and the results are of particular importance to the residents of the respective area. In some cases, local elections may be held simultaneously across the entire country, for example when elections take place in all municipalities at the same time. While such elections constitute an important national political event, the authorities elected at the local level generally exercise their powers within a territorially limited jurisdiction, addressing issues that primarily affect the local community. This gives rise to a political challenge, as the limited scope of local competences may weaken the perceived importance of local elections, thereby reducing voters' incentives to participate, despite the fact that local authorities adopt decisions that directly affect everyday life.

Voter turnout in local elections is frequently explained through the second-order elections (SOE) theory. According to Jakub Lysek[4], the SOE framework provides a useful explanation for systematically lower participation in elections perceived as less politically consequential. As Lysek summarises, the theory assumes that voter turnout tends to be lower in elections where "*less is at stake*", because voters perceive that the outcomes have a more limited impact on political power and policy-making. This logic builds on the foundational work of Karlheinz Reif and Hermann Schmitt[5].

From a political perspective, the territorial limitation of local elections and the restricted competences of local authorities may contribute to the perception of local elections as less politically significant, confined primarily to community-level concerns. This perception can negatively affect voter engagement as well as broader public interest in local electoral processes. Reduced voter engagement may, in turn, undermine the perceived democratic legitimacy of local authorities, even where electoral procedures formally comply with legal requirements.

As a rule, compared to national-level elections, the resources and investments allocated to local elections are more limited, and from a national perspective, media attention and public interest are unevenly distributed. This situation gives rise to both legal and political challenges, as limited financial resources may reduce the visibility of electoral campaigns for

[4] J Lysek, 'Local passion and national apathy: investigating the phenomenon of selective voting behaviour' (2025) 51(2) *Local Government Studies* 208.

[5] K Reif and H Schmitt, 'Nine second-order national elections – a conceptual framework for the analysis of European election results' (1980) 8(1) *European Journal of Political Research* 3-44.

smaller political actors and raise questions regarding the effective equality of electoral competition. From a political perspective, lower visibility and reduced relevance for a wider audience may result in weaker electoral competition, limited access to information for voters, and declining levels of participation. At the same time, it is important to note that in smaller territorial units, local elections may benefit from direct communication between candidates and voters, and voters often place greater trust in candidates they personally know, which may partially offset broader structural disadvantages.

Local elections are generally regulated by national legislation, which defines the composition of local authorities, the electoral system, and key procedural requirements. From a legal perspective, this approach may give rise to challenges where nationally uniform legal rules insufficiently accommodate the specificities of individual territories or local governance structures. In some countries, local elections are governed by separate, level-specific legal acts, while in others a single comprehensive electoral law regulates multiple types of elections conducted within the state. For example, both Latvia[6] and Estonia[7] regulate local elections through Municipal Council Election Acts, reflecting a regulatory model that allows for a more tailored legal framework at the local level.

A similar approach previously existed in Lithuania; however, this changed in 2022 with the adoption of the Electoral Code[8], which consolidated the legal framework governing the election of Members of the Seimas (the National Parliament), the President of the Republic, members of municipal councils and municipal mayors, as well as Members of the European Parliament. The entry into force of this codified framework reflects a broader trend toward the centralisation and harmonisation of electoral regulation at the national level. From the perspective of legal unification, such codification constitutes an advantage; however, the specificity of local elections may not always be fully accommodated within a unified regulatory framework. This creates a legal challenge where local electoral realities evolve more rapidly than the national legislative framework. Moreover, where amendments become necessary, it is procedurally more complex to amend a constitutional legal act, such as an Electoral Code, than an ordinary law, which may reduce the flexibility of electoral regulation at the local level.

2.2. National Level

From the perspective of electoral organisation and public perception, national-level elections are generally regarded by citizens as the most important. National elections are typically classified as first-order elections. According to Middleton[9], higher levels of voter turnout in first-order elections, such as national elections, are explained by voters' perceptions that these contests carry greater political value than second-order elections, as they directly determine the allocation of political power. By contrast, second-order elections tend to experience lower turnout and are shaped primarily by voter responses to national political issues rather than by

[6] Republic of Latvia Law on the Election of Local Government Councils of 17 June 2020 (as amended).

[7] Republic of Estonia Local Government Council Election Act of 27 March 2002 (as amended).

[8] Republic of Lithuania Constitutional Law No XIV-1381 of 19 July 2022 on the Electoral Code (as amended).

[9] A Middleton, 'Turnout, government performance and localism in contemporary by-elections' (2024) 34(2) *Journal of Elections, Public Opinion and Parties* 346.

the specific stakes of the election itself. This analytical distinction was originally developed by Karlheinz Reif and Hermann Schmitt[10]. National elections typically include elections to the national parliament and presidential elections; however, the precise definition and scope of national-level elections vary across countries, reflecting differences in constitutional structures and systems of government. At the national level, all key political and legal processes take place, as voters elect representatives who will shape national regulation, ensure the implementation of laws, and define the future direction of state policy. Decisions adopted at the national level also have a direct impact on the local level, which further explains why voters tend to perceive participation in national elections as particularly significant.

In contrast to local elections, national elections typically receive significantly greater public and media attention, including more extensive coverage and stronger voter engagement with political parties and candidates who are expected to take decisions of national importance. At this level, the electoral mandate is granted to actors responsible for shaping key areas of public policy, such as national security, the state budget, and national health and social systems.

Consequently, national elections encompass policy domains that are of broad relevance to the wider public, which further enhances their political salience and perceived importance. Precisely because of this heightened importance, national elections give rise to additional legal and political risks, including greater vulnerability to attempts at manipulating electoral outcomes and increased demands for ensuring electoral security and integrity. Even minimal external interference may cause disproportionate and potentially irreversible damage to electoral integrity, as it can generate doubts about the legitimacy of election results, even where such interference has not decisively influenced the outcome. From a political perspective, the mere perception of manipulation may be sufficient to undermine public trust in electoral processes and democratic institutions. Manipulative strategies may take various forms. As noted by Cristian Cucoreanu, "Cyber-attacks, disinformation and algorithmic manipulation on social platforms have the potential to undermine the integrity of elections, affecting public perception and trust in the democratic system"[11]. Moreover, national elections often intensify political polarisation and may reflect or deepen existing societal divisions, which constitutes a significant political challenge for democratic systems. Key state policy questions that affect the population as a whole frequently generate political contestation and public polarisation, as they involve differing views on policy priorities, distributional choices, and the appropriate use of public resources. Such polarisation may also influence electoral participation. As noted by Bjarn Eck and Elie Michel, "political polarisation among voters, either ideologically or affectively, has been consistently found to stimulate voter turnout"[12].

In the case of parliamentary elections, voters grant a mandate to the legislative body and, indirectly, to the legislative agenda that the elected representatives are expected to pursue. In many political systems, parliamentary elections also determine the formation of the

[10] Reif and Schmitt, 'Nine second-order national elections' (n 5) 3-44.

[11] C Cucoreanu, 'Cyber risks to national security: manipulation of the electoral process through the use of bots and algorithms on social platforms' (2024) 11(2) *European Journal of Law and Public Administration* 227.

[12] B Eck and E Michel, 'Towards a polarised electorate? How polarisation affects turnout decisions in the Belgian context of compulsory voting' (2025) 6(3) *Politics of the Low Countries* 135.

government. The institutional link between parliamentary elections and subsequent government formation contributes to a degree of political and institutional stability, particularly when compared to systems in which these processes are formally disconnected. Where the parliament plays a decisive role in forming the government, an initial presumption of political trust and legitimacy is more likely to be established, as the executive derives directly from the electoral outcome. However, this trust is not unconditional. In cases where the parliamentary composition is highly fragmented or where governments are formed on the basis of unstable or heterogeneous coalitions, political trust becomes contingent and potentially fragile, increasing the risk of governmental instability. These dynamics are shaped by the outcomes of national elections, which determine the composition of parliament and, consequently, the legal and political framework for government formation. In addition, in a number of democratic states, separate elections for the head of state or president are held, further reinforcing the political significance and complexity of national-level electoral processes.

2.3. European Level

The European level is supranational; however, from the perspective of many potential voters, elections at this level are generally perceived as less important than national elections. This perception is commonly reflected in lower voter turnout in elections to the European Parliament. Low turnout constitutes a significant political challenge for the European Union, as it may raise concerns regarding the representativeness and democratic legitimacy of the European Parliament. The most recent European Parliament elections in 2019 and 2024 confirm the persistence of lower voter turnout compared to national elections, despite an overall increase in participation. As noted by Constantin Schäfer, "individual-level Euroscepticism made people stay at home in the 2019 European Parliament election who had previously participated in national elections"[13]. Higher turnout than in previous elections was recorded in 2024; "yet, in an era defined by economic concerns, geopolitical tensions, and challenges to democratic norms, the stakes of the 2024 European elections appeared higher than ever before"[14]. However, these results varied significantly across jurisdictions: compared to previous elections, some countries experienced a clear increase in turnout, while others saw a decline. These differences can be explained by a variety of factors. For instance, in Lithuania, previous European Parliament elections were held on the same day as national elections and therefore recorded higher turnout, whereas in 2024 the presidential election and a referendum were held in May, and the European Parliament elections took place separately in June.

This phenomenon may also be explained by the fact that potential voters tend to have less confidence that their individual vote has a meaningful impact within a larger political entity such as the European Union and are therefore less inclined to engage deeply with issues decided at the EU level. Recent scholarship indicates that the explanatory strength of second-order election theory is declining. Hix and Cunningham observe that the model was "much less

[13] C Schäfer, 'Indifferent and Eurosceptic: The motivations of EU-only abstainers in the 2019 European Parliament election' (2021) 41(4) *Politics* 532.

[14] L Beaudonnet, C Belot, C Le Gall and V Van Ingelgom, 'The second-order model revisited: lessons from the 2024 European elections in the 27 Member States' (2024) 86(4) *Politique européenne* 6.

effective at explaining the 2024 European Parliament elections than explaining earlier rounds of the elections, particularly between 1989 and 2014"[15], reflecting growing politicisation and changing voter behaviour at the European level. It should also be noted that the 2024 European Parliament elections were the first to take place after the COVID-19 pandemic and the start of the full-scale war in Ukraine, as well as other factors that influenced both the results and voter turnout.

From a legal perspective, this perception is reinforced by the complex and fragmented nature of European electoral regulation, as elections to the European Parliament remain largely dependent on national legal frameworks despite their supranational character. The European Commission has explicitly underlined that

> "the main responsibilities regarding elections lie with the Member States. It is their competence and responsibility to lay down the specific conditions for the conduct and organisation of elections, in accordance with their national legislation, international obligations and applicable EU law, and their authorities and courts have primary responsibility for exercising oversight and ensuring compliance with the relevant rules"[16].

This regulatory structure, while consistent with the constitutional design of the European Union, contributes to the limited visibility of European elections as a distinct and autonomous electoral process.

By contrast, national political issues are perceived by voters as closer and more tangible, and their effects are often experienced more quickly and directly, which tends to strengthen voter engagement at the national level. Admittedly, local issues – returning to the local level – are often even closer to citizens' everyday experience; however, they are generally more limited in scope and less far-reaching in impact than issues addressed at the national level.

Moreover, electoral success at the national level does not necessarily translate into comparable success in elections to the European Parliament, as voter behaviour, campaign dynamics, and political priorities often differ between these electoral arenas. This creates a political challenge for nationally successful parties, which must adapt their strategies, programmes, and campaign approaches to a distinct electoral context characterised by different issues, voter expectations, and levels of political engagement. This constitutes a significant political challenge, particularly for nationally successful parties, namely, how to mobilise voters and maintain electoral support in the context of European Parliament elections, where issues, stakes, and voter motivations are perceived differently.

2.4. Multi-level Elections: Interactions between Electoral Levels

The electoral levels discussed above cannot be assessed in isolation, as they are interconnected and legal and political decisions adopted at one level frequently affect electoral processes at others. The interaction between local, national, and European elections is shaped primarily by

[15] S Hix and K Cunningham, 'Still second-order national elections? Evaluating the classic model after the 2024 European elections' (2026) 49(1) *West European Politics* 260.

[16] European Commission, *Report on the 2024 elections to the European Parliament* COM (2025) 287 final (Communication).

the central role of national legal frameworks, the strategic behaviour of political actors, and the vertical distribution of competences within the European Union.

From a legal perspective, national electoral frameworks play a decisive role across all electoral levels. Legislative provisions adopted at the national level regulate not only national elections, but also local and European Parliament elections. These frameworks establish electoral systems, procedural rules, campaign finance requirements, access to media, and other conditions governing electoral competition. Such regulations do not merely provide technical guidance on how elections are conducted but also shape the legal environment in which political actors operate, influencing their opportunities to compete effectively. While nationally unified regulation contributes to legal certainty and consistency, it may simultaneously limit the ability to accommodate regional or local specificities, thereby creating legal challenges for sub-national electoral processes.

From a political perspective, interactions between electoral levels are reflected in voter behaviour and party strategies. Electoral results at one level may inform political actors about voter preferences, levels of mobilisation, and regional political dynamics, thereby influencing preparations for subsequent elections at other levels. National elections typically attract higher levels of voter interest and participation, which encourages political actors to consider how electoral support demonstrated at the national level may be mobilised or adapted for local or European Parliament elections. At the same time, each electoral level is characterised by distinct political agendas, issue salience, and voter motivations, meaning that electoral success at one level does not automatically translate into success at another.

These dynamics are particularly evident in elections to the European Parliament. Lower voter turnout and different patterns of political engagement require parties to rethink their strategies, programmes, and campaign approaches in order to appeal to voters in a supranational context. The political challenge lies in translating national political support into a European electoral setting where issues are perceived as more distant and where voter motivations differ significantly from those shaping national elections.

Local elections also play an important role within this interactive framework. Electoral outcomes at the local level may serve as an indicator of broader political trends and can provide political actors with opportunities to build credibility, organisational capacity, and voter trust ahead of national elections. Conversely, weak performance or low turnout at the local level may signal disengagement that could later affect national or European electoral participation. In this sense, local elections function both as a testing ground and as a component of broader electoral dynamics.

Overall, legal and political challenges in multi-level elections do not operate exclusively within a single electoral arena, but rather extend across levels through regulatory design, political behaviour, and voter engagement. The European Commission has noted that enhanced cooperation of Member States "for the EU elections can also have a positive spill-over effect on national elections"[17]. Examining the interaction between electoral levels therefore provides a

[17] European Commission, *Report on the 2024 elections to the European Parliament* COM (2025) 287 final (Communication).

more comprehensive understanding of how multi-level electoral governance functions in practice and how challenges related to legitimacy, participation, and fairness emerge within the European Union's electoral system.

3. Conclusions

Despite the fact that European Union Member States differ in their electoral processes, institutional structures, regulatory frameworks, decision-making mechanisms, and systems of governance, certain legal and political challenges are common to the majority of states, with some variations.

At the local level, the competences of local authorities give rise to specific legal and political challenges. Despite their institutional proximity to voters, local elections are often perceived as less important, resulting in lower levels of voter interest and participation. From a political perspective, this is reflected in weakened voter engagement and reduced public attention. From a legal perspective, a degree of regulatory inflexibility may arise, as local elections are predominantly governed by national legal frameworks. While legal unification and centralisation offer advantages in terms of coherence and legal certainty, they may also constitute a challenge where the specific needs and peculiarities of individual regions are insufficiently accommodated.

At the national level, elections are generally perceived as the most important, as this is the level at which political power is allocated and key public decisions are taken. Precisely because of their significance, national elections are particularly vulnerable to legal and political risks, including attempts to manipulate electoral outcomes, and therefore require enhanced security, oversight, and integrity measures. In jurisdictions where the results of parliamentary elections are closely linked to the formation of the government, this institutional connection may contribute to a higher degree of political and governmental stability, compared to systems in which these processes are less directly connected.

The supranational character of elections to the European Parliament gives rise to distinct challenges, most notably persistently lower voter turnout. This phenomenon is largely related to voters' perceptions that the most important political decisions are taken at the national level, as well as to doubts about the ability of individual votes to influence decision-making in the broader European context, and, in some cases, to limited interest in issues perceived as more distant or global. From a legal perspective, these challenges are reinforced by the fragmented nature of European electoral regulation, as elections to the European Parliament remain largely dependent on national legal frameworks. From a political perspective, national political parties are required to adapt their programmes, strategies, and campaign approaches to a broader electoral context. At the same time, lower voter turnout may lead to electoral outcomes at the European level that differ significantly from those observed in national elections, underscoring the distinct dynamics of European electoral competition.

Finally, multi-level elections in the European Union cannot be assessed in isolation. Legal and political challenges at one electoral level may influence electoral behaviour, outcomes, and regulatory choices at other levels. National legal frameworks shape not only national elections

but also local and European electoral processes, while requirements imposed on political actors, including rules on campaign visibility and financial conditions, affect electoral competition across levels.

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The Social Order as a Normative Order. Reflections on the Plurality of Rules of Conduct

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Abstract: This article explores the idea of social order as a fundamentally normative construction. Drawing on philosophy, legal theory, and sociology, it argues that order cannot be reduced to mere coexistence or to the coercive force of the state but must be understood as the fragile balance between values, norms, and institutions. Legal norms occupy a central role due to their institutionalization and state guarantee, yet their legitimacy and effectiveness depend on their consonance with moral, religious, customary, deontological, and technical rules. The study emphasizes that plurality is both the richness and the vulnerability of social order: while diverse systems of regulation complement and enrich one another, they also generate conflicts and contestations. Historical examples and contemporary crises, from the persistence of custom to debates on fundamental rights, from the COVID-19 pandemic to challenges posed by artificial intelligence, illustrate the permanent negotiation between letter and spirit, between coercion and consensus. The conclusion is that social order should be understood not as a fixed state, but as a regulative ideal, constantly reconstructed and reshaped by cultural, political, and technological transformations.

Keywords: social order; normative order; plurality of norms; values; pluralism; legitimacy of law; fragility of order.

1. Introduction

The problem of social order, specifically how stable coexistence among free individuals is possible, has long preoccupied philosophy, legal theory, and the social sciences. From the reflections of ancient philosophy to contemporary theories of law and sociology, the problem of stable coexistence is always posed in terms of a balance between individual freedom and the necessity of collective rules.

Social order is not a natural fact, but a normative construction. It does not arise from the mere coexistence of individuals, but from the relations they establish, relations mediated by rules, values, and mechanisms of control. In the absence of generally recognized norms, the

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community risks collapsing into what Hobbes called the *bellum omnium contra omnes*, "the war of all against all"[1]. Yet an excess of normativity, when reduced to mere techniques of coercion, does not guarantee an authentic order either, but only produces fragile conformity and fear.

For this reason, social order cannot be conceived solely as an effect of force, but above all as an effect of consensus and the internalization of values. Legal, moral, religious, customary, or technical norms coexist, converge, or come into conflict, but together they give substance to an order which is, in its essence, normative.

The question this study seeks to raise is whether social order can be understood otherwise than as a normative order—that is, as the expression of a plurality of rules governing human conduct. In this sense, law appears not as the sole foundation of order, but as a core in constant dialogue with other normative systems.

The contribution of this study to socio-legal theory is threefold. First, it synthesizes classical and contemporary theories of normativity into a unified conceptual framework of polynormativity. Second, it advances the claim that legal legitimacy depends on alignment with multiple normative systems rather than on coercion alone. Third, it illustrates this framework through historical and contemporary examples, including Romanian jurisprudence and global challenges such as pandemic governance and emerging regimes of artificial intelligence regulation.

Methodologically, this article adheres to a normative-conceptual approach grounded in legal theory, philosophy, and sociology. Drawing on canonical authors, such as Hobbes, Weber, Durkheim, Kelsen, Habermas, and Luhmann, alongside Romanian scholarship, it constructs a theoretical model of social order as a plural normative system. Illustrative examples, ranging from customary law and constitutional case law to COVID-19 restrictions and AI governance, demonstrate the tensions, overlaps, and harmonization efforts that characterize polynormative social order in practice.

2. Values, Norms, and Social Order

Any reflection on social order must begin with the values that sustain it. Values are not mere abstractions, but collective reference points that give meaning to common existence: the dignity of the person, justice, truth, solidarity. They constitute the axiological core of the community, and without such a foundation norms would be nothing more than empty prescriptions, devoid of integrative force.

Norms are the concrete expression of these values. Through them, the ideal becomes rule, and what the community regards as desirable is transformed into expected behaviour. In the absence of this link between value and norm, social order becomes artificial, built solely on coercion. As legal doctrine has emphasized, social order is inevitably also an axiological order[2], in which values represent the indispensable support of normativity[3].

Reflection on values has also been the subject of important contributions in Romanian

[1] T Hobbes, *Leviathan* (1651, reprint Penguin Classics 1985) 185.
[2] N Popa, *Teoria generală a dreptului* (5th edn, CH Beck 2019) 215.
[3] I Craiovan, *Tratat de teoria generală a dreptului* (Universul Juridic 2015) 188.

thought. Tudor Vianu showed that values form fundamental categories of the spirit, which structure both cultural and social life. Among theoretical, moral, aesthetic, religious, and legal values, the latter are meant to ensure the balance of coexistence, yet they cannot be understood apart from the broader context of the entire axiological system[4]. Thus, the legal norm is nothing other than the institutionalized expression of a value, placed alongside the other ways through which man imposes order upon his world.

From a sociological perspective, Sorin M. Rădulescu has shown that human action is marked by a constant tension between rationality and irrationality, and that social order can only be explained through this dialectic. Norms, whether legal or moral, function not only as mechanisms for rationalizing behaviour but also as symbolic reference points through which individuals project their identity and their belonging to the community[5]. In the absence of this symbolic dimension, norms would be reduced to external rules, accepted out of fear but not truly internalized.

In turn, Max Weber explained the stability of social order through mechanisms of legitimacy. In his classical typology, power may be founded on tradition, on charisma, or on rational legality. Each of these forms of legitimization, however, rests on collective values: respect for tradition, faith in the providential leader, and acceptance of the impersonal rules of modern law. Consequently, even in rational-bureaucratic societies where law appears to dominate, axiological foundations remain indispensable[6].

Yet values are not immutable. They erode, transform, and become relative under the pressure of history and culture. A society that reduces justice to mere legal procedure, or solidarity to a simple slogan, undermines the very foundation of order. Norms may continue to exist formally, but without the support of values they lose legitimacy, and social order becomes precarious.

Thus, the relationship between values and norms is twofold: on the one hand, values give meaning and foundation to norms; on the other hand, norms preserve and transmit values to future generations. Between them, a circular relationship is established through which social order is continuously reconstructed—not as a definitive equilibrium, but as a permanent tension between ideal and reality.

3. The Plurality of Social Norms: Between Convergence and Tension

Social order cannot be reduced to law alone. It is constituted through the interaction of a complex set of norms arising from different spheres of collective life: morality, religion, custom, social coexistence, profession, and technology. This polynormativity reflects the multiple conditioning of the human being: man is simultaneously a citizen, a believer, a member of a cultural community, a professional, and a user of technologies.

Normative plurality is a constant reality of history. In traditional societies, custom and religion

[4] T Vianu, *Estetica* (Minerva 1971) 45-52.

[5] S M Rădulescu, *Homo Sociologicus. Raționalitate și irațională în acțiunea umană* (Casa de Editură și Presă „Șansa" 1994) 102–110.

[6] M Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978) 215-219.

dominated social order, while written law played only a limited role. In modernity, with the emergence of the rule of law, the legal norm gained centrality, but it did not eliminate the other forms of normativity. Today, all these regulatory forms coexist and interpenetrate, each having its own sphere of legitimacy and effectiveness.

3.1. Moral Norms

Moral norms constitute the first layer of social regulation. They are not imposed through the force of institutions, but through the pressure of conscience and the approval or disapproval of the community. Hans Kelsen observed that the moral order also operates through sanctions, only that these are not organized by the state, but manifest themselves in the form of moral reward or public reproach[7].

The problem of the relationship between law and morality was described by Rudolf von Jhering as a "Cape Horn of legal science". a theoretical obstacle against which many schools of thought have collided without ever fully overcoming it[8]. Two main orientations have emerged: the first conceives law as a "minimum of morality" (Thomasius, Kant, Del Vecchio, Djuvara)[9]; the second, corresponding to legal positivism, regards law as an autonomous system, valid in itself, without reference to morality (Kelsen, Carré de Malberg)[10].

Neither of these orientations offers a definitive solution. If law is reduced to morality, it risks absolutizing contingent values; if detached completely from morality, it becomes a mere technique of domination. The reasonable path remains the recognition of plurality and of the inevitable dialogue between law and morality. In practice, numerous situations demonstrate that formal justice is corrected or complemented by the demands of morality: legislation on fundamental rights, the jurisprudence of Constitutional Courts, and many decisions of international tribunals are all expressions of this convergence.

3.2. Religious Norms

Religious norms have long constituted the foundation of any normative order. In Byzantium and in the Romanian Middle Ages, canon law and religious custom formed the basis for regulating collective life. Even today, in modern states, religion continues to exert a profound influence on social consciousness. In current Romanian law, the principle of secularism does not eliminate the religious impact on community life, visible for instance in ethical debates concerning bioethics, abortion, or euthanasia.

This type of normativity has a dual nature: on the one hand, it expresses fundamental shared values (the protection of life, respect for one's neighbour); on the other hand, it may come into conflict with the principles of the secular state and of human rights. It is precisely this tension between religious tradition and positive law that makes religious norms both a factor of balance and a source of dispute.

[7] H Kelsen, *Teoria pură a dreptului* (Humanitas 2000) 87-89.

[8] R von Jhering, *Law as a Means to an End* (Isaac Husik tr, Boston 1913) 231.

[9] G Del Vecchio, *Lecții de filosofie juridică* (Europa Nova 1996) 202-205; M Djuvara, *Teoria generală a dreptului* (ALL 1995) 320.

[10] R Carré de Malberg, *Contribution à la théorie générale de l'État* (Sirey 1920) 45; H Kelsen, *Teoria pură a dreptului* (Humanitas 2000) 88.

3.3. Customary Norms

Custom is one of the oldest forms of normativity. The *obiceiul pământului* (custom of the land) long dominated Romanian law, being confirmed by rulers and applied in jurisprudence until the advent of modern codifications[11]. Customary norms are formed through the repetition of practices accompanied by the conviction of their binding force (*opinio juris*). They demonstrate that social order can exist even without the direct intervention of the legislator.

Today, custom has lost much of its force in the face of written legislation, yet it survives in certain areas: commercial relations, international law, and the life of rural communities. Moreover, international customary law shows that, on a global level, social order cannot be reduced exclusively to written norms.

3.4. Norms of Social Coexistence

These norms may appear trivial, yet they play an essential role. They regulate everyday gestures: politeness, respect for others, forms of address. They are not codified, but their violation disrupts interpersonal relations and generates tensions. Through their diffuse and informal character, they provide the "lubricant" of daily coexistence, preventing minor conflicts and fostering mutual respect.

3.5. Deontological Norms

With the professionalization of society, deontological norms specific to various socio-professional categories have emerged. The codes of ethics for lawyers, physicians, or magistrates establish standards of conduct that go beyond legal obligations. They express values such as loyalty, integrity, confidentiality, and responsibility toward the client and society. These norms demonstrate that social order is not built solely through general norms, but also through specialized rules adapted to particular fields of activity.

3.6. Technical Norms

The modern era has introduced a new category of norms: technical norms. They do not directly express moral or religious values, but rather instrumental rationality. Nevertheless, their social impact is immense. Security standards, traffic regulations, digital protocols, or rules on data protection are indispensable for the functioning of contemporary society. In the context of the digital revolution and artificial intelligence, technical norms tend to acquire an importance comparable to that of legal norms.

The diversity of social norms is both a source of richness and of fragility. Law may permit what morality condemns; religion may prohibit what law tolerates; technology may impose efficiency while disregarding human dignity. Social order is built out of this tension, not out of uniformity. It is the result of a permanent dialogue between normative systems—a dialogue that never comes to an end.

[11] IC Filitti, *Obiceiul pământului în dreptul românesc* (Editura Academiei 1936) 77.

4. The Legal Order: Between Centrality and Relativity

Among all the normative systems that make up social order, law occupies a central place. The legal norm is institutionalized, guaranteed by the coercive force of the state, and vested with public authority. It is general, abstract, and binding, designed to organize social coexistence through predictable and stable rules[12].

This centrality, however, must not be absolutized. The legal order is not the sole expression of social order, but only one of its institutionalized forms. In the absence of the axiological foundation provided by morality or religion, law risks being reduced to a mere regulatory technique. Ioan Craiovan warned that law cannot be reduced to a normative mechanics but is instead "an order of values that must be understood in the spiritual context of society" [13].

The problem of legitimacy in law is most clearly seen in the debate between the letter and the spirit of the law. A strictly formal application of the norm may lead to solutions contrary to substantive justice. For this very reason, jurisprudence often resorts to teleological interpretations. The Constitutional Court of Romania has consistently affirmed that the letter of the law cannot be detached from the finality of constitutional values, and the High Court of Cassation and Justice has relied on historical-teleological interpretations in order to avoid absurd or unjust outcomes[14].

A significant example is Decision No. 73/2022 of the High Court of Cassation and Justice, where, in interpreting Article 5 of Law No. 309/2002 in relation to Decree-Law No. 118/1990, the Court recognized the rights of surviving spouses, even though the letter of the text appeared restrictive. The solution was grounded in the reparatory purpose of the normative act — in other words, in the spirit of the law. In the same sense, through the Appeal in the Interest of the Law No. 10/2024, the High Court held that institutional arbitration cannot be organized by any non-governmental organization, but only by entities authorized by the legislator, since otherwise the very purpose of the institution would be distorted[15].

These examples confirm Gustav Radbruch's famous formula: when the conflict between justice and legal certainty reaches an extreme threshold, "an extremely unjust law ceases to be law" [16]. In practical terms, this means that the legal order cannot be sustained exclusively by its letter; it also requires spirit (i.e., the fundamental values that legitimize the application of the norm).

Consequently, the legal order is paradoxical: it is autonomous, through its own mechanisms of validation and application, yet also dependent, since its real effectiveness rests on social

[12] N Popa, *Teoria generală a dreptului* (n 2) 229.

[13] I Craiovan, *Tratat de teoria generală a dreptului* (n 3) 245.

[14] M Voicu, 'Jurisprudența – expresia vie a normei juridice și fundamentul construcției normative' (2017) 1 *Revista Română de Drept Privat* 25.

[15] High Court of Cassation and Justice, Panel for the Clarification of Questions of Law, Decision No. 73 of 7 November 2022, Case No. 2098/1/2022, concerning the interpretation of Article 5 paragraph (1) letter a) and letter b) final phrase of Law No. 309/2002 in relation to the provisions of Decree-Law No. 118/1990, published in the Official Gazette of Romania, Part I, No. 72 of 27 January 2023; High Court of Cassation and Justice, Panel for the Appeal in the Interest of the Law, Decision No. 10 of 17 June 2024, Case No. 905/1/2024, concerning the interpretation of the provisions of Article 616 paragraph (1) of the Code of Civil Procedure, published in the Official Gazette of Romania, Part I, No. 851 of 26 August 2024.

[16] G Radbruch, 'Statutory Lawlessness and Supra-Statutory Law' (2006) 26 *Oxford Journal of Legal Studies* 1.

acceptance and on its consonance with collective values. Thus, the legal order appears as a fragile balance between institutional centrality and the relativity of its legitimacy.

5. Normative Plurality and the Structural Fragility of Social Order

If social order is constituted through a plurality of normative systems, then fragility is not an accidental defect but an inherent feature of that order. The coexistence of moral, religious, legal, customary, deontological, and technical norms ensures a dense and flexible regulation of social life, yet it also exposes order to tensions that cannot be definitively resolved. Polynormativity thus represents both the condition of possibility and the limit of social order.

5.1. Normative Conflict as a Structural Phenomenon

In a plural normative environment, conflicts between rules of conduct are inevitable. Law may authorize forms of behaviour that moral norms disapprove; religious prescriptions may prohibit what secular law permits; technical norms oriented toward efficiency may marginalize considerations of justice or human dignity. Such tensions do not arise from normative dysfunction, but from the coexistence of heterogeneous systems grounded in different values, rationalities, and modes of legitimacy.

Historically, these conflicts have accompanied every stage of social development. In traditional societies, custom often resisted the authority of written law. In modernity, positive law was repeatedly contested in the name of moral values and social justice. In contemporary constitutional states, religious norms frequently collide with principles of equality and fundamental rights. These examples confirm that social order is not built upon normative uniformity, but upon the management of normative diversity.

Durkheim's analysis remains instructive. Legal and moral norms, he argued, can only be understood in relation to the forms of social solidarity they sustain. When normative systems lose their capacity to converge around shared values, social actors are confronted not with the absence of rules, but with their fragmentation. *Anomie* thus signifies not a vacuum of normativity, but the weakening of common reference points, with destabilizing effects on social cohesion[17].

5.2. Social Order as a Process of Normative Mediation

Because normative conflict is structural, social order cannot be secured through the simple supremacy of one normative system over the others. Law, despite its institutional centrality, cannot impose durable order solely through coercion. Legal norms that are applied mechanically, without regard to moral expectations or social meanings, risk becoming ineffective or provoking resistance.

In this context, social order appears as the result of a continuous process of mediation among normative systems. Law plays a privileged role in this process, not by eliminating plurality, but by translating competing normative claims into general and binding forms. Its function is less that of an ultimate arbiter than of an institutionalized space in which normative tensions are

[17] É Durkheim, *The Division of Labour in Society* (Free Press 1997) 241.

provisionally stabilized.

Habermas's theory of deliberative legitimacy clarifies this mechanism. Norms acquire authority not only because they are enforced, but because they can be rationally justified and accepted by those subject to them. The stability of social order thus depends on the capacity of legal norms to articulate a workable consensus between moral values, legal principles, and the functional requirements of complex societies[18]. Where such articulation fails, legal validity may persist, but legitimacy erodes.

5.3. Contemporary Transformations and the Intensification of Fragility

The fragility inherent in polynormative order becomes particularly visible in periods of crisis and accelerated change. The COVID-19 pandemic revealed sharp tensions between legal restrictions, moral claims concerning human dignity, and religious practices. Compliance with emergency measures varied significantly depending on the degree to which legal norms resonated with broader normative expectations.

Similar dynamics characterize the digital transformation of society. Technical norms governing data protection, algorithmic decision-making, and artificial intelligence increasingly shape social conduct, often faster than legal and ethical frameworks can adapt. Conflicts between efficiency, transparency, equality, and privacy illustrate the growing difficulty of maintaining normative coherence under conditions of technological acceleration.

At the global level, the international order displays comparable fragilities. Norms of public international law coexist uneasily with geopolitical interests and moral claims concerning human rights and global justice. As Niklas Luhmann emphasized, law functions as a differentiated subsystem of society, capable of contributing to order only insofar as it remains structurally coupled with other normative and communicative systems[19]. When such coupling weakens, legal norms lose both effectiveness and authority.

5.4. Fragility as a Feature of Social Order

The analysis of normative plurality leads to a fundamental conclusion: the fragility of social order is not a contingent failure, but a constitutive feature of normatively complex societies. The balance among normative systems is never definitive. Cultural change, political conflict, and technological innovation constantly modify the hierarchy and interaction of norms, requiring ongoing processes of reinterpretation and legitimation.

Social order must therefore be understood not as a fixed equilibrium, but as a dynamic and revisable construction. It persists through continuous adjustment between stability and change, between established norms and emerging values. Recognizing this fragility is essential for understanding both the limits of legal authority and the conditions under which law can meaningfully contribute to social cohesion within a plural normative landscape.

[18] J Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press 1996) 107-112.

[19] N Luhmann, *Law as a Social System* (Oxford University Press 2004) 142-148.

6. Open Conclusions: Order as Ideal and Limit

This study has sought to show that social order can only be conceived as a normative order, that is, as the expression of the plurality of rules of conduct that structure community life. The analysis has highlighted that this order is neither a natural given nor the exclusive result of state power, but rather a fragile balance between values, norms, and institutions.

Law remains the visible core of social order through its institutionalized character and the coercive guarantee of the state. Yet history and legal practice show that law emptied of values does not generate authentic stability, but only precarious conformity. The legal norm derives its legitimacy from consonance with moral values, from tradition, and from collective acceptance. In the absence of these foundations, it risks becoming a mere instrument of domination.

At the same time, reflection has shown that social order is inevitably plural. Moral, religious, customary, deontological, and technical norms are not mere peripheries, but essential components of order. Between them and law there often appear convergences, but also tensions. This plurality is ambivalent: on the one hand, it enriches social life and provides multiple resources for stability; on the other hand, it generates conflicts and contestations, making order vulnerable.

The fragility of order is not, however, a sign of weakness, but of its structural dynamism. Order is constantly reconstructed, adapting itself to historical, cultural, and technological transformations. From medieval custom to modern codifications, from the nation-state to the era of globalization and artificial intelligence, social order has continually modified its foundations but has never lost its function of ensuring collective cohesion.

The fundamental question remains open: is social order the product of norms or of the collective consciousness that legitimizes them? Most likely, both dimensions are inseparable. Norms provide the external skeleton, but community consciousness gives them life and meaning. Order is not only coercion, but also consensus; not only institution, but also culture; not only letter, but also spirit.

Thus, social order must be understood as a regulative ideal: never fully attained, but always necessary. It represents at once the limit of chaos and the promise of harmony, a precarious yet fertile equilibrium that accompanies the destiny of all human communities.

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Pluralism in Research Methodologies

Challenges to Intergovernmental Coordination Inquiry

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Abstract: Intergovernmental coordination remains a multidimensional and ever-contested concept, involving complex interactions across multiple levels of governance. In spite of the rich tradition of federalist scholarship, existing research often relies on descriptive, country-centric approaches and remains largely at a meta-theoretical level, offering limited insight into the mechanisms shaping coordination. This research note argues that the prevailing institutionalist bias overlooks the crucial role of individual political actors. It advocates methodological pluralism to capture both formal and informal processes. By examining the incentives of executives, ministries, political parties, lobbyists, and civil society, it disentangles the "unified actor" premise and provides a roadmap for advancing theory and empirical rigor in multilevel governance.

Keywords: intergovernmental coordination; intergovernmental relations; multilevel governance; political actors; methodological pluralism.

1. Introduction

Research on Intergovernmental Coordination (IGC) has long been dominated by country-level studies which tend to be very descriptive in nature, neglecting the mechanisms and political actors that interact in policymaking between varying layers of government. Little attention has been given to efforts directed at disentangling those arenas of governance as 'unified actors' and examining the political actors *per se*.

In terms of comparative research, scholars of both federal[1] and unitary states[2] have effectively

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[1] See, generally: H Bakvis and D Brown, 'Policy Coordination in Federal Systems: Comparing Intergovernmental Processes and Outcomes in Canada and the United States', (2010) 40(3) *Publius: The Journal of Federalism*, 484–507; N Behnke and S Mueller, 'The Purpose of Intergovernmental Councils: A Framework for Analysis and Comparison', (2017) 27(5) *Regional & Federal Studies*, 507–527; A Fenna, 'Federalism and Intergovernmental Coordination', in B G Peters and J Pierre (eds), *The SAGE Handbook Public Administration* (Sage 2012) 750-763; Y Hegele, 'Multidimensional Interests in Horizontal Intergovernmental Coordination: The Case of the German *Bundesrat*', (2018) 48(2) *Publius: The Journal of Federalism*, 244-268.

[2] See, generally: G Stoker, 'Intergovernmental Relations', (1995) 73(1) *Public Administration*, 101-122; R Agranoff, 'JPART Symposium Introduction: Researching Intergovernmental Relations', (2004) 14(4) *Journal of Public Administration Research*

mapped the processes and institutions of IGC through rich and informative contributions. Still, the debate has generally remained at a highly abstract and meta-theoretical level. As far as the state of the art is concerned, the multidimensional, multilayer, complex, and even 'contested' character of IGC reveal a diversity of state structures and institutional settings, bureaucracies and financial frameworks, but also a constellation of (state and non-state) actors that interact on the political landscape.

Nevertheless, efforts to translate the study of IGC phenomena into more concrete theoretical insights or empirical evidence has faced significant constraints. Arguably, the analytical lens or frames that researchers have employed might have hindered advances on this topic. Indeed, identifying the formal practice of intergovernmental interaction is important, but tracing the process of informal interactions within the broader political system might reveal hidden, but critical mechanisms that inform the policymaking process across the different territorial layers of government. Consequently, this research note aims to offer a critical insight into the extant body of work and signal the main challenges to IGC inquiry, in particular from the standpoint of using the diverse methodological tools that are available.

2. Challenges to Intergovernmental Coordination Research

The main challenge for IGC research is not the scarcity of theory or data, but the persistence of analytical frameworks that inadequately capture political agency. This section will examine three distinct limitations: the bias towards *formal structures and institutions* (2.1), the issue of *data selection and methodology* (2.2), and the *choice of research focus* (2.3).

2.1. Formal structures and institutions bias

One recurring limitation of IGC literature is its tendency to treat governments as *unified actors* instead of arenas for negotiation, competition and cooperation between multiple actors with varied preferences. By framing intergovernmental relations as interactions between abstract levels of government, scholars frequently overlook the internal political dynamics that shape coordination outcomes. Within the same level of government, divergent preferences may be pursued by executives, ministries, political parties, legislatures, and bureaucracies, generating conflicts that remain invisible in institutional mappings. As a result, coordination failures are often attributed to structural constraints rather than to the strategic behaviour of the political actors operating within those structures.

This problem is clearly illustrated by financial arrangements. Indeed, research on IGC has been shaped by a focus on formal structures and institutions, particularly those connected with the fiscal arrangements between levels of government[3]. Revenue-sharing schemes, grants, and re-

and Theory, 443-446; R AGRANOFF, "Federal asymmetry and intergovernmental relations in Spain", (2005) 17 *Asymmetry Series*, IIGR, Queen's University, Kingston; J GALLAGER, 'Intergovernmental Relations in the UK: Co-operation, Competition and Constitutional Change', (2012) 14(2) *The British Journal of Politics and International Relations*, 198-213; N MCEWEN, W SWENDEN and N BOLLEYER, 'Intergovernmental Relations in the UK: Continuity in a Time of Change?', (2012) 14(2) *The British Journal of Politics and International Relations*, 323343; N MCEWEN, 'Still Better Together? Purpose and Power in Intergovernmental Councils in the UK', (2017) 27(5) *Regional & Federal Studies*, 667-690.

[3] M PAINTER, 'Intergovernmental Relations', in PETERS & PIERRE (eds), *The SAGE Handbook of Public Administration* (n 1) 731.

distributive mechanisms constitute some of the most visible forms of coordination[4]. However, focusing exclusively on the formal structures and institutions involved in financial flows risks obscuring how informal processes (political incentives, party alignment, and administrative capacity) shape negotiations over those resources. Indeed, financial coordination is not merely technical; it is deeply political, involving bargaining among actors with asymmetric power and competing interests.

2.2. Data selection and methodology

Another challenge concerns *data selection* and *methodology*. Intergovernmental coordination produces vast amounts of data (e.g., legal texts, policy papers, meeting records), but no single data source is sufficient to capture its complexity. Data selection is therefore contingent on the research question being investigated, while data analysis depends on the methodological strategy best suited to that question.

There is no single 'best' method for studying intergovernmental coordination. *Methodological pluralism* emerges as an imperative rather than a discretionary choice. Indeed, data collection and analysis may benefit from a variety of research strategies: ethnographic approaches, focus groups, network analysis, expert surveys, and case studies each illuminate distinct dimensions of IGC. Combining these methods allows researchers to identify processes, mechanisms, and causal pathways that remain hidden in single-method designs. Moreover, pluralism enhances comparability across cases and strengthens empirical grounding, advancing research beyond meta-theoretical debates.

2.3. Framing the research question

A further challenge involves the *choice of research focus*. Beyond data generation and analysis, IGC scholars should focus on issues that expose coordination demands and underlying power relations between actors. Moments of crisis (e.g., natural disasters, or the Covid-19 pandemic) can be particularly revealing. Such approaches enable researchers to trace coordination both *vertically* (across levels of government) and *horizontally* (within the same level), highlighting the conditions under which cooperation emerges or breaks down.

3. Institutional Design and Coordination Challenges

The structure of the state corresponds to the territorial distribution of power within said state, clarifying the roles and responsibilities of each tier of government[5]. In multilevel contexts, the institutional design balances between *self-rule* and *shared rule*. The self-rule dimension refers to the authority exercised by the regional constituent units within the state over their territory (region), whereas shared rule shapes the authority exercised by a regional government or its

[4] COST Action IGCOORD, CA20123 – Intergovernmental Coordination from Local to European Governance, *Memorandum of Understanding*, https://e-services.cost.eu/files/domain_files/CA/Action_CA20123/mou/CA20123-e.pdf.

[5] P Calca and T Ruel, 'Setting up institutions in multilevel states: Assemblies, parties, and the selection of candidates', (2023) 30(4) *Party Politics*, 704-718; T Ruel, N Bessa Vilela, N Jesus Silva and Z Oplotnik, 'Intergovernmental Coordination in Portugal', (2023) 32(5) *Studia Iuridica Lublinensia* 31-42; A Murphy and F Ghencea, 'The Legal Framework for Local Government Coordination in Romania', (2023) 32(5) *Studia Iuridica Lublinensia* 105-115.

representatives in a country over time[6].

This dimension is critical to any research puzzle on intergovernmental coordination, as design choices (i.e., centralised vs. decentralised, unitary vs. federal) affect both the formal machinery and informal processes of multilevel governance. Research has demonstrated that subnational power and authority vary across federal and unitary systems, as well as among subnational units within the same state[7]. Such asymmetries strain governing processes by creating uneven capacities and bargaining power[8], which in turn can hinder effective coordination.

At a normative level, intergovernmental coordination processes rest on the political authority attributed to each territorial unit. However, in both federal and unitary systems, the capacity for governing, decision-making, and cooperation is contingent on contextual conditions rather than guaranteed by formal status alone. Coordination is shaped by multiple factors operating across governance levels: institutional design, fiscal autonomy or dependency, administrative capacity, political commitment, and the clarity of roles and responsibilities[9].

These issues constitute critical challenges for research on IGC. Beyond theoretical debates, it is essential to identify the conditions under which governments across different levels are able to cooperate. Addressing these questions requires the use of innovative methods and research strategies capable of advancing empirical knowledge in this field. In this respect, the central innovation of this research strand lies in the systematic use of methodological pluralism to extend the analytical boundaries of existing scholarship.

4. Concluding remarks

Methodological pluralism acknowledges that the development of the social sciences has always been shaped by a plurality of perspectives that not only coexist but often engage in productive dialogue. In practice, the availability of data, the complexity of research questions, and the need for comparison across contexts frequently require the use of diverse methodological tools. Consequently, there is no single, unique, or universally adequate conceptual framework capable of fully "describing the world"[10]. In the study of intergovernmental coordination, embracing methodological pluralism is therefore not merely a pragmatic choice but a necessary condition for capturing the multifaceted and politically contingent nature of coordination processes.

[6] G Marks, L Hooghe and A Schakel, 'Measuring Regional Authority', (2016) 18(2-3) *Regional & Federal Studies* 111-121.

[7] R Agranoff, 'Intergovernmental Relations and the Management of Asymmetry in Federal Spain', in R Agranoff (ed), *Accommodating Diversity: Asymmetry in Federal States* (Baden-Baden: Nomos 1999); D Elazar, *Exploring federalism* (The University of Alabama Press 1987); R Watts, *Comparing Federal Systems* (Ontario: Queen University Kingston 1999).

[8] S Shair-Rosenfield, 'Shared rule as a signal of central state commitment to regional self-rule', (2021) 32(3) *Regional & Federal Studies* 375-392.

[9] N Behnke and S Mueller, *Policy Brief 1: Challenges and Opportunities of Intergovernmental Coordination*, November 2021, COST Action IGCOORD, CA20123 November 2021, https://igcoord.eu/activities/policy-briefs/.

[10] N Rescher, *Pluralism: Against the Demand for Consensus* (Oxford University Press 1993) 41.

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Declararea eronată a nedemnității judiciare în cazul unui omor săvârșit cu intenție indirectă

Notă critică la Jud. Cluj-Napoca, s. civ., hot. 5097/2023

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Abstract: In a case decided by the Cluj-Napoca District Court, the civil panel incorrectly applied judicial unworthiness under Article 959(1)(a) of the Romanian Civil Code, rather than unworthiness by operation of law under Article 958(1)(a), after a criminal conviction for homicide committed with indirect intent. This note argues that the court misinterpreted the form of intent, confusing indirect intent with praeterintentional conduct, and thus misapplied unworthiness to inherit. Drawing upon the distinctions between direct intent, indirect intent, and praeterintention under Romanian law, the note shows that homicide with indirect intent should trigger absolute unworthiness. The analysis situates the rule in a comparative context, stressing its Québec origins and Romanian adaptation. Finally, it considers the practical consequences of the error, including temporal effects on succession claims and the risk of establishing misleading jurisprudential patterns.

Keywords: unworthiness to inherit; direct intent; indirect intent; praeterintention; homicide.

> „[...] prin acțiunea formulată, reclamantul A, în contradictoriu cu pârâta B, a solicitat a se constata că masa succesorală rămasă după defuncta X, decedată în data de 10 decembrie 2018, cu ultimul domiciliu în Cluj-Napoca, este compusă din cota de ½ parte din imobilul situat în Cluj-Napoca [...]; a se constata că au calitate de moștenitori numitul S, în cota de ¼ parte, reclamantul în cota de 3/8 parte și pârâta în cota de 3/8 parte; a se constata că masa succesorală rămasă după defunctul S, decedat în data de 25 iulie 2021, se compune din cota de 5/8 parte din imobilul [amintit anterior]; a se constata nedemnitatea de drept a pârâtei față de moștenirea defunctului și a se dispune înlăturarea acesteia de la moștenire; a se constata că reclamantul are calitatea de unic moștenitor în cota de 1/1 parte (13/16 parte din întregul imobil).

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Autorul mulțumește domnului prof. univ. dr. Adrian Stoica-Constantin pentru comentariile oferite asupra aspectelor de drept procesual dintr-o versiune anterioară a prezentei note. Orice eroare sau omisiune aparține exclusiv autorului.

În motivarea acțiunii formulate se arată că mama părților, X, a decedat în data de 10 decembrie 2018 și nu a fost dezbătută succesiunea. La momentul decesului, aceasta deținea în coproprietate cu soțul său, S, imobilul situat în Cluj-Napoca [...], iar, potrivit art. 963 C.civ., vocație succesorală la moștenire au soțul supraviețuitor și cei doi copii. S, tatăl părților, a decedat în data de 25 iulie 2021, fiind omorât de pârâta care a fost condamnată pentru infracțiunea de violență în familie sub forma omorului și este condamnată la o pedeapsă de 16 ani închisoare cu executare. Drept urmare, este nedemnă de drept față de succesiunea după defunctul și se impune a fi înlăturată de la moștenire (f.2-4).

Pârâta a fost citată la locul de detenție. Prin întâmpinarea depusă la fila 34 din dosar a arătat că înțelege să conteste doar valoarea imobilului ce face obiectul masei succesorale dezbătute, apreciind că acesta are o valoare superioară celei menționate de reclamant în cererea dedusă judecății. [...]

X, cu ultimul domiciliu în Cluj-Napoca, a decedat în data de 10 decembrie 2018, [...] și, așa cum reiese din certificatul eliberat de Camera Notarilor Publici Cluj-Napoca [...], până la acest moment nu a fost dezbătută succesiunea (f.11).

Instanța, în temeiul art. 953 C.civ., va constata că masa succesorală rămasă după defuncta X decedată în data de 10 decembrie 2018, cu ultimul domiciliu în Cluj-Napoca, este compusă din cota de ½ parte din imobilul situat în Cluj-Napoca [...].

În conformitate cu prevederile art. 963 și art. 972 C.civ., va constata că au calitatea de moștenitori soțul supraviețuitor, S, în cota de ¼ parte (10/16 din imobil) și cei doi copii, A și B, în cota de 3/8 parte fiecare (3/16 din imobil).

S a decedat în data de 25 iulie 2021 ca urmare a actelor de violență fizică exercitate asupra sa de către pârâta B. Prin sentința penală [pronunțată de Tribunalul Cluj] acesta a fost condamnată la pedeapsa de 16 ani închisoare cu executare pentru săvârșirea infracțiunii prevăzute de art. 199 alin. (1) raportat la art. 188 alin. (1) C.pen. În motivarea hotărârii pronunțate s-a reținut că, pe fondul disputei iscate între pârâtă și tatăl său și a escaladării acesteia, prin loviturile aplicate cu un obiect de tip tăietor-înțepător, respectiv un cuțit cu lama de 18 cm lungime și lățimea maximă de 3 cm, a acceptat posibilitatea producerii decesului victimei, chiar dacă nu a urmărit un astfel de deznodământ, cu atât mai mult cu cât pârâta avea pregătire medicală și cunoștințe despre dispunerea organelor interne și a principalelor artere și vene de sânge (f.12-20).

Instanța constată că, potrivit art. 958 alin. (1) lit. a) C.civ., este de drept nedemnă de a moșteni persoana condamnată penal pentru săvârșirea unei infracțiuni cu intenția de a-l ucide pe cel care lasă moștenirea. Potrivit art. 959 lit. a) C.civ., o persoană poate fi declarată nedemnă din punct de vedere judiciar în situația în care a fost condamnată penal definitiv pentru săvârșirea cu intenție, față de cel care lasă moștenirea, a unor fapte grave de violență fizică sau morală ori a unor fapte care au avut drept consecință moartea victimei.

În cazul dedus judecății, se reține că se impune aplicarea prevederilor art. 959 alin. (1) lit. a) C.civ. în condițiile în care, în motivarea hotărârii penale [pronunțate de Tribunalul Cluj] s-a reținut că agresorul, pârâta B din prezentul litigiu, a acceptat producerea decesului victimei, prin agresiunea exercitată, nefiind reținută intenția de ucidere pentru a putea fi aplicate prevederile art. 958 alin. (1) lit. a) C. civ.

> Față de cele prezentate, instanța, în temeiul art. 953 C.civ., va constata că masa succesorală rămasă după defunctul S, decedat în data de 25 iulie 2021, cu ultimul domiciliu în Cluj-Napoca, se compune din cota de 10/16 parte din imobilul situat în Cluj-Napoca, […].
>
> În conformitate cu prevederile art. 959 alin. (1) lit. a) C.civ. va declara că pârâta este nedemnă de moștenire și, în temeiul art. [9]60 alin. (1) C.civ., o va înlătura de la moștenire.
>
> În baza art. 963, art. 964 alin. (1) lit. a) C.civ., va constata că reclamantul are calitatea de unic moștenitor al defunctului S, în cota de 1/1 parte (cota de 13/16 parte din întregul imobil). […]"

Notă: Considerăm că hotărârea redată mai sus este criticabilă sub aspectul reținerii unui caz de nedemnitate judiciară [art. 959 alin. (1) lit. a) C.civ.] în temeiul unei condamnări penale pentru omor săvârșit cu intenție indirectă, faptă care atrage, în realitate, nedemnitatea de drept [art. 958 alin. (1) lit. a) C.civ.].

1. Instanța a fost învestită cu soluționarea unei ipoteze clasice de succesiuni succesive: deși mama părților a murit la 10 decembrie 2018, succesiunea acesteia a rămas nedezbătută până la decesul tatălui, survenit la 25 iulie 2021. Problema de drept pe care hotărârea o ridică, sub aspect succesoral, privește însă provocarea acestui din urmă deces de către pârâtă, prin aplicarea unor lovituri de cuțit.

Prin sentință penală definitivă, pronunțată în anul 2022, Tribunalul Cluj a condamnat-o pe pârâtă la o pedeapsă de 16 ani de închisoare pentru *omor* [art. 188 alin. (1) C.pen.] *săvârșit asupra unui membru de familie* [art. 199 alin. (1) C.pen.]. Având în vedere dimensiunile cuțitului („18 cm lungime și lățimea maximă de 3 cm"), precum și pregătirea medicală a pârâtei, care presupune „cunoștințe despre dispunerea organelor interne și a principalelor artere și vene de sânge", instanța penală a concluzionat că aceasta „a acceptat posibilitatea producerii decesului victimei, chiar dacă nu a urmărit un astfel de deznodământ".

Această precizare este esențială deoarece evidențiază forma de vinovăție cu care a fost săvârșită fapta (intenția *indirectă*) și explică, totodată, încadrarea juridică a acesteia ca *omor*, iar nu ca loviri sau vătămări cauzatoare de moarte ori altă infracțiune praeterintenționată.

2. Cu toate că reclamantul a solicitat în mod judicios constatarea nedemnității de drept, instanța civilă a aplicat în mod eronat un caz de nedemnitate judiciară [art. 959 alin. (1) lit. a) C.civ.]. Sub aspect material, motivarea soluției a pornit de la premisa că pârâta „a acceptat producerea decesului victimei" și concluzionează că în conținutul hotărârii penale „[nu a fost] reținută intenția de ucidere pentru a putea fi aplicare prevederile art. 958 alin. (1) lit. a) C.civ.".

Or, aplicând regulile logicii formale, o asemenea concluzie nu putea să fie dedusă din premisa indicată. Dimpotrivă, acceptarea rezultatului fatal nu exclude intenția de a ucide, ci o întărește, sub forma intenției indirecte. A nega existența intenției tocmai în ipoteza în care făptuitorul acceptă posibilitatea producerii rezultatului echivalează cu o *confuzie între formele intenției și absența acesteia*.

3. În materia nedemnității, vinovăția are relevanță în demarcarea unor cauze apropiate

ca finalitate, dar distinct reglementate. O lectură atentă a dispozițiilor art. 958 alin. (1) și art. 959 alin. (1) C.civ. confirmă că legiuitorul sancționează suprimarea vieții exclusiv în prezența *intenției*. În acest cadru normativ, nedemnitatea de drept sancționează fapta săvârșită cu intenție, fie ea *directă* sau *indirectă* [art. 958 alin. (1) C.civ.], în vreme ce primul caz de *nedemnitate judiciară* sancționează numai moartea provocată cu intenție *depășită* (*praeterintenție*)[1], pe care legiuitorul o desemnează prin formula: „fapte care au avut ca urmare moartea victimei" [art. 959 alin. (1) lit. a) C.civ.].

Intenția este *directă* atunci când făptuitorul *urmărește* producerea rezultatului prevăzut [art. 16 alin. (3) lit. a) C.pen.] și *indirectă* dacă doar *acceptă* posibilitatea producerii lui [art. 16 alin. (3) lit. b) C.pen.]. În schimb, intenția este *depășită* atunci când „o acțiune sau inacțiune intenționată produce un rezultat mai grav, care se datorează culpei făptuitorului" [art. 16 alin. (5) C.pen.]. De altfel, literatura noastră a subliniat natura mixtă a praeterintenției, în structura acesteia fiind reunite *intenția de a pune în executare* cu *rezultatul produs din culpă*[2].

Aceste distincții sunt esențiale pentru delimitarea așa-numitelor „fapte care au avut ca urmare moartea victimei", prevăzute de textul art. 959 alin. (1) lit. a) C.civ., expresie prin care sunt avute în vedere infracțiuni praeterintenționate: deși rezoluția infracțională este pusă în executare cu intenție, „rezultatul produs este mult mai grav [...] decât cel urmărit sau acceptat de făptuitor prin săvârșirea faptei"[3].

4. Faptele de nedemnitate reglementate de art. 959 alin. (1) lit. a) C.civ. sunt rezultatul unui transplant juridic. Sursa de inspirație a fost art. 621 para. 1 C.civ.Q., care sancționează cruzimile și comportamentul deosebit de reprobabil. Dacă această primă cauză de nedemnitate relativă a fost receptată prin expresia „violență fizică sau morală"[4], atunci rămâne să explicăm originea și semnificația sintagmei „fapte care au avut ca urmare moartea victimei".

Sunt două rațiuni pentru care legiuitorul quebecoaz nu a consacrat un text echivalent în rândul cauzelor de nedemnitate. Pe de o parte, intenția depășită este străină dreptului penal din Québec, unde faptele menționate atrag altă încadrare juridică (*homicide involontaire* sau *manslaughter*), cu consecința calificării ca nedemnitate absolută [art. 620 para. 1 C.civ.Q.][5]. Pe de altă parte, noțiunea de *comportement hautement répréhensible* a fost interpretată extensiv în jurisprudență, ajungând să acopere inclusiv acele ipoteze de suprimare a vieții în care lipsa vinovăției exclude aplicarea nedemnității absolute[6]. În practică, o asemenea orientare a permis

[1] F Deak și R Popescu, *Tratat de drept succesoral* vol I (ed 3, București: Universul Juridic 2013) 109, n 3; D Chirică, *Tratat de drept civil. Succesiunile și liberalitățile* (ed 2, București: Hamangiu 2017) 22; A Murphy, *Nedemnitatea succesorală și dezmoștenirea* (București: Universul Juridic 2022) 96; MD Bob-Bocșan, *Manual de succesiuni și liberalități* (București: Universul Juridic 2025) 49. În sensul că dispozițiile art. 959 alin. (1) lit. a) C.civ. vizează fapte săvârșite cu intenție directă sau indirectă, opinie cu care nu putem fi de acord, a se vedea C Macovei și MC Dobrilă, în FA Baias, E Chelaru, R Constantinovici și I Macovei (ed), *Noul Cod civil. Comentariu pe articole* (ed 2; București: CH Beck 2014) 1077.

[2] F Streteanu, *Tratat de drept penal. Partea generală*, vol I (București: CH Beck 2008) 460; M Udroiu, *Drept penal. Partea generală* (București: CH Beck 2014) 55.

[3] Deak și Popescu, *Tratat de drept succesoral* (n 1).

[4] Pentru mai multe amănunte, a se vedea MD Bob-Bocșan și AMD Murphy, 'The Unworthy and the Ungrateful: On the Mirroring Legal Patterns of France, Québec, and Romania' (2024) 16(1) *Journal of Civil Law Studies* 99-120.

[5] *St-Hilaire c. Canada (Procureur général)*, 2001 CAF 63 (CanLII) para 161-162.

[6] J Beaulne, *Droit des successions* (ed 4; Montreal: Wilson & Lafleur 2010) 53.

îndepărtarea de la succesiune a fiului achitat, pentru iresponsabilitate, de uciderea părinților[7].

Față de contextul autohton, în care legea penală operează cu grade abstracte de vinovăție (intenție, praeterintenție, culpă), legiuitorul nostru a condiționat aplicarea art. 959 alin. (1) lit. a) C.civ. de forma vinovăției cu care sunt săvârșite faptele de nedemnitate vizate: *directă* sau *indirectă* pentru faptele grave de violență fizică sau morală, respectiv *depășită* în cazul faptelor care au avut ca urmare moartea victimei. Același proces de adaptare poate fi identificat și în materia nedemnității de drept, care sancționează „intenția de a ucide" [art. 958 alin. (1) lit. a) C.civ.], iar nu pe „cel declarat vinovat pentru că a atentat la viața defunctului" [art. 620 para. 1 C.civ.Q.]. Or, uciderea intenționată nu este totuna cu moartea provocată cu intenție depășită, ipoteză în care intenția există doar la nivelul punerii în executare a rezoluției infracționale, în timp ce rezultatul fatal este produs din culpă. Așadar, menținerea distincției dintre formele de vinovăție la nivelul faptelor de nedemnitate nu este întâmplătoare, ci este menită să protejeze coerența internă a sistemului juridic gazdă.

5. Sub aspect procesual, apreciem că instanța *nu putea să schimbe calificarea* capătului de cerere privind constatarea nedemnității de drept *fără să pună în discuția părților* calificarea pe care o consideră exactă [art. 22 alin. (4) C.proc.civ.]. Or, în speța analizată, reclamantul este cel care a indicat temeiul juridic corect, iar instanța a fost cea care a calificat greșit faptele deduse judecății. Eroarea este cu atât mai gravă cu cât numai nedemnitatea de drept poate fi invocată din oficiu [art. 958 alin. (3) C.civ.], în timp ce nedemnitatea judiciară poate fi declarată *doar la cererea părții interesate* [art. 959 alin. (2) și (6) C.civ.].

Suntem de părere că promovarea unei căi de atac și-ar fi găsit temeiul atât în aplicarea eronată a dispozițiilor de drept material (reținerea unui caz de nedemnitate judiciară), cât și în încălcarea principiilor disponibilității și contradictorialității (recalificarea unui capăt de cerere fără a pune acest lucru în discuția părților, aplicând un caz de nedemnitate care nu poate să fie invocat din oficiu). Cu toate că, în speța de față, reclamantul nu a avut interesul să promoveze o cale de atac, soluția fiindu-i, după toate aparențele, favorabilă, ne putem imagina mai multe situații în care o astfel de hotărâre ar genera probleme semnificative.

Pe de o parte, dacă cererea de chemare în judecată ar fi fost formulată după împlinirea termenului de un an de la rămânerea definitivă a hotărârii penale, greșita reținere a unui caz de nedemnitate judiciară ar fi atras *decăderea reclamantului din dreptul de a cere și obține declararea nedemnității* [art. 959 alin. (3) C.civ.], scenariu incompatibil cu regimul juridic al nedemnității de drept [art. 958 alin. (3) C.civ.]. Pe de altă parte, în ipoteza unei ordini inverse a deceselor (decesul mamei ulterior uciderii tatălui de către pârâtă), declararea nedemnității judiciare ar fi produs efecte sensibil diferite: *excluderea pârâtei de la moștenirea tatălui nu ar fi exclus-o și de la moștenirea mamei*, cum s-ar fi întâmplat sub incidența nedemnității de drept [art. 958 alin. (1) lit. b) C.civ.].

6. Consecințele practice ale unei astfel de erori nu sunt deloc neglijabile. Posibilitatea de a „corecta" hotărârea prin intermediul căilor de atac sau, după caz, prin invocarea nedemnității de drept în alt cadru procesual (*e.g.*, într-un litigiu distinct) nu poate justifica eroarea instanței

[7] *Fournier c. Piche*, 2008 QCCS 5384 (CanLII) para 44-45.

de fond. În toate cazurile, justițiabilul va suporta întârzieri în realizarea dreptului său, aspect de natură să aducă atingere dreptului la soluționarea cauzei într-un termen optim și previzibil.

Nu în ultimul rând, există riscul ca soluția eronată să se propage în practica instanțelor, prin efecte de tip „fluture" sau „bulgăr de zăpadă", fundamentând o orientare jurisprudențială contrară literei și spiritului dispozițiilor legale aplicate. Este de dorit ca o asemenea soluție să rămână un caz izolat, iar nu să se constituie într-un model de urmat în practica judiciară.

7. În concluzie, hotărârea analizată demonstrează că interpretarea eronată a formei de vinovăție conduce la aplicarea greșită a cauzelor de nedemnitate succesorală. Problema nu este una pur teoretică, ci generează consecințe practice semnificative pentru justițiabilul care invocă nedemnitatea: eventuala corectare a erorii cu prilejul unui control judiciar sau într-un nou litigiu nu înlătură efectele injuste în plan temporal.