

## THE LAW OF BALTIC COUNTRIES – A SOURCE OF INSPIRATION FOR LEGAL SCHOLARS AND PRACTITIONERS

While it is well established in the literature that legal science *stricto sensu* includes activities directed toward identification of the content of law, the legal science *ampio sensu* has a broader meaning, as also includes the set of disciplines that have in some sense the law as an object of study, such as the science of law, legal theory, jurisprudence, legal dogmatics, the sociology of law, legal anthropology, comparative law, history of law, and science of legislation.<sup>1</sup> This broader approach is embedded in the very act by which the Institute of Comparative Law in Belgrade was founded<sup>2</sup> in 1955, and is continually reaffirmed in its work and the work of its researchers. The Institute's staple journal, *Strani pravni život (Foreign Legal Life)*, bears the same hallmark. As one of the oldest legal journals in Serbia, initially conceived as a bulletin containing reviews of current achievements in comparative legal theory, legislation and practice, it has since grown to foster academic debate and publish original scientific research centring on international and comparative law, contributing further to contemporary legal science not just in Serbia, but also in the Western Balkans. Over the past decades, comparative legal research published therein seems to almost unequivocally include references to the still ongoing European integration processes, seen through the lens of various national legal systems.

First and foremost, the current volume of *Strani pravni život (Foreign Legal Life)* standing before you aims to somewhat narrow down this approach and, addressing the proposal for introducing thematic volumes, voiced by the journal's Editorial Board, showcase the law of the Baltic states – primarily Estonia, Latvia, and Lithuania. This was done for several reasons.

The relevance of the European integration experience of the Baltic states for the Western Balkan countries is evident. The three Baltic States – Estonia, Latvia, and Lithuania

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<sup>1</sup> For a more detailed overview of the key doctrinal approaches see: Knežević Bojović, A. & Ćorić, V. 2020. Legal Science and Regulatory Reform in Serbia: One Step Forward, Two Steps Back. In: *Legal Science: Functions, Significance and Future in Legal Systems II*. University of Latvia, pp. 324-329. doi: <https://doi.org/10.22364/isclul.7.2>.

<sup>2</sup> See: Višekruna A., Čolović, V. & Markov, M. (eds.). 2021. *65 godina Instituta za uporedno pravo*. Beograd: Institut za uporedno pravo.

make up a common European micro-region, sharing a common legal and economic past,<sup>3</sup> not unlike the former SFRY countries. Additionally, the Baltic countries have a parallel trajectory on the path to becoming members of the European Union, participation in the Euro Area, and NATO membership. In addition, the three small states may provide good guidance for Western Balkan countries on how to ensure that other member states and the EU institutions do not take advantage of their status as small states. The approach of Baltic countries to e-governance and e-services is nowadays often resorted to as the role model by government authorities in Western Balkan countries when developing e-government and e-governance solutions. Nevertheless, systemic and in-depth academic research related to laws of Baltic countries is not sufficiently present in legal literature in Serbia and the Western Balkan region, while comparative analysis of their legal systems remains incidental and fragmented.<sup>4</sup>

Consequently, the current volume of *Strani pravni život (Foreign Legal Life)* presents a valuable opportunity to present and critically analyse the topical developments and achievements in the legislations and jurisprudence of the Baltic region in a single, dedicated journal volume. The papers contained therein address a broad spectrum of issues from the domain of national public and private law, and their interaction with international law, EU law, and the jurisprudence of supranational courts – most notably the European Court of Human Rights and the Court of Justice of the European Union. Most papers, consequently, are not restricted to only one legal field; rather, they examine national legal solutions in the light of key principles embedded in international legislation on human rights, or the founding principles of the European Union. Nevertheless, an attempt was made to structure the volume so as to reflect the dominant legal field that is being analysed in a paper, while recognizing the hybrid character of the topic at hand. Consequently, the contributions can be roughly grouped to those that examine the issues relating to supranational law and its implementation in national legislation, constitutional law, administrative law, criminal law and finally, private law.

<sup>3</sup> Auers, D. 2015. *Comparative politics and government of the Baltic States: Estonia, Latvia and Lithuania in the 21st century*. London: Palgrave Macmillan. doi: <https://doi.org/10.1057/9781137369970>.

<sup>4</sup> One of the publications in the Serbian language that fosters more a consistent comparative approach to the law of Baltic states was published by the Institute of Comparative Law in 2005. Under the title *Accession of the State Union of Serbia and Montenegro to the European Union: Experiences of the Ten New Member States*, it presents the experiences of Estonia, Latvia, and Lithuania, along with the experiences of the remaining seven countries which joined the Union in the same wave of enlargement in 2004, outlining the key features of their path towards EU membership (Čavoski, A. et al. 2005. *Pristupanje Državne zajednice Srbija i Crna Gora Evropskoj uniji: Iskustva deset novoprimljenih država*. Beograd: Institut za uporedno pravo). An additional opportunity for sharing knowledge on legal and political science aspects of European integration sharing experiences regarding enlargement, the Institute of Comparative Law participates in the work of a network of around 15 Central, Eastern, and South-Eastern European institutes, initially founded by the Europa Institute in Zurich, Switzerland in 2003. In their contribution to the Oxford Research Encyclopedia of Politics, Kerikmäe, Chochia & Atallah also stress that, as fairly new EU member states, the Baltic States are still largely unknown worldwide and even in the EU (Kerikmäe, T., Chochia, A. & Atallah, M. 2018. *The Baltic States in the European Union*. In: Oxford Research Encyclopedia of Politics. doi: 10.1093/acrefore/9780190228637.013.186). A significant breakthrough and milestone in remedying this was certainly the publishing of *The Law of the Baltic States* in 2017 – a comprehensive analytical overview of the legal systems in the three countries (Kerikmäe, T. et al. (eds.). 2017. *The Law of the Baltic States*. Springer. doi: <https://doi.org/10.1007/978-3-319-54478-6>).

The first group of papers is therefore dedicated to supranational legislation and jurisprudence and its interaction with national laws and practices. Addressing a shared concern regarding the level of pollution of the Baltic Sea, “a heart of the Baltic region”, Kirchner and Dervovic in their paper examine the current threats to the Baltic Sea’s natural environment and the international legal measures that are taken to protect the sea, in particular with a view to possible improvements. Buka and Broks provide valuable insights into the main changes that the system of Latvian courts faced after Latvia’s accession to the EU, with a particular view to the practices of the courts in making preliminary references to the Court of Justice of the European Union.

The second group of papers is dedicated to constitutional issues. Outlining the foundation and constitutional regulation of the Latvian Constitutional Court, additionally examining the appointment of its justices and the rules governing constitutional complaint, Rodiņa confirms the pivotal role of the Latvian Constitutional Court in fostering the system of constitutional order and values. Đurić takes on the sometimes elusive concept of non-territorial minority autonomy and examines the way in which it is regulated in Estonia. Đorđević and Stanić both choose to analyse the institute of the president of the state in the context of its role within the principle of separation of powers. While Stanić offers an in-depth analysis of the causes, development and results of the semi-presidential system in Lithuania Đorđević provides a comparative overview of the legislative solutions in three Baltic states, outlining the differences when it comes to the structure and practice of the system of powers and hence the position, role and powers of the president of the republic.

The third group of papers examines various features of administrative law. Focusing on administrative legislation and practices, Khatsernova analyses the lack of an adequate mechanism for correcting errors of state institutions in their performance of public administration functions in the Lithuanian context, relying also on the relevant jurisprudence of the European Court of Human Rights. Danovskis provides an insight into the scope of regulation of the Latvian Administrative Procedure Law, the use of e-services and other means of electronic communication, outlining additionally the impact of the pandemic of COVID-19 on the use of electronic communication between the government and private persons in administrative proceedings.

Two papers focus on criminal law. Strada-Rozenberga and Rozenbergs scrutinize the path that the Latvian normative regulation in criminal law and the Latvian criminal law doctrine took to arrive at the possibility of introducing some form of criminal liability of legal entities under the influence of various international normative documents that Latvia had acceded to, while at the same time leaving the dominant basic institutions of the Latvian criminal law theory unaffected. Turanjanin and Stanisavljević analyse the regulation of special investigative measures in the three Baltic states and the related developments in the jurisprudence of the European Court of Human Rights.

Finally, the volume contains two papers from the field of private law. Novaković analyses the European Commission’s proposed Regulation on Markets in Crypto Assets (MiCA) and the parallel potential overhaul of crypto-licensing in Estonia, the latter being prompted by the *Danske Bank* money laundering affair. Čemalović examines Estonian legislation and practice in the field of copyright and patent protection in the light of digital

transformation, positing that technological advances would require more supranational regulatory mechanisms.

The choice of topics covered within this volume proves that the law of the Baltic states can be a fertile source of inspiration for legislators and practitioners alike. The legal dilemmas presented therein are easily recognizable; the solutions provide valuable insights into possible theoretic approaches and practical avenues in resolving the said dilemmas but also point to the potential limitations and dangers of choosing one path or the other.

True to the mission of the Institute of Comparative Law and *Strani pravni život (Foreign Legal Life)*, this thematic volume fosters the advancement of comparative legal science. It is also our firm belief that the present volume will boost an added interest in the regulatory frameworks of Baltic States in the Western Balkans. First and foremost, we extend our thanks to the authors who have contributed to the achievement of this goal. We owe special appreciation to the Editorial Board for aiding us in building an improved profile of the journal. The guest editors owe special gratitude to the Editor in chief, Ms. Nataša Mrvić Petrović, for her unwavering trust in the concept of this thematic volume and in us as guest editors. Last, but not least, we are indebted to the Technical Editor, Ms. Aleksandra Višekruna, for her continuous and selfless support in our efforts to compile this volume.