

Editorial

NAVIGATING NEW LEGAL REALITIES AND THE ROLE OF DOCTRINE IN CONTEMPORARY JUSTICE

Iryna Izarova

ABSTRACT

This Editor-in-Chief's Note introduces Issue 3 of the Access to Justice in Eastern Europe journal, providing an overview of the pivotal themes explored in this publication. The editorial highlights the increasingly transnational nature of contemporary legal challenges, focusing on the regulation of artificial intelligence, the extraterritorial impact of European Union law, the protection of digital rights, and the evolution of tort liability. Special attention is given to three notable scholarly contributions: a comparative analysis of cross-border tort claims in the context of Ukraine's European integration and civil law recodification (B. Karnaukh & T. Tsvina); a critical case note on judicial practice regarding the recognition of well-known trademarks and the limits of judicial decisions (K. Pilkov); and a comprehensive examination of the international legal framework for the security and dignified return of displaced persons under jus cogens norms (A. Sadigov & S. Rahimli). Furthermore, the Note underscores the indispensable role of judicial discretion and legal doctrine in addressing legislative gaps and adapting the law to new realities. The editorial concludes by acknowledging the vital contributions of the editorial board and peer reviewers in upholding the journal's commitment to academic excellence.

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This issue of our journal covers key topics that are highly relevant to contemporary jurisprudence. Specifically, these include the rapid development of artificial intelligence technologies, the protection of digital rights and personal data, the extraterritorial impact of European law, and the evolution of tort liability institutions in the face of new challenges.

These topics deeply concern scholars and practitioners across many countries and regions. Contemporary legal problems are becoming increasingly transnational, which is perfectly illustrated by the geographical scope of the research in this issue. For instance, we examine the impact of European legislation (in particular, the EU AI Act) on non-EU member states in the Western Balkans, and investigate how EU environmental requirements and AI rules influence the legal system of Vietnam. Alongside this, significant attention is given to the reception of European experience in Ukraine—ranging from the recodification of tort law in light of the CJEU case law to issues of constitutional identity as a guarantee of statehood. Furthermore, the pages of this issue address specific challenges in Asian and Middle Eastern countries: safeguarding the digital rights of labour migrants and the use of AI in the law enforcement system of Kazakhstan, objective liability in Jordan, and the practice of applying bankruptcy law in the courts of Saudi Arabia.

What is particularly crucial today is how the law responds to threats to the fundamental values and rights of the most vulnerable groups. The search for effective mechanisms to prevent psychological violence at work (Lithuania and Estonia), protect children's privacy in the digital environment, enforce mediation in labour disputes (Ukraine), and provide international legal protection for deported persons (Azerbaijan)—all remind us that the human being and access to justice must remain at the centre of any technological innovations or geopolitical transformations.

Following the tradition of my editorial notes I wish to highlight the most notable and landmark works of this issue. Having caught the keen attention of our editorial team and invited experts, these are the studies I want to personally recommend as you begin reading.

As Ukraine confidently advances toward EU membership, aligning its national private international law with the EU *acquis* has become not merely an ambitious goal but an urgent legislative task. This critical issue is the focus of the article by **Bohdan Karnaukh** and **Tetiana Tsvina**, "Main Connecting Factor for Tort Claims in the EU and Ukraine: Lessons from the CJEU Case Law for Ukrainian Recodification".

The authors focus on cross-border tort disputes, the resolution mechanisms of which in the European Union rely on two fundamental instruments: the Brussels I Recast Regulation (determining international jurisdiction) and the Rome II Regulation (determining applicable law). The authors provide a detailed analysis of how these regulations operate in practice through the prism of the Court of Justice of the European Union (CJEU) case law, paying special attention to complex issues such as the localisation of purely financial loss and the distinction between direct damage and indirect consequences.

Today, Ukraine is undergoing a large-scale recodification of its private law. In April 2026, a draft of the new Civil Code was presented, featuring a dedicated Book VIII on private international law. This study offers a timely 'audit' of these innovations. In particular, current Ukrainian legislation still relies on the *lex loci delicti commissi* principle (the place where the tort was committed), which structurally diverges from the *lex loci damni* approach (the place where the damage occurred) enshrined in Rome II. Although the drafters of the Civil Code have taken a significant step toward European standards by establishing *lex loci damni* as the primary connecting factor, the legislative text still requires refinement. The authors convincingly argue that the draft lacks a codified distinction between direct and indirect damage (a cornerstone of CJEU jurisprudence), omits a rule regarding safety and conduct equivalent to Article 17 of Rome II, and fails to introduce the principle of party autonomy for non-contractual obligations.

The article not only diagnoses conceptual gaps but also offers targeted, well-reasoned recommendations for the legislator. This is a must-read for scholars in the fields of civil and private international law, judges, practising lawyers handling cross-border disputes, and anyone interested in the process of adapting Ukrainian legislation to European Union standards.

Another publication that will undoubtedly draw readers' attention concerns a conceptual question: can a court simply "declare" a trademark well-known to everyone (*erga omnes*), or does such recognition only apply between the parties to a specific dispute (*inter partes*)? This issue was the subject of consideration by the Grand Chamber of the Supreme Court in the landmark "Citramon" case, brilliantly analysed by **Kostiantyn Pilkov** in his new publication for our journal.

Traditionally, in Ukraine, it was believed that an owner could have their trademark recognised as well-known through two equal avenues: an administrative procedure (the Appeals Chamber of the IP Office) or through the court. It was expected that a court decision would have universal effect. However, this approach created risks for legal certainty and the rights of other bona fide owners.

The author, a Supreme Court judge, thoroughly unpacks the logic of the Grand Chamber, which changed the rules of the game. The Court concluded that the appropriate and effective remedy is not a standalone claim for the recognition of a trademark as well-known, but rather a claim to invalidate the registration of a competing trademark. The recognition of the trademark as well-known should merely be a prerequisite (motivation) for such cancellation, meaning it forms part of the reasoning of the judgment.

This approach has enormous practical significance, as it limits the effect of the court decision strictly to the parties to the dispute (*inter partes*), without violating the general principles of commercial proceedings, and prevents the circumvention of limitation periods. Under the Paris Convention (Article 6bis), there are time limits for cancelling bona fide registered competing trademarks. If courts allowed separate recognition of the "well-known"

status, it would essentially "restart" the limitation periods and deprive bona fide competitors of their right to defence. This publication is an excellent example of how legal doctrine meets the real needs of judicial practice. I highly recommend it to all intellectual property lawyers, judges, and scholars interested in the effectiveness of legal remedies.

Taking this opportunity, I would like to emphasise that we deeply value research demonstrating the intrinsic link between theory and the challenges of legal application. The concept of an "ideal law" is an illusion, as no normative act can encompass the entire dynamics of social relations. That is precisely why the key role in ensuring the rule of law belongs to the judge. Doctrine and general principles of law serve as the essential toolkit that helps judicial discretion interpret the law not only by its letter but by its spirit, adapting it to the demands of the present day.

Of particular weight in contemporary academic discourse are publications devoted to the fundamental mechanisms of international law regarding the protection of the rights of displaced persons and state responsibility. Ensuring the security and dignified return of people affected by forced displacement is an extremely delicate issue that requires profound doctrinal reflection and the search for flawless legal instruments.

It is to this complex issue that the study by **Afsar Sadigov** and **Saftar Rahimli**, "The International Legal Framework for the Dignified Return and Security of Azerbaijanis Deported from the Present-Day Armenia", is dedicated.

In their work, the authors approach the issue of the forced displacement of the Western Azerbaijani population strictly through the rigorous lens of peremptory norms of international law (*jus cogens*), international humanitarian law (IHL), and international human rights law. Analysing the context of deportations across different historical periods, the researchers rely on a solid foundation of jurisprudence from key international bodies, including the International Court of Justice (ICJ), the European Court of Human Rights (ECtHR), and the International Criminal Tribunal for the former Yugoslavia (ICTY).

The main academic value of this article lies in its effort to fill the analytical gap concerning the practical realisation of rights. The authors propose a comprehensive, multi-layered framework of legal remedies. The researchers detail the mechanisms of international state responsibility, such as *restitutio in integrum* (restoration to the original state), financial compensation, rehabilitation, and legal guarantees of non-repetition, which are necessary to create conditions for a safe, sustainable, and dignified repatriation.

In closing, I extend my deepest appreciation to our editorial board and reviewers for their outstanding professionalism and impartial evaluations. As legal scholarship grows increasingly complex, their meticulous peer review remains the bedrock of our journal's quality. I believe our authors value this rigorous process, understanding that every piece of constructive feedback is a collaborative endeavour aimed at refining their research and enriching the broader legal debate. Together, we ensure that the insights shared in this

issue—spanning topics from adapting legal doctrines to new realities to resolving complex international disputes —provide a robust foundation for both theoretical progress and practical application. Through this mutual dedication to academic excellence, we continue to advance a profound understanding of justice in our interconnected world.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Слово редактора

АДАПТАЦІЯ ДО НОВИХ ПРАВОВИХ РЕАЛІЙ ТА РОЛЬ ДОКТРИНИ В СУЧАСНОМУ ПРАВОСУДДІ

Ірина Ізарова

АНОТАЦІЯ

У цьому вступному слові головного редактора представлено третій номер журналу *Access to Justice in Eastern Europe* та здійснено огляд ключових тем випуску. Наголошується на транснаціональному характері сучасних правових викликів, серед яких: правове регулювання штучного інтелекту, екстериторіальний вплив права Європейського Союзу, захист цифрових прав та еволюція інститутів деліктної відповідальності. Окрему увагу приділено трьом знаковим публікаціям номера: порівняльному аналізу транскордонних деліктних спорів у контексті євроінтеграції та рекодифікації цивільного законодавства України (Б. Карнаух, Т. Цувіна); критичному огляду судової практики щодо визнання торговельних марок добре відомими та меж дії судового рішення (К. Пільков); а також дослідженню міжнародно-правових механізмів гідного повернення та безпеки примусово переміщених осіб крізь призму імперативних норм міжнародного права (А. Садигов, С. Рагімлі). Крім того, у вступному слові підкреслюється фундаментальна роль суддівської дискреції та правової доктрини у подоланні прогалів законодавства й адаптації права до нових реалій. На завершення висловлено подяку редакційній колегії та рецензентам за їхній внесок у підтримання високих академічних стандартів видання.

Ключові слова: додоступ до правосуддя, правова доктрина, транскордонні делікти, європейська інтеграція, право інтелектуальної власності, міжнародне публічне право, регулювання штучного інтелекту.