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NICOLAUS COPERNICUS SUPERIOR SCHOOL | SGMK

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Esteemed Colleagues and Readers!

It is with significant professional satisfaction that I present the fourth issue of the *Copernican Journal of Law*. With this release, we continue our mission of fostering a high-level academic dialogue that bridges theoretical legal constructs with the shifting realities of modern jurisprudence. The seven articles curated for this volume reflect the diverse and interdisciplinary nature of contemporary legal thought, addressing themes that range from the intersection of technology and commerce to the historical foundations of constitutional identity.

A central theme uniting these contributions is the evolution of legal instruments in response to global socio-economic shifts. Whether exploring the impact of intellectual property on public health, the digitalization of property registers to optimize transaction costs, or the delicate interplay between religion and nationalism in historical constitutional models, these works highlight the law's role as both a stabilizer and a catalyst for change. From the technicalities of automotive distribution to the broader paradigms of European legal practice, this issue offers a comprehensive reflection on how legal systems adapt to provide justice and efficiency in an increasingly complex world.

The international character of our journal is further solidified in this issue. Of the seven distinguished authors featured, six represent prominent foreign research centres: Higher School of Economics and Finance "Ezio Vanoni" (Italy), University of Padova (Italy), Trnava University (Slovakia), Palacký University Olomouc (Czech Republic), Sulkhan-Saba Orbeliani University (Georgia) and Tartous University (Syria). These are joined by a contribution from the Nicolaus Copernicus Superior School (Poland), illustrating our commitment to integrating Polish legal scholarship into the global academic circuit.

I am also pleased to announce that our Editorial Board has been significantly enriched by the inclusion of eminent professors whose expertise will undoubtedly enhance the journal's scholarly rigor: Robert Gyuri (Pavol Jozef Šafárik University in Košice, Slovakia), Ryszard Pankiewicz (Academy of Zamość, Poland), Dimitrios Parashu (Gottfried Wilhelm Leibniz University Hannover, Germany), Olha Skochylias-Pavliv (Lviv Polytechnic National University, Ukraine), Marcin Szewczak (John Paul II Catholic Univer-

sity of Lublin, Poland), Mario Trapani (Roma Tre University, Italy) and Niteesh Kumar Upadhyay (Dhirubhai Ambani University School of Law in Gujarat, India).

Furthermore, I am proud to inform our readers and contributors that the *Copernican Journal of Law* has been accepted for indexing and is now available in the following prestigious databases: ICI World of Journals/ICI Journals Master List and the Central and Eastern European Online Library (CEEOL). This milestone ensures greater visibility and impact for the research published within our pages.

I wish to express my sincere gratitude to Prof. Fabrizio Giulimondi (Nicolaus Copernicus Superior School, Poland), Vice Editor-in-Chief, for his kind and invaluable cooperation. My thanks also go to Magdalena Jagodzińska (University of Warsaw, Poland), our Managing Editor, for her meticulous and dedicated management of the publishing process. I am equally grateful to our reviewers for their insightful and rigorous substantive comments, which are essential to maintaining the high standards of this journal.

I invite you to engage with these articles and trust that they will provide fruitful inspiration for your own research and professional endeavours.

Paweł Lewandowski
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The Distribution System in the Automotive Sector

• **Abstract** •

The automotive distribution sector is undergoing a phase of structural transformation, driven by digitalization, shifts in consumer preferences, and new regulatory frontiers. Traditionally based on a widespread network of dealerships, the industry is moving toward models that integrate online sales and an increasing centralization of commercial strategies by manufacturers. Brands are exploring approaches such as the agency model, direct-to-consumer, and subscription-based mobility services, reducing dependence on traditional networks and redefining the role of dealers. This article try to provide an overview of the subject, analysing the main dynamics currently underway. The aim is to shed light on the fundamental regulations, offering a basic framework of support in a sector that is continuously evolving.

Keywords: Distribution, Automotive, Transformation.

Introduction

The automotive distribution system in Europe has undergone a profound evolution, moving from highly hierarchical and territorially closed models—developed between the 1950s and 1970s—to a regulatory framework that is progressively more open and competitive. This transformation has been driven primarily by European Union competition law, particularly Article 101 TFEU, which prohibits restrictive vertical agreements unless exceptions are justified by procompetitive efficiencies.[1]

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[1] Article 101 TFEU (text and overview): *EURLex* consolidated text & summaries; overview in Jones & Sufrin, *EU Competition Law: Text, Cases & Materials* (OUP, 8th ed., 2023).

The main regulatory milestones include Regulation 1400/2002, which revolutionised the sector by introducing greater commercial freedom for dealers, up to the current framework based on VBER 2022/720 and MVBER 461/2010, which redefine the scope of distributive autonomy for manufacturers and the protection of independent operators.[2] At the same time, some Member States—such as Italy with Law 108/2022—have introduced specific national safeguards without, however, being allowed to derogate from EU competition principles.[3]

Overall, the framework seeks to balance technological innovations (digitalization, ecommerce, connected vehicles), the need for effective competition, and fair contractual relationships between manufacturers, distributors, and independent repairers.[4] A separate and increasingly relevant issue in the sector concerns the agency agreement, which is emerging as an alternative model in the relationships between manufacturers and distributors.[5]

Background

First, it is important to underline that the entire system of automotive distribution—from block exemption regulations to national protections like the Italian 2022 law—must always be interpreted in the light of Article 101 TFEU, which prohibits vertical restraints that restrict competition.[6] Article 101(1) TFEU sets that agreements are not allowed between companies that restrict competition, including vertical agreements (manufacturer → distributor) if they: (1) restrict markets or customers, (2) impose fixed or minimum resale prices, (3) prevent crossborder sales, (4) distort competition between Member States.

Even where a vertical agreement restricts competition, Article 101(3) TFEU allows an exception if the agreement generates sufficient efficiencies to benefit consumers (for example, facilitating market entry, avoiding freeriding, incentivizing

[2] Reg. 1400/2002; VBER 2022/720; MVBER 461/2010 (scope and aims): *EURLex* acts and summaries.

[3] Italian Law 108/2022 (auto distribution safeguards)—analysis and alignment with VBER/ /Article 101 TFEU: (a) CMS (2022); (b) Quintegia study (2024).

[4] Digitalization/ecommerce & verticals: *Guidelines on vertical restraints* (2022) and doctrinal commentary (Whish & Bailey, 11th ed., 2024).

[5] Agency within verticals: *Vertical Guidelines* 2022 (agency sections); doctrinal analysis on "multiprincipal" and agent risk allocation (Greenberg Traurig, 2022).

[6] Structure and objectives of Article 101(1)/(3) TFEU as applied to verticals (general doctrine): (a) Jones & Sufrin, chapters on elements/verticals; (b) Cambridge (Lorenz), *Key concepts of Article 101 TFEU*.

investments), provided strict conditions are met, and no hardcore restrictions are present—the logic that underpins the EU block exemption architecture.[7]

Returning to the automotive distribution system, it emerged during the 1950–1970 period, when manufacturers built networks of authorized dealers bound by strict contractual obligations such as territorial exclusivity, stock requirements, showroom standards, aftersales obligations. This produced a closed and controlled model designed to safeguard brand image, pricing, and customer experience. The EU intervened from 1985 with sectorspecific block exemptions for motor vehicles, curbing excessive territorial exclusivity and rigid commercial conditions, and progressively opening the system.

The Block Exemption Regulation (Regulation 1400/2002)

Regulation (EC) No. 1400/2002 then radically changed the sector. Key features can be summarized as follows: (1) reduction/removal of territorial exclusivity, (2) ability of dealers to sell outside their territory, (3) separation between sales and aftersales, (4) obligation for manufacturers to provide technical information to independent repairers.

In particular, Article 2 (Scope) applied to a wide range of vertical agreements in the motorvehicle sector, including: a) supply and distribution of new motor vehicles; b) spareparts distribution; c) repair/maintenance services. It covered agreement between: a) independent importers or wholesalers; b) authorized distributors and repairers; c) networks involving main distributors and sub-distributors; d) suppliers of spare parts and repair networks.[8]

Article 3 sets that to benefit from the block exemption, the supplier must not exceed a 30% marketshare threshold, following the model of Regulation 2790/1999. Article 4 (Hardcore Restriction) sets that If any hardcore restriction was present, the entire agreement would lose the benefit of the exemption. Key hardcore restrictions included: (1) resale price maintenance (fixing minimum resale prices); (2) restrictions on parallel trade between Member States, which aim to avoid market partitioning.

Article 5 (Specific conditions) listed sector specific conditions, that, basically, can be summarized as follows: (1) noncompete obligations, (2) location clauses, which restrict the dealer's selling or operating location.

[7] Article 101(3) exemption and conditions (efficiencies, fair share, indispensability, no elimination of competition): EU texts and leading treatises (Whish & Bailey).

[8] Selective vs exclusive; active vs passive sales: *VBER 2022/720* and *Vertical Guidelines* (definitions).

Finally, the Regulation permitted two main distribution structure: (1) Selective Distribution in which suppliers sell only to authorised distributors selected based on qualitative criteria, and dealers may not sell to unauthorised distributors; (2) Exclusive Distribution in which the supplier assigns territory to a distributor and restricts active sales into that territory from others (but not passive sales).[9]

The Current Framework: VBER 330/2010, VBER 2022/720, and MVBER 461/2010

In 2010 the EU moved towards a general verticalagreements regime: (1) (VBER 330/2010) with the motorvehicle sector progressively aligned to the general framework, while Regulation 461/2010 (MVBER) added specific rules (in particular for the aftermarket); (2) The new VBER 2022/720 (in force since 1 June 2022) preserves the 30% marketshare safe harbour, updates the definitions of active/passive sales (including online contexts), enables shared exclusivity, clarifies selective distribution (online/offline criteria), and provides a detailed framework for dual distribution, marketplace bans, dual pricing and parity clauses.[10]

This phase greatly reduced sectorspecific protections and aligned automotive distribution with standard vertical market rules.

The EU Regulation 330/2010 (VBER) establishes the conditions under which certain vertical agreements are automatically exempted under Article 101(3) TFEU, meaning they are presumed to produce sufficient efficiency gains to outweigh restrictions of competition. In particular: (1) The exemption must be applied if the supplier does not exceed a 30% market share in the relevant market and the buyer does not exceed a 30% market share on its purchasing market; (2) There are hardcore restrictions which remove the benefit of the exemption entirely if present. These restrictions are: resale price maintenance (RPM)—setting fixed or minimum resale prices; territorial/customer restrictions, which unjustifiably prevent passive or active sales; restrictions on crosssupplies among distributors in selective distribution systems; restrictions on enduser sales by distributors in selective systems (Article 4); (3) Some restrictions do not eliminate the exemption entirely, but they themselves are not exempt, even if included in an otherwise exempt vertical agreement. These include: (a) Noncompete obligations exceed-

[9] Academic critique of the "straitjacket effect" of older BERs and rationale for 1400/2002: Wijckmans/Tuytschaever/Vanderelst, *The Motor Vehicle Distribution Block Exemption*.

[10] 2022 verticals package and impacts on omnichannel/platforms: White & Case (2022); Hogan Lovells (2022); Portolano Cavallo (2022).

ing 5 years; (b) Posttermination noncompete clauses, unless narrowly limited; (c) Certain clauses restricting parts or components suppliers from selling to third parties.

This Regulation expired on 31 may 2022 and it was replaced from 1 June 2022 by the Regulation 2022/720 (the new VBER). It: (1) gives manufacturers greater freedom to organize agencybased models, (2) reduces the strategic autonomy of dealers, (3) allows centralization of pricing and commercial policies.

In particular: (i) The safety zone provided for under the previous regime (the socalled *safe harbour*) has been maintained for all vertical agreements, and it is defined by the 30% marketshare threshold.

(ii) In the exclusive distribution, the new framework allows shared exclusivity, enabling a supplier to appoint up to a limited (five) number of exclusive distributors for a territory. The definition of active sales has been broadened to adapt it to the current context of a significant increase in ecommerce.

(iii) In the selective distribution, the VBER provides clearer rules for selective distribution, especially regarding: online vs. offline criteria, passive sales, and obligations for authorised distributors.

(iv) Among the most significant innovations introduced by the reform is the new framework governing socalled dual distribution, namely distribution models in which the supplier sells its goods both directly to final consumers and through independent distributors. This results in a scenario in which the supplier competes directly with its own distributors.

(v) Differentiated treatment of online vs. offline channels; Allowed restrictions on online marketplaces (marketplace bans may be exempt under certain conditions); Rules on online advertising and the use of price comparison tools.

(vi) The Regulation maintains the list of hardcore restrictions that automatically exclude an agreement from the exemption, including: (a) Resale Price Maintenance (RPM) → fixed or minimum resale prices; (b) Unjustified territorial/customer restrictions (especially restrictions on passive sales); (c) Restrictions on cross-supplies within selective distribution; (d) Restrictions on sales to end users by authorised distributors. Some clauses do not eliminate the exemption for the whole agreement but are not themselves exempt, including: (a) Noncompete obligations that exceed 5 years; (b) Certain posttermination noncompete obligations; (c) Restrictions preventing component suppliers from selling to third parties.

The new framework maintains the previous approach, according to which an agency relationship is excluded from the scope of Article 101 TFEU (and thus from the VBER) only if the agent lacks economic independence—meaning that

the agent does not bear, or bears only insignificant, financial or commercial risk in relation to the contracts it concludes or negotiates on behalf of the principal (the socalled "agency test").

MVBER 461/2010 (Automotive Specific Regulation)

The Regulation EU 461/2010 (MVBER) deals with a specific block exemption for vertical agreements in the automotive industry. The automotive sector remains subject to the general vertical agreements regime (Reg. (EU) 330/2010, later replaced by 2022/720), but Regulation 461/2010 adds specific exemptions and restrictions. It applies to: the purchase, sale, or resale of new motor vehicles, and agreements regarding repair and maintenance services and spare parts distribution.

Key points: (1) It implements Article 101(3) TFEU, permitting vertical agreements that generate efficiency benefits. (2) Its validity was extended by Regulation (EU) 2023/822 for an additional five years, beyond the original expiry of 31 May 2023. This extension allows the Commission to adapt rules to developments such as digitalization, electrification, and new mobility models.

The MVBER incorporates the general vertical rules of the new VBER (Reg. 2022/720) into the automotive aftermarket. The Regulation aims to ensure that certain vertical agreements in the automotive sector are automatically exempt from the prohibition of anticompetitive agreements in Article 101(1) TFEU, provided they meet specific conditions. As regards the hardcore restrictions, certain restrictions automatically remove the benefit of the exemption, such as: preventing the use of equivalent spare parts; obstructing independent repairers' access to technical information; unlawful restrictions on passive/active sales; limiting access to original or matchingquality spare parts. Manufacturers must provide independent repairers with: technical information, tools and diagnostic equipment, necessary software.

The Italian Framework

Italy introduced a national law (law 108/2022) to protect authorized distributors. The law provides: (1) 6-month mandatory written notice period for termination. Otherwise, the termination is invalid; (2) obligation for manufacturers to share all relevant financial information before contract signature. Before signing, the manufacturer/importer must provide the dealer with all necessary information to

assess economic and financial sustainability, including estimates of expected marginal revenues; (3) right to an equitable indemnity for nonamortized investments and goodwill created over the last five years. If the manufacturer or importer withdraws early, it must pay an equitable indemnity covering nonamortized investments and goodwill (based on revenues from the previous five years); (4) no indemnity in case of termination for breach or when the distributor voluntarily terminates. These safeguards operate consistently with EU competition law and cannot derogate from Article 101.

The Agency Model in Automotive Distribution

Under an agency agreement, the dealer does not acquire title to the vehicle but promotes/concludes sales on behalf of the manufacturer, at centrally determined conditions. According to EU competition law, an agency agreement falls outside Article 101(1) TFEU only where the agent does not bear, or bears only insignificant, financial or commercial risk related to the contracts (the "genuine agency" test), as restated in the 2022 Vertical Guidelines (with specific guidance on multiprincipal agents, dualrole agents, marketspecific investments, and risk allocation. If these conditions are met, Article 101 does not apply (and the VBER is irrelevant); otherwise, the arrangement is treated as a vertical agreement subject to 101(1) and the VBER/Guidelines framework.

In practice, manufacturers are exploring agency to centralize pricing, harmonize the online/offline journey, and manage EV gotomarket, though the boundary between genuine agency and de facto distribution requires careful, productby-product assessment under the Guidelines.

Conclusions

The analysis of the automotive distribution system shows how European regulation has progressively shifted its focus from protecting official networks to a broader safeguarding of competition and market access. Overall, the system today appears oriented toward: reducing dependence on old, closed models of exclusive dealerships; promoting hybrid and digital models, such as online distribution and agency systems; ensuring that such innovations do not undermine competition and market access; maintaining strong oversight of the aftermarket, a key sector for competitiveness.

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The Negative Impact of Intellectual Property Protection on Vaccine Accessibility

• **Abstract** •

This article examines the tension between intellectual property protection and vaccine accessibility, demonstrating how patent law and trade secret regimes impede equitable access to vaccines as global public goods. Through analysis of international legal frameworks and recent pandemic case studies (Ebola, Zika, COVID-19), the research reveals that stringent IP protections create monopolistic pricing, suppress competition, and enable concealment of critical health information. While acknowledging patents' role in incentivizing innovation, the article argues that uniform twenty-year patent terms and indefinite trade secret protection contradict vaccines' essential social function. The study proposes reforms including investment-proportional patent durations, excluding vaccines from trade secret protection, implementing price controls, and establishing state subsidy programs. The article concludes that balancing innovation incentives with universal health access requires reconceptualizing vaccines as social goods requiring specialized legal regimes that prioritize fundamental human rights over commercial interests.

Keywords: Vaccine Patents, Intellectual Property Law, Right to Health, Global Public Goods, Health Equity.

Introduction

In legal doctrine, vaccines are recognized as "Global Common Goods" or "Global Public Goods", with ensuring equitable access thereto constituting a universal human interest (Boschiero, 2022, pp. 180–210). This characterization stems from the direct nexus between vaccine accessibility and the fundamental rights to health and life, as vaccines fortify human immunity against disease, impede

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disease transmission, or, in certain instances, effectuate complete recovery from illness.[1] Human rights and patent or trade secret law intersect at a critical juncture, as they represent conflicting interests.[2] For instance, pharmaceutical companies, in consideration of their invested expenditures and time, possess the legal prerogative to protect their innovations—a prerogative they exercise through intellectual property protection mechanisms: patents and trade secret protection "Medical Patents and the Right to Health—from Monopoly Control to Open Access Innovation and Provision of Medicines" (Cullet and Yuanquiong, 2018, pp. 5–29). Legal protection of innovations typically materializes through information confidentiality, monopolistic pricing structures, and analogous measures. Conversely, individuals possess a fundamental right to accessible healthcare, while states bear positive obligations to respect, protect, and ensure access to the right to health (WHO, 2008, pp. 3–11). Consequently, it is manifest that protecting vaccines under the aegis of intellectual property law engenders manifold ethical, moral, and legal dilemmas. Therefore, this article evaluates the merits and demerits of protection mechanisms for vaccines as objects of intellectual property law, which exert tangible influence on both public interests and private interests in practice.

Protection Mechanisms for Vaccines as Objects of Intellectual Property Law

Intellectual property law enables individuals to legally appropriate and protect products created through intellectual labour and cognitive application, including innovations—in this particular context, vaccines (Tikaradze, 2015, p. 117).

A vaccine denotes any biological preparation derived from living organisms that enhances immunity against disease and/or inhibits it (prophylactic vaccines) or, in certain cases, treats disease (therapeutic vaccines) (WHO, 2008, pp. 3–11). The designation and objective of every vaccine is singular—to attenuate the virus/bacteria such that the vaccine recipient can develop immunity without actual infection exposure (De Abrantes, 2016, p. 528). Precisely for this reason, free and universal access to vaccines as recognized global common goods is of paramount importance.

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[1] Basic Concept of Vaccination available at http://www.phrma-jp.org/wordpress/wp-content/uploads/old/library/vaccine-factbook_e/1_Basic_Concept_of_Vaccination.pdf, pp. 12–28.

[2] Ibid., pp. 19–20.

Vaccines, as sophisticated biopharmaceutical products, are typically subject to two principal intellectual property protection mechanisms (Gregersen, 1994, pp. 63–64). Patent protection and trade secret regimes—which, in conjunction, constitute a formidable multilayered security system. Additionally, supplementary protection regimes exist, encompassing regulatory data exclusivity, emergency authorizations, licensing arrangements, and IP sharing mechanisms (Cullet and Yuanquiong, 2018, pp. 5–29).

Vaccine Patents

Vaccines constitute innovations within the sphere of medical patents, to which—both in Georgia and globally—a standard of patent protection exclusion applies. For instance, Georgian law recognizes that patents shall not be granted for innovations pertaining to surgical, therapeutic, and diagnostic methods for treating humans and animals. This provision does not extend to devices and substances employed in such methods.[3] An analogous provision appears in the principal European patent instrument (European Patent Convention, EPC),[4] though unlike Georgian legislation, the EPC references exclusion not merely of treatment methods but of treatment modalities from patent protection. Unlike the EPC's stringent protection, the TRIPS Agreement grants member states the prerogative (rather than obligation) to exclude methods for treating humans and animals from patent protection, motivated by the recognition that this sphere constitutes "a matter of public interest." The United States maintains no statutory restriction regarding exclusion of medical patents from legal protection; however, a provision exempts physicians from legal liability arising from patent infringement, thereby limiting patent rights protection for medical methods.[5] Australia's patent legislation merits mention, as it is considered among common law jurisdictions the sole nation lacking statutory prohibition on medical patent issuance (Mitnovetski and Nicol, 2004, p. 476).

Notwithstanding the foregoing, it is acknowledged that vaccines as final products, along with their various constituent components, are subject to patent protection (De Abrantes, 2016, pp. 532–534).

[3] Article 17, paragraph 'b' of the Law of Georgia on Patents.
[4] Article 53(c) of the European Patent Convention.
[5] The United States Patent Act, 35 U.S.C. § 287(c).

The Problem of Vaccines as Patent Objects

Vaccines as patent objects are considerably complex and differ from other patent objects. Primarily, four vaccine types exist, and their types/varieties may influence patentability.[6] Furthermore, patents may be granted not solely for the final result (the vaccine itself) but also for its constituent elements (e.g. products used in vaccine preparation, vaccine application methods, DNA upon which the vaccine is based, creation methods, etc.). Consequently, a single vaccine as a final product may be subject to one or multiple patents (De Abrantes, 2016, pp. 532–534). The existence of multiple patents on a single vaccine naturally creates significant accessibility obstacles, as all measures necessary for licensing patent-protected vaccines must be undertaken twice or more, increasing both costs and licensing acquisition timelines.

Scientific circles and legal scholars have long disputed vaccine patentability.[7] Proponents argue that vaccines, as among the costliest innovations, cannot be incentivized nor can investors be persuaded to commit substantial investments without reasonable profit expectations (Kaplan and Marcowitz-Bitton, 2022, pp. 430–435). However, whether such protection satisfies public interest and fulfils vaccines' social purpose remains contentious. For instance, during the 2014-2016 Ebola outbreak, NewLink possessed a patent license from the Canadian government for the most effective Ebola vaccine, costing the company USD 205,000 (Santos, 2021, pp. 124–125). The company failed to ensure successful vaccine trials; when the Ebola epidemic commenced, NewLink declined both to continue trials and to transfer the license to another company. Ultimately, this company received USD 30 million for license sale with an additional USD 20 million contingent upon successful trial completion.[8] This example vividly illustrates the problematic aspects of patent protection extension to vaccines, including price escalation, temporal delays, and so forth—even when the "incentive" element has been surmounted.

The Zika vaccine commercialization case likewise exemplifies obstacles that patent protection can create for vaccine accessibility. Although an American governmental organization developed the Zika vaccine, private sector investment was necessary for conducting trials and achieving final vaccine results, which should have occurred through license issuance to a private company. While U.S. legisla-

[6] History of Vaccines, *What do vaccines do? Different Types of Vaccines*, available at https://historyofvaccines.org/vaccines-101/what-do-vaccines-do/different-types-vaccines

[7] Ibid.

[8] Ibid.

tion neither explicitly prohibits nor encourages exclusive patent license issuance, commercial competition for the Zika vaccine's exclusive license persisted for nearly one year (Santos, 2018, pp. 652–665), consequentially correlating with market competition absence, price escalation, and delayed global vaccine accessibility.

This problem was similarly pertinent during the COVID-19 pandemic—the world's most extensive pandemic to date, spanning 2020–2022. In February 2020, U.S. Health Secretary Alex Azar, when questioned whether potential vaccines would be universally accessible, explained that all measures were being undertaken to ensure vaccine accessibility; however, price control would be impossible because private sector investment was essential, thus price control would not ensure "desired outcome" achievement (Togoh, 2020). On October 2, 2020, India and South Africa petitioned the World Trade Organization to waive various provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),[9] including patent protection articles. Patent protection suspension for COVID vaccines materialized only in 2021, enabling vaccine production method sharing; all companies possessing appropriate technology and infrastructure received COVID vaccine production capability (Naik, 2021, pp. 4516–4519). Patent protection relaxation yielded immediate results: specifically, the first vaccine wave was scarcely accessible and, for instance, Georgian citizen vaccination occurred on a "first-come, first-served" principle, with only one specific firm's vaccine available, whereas subsequently five companies' vaccines emerged and accessibility significantly increased.[10]

The aforementioned examples demonstrate that extending intellectual property legal protection mechanisms—patent protection—to vaccines, on one hand, incentivizes new vaccine innovation and biotechnology/biomedicine development; however, on the other hand, it undermines vaccines' primary social function fulfilment, fails to ensure accessible pricing, restricts competition, and consequently creates obstacles to health rights accessibility.

Addressing Obstacles Caused by Vaccine Patenting

According to the research's developed reasoning, as noted, beyond innovation promotion, patents also serve the societal purpose of encouraging new innovation

[9] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) available at https://www.sakpatenti.gov.ge/media/page_files/trips_1.pdf

[10] See, Coronavirus (COVID-19) Vaccinations – statistics by country and year available at https://ourworldindata.org/covid-vaccinations

disclosure, thereby ensuring technological information's broad dissemination/utilization (Barfield and Calfee, 2007, pp. 1–33). To balance existing risks countervailing this benefit—concerning innovation accessibility restrictions, price escalation, competition reduction, etc.—legal scholars examine various possibilities.

Patent protection duration reduction has been designated as one means of averting vaccine patenting's potential adverse consequences (Kaplan and Marcowitz-Bitton 2022, pp. 444–450). According to TRIPS Agreement Article 33, the general patent term comprises twenty years. This protection duration resulted from extensive negotiations and inter-state consensus, universalizing patent protection duration across 164 nations worldwide.[11] Nevertheless, some scholars maintain that patent terms should not be universal but rather determined individually for each innovation according to the time, resources, and investment expended on that specific innovation (Lester and Huan, 2019, pp. 787–790). Moreover, this perspective's proponents believe that determining patent protection duration commensurate with innovation's invested resources would resolve both excessive patent protection and insufficient legal protection for vaccines (innovations). For instance, under current regime conditions guaranteeing twenty-year patent protection, developed nations increase prices through early vaccine procurement, and no restriction mechanism exists within this timeframe (Kaplan and Marcowitz-Bitton, 2022, pp. 444–450). Shorter patent protection duration would enable other companies to commence production, consequently affording developing nations access to scientific benefits.[12]

To reduce vaccine transactional costs (correspondingly, final product accessibility) and clarify licensee patent utilization rights acquisition ambiguity, doctrine proposes extending not property protection standards to patents but rather liability regime/rules characteristic of tort law in common law jurisdictions (Rutschman, 2021, pp. 128–132). Specifically, it is recognized that property rights approximate absolute rights categories, and their restriction is permissible solely in exceptional circumstances explicitly defined by statute, in exchange for prior and just compensation.[13] Regarding liability regime/rules doctrine, damage causers are not constrained by prohibitions against others' rights, provided they fully and justly compensate inflicted damages (Kaplow and Shavell, 1995–1996, pp. 754–757). This approach was provoked by recent U.S. Supreme Court decisions noting that patents are not identical to property rights, and absolute protection characteristic

[11] World Trade Organization, *Amendment of the TRIPS Agreement* available at https://www.wto.org/english/tratop_e/trips_e/amendment_e.htm

[12] Ibid.

[13] Decision of the Supreme Court of Georgia dated April 20, 2022, in case No. 1349-2019.

of property rights may not fully extend thereto.[14] Advocates for such modification assert that relaxing property rights protection standards for vaccines as patent objects carries dual implications: on one hand, acknowledging political economy in contemporary biotechnology development, which predominantly relies upon private company involvement's paramount role in biotechnology advancement. on the other hand, applying liability regime/rules doctrine, even very narrowly, during vaccine development and trial stages would significantly facilitate accessible vaccine creation, particularly in extreme situations such as the COVID pandemic (Rutschman, 2021, pp. 133–134). To substantiate this approach's efficacy, doctrine cites examples wherein one specific vaccine's biotechnological foundation, which may itself constitute a separate patent protection object, may serve as a foundation for vaccines against other diseases.[15]

Therefore, for vaccines, legalizing innovation utilization freedom even in exchange for damage compensation and/or establishing patent protection duration commensurate with investments is essential for both accessible vaccine creation and biotechnology development and disease treatment efficacy promotion purposes.

Vaccines as Trade Secret Protected Objects

Trade secrets constitute an alternative means of protecting vaccines through intellectual property law (Menell, 2017, p. 13). Across jurisdictions, trade secret protection is regulated in certain instances by specialized legislation (e.g. U.S., Germany, etc.) or by general damage compensation provisions.[16] Georgia lacks specialized legislation for regulating trade secret-related legal issues; however, Article 1105 of the Georgian Civil Code explicitly stipulates that such rights belong to the industrial property regulation sphere (Dzamukashvili, 2002, pp. 350–355).

In recent years, trade secret protection objects' scope has expanded considerably. Georgian legislative framework recognizes only one norm regulating trade secrets,[17] though its definition has been refined through judicial practice. specifically, Georgia's Supreme Court deemed essential for information's trade secret qualification the cumulative infliction of damage upon interests such as commercial value and competitiveness.[18] In another case, the court added that trade se-

[14] Oil States Energy Selvs., LLC v. Greene's Energy Grp., LLC, 138 S, 2018.

[15] Ibid.

[16] Ibid.

[17] Article 272 of the General Administrative Code of Georgia.

[18] Decision of the Supreme Court of Georgia dated February 28, 2017, in case No. BS-33-32 (K-16).

crets may encompass information possessing commercial value or enabling profit generation based thereupon.[19] In the U.S., trade secret objects may comprise any information that is commercially valuable and requires reasonable efforts to maintain confidentiality.[20] European Union countries operate under a legally binding unified directive designating trade secrets as undisclosed information,[21] though substantively representing identical trade secret regulation.

Unlike patent protection, manufacturing-commercial trade secret rights violations may engender both civil legal liability (when constituting a delict) and criminal liability. Measures identical to those employed in unfair competition suppression may be adopted, including cessation of activities commenced through unfair competition results and product confiscation for the damaged party's benefit. Compensation may be demanded (and satisfied) including inflicted damages and lost revenue (Dzamukashvili, 2002, pp. 350–355).

In the U.S., trade secrets, unlike patents, are equated with property rights; state public dissemination of such information necessitates just compensation payment, while individual trade secret disclosure is ensured through general damage compensation provisions (Menell, 2017, pp. 10–13).

Trade Secret Regime's Impact on Vaccine Accessibility

It is recognized that trade secret regulatory legislation is premised upon "commercial morality" principles.[22] In a landmark case, the U.S. Supreme Court explained that federal patent-regulating legislation does not encompass trade secret protection. Maintaining commercial ethics standards and encouraging innovation constitute broadly declared policies beyond trade secret law.[23] Therefore, trade secrets may represent a form of innovation incentive mechanism, as even innovations ineligible for patent protection may be protected through trade secret regulatory norms (Arevadze, 2019). However, conversely, the fact that trade secret protection occurs indefinitely, without any registration, and no specific statutory enumeration of trade secret objects exists means that unscrupulous utilization of this instrument may yield reverse effects.

[19] Decision of the Supreme Court of Georgia dated January 16, 2007, in case No. 623-590 (K-06).

[20] United States Uniform Trade Secrets Act, 1979.

[21] Directive (EU) 2016/943, on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

[22] Eastman Co. v. Reichenbach, N.Y.S., 1892.

[23] Kewanee Oil Co. v. Bicron Corp. 416 U.S. 470, 1974.

Utilizing intellectual property law's protection mechanism—trade secrets—during vaccine creation/realization may occur in various forms. Specifically, clinical trial information, vaccine or constituent medication prices, information regarding unlawful corporate wrongdoing (e.g. animal vaccine testing, prohibited substance testing, or human vaccine testing procedure violations), vaccine production technology information enabling product decentralization, and information regarding biological resources necessary for vaccine and treatment method development may be kept confidential (Durkin et al., 2021, p. 130).

Each enumerated action may adversely affect health rights accessibility and the right for all to benefit from scientific progress. Unlike patent protection, which involves rigorous and detailed innovation verification for registration, trade secret cases are limited to minimal criteria, enabling companies to keep confidential—solely for their commercial purposes—significant information that, while not constituting innovation-scale novelty, is important for scientific advancement and universal health protection.

Consequently, developing reasoning that in such sensitive spheres as the medical field, employing simpler protection to circumvent patent protection's stringent provisions may adversely affect vaccine accessibility is grounded in sound judgment. This reasoning's endorsement is particularly relevant when this alternative mechanism—trade secrets—enables indefinite monopolization (confidentiality) of information not constituting patent objects. This reasoning was confirmed during the most recent and most extensive COVID pandemic worldwide, when in 2020 U.S. vaccine contracts were publicized, revealing that one company's contract explicitly granted rights to keep confidential vaccine production and creation know-how, trade secrets, and all types of clinical data.[24] The European continent was no exception; during this period, European Commission-publicized vaccine contracts granted companies extensive discretion to keep confidential information encompassing, inter alia, dosage required per injection, licensee prepaid fees, and vaccine market release schedules (Apuzzo and Gebrekidan, 2021).

Similar to reasoning developed regarding patent protection's negative influences, in this case too, even non-professionally it is evident that keeping confidential such information as vaccine dosage, licensing payment amounts, production quantities, production release plans, etc., does not serve health rights protection or scientific development but rather aims to maximize investor revenues at the

[24] See, S. Lupkin, *COVID-19 Vaccine Contract Accountability. HHS Released More Coronavirus Vaccine Contracts As Election Results Unfolded*, November 8, 2020 available at https://www.npr.org/sections/health-shots/2020/11/08/932793698/hhs-released-more-coronavirus-vaccine-contracts-as-election-results-unfolded

expense of restricting vaccine accessibility. Consequently, protecting them under trade secret auspices, at the expense of specific enterprise profit maximization, seriously harms vaccine accessibility and delays disease combat.

Eliminating Potential Problems Caused by Vaccine Trade Secret Protection

Meticulous fact verification often reveals that adequate and proper trade secret legislation interpretation excludes from trade secret protection vast information related to health (Durkin et al., 2021, p. 135). For instance, despite U.S. courts' endorsement of recognizing prices as trade secrets, doctrine contains persuasive arguments based on trade secret law theory and purpose that price alone should not be protected through such mechanisms (Feldman and Graves, 2020, pp. 106–114). In this case, price is merely a culmination point achieved through party negotiations and does not constitute information that may serve as a starting point for future development.[25] The same may be said regarding most clinical trial safety and efficacy data, as such information cannot confer competitive advantages nor be employed to sell other products or reduce competitor expenses (Morten and Kapczynski, 2021, pp. 180–190).

To reduce potential problems caused by vaccine trade secret protection, doctrine identifies several directions. All recommendations address issues requiring political-legal level state regulation; specifically, primarily, it is considered that trade secrets should not be regarded as fundamental human rights or constitutional rights, and international law endeavours to establish stronger trade secret legislative foundations should not be facilitated (Durkin et al., 2021, p. 136). For instance, if trade secrecy is protected through property rights regime, states will be perpetually constrained from requiring companies to share health-related data for achieved result improvement or new technology development.[26] Second, states must protect societal interests in healthcare and health rights-related matters by restricting trade secret extension, and trade secret disclosure should be permitted where public health protection occupies the opposite scale. This may occur through proportionality testing, recognizing public interest-containing information as exceptional, and/or mandating proactive publication of health and healthcare-related information.[27] Third, to reduce potential problems caused by trade

[25] Ibid.
[26] Ibid.
[27] Ibid.

secret protection, establishing high protection guarantees for whistleblowers has been proposed, which should encompass reasonable judgment standards for whistleblower protection for both unlawful and incorrect actions, minimizing potential adverse legal consequences for them, and creating appropriate infrastructure, resources, and disclosure channels that incentivize disclosure.[28]

Alternatives to Restricting Vaccine Intellectual Property Legal Protection

To increase vaccine accessibility, maintain balance between intellectual property law and moral obligations, and enable everyone, regardless of birthplace, to benefit from this scientific good, all subjects participating in vaccine creation, protection, and utilization cycles must assume certain obligations.

States must steadfastly fulfil assumed positive obligations—respect health accessibility rights, i.e., refrain from direct or indirect interference in this right; protect health accessibility rights—prevent third-party interference in this right; and fulfil it—develop relevant and timely legislation and create adequate legal mechanisms for rights protection (WHO, 2008, pp. 3–20). These positive obligations, inter alia, entail state obligations to ensure prevention of private sector's unjust influence on health accessibility rights (WHO, 2008, p. 26). Intellectual property law-protected objects are social products and possess primarily social functions; therefore, states are obligated, through creating relevant legal frameworks, to ensure accessible pricing for these products (UN Committee on Economic, Social and Cultural Rights, 2017, pp. 2–15). Furthermore, private sector representatives must assume certain moral and ethical obligations ensuring their prevention of human rights violations (Dickhut, 2017, p. 219). Specifically, private companies must study with due diligence and formulate human rights protection policies, assess their contemplated actions' potential impact scope on human rights (Impact Assessments), and effectuate their integration and performance tracking (WHO, 2008, pp. 3–39).

Despite criticism developed in this work, complete removal of patent protection regimes for vaccines is unreasonable and cannot ensure just balance between intellectual property law subjects and other moral or ethical obligations, because patent protection factually encourages and facilitates vaccine innovation. Conversely, extending commercial regimes to vaccines in forms granting private companies rights to indefinitely keep confidential any type of vaccine innovation-related in-

[28] Ibid.

formation (not solely commercially valuable information), including information not subject to patent protection, necessitates excluding vaccines from trade secret regime protection and achieving inter-state consensus on this matter. Regarding patent protection, balancing parties' rights requires protection restriction; price control system establishment is essential, and for specific vaccines, according to invested investments, necessary resources, and their significance, upper limits for sale prices must be established (Dickhut, 2017, p. 231). Moreover, the twenty-year universal patent protection term must be removed and vaccine patents established according to invested investments. To maintain patent protection and ensure equitable vaccine accessibility, a state subsidy system may be established, investing state finances in innovating vaccines against diseases constituting public threats (Kaplan, 2022, pp. 444–450). This automatically ensures reduced need for investor solicitation and, consequently, vaccine sale price stabilization).

Conclusions

Extending intellectual property legal protection mechanisms—patent protection—to vaccines, on one hand, incentivizes new vaccine innovation and biotechnology/biomedicine development; however, on the other hand, it undermines vaccines' primary social function fulfilment. Vaccines are considered among the costliest innovations, whereby investors who commit substantial sums at vaccine creation's initial stages receive patent protection enabling them to unilaterally manufacture and sell at monopolistic prices they establish, failing to ensure accessible pricing, restricting competition, and consequently creating obstacles to health rights accessibility.

The perspective that, for vaccines, legalizing innovation utilization freedom even in exchange for damage compensation and/or establishing patent protection duration commensurate with investments is essential for both accessible vaccine creation and biotechnology development and disease treatment efficacy promotion purposes merits endorsement.

Vaccine trade secret regime protection, unlike patent protection, is considered more easily obtainable. However, in such sensitive spheres as the medical field, employing simpler protection to circumvent patent protection's stringent provisions may adversely affect vaccine accessibility. Endorsing this reasoning is particularly relevant when this alternative mechanism—trade secrets—enables indefinite monopolization (confidentiality) of information not constituting patent objects, i.e., invested valuable novelty.

Recognizing medical sphere-related innovations as property objects and establishing absolute control over their utilization, even under intellectual property law auspices, engenders manifold ethical and moral obstacles, as it is perpetually counterbalanced by highly protected public interest—health rights accessibility, which constitutes a fundamental human right guaranteed at both international and national levels.

Consequently, vaccines as common beneficial goods possessing real, immediate, and vital influence on human health and mortal or life-quality-deteriorating infection dissemination cannot be protected through such stringent legal regimes as patent and trade secret protection law. Complete commercialization of this specific intellectual property law object and extending stringent property regimes thereto manifestly contradicts human rights ethics; thus, alternative protection mechanism identification is necessary, which will achieve conflicting interest balancing without infringing fundamental human rights at property rights' expense.

To achieve the aforementioned objective, all subjects participating in vaccine creation, protection, and utilization cycles must assume certain obligations. Specifically: states are obligated, through creating relevant legal frameworks, to ensure accessible vaccine pricing. For this purpose, primarily inter-state consensus is necessary, and vaccine protection must be excluded from trade secret protection regimes, while private companies must be statutorily mandated to study with due diligence, formulate, and implement human rights protection policies during vaccine creation/realization processes. Furthermore, price control system establishment is essential, and for specific vaccines, according to invested investments, necessary resources, and their significance, both patent protection duration determination and vaccine sale price upper limit establishment must occur. Alternatively, as a strict exception, state paternalistic approach possibilities may be encouraged, and for universal vaccine accessibility and human life preservation purposes, state subsidy programs may be established, maximally reducing private investments in vaccine creation and monopolistic pricing's inevitable risk.

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Electronic Property Registers as an Instrument for Reducing Transaction Costs: An Economic Analysis of Polish and Ukrainian Models

• **Abstract** •

The article examines the role of electronic real estate registers as an institutional instrument for reducing transaction costs in property circulation through the lens of the economic analysis of law. Based on a comparative analysis of the Polish and Ukrainian models of real estate rights registration, the study reveals the impact of historical preconditions for the formation of private land ownership, the specifics of European integration, and contemporary challenges (in particular, the wartime factor in Ukraine) on the level of digitalization and institutional coherence of registry systems. It is substantiated that real estate registers perform not only a legal but also an economic function by reducing costs related to information search, verification of the legal status of property, conclusion and enforcement of contracts, as well as by lowering the level of legal uncertainty. The institutional architecture of cadastral and legal registers in Poland and Ukraine is analysed, with particular attention to mechanisms of inter-register interaction (the Integrated Real Estate Information System—ZSIN in Poland and the "Trembita" system in Ukraine) and their impact on the efficiency of property circulation. The article concludes that the key determinant of the economic efficiency of registration systems is not merely their electronic form, but primarily the degree of institutional integration and consistency of registry data. Special emphasis is placed on the prospects for further digital transformation of registers, in particular through the potential application of blockchain technologies as a tool for enhancing security and reducing transaction costs in the future.

Keywords: Real Estate Registers, Transaction Costs, Land Cadastre, State Registration of Real Rights, Economic Analysis of Law.

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Introduction

The real estate registers are among the key institutional elements ensuring the functioning of the real estate market and the system of property rights protection in contemporary legal orders worldwide. Their significance goes far beyond the purely technical recording of property rights, as they form the foundation of legal certainty, reduce the level of information asymmetry, and ensure a certain predictability of property relations. For this reason, real estate registers function not only as legal, but primarily as economic instruments, without which efficient and transparent property circulation is impossible.

Legal institutions, when examined from the perspective of the economic analysis of law, are assessed through the prism of their ability to minimize transaction costs associated with information search, verification of rights, and the conclusion and enforcement of contracts. In this dimension, registers perform a fundamental function—they reduce the costs borne by market participants, limit legal risks, and contribute to the stability of economic relations. The existence of a publicly reliable property rights register enables parties to property transactions to make economically rational decisions without expending excessive resources on additional legal verification.

The information revolution driven by contemporary globalization processes has led to a transition from paper-based to electronic forms of register administration, as a result of which registers have acquired the characteristics of a fully-fledged market infrastructure mechanism that ensures legal protection and contributes to the stability and economic efficiency of property relations. Further enhancement of the interoperability of electronic registers will only strengthen their economic effect.

In this context, a comparative analysis of the experience and the current level of digitalization of electronic real estate registry systems in Poland and Ukraine is of particular scholarly interest. Poland is currently characterized by a higher level of digitalization and institutional coherence in the functioning of the real estate rights registration system (in particular, land and mortgage registers), whereas the Ukrainian system is undergoing a process of transformation. This creates a basis for analysing the potential economic benefits of the further development of electronic mechanisms for rights registration.

The purpose of this article is to examine electronic registers as an instrument for reducing transaction costs within the framework of the economic analysis of law, as well as to conduct a comparative assessment of the Polish and Ukrainian models from the perspective of their impact on legal certainty and the economic efficiency of property rights protection.

Background of the Formation of the Institution of Private Land Ownership in Poland and Ukraine

Within the framework of institutional economics, according to North, the development of legal institutions is regarded as a historically conditioned process characterized by dependence on the previous trajectory of development (path dependence) (North, 1990, pp. 3–6). As North notes, institutions do not emerge *ex nihilo* (out of nothing), but are the result of gradual changes constrained by prior rules, practices, and models of economic interaction (North, 1990, pp. 7–8).

Based on the above, it can be argued that historical differences in the formation of the institution of private land ownership affect contemporary mechanisms for organizing real estate registration systems and the cost of their institutional modernization. Accordingly, the level of development and digitalization of land registers is largely determined by historical models of land relations and the establishment of the institution of private land ownership.

The current level of digitalization of Poland's electronic real estate registry systems is significantly higher than that of Ukraine; however, this primarily stems from different initial conditions. Thus, as noted in a special report by FAO (the Food and Agriculture Organization of the United Nations), during the communist regime in 1945–1989, three quarters of agricultural land in Poland remained in private family farms, although the development of these farms was constrained by ideological limitations, and only about one quarter of land was held by state farms or cooperatives.[1]

Whereas, according to Masel-Veseliak and Fedorov: "(…) only with the acquisition of state sovereignty and economic independence in Ukraine in 1990 did the transformation of the agrarian sector toward market-based economic conditions take place, involving a transition from the collective-state farm method of agricultural production, based on state ownership of land, to a mode of management built on private ownership of land combined with collective, individual, and family forms of labor organization" (Masel-Veseliak and Fedorov, 2025, p. 5). According to Karabin-Zyc and Kuryltsiv: "As a result of land reform, nearly 7 million Ukrainians became landowners, gaining the legal right to possess, manage, and use their land" (Karabin-Zych and Kuryltsiv, 2015, p. 56).

It follows that the countries under study had different starting conditions for the inclusion of property rights in land registers, as well as differing depths of

[1] Food and Agriculture Organization of the United Nations. (n.d.). *Agricultural Policy. FAO Agricultural Policy and Economic Development Series No. 1*, Rome. Retrieved February 2, 2026, from: https://openknowledge.fao.org/handle/20.500.14283/w7440e

institutional memory. Ukraine underwent a "shock" transformation associated with a rupture in institutional tradition—from a collective farm model that presupposed the absence of private land ownership to mass and rapid privatization. This resulted in the fragmentation of rights, incomplete recording of information in land registers, and a gap between actual land use and the legal formalization of rights. In contrast, Poland was characterised by the preservation of the predominant share of land in private ownership even during the socialist period, which ensured the continuity of the institution of private property and formed a stable basis for the continuous maintenance of land registers, the preservation of registry data, and their subsequent transfer into new organizational and technological formats.

Another important difference between the two states lies in the different nature and chronology of their European integration. Poland acceded to the European Union on 1 May 2004, which necessitated the adaptation of national institutions, in particular the real estate and land rights registration system, to the requirements arising from EU law and the functioning of the internal market, especially in the areas of legal certainty, transparency, and efficiency of property circulation. By contrast, Ukraine articulated its European integration aspirations much later and only on 23 June 2022 acquired the status of a candidate for membership in the European Union, which objectively limited external incentives and institutional motivation for the systematic modernization of registry infrastructure over a prolonged period.

A separate factor that significantly affects the differences between the countries under study is the full-scale war waged by the Russian Federation against Ukraine. This factor has had a direct impact on the functioning of public institutions, in particular in the field of land and real estate rights registration. As is known, on 24 February 2022, state registers under the authority of the Ministry of Justice of Ukraine temporarily suspended their operation. According to Karabin-Zyc and Kuryltsiv, the full-scale armed aggression resulted in restrictions on access to certain registry data (concealment of cadastral numbers, replacement of precise addresses with regional identifiers) in order to prevent the adversary from using registry information for military purposes (Mesel-Veseliak and Fedorov, 2015, p. 65). This, obviously, increases the risks of legal uncertainty regarding objects located in temporarily occupied or hostilities-affected territories. Under such conditions, the deepening of register interoperability objectively receded into the background.

Thus, the wartime factor not only slowed the institutional development of Ukraine's registry infrastructure but also deepened the differences between the countries under study in terms of stability, continuity, and economic efficiency of the functioning of land registers.

Institutional Organization of the Rights Registration System in Poland and Ukraine

The institutional architecture of the registration of land and real estate data in Poland and Ukraine is built around the separation of two functional blocks: the cadastral (geoinformation) block and the legal block (registration of real rights). At the same time, the differences lie in the degree of normative "interconnection" between these blocks, the unity of their data, and the organizational mechanisms of information exchange, which directly affects the cost of verifying the legal status of real estate, the risks of legal uncertainty, and, consequently, transaction costs in property circulation.

In Poland, the cadastral segment of the real estate registration system is institutionally structured as the Land and Buildings Register (EGiB), which functions as a public information system intended for the collection, updating, and unified provision of data on land parcels, buildings, premises, as well as on entities related to these objects.[2] This understanding of cadastral registration is directly enshrined in the Act of 17 May 1989 Geodetic and Cartographic Law, which defines the legal foundations for the functioning of the register and its nationwide character. At the same time, the detailed scope of cadastral data, their structure, as well as the technical and organizational rules for maintaining the register are specified at the level of subordinate regulation, in particular in the Regulation of the Minister of Development, Labour and Technology of 27 July 2021 on the Land and Buildings Register, which establishes EGiB data standards and the procedure for their updating.[3]

The legal segment of the real estate registration system in Poland is ensured by land and mortgage registers, the functioning of which is regulated by the Act of 6 July 1982 on Land and Mortgage Registers and Mortgage.[4] A key element of the institutional logic of this system, in accordance with Article 5 of the said Act, is the principle of public reliance on entries in land registers, according to which, in the event of a discrepancy between the legal status recorded in the land register and the actual legal status, the law grants protection to a person who acquired a right acting in good faith and relying on the content of the register. The application of this principle results in land and mortgage registers in the Polish model performing not only an informational but also a stabilizing function, ensuring predictability and security of property circulation.

2 Act of 17 May 1989 Geodetic and Cartographic Law, Journal of Laws 1989, No. 30, item 163.

3 Journal of Laws 2021, item 1390.

4 Journal of Laws 1982, No. 19, item 147.

It is important to emphasise that the real estate cadastre and the land and mortgage registers are separate registers maintained by different authorities and performing distinct functions; therefore, the issue of consistency between their data is not resolved automatically. For this very reason, in order to institutionally ensure the exchange and reconciliation of information on real estate, Poland has been developing the Integrated Real Estate Information System (ZSIN), the legal basis for the implementation of which is defined in Article 24b of the Act of the Geodetic and Cartographic Law. At present, ZSIN has been partially implemented and is operated as an infrastructural mechanism of electronic interaction between public authorities responsible for maintaining cadastral and legal registers, aimed at ensuring access to registry data and their consistency. At the same time, this system does not function as a fully centralized single rights register and does not replace existing cadastral or legal registers. Thus, the Polish model of the institutional organization of registers combines a clear functional separation of the cadastral and legal segments with formalized mechanisms for integrating registry information and ensuring trust in its content.

In Ukraine, the cadastral block is institutionally represented by the State Land Cadastre, which, pursuant to the Law of Ukraine "On the State Land Cadastre" of 7 July 2011, is defined as a unified state geoinformation system containing data on lands within the state border of Ukraine, their designated purpose, restrictions on use, quantitative and qualitative characteristics, normative and expert monetary valuation, as well as the distribution of land among owners and users.[5] Thus, it is precisely the cadastre that performs the function of the spatial and identification basis of a land parcel as an object of civil circulation and a prerequisite for the subsequent state registration of rights.

Separately, national legislation directly links the possibility of civil circulation of a land parcel to its formation and the entry of relevant data into the State Land Cadastre. In particular, Article 79 of the Land Code of Ukraine provides that the formation of a land parcel involves the determination of its area and boundaries and the entry of information about it into the cadastre.[6] This establishes a direct dependence between the completeness and accuracy of cadastral data and the possibility of the lawful and economically efficient circulation of land parcels.

The legal block of the national model is concentrated in the system of state registration of real rights to immovable property, which operates on the basis of

[5] No. 3613-VI, *Vidomosti Verkhovnoi Rady Ukrainy*, No. 8.

[6] Law of Ukraine of 25 October 2001—Land Code of Ukraine, No. 2768-III, *Vidomosti Verkhovnoi Rady Ukrainy*, No. 3–4.

the Law of Ukraine "On State Registration of Real Rights to Immovable Property and Their Encumbrances" of 1 July 2004 (Law on State Registration of Property Rights).[7] Within this block, ownership rights and other real rights (lease, servitude, emphyteusis, superficies), as well as their encumbrances, are recorded, forming the legally significant legal status of the real estate object. It is precisely the existence of a corresponding entry in the State Register of Real Rights that creates a presumption of the existence and validity of the right and constitutes a key prerequisite for the participation of the object in property circulation.

A separate institutional problem of the Ukrainian model remains the legacy of the Bureaus of Technical Inventory (BTI). Even after the effective introduction, as of 1 January 2013, of a unified system of state registration of real rights to immovable property on the basis of the Law on State Registration of Property Rights, and the transfer of state registration functions from BTI to the State Register of Real Rights to Immovable Property, a significant part of the technical and title documentation concerning objects whose rights arose earlier remained in BTI archives. This results in the persistence of institutional dependence on paper-based and decentralized sources of information, which increases the costs of verifying the legal status of immovable property and heightens the risks of legal uncertainty in property circulation.

In response to the above-mentioned institutional fragmentation, mechanisms of inter-register electronic interaction have been gradually developing in Ukraine. In particular, a governmental communication, as reported by EU4Digital (EU4Digital), indicates that interoperability of the State Land Cadastre with other information systems through the use of the "Trembita" system, which in practice makes it possible to accelerate access to the necessary data and reduce the need for information duplication.[8] Within the scope of this article, this is significant as an institutional factor of potential reduction of transaction costs: the fewer gaps exist between cadastral and registration data, the cheaper and faster it is to confirm the legal status of an object in transactions and disputes.

Thus, despite a similar two-tier structure of the real estate registration system, the Polish and Ukrainian models differ substantially in the level of institutional coherence and integration of registry data. These differences are not only legal in nature but also have a pronounced economic dimension, as they directly affect the

[7] Law of Ukraine of 1 July 2004—On State Registration of Real Rights to Immovable Property and Their Encumbrances, No. 1952-IV, *Vidomosti Verkhovnoi Rady Ukrainy*, No. 51.

[8] EU4Digital. (2024). Trembita.gov.ua: Report for the 1st Quarter of 2024. Retrieved February 2, 2026, from: https://eu4digitalua.eu/uk/news/trembita-gov-ua-zvit-za-2-j-kvartal-2024-roku/

costs of rights verification, the level of legal risks, and the efficiency of property circulation. For this reason, further analysis of real estate registers through the lens of the economic theory of transaction costs is justified.

Real Estate Registers as an Instrument for Reducing Transaction Costs: a Comparative Economic Analysis

Previously, the institutional organization of systems for registering data on land and real estate in Poland and Ukraine was examined. However, the significance of registers is not limited solely to their legal or administrative function. From the perspective of the economic analysis of law, real estate registers act as a key mechanism for reducing transaction costs that accompany the circulation of property rights.

The theoretical foundations of this approach are laid down in Coase's theory of transaction costs, in which he demonstrated that the use of the market is not cost-free and is always associated with expenses related to information search, the conclusion and enforcement of transactions, which explains the existence of institutions as mechanisms for their minimization (Coase, 1937). Subsequently, Williamson clarified that transaction costs are determined by the bounded rationality of participants and the risk of opportunistic behaviour, and therefore effective institutions should reduce information uncertainty and the need for additional safeguards (Williamson, 1985).

In the context of the circulation of property rights, these theoretical provisions are directly applicable to registration systems. According to Shavell, the key economic advantage of a registration system lies in the fact that it facilitates the sale and resale of property by reducing uncertainty regarding ownership rights: in the absence of a register, a buyer will either refrain from entering into a transaction or will be forced to incur additional resources to verify the legitimacy of the title, which directly increases transaction costs (Shavell, 2003, p. 10).

Contemporary land administration doctrine further develops this approach by viewing land registration not merely as a technical accounting process. As noted by Felicitas Sommer and Walter Timo de Vries, land registration is understood not only as a technical process of record-keeping, but as an institutional mechanism for collecting, storing, and legitimizing socio-legal relations concerning land (Sommer and de Vries, 2023). Accordingly, the institutional design of land registers and the logic of their organization directly affect the functioning of the land market and the economic outcomes of property circulation.

In the sphere of real estate circulation, in our view, transaction costs manifest themselves primarily in the costs of verifying the legal status of an object, identifying its characteristics, establishing the completeness and validity of rights, as well as in time costs associated with state registration and waiting for legal certainty. It is precisely in this dimension that real estate registers perform an economic function—they reduce information asymmetry between the parties to a transaction and lower the risks of legal uncertainty.

It should also be noted that the application of the economic analysis of law to the study of registration systems cannot be regarded as a universal or self-sufficient method for explaining legal phenomena. As Havryliuk notes: "(…) a drawback of the methodology of economic analysis with regard to legal processes is, first, its variability, which does not offer a single 'correct' or unconditionally effective solution to a legal problem, and second, its tendency to ignore social and ethical aspects that are traditionally taken into account by legal science" (Havryliuk, 2024, p. 141). This means that economic criteria of efficiency cannot automatically substitute for a legal assessment of institutions, since real estate registers perform not only an informational but also a regulatory function, shaping the legal expectations of participants in circulation and influencing their behaviour and the level of legal certainty.

According to the approach developed by Posner within the framework of the economic analysis of law, legal institutions perform an instrumental function in organizing social interaction, and their effectiveness is determined by their ability to reduce costs associated with exchange and legal uncertainty (Posner, 2014). In this sense, economic analysis does not deny the normative nature of law, but offers an additional analytical lens that makes it possible to assess the extent to which specific legal institutions—such as real estate registration systems—facilitate or, conversely, hinder the efficient functioning of the market.

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Within the framework of this article, the economic analysis of real estate registers is used as a tool to assess how the institutional design of registration systems in Poland and Ukraine affects the level of transaction costs, legal certainty, and

the speed of property circulation. It is precisely in this applied interdisciplinary dimension that the economic analysis of law reveals its heuristic value.

From an economic perspective, the use of real estate registers in property circulation has complex advantages that go beyond the purely legal recording of rights. As noted in an explanatory statement of the Ministry of Justice of Ukraine: "(…) official state registration of rights to immovable property ensures legal protection and legal certainty of ownership rights, creates the possibility of lawful alienation and other forms of civil circulation of the object, opens access to credit secured by real estate, constitutes a prerequisite for participation in state programs (in particular compensation and recovery programs), and forms official data necessary for statistical accounting and human rights protection activities."[9]

In Ukraine, the introduction, as of 1 January 2013, of an electronic system of state registration of real rights to immovable property led to a normative reduction in registration time limits. Pursuant to the Law on State Registration of Property Rights, state registration of rights is carried out on the day of submission of the application, and the overall duration of the procedure does not exceed five working days from the moment the application is registered in the State Register of Rights. The financial dimension of transaction costs in Ukraine is also formalised. For standard state registration of ownership rights, an administrative fee in the amount of 0.1 of the subsistence minimum for able-bodied persons is charged. The legislation also provides for the possibility of expedited registration for an increased fee: one subsistence minimum for a period of two working days, two subsistence minimums for registration within one working day, and five subsistence minimums for registration within two hours. At the same time, the legislation establishes a wide range of social exemptions under which the administrative fee is not charged, in particular for persons whose rights arose before 1 January 2013, persons with disabilities, combatants, and citizens whose property was destroyed as a result of the armed aggression of the Russian Federation. Such a model allows participants in property circulation to choose an economically justified balance between the time and cost of registration, which directly affects the structure of their transaction costs.

In Poland, there is no normatively established mechanism for paid "acceleration" of entries in the land and mortgage register. At present, the rules do not define a specific period between the submission of an application and the entry being made, and its actual duration depends on the workload of the courts

[9] Ministry of Justice of Ukraine. (n.d.). Chomu vazhlyvo vnesty vidomosti pro maino do reiestru rechovykh prav. Retrieved February 9, 2026, from: https://www.kmu.gov.ua/news/chomu-vazhlyvo-vnesty-vidomosti-pro-maino-do-reiestru-rechovykh-prav

and the number of applications, which may range from several weeks to several months or even longer.[10] Since 2023, the structure of fees for registration actions in land and mortgage registers has been unified: a fixed court fee of 200 PLN has been established for entering a primary record of ownership or perpetual usufruct, while other actions—such as mortgage registration, entries of limited real rights, or the deletion of previously made entries—are subject to differentiated fees that vary depending on the type of action and the nature of the legal transaction. Such a system of fixed and differentiated fees creates a predictable basis for assessing the direct costs incurred by participants in property circulation.

The transition from paper-based to electronic forms of register maintenance has an independent economic effect. For Ukraine, a "vulnerable point" remains the coexistence of electronic registers alongside paper-based and decentralized datasets (in particular, BTI archives concerning "historical" objects), which increases the costs of verifying legal status and creates risks of data incompleteness. At the same time, this shortcoming may be gradually mitigated provided that the level of interoperability between cadastral and legal registers is increased and organizational models of their interaction are improved. In the Ukrainian context, such an instrument is the national electronic interaction system "Trembita", designed to integrate state information resources and registers (EU4Digital). In combination with further digitalization of cadastral and legal databases, this mechanism is potentially capable of significantly reducing transaction costs associated with verifying the legal status of real estate, accelerating property circulation, and lowering the risks of legal uncertainty in contractual and dispute-related legal relations.

In Poland, such an additional institutional element aimed at increasing the economic efficiency of the real estate registration model is the development of the Integrated Real Estate Information System (ZSIN). This system does not replace cadastral or legal registers, but ensures their informational interaction, reconciliation, and consistency of data, thereby reducing the risks of discrepancies between cadastral and legal information. In economic terms, this means a reduction in the costs of verifying the legal status of an object, a decreased need for additional evidentiary procedures, and increased predictability of property circulation. Thus, ZSIN complements electronic land and mortgage registers as an instrument of indirect reduction of transaction costs, without violating the principle of functional separation of registers characteristic of the Polish model.

[10] Okeask. (n.d.). Land Registry (Księga wieczysta) in Poland. Retrieved February 10, 2026, from: https://okeask.com/ru/category/poleznaya-informaciya/1702808532-zemelyniy-reestr-ksiega-wieczysta-v-polyshe

Thus, it can be summarized that the economic benefits of using electronic registers for transaction participants manifest themselves primarily in the reduction of the time required to conclude contracts due to: prompt access to official data; the possibility of repeated verification of rights; reduced costs of legal due diligence through limiting the number of "manual" procedures and inter-institutional requests; lower costs of ensuring contract performance as a result of simplified confirmation of the legal status and encumbrances of an object; as well as a decreased likelihood of disputes due to the reduction of information asymmetry and risks of legal contestation. At the same time, the differences between the countries under study indicate that the key factor in reducing transaction costs is not merely the fact of electronification of registers, but the level of their institutional coherence and the effectiveness of inter-register interaction, which ultimately determines the economic potential of registration systems in the long term.

Conclusions

Thus, summarising all of the above, it may be concluded that land and real estate registers perform not only an accounting and legal function, but also a distinct economic one: they reduce transaction costs by decreasing information asymmetry, simplifying the verification of an object's legal status, and increasing the predictability of property circulation. A comparison of the Polish and Ukrainian models demonstrates that the decisive factor is not the mere fact of electronification, but the institutional coherence of cadastral and legal data and the effectiveness of inter-register interaction (in particular through ZSIN in Poland and the "Trembita" system in Ukraine), since it is precisely this coherence that determines the speed of transactions, the level of legal risks, and the cost structure borne by transaction participants.

Further reforms in the field of real estate registration should be aimed at institutional coordination of registers and digital data integration in order to achieve economic efficiency compatible with the requirements of legal certainty and stability of property circulation. In contemporary scholarly discourse, increasing attention is being paid to approaches involving the application of blockchain technologies in land registration systems (Zein and Twinomurinzi, 2023) as a potential instrument for enhancing security, immutability of registry records, and traceability of changes. Such solutions may further contribute to reducing transaction costs by limiting the risks of forgery, unauthorized interference, and disputes over property ownership. At the same time, a comprehensive assessment of the legal, institu-

tional, and economic consequences of implementing blockchain solutions in the field of real estate registration requires further scholarly development and remains open for future research.

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Discrimination Concerning Nationality in the Case Law of Judicial Bodies

• Abstract •

This paper addresses the issue of discrimination in the area of the right to nationality in the context of the case law of judicial and quasi-judicial human rights protection bodies. The development of international human rights law and the case law of judicial bodies in recent decades has significantly challenged the absolute nature of the state's discretionary power in matters of nationality. Nationality is increasingly perceived not only as a formal legal status but also as a significant element of an individual's legal identity. The starting point is the wording of selected international human rights treaties on the right to nationality and the prohibition of discrimination. The focus will be on analysing the extent to which the requirements of non-discrimination and the prevention of statelessness are reflected in the case law of universal and regional judicial or quasi-judicial human rights protection bodies. The contribution comparatively examines the approaches of universal quasi-judicial treaty bodies, the European Court of Human Rights, and the inter-American and African human rights protection bodies to disputes in which nationality serves as both an element of legal identity and a potentially discriminatory criterion. Particular attention is paid to the question of whether the courts recognize the existence of discrimination in access to nationality based on grounds other than gender equality, especially based on origin, ethnicity, birth, or migration status. The conclusion of the contribution identifies trends towards the convergence of case law and formulates implications for domestic legal regulations and application practice.

Keywords: Human Rights, Statelessness, Gender Equality, Legal Status, Legal Identity.

Introduction

Nationality represents the fundamental legal status of an individual, establishing a permanent legal relationship between a person and a state and conditioning the

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exercise of a broad spectrum of rights and obligations. Traditionally, international law recognized it as an area within the exclusive competence of the sovereign state, and differential treatment based on nationality was regarded as a legitimate and natural manifestation of state sovereignty (Brownlie, 2013, p. 415). This approach was particularly evident in the fields of political rights, the entry and residence of foreigners, and social and public-law entitlements.

However, the development of international human rights law and the jurisprudence of judicial bodies over the past few decades has significantly challenged the absolute character of this discretionary power. Nationality is increasingly perceived not only as a formal legal status but also as a significant element of an individual's legal identity, closely linked to the protection of private and family life, the principle of equality, and the prohibition of discrimination. Distinctions based on nationality can therefore no longer be automatically considered legitimate; they are subject to scrutiny under the proportionality, legitimate aim, and necessity tests.

A particularly sensitive area concerns discrimination based on nationality, where differential treatment affects the core of fundamental rights, such as the right to family life, the right to legal identity, the prohibition of arbitrariness, and the protection of children and other vulnerable groups. The jurisprudence of regional and international courts and quasi-judicial bodies shows that the boundary between permissible differentiation and prohibited discrimination in the field of nationality is increasingly narrow and is subject to more rigorous judicial review.

Although the European Court of Human Rights does not expressly recognize a subjective right to nationality, through its interpretation of Article 8 and Article 14 of the European Convention on Human Rights, it has gradually developed case law that evaluates discrimination relating to nationality in terms of its impact on the private and family life of the individual (*Genovese v. Malta*; *Biao v. Denmark*).[1] Similarly, the Inter-American Court of Human Rights, relying on the explicit right to nationality under the American Convention on Human Rights, considers discriminatory denial or deprivation of nationality a serious violation of human rights (*Yean and Bosico Children v. Dominican Republic*).[2] The African human rights system, although it does not contain an explicit right to nationality, has developed protection against discrimination in nationality matters through

[1] ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*; ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

[2] Inter-American Court of Human Rights, *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of 8 September 2005.

case law as part of the right to legal identity and human dignity (*Anudo Ochieng Anudo v. United Republic of Tanzania*).[3]

Quasi-judicial bodies play an essential complementary role in the field of nationality alongside judicial human rights bodies. UN treaty bodies as well as regional mechanisms, through individual complaints, views, and recommendations, gradually develop normative standards on the prohibition of discrimination, the prohibition of arbitrariness, and the protection of legal identity in the context of nationality. Although their decisions are not formally binding, their authoritative interpretation of international treaties significantly influences the case law of courts, national practice, and doctrinal development regarding the acquisition, loss, and deprivation of nationality.

The objective of this article is to analyse how judicial and quasi-judicial bodies at the international and regional levels assess discrimination in relation to nationality, and to identify the criteria they use to distinguish between legitimate differential treatment and violations of the principle of equality. Particular attention is dedicated to the case law of the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights.

The methodology of this paper consists of analysing and subsequently synthesizing relevant international legal norms and the jurisprudence of regional courts and quasi-judicial bodies, with a focus on identifying criteria for assessing discrimination in the field of nationality. The comparative dimension enables an evaluation of converging trends and differences across various human rights protection systems.

Nationality as a Discriminatory Criterion in Law

Discrimination represents one of the fundamental categories of human rights protection and, in the broadest sense, refers to unjustified differential treatment of persons in comparable situations based on a particular characteristic or status. International human rights law distinguishes most notably between direct discrimination, where differential treatment is explicitly based on a protected characteristic, and indirect discrimination, where a seemingly neutral rule or practice in fact disadvantages a certain group of persons (Strážnická et al., 2013, pp. 522–523).

[3] ACHPR, Application No. 012/2015, *Anudo Ochieng Anudo v. The United Republic of Tanzania*, Judgment of 22 March 2018.

Nationality represents the fundamental legal status of the individual, establishing a lasting legal relationship between the person and the state, which subsequently also defines the state's international obligations and corresponding rights regarding nationality (Čepelka and Šturma, 2003, p. 322). Distinctions between citizens and non-citizens are regarded as a legitimate expression of state sovereignty, especially in the areas of political rights, entry and stay in the territory, or access to public office (Brownlie, 2013, pp. 416–417). International law long accepted that the regulation of acquisition and loss of nationality belongs to the core of a state's domestic jurisdiction.

The development of international human rights law has gradually led to the view that nationality must be understood not only as a formal legal status but also as a significant element of an individual's legal identity, directly affecting the enjoyment of fundamental rights and freedoms. Distinctions based on nationality are therefore subject to review under the principles of equality and non-discrimination, particularly when they affect private and family life or lead to legal uncertainty or exclusion.

It is necessary to distinguish between permissible differential treatment and prohibited discrimination. While some differences in the legal status of citizens and non-citizens may pursue a legitimate aim, differential treatment based on nationality cannot be considered legitimate if it is arbitrary, disproportionate, or has discriminatory consequences for protected groups. Judicial and quasi-judicial bodies have repeatedly emphasized that the decisive factor is the practical impact of the measure, not its formal justification (*Biao v. Denmark*).[4]

Special attention is required for the relationship between nationality and other grounds of discrimination, such as gender, ethnic origin, or place of birth. A formally neutral criterion of nationality may, in practice, serve as a proxy for prohibited discrimination, especially when it affects groups historically exposed to marginalization (*Genovese v. Malta*).[5] This is particularly relevant in cases involving transmission of nationality to children, deprivation of nationality, or access to registration and identification documents.

State Discretion in Matters of Nationality

The regulation of the acquisition and loss of nationality has traditionally been part of the core of state sovereignty. International law has long recognized that each

[4] ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

[5] ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

state has the right to determine the conditions under which a person is considered its national. This principle was explicitly confirmed in the case law of the International Court of Justice (*Nottebohm Case*).[6]

The state's discretionary power in matters of nationality is not unlimited. International human rights law requires states to respect the principle of equality, the prohibition of arbitrariness, the protection of fundamental rights, and essential procedural safeguards (*M.A.S. and I.E.J. v. Italy*).[7] This is particularly relevant when decisions on nationality have a crucial impact on the individual's legal identity, family life, or lead to statelessness. This normative shift provides the basis for judicial review of discrimination in matters of nationality and forms the starting point for the analysis in the following sections.

Universal International Legal Framework on the Prohibition of Discrimination in Matters of Nationality

The prohibition of discrimination is a foundational principle of international human rights law and serves as one of the key normative pillars protecting human dignity. Its significance lies in securing equality in the enjoyment of rights and freedoms, irrespective of personal status or other relevant characteristics. In the field of nationality, this principle is fundamental, as nationality conditions access to a wide array of rights, and its denial or restriction may have profound consequences for a person's legal status.

The Universal Declaration of Human Rights (1948) provides the foundational basis of the prohibition of discrimination in Article 2 and explicitly recognizes the right to nationality and the prohibition of its arbitrary deprivation in Article 15. Although the Declaration is not legally binding, it has had a significant impact on subsequent treaty-making and national legislation. Many scholars believe that several of its provisions have gradually acquired customary status (Jankuv et al., 2016, p. 170).

The International Covenant on Civil and Political Rights (ICCPR) prohibits discrimination through Articles 2 and 26. Article 2 obliges states to respect and ensure the rights recognized in the Covenant without distinction, including national or social origin or other status. Article 26 establishes an autonomous

[6] Nottebohm Case, *Liechtenstein v. Guatemala*, ICJ Reports 1955, p. 23.

[7] Communication No. 3589/2019, *M.A.S. and I.E.J. v. Italy*, CCPR/C/134/D/3589/2019, Views 2022.

right to equality before the law.[8] The Human Rights Committee has repeatedly emphasized that Article 26 applies even in areas not explicitly regulated by other provisions of the Covenant, including nationality decisions.[9]

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) obliges states to eliminate discrimination based on race, colour, descent, or national or ethnic origin.[10] The CERD defines racial discrimination as any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life (Article 1 of the Convention). The CERD Committee has repeatedly emphasized in its jurisprudence that although states may distinguish between citizens and non-citizens, such distinctions must not result in discrimination prohibited by the Convention, particularly where they have a disproportionate impact on certain ethnic groups.[11]

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is essential for gender equality, explicitly requiring equal rights of men and women in matters of nationality in Article 9.[12]

The Convention on the Rights of the Child (CRC) also plays a critical role. It prohibits discrimination in Article 2 and recognizes the child's right to a name and nationality in Article 7.[13] The Committee on the Rights of the Child stresses that states must adopt positive measures to prevent discrimination in children's access to nationality, especially in cases involving migrant or stateless parents.[14]

Case Law of Universal Quasi-Judicial Bodies

Universal quasi-judicial human rights bodies, also referred to as UN treaty bodies, play an important role in interpreting and clarifying states' international ob-

[8] International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171.

[9] HRC, CCPR General Comment No. 18: Non-discrimination, 1989.

[10] International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, 660 U.N.T.S. 195.

[11] CERD, *Concluding Observations on the thirteenth and fourteenth periodic reports of the Dominican Republic*, CERD/C/DOM/CO/13-14, 2013.

[12] CEDAW, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 U.N.T.S. 13.

[13] CRC, *Convention on the Rights of the Child*, 20 November 1989, 1577 U.N.T.S. 3.

[14] CRC, *General comment No. 20 on the implementation of the rights of the child during adolescence*, 2016, CRC/C/GC/20.

ligations regarding the prohibition of discrimination in matters of nationality. Through individual communications, general comments, and recommendations, they develop interpretative standards. Although their decisions are not formally binding, they carry significant authoritative weight, prompting states to remedy shortcomings in implementing their obligations under universal human rights treaties.

The UN Human Rights Committee (HRC) addressed this issue in *M.A.S. and I.E.J. v. Italy*,[15] where the complainants argued that Italian authorities had rejected a citizenship application. In the case of the female complainant, the decision was based solely on her husband's circumstances, without an individual assessment of her situation. She claimed this constituted discrimination (particularly under Article 26 ICCPR) and interference with her private and family life. The case serves as a quasi-judicial precedent demonstrating that even in areas of broad state discretion, such as naturalization, states must comply with the prohibition of arbitrariness and the principle of equality.

Within the Committee on the Elimination of Racial Discrimination, the situation in the Dominican Republic was examined under the reporting procedure. The Committee assessed the periodic report and recommended that the state remove administrative barriers preventing persons of Haitian descent from obtaining identity documents and restore documents that had been confiscated, annulled, or destroyed by the authorities. It also stressed that Dominican citizens of Haitian origin must not be deprived of their right to nationality, and that the state must adopt non-discriminatory policies regarding identity documents and ensure due process safeguards. The Committee further expressed concern that the judgment of the Inter-American Court of Human Rights in *Yean and Bosico Children v. Dominican Republic*[16] had not been fully implemented.

In *Salgado v. United Kingdom*,[17] the UN Committee on the Elimination of Discrimination against Women addressed historical legislation that prevented women from transmitting nationality to their children on equal terms with men, thereby constituting differential treatment in the transmission of nationality. The Committee examined the case primarily through the lens of Article 9 CEDAW (equality in matters of nationality) and admissibility requirements. Similarly, in

[15] Communication No. 3589/2019, *M.A.S. and I.E.J. v. Italy*, CCPR/C/134/D/3589/2019, Views 2022.

[16] *Yean and Bosico Children v. Dominican Republic*, Judgment of 8 September 2005, CERD/C/DOM/CO/13-14, para. 23.

[17] Communication No. 11/2006, *Salgado v. United Kingdom*, CEDAW/C/37/D/11/2006.

J.S. v. United Kingdom,[18] the complaint alleged that legislative amendments had failed to eliminate the discriminatory effects of previous rules that favoured paternal over maternal transmission of nationality. The Committee viewed these cases as examples of the enduring impact of genderunequal nationality laws.

The issue of gender equality in the transmission of nationality is also central to the Global Campaign for Equal Nationality Rights, which aims to eliminate legal and practical forms of discrimination in acquiring, changing, and transmitting nationality. Its primary goal is to achieve equality between men and women in nationality laws, particularly concerning the right to confer nationality on children and spouses without discriminatory restrictions. The campaign also seeks to prevent statelessness, as genderdiscriminatory nationality laws are among the significant structural causes of statelessness. Another goal is to strengthen the recognition of nationality as a fundamental human right and a core element of an individual's legal identity, which requires protection beyond the framework of state sovereignty. The campaign supports the harmonisation of domestic legal systems with international human rights standards and emphasises the need for effective legal remedies for those affected by discrimination based on nationality. Currently, 24 countries still prevent mothers from conferring nationality on their children on equal terms with fathers, and in more than 40 countries, women are denied equal nationality rights with men, including the ability to confer nationality on non-citizen spouses (Global Campaign, 2023).

Universal quasi-judicial human rights bodies, when assessing individual communications, have concluded that although nationality falls within the sphere of state discretion, decisions concerning its acquisition or loss must respect the principle of equality and the prohibition of arbitrariness, including the duty to assess each case individually. Differential treatment in nationality matters based on the sex of the parent constitutes a form of discrimination incompatible with states' international obligations regarding gender equality. Discriminatory administrative practices in issuing identity documents may result in *de facto* denial of nationality and constitute violations of the right to equality and legal identity. The treaty bodies consistently stress that the prohibition of discrimination in matters of nationality applies not only to formal legal rules but also to their practical consequences for an individual's legal status.

[18] Communication No. 38/2012, *J.S. v. United Kingdom*, CEDAW/C/53/D/38/2012.

Regional International Legal Framework on the Prohibition of Discrimination in Matters of Nationality

This part of the paper focuses on three regional human rights protection systems: the European system operating under the Council of Europe, the Inter-American system under the Organization of American States, and the African system under the African Union.

European System of Human Rights Protection

The European Convention on Human Rights (hereinafter "the Convention")[19] represents the core regional human rights instrument of the Council of Europe, aimed at ensuring an effective and uniform protection of fundamental rights and freedoms of the individual. The Convention occupies a special position in international law, as it is not merely a declaratory instrument but a living legal instrument, whose application and interpretation are entrusted to an independent international judicial body, the European Court of Human Rights (ECtHR).

The ECtHR ensures compliance with the obligations arising from the Convention through individual and inter-state applications lodged against the Contracting States. The judgments of the ECtHR are legally binding on the states concerned, and their execution is supervised by the Committee of Ministers of the Council of Europe, ensuring both the normative and practical effectiveness of the Convention.

In exercising its mandate, the ECtHR respects the principle of subsidiarity, according to which the primary responsibility for protecting the rights guaranteed by the Convention lies with domestic authorities. This principle is reflected in the margin of appreciation doctrine, which grants states a degree of discretion in applying the Convention, particularly in areas sensitive to cultural, moral, or social differences.

The relationship between the Convention and the ECtHR is characterised by the Court's dynamic interpretation of Convention provisions. The ECtHR repeatedly stresses that the Convention must be interpreted in light of present-day conditions and evolving European human rights standards. Through its case law, the Court has progressively expanded the content and scope of various rights, including those not explicitly mentioned in the Convention but implicitly protected

[19] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005.

through its provisions, most notably Article 8, which guarantees the right to respect for private and family life.

Since the Convention does not expressly guarantee a subjective right to nationality, the Court's jurisprudence confirms that issues of acquisition, loss, and consequences of nationality may nonetheless fall within the scope of protection of the Convention through Article 8, as nationality may constitute an essential element of an individual's identity (*Genovese v. Malta*).[20] The ECtHR has repeatedly emphasized that although states enjoy a wide margin of appreciation in regulating matters of nationality, the exercise of this power must comply with the principles of legality, proportionality, and the prohibition of arbitrariness (*Karassev v. Finland*).[21]

Where the loss or refusal of nationality interferes with family life, creates a risk of statelessness, or affects the social ties of the individual, it may constitute a violation of Article 8 (*Slivenko v. Latvia*).[22] The ECtHR stresses that interferences with private and family life must pursue a legitimate aim and be necessary in a democratic society (*Pretty v. the United Kingdom*).[23]

The prohibition of discrimination in the enjoyment of the rights and freedoms guaranteed by the Convention is set out in Article 14. Its distinctiveness lies in its non-autonomous nature: it applies only in connection with another right protected by the Convention. Thus, Article 14 does not prohibit discrimination in general, but only discrimination occurring in the enjoyment of a Convention right. The ECtHR interprets Article 14 as an expression of the principle of equality, which does not require absolute equal treatment but prohibits differential treatment of individuals in analogous situations unless it has an objective and reasonable justification (*Thlimmenos v. Greece*).[24] Such justification must pursue a legitimate aim and maintain a reasonable relationship of proportionality between the means employed and the aim sought (*Carson and Others v. the United Kingdom*).[25] The list of discriminatory grounds under Article 14 (e.g., sex, race, language, religion, national or social origin) is illustrative, allowing for a dynamic interpretation (Čapek, 2010, pp. 621–645). The ECtHR has therefore recognised additional prohibited grounds, including nationality, birth status, or sexual orien-

[20] ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

[21] ECtHR, Application No. 31414/96, 12 January 1999, *Karassev v. Finland*.

[22] ECtHR, Application No. 48321/99, 9 October 2003, *Slivenko v. Latvia*.

[23] ECtHR, Application No. 2346/02, 29 April 2002, *Pretty v. the United Kingdom*.

[24] ECtHR, Application No. 34369/97, 6 April 2000, *Thlimmenos v. Greece*.

[25] ECtHR, Application No. 42184/05, 16 March 2010, *Carson and Others v. the United Kingdom*.

tation (*Genovese v. Malta*).[26] In the context of nationality, Article 14 is particularly significant when read in conjunction with Article 8. The ECtHR has repeatedly held that decisions concerning acquisition, loss, or deprivation of nationality that interfere with private or family life may fall under the scope of the prohibition of discrimination (*Biao v. Denmark*).[27]

Unlike Article 14, Protocol No. 12 of the Convention introduces a general prohibition of discrimination applicable to the enjoyment of any right set forth by law as well as to actions of public authorities. This significantly expands the level of protection within the European human rights system (Strážnická et al., 2013, pp. 546–548). Protocol No. 12 removes the accessory nature of the prohibition of discrimination and enables challenges to discriminatory treatment even in areas not linked to specific Convention rights.[28] This broader scope is particularly relevant for matters of nationality, as it allows individuals to allege discrimination in the exercise of public authority without needing to demonstrate interference with another Convention right. Although the ECtHR's case law on Protocol No. 12 remains less extensive, the Court has confirmed that the criteria for assessing discrimination mirror those developed under Article 14, especially the requirement of objective and reasonable justification (*Sejdić and Finci v. Bosnia and Herzegovina*).[29] Its impact is limited by the number of ratifications (20 of 46 member states), resulting in uneven protection against discrimination across the Council of Europe.

Inter-American System of Human Rights Protection

The Inter-American human rights system, established within the Organization of American States, draws inspiration from the Universal Declaration of Human Rights while also reflecting regional specificities. Its fundamental treaty is the American Convention on Human Rights (Pact of San Jose, ACHR),[30] which, building on the American Declaration of the Rights and Duties of Man, provides broader and more explicit protection of certain fundamental rights.

[26] ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

[27] ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark*.

[28] Council of Europe, Explanatory Report to Protocol No. 12, §§ 15–18, ETS No. 177.

[29] ECtHR, Applications nos. 27996/06 and 34836/06, 22 December 2009, *Sejdić and Finci v. Bosnia and Herzegovina*.

[30] American Convention on Human Rights, "Pact of San Jose, Costa Rica" (B-32), OAS, Treaty Series, No. 36.

Unlike the European system, the Inter-American system explicitly recognises the subjective right to nationality in Article 20 ACHR. This provision grants everyone the right to nationality, prohibits arbitrary deprivation, and obliges states to ensure that no child is left stateless. When read together with Article 24 (equality before the law), Article 20 creates a strong normative framework for assessing discrimination in matters of nationality.

The Inter-American Court of Human Rights interprets Article 20 as a norm aimed at preventing statelessness and protecting individuals from exclusion from the legal order. It emphasises that although states possess authority to regulate the acquisition and loss of nationality, this authority is not absolute and must be exercised in conformity with the principles of non-discrimination, the prohibition of arbitrariness, and the protection of legal identity.[31] The Court views nationality as a prerequisite for exercising other human rights and as a key element of legal and social inclusion (*Yean and Bosico Children v. Dominican Republic*).[32] The Court consistently holds that differential treatment is permissible only when pursued for a legitimate aim and is objectively and reasonably justified (*Atala Riffo and Daughters v. Chile*).[33]

Article 24 of the ACHR establishes a general right to equality before the law and to equal protection without discrimination. It is autonomous and applies even without a violation of another Convention right. Together with Article 1(1) ACHR (general non-discrimination clause), the Court is able to assess both formal and substantive equality, that is, not only the text of the law but also its real-world impact. The combined application of Articles 20 and 24 ACHR forms the core of the Inter-American system's protection against discrimination in matters of nationality.

African System of Human Rights Protection

The African human rights system is based on the African Charter on Human and Peoples' Rights (1981),[34] which enshrines the principles of equality and non-discrimination (Articles 2 and 3) and the right to legal personality (Article 5).

[31] Advisory Opinion OC-4/84, 19 January 1984, Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica.

[32] IACtHR, Case of the Girls Yean and Bosico v. Dominican Republic, Judgment of 8 September 2005.

[33] IACtHR, Case of Atala Riffo and Daughters v. Chile, Judgment of 24 February 2012.

[34] African Charter on Human and Peoples' Rights (Banjul Charter), adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

These rights are protected by two complementary bodies: the African Commission on Human and Peoples' Rights (quasi-judicial) and the African Court on Human and Peoples' Rights (judicial).

Both bodies interpret Article 2's general prohibition of discrimination dynamically, applying it to grounds such as nationality, ethnic origin, and security status. They emphasise that equality under Article 3 requires not only formal equality in law but also an obligation on the state to prevent discriminatory effects in practice (*Anudo Ochieng Anudo v. United Republic of Tanzania*).[35]

Although the African Charter does not explicitly guarantee a right to nationality, both bodies have developed jurisprudence affirming that nationality is an essential component of legal identity, and its denial or deprivation may violate multiple Charter provisions, especially those on equality and non-discrimination.

In February 2024, African states adopted the Protocol to the African Charter on specific aspects of the right to nationality and the eradication of statelessness in Africa,[36] affirming the obligation of states to ensure the protection and respect of the right to nationality as a precondition for the exercise of all other human rights. The Protocol, not yet in force, is the first regional instrument to guarantee the right to nationality explicitly. It obliges states to grant nationality to children born on their territory where at least one parent was also born there. Importantly, due to low birth registration rates in many African states, the Protocol allows flexible evidentiary standards, including oral testimony and other indirect forms of evidence.

Case Law of Regional Judicial and Quasi-Judicial Bodies

European Court of Human Rights

As noted in the preceding sections, the international legal framework prohibiting discrimination and the decision-making practice of UN quasi-judicial bodies progressively limit the traditional understanding of state sovereignty in matters of nationality. These normative and interpretative foundations are also reflected in the jurisprudence of the European Court of Human Rights (ECtHR), which, although it does not expressly recognize a subjective right to nationality, has, thro-

[35] ACHPR, *The Matter of Anudo Ochieng Anudo v. United Republic of Tanzania*, Application No. 012/2015, Judgment of 22 March 2018.

[36] African Union (AU), *Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*, 18 February 2024.

ugh the interpretation of the European Convention on Human Rights, developed an effective mechanism of protection against discrimination in this field.

Nationality as Part of Personal and Legal Identity

A landmark judgment in this regard is *Genovese v. Malta*,[37] in which the ECtHR explicitly held that nationality is an element of an individual's identity. That refusal to grant it may significantly affect the person's private life. The Court emphasized that although the Convention does not guarantee the right to acquire nationality, discriminatory refusal to grant it, when it affects the applicant's identity, falls for review under Article 14 in conjunction with Article 8. The key criterion was not the existence of a subjective right to nationality, but the actual impact of the refusal on the individual's personal circumstances.

This concept was further developed in case law on deprivation of nationality. In *Ghoumid and Others v. France*, the ECtHR confirmed that the deprivation of nationality constitutes an interference with Article 8, as it directly affects a person's identity and social links.[38] Although the Court found no violation in that case, it clearly stated that such measures cannot be regarded as legally neutral and must undergo strict proportionality scrutiny. Understanding nationality as an element of legal identity, therefore, plays a crucial role in assessing discrimination, as it requires heightened protection.[39]

Non-discrimination and Nationality

In *Genovese v. Malta*,[40] the Court held that the refusal to grant nationality based on birth status outside marriage violated Article 14 in conjunction with Article 8. The Court noted that the decisive factor is the comparability of the situation and the impact of the measure on personal identity, not the formal absence of a subjective right to nationality. This demonstrates that Article 14 functions as a corrective even in areas where states claim a broad margin of appreciation.

Similarly, in *Biao v. Denmark*,[41] the Grand Chamber found a violation of Article 14 in conjunction with Article 8 due to the indirect discriminatory effects of

[37] ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta*.

[38] ECtHR, Application No. 52273/16 and 4 others, 25 June 2020, *Ghoumid and Others v. France*.

[39] ECtHR, Application No. 50963/99, 20 June 2002, *Al-Nashif v. Bulgaria*.

[40] ECtHR, Application No. 53124/09, 11 October 2011, *Genovese v. Malta.*

[41] ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark.*

immigration legislation, which disproportionately disadvantaged persons of foreign origin. Although the case did not directly concern nationality, it underscored that legal rules affecting personal status and family life, and having discriminatory effects, are subject to strict review. These rulings confirm that Article 14 of the Convention is a key tool in uncovering hidden discrimination in matters relating to nationality.

Deprivation of Nationality and Discrimination

Deprivation of nationality constitutes one of the most severe interferences with an individual's legal status and can result in exclusion from society. The ECtHR has repeatedly stated that such measures may fall within Article 8, as they directly affect a person's identity and social ties (*Slivenko v. Latvia*).[42]

The discriminatory dimension emerges particularly when deprivation affects persons of migrant background or dual nationals. In *Ghoumid and Others v. France*,[43] the Court acknowledged that deprivation of nationality interferes with private life and found no violation only because the measure was lawful, pursued the legitimate aim of national security, was subject to individual assessment, and did not lead to statelessness. Nonetheless, the ECtHR stressed that deprivation measures must always undergo strict proportionality review and must not be discriminatory. Selective application against particular population groups is a matter of special concern.

Conversely, in *Biao v. Denmark*,[44] the Court rejected differential treatment in family reunification based on the duration of the applicant's Danish nationality because this criterion resulted in indirect discrimination against naturalised citizens of foreign origin. The Court held that distinctions closely linked to ethnic origin must be justified by very weighty reasons, which were absent in the case.

Although this case did not involve deprivation of nationality, it demonstrates that indirect restrictions on rights associated with nationality may also have discriminatory effects. Overall, the Court's case law confirms that denationalisation is not merely a matter of public security or sovereign discretion, but a fundamental human rights issue that requires an especially rigorous application of the prohibition on discrimination.

[42] ECtHR, Application No. 48321/99, 9 October 2003, *Slivenko v. Latvia*.

[43] ECtHR, Application No. 52273/16 and 4 others, 25 June 2020, *Ghoumid and Others v. France*.

[44] ECtHR, Application No. 38590/10, 24 May 2016, *Biao v. Denmark.*

Procedural Aspects and Positive Obligations of the State

In addition to substantive issues, the ECtHR also emphasizes procedural safeguards in nationality-related decisions. Even in areas of state discretion, adequate procedural guarantees must be in place to prevent arbitrary or discriminatory decision-making (*AlNashif v. Bulgaria*).[45] These guarantees include the obligation of individualised assessment, reasoned decisions, and access to effective judicial review.

The ECtHR's jurisprudence on nationality demonstrates a significant shift from traditional sovereign understandings toward a human rights-oriented approach. Although the Convention does not explicitly guarantee a right to nationality, the Court, through Articles 8 and 14, has created an effective framework for protecting individuals from discrimination where decisions on acquisition, loss, or deprivation of nationality interfere with identity, family life, or social inclusion.

Key conclusions include that differential treatment based on nationality, origin, birth status, or migration background is subject to strict scrutiny; even formally neutral legislation may produce indirect discriminatory effects; deprivation of nationality affects the core of legal identity and therefore requires strict proportionality and strong procedural safeguards; ECtHR case law significantly limits state discretion in nationality matters, aligning the European system with broader international human rights standards.

Inter-American Commission on Human Rights and Inter-American Court of Human Rights

The Inter-American Commission on Human Rights (IACHR) is a quasi-judicial body of the Organization of American States, established in 1959, whose principal mandate is to promote and protect human rights across the Americas. The Commission monitors compliance with the American Convention on Human Rights[46] and the American Declaration of the Rights and Duties of Man,[47] decides individual petitions, issues thematic reports and recommendations, and, where appropriate, refers cases to the Inter-American Court of Human Rights. Although

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[45] ECtHR, Application No. 50963/99, 20 June 2002, *AlNashif v. Bulgaria*.

[46] American Convention on Human Rights, *Pact of San Jose, Costa Rica* (B-32), OAS, Treaty Series, No. 36.

[47] *American Declaration on the Rights and Duties of Man*, adopted by the 9th International Conference of American States, E/CN/122/Rev, 1*, 8 October 1948.

its decisions are not formally binding, the Commission's findings carry significant authoritative and normative weight, particularly in interpreting the prohibition of discrimination and the right to nationality, including issues related to statelessness, birth registration, and discriminatory administrative practices. The IACHR has addressed, for example, the denial or deprivation of nationality based on origin, including discrimination against persons of Haitian descent in the Dominican Republic[48] and the treatment of Haitian migrants in the United States.[49] It found that deprivation or denial of nationality on grounds of origin violates the principle of equality and leads to mass statelessness. It has also confirmed the impermissibility of discrimination based on national origin or migration status (IACHR, 2015, pp. 152–159).

Because individuals do not have direct access to the Court, petitions are first submitted to the Commission, which assesses whether the complaint falls under the American Declaration (in which case only the Commission examines it) or under the American Convention (resulting in a two-stage procedure: examination by the Commission followed by referral to the Court) (Strážnická et al., pp. 159–162). Judgments of the Inter-American Court are final and binding, and no appeal is permitted. The Court may issue interpretative judgments where disputes arise regarding the meaning of its decisions. In addition to contentious cases, it also conducts advisory proceedings, issuing authoritative interpretations of the Convention and other regional human rights instruments. These decisions have a profound influence on national legal systems across Latin America.

Nationality as Part of Legal Identity and Protection Against Discrimination

The Inter-American Court consistently emphasizes that nationality is part of an individual's personal identity, and its denial or restriction may lead to exclusion from the legal order. This approach was central to the landmark case *Yean and Bosico Children v. Dominican Republic*,[50] in which the Court held that the refusal to grant nationality to children born in the territory because of their parents' origin violated Articles 20 and 24 of the ACHR. The Court stressed that differential treatment based on origin or migration status is impermissible when it produces

[48] Inter-American Commission on Human Rights, *The Situation of Dominicans and Haitians of Dominican Origin in the Dominican Republic*, OEA/Ser.L/V/II. Doc. 45/15 (2015).

[49] Inter-American Commission on Human Rights, *Haitian Centre for Human Rights et al. v. United States*, Case 10.675, Report No. 51/96 (1997).

[50] IACHR, *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of 8 September 2005.

statelessness. The Court assessed discrimination not in isolation but in the context of its cumulative effects on dignity, identity, and equality of the children (*Yean and Bosico Children v. Dominican Republic*). This illustrates a substantive rather than formal understanding of discrimination.

Deprivation of Nationality and the Prohibition of Arbitrariness

The discriminatory dimension of nationality also arises in cases of its deprivation. In *Ivcher Bronstein v. Peru*,[51] the Court examined a situation where the applicant was stripped of his nationality because of his critical stance toward the government. The Court held that nationality cannot be used as a punitive tool against political opponents, and such actions violate Article 20 ACHR. Selective or repressive deprivation of nationality thus constitutes discrimination based on political opinion or another protected characteristic. This case reinforces that the prohibition of discrimination applies even in areas traditionally considered part of the state's broad discretion.

Positive Obligations of the State and the Protection of Vulnerable Groups

A significant element of the Inter-American Court's jurisprudence is its emphasis on states' positive obligations to ensure the right to nationality without discrimination. In cases concerning children, stateless persons, and minority groups, the Court has repeatedly held that states must adopt active measures to remove administrative and legal obstacles preventing the recognition of nationality.

This approach was evident in *Yean and Bosico Children v. Dominican Republic*,[52] which concerned the denial of nationality to children born on the territory of the Dominican Republic due to the Haitian origin of their parents. The Court held that such treatment constituted discrimination based on origin and migration status, in violation of Articles 20 (right to nationality) and 24 (equality before the law) of the American Convention on Human Rights. The Court stressed that nationality forms an essential element of a child's legal identity and that states have a positive obligation to prevent statelessness, especially with respect to vulnerable groups.

Compared with the ECtHR, the Inter-American Court provides stronger protection in matters of nationality, mainly due to the explicit enshrinement of the

[51] IACHR, *Case of Ivcher-Bronstein v. Peru*, Judgment of 6 February 2001.

[52] IACHR, *Case of the Girls Yean and Bosico v. Dominican Republic*, Judgment of 8 September 2005.

right to nationality in the American Convention. The interpretation of Articles 20 and 24 ACHR offers an important comparative contrast to the European system. While the ECtHR relies on the implicit protection of nationality under Articles 8 and 14 of the ECHR, the Inter-American Court's explicit normative framework enables stricter scrutiny of discrimination.

The Inter-American Commission's work demonstrates a consistent approach: discrimination in matters of nationality is incompatible with human dignity and legal identity. Even seemingly neutral administrative or registration procedures may lead to indirect discrimination and *de facto* statelessness, requiring strict review under the equality principle.

African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. African Commission on Human and Peoples' Rights—Discrimination, Legal Identity, and Statelessness

The African Commission has played a pioneering role in recognizing the discriminatory effects of nationality laws in Africa. A key decision is *The Nubian Community in Kenya v. Kenya*,[53] in which the Commission held that systemic denial of birth registration and the resulting barriers to acquiring nationality constituted indirect discrimination in violation of Articles 2, 3, and 5 of the African Charter.[54] The Commission examined discrimination in access to national identity documents and its consequences for legal status, the risk of statelessness, and access to rights. Recognition of legal status and access to documentation determine the ability to acquire nationality and, consequently, to enjoy associated rights. The Commission emphasized that although the legal framework was formally neutral, its application resulted in long-term marginalization of a specific ethnic group.

A similar approach was adopted in *Open Society Justice Initiative v. Côte d'Ivoire*,[55] where the Commission found that selective administrative practices regarding identity documents and nationality could lead to *de facto* statelessness and a violation of the principle of equality. The Commission explicitly stated that states have a positive obligation to ensure effective access to nationality without

[53] ACHPR, Communication 317/2006 (2015), *The Nubian Community in Kenya v. The Republic of Kenya*.

[54] *African Charter on Human and Peoples' Rights (Banjul Charter)*, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

[55] ACHPR, Communication No. 318/06 (2015), *Open Society Justice Initiative v. Côte d'Ivoire.*

discrimination, especially for vulnerable groups. The case involved discrimination against the Dioula ethnic group in access to nationality recognition and identity documents; the Commission recommended reforms to ensure non-discriminatory national legislation and practice, including effective birth registration and access to nationality documentation.

African Court—Nationality as Part of Human Dignity and Equality

The jurisprudence of the African Court on Human and Peoples' Rights builds on and extends the Commission's approach. In *Anudo Ochieng Anudo v. United Republic of Tanzania*,[56] the Court found that the arbitrary deprivation of nationality violated the right to equality before the law, the prohibition of discrimination, and the right to human dignity. The Court emphasized that stripping an individual of nationality without due process and without the possibility of an effective defence constitutes an extreme interference with legal identity.

Another significant judgment is *Robert John Penessis v. United Republic of Tanzania*,[57] where the Court confirmed that deprivation or non-recognition of nationality based on origin or administrative suspicion without adequate procedural safeguards has discriminatory effects and is incompatible with the African Charter. The Court also affirmed the customary-law status of Article 15 of the Universal Declaration of Human Rights (right to nationality).

The jurisprudence of both the African Commission and the African Court reveals several common features. Both bodies reject a purely formal concept of equality and emphasize the material effects of discriminatory measures. Nationality is considered a core element of legal identity, and its denial or deprivation may trigger violations of multiple human rights. States have positive obligations to prevent statelessness and eliminate discriminatory administrative barriers. Even seemingly neutral rules on registration, evidence, or documentation may have disproportionate and discriminatory impacts on certain population groups. Discrimination in nationality matters often manifests indirectly, through procedural and administrative barriers that obstruct effective enjoyment of legal status.

[56] ACtHPR, Application No. 012/2015 (2018), *Anudo Ochieng Anudo v. United Republic of Tanzania*.

[57] ACtHPR, Application No. 013/2015 (2019), *Robert John Penessis v. United Republic of Tanzania*.

Conclusions

The examined jurisprudence of international and regional judicial and quasi-judicial bodies shows that discrimination based on nationality is no longer perceived solely as a manifestation of unchecked state sovereignty, but as an area subject to intensive human rights scrutiny. The ECtHR, the Inter-American Court, the African Court, and relevant UN and regional bodies consistently affirm that differential treatment in acquiring, losing, or depriving nationality is permissible only if it pursues a legitimate aim, is objectively and reasonably justified, and satisfies proportionality requirements.

Case law identifies key criteria for distinguishing legitimate differential treatment from violations of equality. The impact of the measure on an individual's legal and personal identity is central, especially for children, stateless persons, and other vulnerable groups. Bodies assess whether discrimination is direct or indirect, whether comparable situations are treated differently without sufficient justification, and whether measures lead to *de facto* exclusion from the legal order. Procedural safeguards, individual assessment, and the absence of arbitrariness are essential.

Overall, international and regional jurisprudence demonstrates a convergence toward understanding nationality as a fundamental element of legal identity, in which the prohibition of discrimination functions as an essential corrective, limiting state discretion and strengthening a substantive concept of equality.

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Contractual Model for the Participation of Churches in the Public Sphere in the Czech Republic

• **Abstract** •

The article focuses on the model of legal regulation of relations between the church (churches) and the state in the Czech Republic. It is a specific model of agreement that regulates the activities of churches and religious societies in the public sphere (the army, healthcare, prisons, the police, etc.). The Czech model differs from the models commonly used in neighbouring countries. The Czech Republic has not yet ratified a concordat (although attempts were made in 2002 and 2024), and churches in a secularized environment are increasingly forced to cooperate and negotiate with the state. Churches thus act more in the dimension of serving society and less as a political force in society.

Keywords: Contractual Model, Concordat, Relationship Between Churches and the State, Religious Freedom, Public Sphere, Cooperation, Separation.

Introduction

In the context of models of relations between church and state, the Czech Republic could currently be characterised by a certain degree of cooperation in areas of common interest, together with elements of separation, particularly in terms of respect for the autonomy of churches. As of January 2026, the Czech Republic has not yet ratified a concordat (i.e., a sui generis international treaty), although efforts to conclude one have been made repeatedly. The contractual model discussed in this article is a term used in the Czech Republic to describe the legal and institutional arrangement of relations between the state and churches, based on

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contractual agreements between the state (its institutions) and multiple churches or religious societies. This model is an alternative to, on the one hand, mere state regulation of church-state relations through unilateral confessional law and, on the other hand, the still lacking regulation through international law or bilateral agreements with individual churches. In Czech secular society, it allows for cooperation between the state and churches through agreements without undermining the secular character of the state. It is also a tool that protects against potentially dangerous forms of religiosity.

Legal Framework for the Activities of Churches in the Czech Republic

Churches pushed out of the public sphere after 1948 gradually returned to the public eye and into the consciousness of the Czech population after the Velvet Revolution in November 1989. They are also gradually searching for their identity and place in a changed society. Over the last twenty years, they have increasingly learned to act together in relation to the state, in an increasingly ecumenical manner, because the specific nature of the Czech environment requires such an approach. The Czech Republic (hereinafter CzR) describes itself as a religiously neutral state,[1] i.e. a state that is not bound to any religion or worldview, does not favour or disadvantage any church, religious society, or belief (including atheism), and interferes as little as possible in church affairs so that the rights of others or the law are not violated. Fundamental rights and freedoms, including religious freedom in both its individual and collective dimensions, are (apart from their enshrinement in international)[2] guaranteed by Czech law (in particular Articles 3, 15, and 16 of the Charter of Fundamental Rights and Freedoms, which is part of the constitutional order of the Czech Republic. Churches are separate from the state and are independent in their internal affairs, and the state may cooperate with them on an equal and non-discriminatory basis. The basic regulation govern-

[1] Cf. Charter of Fundamental Rights and Freedoms of the Czech Republic, Article 2. This formulation in the Czech constitutional law is a reaction to the experience of the totalitarian Communist State. It ruled Czechoslovakia for 41 years (1948–1989) and all this time the atheism of Marxist-Leninist provenance played the role of the State religion. Cf. Tretera, Horák, p. 37.

[2] Among the international treaties ratified by the Czech Republic are, for example, the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, the International Covenant on Civil and Political Rights of 1966, the Convention on the Rights of the Child of November 20, 1989, and others. Many of these were only acceded to by the then Czechoslovakia after the fall of communism in 1990. According to Article 10 of the Constitution, international treaties take precedence over domestic law in the Czech Republic.

ing the status of churches and religious societies is currently Act No. 3/2002 Coll. on freedom of religious belief and the status of churches and religious societies and on amendments to certain acts (Act on Churches and Religious Societies), as amended (hereinafter referred to as the Act on Churches). Churches and religious societies in the Czech Republic are regarded as special entities under private law, and their activities before the state are subject to registration under the Act on Churches.

The term "registration of churches and religious societies" was introduced by the "first" Act on churches from the period after the Velvet Revolution, Act No. 308/1991 on freedom of religious belief and the status of churches and religious societies, effective as of September 1, 1991. According to this law, churches that were active in the country on the date of its entry into force were registered, and the annex to the law listed them (Tretera and Horák, p. 120). This act remained in force until the current Act on Churches No. 3/2002 Coll. came into effect, i.e. until January 6, 2002. This "second" Act on Churches expanded access to registration for numerically smaller churches and religious societies by reducing the census requirement for registration to a uniform 300 adult persons (Czech citizens or foreigners with permanent residence in the Czech Republic who profess membership in that church) but also removed from the existing set of common rights of churches certain so-called special rights that belong only to certain churches, i.e., those to which the state has granted the exercise of special rights.[3] Recognition of special rights is possible 10 years after registration, provided that the church publishes an annual report, has no obligations to the state or third parties, and meets the census requirement of 1‰ of the population of the Czech Republic according to the latest census of people, houses, and apartments, which currently amounts to 10,525 persons.[4]

The authorisations to exercise so-called special rights include the right to (a) teach religion in state schools (since 2005 referred to as "public schools" or, more precisely, "schools of public founders") in accordance with a special legal regulation, (b) authorize persons performing religious activities to perform spiritual care in the armed forces of the Czech Republic, in places where detention, imprisonment, secure detention, protective treatment, and protective upbringing are carried out, (c) to perform ceremonies in which church marriages with state validity are concluded in accordance with a special legal regulation, (d) to establish church

[3] For more details on these special rights see Přibyl, 2007, pp. 86–99.

[4] According to the latest population census in 2021, the population of the Czech Republic was 10,524,167.

schools in accordance with a special legal regulation, (e) maintain the obligation of confidentiality by clergy in connection with the exercise of the seal of confession or the exercise of a right similar to the seal of confession, if this obligation has been a traditional part of the teaching of the church and religious society for at least 50 years; this does not affect the obligation to prevent a criminal offense imposed by a special law. The right to funding under a special legal regulation on the financial security of churches and religious societies, which was originally part of these special rights, ceased to exist on the basis of Act No. 428/2012 Coll. on property settlement with churches and religious societies, which sought to redress property injustices suffered by churches during the communist era and to create a new model on the basis of which churches would be able to finance themselves. The registers of churches and religious societies in the Czech Republic are administered by the Ministry of Culture as public lists. These are the Register of Registered Churches and Religious Societies, the Register of Unions of Churches and Religious Societies, and the Register of Registered Legal Entities of Churches (Section 17 of Act on Churches).[5]

In this article, we focus on the contractual system between churches and the state as it has gradually developed in the Czech Republic, even though the Czech legal system does not contain (nor does it exclude) any explicit provisions calling for such legal regulation on the basis of contracts. Experts in confessional law in the Czech Republic cite two possible areas of agreements: (1) a concordat (which the Czech Republic does not yet have) and (2) the conclusion of agreements of a domestic nature between state authorities and individual religious societies or their associations (Tretera and Horák, p. 106). These agreements then supplement state legislation on churches with provisions focused on specific areas of activity of churches and religious societies in the public sphere. The treaty system was thus created as a kind of practical "substitute," as will be described below. Churches in the Czech Republic operate on the basis of state legislation—constitutional and statutory provisions (not only on the basis of concluded treaties)—in other areas as well, such as education, social services, and others, if they are covered by law.[6]

[5] The registers are publicly available online via the link: https://www-cns.mkcr.cz/cns_internet/Default.aspx

[6] For example, the legal status of church schools as part of the education system is enshrined directly in Act No. 561/2004 Coll. on preschool, primary, secondary, higher vocational, and other education (the Education Act), § 8 section 6, etc.

The Concordat Agreement and its Absence in the Czech Republic

A concordat agreement is a sui generis international treaty concluded between representatives of the state and the Catholic Church (represented by the Holy See), addressed to the benefit of both citizens and believers, as well as society as a whole, guaranteeing religious freedom (the status of the Church, its institutions, and representatives), autonomy (appointment of bishops, exercise of ecclesiastical power, relations with the Holy See and other international relations, church property), and cooperation (marriage and family, cultural and historical heritage, education, public service in the army, prisons, healthcare, etc.). Based on the principle of equal treatment, a modern democratic state should then treat the conclusion of agreements between the state and non-Catholic churches and religious societies (which, unlike the Catholic Church, do not have international legal representation)—however, this option is not yet available in the Czech legal system. Attempts to negotiate a concordat in the Czech Republic have been ongoing since the country's re-democratization. The interwar Czechoslovakia did not have a formal concordat, but rather a provisional concordat agreement that addressed the most pressing issues of common interest to the church and the state at the time: Modus vivendi concluded at the turn of 1927 and 1928.[7] The modus vivendi was not formally abolished after the communist coup in February 1948, but it was fundamentally violated by the legislation of the totalitarian regime and finally, after the Velvet Revolution in November 1989, ceased to exist on the basis of the customary principle of international law *pacta sunt servanda—rebus sic stantibus* (Cf. Němec, p. 85).

Attempts to conclude a concordat in the Czech Republic[8] have occurred repeatedly throughout the modern history of the state, both on the part of the Catholic Church and on the part of political representatives. Already during his visit to the Czech Republic in 1997, Pope John Paul II himself called for such an adjustment of relations at the international legal level. However, the situation is always highly dependent on the current political atmosphere and representation in the Czech Republic, which is why such a treaty has not yet been ratified. Gradually, on the basis of diplomatic negotiations, two drafts of such a concordat treaty were signed in the Czech Republic in 2002 and 2024, but the ratification process

[7] The text of the *Modus vivendi* is available in Czech at: https://spcp.prf.cuni.cz/dokument/modus.htm

[8] The author refers here to another article she has written on this issue: Menke, 2025, pp. 89–113.

for the first treaty was halted in the Chamber of Deputies of Parliament, which did not recommend ratification by a majority of 110 votes out of 200 deputies (177 deputies were present), and the treaty was therefore not submitted to the President of the Republic for ratification (Tretera and Horák, p. 109). In the second case, the text of the agreement was signed on October 24, 2024, at the Office of the Prime Minister of the Czech Republic in Prague. Cardinal Pietro Parolin, Secretary of State, signed on behalf of the Holy See. Petr Fiala, Prime Minister, signed on behalf of the Czech Republic. The process is currently on hold following recommendations for ratification by both chambers of the Czech Parliament: the Chamber of Deputies and the Senate. The Chamber of Deputies gave its consent to ratification on March 6, 2025, while the Senate gave its consent in November 2024 and did not request a constitutional review as a whole. However, in March 2025, a group of 17 senators subsequently requested a review and turned to the Constitutional Court of the Czech Republic, which should review whether this agreement is in accordance with the constitutional order of the Czech Republic. The Constitutional Court accepted the proposal for consideration under file number Pl. ÚS 8/25, and Judge Milan Hulmák was appointed as the reporting judge. President Petr Pavel expressed his doubts to the Constitutional Court, saying that the treaty undermines the fundamental constitutional principles of the Czech Republic as a sovereign, secular, and republican state. The Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic sent supporting opinions to the Constitutional Court.[9] The Constitutional Court of the Czech Republic has not yet (January 2026) ruled on the agreement, and so the ratification process has not continued (final ratification would then be carried out by the President of the Czech Republic and the Pope). Today, the Czech Republic is one of the few countries in Europe that has not yet ratified the concordat agreement (Csukás, 2024).[10] Although the Czech Republic is considered one of the most atheistic countries in Europe, I am convinced of the need for such an

[9] All documents related to the proceedings before the Constitutional Court of the Czech Republic are available at: https://www.usoud.cz/projednavane-plenarni-veci?tx_odroom%5Bdetail%5D=5478&cHash=0fb79ed4db760ce41cfb6da76482b6b6

[10] All countries bordering the Czech Republic have concluded concordats with the Holy See; in Germany, these agreements are also concluded by individual states. Other European countries that have concluded concordats since the Second Vatican Council include Spain, Italy, Malta, Hungary, Croatia, Estonia, Lithuania, Latvia, Slovenia, Portugal, Bosnia and Herzegovina, and Albania (outside Europe, for example, Colombia, Ecuador, Peru, Bolivia, Brazil, Tunisia, Morocco, and Kazakhstan). It is clear that in many of these countries, Catholics constitute a minority of the population.

agreement in the Czech environment. Not only would the legal certainty of the Catholic Church and, equally, of other churches be reinforced by international law, but the proposed text of the 2024 concordat also enshrines the contractual principle described in the article (Csukás, 2024).[11]

If the concordat is ratified and published in the Collection of Laws and International Treaties, it will become an international treaty within the meaning of Article 10 of the Constitution and, in the event of a conflict with the law, will take precedence over the common acts, not over the constitutional ones. Since the concordat regulates religious freedom, the ratified and promulgated concordat will have the status of a special human rights convention in the legal system of the Czech Republic (Csukás, 2024).

For purposes of comparison, it should be noted that the Slovak Republic, as the second successor state of former Czechoslovakia, concluded concordat agreements. The Slovak model consists of a basic agreement from 2000 (*accordo di base*) with follow-up partial agreements: on spiritual service to Catholics in the armed forces and armed corps (from 2002) and on education and training (2004). The basic agreement provides for further partial agreements, which have not yet been signed: on the regulation of the right to conscientious objections and on property. In parallel with the text of the agreements, similar texts of agreements between the Slovak Republic and other churches and religious societies were prepared on the basis of the principle of parity and approved by parliament: the basic agreement of 2002 with a group of 11 non-Catholic churches operating in Slovakia, followed by partial agreements on spiritual service in the armed forces and corps of 2004 and on education and training of 2005. Other churches and religious societies may accede to the multilateral agreement with non-Catholic churches with the consent of all existing signatories, and individual current signatories may withdraw from this agreement.

[11] The concordat would not only strengthen the parity of churches and religious societies, but would also reinforce the principle of legal certainty, which Parliament occasionally undermines. An international treaty cannot be amended without the consent of the other party (i.e., the Holy See), and therefore the concordat would guarantee all believers and all churches and religious societies individual and collective religious freedom with all its consequences, regardless of changes in the composition of the government, the House of Representatives, or the Senate. Certainty that a "normal" (non-constitutional) law cannot provide.

The Contractual Model as a Form of Cooperation between Churches and the State

The system of relations between churches and the state in post-secular Czech society can be characterized as cooperative to a certain extent, with elements of separation. The form and content of this cooperation are specified here by treaties and agreements between churches themselves, as well as by subsequent treaties with the state, its representative in a specific area of common interest, e.g., in the army, healthcare, prisons, etc. Czech secular society perceives it more positively when several churches act in harmony and ecumenically in the public sphere than when each of them pursues its own line independently of the others. In many areas, therefore, the model of denomination-based pastoral care (e.g., Catholic care only for its own believers, as required by Catholic Church regulations) is not applied, but rather a model of broad non-evangelical cooperation on an ecumenical basis. This model of tripartite agreements (state authority + Czech Bishops' Conference + Ecumenical Council of Churches in the Czech Republic) developed gradually as a necessity but also, to a certain extent, as a practical "substitution" for the non-existent concordat. The contracting parties in inter-church agreements are represented here by the Czech Bishops' Conference (CBC) as the representative of the Roman Catholic and Greek Catholic churches, and the Ecumenical Council of Churches in the Czech Republic (ECC) as the representative of member churches (the Apostolic Church, the Baptist Brethren Union, the Brethren Church, the Czechoslovak Hussite Church, the Evangelical Church of Czech Brethren, the Evangelical Church of the Augsburg Confession in the Czech Republic, the Evangelical Methodist Church, the Unity of Brethren, the Orthodox Church, the Silesian Evangelical Church of the Augsburg Confession, and the Old Catholic Church) and religious communities with observer status in the ECC (the Seventh-day Adventist Church, the Federation of Jewish Communities in the Czech Republic). The contracting parties in agreements between churches and the state are the CBC, the ECC, and representatives of the state (ministries, etc.) according to the area covered by the agreement. Usually, an agreement is first concluded between the churches and only then with the state, as will be described in more detail in the following chapter.

The aforementioned Article 13 of the unratified concordat agreement of 2024 stipulates that: 1. In matters concerning the entire Catholic Church in the Czech Republic, the Czech Bishops' Conference shall negotiate with ministries and other central administrative authorities of the Czech Republic. This shall not affect the right of the contracting parties to negotiate these matters directly. The Czech

Bishops' Conference, with the consent of the Holy See and the relevant authorities of the Czech Republic, may conclude agreements on the matters referred to in the first paragraph. This shall not affect the existing practice of concluding multilateral agreements between the authorities of the Czech Republic and churches and religious societies.[12] This article attempts for the first time to enshrine in law the existing possibility for state authorities to conclude agreements with several churches and religious societies, i.e., including the Czech Bishops' Conference and the Ecumenical Council of Churches, on spiritual service in public institutions, which is an established practice dating back to 1994. This provision is the most significant innovation introduced by the concordat. Otherwise, it more or less recapitulates the rights of believers and religious communities scattered across various laws, clarifying them here and there, but providing them with greater legal protection through international law (Csukás, 2024).

Concrete Areas of Church Activity in the Public Sphere Based on Agreements

In the sphere of the army, a contractual ecumenical non-missionary model was created after the first positive experience with the work of a military chaplain in the Czech IFOR/SFOR unit in Bosnia and Herzegovina in 1996. On June 3, 1998, an agreement was concluded between the Ministry of Defence of the Czech Republic, the Czech Bishops' Conference, and the Ecumenical Council of Churches in the Czech Republic on the conditions for the establishment and operation of spiritual services within the Ministry of Defence. On the basis of this agreement, the Minister of Defence of the Czech Republic issued Order No. 19/1998, establishing a chaplaincy within the Ministry of Defence on June 22, 1998. The specific conditions for the work of military chaplains were then laid down in the Agreement on Cooperation between the Ministry of Defence of the Czech Republic, the Ecumenical Council of Churches in the Czech Republic, and the Czech Bishops' Conference of June 28, 1999. An appendix to this agreement was then drawn up on January 26, 2012, between the Ministry of Defence of the Czech Republic, the Ecumenical Council of Churches in the Czech Republic, and the Czech Bishops' Conference. The latest (currently valid) Agreement on Spiri-

[12] Article 13 of the Concordat Agreement of 2024. The full text of the agreement is available at: https://mzv.gov.cz/jnp/cz/zahranicni_vztahy/mezinarodni_smlouvy/aktualne/smlouva_mezi_ceskou_republikou_a_svatym.html

tual Service in the Ministry of Defence was signed on December 18, 2024.[13] Military chaplains are clergymen sent into service by all Christian churches affiliated with the Ecumenical Council of Churches and the Czech Bishops' Conference to serve everyone in the military who requests their assistance (soldiers, their family members, commanders, and others). Since its reestablishment in 1998, more than 40 military chaplains from nine Christian churches have served in the Czech Army.[14] The inter-church platform for consultation in the field of spiritual service in the army was registered on February 4, 2002, as an association of churches and religious societies under the name Military Spiritual Service.

In the area of prisons, the first tripartite agreement between the Prison Service of the Czech Republic, the Czech Bishops' Conference, and the Ecumenical Council of Churches in the Czech Republic was concluded on January 7, 1994, to strengthen the powers of representatives of churches and religious societies. As more detailed specifications were needed, further agreements were gradually concluded: the second agreement on June 28, 1999, the third agreement on August 18, 2008, and the fourth, currently valid agreement on November 21, 2013.[15] Spiritual services in prisons are provided by prison chaplains and volunteer clergy. Spiritual services in Czech prisons are fundamentally ecumenical, and all churches registered in the Czech Republic with special rights to provide services in prisons may participate. Prison chaplains are sent by their own churches after consultation with other churches and religious societies. Chaplains are civil employees of the Prison Service, which currently employs 43 prison chaplains from 11 different churches in 34 prisons and remand centres. Chaplains are organizationally accountable to the director of their prison and, in terms of methodology, to the chief chaplain of the prison service and his deputy. In addition to providing spiritual services in local conditions, they also participate in the creation and implementation of educational programs leading to a change in the values of clients, devote themselves to their co-workers, and serve as advisors to the directors of their prisons in the areas of ethics and church and religious issues.[16]

[13] Text of the Agreement on Spiritual Services in the Ministry of Defence, signed on December 12, 2024, available at: https://spcp.prf.cuni.cz/rcp/97/06-dohoda-o-duchovni-sluzbe-v-rezortu-ministerstva-obrany.pdf

[14] Information retrieved February 13, 2026, from: https://kaplani.mo.gov.cz/aktuality/zakladni-informace

[15] The text of the current Agreement on Spiritual Service in Prisons is available at: https://www.vs.gov.cz/media/organizacni-jednotky/generalni-reditelstvi/ostatni/dohoda-o-duchovni-sluzbe.pdf

[16] Information retrieved February 13, 2026, from: https://www.vs.gov.cz/sekce/duchovni-sluzba-1

Contractual cooperation is also gradually developing in the area of post-traumatic care for victims of crime and disasters (police, fire brigade). The first trilateral agreement on the provision of post-traumatic intervention care for members of the Czech Police was concluded on October 7, 2002, between the Ministry of the Interior, the Czech Bishops' Conference and the Ecumenical Council of Churches in the Czech Republic, and the first similar cooperation agreement with the General Directorate of the Fire and Rescue Service at the beginning of 2003 (Tretera and Horák, p. 217). Comprehensive regulation of this area was established by the Agreement on the Participation of Persons Performing Spiritual Services in the System of Providing Post-Traumatic Intervention Care between the Ministry of the Interior, the Czech Bishops' Conference, and the Ecumenical Council of Churches in the Czech Republic dated October 6, 2011. The conditions for the provision of spiritual services were then regulated by the Police President's Instruction of June 7, 2019, on the provision of spiritual services No. 121/2019. On April 14, 2020, an "inter-church" Agreement on the conditions for the establishment and operation of spiritual services in the Czech Police and other security forces was signed between the Czech Bishops' Conference and the Ecumenical Council of Churches,[17] and followed by the Agreement on Spiritual Service in the Czech Police Force of December 16, 2024, concluded between the Czech Police Force, the Czech Bishops' Conference, and the Ecumenical Council of Churches in the Czech Republic, which currently regulates spiritual service in the police force. The agreement defines the competences and scope of activities of police chaplains, who are appointed by individual churches represented in the Czech Bishops' Conference and the ERC. Their activities are coordinated by the Council for Spiritual Service in the Czech Police, which addresses fundamental issues related to spiritual service, comments on current affairs, and cooperates with experts and other institutions. There are currently only two chaplains working for the Czech Police – one for the Roman Catholic Church and one for the Old Catholic Church. These chaplains perform their service to police employees voluntarily and completely free of charge.[18]

The last area in which a contractual model of cooperation between churches and the state has gradually been established is *health care*. The Inter-Church Agreement on Spiritual Care in Health Care was concluded on November 20, 2006, and has been gradually refined by two amendments: the first amendment

[17] The text of this inter-church agreement is available here: https://www.cirkev.cz/public/media/cp_news_archive/dohoda-u-policie.pdf

[18] Information retrieved February 13, 2026, from: https://www.ado.cz/2024/12/18/podepsana-dohoda-o-duchovni-sluzbe-u-policie-cr/

of December 12, 2011, and the second amendment of January 15, 2019, defining the qualification requirements for healthcare chaplains and volunteers. In 2017, the Ministry of Health issued a methodological guideline on spiritual care in inpatient healthcare facilities provided by healthcare service providers as a recommendation. It was not until July 11, 2019, that a tripartite agreement was concluded between the Czech Republic, represented by the Ministry of Health of the Czech Republic, and Christian churches represented by the Czech Bishops' Conference and the Ecumenical Council of Churches on the provision of spiritual care in healthcare facilities. A healthcare chaplain is a person who provides pastoral care in healthcare or social services and hospices. They work on the basis of a mandate from their church and a contract with the hospital in hospital teams regardless of religion, offering a listening ear, human closeness, prayer or sacraments, and are bound by confidentiality. The position of healthcare chaplains is also enshrined in state legislation in Section 113h and 113i of Act No. 372/2011 Coll. on health services and conditions for their provision (the Health Services Act).

Conclusions

We can therefore summarize that the legal definition of the activities of churches in the Czech public sphere is determined by a combination of legislation and contractual provisions. The approach of drawing up an inter-church agreement, which became a prerequisite for a later agreement with the ministry or other representative of the state administration in the relevant area, has proven successful. The aforementioned tripartite contractual model of legal regulation of church activities in the Czech public sphere is specific. It effectively replaces other models: primarily the frequent model of a concordat agreement in the case of the Catholic Church (as is the case, for example, in Poland, Slovakia, and other countries) or another contractual model of state agreements with non-Catholic churches and religious societies (used in a certain form, for example, in Slovakia or Germany). In a secular state, this allows for cooperation between churches and the state without significant polarization or privileging of certain churches and religious societies. The Czech experience shows how churches, after the end of the totalitarian regime in 1989, which had prevented them from engaging in many activities, sought to re-engage in public life. Churches in the Czech Republic were gradually forced to find their position in ecumenical dialogue, rather in an attitude of service in the public sphere and in joint agreement with public authorities. The consensus of the majority of society regarding churches as a necessary and good

partner in the Czech Republic is lacking after the long-term devastation of values from the times of oppression. We can say that this model is cautiously cooperative (unlike, for example, the long-term and systematic cooperation between churches and the state as established in Germany, where churches can have the status of public corporations and are institutional partners of the state). However, the differences are determined by the context of historical and social developments in individual countries, and the Czech Republic takes a very cautious approach to anything that could even hint at a violation of the secularity or neutrality of the state. This can also be seen in the reserved attitude of Czech society towards the concordat agreement, which has not yet been ratified in the Czech Republic, even though two texts of this agreement have already been drafted. In the Czech environment (even 60 years after its conclusion), the message of the Second Vatican Council concerning modern relations between the Church and the state has not yet resonated sufficiently: "The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all."[19] This also shows how deeply the lack of freedom affects the history and culture of a nation.

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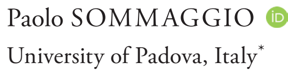
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Europe: Paradigms and Perspectives of Legal Practice in the European Context

• **Abstract** •

The article examines three paradigms of European legal practice in permanent transition: the normative paradigm (from legislative rules to jurisprudential rights), the systemic paradigm (from hierarchical pyramid to reticular network), and the axiological paradigm (between bioconservatives and bioinnovators). The author argues these are not complete shifts from one stable model to another: paradigms remain perpetually suspended between old ones and new ones. This article contributes to the existing literature on European legal theory by demonstrating that the three examined paradigms—normative, systemic, and axiological—do not represent completed shifts but rather coexist in a state of permanent transition, a condition that itself constitutes the new immutable paradigm of contemporary European legal practice. Ultimately, the article argues that Europe must recover its Socratic philosophical heritage to transform the condition of permanent transition from a source of democratic fragility into an opportunity for reflective legal practice.

Keywords: Permanent Transition, Legal Pardigms, Rules vs Rights, Pyramid vs. Network, Bioconservatism vs. Bioinnovation.

Introduction

In this paper, I will attempt to highlight the paradigms of legal practice undergoing the most significant change in Europe today, while also trying to show how they are changing according to a completely peculiar perspective that must be taken into due account in a context like the contemporary one.[1]

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[1] This paper reproduces, expanding and systematizing them, some considerations expressed in the presentation entitled "Europe: Paradigms and Perspectives", given during the Conference entitled "Federalizzazione dell'Unione Europea: più luci o ombre" held on September 13, 2024, at Sala

A paradigm, according to the teaching of Thomas Kuhn, constitutes a central idea, a universally recognized conceptual achievement, which, for a certain period of time, provides an acceptable model to those acting in a given field (Kuhn, 1962). The issue of paradigm shift (or, rather, paradigm shifts) that I am interested in briefly analysing here is the change in some fundamental ideas that are typical of legal practice, particularly normative, sociological, and axiological, in the current structure of the European Union.

The element of originality I will try to show consists in the peculiarity of these changes: they remain in constant transition (i.e., never definitively moving from point A to point B but remaining perpetually poised between the two). In other words, the paradigms relating to law, the socio-political community, and shared values in European legal practice do not transition from an "old" paradigm to a "new" paradigm but become "mutants" in the most proper sense of the term: a present participle. This is because they change, yet remain in constant change (if you will, following a pattern reminiscent of the so-called "uniform rectilinear motion") according to a model of "permanent transition". That is, they do not move from one point to another, but remain constantly in transition without ever truly becoming something else, erecting the mutation itself as a new paradigm that appears, itself, immutable. Let us see how.

The methodology adopted is qualitative and hermeneutical, drawing on legal theory, political philosophy, and sociology. Each paradigm is analysed through its foundational authors and critically assessed through contemporary European legal developments, including case law and governance practices.

The Legal Paradigm

The first transition I will analyse is that of the normative paradigm, or rather, the way law is considered in the widespread culture of European jurists. Many of them, in fact, today grapple with the issue of expanding protections recognized for bearers of ever-new interests (Bobbio, 1990; Galgano, 2005; Irti, 2007). If we look at the current debate, we notice how it is linked to the question of identifying new

Zuccari (Palazzo Giustiniani)—Senato della Repubblica Italiana—Rome. The author would like to thank the Rome Bar Association, the University of Rome—Foro Italico, the Nicolaus Copernicus University in Poland, and all those who have helped organize the important opportunity for reflection and exchange. For more on the conference, see P. Lewandowski, Międzynarodowa Konferencja Naukowa Federalizzazione della Unione Europea: più Luci o Ombre? Rzym, 13 Września 2024, *Roczniki Nauk Prawnych vol. XXXIV, no. 3 (2024)*, pp. 101–103. https://doi.org/10.18290/rnp24343.7

positions of advantage (particularly civil rights) or, better, to the creation of situations of protection and guarantee according to a pattern consisting of the protection, by national domestic courts or European courts, of ever-new claims.[2] These prerogatives are presented as new specifications of equally existing principles and values within the Union, such as, for example, the values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, or those of the Charter of Fundamental Rights of the European Union or the European Convention on Human Rights, also in light of the jurisprudence of the Court of Justice and the European Court of Human Rights (ECtHR).

European states, still on paper based on written law (Civil Law), seem to have lost interest in the traditional instrument of *positum* law and are transitioning from a legal culture that is tendentially normative one, based on general and abstract rules of parliamentary origin, to a culture based *primarily* on the jurisprudential recognition of *ad hoc* legal protections (Bobbio, 1968; Bobbio, 1990). A mechanism of legal production analogous to that operating in Common Law countries manifests itself in European practice, in a perspective that seems to exacerbate the vague mercantile flavour of a production in which the citizen always demands new services[3] (Dworkin, 1977). This is because, today, many *rights* are considered to exist before and regardless of their recognition within normative measures of a general and abstract nature.

What I would like to draw attention to, however, is that this model risks leading to a situation of overproduction of positions of advantage, which, although in theory a positive element, risks showing profound critical issues in practical realization. It seems, in fact, that the jurisprudential production of new *rights* follows a logic more linked to *customer satisfaction* than to the control of democratic rationality that instead oversees the normative production of parliamentary assemblies (*rules*).[4] Apparently, this is a favourable situation for the European citizen (others

[2] See, for example, the systematic use that domestic courts have developed of Article 267 TFEU on the referral for a preliminary ruling to the European Court, where the nomophylactic role of the domestic high courts themselves is strongly challenged.

[3] For instance, the European Court of Justice's jurisprudence on the *right to be forgotten* (Case C-131/12, *Google Spain SL v. AEPD*) illustrates this dynamic: a new right was created by judicial decision without prior parliamentary deliberation, subsequently forcing domestic legislatures to retroactively accommodate a framework of rules to manage its scope.

[4] Just one example: the increasingly evident phenomenon of massive preliminary references to the European level and the way in which it has become, in fact, a tool that upsets the nomophylactic function of the domestic courts of each Union country. Here the national legislature is inhibited because the domestic court requests a review from the European Court and, in this way, can overcome the limits imposed by the parliamentary assemblies in the legislation of each state.

would call it a win-win situation), since the one who enjoys the positive effects of this mechanism is the citizen who can receive protection both from established law and from courts that create a new *ad hoc* protection situation.[5] But this is not, in reality, what actually happens. The rights-based approach of the Courts and the inexhaustible production that ensues is proving increasingly *disruptive*: from an exception, it has become the customary way of requesting new rules, so much so that today it seems the most effective tool for modifying the domestic legal systems of Union states in a direction we could define as post-democratic, i.e., one that does not take due account of the democratic scrutiny of national parliaments.

The paradigm shift (from rules to rights) constitutes a serious problem for the constitutional framework of the European Union states because they are still linked to traditional formulas of legal production, connected to general and abstract provisions issued by parliamentary bodies. While, in fact, it is the decisions of (domestic and) European courts that contribute more widely to providing citizens with tools for defence or recognition of new prerogatives, sometimes possibly competing with or openly contrasting those of the national legislature. We have thus moved from the problem of the abstractness of the provision born from parliamentary debate, today perceived as distant and the result of too many compromises, to the greater speed and concreteness of measures that attempt to resolve practical situations, thus recognizing new rights. In an activity that, however, is characterized as inexhaustible, i.e., suffering from a tendency towards productivity and inflation.

The author is not interested in delving into how this operation might, in fact, modify the equilibria linked to the sovereignty of a given state (although this would be a very interesting topic to explore). What I instead wish to emphasize is that the culture of normativism (which for convenience we will take as a unitary phenomenon), seems to have yielded to the practical reason of the so-called *suppletive jurisprudence*, particularly at the moment of justifying the premises upon which judges arrive, case by case, at a decision.[6] Much could be said about these new legal products and the issue of their inflation; however, I will limit myself here to pointing out some potential problems. The first one is that situations of conflict

[5] I deliberately leave aside the issue of the relationship between European Courts and National Courts where the strategy of direct recognition of prerogatives (rights) to individuals sometimes comes into open conflict with the national legislation of a member state, generating serious problems of nomophylaxis, if not outright systemic sovereignty.

[6] Leaving aside for obvious reasons of expediency the distinction between decisional reasoning (the so-called "context of discovery") and justificatory reasoning (found in the motivation), we can instead briefly frame the issue of justifying decisions.

between *rights* will become increasingly numerous: by avoiding recourse to the parliamentary discussion of the rule, which guarantees the preventive input of all interested parties (and counter-interested parties), advantageous prerogatives are created thanks to the recognition of a single Court which, in case of conflict, will not be able to harmonize due to the lack of a shared resolution criterion.

Secondly, there is the concrete risk that through the inflation of *rights*, positions of "privilege" will be created, characterized by the ever-growing demands of ever-new minorities compared to the demands of the rest of the population that still relies on the slower, and democratic, instrument of *rules*.

The third risk is the abandonment, thanks to the spread of *rights*, of the typical relationship of the right-duty correlation (which instead characterizes rules) since in *rights* the need for a duty incumbent on the holder of a position of advantage is barely noticeable. And this leads us to the final consideration: the concrete danger of creating a new European citizen endowed with ever-new *rights* of jurisprudential origin and, as just mentioned, less attentive to their duties, including respect for the rules themselves (which can hardly be a concrete tool for protection since they are now increasingly outside the circuit of rights production).[7] A further problem is the cultural habit of the so-called "begging" for rights, i.e., the request for specific protection situations deriving from a concession by Authority, government or courts, regardless of an architecture made up of general principles valid for everyone.

In such a scenario, how will it be possible to ask European citizens to respect the rules of coexistence (*rules*), if they then take a back seat to rights (*rights*) endowed with different appeal because they are immediately effective? And how will it be possible to curb the demand for new prerogatives, whose overproduction will certainly lead to situations of irreconcilable conflict between *rights*? Courts risk, in fact, becoming simple providers of services, *rights*, completely disconnected from democratic scrutiny and axiological evaluation of the shareability of their extension. This is no small problem, on which much more could be said, but this is not the most suitable place (Sommaggio and Daldoss, 2025).

The paradigm of rules is being replaced by the paradigm of rights as in a sort of Americanization of Civil law countries (Somma, 2011; Somma, 2007). Apparently, because on a technical-legal level, we are not witnessing a substitution of the old rules paradigm with the new rights paradigm; instead, we are observing

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[7] An indication of this risk is that aura of "moral impunity" that culturally accompanies those who act to claim new rights which, even if endowed with strong media impact, risk justifying, at the limit, even a position "against the rules" that is tolerated in the name of higher values.

a constant transition that remains between the rules of parliamentary creation and the recognition of new jurisprudential prerogatives: a kind of "permanent transition" that must be recognised since there is no longer a shared reference model, only a model in continuous oscillation between rules and rights.

The Systemic Paradigm

Let us now consider a second paradigm: the systemic paradigm which, from a pyramidal model, increasingly takes the form of a network, also never definitively transitioning from one to the other. This second paradigm straddles the tradition of legal formalism, clearly identifiable with the idea of a hierarchically structured system in a vertical sense (represented by the metaphor of the 'pyramid' or *stufenbau*), and that current of thought which considers the 'network' as the most appropriate metaphor for the new governance according to a horizontal and polycentric perspective. In this framework, the governance model of the European Union seems to transition from a centralistic pyramidal paradigm to a federal and reticular one without, however, ever fully reaching it, but rather remaining in a condition of constant transformation.

Concerning the pyramidal paradigm, we can refer to the traditional normative organization (of *rules*), which has its roots in the thought of Hans Kelsen (Kelsen, 1989; Kelsen, 1966; Kelsen, 1952). In this model, we find some recurring elements such as a hierarchical structure of sources (Sarra, 2012), the 'top-down' trend of the main mechanisms of legal reasoning (linked to the privilege of the deductive reasoning model), and the principle of completeness of the system[8] (Bin, 2013, pp. 8–12, 16–17; Pastore, 2014, p. 27). However, contamination between different legal systems and the phenomenon of globalization lead, according to Baldo Pastore as well, "the pyramid to crumble"[9] (Pastore, 2014, p. 28). The pyramidal paradigm crumbles due to factors of cultural and social change such as a progressive interdependence of markets and processes of global political integration and

[8] Read the clear words of Baldassarre Pastore: "The centrality of that ordering principle, whereby one source prevails over another, which produces a representation of the system as a 'pyramid', fades away: a metaphor of that 'vertical hierarchy' which certainly had a historical and cultural pre-eminence, conferring organicity and compactness to the system of sources, but which today, in the presence of crowded and disjointed steps of the pyramid, appears increasingly less exhaustive and not even possible."

[9] Thus Pastore: "The proliferation and fragmentation of sources, normative polycentrism and osmosis between legal systems (national, supranational, international) prevent any reading of the legal phenomenon according to hierarchical schemes. The pyramid tends to crumble."

the irruption of so-called 'liquid' thought (Bauman, 2000) after the crisis of modernity (Toulmin, 1990) and the subsequent advent of post-modernity (Lyotard, 1979; Vattimo, 1991). The authors who best help understand the new paradigm of the network are, I believe, François Ost and Michel Van de Kerchove (Ost and de Kerchove, 2002; Daldoss, 2022). They argue that, unlike the pyramidal model, the new references are creativity, flexibility, pluralism, i.e., the 'coexistence' of different value positions (Losano, 2005). In other words, moving from a thetic perspective to a pluralist or polycentric one (Sommaggio, 2013). This paradigm, on the systemic level, is characterized by proportionality and subsidiarity as increasingly fundamental pillars in the processes of validation, and social and political legitimation. Indeed, the literature that has recently addressed the theme of multi-level governance in the European Union[10] (Piattoni, 2010) seems to support this very transformation since authority is diffused among different levels of government and among different actors, and governance models differ considerably from each other[11] (Hooghe and Marks, 2001, p. 4).

The network metaphor, therefore seems particularly suitable for grasping the essence of multi-level governance: "(…) the network approach suggests that governance should be based on models of relationship between public authorities at various levels, associations and citizens that are less constrained" (Jachtenfuchs, 2001). An example of how the network metaphor can be used in the systemic landscape comes from one of the most representative jurists on the Italian scene: Sabino Cassese (Cassese, 1999). Particularly, in his work *The Crisis of the State* (Cassese, 2002), he offers some reflections on a transformation in the way of conceiving sovereignty: "(…) the multiplication of public powers was not matched by their hierarchization, so that roles, tasks and positions are only partially defined; there are no clear boundaries for areas or matters, but structural and functional interdependence; procedures are not sequences articulated along clear lines of authority, but actions carried out in mutual support" (Cassese, 2002, pp. 62–63). To clarify this coexistence, one may imagine the European legal system not as a pyra-

[10] "Multi-level governance" began to be discussed from the 2001 White Paper on European Governance. See: European Governance—a White Paper, COM (2001) 428 of 25.07.2001.

[11] This leads, among many others, Liesbeth Hooghe and Gary Marks to argue that the European Union would be characterized mainly by three features: "First, (…) competencies in decision-making are shared between actors at different levels and are no longer monopolies of national governments. Second, collective decision-making among states involves a significant loss of control by individual national governments. (…) Third, political arenas are interconnected in a network shape rather than nested. If on the one hand national arenas remain important in shaping the preferences of national governments, the model of multi-level governance rejects the idea that subnational actors are nested solely within them."

mid that has collapsed into a network, nor as a network that has supplanted the pyramid, but rather as a *bipolar structure* where hierarchical principles continue to operate in certain domains (e.g., constitutional review) while reticular logic prevails in others (e.g., multi-level governance in environmental or competition law).

This new "reticular" representation of the State abandons the concept of "vertex" and transforms the meaning of old and new decision-making centers with the key concept of "node" and opens the way to the personalization of governance functions. However, even in this case, it does not seem that the network has completely replaced the pyramid. Rather, it appears that the pyramid and network models generate a situation of permanent transition, without the victory of one paradigm over the other. We can say that European practice, regarding its systemic governance model, finds itself during a permanent transition destined never to be resolved into either pole: poised between the pyramidal model and the reticular model, without, however being able to resolve itself definitively into one of the two paradigms.

The Axiological Paradigm

I will now attempt to present the third and final paradigm in mutation, namely the axiological paradigm, which so greatly influences European reality. This, too, as anticipated, presents itself in permanent transition. This is the paradigm, in my opinion, that more than any other influences the way of considering the principles of European culture because it presents itself in connection with new forms of single thought, which approach the deepest structures of society with unprecedented radicality: I am referring to biopower, i.e., the capacity of biotechnologies to guarantee direct power over the body, and consequently an intervention on the foundational values of European culture and on the most deeply rooted anthropological structures (Sommaggio, 2012b; Sommaggio, 2016; Sommaggio, 2018). Thus, Europe finds itself in a situation of permanent transition between the bioconservative value paradigm and the bioinnovator paradigm. This is because values are increasingly influenced by the change in the reference anthropological conception.

If there are not too many definitional problems for the bioconservative anthropological paradigm (Habermas, 2001), i.e., relating to those instances that deem it necessary to avoid modifying the human anthropological model, a few more words need to be spent on the bioinnovators who, especially in the industrialized West, propose a new phase of technological innovation concerning the hu-

man body and, consequently, the entire human species. The bioconservative paradigm inspired, for example, the Universal Declaration on the Human Genome (UNESCO, 1997) which, in Article 1, declared the human genome "heritage of humanity."[12]

To fully understand the other paradigm, the bioinnovator one, we must instead take a step back to the dawn of so-called biotechnologies. The first season of biotechnologies, the statist-oriented one, saw the flourishing, in the early twentieth century in Europe (but also in the United States), of enthusiastic eugenic societies aimed at improving the human species, favouring a perspective of improvement intervention through normative imposition by national states. The second season, instead, was characterized by a less imposition line, but one that passes through the satisfaction of (induced) needs that form the basis of societies with a consumerist culture[13] (Zanuso, 2016).

Those who support this latter possibility recognize themselves in the reflection represented by so-called trans-humanists (More, 2013). Transhumanists believe that, through intervention on the deep structures of the human species, made possible by the development of biotechnologies, one can, indeed, one must, arrive at a better humanity which represents the first step towards a new post-Darwinian era, in which evolution will be self-directed and no longer externally directed. Due to this perspective, the individual's choice to modify their own characteristics occurs, as with mass consumer products, for the satisfaction of those desires, oriented exclusively towards particular options, which form the basis of societies with a consumerist culture. However, biotechnologies could, perhaps unbeknownst to us, impose new models of transformation, making them appear inevitable, directing policies for the allocation of financial resources in the research of transformation tools[14] (Gambino, 2002; Sommaggio, 2010). The picture is thus completed through the announcement of a new *mutant* humanity.

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[12] See, the Universal Declaration on the Human Genome and Human Rights (11/11/1997), Article 1 of which states that: "The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity."

[13] And here it is technology that allows the birth of ever-new desires. Desires that then claim to be enforced through court intervention as new rights.

[14] Gabriella Gambino argues that: "To date, in fact, perinatal medicine is able to cure less than 15% of diagnosable pathologies and with the completion of the Human Genome Project all the genetic variations that will be mapped could soon become targets for prenatal diagnosis, increasing the gap between diagnostic and therapeutic possibilities (…) Predictive diagnosis is creating the new social category of inpatients, the so-called 'healthy-ill' foetuses who may, one distant day, develop some symptoms of a disease, currently incurable".

Formulating a prediction for this humanity in transition does not seem so simple. The new project of "improving" the human could consist, for example, in greater performativity of the individual. A new enhanced human subject who would be endowed with a prolonged life expectancy, and an intelligence superior to the level we are used to[15] (Anders, 1956; Portinaro, 2003; Pulcini, 2004).

The bioinnovator paradigm, therefore, declares that it wants to assume responsibility for evolution. No longer, then, a blind evolution or almost guided by obsolete selective mechanisms, but a new conception of the human: a human no longer prey to disease, rational limits, or aging (Postigo Solana, 2009; Vatinno, 2010). As in the rest of the world, also in Europe and Italy the transhumanist perspective has begun to be explored thanks to the contribution of numerous and interesting studies (Terrosi, 1997; Marchesini, 2002; Longo, 2003; Fimiani, 2004; Esposito, 2004; Pireddu and Tursi, 2006; Campa, 2010; Caffo and Marchesini, 2014). An interesting definition of Transhumanism is contained in the "Mondoperaio Encyclopedia" signed by Riccardo Campa. There we read: "The term transhumanism indicates a philosophical doctrine belonging to the family of progressive ideologies. Transhumanist intellectuals elaborate, study or promote technologies aimed at overcoming human limits. They analyse the trends, psychological dimensions, ethical implications and social impact of such technologies, highlighting above all the positive aspects of scientific development, but without underestimating the potential dangers. The same term indicates the intellectual and cultural movement which, referring to this philosophy, considers the improvement of the human condition possible and desirable. By improvement is meant the limitation and, possibly, the elimination of natural processes such as aging, disease and death, as well as the increase of man's intellectual, physical and psychological capacities" (Campa, 2006).

I will give just two examples of how transhumanists intend to assume responsibility for the future evolution of man. The first example is provided by the English biochemist Aubrey De Gray, according to whom man can and must combat aging, which still appears to be a little-frequented topic in the medical-scientific landscape. According to Guy Brown, in fact, "An eighty-year-old today looks the same as an eighty-year-old several centuries ago" (Brown, 2009; De Gray and Ray,

[15] It must be remembered, however, that several authors are critical of such a perspective: according to Günther Anders, known for his techno-sceptical position, we will witness a veritable anthropological revolution: from the homo faber model to the homo creator model. "By the name homo creator, I mean the fact that we are capable, or rather we have made ourselves capable, of generating products from nature that are not part (like the house built with wood) of the category of cultural products, but of nature itself."

2008; Bonifati and Longo, 2012). That's the point. According to De Gray, aging can be considered like any other disease: it would indeed be due to an accumulation of 'waste' products from cellular metabolism that progressively prevent cells from reproducing until the organism dies. For this reason, he proposes SENS (Strategies for Engineered Negligible Senescence), different strategies capable of reacting to aging, ranging from regeneration to grafts to drugs, etc. Thus, the concept of negligible senescence becomes fundamental. It can, in fact, be proceduralized to prevent the body from becoming prone to disease and, therefore, to destruction (De Gray, 2004).

Another author we can count among the ranks of enthusiastic transhumanists is Raymond Kurzweil, who believes the so-called "singularity" is near, i.e., the overcoming of human intelligence by artificial intelligence. The convergence between these two types of intelligence should be guaranteed precisely by the development of genetics, nanotechnologies and robotics (Kurzweil, 1992; Kurzweil, 2000; Kurzweil, 2005). All this will lead to the realization of the singularity, in which: "billions of nanobots will travel through the bloodstream of our organisms and our brains. Destroying pathogens, correcting DNA errors, eliminating toxins, and carrying out many other activities to improve our physical well-being. The outcome will be that we can live indefinitely without aging". According to Kurzweil, the modifications will be realizable, initially, in virtual environments; later in actual reality. The enhancement of physical and sensory capacities could be, for example, the artificial tongue (Bonifati and Longo, 2012, p. 118), the cochlear implant (Gazzaniga, 2009, p. 419) and the retinal prosthesis. These biotechnologies can be included among "man-machine hybridizations" (Longo, 2001): for many, this represents the realization, still very primitive today, of the first truly cybernetic organisms. The common basis of transhumanists, insofar as it may be useful to remember here, consists of the idea that the human (and therefore also the genome) is not a stable and immutable reality since it is not possible, at this evolutionary stage, to find a discriminating criterion between nature and artifice. Transhumanism is, therefore: "(…) a cultural, intellectual and scientific movement, which affirms the moral duty to improve the physical and cognitive capacities of the human species and to apply new technologies to man, so that unwanted and unnecessary aspects of the human condition can be eliminated, such as suffering, disease, aging, and even being mortal" (Bostrom, 2003).

A strong criticism of bioinnovators, particularly transhumanists, comes from the American Francis Fukuyama (Fukuyama, 2002), former chairman of the US Presidency's Bioethics Committee. There are three reasons for criticism that the author proposes against human transformation (or enhancement). The first reason

is linked to respect for the creative will of the divine: modifying human nature would violate a sphere pertaining only to the divine God. This position, however, can be contested: there are no serious arguments to consider biotechnologies contrary to religion[16] (Balistreri, 2011). The second line of criticism concerns the effects that could arise from human enhancement to the detriment of future generations[17] (Fukuyama, 2002, p. 123). This would certainly make the economic development of the new society impossible, causing a series of hardly sustainable social tensions. The third line of criticism proposed by Fukuyama is legal in nature. The enhancement, the transformation of current human characteristics, would create social disparities, eliminating any possibility of solidarity with the weakest[18] (Fukuyama, 2002, p. 215). The most important concern for Fukuyama, however, is the spectre of an illiberal society. Based on the principles contained in the US Declaration of Independence, Fukuyama recalls that individuals possess intrinsic value, and that this very fact constitutes the essence of liberalism.

The core of the bioinnovator project would consist precisely in the modification of this essence because the posthumanist perspective could constitute the point of arrival (or direction of use) of transformation technologies, while the transhuman characterizes the period of gradual human enhancement (Vatinno, 2010; Bonifati and Longo, 2012).[19] A period destined never to transition into the posthuman, but to remain suspended in a permanent transition between bioconservation and bioinnovation. While the bioinnovator paradigm presents itself as emancipatory, it risks eliding the distinction between *freedom to modify* and *freedom from coer-*

[16] "If everything that exists can be attributed to divine wisdom, then the will of God will also be expressed when we try to improve our dispositions and capacities, since, if we can do so, we may have reason to believe that God willed it."

[17] "People at the top of a social hierarchy usually do not want to lose their status and often use their considerable influence to protect it. It is difficult for a younger person to take the initiative to remove a leader, a boss, a sports champion, a professor or a board member, at least until age has significantly deteriorated their abilities."

[18] "The possibility that biotechnologies could give rise to new genetic classes has often been hypothesized and condemned, ever since one questioned the future, but the opposite eventuality also seems equally plausible: a tendency towards a much more egalitarian society from a genetic point of view could emerge, since it seems quite unlikely that citizens of modern democratic societies would stand idly by while elites crystallize their social advantage in their children's genetic makeup."

[19] Italian transhumanists also propose a definition of posthuman, understood as: "Once the posthuman stage is reached, intellectual and physical capabilities will be far superior to those of a non-enhanced human being. Posthumans could be completely synthetic (based on artificial intelligences) or could be the result of a series of partial enhancements carried out on biological humans or transhumans. Some posthumans might even decide to get rid of their bodies and live inside supercomputers, taking the form of pure information. It has been said that it is impossible for us humans to imagine what the posthuman condition might be like."

cion to modify. The transition from bioconservatism to bioinnovation is not merely a neutral expansion of choice but may introduce new forms of social pressure, particularly when enhancement technologies become normalized or expected within consumerist societies. In fact, the posthuman paradigm brings with it many other transformations that are corollaries, particularly in the value horizon of European citizens (but not only). Any attempt to curb the technical possibilities involving the human body and its biology (from somatic, genetic, neuroscientific transformations to surrogacy) but also pertaining to modifications of the genome are labelled as obscurantist, against progress and against freedom (Sommaggio, 2010; Sommaggio, 2014). Therefore, any intervention of human modification is for that very reason conceived as right in itself because only through mutation can the human become responsible and become posthuman. In this activity of transformation, every opposing voice is seen as an undue interference in the personal sphere that freely decides its own most appropriate mutation.

This affects common values because this movement, which has begun to spread among the population also through the dynamics of sexual transition and gender self-recognition, poses the alternative: modify oneself to freely self-define without any biological limit, or self-destruct. For example, the use of the argument of avoiding suicide due to the non-recognition of a gender transition affirmation, even in minors, is now part of this movement for the affirmation of new law (e.g., *Ley* n. 4 of February 28, 2023, establishing rules for the protection of transsexual persons and the rights of LGBTQ people. (“Para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI”). On closer inspection, however, as we have already anticipated, the posthuman could also reveal itself as a movement of transformation characterized by violence. This is for the simple consideration that every project of a “new” humanity, from the most abject to the most philanthropic, always contains a strong drive towards reducing each one to the schema chosen as a reference. And in fact, as Francesco Cavalla recalls, every ‘new’ (improved) man, freed from his limits and master of himself “(…) will refuse to find the ‘other’ in any existence that appears to him lacking even one of the characters he deems essential to his own subjectivity (…) Indeed, if the ego supposes it finds before itself only objects or existences identical to it, whatever determination of reality it assumes, this turns out to be dogmatic, as it is constitutively removed from the challenge of its negation” (Cavalla, 1974, p. 341).

The previous considerations allow us to understand that particular phenomenon which in the European context is commonly defined as the “dictatorship of minorities” (Levitsky and Ziblatt, 2023). Even in this case, however, we observe

how the posthuman is not the point of arrival of this transition path, but it is the transition that presents itself, within European culture, as a perennial and inexhaustible movement.

Conclusions

Europe, therefore, faces three paradigms in constant transition: the normative paradigm, the systemic paradigm, and the axiological paradigm. We are, as we have seen, faced with a permanent transition. These are paradigms that do not evolve from one pole to another (from rules to rights, from pyramid to network, from human to posthuman) but remain within an oxymoron where transition is constant, i.e., it does not proceed linearly from one point to another, but remains suspended in a potentiality that we will have to deal with in the years to come. It could be argued that this phenomenon is not new in Europe, but that it could be, in many respects, likened to the concept of "permanent revolution".

As is well known, the term *permanent revolution* appears in the thought of Karl Marx already in the texts of 1848, particularly in his *Address on the Class Struggle in France*. However, Marx speaks of the need for a revolution that does not limit itself to a simple change of regime, but that continues until the material conditions of existence are transformed, and therefore with a precise albeit distant point of arrival: "The revolution must be permanent until all the more or less propertied classes have been expelled from power and until the proletariat has conquered state power" (Marx, 1972).

Leon Trotsky, in the first decades of the twentieth century, reformulated the same concept in a theoretical-practical key. In his *Theory of the Permanent Revolution* (1930), he argued that the socialist revolution cannot be confined within national limits: it must expand and constantly renew itself. "The permanent revolution is not an isolated act, but the law of modern history" (Trotsky, 1930). Trotsky thus transformed the Marxian dialectic into a global dynamic: historical becoming becomes uninterrupted, without a final point.

I believe that, regardless of the ideological aspects, the intuition of these forms of constant transformation may be a product of the modern world approaching contemporaneity, because it seems precisely that European legal practice today is characterized by a similar state of permanent modification. At this point we can conclude that the changes analysed in the previous paragraphs possess precisely this peculiar characteristic: they are not transformations from a state A to a state B, but new ways of being that remain in constant change. They are, in

other words, mutants. The concept of *mutant* is not new in literature and finds its origins in biological lexicon, where it indicates the emergence of a difference with respect to a pre-existing code. Transposed into the philosophical and social sphere, it instead configures itself as a metaphor for the contemporary condition we have presented: a world in which change has ceased to be episodic to become permanent. The words of *Zarathustra* come to mind: "One must still have chaos in oneself to be able to give birth to a dancing star" (Nietzsche, 1972, Prologue § 5). Probably, in the Nietzschean perspective, the mutant embodies this capacity precisely: to transform disintegration into a formula of creation, instability into an opportunity for overcoming. On the more strictly sociological side, Bauman himself observes how liquid modernity dissolves certainties and makes identity itself a fluid process: "Identities are tailor-made in the do-it-yourself store" (Bauman, 2000, p. 116).

The mutant is, therefore, the archetype of a world in which the individual does not limit themselves to adapting, but constantly reinvents themselves, making change the hallmark of their own existence. In globalized and technological societies, permanent change thus configures itself as the only positive value: it is the only one that generates innovation, resilience and plurality. Where tradition celebrated continuity and permanence, today a veritable *beatification of the mutant* emerges. It is not a religious beatification, but a cultural one: the symbolic recognition that metamorphosis is the only possible foundation in an unstable world. This, perhaps, because the human is always capable of exceeding any determination, in a dynamic of uninterrupted overcoming that stands as an immutable bridge between autopoiesis and self-transcendence. What better viaticum for this particular attitude of thought than the example of the Socratic office to the god of Delphi (Sommaggio, 2016; Vlastos, 1994)? And here, I believe that Heraclitus is also an excellent ally. For Heraclitus, in fact, reality is in perpetual becoming: day follows night, birth succeeds death, satiety follows hunger, and so on. And this supreme principle regulates the world without producing contradictions, exactly as a river flows incessantly and receives ever-new waters without thereby ceasing to be a river. As Heraclitus states in one of his fragments, establishing the parallel with the river later taken up by Plato, "different waters flow for those who step into the same rivers" (Diels-Kranz 12). But Heraclitus also suggests that: "Pólemos is father of all things, king of all" (Diels-Kranz 53). One must indeed consider that the flow of paradigms from one to the other will in any case have to contend with the necessity of managing the oppositions between the paradigms themselves, preventing them from degenerating into violence (Cavalla, 2017; Sommaggio, 2012a). To navigate this condition of permanent transition without succumbing to either

normative inflation or democratic deficit, European legal practice must cultivate a renewed form of *Socratic legal culture*: one that privileges questioning, dialogue, and the public justification of legal decisions over the mere assertion of rights or the uncritical acceptance of technological imperatives. Only such a culture can transform the mutant condition from a source of instability into a foundation for reflective resilience. And to orient such a phenomenon of permanent transition, Europe must therefore rediscover culture at its philosophical and cultural roots to navigate towards a future perspective that is less confused and more respectful of identities and differences. Looking ahead, therefore. So far ahead as to also rediscover its own cultural and philosophical roots. Starting again from Heraclitus. Starting again from Socrates.

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Religion and Nationalism in the Legal and Constitutional Models of State Authority in Syria and Greater Lebanon during the French Mandate 1920–1930

• **Abstract** •

This paper attempts to shed light, in a comparative manner and from a historical perspective, on the development of legal and constitutional models of state authority in Syria and Lebanon after the end of Ottoman rule, which lasted nearly 400 years, and the formation of the first Arab government in Syria during the reign of King Faisal in 1920. This constituted the initial nucleus for the emergence of the features of the Syrian state. After that, the French mandate over Syria and Great Lebanon began, marking the beginning of a new and unique legislative and constitutional phase, in which nationalism, religion, and cultural conflict played a major role in shaping the content of all constitutional systems and articles. The situation even reached the point of dividing Syria, of which Lebanon was a part at the time, into countries on sectarian and religious grounds.

Keywords: French Mandate, Constitution, Syria, Lebanon, Religion.

Introduction

Historically, for any humanitarian, tribal, or civilizational group, there must be common elements among the group's members that constitute a starting point for integration into a unified entity distinct from the rest of the groups. If we look at all ancient societies and civilizations clearly, we find that there are several elements for establishing civilization or forming a unified human society distinct from jealousy. For example, nationalism and religion in the civilizations of Babylon, Sumer, and the Pharaonic civilization formed essential elements of its identity, as each civilization had its own religious festivals, gods, and language.

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Syria and Lebanon were part of what was known as the Levant, and there were no borders or major differences between the people. The Arameans had been present in the region since ancient times and continued to rule the region for a long time. This continuity led to the emergence of national branches such as Syriac, Chaldean and Assyrian, which formed the basis of Syrian civilization and the first peoples to embrace the Christian religion, in addition to the Phoenicians along the eastern coast of the Mediterranean. At that historical stage, we find that religion played a great role in life, as it offered sacrifices and invitations to the gods. The construction of places of worship and the celebration of religious holidays appear clearly to this day in inscriptions and monuments such as the Temple of Jupiter in Damascus, known today as the Umayyad Mosque, Amrit in the Syrian city of Tartous, and the monuments of Baalbek in Lebanon. The documents and laws regulating the lives of those civilizations showed sanctification and veneration of religious beliefs and love and protection of the homeland (Chaddad, 2021, p. 89).

Constitutional and Legal Features of Syria after the Collapse of the Ottoman Empire and the Beginning of the French Mandate in 1920–1930

After the defeat of the Ottomans in World War I, the Ottoman Empire collapsed in 1918 and the Arab forces entered Damascus, led by King Faisal I bin Al-Hussein to end years of Ottoman rule and the policy of Turkification of Syria. On March 8 of that year, the independence of Syria was declared within its natural borders, which included Lebanon, Jordan, Palestine, and the northern Syrian regions that France granted to Turkey under the Treaty of Lausanne 1921. Afterwards, the formation of the first Arab government in the history of Syria was announced, and King Faisal was appointed king of the Arab Kingdom of Syria (Salhi, 2012, p. 261).

Syria at that time was suffering from economic hardship after years of Ottoman rule, and King Faisal called for the formation of a government on May 3, 1920, led by Hashim al-Atassi, a Syrian politician. This was the second Arab government, as the first Arab government was formed in 1918 under the leadership of Ali Rida al-Rikabi, who was also appointed by King Faisal, during that period, the Syrian government focused on establishing the national army and enacted the textile law. Due to the scarcity of its financial revenues, it resorted to financing the treasury through a national loan secured by long-term guarantees on state-owned and non-invested lands and the first Syrian currency introduced was the "Syrian Dinar" for circulation (Mardini, 1966, p. 86).

In July 1920, the Syrian government approved the first Syrian constitution consisting of 147 articles distributed over 12 chapters, explaining the form of government, the identity of the kingdom, and the rights and freedoms. Article 1 stated that the government of the Arab Syrian Kingdom is a civil parliamentary monarchy, its capital is Damascus, and the religion of its king is Islam. Article 2 states that the kingdom is a political unity that does not accept division and consists of unified provinces. Article 3 confirmed the Arab identity of the kingdom and that the Arabic language is the official language of the kingdom. The constitution also confirmed the powers and duties of the king in the second chapter of the constitution, from Articles 4 to 8. The constitution guaranteed equality among all citizens in the third chapter, from Articles 9 to 14, and affirmed freedom of belief, worship, and the practice of religious rituals, provided they do not disrupt public security. It also managed the Sharia courts and sectarian councils for their affairs according to the law of each religion and sect (Barout, 2013, p. 28).

It should be noted that the constitution emphasized the Arab identity of Syria and that Islam is the religion of the king, even though Syrian society is a unique ethnic and religious mixture. However, the constitution did not mention other ethnicities such as Kurds, Syriacs, Assyrians, Chaldeans, Armenians, Hebrews, Arameans, Turkmens, and only mentioned the Arab ethnicity as the official nationality of the kingdom. It can be said that this is because King Faisal bin Al-Hussein was Arab, and to link Syria with its Arab surroundings after decades of Turkification policies and Ottoman dependency. The constitution limited itself to mentioning the equality of all Syrians in rights and religious freedom before the law.

Syria's independence did not last long. In accordance with the secret Sykes-Picot Agreement of 1916 between France and the United Kingdom, and with the approval of Russia and Italy, this agreement aimed to divide spheres of influence in the regions that were under Ottoman control during the First World War between France and Britain (Kitching, 2015, p. 12).

The French general Henri Gouraud, who was charged with implementing the French Mandate over Syria and Lebanon, demanded in July 1920 that King Faisal accept the French Mandate over Syria and Lebanon, issuing him an ultimatum containing several conditions: the Syrian state must accept the French Mandate, reduce the number of members in the Syrian army, abolish compulsory military service, conduct monetary dealings under French supervision, and punish those who opposed or rejected the French Mandate (Eldar, 1993, p. 489).

The Syrian government accepted the French mandate, and this was a historical turning point in the constitutional and legal life of the Syrian state. France imposed its own policy, making the French language an official language in gov-

ernment offices, schools, and universities, as well as in official documents and newspapers. They also sent Christian missionary delegations, especially to the Alawite regions in western Syria, due to the religious and belief-related closeness between the Alawites and Christians. France divided Syria into mini-states based on religion, transforming the Arab Kingdom of Syria into several states, each with its own religious particularity and unique identity. These included the State of the Alawites in the west, the State of the Druze with its centre in the city of Suwayda in the south, the State of Damascus, including Damascus, Hama, and Homs, predominantly Muslim areas and the State of Aleppo, centred in Aleppo, along with the northern and eastern cities of Syria, also with a Muslim majority. The Sanjak of Alexandretta enjoyed autonomous governance and was later granted to Turkey; today, it is known as Hatay (Uslu, 2020, p. 86).

In Syria, which was initially divided, French political advisors in the new states they founded on a sectarian basis were able to side with influential local authorities by building strong relationships with prominent, wealthy landowners and property owners. This produced parliaments for the emerging states, most of whose members were such prominent figures, and gave them positions in the local police that oversaw elections. It thus became in the interest of these notables to preserve the fragile confederal system established by the French mandate to administer the country by an administrative decision issued by the High Commissioner in 1922 (Antonius, 1934, p. 557).

The majority of Syrians rejected the reality of the division that had befallen Syria. The outbreak of the Syrian Revolution against the Mandate was a decisive response to the fragile state of the Syrian state. The Syrian elite demanded the reunification of Syrian territories and rejected the constitutional and administrative status of divided Syria. Therefore, in April 1928, the French government called for the formation of a Constituent Assembly and the preparation of a constitution for a unified Syria.

The 1930 Constitution affirmed in Articles 1 and 2 the unity of Syria and the independence of its lands, and in Article 2 that Syria is a parliamentary republic and the religion of its president is Islam (Zisser, 2004, p. 202). In the 1930 Constitution, the transformation of the Syrian state from an Arab kingdom to a republic without mentioning the term Arabic, i.e., the absence of defining the identity of the state. It can be said that this is due to the fact that Syria at that time was under the French mandate and influenced by French culture.

In Article 3, the religion of the head of state was determined, which is Islam, to which the Christians objected to. The determination of the religion of the head of state was justified because Islam is the religion of the majority in Syria and does not

conflict with the concept of democracy. The Constitution also affirmed the equality of all citizens in civil and political rights and freedom of personality and belief before the law in Articles 6 and 7. Also the official language of the Syrian state was not mentioned, nor were the components of the Syrian people from other nationalities mentioned. We find the absence of the term Arabism or a mention of the rights of other nationalities. Rather, the constitution was satisfied with mentioning the term citizens without addressing the issue of nationalism. Therefore, the language and national specificity of the Kurdish people did not receive any recognition from those elites, which prompted a group of Kurdish and Christian tribal leaders to submit two petitions to the French mandate, registered in the office of the French High Commissioner The first, in 1930, and the second in 1933, under number "6501", demanded that the Kurds be treated in a similar manner to the rest of the population components subject to the French mandate, and that they deserved a completely special administration, and that the Kurds be accepted into public positions, administration, justice, gendarmerie, and police, and that the Kurdish language be accepted as an official language in public departments, and that a Kurdish school be established in Hasakah city to qualify teachers (Shafan, 2025).

Greater Lebanon and the Conflict between Religion and Nationalism since the Establishment of the State and the Issuance of the First Constitution

The division and formation of new states on a sectarian and cultural basis did not stop. On September 1, 1920, France declared the establishment of the independent state of Greater Lebanon under the French mandate. Beirut was established as the capital of this country, which carried a flag similar to the French flag in its three colours: blue, white, and red, in addition to a cedar tree in the middle (Geukjian, 2023, p. 68).

After the declaration of the establishment of the State of Greater Lebanon, the first government was formed under French supervision, and the High Representative, Major General Gouraud Haqqi Al-Azm, was appointed Prime Minister, and the first government consisted of ministers from various sects to represent the new state on September 1, 1920 and continued until 1922 (Al-Chaer, 2020, p. 231).

As a result of the declaration of the establishment of the State of Greater Lebanon, supporters of their positive position on the establishment of the State of Greater Lebanon supported the idea that the State of Greater Lebanon was ideologically a gift from France in response to the Lebanese memorandum to the

Versailles Peace Conference in France in 1919, which stated: "Lebanon has always constituted a national entity distinct from neighbouring societies in language, customs, intellectual similarity, and Western culture." As for those who reject the establishment of the state of Greater Lebanon and who support remaining with Syria and with King Faisal bin Hussein's project to establish an Arab kingdom that includes the regions of Greater Syria, they were punished in exile and rejected by other Lebanese parties supporting the establishment of the new state (Lebanon 1926, rev. 2004).

It is worth mentioning that the religious diversity in the Christian-majority Lebanese society, which imposed the distribution of powers between the various parties, was clearly manifested in an agreement known as the national charter, and the most prominent of what was stated in it, the distribution of powers in Lebanon is based on the system of sectarian "consensual democracy", where the three presidencies are divided according to the National Charter of 1943: the president of the Republic is a Maronite Christian, the prime minister is a Sunni Muslim, and the speaker of the House of Representatives is a Shiite Muslim. The parliament (128 seats) is divided equally between Christians and Muslims (Georges, 2018).

Religion was the most prominent player in declaring the State of Greater Lebanon because the idea of transforming Lebanon from a Mutasarrifate state in Mount Lebanon during the Ottoman era into a sovereign state was launched by Maronite Patriarch Elias Hoayek, who served as ambassador for the Maronite community during the French Mandate. Maronite Patriarch Elias Hoayek saw France as the caring and benevolent mother of the Lebanese throughout history, a refuge, protector, and saviour for the Maronites after the years of persecution and famine that the Maronites experienced under Ottoman rule. He also expressed his admiration for her sophisticated liberal face that supports freedom and human justice. This relationship contributed directly to Lebanon obtaining official and final recognition of its complete independence from Syria in 1919 through the written promise made by Clemenceau, and then in 1920 through the declaration of the establishment of the State of Greater Lebanon by General Gouraud. But the dual political and economic crisis that the world was going through, and Lebanon's need for the support and assistance of a Western superpower, prompted Patriarch Hoayek to retreat from the demands for complete independence and the filling of internal and external sovereignty that he expressed in the speech that he prepared in Lebanon and delivered in France before President Clemenceau in 1919. Although he was convinced that Lebanon deserved to be a fully sovereign state, both internally and externally, he accepted that Lebanon be subject to the principle of the mandate, provided that this mandate did not restrict Lebanon's

right to sovereignty, but rather prepared it for it. He demanded that France be the mandate state, and this was expressed in the memorandum he prepared in France and submitted to the peace conference in 1919 (Mouawad, 2016).

The Lebanese did not have a unified opinion on the declaration of the State of Greater Lebanon. There were those who rejected the continued dependency on Syria under the French mandate. Such a trend was the Syrian Central Committee, a movement that called for the establishment of a small Christian Lebanon, and others who supported the idea of establishing the State of Greater Lebanon with friendly relations with Syria and the Arab countries (Issam, 1998, p. 57).

The French cultural influence in Lebanon was stronger than in Syria. This was due to the fact that the majorities in Lebanon were Christians and France presented itself as a Christian country that supported freedoms and rights. Compared to the Ottoman rule, it could be said that this influence was also present. The influence of the Ottoman rule and its support was greater in Syria than in Lebanon, where the percentage of Muslims was greater than that of Christians.

As a result of the change in the form and identity of the authority in Syria and Lebanon over time, the problem of identity and belonging emerged since the beginning of the French Mandate and the establishment of the State of Greater Lebanon. The Maronites frankly expressed their Phoenician nationalism and their lack of Arabism, while in Syria we find that Syria after the Mandate moved towards a civil character and reduced the role of religion. This appeared clearly in the 1950 Constitution and the party and religious pluralism in the Syrian Parliament. After that, it moved towards Power towards Arab affiliation, and this is what ultimately led Syria to the Egyptian-Syrian unity led by Gamal Abdel Nasser in 1958 and the arrival of the Arab Socialist Baath Party to power after the collapse of the Egyptian-Syrian unity in 1961.

Conclusions

1. The Syrian and Lebanese experience in the subject of religion and identity is considered one of the most complex experiences in a society characterized by religious and national pluralism, where the majority confiscates the opinions of other nationalities without taking them into consideration as partners in the homeland. This is what happened in the establishment of the State of Greater Lebanon in 1920 and also in Syria in the Syrian Constitution of 1930 when Syria changed from an Arab Kingdom to the Syrian Republic, and without specifying national affiliation in a way Clear.

2. The adoption of religion as a source of legislation and giving it a major role in personal, political and party matters has given religion a great place in influencing the identity of the state since the founding of the states of Greater Lebanon to the present time, as well as in Syria.
3. The French mandate had a great impact with positive and negative results. France contributed to encouraging education, opening schools and universities, and adopting the teaching of French as an official language, even in drafting laws and legislation. However, French policy contributed to dividing Syria on a sectarian basis and establishing Greater Lebanon as a Christian country in the Arab East.
4. The formulation of Syrian and Lebanese legislation and laws was influenced by the French legislator in matters of freedoms, rights, and the judicial system, all the way to the structure of the state and its political and educational system. We find that the French system remains the one adopted to this day since 1920.
5. The change in the form of authority, the constitutional system of the state, and its national orientation depends on political events, the circumstances in which it lives, and cultural influence as well. This is what happened when Syria transformed from an Ottoman state, then an Arab kingdom in 1920 under the rule of King Faisal, then into the Syrian Republic during the French Mandate in 1930. The same applies to the State of Greater Lebanon.

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