

XVIII PPJ Course and Conference, IUC Dubrovnik

JUDICIAL PRECEDENTS: UNIFORMITY AND PLURALISM

27– 31 May 2024

Conference outline and call for participation

What kind of binding force should judicial decisions hold in modern societies? Can a court judgment issued by one court bind other courts when they decide similar cases? The two most prominent legal traditions, common law and civil law, have historically been perceived as opposing viewpoints on these questions. The Anglo-American doctrine of *stare decisis*, which mandates adherence to judge-made law, contrasts with the Continental European perspective that reserves lawmaking authority solely for the legislature, with courts tasked only to apply it. However, the accuracy of this dichotomy may be questioned in light of recent developments.

Some European tribunals operating at a trans-national level possess the authority to render binding decisions with the force of law. For instance, the preliminary rulings of the Court of Justice of the European Union (CJEU) and the final judgments of the European Court of Human Rights (ECtHR) are recognized as sources of law across European states. Moreover, many constitutional courts in civil law jurisdictions are empowered to issue binding rulings often treated as precedents.

In civil law countries, there appears to be a growing desire to expand the influence of judicial precedents to ordinary courts. Several supreme courts in continental Europe already wield the power to issue binding interpretations of legal norms. Concurrently, various procedural models are being devised to facilitate uniform adjudication of similar cases. Furthermore, there is a trend to augment the guiding authority of judgments rendered by appellate and other courts. These developments unfold against the backdrop of persistent challenges such as inefficient dispute resolution and inconsistent case law, often cited as reasons to bolster the authority of high court judgments. In pursuit of uniformity and efficiency, both European continental judicial systems and Latin American judiciaries have adopted practices seemingly converging with the Anglo-American doctrine of *stare decisis*. This involves recognizing judicial decisions that establish a binding interpretation of the law, and in some cases, even create new legal rules. Conversely, the common law approach to judicial precedents is evolving in tandem with the changing landscape of civil litigation.

At the XVIII Public and Private Justice Course, we aim to explore these trends and foster discussions on the fundamental issues they engender. Among other topics, we seek to examine the implications of the doctrine of judicial precedents and how it is construed in jurisdictions that recognize it. Additionally, we intend to investigate the impact of newly recognized legislative or quasi-legislative powers vested in high courts on the doctrine of separation of powers. Do judges in common law and civil law systems share a uniform understanding of precedents? Moreover, are these developments conducive to addressing existing challenges or do they introduce a host of new problems, potentially exacerbating the crisis of judicial legitimacy? Considering the hierarchical nature of civil law justice systems, are binding rulings from higher courts posing a potential threat to substantive judicial independence, limiting the open and pluralistic dialogue between lower and higher courts? May binding opinions from the highest judicial instances encroach upon the prerogatives of legislative bodies, resulting in the creation of suboptimal laws? We invite speakers and participants to explore these and related questions during this year's course and conference.

The draft program for the 2024 PPJ Course and Conference will be available soon at <http://alanuzelac.from.hr/text/iuc-course>. We extend a warm invitation to join us for discussions on the aforementioned topics. All who are interested in participating may contact us at ppj.dubrovnik@gmail.com or at the emails of the organizing course directors.

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