1 | 2025

22. Jahrgang
15. Februar 2025
S. 1–48

PVSt 10443

GPR

Zeitschrift für das Privatrecht der Europäischen Union

European Union Private Law Review
Revue de droit privé de l'Union européenne

ottoschmidt

86202912501

Zivilverfahrensrecht

Prof. Dr. Alan Uzelac

EU Law and Internal Judicial Independence – Hann-Invest Judgement and its Relevance for Procedural Autonomy and Common Rule of Law Standards

GPR0074974

1. Introduction

1.1. Relevance

1 On July 11, 2024, the CJEU published a judgment in three joined Croatian cases[1] (here jointly referred to as *Hann-Invest*). The Grand Chamber judgment questioned a long-standing and broadly used method of case-law unification in Croatia. Its outcome is significant, because it provides, for the first time, a guidance in evaluation of internal practices of case-law unification from the perspective of Union law. This judgment is also setting limits to procedural autonomy of Member States in adoption of internal and administrative mechanisms aimed at streamlining case-law in higher (and the highest) national courts.

2 This is the second time that the CJEU is issuing significant decisions concerning Croatia that highlights the boundaries of procedural autonomy in establishing mechanisms related to fundamental institutes of civil procedural law. In the first ever Croatian CJEU judgment, in the cases of *Pula parking* and *Zulfikarpašić*, the CJEU examined the compatibility of Croatian notarial enforcement (the procedure for issuing enforcement orders by public notaries) with the standards of the European Enforcement Order Regulation and the Brussels I bis Regulation, concluding that, under EU law, notaries do not fall within the concept of 'court.'[2]

1.2. The Background

1.2.1. The Preliminary Reference

3 The preliminary reference was submitted by the High Commercial Court of the Republic of Croatia (HCC). It is the highest national court of commercial branch of jurisdiction in all litigious and non-litigious cases. It only has appellate jurisdiction, for all appeals against decisions of nine Croatian first-instance commercial courts. The HCC has about 30 judges and some 20 judicial assistants (the latter are also entrusted with resolution of simpler civil matters).

4 The questions directed to the CJEU were posed by the same three-judge panel of the HCC, which sent consecutively three preliminary references in cases of similar nature, with the same underlining issue (though with some minor variations, see more *infra* at 2.1.2). In all three cases, the panel questioned the accustomed system of case-law unification which uses two bodies, registrations judges (or registration office) and section meetings.

1.2.2. The First Question: Powers of Registrations Judges

5 The first question concerned the compatibility of the powers of the 'registrations judges' with EU law. Specifically, it related to a provision in the Rules of Court Procedure (a regulation issued by the Ministry of Justice) stating that: 'a case before a court of second instance shall be deemed to be closed on the date on which the decision is sent from the court office, *after the case has been returned by the Registration Service* [...]'[3].

6 Effectively, the HCC panel challenged the authority of the registrations judge(s) to delay the delivery of an already deliberated and decided judgment and to request the convening of a section meeting, under the pretext that the panel's legal reasoning conflicted with established case-law. In this context, the CJEU reinterpreted the question in its judgment, addressing the compatibility with EU law of an arrangement where:

7 *[T]he judicial decision adopted by the judicial panel responsible for the case may be sent to the parties for the purpose of closing the case concerned only if its content has been approved by a registrations judge who is not a member of that judicial panel.*

1.2.3. The Second Question: Binding 'Legal Positions'

8 The second question addressed the powers of section meetings to issue 'legal positions' that would be binding on all judges of the section, including those who were part of the panel that made the 'controversial' decision. The contested provision was

1 Judgment of the Court (Grand Chamber) of 11 July 2024 – C-554/21, C-622/21 and C-727/21, ECLI:EU:C:2024:594 – *Hann-Invest*, *Mineral-Sekuline*, and *Association KHL Medveščak*.

2 See CJEU, C-551/15, ECLI:EU:C:2017:193. The outcome of these decisions led to amendments to the Enforcement Act, which restored the authority to issue such summary orders to the courts. The *Hann-Invest* will have even more far-reaching consequences, as it will inevitably lead to amendments of several laws and regulations (i.e. Code of Civil Procedure, the Courts Act and the Court Rules of Procedure, including Supreme Court's own internal rules of procedure).

3 Article 177 para 3 of the Rules of Court Rules of Procedure (*Sudski poslovnik*), emphasis added.

Article 40(2) of the Law on Judicial Bodies[4], which provides that 'the legal position adopted at the meeting of all the judges or of a section of [the Supreme Court and the courts of appeal] shall be binding on all the chambers or judges at second instance of the section or court concerned.'

9 This question was again reformulated by the CJEU, specifically addressing the compatibility with EU law of an arrangement where:

10 *[A] section meeting of that court has the power to compel, by putting forward a 'legal position', the judicial panel responsible for the case to alter the content of the judicial decision which it previously adopted, even though that section meeting also includes judges other than those belonging to that judicial panel [...].*

11 Both issues were clearly interconnected. The judicial panel that submitted the question observed that the provisions in question were being interpreted and applied in a way that undermines the authority of the members of a judicial panel to independently and autonomously decide the cases assigned to them.

1.3. 'Registrations Judges' and 'Legal Positions' in Croatian Law

1.3.1. On Austro-Hungarian Roots: the Evidenzbüro

12 Indeed, a full understanding of the *Hann-Invest* decision requires knowledge of the local context, including the historical origins and specific features of the Croatian system of case-law unification. Without this background, there is a significant risk of drawing incorrect conclusions about the meaning and implications of the *Hann-Invest* judgment.[5]

13 Like many other aspects of Croatia's national civil justice system, both 'registrations judges' and 'legal positions' have their origins in the influence of Austrian law. This influence stems not only from Croatia's historical ties to the Habsburg and Austro-Hungarian Empires but also from the decision to use Austrian civil procedure law as the model for unifying the legal framework for civil justice across the entire Kingdom of Yugoslavia in the late 1920s. As a result, all successor states of the former Yugoslavia adopted similar organizational structures and mechanisms for unifying case law. These shared elements were further reinforced and jointly transformed during their continued existence within the same state after the Second World War.

14 The 'registrations judges' (*suci evidentičari*) were directly inspired by the Austrian judicial system, where a similar role-the *Evidenzrichter* or registrations judge-was established as part of the judicial organization in the Habsburg Monarchy. The primary responsibility of these judges was to monitor and document case law at the court level, ensuring accurate record-keeping and producing an overview of legal practice to promote transparency and predictability. In the pre-digital era, this was a crucial function, particularly in larger judicial districts. However, with the development of modern administrative practices, the role of the *Evidenzrichter* gradually diminished in significance.[6]

1.3.2. Transformation of Case-law Unification System during Socialist Period

15 Currently, in Austro-German practice, 'registrations judges' are no longer needed, as their primary function-maintaining oversight of leading case-law-has been replaced by integral judicial case management systems (ICMS) and electronic filing. However, in countries influenced by Austrian legal traditions in the first half of the 20th century, the role of 'registrations judges' and 'registration offices' evolved during the Socialist period in the latter half of the century. In these systems, they spread from the highest court to all courts and focused on overseeing individual legal proceedings to prevent contradictory judgments on the same legal issues from leaving the courts and being delivered to the parties.

16 This preventive function of 'registrations judges' might not have been problematic had it not been combined with another adaptation of Austro-German judicial organization influenced by the Socialist doctrine of 'democratic centralism.' Unlike the relatively sophisticated framework of the 1930s, which acknowledged the independence of individual panels[7], a new, much simpler method emerged to discipline 'dissenters.'

17 Judicial sections established in larger courts (typically divided into 'civil' and 'criminal' sections) began playing a central role in unifying case law. However, this unification did not rely on internal peer discussions or referrals to extended panels (such as a 'grand chamber'). Instead, it was achieved by exerting pressure on members of designated judicial panels to conform to prevailing views-voluntarily if possible, or, failing that, through an institutional obligation to adhere to the 'binding' legal positions adopted by their 'collective,' i.e., the judicial sections (or, incidentally, by the full court session).

1.3.3. Survival of pre-1990s Mechanism: Binding Legal Positions of Court Sections

18 Judicial sections have consistently been defined in organizational legislation as 'bodies of judicial administration.' Their powers were established in laws on judicial organization, not in procedural codes, and they were not regarded as 'judicial formations,' meaning bodies authorized to decide individual cases.

4 *Zakon o sudovima*, *Narodne novine*, br. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20.

5 See e.g. C.D. *Classen*, ‚Ein zu großer Schritt in Richtung europäische Harmonisierung der Justizverfassung?', JZ *(Juristenzeitung)* 2024, pp 720–724. The author raises concerns about 'uncertainties regarding Croatian law' and then concludes that the case involved the 'possibly wrong application' of that law in an individual instance. However, this text will demonstrate that the CJEU neither misapplied nor misinterpreted Croatian law.

6 At present, the only remnant of the former framework is the name of the Scientific Office of the OGH (Austrian Supreme Court) which is also known as '*Evidenzbüro*', see https://www.ogh.gv.at/service/evidenzbuero/.

7 Already in the Kingdom of Yugoslavia, the 'registrations judges' were obliged to bring incoherent decisions to the attention of the court president. However, in such scenario, and only in the highest (supreme or cassation) courts, the court president – or the competent panel – could decide to refer the case to the extended panel of 11 judges, which would decide after having received two written reports submitted by reporting judges – cf. S. Zuglia, *Građansko procesno pravo Kraljevine Jugoslavije* [Civil Procedure of Kingdom of Yugoslavia] (Belgrade 1936), pp 79–81.

Nevertheless, at the level of higher (appellate) courts and supreme courts, judicial sections were granted the authority to discuss various legal matters and adopt binding 'legal positions.'

19 Such 'positions,' typically brief excerpts from the section meeting's protocols, were adopted when a 'registrations judge' alerted the section (via the court or section president) to contradictory judgments issued by different panels of the court. During this time, the service of such judgments was stayed. If the section voted to adopt a different 'legal position,' the panel that had already deliberated and adopted the judgment was required to reopen its deliberations. This panel, along with all other judges and panels within the same section, would then be obligated to apply the newly adopted 'legal position,' determined by a majority vote of the section.[8]

1.3.4. Emerging Criticism of 'Binding Legal Positions'

20 This mechanism of case-law unification was considered normal within a system adhering to the doctrine of the unity of state power. However, in the context of separation of powers-where judicial functions are distinct from administrative roles and adjudication is recognized as the domain of independent and impartial tribunals established by law in accordance with applicable rules on the composition of judicial formations-this method began to be seen as questionable.

21 Concerns about Croatia's legal harmonization mechanisms under EU law became apparent during the country's EU accession negotiations. At the initiative of EU monitors, a provision in the 2013 Law on Judicial Bodies that allowed the president of a court or court section to suspend the delivery of a judgment and convene a section meeting to resolve differing legal interpretations among court panels was removed at the last minute. This provision was eliminated through an amendment proposed by the Croatian government to its own legislative draft, accompanied by a brief explanation: *'Such a provision is questionable in light of the constitutionally guaranteed rights and duties of judges, who must maintain complete independence in decision-making, according to the opinion of European Commission experts.'*[9]

22 However, as demonstrated in *Hann-Invest*, despite the deletion of the contentious provision, the same practice persisted through the *Court Rules of Procedure* and the *de facto* powers of the registrations judges. This was further facilitated by the fact that Article 40(2) of the *Law on Judicial Bodies*, which authorizes judicial sections to issue binding 'legal positions,' went unnoticed during the EU accession negotiations, only to be later challenged by the HCC in the *Hann-Invest* case.

23 The historical origins of this mechanism for case-law unification and its survival as a relic of former Socialist law have repeatedly been criticized by legal scholars in Croatia and other post-Yugoslav countries.[10] Despite these criticisms, the old practice endured, even as procedural law was amended to introduce more appropriate mechanisms for case-law unification, such as second appeals to the Supreme Court by permission (*revizija po dopuštenju*), referrals to extended panels of the Supreme Court, and model procedures for resolving principled legal issues. At the Supreme Court level, these outdated practices were not only retained but further institutionalized, as the 2020 Rule Book of the Supreme Court formally adopted and regulated all the elements of the earlier pre-transition practices.

2. Content of the Judgment in the Hann-Invest et al. case

2.1. Law and Facts of the Case(s)

2.1.1. Legal Grounds Raised in the Preliminary Reference

24 The questions presented were whether Article 40, paragraph 2 of the Law on Judicial Bodies and Article 177, paragraph 3 of the Court Rules of Procedure comply with the requirements of Article 47 of the Charter of Fundamental Rights of the European Union and Article 19(1) of the Treaty on European Union. The judicial panel that submitted the question noted that the cited Croatian provisions are interpreted in a manner that casts doubt on the authority of a judicial panel to independently and autonomously decide on the disputed legal issues.

25 In raising the question, the HCC panel referred to the fact that the role of the registrations judge in the decision-making process is not regulated by law. Parties are not informed of the actions of the registrations judge nor of the judge's identity, and the panel expressed the opinion that such an interpretation of the Law on Judicial Bodies and Court Rules of Procedure significantly impacts the right of the adjudicating judges to interpret and apply the law independently.

2.1.2. The Factual Variations in the Three Cases

26 The facts of the three cases were as follows:

- **Hann-Invest case**: The registrations judge refused to register the HCC panel's decision, arguing that another panel had previously ruled differently in similar cases. Consequently, the unanimous decision was returned to the competent panel with instructions to re-evaluate it. If the panel maintained its position, the matter would be brought before a section meeting to adopt a binding legal position for all judges.
- **Mineral-Sekuline case**: The decision was similarly returned to the panel with the explanation that two other decisions from the same court expressed different legal positions. However, the panel pointed out that these two other decisions were made after the decision in the present case had already

8 On 'registration of case-law' (*evidencija sudske prakse*) in the supreme courts of the Federate People's Republic of Yugoslavia see chapter on judicial administration in S. Zuglia, '*Sudovi i ostali organi koji učestvuju u vršenju građanskog pravosuđa*' [Courts and Other Organs of Civil Justice] (Zagreb: Školska knjiga 1956), p 70–72.

9 Amendments of the Croatian Government to the final proposal of the Law on Judicial Bodies, P.Z. no. 217/2 of 21 Feb 2013, 711-01/12-01/6, https://sabor.hr/sites/default/files/uploads/sabor/2018-12/amandmani_Vlade_RH_PZ_217.pdf.

10 See S. Triva & M. Dika, *Građansko parnično procesno pravo* (Narodne novine, Zagreb 2004), § 23/6, p 124; E. Lokvenec, *Ulogata na Vrhovniot sud vo obezbeduvanjeto edinstvo vo primenata na zakonite od strana na sudovite* (diss.), (Skopje 2020), pp 213–218; A. Uzelac, 'Jedinstvena primjena prava u hrvatskom parničnom postupku: tradicija i suvremenost', in J. Barbić (ed.), *Novine u parničnom procesnom pravu*, (Zagreb: HAZU 2020), pp 111–168.

been issued. Despite this, the registrations judge delayed registering the decision until the other two decisions were finalized.

- **Association KHL Medveščak case**: The registrations judge halted the delivery of the decision, citing disagreement with the competent panel's legal position. Unlike the other cases, no contradictory decisions from the same court were referenced as justification.

2.2. The CJEU's Decision on Jurisdiction

27 In its judgment, the CJEU's Grand Chamber first concluded, contrary to the opinion of Advocate General Pikamäe, that the request for the interpretation of EU law was admissible and that the CJEU had jurisdiction to interpret EU law in these cases.[11]

28 Although the HCC did not claim that the main proceedings involved the interpretation or application of Union law at the national level-a typical prerequisite for a substantive ruling-the Court determined it had jurisdiction under Article 19(1) TEU. This provision obliges Member States to ensure sufficient remedies for effective legal protection in areas covered by Union law. It applies to all national bodies acting as courts capable of adjudicating issues related to the interpretation or application of Union law.

29 The CJEU's position clearly expands the potential to provide substantive interpretations of fair trial standards upon preliminary references from any European national court, regardless of the nature of the main case. The sole precondition is that an issue of EU law could hypothetically arise before that court.

30 While procedural autonomy allows Member States to organize their judicial systems independently, the CJEU held that, for the effective legal protection, those systems must ultimately adhere to the right to a fair trial as guaranteed by Article 19(1) TEU, Article 47 of the Charter of Fundamental Rights of the European Union, and Article 6(1) of the European Convention on Human Rights.[12]

2.3. The CJEU's Decision on Questions Raised by the HCC

31 By situating the questions raised within the framework of fair trial rights, the CJEU addressed each core aspect of the right to a fair trial as relevant to the cases under review: the right to an independent court established by law, the right to adversarial proceedings, and the right to transparency in the legal norms governing judicial proceedings.

2.3.1. The Right to an Independent Court Established by Law

32 Regarding the right to an independent court, the CJEU stressed that independence requires the competent judicial body to perform its functions entirely autonomously, free from hierarchical subordination to any person or entity. This autonomy must protect against influence not only from other branches of government but also from within the judiciary itself (so-called internal independence).

33 The right to a court established by law is another fundamental safeguard, ensuring that essential aspects of the judicial process, such as the composition of decision-making bodies, are regulated at a normative level that guarantees legal certainty and eliminates undue influence by the executive.

34 In terms of legal certainty, the organization of the judicial system cannot be left to the discretion of judicial bodies alone; courts must base their decisions on clear, predictable legal rules and organized procedures. Regarding executive influence, this element is particularly relevant in the *Hann-Invest* case because the *Rules on Court Procedure*, which played a central role in the dispute, is a regulation issued by an executive body-the Ministry of Justice.

2.3.2. The Right to an Adversarial Process and the Right to Be Heard on All Essential Factual and Legal Elements of the Case

35 In terms of the right to an adversarial process, as a fundamental element of the right to a fair trial, the CJEU emphasized that the right to be heard entails the ability to discuss all essential factual and legal elements of the case. This includes the opportunity to comment on statements from third parties or individuals that could significantly influence the outcome of the proceedings.

2.3.3. The Right to Transparent Procedural Rules on Court Composition

36 Regarding all elements critical to a fair trial, the CJEU stresses the importance of transparent legal arrangements for procedural rules. It is essential that the composition of judicial panels is clearly regulated, and that guarantees are in place to exclude any unwarranted interference in the decision-making process by individuals who are not members of the panel assigned to the case. This should also ensure that parties in the proceedings are allowed to express their views on any potential circumstances that may impact the final outcome of the case.

2.4. Application of General Standards to Registrations Judges

37 Based on the premises outlined above, the CJEU concluded that *'the provisions of the Court Rules of Procedure are applied in a manner where the role of the registrations judge exceeds*

11 On AG's opinion, and its critique, see N. Bačić Selanec & D Petrić, 'Editorial Comment: Internal Judicial Independence in the EU and Ghosts from the Socialist Past: Why the Court of Justice Should Not Follow AG Pikamäe in Hann Invest' 20 *CYELP* ('Online First') (2024), https://www.cyelp.com/index.php/cyelp/article/view/565.

12 On upcoming 'very intense involvement' of the CJEU with the procedural due process standards of national judiciaries, see *D. Sarmiento* and *S. Iglesias*, 'Is this the End? – From the Polish Parliamentary Election to the Croatian HANN-INVEST case' (*EU Law Live*, 31 October 2023), https://eulawlive.com/insight-is-this-the-end-from-the-polish-parliamentary-election-to-the-croatian-hann-invest-case-by-daniel-sarmiento-and-sara-iglesias/.

mere record-keeping.' The Court determined that the registrations judge:

38 ... can, in fact, block the registration of the judicial decision adopted and thus hinder the completion of the decision-making process and the notification of that decision to the parties by referring the case back to that judicial panel for a re-examination of that decision in the light of his or her own legal observations and, if he or she continues to be in disagreement with that judicial panel, by inviting the president of the relevant section to convene a section meeting for the purpose of adopting a 'legal position', which will be binding on that judicial panel.[13]

39 Such practices were assessed as an 'interference' that could enable the registrations judge to significantly influence the final resolution of a specific case. The CJEU highlighted that the registrations judge's intervention takes place at a stage when the judicial panel has already deliberated and issued its decision. Moreover, the registrations judge is not a member of the judicial panel responsible for the decision and did not participate in the earlier stages of the case leading up to the decision's issuance.

40 The CJEU also noted that the powers of the registrations judge are not clearly defined. There are no objective criteria outlining under what conditions the judge may intervene to block the dispatch of a decision for reconsideration. For example, there are no clear rules specifying which decisions can be 'recorded' and which must be returned for reconsideration, often under the implicit threat that a section meeting could impose a binding decision, compelling the judicial panel to align with the registrations judge's perspective.

41 Given these factors, the CJEU concluded that:

42 ... a practice such as that at issue in the main proceedings, according to which the judicial decision adopted by the judicial panel responsible for the case may be regarded as final and sent to the parties only if its content has been approved by a registrations judge who does not form part of that judicial panel, is incompatible with the requirements inherent in the right to effective judicial protection.[14]

2.5. Application of General Standards to Section Meetings

43 The CJEU's judgment provided an even more detailed examination of whether the powers of section meetings align with essential elements of the right to a fair trial.

44 Based on the facts of the cases under examination, the CJEU concluded that, regardless of the lack of explicit legal norms, a section meeting or the convening of all judges is initiated by the registrations judge when there are conflicting interpretations between sections, panels, or judges of a higher court. At such a meeting, legal positions are adopted that are binding on all judges of the section or court, unless a panel voluntarily agrees to 'align' its decision with the positions of other panels or the registrations judge.

45 For the CJEU, it was also relevant to establish that, at a section meeting, all section judges - including members of the judicial panel responsible for the original decision - may be present and participate in the section meeting. However, the majority of the section comprises judges who are not members of that panel. In certain circumstances, even individuals outside the specific court, such as 'law professors, eminent academics, or experts in a specific field of law,' may participate in the meeting.[15]

46 The legal position adopted by a majority vote at a section meeting is 'formulated in a more or less abstract manner' but binds all judges, including those on the judicial panel that issued the decision prompting the section meeting, provided that the decision has not yet been registered or dispatched. It is then up to the registrations judge to 'refuse to register the 'new' judicial decision adopted by that judicial panel if it departs from that 'legal position."[16]

47 Such a procedure, according to the CJEU, 'effectively allows interference by several judges participating in the section meeting in the final resolution of the case that was previously deliberated and decided upon by the competent judicial panel.' Even the mere possibility of a panel's decision being subjected to section meeting review, as well as the panel's obligation to adhere to the 'legal position' formulated at the section meeting-even after the panel's deliberations have concluded - can influence the final content of that decision.

48 Furthermore, the CJEU found that the criteria for scheduling and convening a section meeting under these circumstances are not sufficiently objective. Although Article 40, paragraph 1 of the Courts Act allows for a section meeting 'where it is found that there are differences in interpretation between sections, chambers or judges regarding questions relating to the application of the law or where a chamber or a judge of a section departs from the legal position previously adopted', in case C-727/21, a section meeting was convened solely because the registrations judge disagreed with the legal position of the competent judicial panel.[17]

49 In the documents of the three cases, it was also shown that, as in cases involving the registrations judge, parties were not notified of the section meeting or of the adoption of a 'legal position' at such meetings. This deprives them of the opportunity to exercise their procedural rights before the section meeting. Accordingly, the Court concluded that:

50 ... national legislation which allows a section meeting of a national court to compel, by putting forward a 'legal position', the judicial panel responsible for the case to alter the content of the

13 Judgment of the Court (Grand Chamber) of 11 July 2024 – C-554/21, C-622/21 and C-727/21, ECLI:EU:C:2024:594 at 64 – *Hann-Invest*, *Mineral-Sekuline*, and *Association KHL Medveščak*.

14 Judgment of the Court (Grand Chamber) of 11 July 2024 – C-554/21, C-622/21 and C-727/21, ECLI:EU:C:2024:594 at 69 – *Hann-Invest*, *Mineral-Sekuline*, and *Association KHL Medveščak*.

15 The option of academic presence at section meetings (naturally without any voting rights) was acknowledged by the CJEU. However, in practice, this opportunity was almost never utilized. As a professor of procedural law, I can attest that in my 35 years of academic career, I was invited to participate in a section meeting only once.

16 Judgment of the Court (Grand Chamber) of 11 July 2024 – C-554/21, C-622/21 and C-727/21, ECLI:EU:C:2024:594 at 74 – *Hann-Invest*, *Mineral-Sekuline*, and *Association KHL Medveščak*.

17 Judgment of the Court (Grand Chamber) of 11 July 2024 – C-554/21, C-622/21 and C-727/21, ECLI:EU:C:2024:594 at 77 – *Hann-Invest*, *Mineral-Sekuline*, and *Association KHL Medveščak*.

judicial decision which it previously adopted, even though that section meeting also includes judges other than those belonging to that judicial panel and, as the case may be, persons from outside the court concerned, before whom the parties do not have the opportunity to put forward their arguments, is incompatible with the requirements inherent in the right to effective judicial protection and to a fair hearing.[18]

3. The Impact of *Hann-Invest*

3.1. Local Developments

51 Shortly after the publication of the *Hann-Invest* judgment, the Supreme Court of Croatia expressed concern that 'eliminating the powers of the registrations office and the binding nature of the legal positions of section meetings in second-instance and higher courts, as well as in the Supreme Court, (...) will increase the likelihood of conflicting judicial decisions,' further noting that 'it would have been more appropriate if a transitional period had been provided for adaptation.'[19] Another Supreme Court judge wrote in a case report that *Hann-Invest* indicates 'the death of case registration office'.[20]

52 In Autumn 2024, the Ministry of Justice established a working group tasked with drafting legislative amendments based on the *Hann-Invest* judgment. This effort is currently underway, with initial drafts proposing significant changes to the Law on Judicial Bodies and strengthening rules on case referrals from regular to extended panels of the Supreme Court in key procedural codes. Such referrals to 'grand chambers' were explicitly endorsed in the *Hann-Invest* decision as an appropriate means of reconciling internal judicial independence with the need for legal certainty, a cornerstone of the rule of law.[21]

53 Additionally, beyond eliminating the authority of court section meetings to issue binding legal opinions, initial efforts to address the future of Croatian 'registrations judges' envision the creation of a modern, centralized *Evidenzbüro* at the Supreme Court. For the first time, this reform could unify the fragmented system of appellate 'registrations offices' and the *ad hoc* independent sections for monitoring CJEU and ECtHR jurisprudence into a cohesive system for case-law analysis and publication. This model would resemble the *Jurisconsult Office* at the European Court of Human Rights in Strasbourg, marking a significant modernization of Croatia's judicial system.

54 Yet, many continue to advocate for preserving as much of the *ancien régime* as possible, aiming for an outcome aligned with the principle of *plus ça change, plus c'est la même chose* ('the more things change, the more they stay the same'). Their strategy involves rebranding the 'registrations judge' while retaining the same paternalistic approach and institutional pressures on internal 'dissenters,' often labeled as the 'black sheep' of the judiciary.

55 Similarly, some propose simply renaming current 'section meetings' as 'extended panels' while keeping their modus operandi largely unchanged. With reformist Pro-Europeans on one side and procedural Eurosceptics on the other, the future direction of the reforms remains uncertain. The coming months will reveal whether the scales tip toward genuine transformation or superficial adjustments.[22]

In practice, the three Croatian cases decided by the CJEU in its *Hann-Invest* judgment did not involve issues with very far-reaching legal or social consequences.[23] However, a new and still undecided case originating from the same HCC panel, *PPD v. Gazprom*[24], could have significantly broader implications. In this case, the second question referred to the CJEU essentially asks whether a national civil court should consider restrictive EU measures against Russia, even if doing so would conflict with a binding 'legal position' that caused the *Evidenzrichter* to stay the delivery of the judgment.[25] 56

Additionally, *Hann-Invest* may cause a ripple effect in numerous appellate proceedings. At present, appellants in many cases are requesting the annulment of appellate decisions by demanding disclosure as to whether the outcome was influenced by the interventions of a registrations judge and/or a 'binding legal position.' This could open the door to further challenges and negatively affect the efficiency of Croatia's judicial system. 57

3.2. The European Feedback

The publication of Hann-Invest judgment raised considerable interest outside of Croatia, too. The commentators are talking about a 'much-awaited ruling', about 'yet another building block to the conceptualization of judicial independence as the cornerstone of effective judicial protection'.[26] A general assessment is that the judgment paves the way for 'stronger involvement of the Court in the domestic organization of justice', particularly in connection with the relics of Socialist approach to internal dynamics of judicial institutions in Central and Eastern Europe.[27] 58

Already now, there are sufficient indications that CJEU's questioning of internal independence will have an impact on a 59

18 Judgment of the Court (Grand Chamber) of 11 July 2024 – C-554/21, C-622/21 and C-727/21, ECLI:EU:C:2024:594 at 79 and 82 (in fine) – *Hann-Invest*, *Mineral-Sekuline*, and *Association KHL Medveščak*.

19 See the reaction of the Supreme Court's spokesperson at https://www.vsrh.hr/sudbena-vlast-republike-hrvatske-provest-ce-odluku-suda-europske-unije-no-ocekuje-se-povecanje-suprotnih-sudskih-odluka.aspx.

20 *Ž. Pajalić*, 'Kraj evidencije sudske prakse? U povodu presude Suda Europske unije u predmetima C-554/21, C-622/21 i C-727/21', *Informator*, 25 July 2024, https://informator.hr/strucni-clanci/kraj-evidencije-sudskeprakse?hls=.

21 See Judgment of the Court (Grand Chamber) of 11 July 2024 – C-554/21, C-622/21 and C-727/21, ECLI:EU:C:2024:594 at 80 – *Hann-Invest*, *Mineral-Sekuline*, and *Association KHL Medveščak*.

22 As a member of the working group formed at the Ministry of Justice for this purpose, the author of this text is moderately optimistic regarding the projected outcome.

23 The three cases dealt with the right of the Financial Agency for reimbursement of the costs related to the activities carried out in the context of simple insolvency proceedings.

24 C-403/24, *Prvo plinarsko društvo* (request for preliminary ruling lodged on 10 June 2024).

25 The case deals with the payment of a bank guarantee issued as a security for Gazprom's claim in the amount of 35 million €.

26 *A. Schmidt*, 'When the threat comes from home: the Grand Chamber's review of the Croatian judicial uniformity mechanism under Article 19 (1) TEU in Hann-Invest', *Quaderni AISDUE – Rivista quadrimestrale,* 3/2024, p 1.

27 Ibid., see also *D. Petrić* & *N. Bačić Selanec*, 'Op-Ed: Reshaping national Judiciaries under Article 19(1) TEU: the Grand Chamber's Decision in Hann-Invest', *EU Law Live,* 22-26 July 2024, https://eulawlive.com/op-ed-reshaping-national-judiciaries-under-article-191-teu-the-grand-chambers-decision-in-hann-invest/.

number of 'transition' countries, which have jointly shared the tradition of democratic centralism, transposing political mechanisms of decision-making to all court instances with a view to suppress the 'dissenters'. This has been especially pronounced in the higher and the highest judicial institutions. The remnants of this tradition have so far often been under the radar, and they were ignored and/or tolerated both before and after the EU accession of 'new democracies'.[28]

60 The significance of the *Hann-Invest* judgment extends beyond the borders of the former Eastern Bloc. Many of the features now scrutinized by the CJEU originated-and were further developed-from 19th-century Austro-German legal models, particularly those implemented during the absolutist post-1848 period.

61 The Croatian model of interference by the *Evidenzstelle* and *Evidenzrichter* in service of court presidents, tasked with unifying legal positions in the highest court, was directly derived[29] from the Austrian Supreme Court's method of case-law unification introduced in the judicial reform of 1854. This reform established the collection of leading judgments (*Judikatenbuch*) and mandated that, through the *Evidenz* service, court presidents could exercise controlling functions. Judgments issued by regular seven-member panels were subject to mandatory re-examination if they deviated from established legal 'principles,' with the possibility of referral to an extended panel of fifteen judges if necessary.[30]

62 In Austria, as in Croatia before the *Hann-Invest* decision, this unification process occurred at the same critical juncture: after the judicial panel 'established by law' had already deliberated and issued (but not yet delivered) its judgment.[31]

63 Certain elements of this tradition appear to persist in some Austro-German legal institutions, potentially explaining the initial negative reactions in Germany to the *Hann-Invest* judgment. Critics argued that the CJEU's new direction encroaches too far on the procedural autonomy of Member States, raising concerns about unnecessary interference in long-standing judicial practices.[32]

64 In the concluding chapter of this paper, I will present a more optimistic perspective on the CJEU's activist approach, which challenges the autonomous discretion of Member States in balancing the coherence of jurisprudence with internal judicial independence.

65 First, I will argue that the extension of fairness scrutiny under Article 19(1) TEU completes the framework of emerging common standards of due process, already well-developed through ECtHR and CJEU case law. Second, I will demonstrate that concerns about excessive scrutiny of current (Western) European judiciaries are unwarranted, as the CJEU has addressed only a limited number of the problematic aspects of Croatia's system of 'binding legal positions.' Finally, I will emphasize the importance of fostering more robust dialogue and engagement in both self-assessment and mutual comparative evaluation of borderline practices in case-law unification across judicial systems. This is particularly vital in the current climate of rising undemocratic and illiberal tendencies within EU Member States.

4. Conclusions: *Ein zu großer Schritt?* Not Really...

4.1. Streamlining the European Approach to Procedural Autonomy

66 The *Hann-Invest* judgment is unique as it represents the first detailed response by the CJEU to the challenges of internal judicial independence. However, it is not the first European judgment to address this issue, nor is it the first CJEU ruling to limit Member States' procedural autonomy in organizing and operating their highest national courts. In essence, this judgment reflects continuity in the ongoing effort to balance procedural autonomy with the fundamental European values of human rights protection and the rule of law.

67 In recent times, the European Court of Human Rights issued several topical judgments regarding the issues of judicial independence, particularly in the context of higher and supreme judicial tribunals. In *Hann-Invest*, the CJEU referenced an important Croatian case, the ECtHR judgment in *Parlov-Tkalčić v. Croatia*.[33] In that case the Strasbourg Court revisited the doctrine of internal independence, focusing on the potential influence of court presidents on the independence of judicial panels within an appellate court. In the broader context of judicial independence, the ECtHR reexamined its position on the procedure for appointing Supreme Court judges in *Guðmundur Andri Ástráðsson v. Iceland*[34], complementing its steady flow of cases which found violations of judicial independence and sys-

28 On survival of such elements in legal systems of countries like Poland, Czechia or Croatia see e.g. *M. Bobek*, 'Conclusions: Of Form and Substance in Central European Judicial Transitions', in M. Bobek (ed.), *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, (Hart 2015.), pp 391-418; M. Bobek, 'The Fortress of Judicial Independence and the Mental Transitions of the Central European Judiciaries', *European Public Law* 14, 1 (2008), pp 99-123; Z. Kuhn, The Authoritarian Legal Culture at Work: The Passivity of Parties and the Interpretational Statements of Supreme Courts, *Croatian Yearbook of European Law and Policy* (CYELP) 2 (2006), p 2; *D. Kosar*, 'Politics of Judicial Independence and Judicial Accountability in Czechia: Bargaining in the Shadow of the Law between Court Presidents and the Ministry of Justice', *European Constitutional Law Review*, Vol. 13, Issue 1, March 2017, pp 96 – 123, https://doi.org/10.1017/S1574019616000419; *R. Mańko*, 'Survival of the socialist legal tradition? A Polish perspective', *Comparative Law Review* 4, vol. 2 (2013), pp 1–28; *A. Uzelac*, 'Survival of the third legal tradition?', in J. Walker & O. Chase, *Common Law, Civil Law and the Future of Categories*, (Markham: Lexis Nexis 2010), pp 377–396.

29 See *supra,* n. 7 (indicating that the first uniform procedure of law unification introduced in the Kingdom of Yugoslavia under 1928 Law on Courts was basically identical to the Austrian one).

30 *„... die Beschlüsse einzelner Senate, welche den einmal gefassten Rechtsgrundsätzen widersprechen ... bis zu deren Ausfertigung an das untere Gerichts oder an die Parteien einzustellen und eine neuerliche Berathung in einem verstärkten Senat von fünfzehn Mitgliedern des obersten Gerichtshofes mit Einschluss des Vorsitzenden anzuordnen ...',* see *Entscheidungen des k.k. obersten Gerichtshofes in Civilsachen*, (Wien: Manz 1887), Einleitung, p 3.

31 However, except for this element, the old Austrian method would most likely pass the CJEU scrutiny, because it was clearly defined by law, and its impact was not in imposing a binding legal view on the original panel, but in the referral to a *Verstärkter Senat* which would finally decide the case.

32 Cf. *Classen*, JZ 2024, vol. 79, supra n. 5.

33 ECtHR, 22 December 2009, CE:ECHR:2009:1222JUD002481006 – *Parlov-Tkalčić v. Croatia*.

34 Judgment of 1 December 2020, 26374/18, CE:ECHR:2020:1201JUD002637418 – *Guðmundur Andri Ástráðsson v. Iceland* [GC].

temic dysfunctions in judicial appointments procedure in Eastern Europe.

68 The CJEU itself has previously addressed similar systemic issues in Poland, Romania and Hungary,[35] often encountering strong opposition which emphasized procedural autonomy and challenged the principles of primacy of EU law, as well as the jurisdiction of the CJEU to rule on such issues.[36] Nevertheless, despite bitter resistance, the decisions of European courts were steadily expanding boundaries, contributing to important procedural reforms and to emerging common standards of due process.[37] For the EU as a coherent area of justice it is an essential task. The Hann-Invest judgment is consistent with this trend and does nothing what has not been already done in similar ECtHR cases. Instead, it reinforces and complements the evolving system for evaluating internal mechanisms of case-law harmonization in national courts, focusing on a substantive element of due process – on independence of adjudicating formations as a value that is equally, if not more, important than legal certainty. It is particularly commendable that the CJEU (unlike AG Pikamäe) did not regard that fundamental principles of due process only apply to cases in which national courts directly apply EU law.

4.2. No Fear of Undue Transplants: The Undiscovered Secrets of 'Legal Positions'

69 A German commentator expressed concerns about the uncertainties surrounding the content of Croatian law in the context of the CJEU's *Hann-Invest* decision, stating: '... *[i]t is crucial in disputes regarding the law of judicial organization, like the present case, to avoid scenarios where individual national judges-frustrated or disappointed for any reason-submit questions for a preliminary ruling that have little relevance to the actual day-to-day functioning of the judiciary*'.[38] This observation is valid; however, in the Croatian case, the day-to-day functioning regarding 'binding legal positions' was not only accurately diagnosed by the CJEU but is also marked by several additional problematic elements. These issues, while significant, were not addressed in the judgment due to the limited scope of the preliminary reference. To summarize a more detailed analysis,[39] I outline a few of the further issues with 'binding legal positions' that were not mentioned by the CJEU:

- Court sections (*sudski odjeli*) in Croatia are defined as bodies of judicial administration, not adjudicating bodies. Consequently, 'legal positions' used to be labeled as 'decisions of judicial administration';[40]
- Legal positions were adopted at section meetings by vote of the present members (the only precondition being that over half of section members vote for the 'position'). However, the identity of the voting judges and the indication of the vote count and the preferences of individual judges have never been publicly available;[41]
- No prior written reports, examination of case files, or detailed materials were prepared or reviewed before adopting legal positions. In practice, most section meetings did not have a pre-prepared agenda which would allow differing views to be heard in a balanced way, offering a security that elaborate reasons for one or the other 'legal position' will be presented;[42]
- Section meetings were (and are) not open to public. Not only are parties neither informed about them nor allowed to participate, but even *ex post facto*, their proceedings and content remain a 'black box.' The only published outcome of the section meeting is typically a half-page excerpt from the protocol, stating an unreasoned 'legal position';[43]
- Unlike other binding legal instruments, 'legal positions' are not published in the official gazette. Even when made public (which is not mandatory), they do not specify their effective date or scope of application. Formally, they are binding only on judges within the court section that adopted them, but they are frequently treated as quasi-binding law by other courts as well;
- Adopted 'legal positions' were legally unchallengeable. The Constitutional Court dismissed constitutional complaints against them on the grounds that they did not qualify as individual acts and refused to subject them to abstract constitutional review, reasoning that they were neither 'laws' nor 'other regulations.'[44]

70 As clearly visible from all the preceding elements, despite its historical roots and inspiration in the Austro-German tradition, the Croatian mechanism of case-law unification has been infused with additional layers of influence stemming from the period of 'socialist legality.' Consequently, it is highly improb-

35 See e.g. C-791/19, ECLI:EU:C:2021:596 – *Commission v. Poland (Disciplinary regime for judges)*; C-156/21, ECLI:EU:C:2022:97 – *Hungary v. Parliament and Council*.

36 Polish Constitutional Court even pronounced „Article 2 and 19(1) TEU as inconsistent with the Polish Constitution insofar as they ... examine the legality of the procedure for the appointment of judges' concluding that „by deriving a right to examine the organization and structure of a Member State's judicial system from Article 19(1) TEU, the CJEU has essentially granted itself a new competence'. See Polish Constitutional Court judgment of 7 October 2021, No. K 3/21.

37 Resistance to rethinking fundamental elements of procedural traditions is not unique to the European East. After the ECtHR decisions in *Van Orshoven v. Belgium* (1997) and *Kress v. France* (2001), there was significant opposition to altering the traditional modus operandi of the Advocate-General and similar independent officers in civil cases at the highest courts in Romanic legal systems. Nevertheless, these rulings ultimately led to reforms that enhanced the roles of the *commissaire du gouvernement* and the *Avocat Général*, introducing greater transparency, and fostering fairer proceedings, and stricter adherence to equality of arms principle.

38 *Classen*, JZ 2024 at 722.

39 See *A. Uzelac*, in *Novine u parničnom procesnom pravu*, pp 124–138.

40 See also *supra* at 1.3.3.

41 A local think-tank requested in mid-2024 an insight into full protocol of the section meeting, but was rejected with justification that 'judges' deliberations should not be publicly available'.

42 When asked to take an insight into the materials used to form an opinion at the court section, upon the same request (see preceding footnote) the Supreme Court responded that 'no such documents are available'. Supreme Court decision Su-I-31/2024-3 on these requests was paradoxically issued on 9 July 2024, only two days before the publication of CJEU Hann-Invest judgment.

43 See e.g. 'legal positions' of the civil section of the Supreme Court at https://www.vsrh.hr/pravna-shvacanja-gradjanski-odjel.aspx. However, other higher courts have developed different practices regarding the publication and justification of 'legal positions.' In at least one instance, a high court went so far as to remove a case from the competent panel and effectively reverse the decision, basing its ruling on its own interpretation of the factual issues in the specific case.

44 See Croatian Constitutional Court decisions of 12 April 2022, U-I/6950/2021 and U-I/6951/2021, https://usud.hr/.

able that the criteria established in *Hann-Invest*, in their current form, would result in a challenge to the existing Austrian or German systems for ensuring uniformity in the case law of their highest courts.[45]

4.3. Final Remark on Internal Independence and Procedural Autonomy: Importance of Separation of Powers in Challenging Times

71 The past five years have presented an exceptionally challenging environment for the development of the Union's fundamental values. From the COVID-19 pandemic to wars in Ukraine and Palestine, from polarizing politics in the United States to the rise of illiberal and populist movements in Europe, both external and internal pressures have intensified centripetal forces within the EU. One crucial response to these challenges lies in fostering a shared understanding of fundamental political and legal institutions.

72 As a safeguard against authoritarian and illiberal tendencies, adherence to the doctrine of separation of powers is vital. A cornerstone of this doctrine is the clear distinction between, on one side, democratically elected and politically accountable officials in the legislative and executive branches, and, on the other, an independent and efficient judiciary. This separation ensures the proper functioning of democratic governance while protecting the rule of law and fundamental rights.

73 However, the separation of powers also entails a division of functions. Judicial authority is distinguished from the executive and legislative branches not only by its title or the permanent status of its professional holders but also by its unique modus operandi and core responsibilities.

74 Contrasting the doctrines of separation and unity of powers underscores this distinction. In a state founded on the ideal of the unity of state authority, it is logical for courts to align with and contribute to state policy, collectively implementing it by shaping their decisions in accordance with the democratic principle of majority rule. This approach involves adhering to a strict hierarchical structure and respecting the positions and interpretations of higher judicial or governmental bodies. Within such a paradigm, there is no significant distinction between judicial administration and adjudication in individual cases-both are merely the application of rules and policies within the framework of a unified state authority. State power in such a system may, at times, operate more efficiently, but it is invariably more prone to the dangers of totalitarian rule.

75 However, in a system that rejects a monolithic structure of power, authority is divided to prevent it from becoming absolute, with mutual checks and balances among branches of government. In such a framework, the role of courts must be fundamentally different. Often referred to as *the least dangerous branch,*[46] the judiciary holds this distinction because it lacks both the authority to create rules and the power to enforce them directly. In this system, the central function of courts must be judicial in its nature. This function-adjudication-is carried out by individual judges deciding individual cases. It is not the work of an impersonal collective or a court functioning as an administrative structure.[47]

76 The *Hann-Invest* judgment reaffirms that, even in the highest courts-whose role in civil cases is largely public and systemic-the essential features of judicial function must be preserved. These include the internal and substantive independence of tribunal members who comprise the competent 'judicial formation,' and decision-making through a legal process that is fundamentally distinct from political decision-making, which may rely on arbitrary voting based on abstract principles or options predefined by court leadership.

77 As emphasized by the CJEU, the personal authority of individuals forming a tribunal established by law must encompass their right to independently and conscientiously assess all circumstances of a case. This assessment must be grounded in inputs obtained through an adversarial procedure prescribed by law, ensuring that all relevant arguments and perspectives are considered. In this regard, the *Hann-Invest* judgment serves as a reminder of the essential separation of functions between the political and judicial branches for all Member States. This distinction is particularly crucial when developing new methods for efficient adjudication of repetitive and systemically important legal issues.[48] It is also a timely invitation for reflection on the importance of safeguarding judicial independence from undue internal pressures, ensuring that all those legally competent to contribute to court decision-making-across all levels of the judicial hierarchy-can do so freely and conscientiously. The dialogue between national and European courts on the proper interpretation of these institutional values is essential and transcends regional concerns, extending far beyond the countries of the European East and South.[49]

Summary

78 On July 11, 2024, the CJEU issued a landmark judgment in three connected cases (C-554/21, C-622/21 and C-727/21,

45 At the same time, it should be noted that the German and Central European emphasis on legal certainty may create tensions with internal judicial independence. In the case-law of the ECtHR, judicial independence, as a core component of Article 6 due process rights, takes precedence over the uniformity of case law. The uniformity of case law becomes significant only when 'profound and long-standing differences' exist in the case-law of domestic courts, as confirmed by leading cases such as *Nejdet Şahin and Perihan Şahin v. Turkey* [GC] – 13279/05, judgment of 20 October 2011; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], 76943/11, judgment of 29 November 2016; *Beian v. Romania* (no. 1), 30658/05, § 38, ECHR 2007-V (extracts). The ECtHR holds that '[d]ivergences in case-law between domestic courts or within the same court cannot, in themselves, be considered contrary to the Convention', emphasizing that case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement.

46 See A M *Bickel*, *The Least Dangerous Branch. The Supreme Court at the Bar of Politics,* Yale UP, 1986.

47 On the notion of court see more in *A Uzelac*, 'The Meaning of Court' in: B Hess, M Woo, L Cadiet, S Menétrey, & E Vallines García (eds), *Comparative Procedural Law and Justice* (Part II Chapter 1), cplj.org/a/2-1.

48 Such new methods include a number of new 'pilot' or 'model' schemes of case processing, such as German 'leading case procedure' (*Leitentscheidungsverfahren*), as well as Italian preliminary reference procedure at the *Corte di Cassazione* (Art. 363b of Italian CCP), or Croatian 'model procedure for resolution of important legal issues' (Art. 502.i-n Croatian CCP).

49 Another pending case in which the same topic will be discussed before Strasbourg court is the Dutch *Kuijt* case (ECtHR, 19365/19, lodged on 4 April 2019) which deals with the practice in the Dutch *Hoge Raad* allowing 'reservist' judges to sit in deliberations even when they do not form a part of the panel to which the case has been assigned.

Hann-Invest and others), determining that the current method of standardizing case-law in higher Croatian courts conflicts with the procedural standards of Union law. The preliminary reference from the High Commercial Court questioned the powers of registrations judges to stay delivery of an already deliberated and decided judgment and request convening of a section meeting that could issue a binding 'legal position' if the judgment deviates from prior case-law. The CJEU decided that such procedure is not in line with two fundamental guarantees of the Union law: the right to a tribunal established by law and to the right to internal judicial independence. The author is discussing Hann-Invest decision from a national and comparative perspective and inquires into its potential implications for the procedural autonomy of the Member States.

Zusammenfassung

79 Am 11.7.2024 fällte der EuGH ein wegweisendes Urteil in drei verbundenen Rechtssachen (C-554/21, C-622/21 und C-727/21, Hann-Invest u.a.), in dem festgestellt wurde, dass die derzeitige Methode der Vereinheitlichung der Rechtsprechung an höheren kroatischen Gerichten mit den Verfahrensstandards des Unionsrechts unvereinbar ist. Die Vorlagefrage des Obersten Handelsgerichts betraf die Befugnisse der Evidenzrichter, die Verkündung eines bereits beratenen und entschiedenen Urteils auszusetzen und die Einberufung einer Abteilungssitzung zu beantragen, die eine verbindliche „Rechtsauffassung" erlassen könnte, wenn das Urteil von der bisherigen Rechtsprechung abweicht. Der EuGH entschied, dass ein solches Verfahren nicht mit zwei grundlegenden Garantien des Unionsrechts vereinbar ist: dem Recht auf ein gesetzlich eingerichtetes Gericht sowie dem Recht auf interne richterliche Unabhängigkeit. Der Autor beleuchtet die Entscheidung in der Rechtssache *Hann-Invest* aus nationaler und vergleichender Perspektive und untersucht deren potentielle Auswirkungen auf die Verfahrensautonomie der Mitgliedstaaten.

Résumé

Le 11 juillet 2024, la CJUE a rendu un arrêt marquant dans 80 trois affaires connexes (C-554/21, C-622/21 et C-727/21, Hann-Invest et autres), concluant que la méthode actuelle d'uniformisation de la jurisprudence dans les juridictions supérieures croates est incompatible avec les normes procédurales du droit de l'Union. La question préjudicielle posée par la Haute Cour commerciale portait sur les pouvoirs des juges des enregistrements de suspendre le prononcé d'un jugement déjà délibéré et décidé, et de demander la convocation d'une réunion de section pouvant adopter une „ position juridique „ contraignante si le jugement diverge de la jurisprudence antérieure. La CJUE a jugé qu'une telle procédure n'est pas conforme à deux garanties fondamentales du droit de l'Union: le droit à un tribunal établi par la loi et le droit à l'indépendance judiciaire interne. L'auteur analyse la décision Hann-Invest dans une perspective nationale et comparative et examine ses éventuelles implications pour l'autonomie procédurale des États membres.

Prof. Dr. Alan Uzelac

Head of Department for Civil Procedure at the University of Zagreb, Faculty of Law. Founding Member of the CEPEJ. Honorary Council member of the International Association of Procedural Law and Member of the Council of the German Association for International Procedural Law.

Arbeits- und Sozialrecht

Mag. Dr. Christina Schnittler / Univ.-Prof. Mag. Dr. Elisabeth Brameshuber

Europäisches Arbeitsrecht vor dem Gerichtshof der Europäischen Union 2023/2024

GPR0074973

I. Einleitung

1 Wie im Vorjahr gibt der Bericht einen Überblick zu aktuellen Entscheidungen des EuGH im europäischen Arbeitsrecht. Die im Berichtszeitraum[1] ergangenen Entscheidungen sind in unterschiedliche Rubriken untergliedert. Bei den Grundfreiheiten dominieren im Berichtszeitraum Entscheidungen zur Dienstleistungsfreiheit. Neben den „Klassikern" der Vorabentscheidungen im Individualarbeitsrecht – dem Diskriminierungsschutz sowie dem Arbeitszeit- und Urlaubsrecht – ergingen auch einige Entscheidungen zum Beendigungsschutz und dort erstaunlich viele zur Rahmenvereinbarung über befristete Arbeitsverhältnisse. Zu den Grundrechten wurde – wenngleich zum Teil dogmatisch von Bedeutung (s *X [Absence de motifs de résiliation]* zu Art. 47 GRC) – kein eigener Punkt aufgenommen, sondern die Entscheidungen, der zugrunde liegenden Materie entsprechend, den jeweiligen Teilbereichen zugeordnet.

1 Der Bericht umfasst Urteile vom Zeitraum Juli 2023 bis November 2024.