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**IN SEARCH OF ORIGINALITY IN CENTRAL AND EASTERN  
EUROPEAN LEGAL CULTURE CULTURE(S)  
4<sup>TH</sup> ANNUAL CEENELS CONFERENCE:  
LEGAL INNOVATIVENESS IN CENTRAL AND EASTERN EUROPE  
MOSCOW, 14–15 JUNE 2019<sup>1</sup>**

**Abstract.** The paper describes the debates which took place during the 4<sup>th</sup> Annual CEENELS Conference (Moscow, 14–15 June 2019). The aim of the conference was to analyse the issue of legal innovativeness in Central and Eastern Europe, the topic which was chosen as a continuation of previous CEENELS conferences. The organizers wanted to challenge the widespread belief that the legal culture of Central and Eastern Europe lacks original and innovative concepts and ideas. Even if the conference did not bring a definitive answer about the character of Central and Eastern European countries' legal culture, it showed that the region is not only a territory of legal transplants and reception of legal ideas, concepts and institutions, created in Western Europe or the US.

**Keywords:** legal culture, Central and Eastern Europe, Central and Eastern European Network of Legal Scholars.

**W POSZUKIWANIU ORYGINALNOŚCI KULTURY PRAWNEJ  
(KULTUR PRAWNYCH) ŚRODKOWEJ I WSCHODNIEJ EUROPY  
IV KONFERENCJA NAUKOWA CEENELS „LEGAL  
INNOVATIVENESS IN CENTRAL AND EASTERN EUROPE”  
MOSKWA, 14–15 CZERWCA 2019**

**Streszczenie.** Artykuł opisuje dyskusje, które miały miejsce podczas IV Konferencji CEENELS (Moskwa, 14–15 czerwca 2019). Celem konferencji była analiza zagadnienia innowacyjności w zakresie prawa w Europie Środkowo-Wschodniej. Temat ten został wybrany jako kontynuacja poprzednich konferencji CEENELS. Organizatorzy chcieli podważyć powszechne przekonanie, że w kulturze prawnej Europy Środkowo-Wschodniej brakuje oryginalnych oraz nowatorskich koncepcji i pomysłów. Nawet jeśli konferencja nie przyniosła definitywnej odpowiedzi na temat

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<sup>1</sup> I would like to thank Dmitry Poldnikov for his encouragement to write this text and his valuable comments.

charakteru kultury prawnej krajów Europy Środkowo-Wschodniej, to pokazała, że region ten jest nie tylko terytorium przeszczepów prawnych i recepcji idei, koncepcji i instytucji prawnych, tworzonych w Europie Zachodniej lub USA.

**Słowa kluczowe:** kultura prawna, Europa Środkowo-Wschodnia, Central and Eastern European Network of Legal Scholars.

The 4<sup>th</sup> Annual CEENELS Conference took place in Moscow on June 14–15, 2019. It was organized by one of the foremost Russian universities, the National Research University “Higher School of Economics,” in collaboration with the Faculty of Law of the University of Graz, and under the patronage of the best-known journal devoted entirely to legal issues in the region, the *Review of Central and Eastern European Law*. The conference was a major academic event, gathering about 80 legal scholars from fifteen European countries and the US. Its subject, “Legal Innovativeness in Central and Eastern Europe,” was chosen as a continuation of the themes discussed during the CEENELS conferences in previous years (cf. Zomerski 2016, 2017; Szymaniec 2018; Mańko 2020a, 33–36).

CEENELS – the Central and Eastern European Network of Legal Scholars – was created in 2015 as an informal network of legal scholars, intended to counterweight the prevailing influence of Western European and Northern American scholarship in the intellectual life of the region (cf. Zomerski 2016). Among the strategic goals of CEENELS, strengthening the ties between legal scholars from different countries in the region has been emphasized. It is worth noting that, the term “Central and Eastern Europe” is interpreted by the creators of CEENELS much more broadly than it is usually understood, for instance as in basic OECD terminology (Glossary 2001). Thus, it is conceived as a cultural notion encompassing the shared experiences of all the countries controlled previously by the Soviet Union, as well as the Balkan region where various cultural influences have mingled. Another of CEENELS’s goals is to promote joint research projects and create a unique methodology of legal research, which will contribute to build critical legal knowledge about the region (CEENELS 2016).<sup>2</sup> Determining whether it is possible to establish such a unique methodology is a matter of time. However, with some degree of confidence it is possible to say that each subsequent meeting within the network brought us closer to identifying the distinctive features of the legal culture, or the family of legal cultures, of the region. The first CEENELS conference took place in Brno in 2015 and it focused on determining the state of legal culture in the region twenty-five years after the beginning of the political and economic transition (Zomerski 2016). The aim of the second conference, organized in Kraków in 2017, was to identify the remnants of legal and political thinking from the period of “real socialism” (Zomerski 2017), while the third

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<sup>2</sup> See also the informal manifesto of CEENELS written by the organisers of the 1st CEENELS conference: Mańko, Škop and Štěpáníková (2016).

annual conference, taking place on 11–13 January 2018 at the University of Latvia in Riga, was intended to identify legal identities and legal traditions of the region (Szymaniec 2018). It is worth adding that the topic of the 5<sup>th</sup> Annual CEENELS conference, held (online)<sup>3</sup> at the University of Debrecen on 25 June 2021, was devoted to “Re-thinking legal institutions in Central and Eastern Europe.”

The intention of the organizers of the 4<sup>th</sup> Annual CEENELS Conference, which took place at the HSE Faculty of Law in Moscow,<sup>4</sup> was to challenge the widespread belief that the legal culture of Central and Eastern Europe lacks original, innovative concepts and ideas which are capable of contributing to the European legal heritage and that it should be characterized as a culture of borrowers. According to that view, the main difference between the legal evolutions of Western and East-Central Europe lay in the fact that in the former Roman law was the subject of ongoing discussion and reception, while in the latter it was hugely neglected or even rejected in the Early Modern period. This caused a “delay” that had to be made up for in the nineteenth century. Moreover, in the nineteenth and early twentieth centuries the region was under the influence of French and German-Austrian legal cultures which were immersed in Roman law, while later its legal development was harshly interrupted due to the establishment of Communist regimes (cf. Giaro 2011).<sup>5</sup> After the collapse of the Soviet bloc, the main task for the region was the adaptation of its legal culture to Western values, especially through establishing the proper rule of law standards and systems of protection of human rights. In the view of some comparative law scholars, legal reforms in Central and Eastern Europe have not been completed and there is still much to do to eradicate the remnants of “real socialist” legal mentality and to adjust both legal institutions and legal education in the region to Western-European level.<sup>6</sup> Needless to say, this view leads to the

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<sup>3</sup> The 5<sup>th</sup> CEENELS conference was initially to be held on 26–27 June 2020 but was postponed due to the COVID-19 pandemic.

<sup>4</sup> The convenors of the 4<sup>th</sup> CEENELS conference were Professor Dmitri Poldnikov, Dr Vladislav Starzhenetsky, and Dr Bulat Nazmutdinov.

<sup>5</sup> Cf. Giaro 2011. Zdeněk Kühn emphasizes the importance of the Austro-Hungarian legal culture for the Central European legal tradition; however, the understanding of Central European legal culture that he employs is very narrow (Kühn 2011, 1–20).

<sup>6</sup> Professor Uwe Kischel, in his well-known synthesis of comparative law, points out that even the countries of the region which became the EU member states still have many problems with statutes which have been rashly drafted and passed. The process of application of law in the region is tainted by excessive formalism. Both courts and administrative bodies are reluctant to take sufficiently into account “the parties’ interest, or legal common sense.” Moreover, according to Kischel, old elites, dating back to the period of “real socialism,” have still maintained the influence on both legal education and the system of application of law. Cf. Kischel 2019, 534–546. A similarly unfavorable picture of Central and Eastern European legal culture can be found in other scholarly publications.

opinion that the legal environment of Central and Eastern Europe is still in the position of a disciple of more developed Western legal cultures.

To determine whether Central and Eastern European legal culture (or the family of Central and Eastern European legal cultures, if we would admit that it is not a single culture but rather a group of cultures which are similar in various ways) has produced something which is interesting not only because of its distinctiveness, all the elements of legal cultures should be analyzed. Since a legal culture includes not only legal institutions, concepts, ideas, values, and mentalities, but also the patterns of social behaviours concerning law and attitudes towards certain legal institutions and the entire legal system (cf. Nelken 2004, 1–11), the topic must be studied from many perspectives. The Moscow conference offered such an approach. An abundance of papers devoted to various aspects of positive law, application of law (“law in action”), as well as legal theory and history, was presented in the course of four plenary sessions and twenty-two parallel sessions. The sessions’ titles are meaningful, so it is worth quoting them: “Legal Theory,” “Legal Language,” “Legal History,” “Byzantine Law,” “Constitutionalism,” “Courts,” “Public Law,” “‘Immunity’ and ‘Resistance’ within Administrative Praxis,” “Criminal Law,” “Private Law,” “International Law,” “International Courts,” and “New Challenges.” They show clearly that the organizers of the conference were eager to present the legal problems of the region in the broader context of international legal relations. It is impossible to describe here the content of every conference paper. Therefore, I will focus on those of these presentations which I consider important and/or interesting from the point of view of the conference topic.

The first plenary session started with a paper of associate professor Evgeny Salygin, the dean of HSE Faculty of Law, who portrayed his faculty as a leader in legal education in Russia. Then, Professor Adam Bosiacki (director of the Institute of Sciences on State and Law at the Faculty of Law and Administration, University of Warsaw) delivered his keynote lecture, entitled “Legal challenges of post-communism: the Polish experiences.” Professor Bosiacki pointed out some socio-political factors negatively influencing legal reforms in Poland. In his view, the lack of broad, comprehensive political programmes and political instability should be listed among the most important of these factors. Furthermore, Professor Bosiacki supported the position of those who are of the opinion that legal reforms in Poland have not been completed. As an example, he mentioned the legal regulation of the healthcare system, undergoing several changes during the last twenty five years. The Polish experience certainly is not unique in the region, but, as Professor Bosiacki noted, should not be generalized to other countries of the region.

The next speaker, Professor Martin Škop (associate professor and dean of the Faculty of Law, Masaryk University, Brno) dealt with issues that were already the subject of his paper in Riga, namely the art of law drafting. As the Czech scholar pointed out, in Central Europe the law-making process is still depicted as formalized, objective and rational. According to Professor Škop, such a depiction

corresponds to the values of industrial society, but it is not necessarily relevant nowadays. Professor Škop presented the outcomes of the legal sociological research conducted by his team. The research was focused on officials drafting legal acts in the Czech Ministry of Justice and showed that they feel unappreciated. Thus, in the speaker's opinion, their role needs to be recognized.<sup>7</sup>

In his paper entitled "Digitalization and Legal Doctrines", Professor Anton Ivanov (HSE) spoke about the influence of artificial intelligence on legal education and on legal culture in general. According to Professor Ivanov, artificial intelligence can be more easily accommodated to common law legal culture, since using computer programs, it is a simpler task to analyze court decisions than the abstract ideas that are the basis of civil law legal culture. Moreover, certain AI tools, provided by American corporations, may contribute to the unification of legal cultures, transplanting patterns of thinking typical of common law culture to the ground of the civil law legal systems. In that regard, Professor Ivanov advised that civil law countries should focus on creating such AI tools which would be able to deal with abstract legal ideas.

Professor Anton Rudokvas (Saint Petersburg State University) shed light on the historical origins of certain provisions of the Civil Code of the Russian Federation. The scholar drew special attention to the institution of trust which was introduced to Russian law by the presidential decree of Boris Yeltsin of 1992. It was later regulated by the provisions of the part two of the Civil Code of the Russian Federation (chapter 53, articles 1012–1226).<sup>8</sup> However, being a type of contract, the Russian trust differs substantially from a common-law institution.<sup>9</sup>

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<sup>7</sup> The same topic was addressed by Dr. Markéta Štěpáníková, a member of Professor Škop's research team, in her paper "Informal authorities in the process of legal drafting." She was of the opinion that due to the immense role of ministry legal officials during the lawmaking process, they should be named the "informal bearers of authority." This view provoked lively discussion during which a different view was presented, namely that MPs' assistant, experts involved in parliamentary commissions and lobbyists should be considered as "informal bearers of authority", rather than ministry officials. Taking into account my own experience as a member of the Legislative Council for the Prime Minister of Poland, I would rather admit that (at least in Poland) in many cases ministry officials prepare drafts using excerpts from legal acts which are already in force or were in force before. Sometimes this attitude leads to the phenomenon of "copy – paste" legislation, which is a source of many legislative errors and sometimes even loopholes in legal texts. Thus, ministry staff are not always a creative force in the legislative process. It is worth adding that the art of lawmaking was also a subject of the papers of Professor Yuri Arzamasov of HSE ("Correlation between normography, jurisprudence, and legal linguistics"), who proposed the introduction of normography, i.e. a new branch of legal sciences, dealing with the drafting of legal texts.

<sup>8</sup> Cf. Federal Law No. 15-FZ of January 26, 1996.

<sup>9</sup> Not only this plenary presentation, but also a separate section, was devoted to private law. A wide range of topics was presented there, including the nature of Romanian private law (Professor Emőd Veress, Sapientia Hungarian University of Transylvania), testamentary gifts under legal provision valid on the Polish lands and in contemporary Poland (Dr. Jarosław Turlukowski, University of Warsaw), the institution of executory debenture in Croatia (associate professor Antun

Professor Alan Uzelac (University of Zagreb) presented another innovation which should not be followed. This doubtful Croatian legal institution is a writ of execution issued by a notary on the basis of a so-called “authentic document” (e.g. an invoice). It was introduced in order to facilitate the collection of debts, but thereafter it has become the cause of numerous abuses. It is worth mentioning that by 2019, due to such writs, bank accounts of 350 000 Croatian citizens were temporarily blocked. The Court of Justice of the European Union decided, in its judgment of 9 March, 2017,<sup>10</sup> that Croatian notaries who act within the framework of the proceedings based on an “authentic document” do not fall into the notion of a “court” under the EU law,<sup>11</sup> because during the proceedings the principle of *audi alteram partem* is not respected.

A professor at Charles University in Prague and judge of the Supreme Administrative Court of the Czech Republic in Brno, Zdeněk Kühn, devoted his conference paper to judge-made law in Central and Eastern Europe. According to the Czech scholar, during the transition period the role of court decisions in the region was gradually increasing. This process related to the changes in court proceedings (introduction of the elements of an adversarial system) and the growing popularity of a communicative approach to law. It should be emphasized, however, that the concept of precedent is hardly accepted in the countries of the region, even though reference to court decisions plays a huge role in legal argumentation (thus, some scholars refer to *de facto* precedents).<sup>12</sup>

Professor Máttyás Bencze (University of Debrecen) presented his own model of quality control of adjudication. In the author’s intention, this model is the answer to the problem of the low quality of legal arguments employed by courts in Central and Eastern Europe. The lack of sufficient connection between legal argument and conclusion, ambiguity of wording and overloading with special terminology should be listed among the main deficiencies of courts’ reasonings. To avoid these deficiencies, quality control of adjudication based on “minimum requirements” should be introduced. These requirements, which combine the assessment of the

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Bilić, University of Zagreb), business transaction invalidity under Russian law (Konstantin Totyev, HSE, Moscow; cf. Totyev 2016), shareholder agreements under Czech and Slovak law (Sandra Brožová, University of Economics in Prague), the institution of “obșteia”, a collective forest owners’ association, as a form of common-pool resources management in Romania (Dr. Ionuț Tudor), and corporate social responsibility under Polish law (Ewa Matejkowska, Jagiellonian University).

<sup>10</sup> European Court of Justice judgment of 9 March 2017, Case C-551/15 *Pula Parking d.o.o. v Sven Klaus Tederahn*, ECLI:EU:C:2017:193.

<sup>11</sup> Cf. Article 1(1) of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, 1–32).

<sup>12</sup> In regard to the Polish legal system, cf. Stawecki 2010. It is worth mentioning that in Polish legal theory Professor Andrzej Stelmachowski (1925–2009) was the first who, in 1960s, wrote about the law-making role of courts (Stelmachowski 1967). His views were challenged by some of the most eminent Polish legal scholars, including Professor Jerzy Wróblewski (1926–1990).



legality of a decision and its persuasiveness, include the clarity of a decision and the arguments which have been employed, considering all the essential circumstances of the case, the assessment of all the parties' arguments, and the linguistic clarity of the decision. According to Professor Bencze, the assessment of courts' decisions should be multifaceted and include such elements as an analysis of the number of appealed decisions, survey research regarding the comprehensibility of decisions and citizens' satisfaction with the quality of judgements, and the development of an algorithm to analyze the consideration of the parties' arguments in court decisions.

The last lecture of the plenary sessions was delivered by Professor Kathryn Hendley (University of Wisconsin Law School), who spoke about her research project devoted to the career preferences of young Russian lawyers. The survey, conducted in 2016, covered more than two thousand undergraduates from 163 Russian law schools of both public and private universities (cf. Hendley 2018). According to the American scholar, all Russian graduates have acquired the same legal culture, which emphasizes democratic values and judicial independence. They differed, however, about the courts' independence. On the one hand, those who seek to work in state administration and the criminal justice system are more convinced of the independence of the judges. On the other hand, "most of those who hoped to work with private clients were openly suspicious of the courts, fearing that they would bend to the will of politicians" (Hendley 2018, 273) As described by professor Hendley, the system of legal education in Russia, with the distinction between full-time students and extramural students (*zaochniki*) and the phenomenon of "fly-by-night" legal education (Hendley 2018, 268–269, 271–272) resembles to some extent the Polish system during the late 1990s and the first decade of the present century. Thus, it is likely that the educational attitudes and career preferences of Russian students have some similarities with the attitudes and preferences of law students in Poland and other countries of Central and Eastern Europe. Professor Hedley's multidimensional project could serve as a model and an incentive to carry out similar research in other countries of the region.

Russian legal professions were also the subject of the analyses of Yulia Khalikova (Bremen International Graduate School of Social Sciences) and Dr. Anton Kazun (HSE, Moscow) who spoke about the symptoms of gender inequality among attorneys. A more general topic concerning legal practitioners was raised by Dr. Lucian Bojin (Western University of Timișoara), who pointed out the changes in lawyers' practice in post-1989 Romania. In his view, the gradual adoption of patterns of behaviours taken from American law firms and law schools by Romanian legal practitioners caused more significant changes, namely the "bottom up" reception of common law ways of thinking, instead of the "top down" reception of French legal culture, which was characteristic of Romania in the late nineteenth and early twentieth centuries.

Another Romanian scholar from the same university, Dr. Alexandra Mercescu, presented one of the most interesting, at least in my opinion, papers in panel sessions. Its title, “‘Originality’ in Law: Its Ontology, Its Politics”, referred to the very core of the conference’s subject. Dr. Mercescu pointed out that for Romanian legislators originality is not the most important value, since frequently their aim is simply to follow the Western (“Euro-American”) model of regulation. Moreover, originality is not so much appreciated by Romanian legal scholars, since so-called legal dogmatics,<sup>13</sup> consisting of commenting on legal provisions in a seemingly objective way, is still a prevailing style of writing about the law in force in Romania. It appears that what presented by Dr. Mercescu applies not only to Romania, but also to other countries of the region, such as Poland, Czech Republic and Slovakia. Central and Eastern European lawyers with a practical orientation do not appreciate originality so much, since they are trying to convince society that they are revealing an objective sense of legal norms, even if the interpretation they are proposing and defending serves the specific interests of certain social groups or private companies.

Among other contributions on legal theory was a joint paper prepared by Professor Vladimir Isakov and Professor Dmitry Poldnikov (HSE, Moscow). The authors discussed the state of theoretical jurisprudence in Russia, pointing out that there is no journal dedicated exclusively to the general theory of law. Only five out of thirteen leading Russian legal journals accept papers concerning theoretical issues. In fact, the issues raised by the authors are connected with problems considered by Dr. Mercescu: since legal scholarship in Central and Eastern Europe is largely practically oriented, it is often hard to find a separate forum for more general reflection.

Four contributions were devoted to the most innovative achievements of Polish scholars. Professor Tomasz Bekrycht (University of Lodz) analyzed theories of legal interpretation developed in Polish legal theory. He emphasized that the abandonment of the simple positivist model of legal language and methods of juristic practice in Polish legal studies led to the emergence of a more complex picture of theories of legal interpretation. The author distinguished three groups of “theory-conceptions” related to legal interpretation. The first group mainly describes judicial decisions and legal practice, not only from the viewpoint of their outcomes, i.e. conclusions of judgements and their justification, but their axiological basis. Such an approach was represented by Lech Morawski (1949–2017). The “theory-conceptions” belonging to the second

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<sup>13</sup> Practically oriented legal scholarship in Central and Eastern Europe still takes the form of dogmatics, dating back to the nineteenth century. Raul Narits wrote about this phenomenon: “Dogmatics has traditionally two levels: first the general level, where dogmatics is understood as scientific processing of all legal material. In a more specific sense dogmatics is understood as sentences that form a certain system, which enable to conceptually and systematically value the application of law” (Narits 2007, 19).



group criticize and dispute the ways and methods of the legal reasoning that underlies legal decisions and indicate methods and approaches which could be applied to a given legal decision in the future. Jerzy Wróblewski's theory falls into this group. The starting point for the theories of the third group is not a description of judicial practice, but an application of the achievements of various disciplines (such as linguistics, logic, cognitive science, philosophy of language) to legal reasoning in order to create an ideal model of interpretation. This model consists of a series of postulates, directives, and recommendations as to how to proceed to get the best result in interpretation. Maciej Zieliński (1940–2020) developed such an approach.

In my own contribution, I focused on the innovative achievements in Polish sociology of law in the 1960s and 1970s. Polish legal sociology was launched after 1956 and was marked by such names as Adam Podgórecki (1925–1998) and Maria Borucka-Arctowa (1921–2018), although it had some predecessors in the pre-war period among the representatives of the Wilno school of Bronisław Wróblewski (1888–1941). Podgórecki, who was undoubtedly the main figure of the current, combined in an original way the elements of the Petrażyckian tradition (cf. Podgórecki 1981) with the American concepts of social engineering. Emphasizing the importance of the category of intuitive law for sociological research, he was, just as Petrażycki before him, an adherent of legal pluralism (cf. Podgórecki 1991). Dr. habil. Rafał Mańko (University of Amsterdam) presented the theory of Artur Kozak (1960–2009), whose legacy is largely unknown outside Poland. Kozak was inspired by Berger's and Luckmann's idea of social construction of reality and Richard Rorty's ethnocentrism, which was transformed by him into the concept of "juriscentrism", the very core of his thought (cf. Mańko 2020b). In the same session, Wojciech Zomerski (University of Wrocław) discussed the changes in Polish legal theory which led to the emergence of post-analytic theory of law (cf. Stambulski 2019). It is worth noting that in the section on legal history, associate professor Evgeny Tikhonravov (Siberian Federal University, Krasnoyarsk) devoted his paper to Krystyna Marek (1914–1993), a Polish émigré activist who became a full professor of international law at the University of Geneva. In the paper, her role in shaping the concept of non-recognition of territorial annexation was specially emphasized (cf. Marek 1954).

The paper of associate professor Anita Soboleva (HSE, Moscow), who presented her own "topical approach" to legal interpretation, should be considered as one of the most original contributions in the session devoted to legal theory. Her basic sources of inspiration are Ronald Dworkin's theory of judicial decision-making and the work of Jerome Frank (1889–1957), who revealed the role of psychological factors in judges' decisions. According to Dr. Soboleva, everything applied in issuing a legal decision has a legal character. Thus, instead of sources of law, she distinguishes sources of judicial (legal) arguments, which serve as

*topoi*, and include norms, principles, values, ethical concepts, and religion. The “rhetorical situation”, the key point of Dr. Soboleva’s theory, is characterized by the constant interplay of the author, text and audience. Moreover, during the same session Professor Anton Didikin (HSE, Moscow) analyzed acts of speech and Dr. Alexander Petrov (Siberian Federal University, Krasnoyarsk) spoke about the formal priority of codes on the basis of the legal system of Russian Federation.<sup>14</sup>

The entire Russian-language session was devoted to Byzantine law and its heritage. In the scope of this session, such issues as the synthesis of religious and secular authority in Byzantium, the reception of Romano-Byzantine law among Balkan Slavs in the Middle Ages and the influence of Byzantine law on Russian law, were discussed.<sup>15</sup> The legal history session was, in turn, dominated by the subject of modernization and legal transformations in nineteenth- and early-twentieth century Russia,<sup>16</sup> but the situation of the Russian peasantry in the eighteenth century was also widely discussed.<sup>17</sup> Among these topics, the paper of Dr. Laura Gheorghiu (University of Graz) clearly stood out, because it was devoted to the theory of the “founding father” of functionalism in international relations, David Mitrany.

Since in many countries of the region religion is considered to be almost an element of national identity, it is quite surprising that only three contributions were devoted entirely to law and religion issues. Professor Alexander Safonov (HSE, Moscow) presented the issue of freedom of conscience in Russian jurisprudence

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<sup>14</sup> It is worth adding that codes have never had a formal priority in the Polish legal system. Consequently, from the formal point of view, they are considered equal to other statutes. There are, however, specific rules concerning how codes should be drafted, passed and changed. Thus, if the basic guidelines on what codes should be are followed, there is no need to give codes a special place in the hierarchy of legal sources.

<sup>15</sup> The following speakers took part in this section: associate professor Dr. Aleksandar Đorđević (University of Niš), professor Alexey Ovchinnikov (Southern Federal University, Rostov-on-Don), Dr. Vadim Pavlov (Academy of the Ministry of the Interior, Minsk), associate professor Andrei Seregin (Southern Federal University, Rostov-on-Don).

<sup>16</sup> The following scholars took part in this section: Professor Konstantin Krakovski (Russian Presidential Academy of National Economy and Public Administration), Professor Kirill Solovyov (Institute of Russian History, Russian Academy of Sciences), Professor Alexander Safonov (HSE, Moscow), and Dr. Bulat Nazmutdinov (HSE, Moscow). Only one contribution concerned Soviet law: associate professor Aaron Retish (Wayne State University, Detroit) analyzed “Legal Innovations of the Local People’s Courts, 1917–1922.”

<sup>17</sup> This topic was raised by Dr. Elena Borodina (Institute of History and Archaeology, Ural branch of Russian Academy of Sciences) and Alice Plate (Ural Federal University named after the first President of Russia B.N. Yeltsin). Professor Elena Marasinaova dealt with the interesting subject of the moratorium on the death penalty which was in force during the reign of Elizabeth Petrovna. Professor Marasinaova posed a question of whether the moratorium was influenced by Orthodox Christian beliefs or by Enlightenment thought (cf. Marasinaova 2019). Only Professor Adrian A. Selin (HSE, St. Petersburg) dedicated his paper to the early modern Russia, speaking about Novgorod’s judicial system at the turn of the 16th and 17th centuries.

at the beginning of the 20th century and the relationships between Russian and Western-European concepts in that regard. Ksenia Eggert (KU Leuven/HSE, Moscow) focused on the “anti-blasphemy” law in contemporary Russia, while the paper by Dr. Wojciech Ciszewski (Jagiellonian University) dealt with conscientious exemptions.

Several contributions referred to different aspects of legal language. Associate professor Natallia Kovkel (Belarusian State Economic University) spoke about the contemporary semiotics of law, while professor Vladislav Turanin (Belgorod State University) devoted his paper to the phenomenon of legal terminology. Dr. Simeon Groysman (Sofia University “St. Kliment Ohridski”) tried to convince his listeners that introduction of the language emphasized the supremacy of rights in Bulgaria and other Balkan countries was based on a “top-down” mechanism and was not the result of the cultural development of these countries. Dr. Anna Demenko and Dr. Michał Urbańczyk (Adam Mickiewicz University in Poznań) analyzed the phenomenon of hate speech in Poland, pointing to the ineffectiveness of Polish criminal responsibility in the cases related to this phenomenon.

The session on constitutionality was dominated by such issues as populism and the phenomenon of “illiberal democracy.” Dr. Petr Agha (Czech Academy of Sciences) dealt with the former, while Professor Adam Sulikowski (University of Wrocław) focused in his contribution on the later.<sup>18</sup> Associate professor Alexandra Troitskaya (Moscow State University) devoted her paper to the more general topic of Eastern European constitutionalism which, in her view, should be analyzed taking into account the broader social context of each country. Associate professor Anna Alexandrova (Penza State University) spoke about the arrangements of social rights in Central and Eastern-European basic laws. Bartłomiej Ślemp (University of Warsaw) presented constitutional problems involved in local government finance in the CEE region. The homogeneity clause in the Russian constitution was, in turn, the subject of Dr. Alexander Gorskiy’s paper (University of Tübingen), who found it to be halfway between Austrian and German constitutional provisions concerning the requirement of homogeneity (*Homogenitätsgebot*).

Three papers in the session dedicated to the courts focused on judicial law-making. The methodological approach was presented by Dr. Maria Filatova (HSE, Moscow), while Maxim Sorokin (National Institute for Entrepreneurship Research, Russia) focused on Russian issues. Associate Professor Marko Bratković (University of Zagreb) analyzed the binding force of the interpretational statements of the Supreme Court. Jan Zobec, a former Slovenian Constitutional Court justice who serves now as a judge of the Supreme Court, pointed out the failures during

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<sup>18</sup> The same subject was raised by Dr. Przemysław Tacik (Jagiellonian University) in his contribution in the public law session. However, in my view the term “neo-authoritarianism” used by the author is not a felicitous one, because it puts the current problems in the wrong context which leads to their presentation in an exaggerated way.

the transition of Slovenian judiciary. Two reports concerned Polish issues: Kinga Drewnowska (University of Wrocław) spoke about the constitutional judiciary, while the principle of proportionality was discussed by Magdalena Michalska (Jagiellonian University).<sup>19</sup> Moreover, the conference lecture of associate professor Marianna Muravyeva (University of Helsinki) was also concerned with judicial practice. Its title speaks for itself: “‘One Slap is Not the End of the World’: Defining Family Violence in the Courtroom.” During its preparation, Dr. Muravyeva analyzed some 800 decisions and protocols of administrative and criminal cases in the courts of Moscow and St. Petersburg encompassing the entire decade between 2008 and 2018.<sup>20</sup>

The entire session, under the rather enigmatic title “‘Immunity’ and ‘Resistance’ within Administrative Praxis”, was concerned solely with administrative law in Poland. Its participants were scholars associated with Jagiellonian University in Cracow. The discussed topics covered the new institution of administrative mediation introduced into Polish law in 2017 (Professor Hanna Knysiak-Sudyka), means of challenge in administrative proceedings (Professor Marta Romańska), administrative appeals (Jakub Grzegorz Firlus) and the participation of the public prosecutor in administrative proceedings, which is an institution dating back to the time of “real socialism” (Dr. Agata Cebera). Moreover, issues concerning Polish administrative law were also included in the sessions devoted to public law and the courts. Piotr Eckhardt (Jagiellonian University) analyzed the institution of the construction planning permit, while Professor Agnieszka Skóra (University of Warmia and Mazury in Olsztyn) presented changes in attitudes towards electronic administration and electronic administrative courts and electronic administration in Poland.

Issues of criminal law were presented in a single session. Firstly, Monika Czechowska (University of Wrocław) described the Polish institution of crown witness as a merger of elements taken from Italian, American and German legal systems. Since a person as a crown witness might escape criminal liability, warnings have been presented regarding possible abuse of this institution. Then Dr. Imre Otto Nemeth (Eötvös Loránd University) drew attention to the phenomenon of overcriminalization.<sup>21</sup> The way restorative justice is used in

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<sup>19</sup> Without doubt, the principle of proportionality is very useful tool (cf. Barak 2012; Szymaniec 2015), but it is hard to admit the originality of the Polish arrangement of this principle (Article 31 (3) of the Constitution of the Republic of Poland of the 2 April 1997). It is largely based on the Federal Law of the Federal Republic of Germany and the jurisprudence of the Federal Constitutional Court in Karlsruhe.

<sup>20</sup> Other reports presented in the public law session were devoted to state liability in Slovenia (Professor Damjan Možina, University of Ljubljana) and legal transition in Armenia (Dr. Aiste Mickonytė and Dr. Benedikt Harzl, University of Graz).

<sup>21</sup> This phenomenon is apparent not only in Hungary but also in Poland. Based on my experience in the Legislative Council for the Prime Minister of Poland, I am able to say that many drafts of statutes contain criminal provisions which are unnecessary from the social point of view. It

Germany was a theme of the report of Irina Chashchina (HSE, Moscow) and Christina Kulakova (Ludwig-Maximilians-Universität München). Finally, Maxim Karljuk (HSE, Moscow) in his contribution discussed the question of punishment. Using arguments taken from such different sources as the writings of Marxist lawyers from the early Soviet period, theories presented by modern sociologists and the achievements of neuroscience, the author questioned the existence of free will and thus challenged the concept of criminal punishment.

The international law sessions included papers that looked, in accordance with the traditional approach to that branch of law, at the relationships between states created by states themselves. Two of the papers focused on bilateral investment treaties. Associate professor Emilia Mišćenić (University of Rijeka) presented the Croatian perspective on the issue, while Dr. Velimir Živković (KFG, International Rule of Law) focused on the Serbian approach which, in his view, lacks legal originality. Integration in the scope of the Eurasian Economic Union was the subject of the paper authored by Dr. Hugo Flavier of Bordeaux University. The last paper in this session, by Professor Daria Boklan (HSE, Moscow), was devoted to the Russian response to the threat of climate change in the scope of international law. The session on international courts presented, in turn, different ways of interaction between international and domestic courts. In the paper entitled “The tale of two courts,” Yulia Khalikova (International Graduate School of Social Sciences, Bremen) presented the responses of the Constitutional Court of the Russian Federation to the case law of the European Court of Human Rights. Andrey Shcherbovich and Mikhail Zverev (HSE, Moscow) dealt with a similar subject, although they also took into account the jurisprudence of Russian ordinary courts. In the last paper, the possible impact of the latest European Court of Justice’s judgments on the European Arrest Warrant System was analyzed by Professor Balazs Jozsef Geller (Eötvös Loránd University).<sup>22</sup>

Even if the CEENELS Moscow conference did not bring a definitive answer to the question of the original contributions of Central and Eastern Europe to the world legal heritage, it showed that the region is not only a territory of legal transplants and reception of legal ideas, concepts and institutions, created elsewhere. Many topics discussed at the conference should remain the subject of further, detailed studies.

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seems that the authors of drafts view the introduction of such provisions as a remedy for any phenomenon they deem negative. Therefore, due to such an approach, the principle of proportionality ceases to serve as a tool for assessing the admissibility of criminalization.

<sup>22</sup> It is worth noting that the short session on new challenges to legal systems included three contributions. Associate professor Maria Kapustina (St. Petersburg State University) presented the impact of Russian Information Security Doctrine on legal regulations. The phenomenon of whistleblowing as a legal issue was explored by Dr. István Ambrus (Eötvös Loránd University). Associate professor Daria Chernyaeva (HSE, Moscow) presented, in turn, the Russian approach to the regulation of genetic engineering.

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