

## EDITORIAL

Dear Readers,

It is my great pleasure to briefly present the papers published in the second issue of the scientific journal *Facta Universitatis: Law and Politics* for the year 2022. This issue comprises articles on a range of different research topics and current social and legal issues in the field of LGBT+ human rights, behavioral approach to law and economics, criminal law, international arbitration law, international commercial law, intellectual property law, EU law, and international law on the protection of children's rights.

**Aleksandar S. Mojašević, LL.D.**, Associate Professor, Faculty of Law, University in Niš; **Dejan Vučetić, LL.D.**, Full Professor, Faculty of Law, University of Niš; **Stefan Stefanović**, PhD Student, Faculty of Law, University of Niš, submitted the paper *COVID-19 Vaccination Policy and Human Rights: A Behavioral Approach*. The authors explore the implications of different vaccination policy models (mandatory or voluntary) on human rights from the behavioral science perspective. First, they seek to determine the optimal framework for vaccination policy, starting from diverse forms of paternalistic interventions: 1) anti-paternalistic policies, 2) nudge policies, 3) coercive paternalism, and 4) behavioral regulation of externalities. Giving prevalence to the libertarian paternalism policy (the nudge policy), the authors support their hypothesis with studies on behavioral insights in the context of the COVID-19 pandemic and vaccination policy. Then, they explore the implications of mandatory vaccination on human rights and the conditions for implementing the compulsory vaccination policy. Finally, the authors correlate the established optimal behavioral framework with the requirements for mandatory vaccination, and present arguments in favor of provisional mandatory vaccination which does not violate the individual freedom but contains an element of obligation.

**Zorica Mršević, LL.D.**, Associate Professor, Faculty of European Legal and Political Studies, University Business Academy Novi Sad, submitted the paper *Same Sex Unions between Invisibility and Legality*. The author analyzes the social and legal status of same-sex unions in the Republic of Serbia. The right to legal regulation of same-sex unions as an alterity to marital and extramarital unions is presented in light of the importance of the legitimate right to diversity and the right to guaranteed civil rights of those who are a minority. The paper aims to develop the social awareness and facilitate establishing a dialogue with this family alterity. The legal recognition of same-sex unions is much more than the legal regulation of their property relations and civil status. It is a sign of democratization of society, its openness and tolerance. The paper presents the scientific and current social context in Serbia, affirmative views of the Protector of Citizens as an independent institution, and the European context, with special reference to recent documents of the Parliamentary Assembly of the Council of Europe and relevant judgments of European human rights courts. As the position of the LGBTI+ people in Serbia is slowly changing for the better, the author advocates for legal regulation of this matter.

**Kristina Stevanović, LL.D.**, Senior Legal Affairs Officer at the University of Niš, submitted the paper *The Enforcement of Arbitral Awards under the ICSID Convention and Public Policy*. International arbitration emerged as a response to cross-border trade and foreign investments. This legal instrument enables the uninterrupted flow of foreign capital which has a significant impact on the national economy, particularly considering that arbitral awards are enforced in national jurisdictions. The profit-oriented economic trend and its impact on individual states is even more visible in international investments, given that foreign investors who operate on the Host State territory are included not only in economic but also in social affairs of that State. This poses a challenge: how should a State preserve national interests? Referring to the relevant provisions of the New York Convention (1958) and the ICSID Convention (1965), the author elaborates on the idea that public policy may be used in the enforcement stage as justification for non-compliance with the rendered arbitral award. The author introduces relevant arbitration practice that has challenged the interpretation of Article 54 of the ICSID Convention and analyzes the impact it has had on the ICSID system.

**Filip Mirić, LL.D.**, Scientific Research Associate and Technical Associate for PhD studies, Faculty of Law, University of Niš, submitted the paper *Preventing the Spread of the COVID-19 Disease: Criminal Law Aspect*. Given that the COVID-19 pandemic has affected every aspect of our daily lives, the paper analyzes the criminal law aspect of preventing the spread of COVID-19 pandemic in the Republic of Serbia, by presenting two criminal offences whose incrimination is important for pandemic control: Failure to comply with the Health Regulations during an Epidemic (Article 248 CC RS) and Transmitting a Contagious Disease (Article 249 CC RS). The author analyzes the work of judicial bodies during the pandemic with reference to the statistical data issued by the Statistics Office of the Republic of Serbia on the number of criminal reports, charges, convictions, and sanctions imposed for the commission of these criminal offences in the first pandemic year (2020). Based on the statistical data which provide a clear insight into the phenomenological characteristics of this form of crime in Serbia, the author formulates recommendations for improving the response of the criminal justice system *de lege ferenda*.

**Yunus Emre Ay, LLB, LLM** (Prague), Antalya Bar Association, Turkey, submitted the paper *The Interpretation of the Principle of Strict Compliance in Letters of Credit in International Commercial Law*. Letter of Credit (L/C) is a very popular payment method in international trade. The issuing bank has the obligation to make payment if the documents stipulated in a Letter of Credit are presented. Under the strict compliance principle, any discrepancy in the documents may be the reason for refusing payment. There are two different approaches to the interpretation of the principle of strict compliance: literal compliance and substantial compliance. In literal compliance, a slightest inaccuracy may be the reason for refusing payment; the substantive interpretation is more flexible. The author provides an overview of these two approaches, with specific reference to relevant case law and relevant provisions of the UCP Rules and ISBP Rules governing this international trade matter. These international rules and diverse case law offer opportunities for a more flexible and balanced approach to the interpretation of strict compliance.

**Aleksandra Vasić, LL.M.**, PhD Candidate, Faculty of Law, University of Novi Sad, submitted the paper *Licence Fee as an Essential Element of a Licence Agreement*. The author examines the institute of licence fee which is envisaged in the Serbian Civil Obligations Act as an essential element of a licence agreement. In the context of intellectual property law, the author analyzes the most frequent types of payment related to licence fees

(lump sum, royalties) and the payment methods (in cash or in kind, as a single payment or in installments). The lump sum payment may be effected as a single payment or in several instalments, while the amount of royalties depends on the scope of exploitation of the subject matter of licence. The author also discusses the factors to be considered in determining the licence fee amount and the issue of gratis licence agreements.

**Jovana Tošić, LL.M.**, PhD Candidate, Faculty of Law, University of Belgrade, submitted the paper *Constitutional Breakthrough of the Common Foreign and Security Policy in the context of Bank Refah Kargaran Case*. The paper aims to shed some light on the process of constitutionalization of the Common Foreign and Security Policy (CFSP) which has been underway for some time, but also to investigate potential impacts of the judgment of the EU Court of Justice in the case *Bank Refah Kargaran v Council*, considering the political sensitivity of foreign affairs and shared power of national courts in exercising judicial review of the CFSP acts. In the appeal case *Bank Refah Kargaran v Council*, the EU Court of Justice established its jurisdiction over claims for damages in the field of Common Foreign and Security Policy (CFSP) pertaining to restrictive measures against individuals. The case indicates a broader tendency of the Court to expand the contours of its review despite limitation clauses set out in the Lisbon Treaty. Driven by the present case and former case law, the Court emphasized the importance of effective judicial protection in preserving the unity of the EU legal order. Thus, the Court reaffirmed its ambitions in terms of further constitutionalization of CFSP matters in the name of the rule of law and human rights protection.

**Ljubica Mihajlović, LL.M.**, PhD Student, Faculty of Law, University of Niš, submitted the paper *The Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: A New Method Of Legal Protection Of Children's Rights*. The author analyzes the Third Optional Protocol to the Convention on a Communications Procedure (2011), one of the most important developments in the children's rights protection system established under the Convention on the Rights of the Child (CRC, 1989). Under this Protocol, the competences of the Committee on the Rights of the Child have been expanded, and children have been given the opportunity to address the Committee, either directly or through adult representatives, for violations of the rights guaranteed by the CRC, the First Optional Protocol and the Second Optional Protocols to the CRC. The author presents the available proceedings, an illustrative case from the Committee practice, and the nature of the Committee decision.

We would like to extend our sincere appreciation and gratitude to our distinguished reviewers whose professional attitude to double-blind peer review has significantly contributed to the quality of this scientific journal.

Considering that our scientific journal *Facta Universitatis: Law and Politics* is committed to publishing scientific articles on different law-related issues across a wide range of social sciences and humanities, we invite you to submit research articles on topics of your professional interest.

Editor-in-Chief  
Prof. Dejan Vučetić, LL.D.

Niš, 1<sup>th</sup> November 2022