

Editor-in-Chief's Note

ISSUE 3 OF 2023 AND THE JOURNAL'S POLICY ON NEUTRALITY AND NON-DISCRIMINATION IN EDITORIAL WORK

In this issue of the Access to Justice in Eastern Europe journal, we collected articles from authors of various states – Romania, Moldova, Ukraine, Slovakia, Poland, and Saudi Arabia. We are particularly delighted to welcome contributions from authors from Kosovo, as their efforts to spread knowledge about their jurisdiction and share the results of their studies is warmly welcomed. This fact alone is another good reason for policymakers, legal practitioners, and researchers to read this issue.

As usual, I would like to provide a brief overview of some of the articles featured in this issue. However, before diving into the contents, as Editor-in-Chief, I would like to share some ideas and reflections with our audience and my colleagues and editors. I will discuss the Journal's commitment to neutrality and non-discrimination, especially in light of the challenges faced during wartime in Ukraine.

The editorial role is challenging and ever-evolving, requiring vigilant attention to ongoing developments. AI has emerged as a remarkable issue, exemplifying the need to be vigilant and ready to address all new challenges. At the same time, the most demanding matter Ukrainian journals have faced in the last months has been neutrality and non-discrimination toward authors, reviewers, editors and Board members from state aggressors.

International documents, such as the International Covenant on Civil and Political Rights¹, the Universal Declaration of Human Rights², and the European Convention on Human Rights³, guarantee non-discrimination for all people and the right to freedom of expression. These rights encompass the freedom to hold opinions, receive and impart information and ideas without interference by public authority, and regardless of frontiers. However, it is essential to acknowledge that the exercise of these freedoms, since it carries duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties

1 International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXI) A) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed 25 July 2023.

2 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 25 July 2023.

3 Council of Europe, *European Convention of Human Rights: as amended by Protocols Nos 11, 14 and 15, supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2014) <https://www.echr.coe.int/documents/d/echr/convention_eng> accessed 25 July 2023.

as are prescribed by law and necessary for a democratic society, particularly in the interests of national security⁴.

While the case law on this matter may not be so extensive, I find it necessary to highlight some key points through specific judgements.

In the case of *Vereniging Weekblad Bluf! v. the Netherlands*⁵, a report was published, and the director of the internal security service was deemed to violate the Criminal Code. Consequently, the issue of the journal was withdrawn from circulation by order of the public prosecutor without the need for adversarial proceedings to prove that the information in question had to be kept secret. However, in his decision, the Court ruled that this measure was unnecessary in a democratic society and constituted a breach of Article 10 and the right to freedom of expression (Art. 10) (pp. 28-46).

In the case of *Wille v. Liechtenstein*⁶, a newspaper published an article on the lecture given by the applicant, a Judge, mentioning, inter alia, his views on the competencies of the Constitutional Court. This article became the basis for the Prince of Liechtenstein to announce his intention not to reappoint the applicant to a public office. The Court found that this action by the Prince interfered with the applicant to exercise his freedom of expression. By criticising the contents of the applicant's speech and expressing the intention to sanction him for freely expressing his opinion, the Prince's announcement constituted a reprimand for the applicant's previous exercise of his right to freedom of expression. Moreover, it had a chilling effect on the applicants' future expression, as it was likely to discourage them from making statements of that kind in the future (p. 50).

I suppose the mentioned cases have a direct link to the behaviour of journals in two important aspects. Firstly, it reflects the role of decision-making in the editorial process, akin to a sovereign editor, such as the Prince, giving the right to proceed with further publication. Secondly, it highlights the importance of evaluating content without bias or background information about the authors.

Discrimination remains one of the worst aspects of human society. The very idea of treating people differently based on their colour, gender, or political views is ugly. In reality, there is no distinct white and black, even among natural colours, as artists have observed. Manipulating these differences or any other criteria only disregards the history and remarkable achievements of all individuals without exception. Nevertheless, despite decades of international acts to address non-discrimination, we still face many challenges.

As an Editor-in-Chief, I confront various forms of bias. The publication process is human-driven, making it susceptible to subjective opinions and views. Navigating through this wild forest of judgments and opinions can be exceedingly challenging. However, I firmly believe that maintaining a clear and transparent policy, supported by well-grounded arguments, can guide us to avoid confusion and difficulties.

Since the occupation of Ukrainian territory in 2014, we have come to realise that academic publishing is an integral part of our society's activities, and it is imperative to react and

4 Dominika Bychawska-Siniarska, *Protecting the Right to Freedom of Expression under the European Convention on Human Rights: A handbook for legal practitioners* (Council of Europe 2017) <<https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814>> accessed 25 July 2023.

5 *Vereniging Weekblad Bluf! v the Netherlands* App no 16616/90 (ECtHR, 09 February 1995) <<https://hudoc.echr.coe.int/eng/?i=001-57915>> accessed 25 July 2023.

6 *Wille v Liechtenstein* App no 28396/95 (ECtHR, 28 October 1999) <<https://hudoc.echr.coe.int/?i=001-58338>> accessed 25 July 2023.

position ourselves on the right side of this ongoing war (In this case, we truly support our colleagues who signed this letter⁷).

By the laws of Ukraine, particularly in the media, including journals, the dissemination of information containing the following is prohibited: calls for violent change, the overthrow of the constitutional order, initiation or conduct of aggressive war or military conflict, violation of Ukraine's territorial integrity, the liquidation of Ukraine's independence, and information that justifies or propagates such actions; statements that incite hatred, hostility, or cruelty towards individuals or groups based on their ethnic or social origin, citizenship, nationality, race, religion and beliefs, age, gender, sexual orientation, gender identity, or disability; information that denies or justifies the criminal nature of the Communist totalitarian regime in Ukraine from 1917 to 1991, as well as the criminal nature of the national-socialist (Nazi) totalitarian regime, creating a positive image of persons who held leading positions in the Communist Party, other Union and autonomous Soviet republics (except for cases related to the development of Ukrainian science and culture), justifying the actions of Soviet state security; information that contains symbols of the Communist or national-socialist (Nazi) totalitarian regime, propaganda of the Russian totalitarian regime, armed aggression of the Russian Federation as a state-terrorist against Ukraine, as well as symbols of the military invasion by the Russian totalitarian regime.

Most importantly, this includes the prohibition of disseminating information that degrades or disrespects the state language, denies or calls into question the existence of the Ukrainian people (nation), Ukrainian statehood, and/or the Ukrainian language (Article 36 of the Law on Media, entered into force in March 2023)⁸.

According to the law, the Russian Federation is recognised as a state-terrorist, with one of the political regime's objectives being the genocide of the Ukrainian people, physical extermination, mass killings of Ukrainian citizens, committing international crimes against the civilian population, using prohibited methods of war, destruction of civilian objects and critical infrastructure, artificially creating a humanitarian catastrophe in Ukraine or its specific regions, and its political regime being inherently Nazi in its essence, practice, and ideological following of the national-socialist (Nazi) totalitarian regime⁹.

The law strictly prohibits the propagation of the Russian Nazi totalitarian regime and the armed aggression of the Russian Federation as a state terrorist against Ukraine. It also addresses the use of symbols related to the military invasion of the Russian Nazi totalitarian regime in Ukraine, stating that employing these symbols as specified in the law constitutes a distinct form of propaganda of the Russian Nazi totalitarian regime and the armed aggression of the Russian Federation as a state-terrorist against Ukraine (Part 3 of the Law).

The prohibition of using the specified symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine does not apply to cases where their use serves a legitimate purpose and is lawful, as long as it does not have signs of propaganda of the Russian Nazi totalitarian regime and the armed aggression of the Russian Federation as a state-terrorist against Ukraine. This exception includes situations in scientific activities, such as during

7 'An Open Letter from Scientists of Ukraine and Diaspora' (*National Research Foundation of Ukraine*, 13 February 2023) <<https://nrfu.org.ua/en/news-en/an-open-letter-from-scientists-of-ukraine-and-diaspora>> accessed 25 July 2023.

8 Law of Ukraine No 2849-IX of 13 December 2022 'On Media' (as amended of 02 July 2023) <<https://zakon.rada.gov.ua/laws/show/2849-20>> accessed 25 July 2023.

9 Law of Ukraine no 2265-IX of 22 May 2022 'On the Prohibition of Propaganda of the Russian Nazi Totalitarian Regime, Armed Aggression of the Russian Federation as a State-Terrorist against Ukraine, Symbols of the Military Invasion of the Russian Nazi Totalitarian Regime in Ukraine' (as amended of 31 March 2023) <<https://zakon.rada.gov.ua/laws/show/2265-20>> accessed 25 July 2023.

scientific research and dissemination of research results in a manner not prohibited by the legislation of Ukraine (paragraph 7).

In August 2022, a draft law of Ukraine titled 'On Amendments to Certain Laws of Ukraine Regarding the Prohibition of Using Information Sources from the Aggressor State or Occupying State in Educational Programs, Scientific, and Scientific-Technical Activities,' was registered as bill number 7633 on August 4 2022¹⁰. This bill has sparked serious discussions within academic circles.

Keeping this in mind, I am pleased to share our new approaches to the journal's policy on neutrality and non-discrimination in the editorial process, based mainly on the legal regulations, case law and ethical ideas of the role and meaning of scholarly publishing in an open society.

The journal maintains a neutral stance towards political controversies. It ensures that the editors do not express personal preferences or biases towards manuscripts or authors based on their country of origin, residence, or affiliation. Publication decisions are made independent of the manuscript's origin, including the authors' nationality, ethnicity, political beliefs, race, or religion. The journal's editorial board is not influenced by external factors such as government policies or institutional guidelines.

To promote depoliticisation in research, we advise authors to avoid making provocative remarks, controversial geopolitical claims, or using disputed map markings. In cases where this cannot be avoided, the journal reserves the right to label such content as controversial during or after publication, publish the editor's comments, or reject/retract articles.

However, the editors reserve the right to reject manuscripts without review under the following circumstances:

1. The author(s) are affiliated with an organisation or institution located in a country deemed an aggressor state or a state sponsor of terrorism.
2. The research is funded by an organisation or institution in a country deemed an aggressor state or a state sponsor of terrorism.
3. The manuscript contains calls for the violation of state order or the rule of law, human rights abuses, terrorism, or the dissemination of ideological or politicised ideas.
4. The research is based on conclusions or results obtained by authors affiliated with an organisation or institution in a country deemed an aggressor state or a state sponsor of terrorism without sufficient justification for their uniqueness, originality, and global scientific significance or their specific relevance to the research proposed for publication.
5. The study excessively focuses on conclusions or results of studies that contain or reflect the subjective assessments or opinions of the author(s) regarding Ukrainian statehood and/or independence, distort historical events, the Ukrainian language, or national identity.

The main aim is to identify and fight it greatly. Scientific research should be free of the influence of research institutions and state policies; however, we presume that authors can

¹⁰ Draft Law of Ukraine no 7633 of 04 August 2022 'On Amendments to Certain Laws of Ukraine Regarding the Prohibition of Using Information Sources from the Aggressor State or Occupying State in Educational Programs, Scientific, and Scientific-Technical Activities' <<https://itd.rada.gov.ua/billInfo/Bills/Card/40164>> accessed 25 July 2023.

express their visions of the study, its objectives and results. In the case of a totalitarian state, aggressor states, journals, editors, and reviewers can not be obliged to take responsibility to conclude whether the particular study brings to the science free expression or is biased or bound by the leading affiliation institutions.

Open science is only truly possible when scholars have the freedom to openly express their opinions; otherwise, it carries more dangers than benefits.

In my opinion, a few articles in this issue deserve particular attention. Firstly – the writing of co-authors *Judita Krasniqi, Labinot Hajdari, Alban Maliqi and Kimberly DeGross Madsen*, ‘The Mirror Reflection of the Russian Invasion of Ukraine in the Western Balkans: Opening New Conflicts as a Distraction’, in which the correlation between the increase in tensions between Russia and Ukraine and the rise of tensions in the Western Balkans was analysed. The article examines how Russia’s aggression in Ukraine has increased pressure on Serbia, its closest ally, to fuel tensions in the region using hybrid war methods. These methods involve a combination of various war tactics integrated into different spheres, including political, religious, ideological, ethical, economic, and informational.

The research reveals that Russia’s influence in the Western Balkans aims to destabilise the region by reigniting past conflicts or inciting new ones to divert international attention from the declining power of Ukraine. The article highlights the importance of accelerating NATO and EU integration for Western Balkan countries to counteract Russian influence and prevent future conflicts among Balkan states. The study concludes that Russian influence in the region is real and seeks to undermine the power and influence of the West and NATO in former Yugoslav states, using conflicts as a distraction from Ukraine’s power decline.

Oksana Khotynska-Nor, Nana Bakaianova, and Maryna Kravchenko, in their article, examined the impact of martial law on the activity of the Prosecutor’s Office in Ukraine following the full-scale invasion by the Russian Federation in February 2022. The study presents a systematic analysis of the Prosecutor’s Office’s performance indicators within the context of the events unfolding during the war, focusing on a period of over a year. The authors base their analysis on the performance indicators of four regional Prosecutor’s Offices representing different regions of Ukraine. This approach allows for examining the correlation between the intensity of military aggression in specific regions and the effectiveness of the Prosecutor’s Office’s operation. The findings reveal that the territorial factor significantly influences the activity of the Prosecutor’s Office during martial law.

Additionally, the full-scale war has resulted in polar phenomena among prosecutors, including intensifying their civil position against the aggressor. Moreover, professional and behavioural disruptions among prosecutors have been observed, which are subject to assessment by a disciplinary body, potentially leading to the finalisation of a prosecutor’s career. This article is expected to provide valuable insights for anyone interested in the justice system, particularly the Prosecutor’s Office, and its responses to the extraordinary conditions of war.

Notably, a group of Ukrainian scholars, *Oksana Kaplina, Anush Tumanyants, Iryna Krytska and Olena Verkhoglyad-Gerasymenko*, explored the use of artificial intelligence (AI) technologies in criminal proceedings. The rapid development of digital technologies has impacted various spheres of society, including the legal field. This study focuses on the application of AI systems in criminal justice, considering the potential challenges in upholding fundamental human rights and legal principles, and emphasises that using AI systems for auxiliary purposes poses minimal risks of interfering with human rights and freedoms. However, adopting AI in other areas may significantly infringe upon these rights and freedoms. Therefore, it is essential to control and verify the use of AI for such purposes, limiting its implementation to subsidiary roles and, in some instances, even prohibiting

it altogether. The study underlines the importance of safeguarding fundamental human rights and adhering to basic legal principles, such as the presumption of innocence, non-discrimination, and the right to privacy, when applying AI systems in the criminal justice system.

Hanna Ostapenko's article offers a comprehensive analysis of the implementation of the legal certainty principle and access to justice in Ukraine, particularly amidst the challenges posed by the ongoing war. According to the author's findings, legal certainty is an integral element of the rule of law, ensuring predictability and clarity in legal regulation and requiring proper enforcement of legal acts while prohibiting retroactivity. It contributes to stability in legal regulation and respects legitimate expectations. A key finding in this article is the reciprocal relationship between improving access to justice and legal certainty. When legal certainty is compromised due to legislative gaps or unclear norms, the right to access the court becomes essential for restoring the violated rights of claimants. The requirement of *res judicata* for legal certainty is also necessary for access to justice.

This issue presents a collection of intriguing articles and notes that will captivate those interested in access to justice issues in Eastern Europe.

As always, I am endlessly grateful to my dedicated team, and I pass our warm welcome to our new English editors, *Nicole Robinson and Julie Bold*. English language publications are paramount as they facilitate the global dissemination of knowledge, enabling researchers, professionals, and policymakers from diverse backgrounds to access and contribute to cutting-edge research and advancements across various fields. We are warmly grateful to our editors for their help.

We are proud to announce a Special Issue aimed at collecting articles related to the intersection of legal and economic issues. Understanding this intricate relationship is crucial as it provides insights into how effective legal systems can foster economic growth, social inclusion, and overall societal well-being, benefiting individuals, businesses, and communities alike.

Leading this special issue will be *Prof. Ganna Kharlamova* from Taras Shevchenko National University of Kyiv, Ukraine, *Prof. Alfredo Moscardini* from Northumbria University, UK, and *Dr. Eduard Stoica* from Lucian Blaga University of Sibiu, Faculty of Economic Sciences, Romania. Their expertise will be complemented by contributions from other esteemed scholars, making this Special Issue a significant contribution to understanding how legal frameworks impact economic performance and society as a whole.

Slava Ukraini!
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