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Medzinárodný internetový vedecký časopis zameraný na právne otázky v interdisciplinárnych súvislostiach

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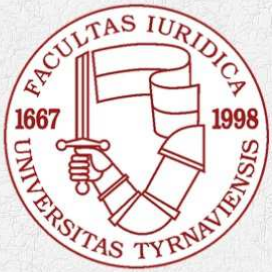

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Editoriál k zimnej edícii SOCIETAS ET IURISPRUDENTIA 2025

Ctení čitatelia, vážení priatelia,

dovoľte, aby som Vám predstavila štvrté číslo trinásteho ročníka SOCIETAS ET IURISPRUDENTIA, medzinárodného internetového vedeckého časopisu zameraného na právne otázky v interdisciplinárnych súvislostiach.

Časopis SOCIETAS ET IURISPRUDENTIA vychádza pod záštitou Právnickej fakulty Trnavskej univerzity v Trnave a tematicky sa zameriava najmä na spoločensky významné prierezové súvislosti otázok verejného práva a súkromného práva na národnej, nadnárodnej, ako aj medzinárodnej úrovni, pričom prijíma a publikuje výhradne pôvodné, doposiaľ nepublikované príspevky. Jeho cieľom je poskytovať podnetnú a inšpiratívnu platformu pre vedecké a celospoločensky prínosné riešenia aktuálnych právnych otázok a ich komunikáciu na úrovni najmä odbornej právnickej, ale aj zainteresovanej širokej občianskej verejnosti v kontexte ich najširších interdisciplinárnych spoločenských súvislostí, a to nielen na národnej, ale aj na regionálnej a medzinárodnej úrovni.

Časopis vychádza v elektronickej on-line podobe pravidelne štyrikrát ročne, a to v termínoch 31. marec, 30. jún, 30. september a 31. december, pričom ponúka priestor pre publikáciu príspevkov v podobe samostatných vedeckých štúdií, ako aj cyklov vedeckých štúdií, esejí zamýšľajúcich sa nad aktuálnou spoločenskou témou alebo dianím, recenzií publikácií vzťahujúcich sa na hlavné zameranie časopisu, a taktiež informácií, ako aj správ súvisiacich so základným poslaním časopisu.

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prvá štúdia ponúka čitateľom komplexnú kritickú analýzu etickosti používania umelej inteligencie právnikmi v Južnej Afrike, pričom v nej autori porovnávajú aktuálne skúsenosti a ponaučenia s právnym stavom riešenia tejto otázky v Nemecku a Francúzsku. Druhá a zároveň posledná štúdia skúma a podrobne analyzuje právnu úpravu povinností zamestnávateľov vyplývajúcich z doplnkového dôchodkového systému v Slovenskej republike v aktuálnom znení.

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Verím, že časopis SOCIETAS ET IURISPRUDENTIA poskytne podnetnú a inšpiratívnu platformu pre komunikáciu na úrovni odbornej aj občianskej verejnosti, a rovnako tiež pre vedecké a celospoločensky prínosné riešenia aktuálnych právnych otázok v kontexte ich najširších interdisciplinárnych spoločenských súvislostí, a to nielen na národnej, ale aj na regionálnej a medzinárodnej úrovni.

V mene celej redakčnej rady a redakcie časopisu SOCIETAS ET IURISPRUDENTIA

s úctou,

Jana Koprlová

Trnava 31. december 2025

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Editorial for Winter Edition of the SOCIETAS ET IURISPRUDENTIA 2025

Dear readers and friends,

let me introduce the fourth issue of the thirteenth volume of SOCIETAS ET IURISPRUDENTIA, an international scientific online journal for the study of legal issues in the interdisciplinary context.

The journal SOCIETAS ET IURISPRUDENTIA is issued under the auspices of the Faculty of Law of the Trnava University in Trnava, Slovakia, and it thematically focuses mainly on socially relevant interdisciplinary relations connected with issues of public law and private law at the national, transnational and international levels, while accepting and publishing exclusively original, hitherto unpublished contributions. Its aim is to provide a stimulating and inspirational platform for scientific and society-wide beneficial solutions to current legal issues and their communication at the level of primarily legal experts, but also the interested general public in the context of their broadest interdisciplinary social relations, in like manner at the national, regional and international levels.

The journal is issued in an electronic on-line version four times a year, regularly on March 31st, June 30th, September 30th and December 31st, and it offers a platform for publication of contributions in the form of separate papers and scientific studies as well as scientific studies in cycles, essays on current social topics or events, reviews on publications related to the main orientation of the journal and also information or reports connected with the inherent mission of the journal.

The website of the journal SOCIETAS ET IURISPRUDENTIA offers the reading public information in the common graphical user interface as well as in the blind-friendly interface designed for visually handicapped readers, both parallel in the Slovak as well as English languages. In both languages the journal's editorial office provides also feedback communication through its own e-mail address. At the same time, the website of the journal offers readers due to the use of dynamic responsive web design accession and browsing by using any equipment that allows transmission of information via the global Internet network.

The current, fourth issue of the thirteenth volume of the journal SOCIETAS ET IURISPRUDENTIA offers a total of two separate scientific studies. The very first study offers readers a comprehensive critical analysis

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of the ethical use of artificial intelligence by legal practitioners in South Africa, in which the authors compare current experiences and lessons learned with the legal status of addressing this issue in Germany and France. The second and final study examines and analyses in detail the legal regulation of employers' obligations arising from the supplementary pension scheme in the Slovak Republic in its current version.

In relation to the release of the fourth issue of the thirteenth volume of the journal SOCIETAS ET IURISPRUDENTIA we are pleased to inform all its readers, contributors as well as fans that the journal has been registered in the Directory of Open Access Journals (DOAJ) as well as in international scientific databases Crossref, ERIH PLUS and Index Copernicus International and applied for registration in other international scientific databases. At the same time, we would like to inform that till the date of the new issue, the journal's websites had recorded a total of 156 countries of visits (in alphabetical order):

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155. Zambia
156. Zimbabwe

On the occasion of launching the fourth issue of the thirteenth volume of the journal, I would be delighted to sincerely thank all the contributors who have contributed in it actively and have shared with the readers their knowledge, experience or extraordinary views on legal issues as well as the top management of the Faculty of Law of the Trnava University in Trnava, all friends, colleagues, employees of the Faculty of Law, the rector's administration at the Trnava University in Trnava for all support and suggestive advices and, finally, also the members of journal's editorial board and the editorial team.

I believe that the journal SOCIETAS ET IURISPRUDENTIA provides a stimulating and inspirational platform for communication both on the

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professional level and the level of the civic society as well as for scientific and society-wide beneficial solutions to current legal issues in context of their broadest interdisciplinary social relations, in like manner at national, regional and international levels.

On behalf of the entire editorial board and editorial office of the journal SOCIETAS ET IURISPRUDENTIA,

Yours faithfully,

Jana Koprlová

Trnava, Slovakia, December 31st, 2025

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Critical Analysis of the Ethical Use of Artificial Intelligence (AI) by Legal Practitioners in South Africa: Comparative Lessons from Germany and France[1]

Usenathi Phindelo
Paul T. Mtunuse

Abstract: *This study critically analyses the ethical use of Artificial Intelligence (AI) by legal practitioners in the South African courts. The study uses doctrinal research methodology to examine primary and secondary sources. It explores the intersection between emerging technologies and professional ethics, raising key questions about lawyers' honesty, responsibility, and accountability in an era where algorithmic tools are increasingly used in litigation. An analysis of existing South African statutory frameworks reveals a regulatory gap. This study proposes the inclusion of AI-specific standards in professional regulations. The paper compares the application of AI in the South African courts with that in the European Union countries, specifically Germany and France. The study concludes that reform is urgently needed to preserve judicial integrity and uphold public confidence in the legal system.*

Key Words: *Legal Ethics; Artificial Intelligence; Legal Practitioners; Professional Responsibility; Hallucinated Citation; Courts; Plagiarism; Cheating; Germany; France; South Africa.*

Introduction

Artificial Intelligence is increasingly reshaping the way lawyers practise and the way courts receive legal submissions. In South Africa, as elsewhere, AI-driven tools such as large language models are being deployed

[1] The authors would like to acknowledge that the manuscript was presented at the South African Humanities Dean's Association, 2025 SAHUDA Conference, hosted by Walter Sisulu University, from 22 – 24 October 2025, as: Usenathi Phindelo and Paul T. Mtunuse *"Critical Analysis of the Ethical Use of Artificial Intelligence (AI) by Legal Practitioners in South African Courts: The Mavundla Case Revisited"*. The manuscript is based on a study by Walter Sisulu University Master of Laws (LLM) student Usenathi Phindelo, titled: *"The Influence of Artificial Intelligence (AI) in the South African Legal Profession and Courts: Challenges and Prospects"*.

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to draft pleadings, generate case summaries, and even suggest relevant precedent.[2] Although these tools promise efficiency and broader access to legal knowledge, they also pose serious risks if practitioners fail to verify their outputs.[3] Among the most concerning risks is the phenomenon of hallucination, where AI fabricates authorities that do not exist. This is not a speculative risk; it has already materialised in the South African courts.[4] However, AI has become an unavoidable presence in modern courtrooms, but these tools should enhance rather than replace human judgment.[5]

The paper argues that the central research question addressed in this study is: to what extent does the existing South African ethical and regulatory framework effectively govern the use of AI by legal practitioners in court proceedings?

While recent jurisprudence demonstrates a judicial willingness to sanction AI-related misconduct, a gap remains in the legal literature regarding whether current professional rules adequately account for the unique risks posed by AI-driven tools, or whether more explicit ethical guidance is necessary. There is also a notable gap in comparative analysis linking concrete judicial responses to AI misuse with underlying legal cultures. Limited attention has been paid to how common law and civil law traditions may differ in their experiences and responses to the ethical risks posed by AI in litigation.

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[2] MULEYA, P. Can Machines Argue the Law? Reassessing AI's Role in Legal Opinions and Heads of Argument under POPIA. *De Rebus* [online]. 2025-05-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: https://www.derebus.org.za/can-machines-argue-the-law-reassessing-ais-role-in-legal-opinions-and-heads-of-argument-under-popia/.

[3] THALDAR, D., S. MBATHA, M. BOTES and P. ESSELAAR. Responsible AI Use in South African Legal Practice: A Call for Ethical Guidelines. *De Rebus* [online]. 2025-07-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: https://www.derebus.org.za/responsible-ai-use-in-south-african-legal-practice-a-call-for-ethical-guidelines/.

[4] See *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P; *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20, paras 86 – 87; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 86 – 89.

[5] MOKGOBU, A. Chief Justice Maya Urges 'Careful Handling' of AI in Courts. In: *Jacaranda FM* [online]. 2025-09-04 [cit. 2025-11-04]. Available at: https://www.jacarandafm.com/news/news/chief-justice-maya-urges-careful-handling-ai-courts/.

The study argues that although the manifestations of risk differ across legal systems, the duty of verification and professional accountability remains constant. Analysing the South African jurisprudence alongside international and comparative perspectives, the study demonstrates that AI should enhance, rather than erode, the integrity of judicial proceedings.

Although this study is grounded in the South African jurisprudence, the ethical challenges examined are not specific to that jurisdiction. Courts across jurisdictions are increasingly confronted with AI-generated submissions, fabricated authorities, and unverified legal analysis. These challenges raise fundamental questions about professional responsibility, judicial trust, and the integrity of the procedural process, which are equally relevant to common law and civil law systems. By analysing the South African case law in dialogue with international regulatory developments, particularly within Europe, this article seeks to contribute to broader comparative debates on how different legal cultures should respond to the ethical risks posed by artificial intelligence in litigation.

1 How the South African courts have dealt with the ethical use of AI by legal practitioners

The landmark case of *Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others*, demonstrates the judiciary's growing concern with this issue.[6] Counsel for the applicant relied on several cases that, upon investigation, were revealed not to exist in any law report or database.[7] These authorities had been produced by an AI system and included without verification in the heads of argument.[8] The court condemned this conduct, stressing that legal practition-

[6] See *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P.

[7] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 20 – 22.

[8] MOYO, A. Lawyers Face Probe for Using 'Hallucinating' GenAI in Court. In: *ITWeb* [online]. 2025-07-02 [cit. 2025-11-04]. Available at: https://www.itweb.co.za/article/lawyers-face-probe-for-using-hallucinating-genai-in-court/Pero3MZ3221qQb6m; and AI in Legal Research under Scrutiny after Fake Case Citations. In: *Moonstone Information Refinery* [online]. 2025-01-13 [cit. 2025-11-04]. Available at: https://www.moonstone.co.za/ai-in-legal-research-under-scrutiny-after-fake-case-citations/.

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ers owe an ethical duty to ensure that all authorities cited are genuine.[9] The High Court further referred the matter to the Legal Practice Council.[10]

The study argues that the facts of the Mavundla case illustrate both the promise and peril of AI in legal practice. This decision signalled that the duties of honesty and integrity imposed on practitioners by the Legal Practice Act (LPA) and the Code of Conduct[11] remain unaltered by technological advances.

The paper submits that the decision in Mavundla went beyond condemning the specific conduct. It served as a broader warning to the profession. The court stressed that time pressures, technological convenience, or ignorance of AI's limitations could never excuse a failure to verify legal sources.[12] By referring counsel to the LPC for investigation, the court signalled that professional regulation must adapt to the challenges posed by AI, and that practitioners must not treat new technologies as shortcuts that undermine their ethical duties.[13]

Mavundla is not an isolated incident. The case of *Parker v. Forsyth NO and Others* marked one of the earliest judicial encounters in South Africa with AI hallucinations.[14] The Johannesburg Regional Court addressed a similar issue, where counsel submitted case authorities that were later found to be non-existent, also generated by ChatGPT.[15] Although the court in this case stopped short of referring the matter for disciplinary proceedings, it nevertheless imposed a costs order as a sanction. It emphasised that practitioners had been careless in relying on AI without

[9] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 37 – 39.

[10] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 37 – 51.

[11] *Legal Practice Act No. 28* [2014].

[12] MATTHEE, J. and G. STOPFORTH. AI in the Courtroom: The Dangers of Using ChatGPT in Legal Practice in South Africa. In: *The Conversation* [online]. 2025-11-04 [cit. 2025-11-04]. Available at: https://doi.org/10.64628/AAJ.6cq6mrtgp.

[13] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P.

[14] *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20.

[15] *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20, paras 86 – 87.

verification.[16] The court further stressed that even preliminary reliance on unverified authorities risks misleading the opposing party and undermining the fairness of proceedings.[17]

In *Van der Berg v. General Council of the Bar of South Africa*, the court also held that a legal practitioner's duty is not only to the client but also to the court.[18] Importantly, the court emphasised that reliance on AI does not relieve counsel of responsibility, nor does delegation to a candidate attorney absolve a supervising practitioner from accountability.[19]

More recently, in *Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others*, the Gauteng Division confronted the use of fabricated authorities in urgent application proceedings.[20] The court rejected attempts to distinguish the case from Mavundla on the grounds that the fabricated cases were not ultimately relied upon in oral argument.[21] It stressed that the very act of including hallucinated authorities in written submissions violates Rule 57.1 of the LPC Code,[22] which obliges practitioners to avoid misleading the court.[23]

[16] *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20, paras 92 – 93.

[17] *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20.

[18] *Case of Van der Berg v. General Council of the Bar of South Africa* [2007-03-22]. Judgement of the Supreme Court of Appeal of South Africa, 2007, 270/06, para 16; and *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, para 38.

[19] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 45 – 46.

[20] *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 86 – 89.

[21] *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 90 – 92.

[22] See *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

[23] *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038, paras 90 – 92.

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The paper, therefore, argues that this cautious yet firm stance by the courts was further developed in the *Northbound Processing* case.[24] As in Mavundla, the court referred the matter to the LPC for disciplinary investigation, thereby reinforcing a consistent judicial message of zero tolerance. The jurisprudence emerging from Mavundla, Parker, Van der Berg and Northbound points to an urgent need for reform. While Rule 57.1 and the LPA provide a framework to discipline misconduct,[25] they do not explicitly account for AI-related challenges.[26] Without clearer standards, the profession risks inconsistency and the erosion of trust in the judicial system. These cases demonstrate that the South African courts are no longer treating AI misuse as a novelty, but rather as an ethical breach rooted in established professional duties.[27]

The paper submits, therefore, that when read together, Mavundla, Parker, and Northbound establish a continuum of judicial response.[28] Parker imposed costs as a warning; Mavundla introduced disciplinary referral and highlighted supervisory responsibility. Northbound extended this principle, closing the door to attempts at distinguishing minor or technical breaches. Together, these cases illustrate a consistent judicial philosophy: AI does not diminish the practitioner's ethical obligations, and verification of all sources remains essential.[29]

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[24] *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

[25] *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

[26] Van der VYVER, C. Guidelines for Responsible AI Integration in Legal Practice. *De Rebus* [online]. 2025-05-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: https://www.derebus.org.za/guidelines-for-responsible-ai-integration-in-legal-practice/.

[27] MAHOMED, N. and S.-N. SIDDIQI. Another Episode of Fabricated Citations, Real Repercussions: South African Courts Show No Tolerance for AI-hallucinated Cases. In: *Cliffe Dekker Hofmeyr* [online]. 2025-07-04 [cit. 2025-11-04]. Available at: https://www.cliffedekkerhofmeyr.com/en/news/publications/2025/Practice/Employment-Law/combined-employment-and-knowledge-management-alert-4-july-Another-episode-of-fabricated-citations-real-repercussions-South-African-courts-show-no-tolerance-for-AI-hallucinated-cases.

[28] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P; *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

[29] These lessons are globally relevant; they resonate with emerging case law in the United Kingdom, see *Case of Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qa-*

2 Ethical duties under the LPA and LPC Code

The ethical framework governing legal practitioners in South Africa predates the advent of AI, yet its principles remain readily applicable to the challenges posed by these technologies. The LPA establishes the Legal Practice Council as the regulatory authority and requires practitioners to act with honesty, integrity, and competence.[30] Section 36 empowers the Legal Practice Council to regulate conduct, while the Code of Conduct codifies duties owed by practitioners.[31] The Code of Conduct, adopted under the LPA, provides detailed guidance, with Rule 57.1 being particularly relevant.[32] The rule states that a legal practitioner must take all reasonable steps to avoid misleading the court, whether directly or indirectly, on matters of fact or law.[33] This includes ensuring that papers filed contain accurate references and that authorities cited genuinely exist.

In the AI context, Rule 57.1 requires practitioners not only to avoid deliberate deception but also to verify the accuracy of AI-generated outputs.[34] The duty of verification is a core responsibility of legal practitioners.[35] Rule 18.3 of the Code of Conduct reinforces this by requiring lawyers to supervise the work of staff and candidate legal practitioners.[36] This principle applies equally to the use of artificial intelligence.

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tar National Bank QPSC and QNB Capital LLC [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin); and other jurisdictions confronting AI-generated pleadings.

[30] *Legal Practice Act No. 28* [2014].

[31] See Section 36 of the *Legal Practice Act No. 28* [2014], which requires the Legal Practice Council to develop and publish a code of conduct that sets the standard of professional conduct for all legal practitioners and candidate legal practitioners.

[32] *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

[33] See Rule 57.1 of the *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

[34] OLIPHANT, M. The Ethical Imperative of Verifying AI-generated Content in Legal Practice. *De Rebus* [online]. 2025-08-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: https://www.derebus.org.za/the-ethical-imperative-of-verifying-ai-generated-content-in-legal-practice/.

[35] Van ECK, M. Expanding Ethical and Professional Guidelines: The Use of Artificial Intelligence in the Legal Profession. *De Rebus* [online]. 2025-09-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: https://www.derebus.org.za/expanding-ethical-and-professional-guidelines-the-use-of-artificial-intelligence-in-the-legal-profession/.

[36] See Rule 18.3 of the *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337.

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AI cannot replace the practitioner's obligation to check, review, and take responsibility for the information provided to courts or clients.[37] Ultimately, the practitioner remains accountable for ensuring accuracy and integrity in all aspects of legal practice.[38] Negligent reliance on fabricated authorities is as culpable as deliberate fabrication because the effect on judicial proceedings is the same. The duty of supervision also plays a critical role.[39] The LPA requires that candidate attorneys work under the oversight of a principal, and the courts have made clear that principals are responsible for verifying the accuracy of submissions prepared by juniors, even when AI tools are involved.[40]

The study argues that these duties also serve a constitutional function. The fairness of trials, the principle of legality, and the rule of law all depend on courts being able to rely on the authenticity of authorities presented to them. When practitioners fail to uphold these standards, they do not merely breach professional ethics; they jeopardise the constitutional right to fair hearing and a fair trial[41] and erode public confidence in the judiciary.

In civil law jurisdictions, although judges determine the law *ex officio*, practitioners' submissions still shape judicial understanding. Misleading AI-generated content can, therefore, compromise procedural efficiency, equality of arms, and institutional trust.

The study argues that, although arising in a South African context, the cases offer comparative insights. Civil law jurisdictions, particularly

[37] South African Courts Weigh in on the Ethical Use of Artificial Intelligence in Legal Practice. In: *VDMA Law* [online]. 2025-08-06 [cit. 2025-11-04]. Available at: https://vdmalaw.com/2025/08/06/south-african-courts-weigh-in-on-the-ethical-use-of-artificial-intelligence-in-legal-practice/.

[38] Van ECK, M. Expanding Ethical and Professional Guidelines: The Use of Artificial Intelligence in the Legal Profession. *De Rebus* [online]. 2025-09-01 [cit. 2025-11-04]. ISSN 1605-6264. Available at: https://www.derebus.org.za/expanding-ethical-and-professional-guidelines-the-use-of-artificial-intelligence-in-the-legal-profession/.

[39] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, para 48; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

[40] See *Legal Practice Act No. 28* [2014]; and *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P, paras 48 – 49.

[41] See Section 35(3) of the *Constitution of the Republic of South Africa Act No. 108* [1996] (hereinafter referred to as the "Constitution").

in Central Europe, are often regarded as less susceptible to certain risks posed by AI-assisted legal reasoning due to the *iura novit curia* principle, under which courts bear primary responsibility for determining and applying the law. While this principle is most explicitly articulated in civil law systems, the South African courts similarly retain ultimate authority over the identification and application of the law, albeit within a mixed legal tradition. However, as this analysis will demonstrate, the ethical risks associated with AI transcend traditional legal frameworks.

The article submits that, beyond professional ethics, these duties serve a constitutional purpose. Accurate filings protect the fairness of trials, uphold the principle of legality, and preserve public trust in the judiciary. While civil law courts have the authority to determine the law *ex officio*, they nonetheless depend on structured submissions from parties. Unverified AI content may misrepresent facts, distort arguments, or increase judicial workload, demonstrating that ethical duties are not exclusive to common law systems.

3 Regulatory gaps and international perspectives

3.1 Domestic regulatory gaps

While the preceding discussion focuses on the South African regulatory and judicial responses, these developments must be understood within a broader comparative context. The ethical challenges posed by AI in litigation are global in nature, and South Africa's experience offers a useful case study rather than a jurisdictional endpoint. Examining how other legal systems conceptualise professional responsibility in the age of AI enables a clearer assessment of whether existing frameworks are adaptable or whether new regulatory models are required.

Despite the strong judicial stance in the cases discussed above, South Africa lacks AI-specific regulation in legal practice.[42] The Legal Practice Act and Code of Conduct provide a general ethical framework, but they were drafted before AI became prominent in the profession. While Rule 57.1 obliges practitioners not to mislead the court, it does not expressly mention AI-generated content. This creates uncertainty about whether the existing rules are sufficient to prevent systemic abuses.

[42] BERNSTEIN, D. and D. RAMJEE. AI Watch: Global Regulatory Tracker – South Africa. In: *White & Case* [online]. 2024-12-03 [cit. 2025-11-04]. Available at: https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-south-africa.

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The Protection of Personal Information Act (POPIA) raises further concerns.[43] AI tools often process sensitive client data when drafting legal submissions or opinions. Confidentiality remains vital when using AI, and to uphold confidentiality, legal practitioners must comply with POPIA by using secure or anonymised AI systems to protect client data.[44]

The concern is: What happens when practitioners input confidential information into AI systems hosted on third-party servers? Such conduct may amount to a breach of the POPI Act.[45] Yet current jurisprudence is silent on this dimension. Similarly, the Electronic Communications and Transactions Act (ECTA) regulates electronic transactions but does not anticipate the role of AI in generating legal documents.[46]

South Africa's National Artificial Intelligence Policy Framework of 2024 outlines a vision for the responsible development of AI in the country.[47] However, it is aspirational rather than binding, as it is still under development. The courts must currently rely on general ethical rules, which were never designed with AI-specific risks in mind. This regulatory lag leaves gaps in enforcement and consistency.

3.2 Comparative lessons from Germany and France

Comparative experience offers useful guidance. The European Union's AI Act categorises AI applications into risk levels, imposing strict obligations on high-risk uses, such as those in legal services.[48] Under this framework, legal AI tools would require transparency, accountability, and human

[43] *Protection of Personal Information Act No. 4* [2013].
[44] STEWART, K. Responsible AI Use in South African Legal Practice: A Call for Ethical Guidelines. In: *Polity* [online]. 2025-10-29 [cit. 2025-11-04]. Available at: https://www.polity.org.za/article/responsible-ai-use-in-south-african-legal-practice-a-call-for-ethical-guidelines-2025-10-29.
[45] See *Protection of Personal Information Act No. 4* [2013].
[46] *Electronic Communications and Transactions Act No. 25* [2002].
[47] *South Africa National Artificial Intelligence Policy Framework* [online]. 1st ed. Pretoria: Department of Communications and Digital Technologies, 2024. 13 p. [cit. 2025-11-04]. Available at: https://www.dcdt.gov.za/sa-national-ai-policy-framework/file/338-sa-national-ai-policy-framework.html.
[48] *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)*. OJ EU L, 2024/1689, 2024-07-12.

oversight to ensure effective use.[49] Similarly, the OECD AI Principles emphasise fairness, accountability, and transparency as non-negotiable standards.[50]

The paper argues that, moreover, UNESCO has consistently stressed the importance of aligning AI with human rights and ethical values. If incorporated into the South African law, such standards could help close the regulatory gaps exposed in Mavundla, Parker, and Northbound Processing.

The Divisional Court's decision in *Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC*, marks the first direct judicial censure of legal practitioners who relied on unchecked generative AI to draft procedural documents.[51] Heard together under the Hamid jurisdiction, the cases revealed how practitioners submitted pleadings and statements riddled with fictitious case law, legal inaccuracies, and unverified content.[52] The Court condemned the conduct as misleading, negligent, and contrary to duties owed to the administration of justice.[53] Wasted costs, referrals to regulators, and strong judicial criticism followed.

This approach resonates with the reasoning in *Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal* case, where the High Court similarly highlighted the dangers of de-

[49] CHEONG, B. Ch. Transparency and Accountability in AI Systems: Safeguarding Wellbeing in the Age of Algorithmic Decision-making. *Frontiers in Human Dynamics* [online]. 2024, vol. 6, p. 2 [cit. 2025-11-04]. ISSN 2673-2726. Available at: https://doi.org/10.3389/fhumd.2024.1421273.

[50] AI Principles. In: *Organisation for Economic Co-operation and Development* [online]. 2025 [cit. 2025-11-04]. Available at: https://www.oecd.org/en/topics/ai-principles.html. These principles resonate strongly with *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P. In this case, the lack of verification and accountability led to the fabrication of authorities. Had South Africa adopted similar binding frameworks, practitioners might have been required by law to disclose their use of AI or certify the authenticity of AI-generated content.

[51] *Case of Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC* [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin).

[52] *Case of Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC* [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin).

[53] See *Case of Ayinde v. London Borough of Haringey, and Hamad Al-Haroun v. Qatar National Bank QPSC and QNB Capital LLC* [2025-06-06]. Judgement of the High Court of England and Wales, 2025, [2025] EWHC 1383 (Admin), para 73.

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ploying AI-generated content in litigation without proper scrutiny.[54] In both instances, the judiciary emphasised that generative AI does not exempt lawyers from their professional obligations. Whether in South Africa or the United Kingdom, the principle is consistent: legal representatives remain wholly responsible for the accuracy and integrity of documents filed in their name, regardless of whether they were drafted by a person or a machine.

The study submits that these international examples provide a comparative framework relevant to both South African and European legal contexts, demonstrating how AI efficiency can coexist with the protection of fundamental rights. AI-driven tools are increasingly being used in courts for sentencing, evidence analysis, and case prediction, raising concerns about fairness and bias.

Article 6 of the ECHR and Article 14 of the ICCPR guarantee fair trials, requiring transparency, equal treatment, and reasoned judgments.[55] The ICC Code of Judicial Ethics mandates judicial independence, efficiency, and impartiality.[56] AI bias or overreliance may undermine these principles in both common law and civil law systems. Even where the court formally determines the law, AI-generated misinformation can compromise the procedural integrity and fairness of the process.

Germany and France provide instructive examples for South Africa in regulating AI within the legal system. A useful comparative perspective may be drawn from Germany, a civil law jurisdiction within the European Union that is actively modernising its civil justice system while maintaining strict constitutional limits on the use of artificial intelligence in adjudication. The German reforms prioritise procedural digitalisation, such as mandatory electronic filing, electronic case management, video hearings, and online procedures, rather than the automation of judicial decision-making.[57] This sequencing reflects an understanding that efficiency and

[54] See *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P.

[55] *Convention for the Protection of Human Rights and Fundamental Freedoms* [European Convention on Human Rights] [1950-11-04], Article 6; and *International Covenant on Civil and Political Rights* [ICCPR] [1966-12-16], Article 14(1).

[56] *Code of Judicial Ethics* [online]. 1st ed. The Hague: International Criminal Court, 2022. 4 p. [cit. 2025-11-04]. ISBN 92-9227-372-8. Available at: https://www.icc-cpi.int/publications/official-journal/code-judicial-ethics, Articles 3 and 7.

[57] GLEICH, M. Digitalisation of Civil Proceedings in Germany. In: *Norton Rose Fulbright* [online]. 2022-11-08 [cit. 2025-11-04]. Available at: https://www.nortonrosefulbright.

access to justice may be enhanced through technology without displacing the human exercise of judicial power. The German experience, therefore, demonstrates that digital transformation in civil proceedings need not entail the delegation of legal reasoning to artificial intelligence, particularly in systems where judges bear an active responsibility for determining and applying the law.[58]

Notably, the German constitutional law imposes clear limitations on the role of artificial intelligence in courts. Article 103(1) read in conjunction with Article 97(1) of the German Basic Law ensures a fair trial and judicial independence.[59] As a result, AI systems may not be able to issue judgments or binding orders. Instead, artificial intelligence is cautiously deployed as a supportive tool. For example, in case management or the generation of non-binding settlement proposals in mass claims involving repetitive factual patterns.[60] This distinction between adjudication and assistance preserves the values of judicial independence, transparency, and accountability, which are equally central to South Africa's constitutional framework. The German approach thus offers a valuable lesson for South Africa: AI may be constitutionally acceptable when used to facilitate efficiency and access to justice, but not where it undermines the judge's duty to independently ascertain the law, provide reasons, and ensure a fair trial.

While the German courts have primarily adopted AI for handling mass and standardised claims, its use remains limited to decision-support tools, with final judicial decision-making retained by human judges, in line with the civil law principle of *"iura novit curia"*.[61] This ap-

com/en/knowledge/publications/3bc3c34a/digitalisation-of-civil-proceedings-in-germany.

[58] GLEICH, M. Digitalisation of Civil Proceedings in Germany. In: *Norton Rose Fulbright* [online]. 2022-11-08 [cit. 2025-11-04]. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/3bc3c34a/digitalisation-of-civil-proceedings-in-germany.

[59] *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law for the Federal Republic of Germany] [1949-05-23], Articles 97(1) and 103(1).

[60] GLEICH, M. Digitalisation of Civil Proceedings in Germany. In: *Norton Rose Fulbright* [online]. 2022-11-08 [cit. 2025-11-04]. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/3bc3c34a/digitalisation-of-civil-proceedings-in-germany.

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proach is reinforced by the EU Artificial Intelligence Act,[62] which classifies judicial AI systems as high-risk and subjects them to strict oversight and risk-management requirements.[63]

The study, in contrast, argues that South Africa currently lacks a binding framework specific to AI for courts and legal practitioners. The German experience demonstrates how AI may enhance efficiency without undermining judicial independence or fair trial rights. It, therefore, offers valuable regulatory guidance for South Africa's evolving approach to AI in the legal profession.

France provides a complementary perspective on AI integration in the legal sector. Rather than adopting standalone legislation, France implements the EU AI Act. On the other hand, it is developing sector-specific guidelines,[64] such as proposed amendments to the Intellectual Property Code,[65] and CNIL's AI Action Plan, to regulate generative AI, protect data privacy, and ensure accountability.[66] The French courts have explored the use of AI in legal analysis and case law consistency through various projects, consistently reaffirming that AI remains a supportive tool and should not replace human judgment.[67] Similarly, recent rulings and expert discussions stress transparency, verifiability, and due process when

[62] *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)*. OJ EU L, 2024/1689, 2024-07-12.

[63] *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)*. OJ EU L, 2024/1689, 2024-07-12, Article 6.

[64] *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)*. OJ EU L, 2024/1689, 2024-07-12, Article 6.

[65] *Loi n° 92-597 du 1er juillet 1992 relative au code de la propriété intellectuelle (partie législative)* [1992-07-01]. Journal Officiel de la République Française, 1992, n° 0153.

[66] Artificial Intelligence: The Action Plan of the CNIL. In: *CNIL – Commission Nationale de l'Informatique et des Libertés* [online]. 2023-05-16 [cit. 2025-11-04]. Available at: https://www.cnil.fr/en/artificial-intelligence-action-plan-cnil.

[67] KHAMITOVA, D. and S. SACHDEV. AI and Arbitration: A Perspective from France. In: *Clyde & Co* [online]. 2025-07-31 [cit. 2025-11-04]. Available at: https://www.clydeco.com/en/insights/2025/08/ai-and-arbitration-a-perspective-from-france.

AI assists in case preparation, reflecting the principle that adjudication and arbitration remain human-led.[68] An example is the case of *Comité Social et Économique de la société de MetLife Europe DAC v. MetLife Europe DAC*, Tribunal judiciaire de Nanterre, Ordonnance de référé.[69] The court emphasised that AI surveillance systems should not be implemented in the workplace without first engaging employee representatives, reinforcing the principles of transparency and stakeholder consultation standards that are equally relevant when AI tools are employed to assist in arbitration case preparation.[70]

The paper submits that for South Africa, the French approach demonstrates how AI can enhance efficiency in legal proceedings while safeguarding fairness, accountability, and judicial independence, offering lessons for developing a structured regulatory framework for AI in courts and law firms. South Africa can learn valuable lessons from both Germany and France on the ethical application of AI by legal practitioners and courts.

4 Commentary on the ethical application of AI

Ka Mtuze and Morige argue that South Africa currently lacks deliberate AI legislation. That, instead, regulation is fragmented and applied by coincidence rather than intention.[71] Their commentary reinforces the view that existing statutory frameworks, such as the LPA,[72] the POPI Act,[73] and

[68] KHAMITOVA, D. and S. SACHDEV. AI and Arbitration: A Perspective from France. In: *Clyde & Co* [online]. 2025-07-31 [cit. 2025-11-04]. Available at: https://www.clydeco.com/en/insights/2025/08/ai-and-arbitration-a-perspective-from-france.

[69] *Ordonnance de référé du Tribunal judiciaire de Nanterre n° RG 24/01457* [2025-02-14].

[70] *Ordonnance de référé du Tribunal judiciaire de Nanterre n° RG 24/01457* [2025-02-14].

[71] SNAIL KA MTUZE, S. and M. MORIGE. Towards Drafting Artificial Intelligence (AI) Legislation in South Africa. *Obiter* [online]. 2024, vol. 45, no. 1, pp. 161-179 [cit. 2025-11-04]. ISSN 2709-555X. Available at: https://doi.org/10.17159/obiter.v45i1.18399. This argument resonates with the reasoning in Mavundla, where the court had to rely on Rule 57.1 of the *Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Entities* [2019]. Government Gazette of the Republic of South Africa, 2019, No. 42337 to sanction conduct involving AI, despite this rule not being designed to regulate algorithmic tools; see *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P.

[72] *Legal Practice Act No. 28* [2014].

[73] *Protection of Personal Information Act No. 4* [2013].

the ECT Act,[74] provide general ethical norms but were not drafted with generative AI or hallucinated authorities in mind.[75]

Batool[76] and Ali Khan[77] note that a common challenge across jurisdictions is the absence of consistent monitoring frameworks and the lack of clear, binding rules on accountability.

The study argues that these comparative studies support the concern that unverified reliance on AI can undermine the integrity of legal proceedings. Transparency, accountability, and fairness must be foundational principles in regulating AI in legal practice, rather than secondary considerations.

Wang argues that AI-driven tools pose systemic risks to professional responsibility, particularly where practitioners abdicate their duty of independent judgment to machine outputs.[78] Similarly, Pietropaoli emphasises that liability issues arise when lawyers rely on AI-generated materials without adequate scrutiny, leading to potential miscarriages of justice.[79]

The article argues and submits that these commentaries and interventions highlight a global consensus: while AI offers opportunities for efficiency, its use in law must be carefully balanced against enduring principles of honesty, responsibility, and accountability.

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[74] *Electronic Communications and Transactions Act No. 25* [2002].

[75] SNAIL KA MTUZE, S. and M. MORIGE. Towards Drafting Artificial Intelligence (AI) Legislation in South Africa. *Obiter* [online]. 2024, vol. 45, no. 1, pp. 161-179 [cit. 2025-11-04]. ISSN 2709-555X. Available at: https://doi.org/10.17159/obiter.v45i1.18399.

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[77] KHAN, A. A., M. A. AKBAR, M. FAHMIDEH, P. LIANG, M. WASEEM, A. AHMAD, M. NIAZI and P. ABRAHAMSSON. AI Ethics: An Empirical Study on the Views of Practitioners and Lawmakers. *IEEE Transactions on Computational Social Systems* [online]. 2023, vol. 10, no. 6, pp. 2971-2984 [cit. 2025-11-04]. ISSN 2329-924X. Available at: https://doi.org/10.1109/tcss.2023.3251729.

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5 Legal culture, AI hallucinations and the principle of *iura novit curia*

The ethical risks associated with AI-generated court filings extend beyond adversarial legal systems. In many Central European jurisdictions, the civil law tradition is characterised by the principle of *iura novit curia*. According to this principle, the court bears primary responsibility for determining the applicable law. At first glance, this principle may appear to mitigate the dangers posed by fabricated or inaccurate legal authorities submitted by legal practitioners.

However, this assumption requires careful qualification. Even within civil law systems, courts rely on parties' submissions to structure disputes, identify relevant statutory provisions, and contextualise legal arguments.[80] AI-generated hallucinations may, therefore, distort the factual and legal matrix presented to the court, increase judicial workload, and undermine procedural efficiency.[81] In complex litigation, urgent proceedings, or cases involving comparative or international law, the uncritical submission of AI-generated material may still compromise fairness and judicial integrity. Moreover, contemporary civil law practice increasingly incorporates adversarial elements, including written argumentation, expert opinions, and comparative jurisprudence.[82] In such contexts, the ethical concern is not limited to misleading the court on the law, but extends to broader issues of institutional trust, equality of arms, and professional reliability.

The article argues, therefore, that the risk posed by AI, manifests differently across legal cultures, but it does not disappear. While the urgency and regulatory response may differ between common law and civil law systems, the underlying ethical principle remains constant: legal practitioners must retain responsibility for the accuracy, authenticity,

[80] ROM, M. C., M. HIDAKA and R. BZOSTEK WALKER. *Introduction to Political Science* [online]. 1st ed. Houston: OpenStax, 2022, pp. 345-349 [cit. 2025-11-04]. ISBN 978-1-951693-56-5. Available at: https://openstax.org/details/books/introduction-political-science.

[81] Van ECK, M. AI 'Hallucinations' Are Threatening the Administration of Justice in SA. In: *Daily Maverick* [online]. 2025-07-15 [cit. 2025-11-04]. Available at: https://www.dailymaverick.co.za/opinionista/2025-07-15-ai-hallucinations-are-threatening-the-administration-of-justice-in-sa/.

[82] HASNEZIRI, L. The Adversarial Proceedings Principle in the Civil Process. *European Journal of Marketing and Economics* [online]. 2021, vol. 4, no. 1, pp. 88-91 [cit. 2025-11-04]. ISSN 2601-8667. Available at: https://doi.org/10.26417/548nth20i.

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and verification of all materials submitted to court, regardless of whether the court formally determines the law *ex officio*.

6 Towards reform: universal ethical standards for AI in litigation

The jurisprudence emerging from case law demonstrates that existing ethical rules can be applied to AI misuse. However, it also exposes the limits of frameworks not specifically designed for algorithmic technologies.[83] Rather than proposing reforms confined to the South African practice, this study advances principles capable of application across legal systems, subject to contextual adaptation.

First, jurisdictions should adopt explicit professional standards that require legal practitioners to verify all AI-generated content before submitting it to the court. Whether in common law or civil law systems, the duty of verification is central to maintaining judicial trust and procedural integrity.

Second, legal practitioners should be required to disclose the use of AI in preparing court filings where such use materially affects the content submitted. Disclosure promotes transparency without prohibiting innovation and allows courts to assess submissions with appropriate caution.

Third, supervisory obligations must extend to the use of technological tools. Principals and senior practitioners should be responsible not only for the work of junior lawyers but also for the systems and technologies deployed within legal practice.

Finally, judicial training and institutional awareness are essential. Courts must understand both the capabilities and limitations of AI in order to respond proportionately to misconduct and develop effective procedural safeguards.

While the precise form of regulation will differ between common law and civil law traditions, these principles reflect a shared ethical foundation. AI should enhance access to justice and efficiency, but only if constrained by clear professional accountability.

[83] *Case of Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal and Others* [2025-01-08]. Judgement of the High Court of South Africa, 2025, 7940/2024P; *Case of Parker v. Forsyth NO and Others* [2023-06-29]. Judgement of the High Court of South Africa, 2023, 1585/20; and *Case of Northbound Processing (Pty) Ltd v. South African Diamond and Precious Metals Regulator and Others* [2025-06-30]. Judgement of the High Court of South Africa, 2025, 2025-072038.

Conclusions and recommendations

The jurisprudence emerging from *Mavundla v. MEC: Department of Co-operative Government and Traditional Affairs KwaZulu-Natal*, reinforced by *Parker v. Forsyth* and *Northbound Processing*, establishes a clear principle: AI does not absolve legal practitioners from their ethical duties. Fabricated case law, whether introduced negligently or intentionally, constitutes a breach of Rule 57.1 and undermines judicial integrity.

Yet these cases also expose the limits of South Africa's regulatory framework. The Legal Practice Act and existing codes of conduct provide a foundation, but they lack provisions specific to AI. Comparative jurisdictions such as Germany and France offer valuable lessons on proactive regulation. South Africa must seize this moment to codify clear duties, enhance supervisory obligations, and provide training for both practitioners and judges.

The recommendations are, therefore, threefold. First, amend the Code of Conduct to include AI-specific rules requiring disclosure, verification, and accountability. Second, strengthen supervisory responsibilities by mandating firm-level AI policies and LPC oversight. Third, develop judicial training and court rules that anticipate AI misuse.

By adopting these reforms, South Africa can transform the cautionary tale of Mavundla into a catalyst for ethical innovation. AI can enhance the efficiency of legal practice, but only if harnessed responsibly. The judiciary has sounded the alarm; it is now for legislators, regulators, and the profession to respond. In doing so, the legal system can ensure that AI remains a tool of justice rather than a threat to its very foundation.

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Employer Obligations in the Supplementary Pension Scheme in the Slovak Republic[1]

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Abstract: *This article analyses the legal nature, scope, and justification of employer obligations under Slovakia's supplementary pension savings scheme (the third pillar), as regulated by the Act No. 650/2004 Coll. It places these duties within the post-2003 multi-pillar reform and the hybrid design of the third pillar, combining voluntary participation with mandatory employer and employee involvement for selected occupational groups. The paper details the employer's core duties – concluding an employer agreement, enrolling eligible employees, remitting statutory minimum contributions, and meeting administrative and equal-treatment requirements – drawing primarily on systematic and teleological interpretation of the Act and the constitutional right to adequate material security in old age under the Article 39(1) of the Slovak Constitution. It argues that mandatory contributions for hazardous or physiologically limited professions serve legitimate compensatory and preventive aims, yet interfere with contractual autonomy and may produce economic and competitive distortions. The article, therefore, identifies proportionality-based limits to the current model and outlines de lege ferenda options to recalibrate mandatory participation, strengthen review mechanisms, and enhance flexibility and incentives.*

Key Words: *Social Security Law; Supplementary Pension Savings; Third Pillar; Employer Obligations; Mandatory Participation; Hazardous Work; Contractual Autonomy; Proportionality; Slovak Pension Reform; Act No. 650/2004 Coll.; Constitutional Right to Old-age Security; the Slovak Republic.*

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Introduction

In the Slovak Republic, the pension system is based on a three-pillar structure, consisting of the mandatory public pay-as-you-go scheme governed primarily by Act No. 461/2003 Coll. on Social Insurance, as amended, the mandatory funded pillar regulated by Act No. 43/2004 Coll. on Old-age Pension Savings and on Amendments to Certain Acts, as amended and the voluntary supplementary pension scheme regulated by Act No. 650/2004 Coll. on Supplementary Pension Savings and on Amendments to Certain Acts, as amended (hereinafter referred to as the "Act No. 650/2004 Coll.").

Supplementary pension savings, as the third pillar of the pension system of the Slovak Republic, constitutes a specific institution of social security that complements the mandatory public schemes with a voluntary, or partly mandatory, element of employer and employee participation in financing supplementary pension benefits. From a labour-law perspective, the employer appears to be the key actor within the system, performing intermediary, financial, and social functions.

Participation in the third pillar is voluntary for the majority of employees; however, the legislature, by the Act No. 650/2004 Coll., introduced mandatory participation for specific categories of employees, thereby creating a hybrid model – savings that are voluntary as a rule, yet required in particular cases. Employer obligations must, therefore, be analysed not only in terms of their legal content, but also in terms of their social function and the constitutional context of the right to adequate material security in old age under the Article 39 of the Constitution of the Slovak Republic.[2]

This paper aims to analyse the legal nature and scope of the employer's obligations within the supplementary pension savings system, with particular attention to mandatory participation for selected categories of employees. The central research question is whether the current configuration of these obligations satisfies the requirement of proportionality and strikes an appropriate balance between the system's social function and the protection of the employer's contractual autonomy. The paper also seeks to show to what extent the duty to contribute constitutes an appropriate instrument of social policy, and where its normative limits begin.

[2] *Constitutional Act No. 460/1992 Coll. Constitution of the Slovak Republic, as amended.*

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A specific doctrinal treatment of employer obligations within the system of supplementary pension savings is virtually absent from the Slovak legal scholarship. The analysis, therefore, relies primarily on the interpretation of the Act No. 650/2004 Coll., the constitutional framework, relevant explanatory memoranda, and comparative trends in multi-pillar pension systems.

Methodologically, the paper proceeds from an analysis of the law in force (the dogmatic method), focusing on a systematic and teleological interpretation of the Act No. 650/2004 Coll. and related legal instruments. Given the relative lack of coherent doctrine and case law concerning mandatory employer participation in supplementary pension savings, the argumentation is grounded primarily in the statutory text, its internal structure, the constitutional context of the right to adequate material security in old age, and the principle of the social State. The analysis also includes an evaluative assessment of the proportionality of the interference with the employer's contractual autonomy, as well as *de lege ferenda* considerations responding to the practical application problems identified.

1 Legal framework of supplementary pension savings

The pension reform of 2003 – 2004 introduced a three-pillar model in Slovakia: the pension insurance scheme (1st pillar), old-age pension savings (2nd pillar), and supplementary pension savings (3rd pillar). Old-age pension savings and supplementary pension savings display a predominance of private-law insurance elements; they differ, inter alia, in the extent to which insurance risk is taken into account, the linkage of entitlement to the completion of a specified insurance period, the existence of a contractual legal basis, participation in investment returns, and the consequences of non-payment of contributions.[3] The core idea underlying this model was to increase the system's financial stability, create room for higher pension benefits, and diversify risks threatening classic pay-as-you-go schemes, including those arising from demographic developments and labour-force mobility.[4] Within this architecture, supplementary pension savings serve as an auxiliary funded pillar based on contractual relationships among the participant, the supplementary pen-

[3] LACKO, M. Poistná zásada vo svetle aktuálnych zmien. *Právny obzor*. 2011, roč. 94, č. 1, p. 90. ISSN 0032-6984.

[4] LACKO, M. *Hmotné zabezpečenie v starobe*. 1. vyd. Bratislava: Sprint dva, 2011, pp. 42-43. ISBN 978-80-89393-65-7.

sion company, and, where applicable, the employer.[5] Macková, however, interprets the introduction of old-age pension savings and supplementary pension savings as a manifestation of a shift from public-law social security towards private-law saving, amounting even to a "dismantling of the social state".[6] In the context of the multi-pillar model, Lacko emphasises that complete constitutional protection of pension entitlements is primarily attached to the basic pension insurance scheme. In contrast, funded pillars are subject to legal regulation and supervision, but not to a direct guarantee of a specific benefit level.[7] The purpose of supplementary pension savings is to provide an individual with supplementary income aimed at raising his or her standard of living in post-productive age.[8]

Supplementary pension savings is governed by the Act No. 650/2004 Coll. on Supplementary Pension Savings, effective from 1 January 2005. According to Lacko, a supplementary pension savings scheme is a defined-contribution, funded scheme in which contributions by the participant, the employer, or a third party are accumulated in individual accounts within supplementary pension funds and used to finance supplementary old-age and supplementary service (early-retirement) benefits.[9] The legal framework of the scheme is characterised by a linkage of private-law elements (contractual relations between the participant, the employer, and the supplementary pension company) with public-law regulation, in particular the supervision of the National Bank of Slovakia and the statutory delineation of employer obligations.

The principal institutional actor of the scheme is the supplementary pension company, which manages the assets of participants and employers through supplementary pension funds. The participant – typically an

[5] LACKO, M. *Slovak Social Security Law*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010, p. 36. ISBN 978-80-7380-259-2.

[6] MACKOVÁ, Z. Dvadsať rokov transformácie sociálneho zabezpečenia (Jeden krok vpred, dva kroky vzad alebo od sociálneho zabezpečenia cez sociálne poistenie, ba dokonca sporenie opätovne k sociálnemu zabezpečeniu na úrovni životného minima – t.j. k odvodovému bonusu?). *Právny obzor*. 2011, roč. 94, č. 1, p. 63. ISSN 0032-6984.

[7] LACKO, M. *Slovak Social Security Law*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010, p. 16. ISBN 978-80-7380-259-2.

[8] SLEZÁKOVÁ, A. Komparácia zákonných podmienok pre distribúciu doplnkového dôchodkového sporenia v SR a doplnkového penzijného sporenia v ČR. *Studia Iuridica Cassoviensia* [online]. 2021, roč. 9, č. 1, p. 87 [cit. 2025-11-03]. ISSN 1339-3995. Available at: https://doi.org/10.33542/SIC2021-1-07.

[9] Cf. LACKO, M. *Slovak Social Security Law*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2010, pp. 39-40. ISBN 978-80-7380-259-2.

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employee – concludes a participant agreement by which he or she undertakes to pay contributions into an individual account and simultaneously acquires the right to a supplementary pension benefit. The employer may enter the scheme as a contributing entity in respect of its employees' supplementary pension savings. The contractual relationship between the employer and the supplementary pension company is subject to a specific legal regime and is referred to as an employer agreement.

The supplementary pension savings scheme is designed as a complement to the public pension insurance system; its purpose is not to replace statutory pension benefits but to secure an above-standard or earlier pension income. From a constitutional perspective, it represents one of the instruments through which the Article 39(1) of the Constitution of the Slovak Republic is implemented, providing that citizens have the right to adequate material security in old age and in the event of incapacity for work. The Act No. 650/2004 Coll. thus establishes a specific legal mechanism by which this right is realised not only by the State but also by private and employer-based actors.

The legal framework is hybrid, combining voluntary and mandatory participation. The general rule is that participation in supplementary pension savings is voluntary and applies to the majority of employees and employers. Voluntariness means that the participant decides whether to conclude a participant agreement, and the employer decides whether to join the scheme as a contributing entity. An exception to this principle is mandatory participation for specific categories of employees and employers. The employer's duty to conclude an employer agreement with a supplementary pension company and to pay contributions to supplementary pension savings arises where the employer employs persons performing work classified in the third or fourth risk category pursuant to a decision of the public health authority, as well as where the employees concerned perform the profession of a dancer or a wind-instrument musician.

Within the scope of statutorily defined duties, the employer is bound to perform a range of legal acts and payments of both public-law and private-law character. These duties include, in particular, concluding an employer agreement, keeping records of participants, remitting contributions to supplementary pension savings in the statutory amount, and notifying the supplementary pension company of changes relating to the employment relationship. Employer contributions constitute a financial

performance linked to the employment relationship, while their tax and social-contribution treatment is regulated by separate legislation.

Accordingly, the legal framework of supplementary pension savings establishes a tripartite system of relationships among the participant, the employer, and the supplementary pension company, complemented by public-law supervision and a sanctions mechanism. This model combines elements of individual responsibility and social solidarity; the employer's specific position reflects the societal requirement that entities that benefit from an employee's work should also contribute to that employee's pension security.

2 Participation in supplementary pension savings

The system of supplementary pension savings is characterised by its hybrid nature, in which elements of voluntariness and statutory obligation interweave. This duality reflects the legislature's effort to create a mechanism that enables the broadest possible segment of the population to participate in old-age provision, while preserving space for individual responsibility and freedom of choice. A model has thus emerged that combines market-based and social components – supplementary pension savings as a private instrument serving a public objective.

The foundational principle of the scheme is the voluntariness of participation, manifested in the participant's autonomy to decide whether to enter into a participant agreement with a supplementary pension company and to determine the amount of his or her contributions. The voluntary character also operates on the employer's side: the employer may decide whether to join the scheme as a contributing entity and, if so, to what extent it will provide contributions for employees. In such cases, the employer may conclude an employer agreement with a supplementary pension company, thereby establishing the contractual framework for making contributions in favour of employees. This model is particularly used by undertakings that pursue a social policy beyond statutory minima and view contributions to supplementary pension savings as an employee benefit, thereby enhancing loyalty and workforce stability.

Conversely, in some instances, the legislature has departed from the principle of voluntariness and has imposed mandatory participation of both employers and employees in supplementary pension savings. These are situations in which the nature of the work performed or the characteristics of the profession justify an increased need for old-age security.

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Mandatory participation applies to employees performing so-called hazardous work, which, by decision of the public health authority, is classified in the third or fourth risk category under the Act No. 355/2007 Coll. on the Protection, Support and Development of Public Health,[10] as well as to employees working in the professions of dancer or musical artist – wind-instrument performer. An employer who employs such persons is obliged to conclude an employer agreement with a supplementary pension company and to pay contributions for those employees into supplementary pension savings.

The origins of mandatory participation lie in the transformation of the former special pension security scheme, which, before 2004, provided preferential pension conditions for employees in the so-called first and second occupational categories.[11] The pension reform dismantled this publicly funded model while seeking to preserve a compensatory mechanism for employees in occupations that entail greater wear and tear on the workforce. The legislature, therefore, transferred responsibility for their supplementary old-age provision to the employer, as an actor forming part of the causal chain of risk and able to influence working conditions. The employer's duty to contribute in these cases thus serves as a means of mitigating social disparities and, simultaneously, as a preventive instrument incentivising employers to reduce workplace risk.

The hybrid character of the scheme entails several legal and social implications. On the one hand, it allows employers and employees to voluntarily and flexibly build supplementary pension provision according to individual capacities and needs. On the other hand, it establishes binding rules where required by health protection and social justice. In this way, a balance is struck between the participants' autonomy and the public interest in ensuring a dignified old age.

From the perspective of legal theory, this model represents an interesting example of normative symbiosis between private-law and public-law regimes. Voluntary participation derives from freedom of contract and economic motivation, whereas mandatory participation is grounded in peremptory statutory provisions and pursues the constitutionally pro-

[10] *Act No. 355/2007 Coll. on the Protection, Support and Development of Public Health and on Amendments to Certain Acts, as amended*.

[11] In particular, citizens who satisfied the conditions laid down in Section 21(1) and Section 174 of the *Act No. 100/1988 Coll. on Social Security* [effective until 31 December 2003] were subject to a specific (more favourable) retirement age for the purposes of assessing entitlement to an old-age pension and to an early old-age pension.

tected aim of social protection. From the employer's perspective, this creates a situation in which a voluntary decision to make contributions is transformed into a legal obligation once certain factual conditions are met. This shift from contractual autonomy to statutory duty underscores the scheme's dynamic nature. It demonstrates that supplementary pension savings is not merely a private form of investment, but also a constituent part of the broader framework of social law.

The hybrid third-pillar model, therefore, appears to be a balanced compromise between the individualisation of pension provision and its social function. It enables a combination of the principles of solidarity and responsibility. At the same time, the employer's participation – whether voluntary or mandatory – is a key link in the implementation of the constitutional right to adequate material security in old age.

3 Scope of the employer's obligations

The scope of an employer's obligations under the supplementary pension savings scheme is determined by the employer's legal position as an intermediary between the employee, who is the participant in the savings scheme, and the supplementary pension company, which manages the funds. The employer's obligations are, therefore, mixed in nature – they include contractual elements typical of private-law relationships, yet they also have a public-law dimension, since compliance is subject to supervision and a sanctions mechanism.

Under the Act No. 650/2004 Coll., the employer's obligations depend primarily on whether the employer has entered the scheme voluntarily or whether the Act imposes on it a duty to conclude an employer agreement and to contribute to supplementary pension savings. In the case of voluntary participation, the legal relationship between the employer and the supplementary pension company rests on contractual autonomy, and the content of the obligations follows from the employer agreement concluded. Where, however, the employer employs persons performing work within the meaning of Section 2(2)(b) of the Act No. 650/2004 Coll., its obligations are mandatory (peremptory) in character. They cannot be validly waived or modified in a manner that would reduce the level of statutory protection afforded to employees.

The employer's fundamental obligation is to conclude an employer agreement with a supplementary pension company. This agreement constitutes a specific legal instrument without an equivalent in other areas

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of labour law or social security law. Its purpose is to regulate the method and periodicity of contribution payments, to identify the categories of employees for whom contributions are remitted, and to ensure proper registration of participants. By agreeing, an obligation relationship arises between the employer and the supplementary pension company; although contractual in form, its essential content is determined by mandatory statutory provisions. The duty to agree must be fulfilled within thirty days from the commencement of employment of an employee performing work classified in the third or fourth risk category, thereby making explicit that failure to do so constitutes unlawful conduct.[12]

Closely linked to the conclusion of the employer agreement is the employer's obligation to register the employee in the supplementary pension savings scheme and to remit contributions regularly to the employee's individual account. The Act sets a minimum contribution of 2 % of the employee's assessment base, which is identical to the assessment base for social insurance.[13] This minimum is peremptory and represents a binding floor below which the employer may not go.

The employer is further obliged to ensure proper administration connected with supplementary pension savings. This obligation has several layers. First, there is a record-keeping duty to maintain a list of employees participating in supplementary pension savings and to record all changes affecting their employment status. Second, the employer has a notification duty vis-à-vis the supplementary pension company: pursuant to the employer agreement, the employer must inform the company of facts affecting the duration, course, and termination of the employer's and employees' participation in the scheme. This entails, in particular, notifying without undue delay events such as the termination of a participant's employment, the participant's death, organisational changes and their consequences for participation by the employer and participants. Third, the employer must ensure timely remittance of contributions within the deadlines set by the employer agreement, typically monthly after wages are paid.

Employer contributions are subject to a specific tax regime. The Act No. 595/2003 Coll. on Income Tax recognises employer contributions to

[12] Cf. Section 5(2) of the *Act No. 650/2004 Coll. on Supplementary Pension Savings and on Amendments to Certain Acts, as amended*.
[13] Cf. Section 13(3) of the *Act No. 650/2004 Coll. on Supplementary Pension Savings and on Amendments to Certain Acts, as amended*.

supplementary pension savings as tax-deductible expenses up to 6 % of the employee's accounted wage, wage compensation, and remuneration.[14] At the same time, such contributions are treated as part of the employee's taxable income, subject to personal income tax and included in the assessment base for social contributions. This regime balances the State's interest in fiscal neutrality with the need to preserve employers' incentives to contribute to supplementary pension savings.

Particular attention should be paid to equal treatment. The Act expressly prohibits discrimination against employees in the provision of contributions to supplementary pension savings, meaning that the employer may not determine the circle of eligible persons on the basis of criteria contrary to the principle of equality in remuneration and social benefits. Suppose the employer provides contributions only to a particular group of employees. In that case, it must demonstrate an objective justification for such differentiation, for example, differences like work, function, or length of employment. This ensures that supplementary pension savings do not deepen workplace inequalities but instead contribute to social cohesion.

Failure to fulfil employer obligations gives rise to liability under the public-law supervisory regime. The National Bank of Slovakia, as the financial-market supervisory authority, is empowered to impose a fine of up to EUR 30,000 on the employer for breaches of obligations arising from the Act or the employer agreement. In addition, civil liability towards employees may arise where non-payment of contributions has caused them damage. The Act thus establishes a multi-layered system of legal responsibility with both preventive and repressive functions.

The scope of the employer's obligations within the third pillar, therefore, reflects a broader trend towards employer participation in employees' social security. It is not merely a formal duty to remit contributions, but part of a comprehensive concept of responsible enterprise, in which the employer becomes a co-bearer of society's social commitment. The statutory obligations cannot be interpreted in isolation, but as an integral

[14] Cf. Section 19(3)(l) of the *Act No. 595/2003 Coll. on Income Tax, as amended*; and SCHNEIDER, S. M., T. PETROVA and U. BECKER, eds. *Pension Maps: Visualising the Institutional Structure of Old Age Security in Europe and Beyond* [online]. 2nd ed. Munich: Max Planck Institute for Social Law and Social Policy, 2021. 545 p. [cit. 2025-11-03]. Available at: https://doi.org/10.17617/2.3359088.

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component of the protection of social rights and as a means of balancing economic freedom with social justice.

4 Employer obligations: a teleological perspective

The statutory duty of the employer to conclude an employer agreement with a supplementary pension company and to contribute to supplementary pension savings for employees performing hazardous work or physically limited professions has a clear teleological foundation. Its purpose does not lie in an administrative transfer of responsibilities from the State to private actors, but rather in maintaining social equilibrium within the pension system and in giving effect to the constitutionally protected right to adequate material security in old age. This duty reflects the fact that certain occupations are objectively disadvantaged in terms of the length of working life and the impact of the working environment on health, and, therefore, require a specific compensatory mechanism.

The intended rationale of mandatory participation in supplementary pension savings was to replace the abolished system of special pension provision for employees formerly classified in Occupational Categories I and II. The legislature recognised that the complete removal of that mechanism would have reduced the level of social protection for population groups which, for objective reasons, cannot rely on full participation in the basic pension insurance scheme. Mandatory supplementary pension savings thus constitute compensation for premature wear and tear on the workforce and for a shortened duration of gainful activity. It is a solution grounded in the principle of solidarity, yet implemented through private-law relationships.

The teleological justification of this duty may also be assessed through the lens of proportionality between the public interest and the interference with the employer's contractual autonomy. The legislature imposed the duty to contribute to supplementary pension savings only to the extent strictly necessary, i.e., where a real and objectively demonstrable reason exists – either an increased health risk or a structurally limited period during which the profession can be performed. The measure pursues a legitimate aim: the protection of workers' social rights and the correction of disparities arising from the physical and economic conditions of work. This objective is consistent with the Article 39(1) of the Constitution of the Slovak Republic, which guarantees everyone the right to adequate material security in old age, and with the principle of the social State under the Article 1(1) of the Constitution.

Mandatory employer contributions also serve an essential preventive function. By shifting part of the financial responsibility to the employer, the law creates an economic incentive to improve working conditions and to reduce the riskiness of work. An employer who, through investments in occupational safety or technological innovation, succeeds in having a given activity removed from the hazardous-work category simultaneously ceases to be subject to the duty to contribute to supplementary pension savings. The system thus implicitly rewards prevention and internalises social costs that the public pension scheme would otherwise bear. From the perspective of social-policy theory, the employer's duty may, therefore, be understood as an expression of the concept of the "responsible employer", i.e., an employer obliged to share in the social consequences of its entrepreneurial activity.

The teleological basis for mandatory contributions is equally evident in artistic professions, particularly in dancers and wind instrument musicians. In these occupations, physiological limits on the duration of professional performance exist independently of the will of either the employer or the employee. Mandatory participation in supplementary pension savings here operates as a specific form of protection for the period following the end of an artistic career, which typically precedes the attainment of statutory retirement age. The legal regulation, therefore, carries not only a social but also a cultural-policy dimension, insofar as it safeguards professions of significant societal value.

From the standpoint of legal systematics, the employer's duty within the third pillar may be viewed as an expression of the principle of private-sector participation in fulfilling the State's social function. This principle is inherent in modern social law and rests on the premise that ensuring a dignified old age is a common objective of both the public and private spheres. The employer's duty should, therefore, not be interpreted as a unilateral burden, but as an instrument of social responsibility and solidarity within employment relationships.

Teleological analysis thus confirms that the legal regulation of mandatory employer participation in supplementary pension savings pursues a constitutionally legitimate and socially desirable aim. At the same time, it represents a compromise between individual responsibility and the public interest, emphasising a fair allocation of the costs of social protection among the State, the employer, and the employee. This approach aligns with European trends favouring a pluralistic model of old-age pro-

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vision that combines mandatory and voluntary elements and involves the co-participation of multiple actors.

5 Value-based and constitutional aspects

Employer participation in the supplementary pension savings scheme cannot be conceived merely as a technical-financial mechanism; rather, it is above all a legal and value-laden expression of social solidarity within employment relationships. The employer's obligations under the third pillar acquire their whole meaning only when viewed through the constitutional framework of social rights, in particular the right to adequate material security in old age enshrined in the Article 39(1) of the Constitution of the Slovak Republic. This provision embodies the State's commitment to ensuring conditions that enable citizens to live with dignity even after the end of their economically active lives. The Act No. 650/2004 Coll. serves as an instrument for implementing this constitutional commitment in cooperation with private-law actors.

In this context, the employer acts as an intermediary of constitutionally guaranteed social security. This does not amount to a transfer of a public-law task in the narrow sense, but rather to a manifestation of cooperation between the public and private sectors in the realisation of social rights. The employer's duty to contribute to supplementary pension savings thus reflects the principle of participation inherent in the modern social State. That principle rests on the idea that ensuring a dignified old age is not the exclusive responsibility of the State, but a societal commitment shared by all relevant actors – individuals, employers, and the State alike.

From the standpoint of the legal order's value orientation, supplementary pension savings embody two fundamental principles: solidarity and responsibility. Solidarity is expressed in the employer's contributions to employees' supplementary provision not merely as part of an economic exchange for labour, but also as recognition of social responsibility for the consequences of the working environment and conditions under which work is performed. Responsibility is reflected in the individual dimension: each employee has the opportunity to co-participate in his or her future security through personal contributions and decisions concerning the savings profile. In this way, the scheme integrates the principles of individual initiative and collective co-responsibility.

A teleological and constitutional interpretation of the Act No. 650/2004 Coll. confirms that the employer's duty has not only an economic, but also a moral and societal dimension. It forms part of a broader concept of decent work, grounded in the idea that the employer should bear an appropriate share of responsibility for ensuring employees' dignified living standards even after they cease active work. This approach aligns with international instruments, in particular the European Social Charter[15] and the recommendations of the International Labour Organisation, which emphasise States' obligations to create an environment that supports supplementary old-age schemes and employer participation in their financing.

From a constitutional-law perspective, the employer's duty may also be interpreted through the principle of the social State under the Article 1(1) of the Constitution. This principle implies an obligation on the State to create legislative and institutional conditions for social inclusion and for protecting individuals against social exclusion. The supplementary pension savings scheme exemplifies how this principle may be fulfilled through a normative framework that activates private actors without diminishing the level of constitutionally guaranteed protection. In this setting, the employer becomes a partner of the State in pursuing social objectives, thereby strengthening the legitimacy and sustainability of the pension system as a whole.

The constitutional significance of the employer's duty can further be perceived in terms of equality and justice. Mandatory employer participation in hazardous or physically demanding professions aims to eliminate inequalities in access to pension security caused by differences in working life length and varying degrees of exposure to health-damaging factors. The Act thus reinforces the material dimension of the equality principle and meets the requirement of proportionality between the level of societal contribution and the level of social protection. This approach accords with the understanding of social law as a dynamic system that responds to objective social disparities and, through normative instruments, mitigates them.

The value basis of supplementary pension savings, therefore, goes beyond the confines of individual retirement financial planning. It is an institution combining economic rationality with an ethical dimension of social responsibility. The employer's duty to contribute to supplementary

[15] *European Social Charter* [1961].

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pension savings is a legal expression of a prevailing social-policy orientation: that a dignified old age is not solely a matter for the individual, but the product of collective effort to distribute the consequences of working life more fairly. From this perspective, the third pillar performs not only a supplementary but also an integrative function – linking economic efficiency with the normatively anchored requirement of shared bearing of social risks and participatory responsibility.

6 Critical aspects of the employer's duty to contribute to an employee's supplementary pension savings

The foregoing analysis has shown that the employer's duty to contribute to supplementary pension savings can be justified teleologically and constitutionally, in particular by reference to the principles of the social State, participation, and solidarity. For the sake of completeness, however, it is necessary to take account of arguments that question the scope and the specific form of this interference with the employer's legal position. A critical reflection on the duty to contribute is essential not only from the perspective of systemic coherence of the legal regulation, but also for assessing its value-based legitimacy in a market-economy environment.

One of the basic critical starting points concerns contractual autonomy and freedom of enterprise. The employer's statutory duty to conclude an employer agreement and to remit contributions to supplementary pension savings constitutes an interference with the employer's decision-making autonomy as regards the forms of remuneration and social provision for employees. An employer who already bears the burden of mandatory contributions to public social-insurance schemes is legally compelled to enter into a specific type of funded (capitalisation-based) product, without the possibility of choosing an alternative mechanism of supplementary provision (such as an in-house occupational scheme, an individual investment strategy for employees, or another form of long-term benefit). From the standpoint of classical private-law principles, this reveals a tension between freedom of contract and the peremptory character of the contribution duty.

Closely related is the economic dimension of the duty. Employer contributions constitute a financial performance linked to the employment relationship and, together with mandatory payments into public schemes, increase overall labour costs. In low-margin sectors or within small and medium-sized enterprises, mandatory supplementary savings may

exert real pressure on wages, employment levels, or the undertaking's investment capacity. Although the legal framework grants tax advantages to such contributions, it cannot be overlooked that they represent another element of the "socialisation" of costs through the employer, potentially affecting competitiveness and market behaviour in the long term.

A further layer concerns possible distortions of equality and competition among employers. The duty to contribute attaches only to employers who employ persons performing work classified in the third or fourth risk category, or specific artistic professions. In practice, however, risk classification often depends on the correct application of criteria by public health authorities and on the organisation of work. An employer whose processes are classified as hazardous is thus exposed to an additional financial burden. In contrast, another employer in a related sector – under a different classification – does not bear such a duty. This may create incentives to "optimise" classifications or organisationally circumvent the system, while undermining equality of competitive conditions.

The legitimacy of transferring part of the State's social function to the private sector is also open to critique. The right to adequate material security in old age is primarily addressed to the State, which must create systemic conditions for its fulfilment. Mandatory employer participation in the third pillar may, therefore, be perceived as a form of "privatisation" of social policy, in which private actors finance part of a public commitment. Although this is a tendency typical of modern pluralistic pension systems, the question remains whether the scope and intensity of that transfer are proportionate and whether adequate compensatory mechanisms accompany it.

A particular problem is the tying of mandatory contributions to a specific financial product administered by supplementary pension companies. The third pillar is based on the capitalisation principle, while the employer has no real control over investment strategy or the long-term performance of the funds. Suppose it later proves that fund returns are low or the fee structure is excessive. In that case, a situation may arise in which mandatory employer contributions fail to generate an adequate social effect for employees. From this perspective, one may object that the legislature compels employers to finance a specific investment product without allowing a rational choice among alternative forms of retirement provision.

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Finally, the paternalistic dimension of the regulation vis-à-vis the employee should be noted. Mandatory employer contributions form part of a wider remuneration package that employees cannot flexibly convert, for example, into higher wages or different benefits. Even if a legitimate aim is pursued – protecting future old-age security – this represents a restriction of individual autonomy in determining one's own retirement-saving strategy in conditions of increasing financial literacy and a growing diversity of investment options, such paternalism may be regarded as contestable.

These critical aspects do not negate the teleological and constitutional justification of the employer's duty within the third pillar; they do, however, underscore the need to view it as a normatively limited institution that must comply with the principle of proportionality, the protection of contractual autonomy, and the requirement of economic rationality. These considerations should also inform any *de lege ferenda* debate aimed at striking an appropriate balance between the duty's social function and its practical effects on employers and employees alike.

7 *De lege ferenda* considerations

De lege lata, the employer's duty to contribute to supplementary pension savings for employees in hazardous and other specific professions constitutes a legitimate instrument of social policy. It builds on the discontinued special pension system and primarily pursues compensatory objectives. The purpose of the legal regulation of supplementary pension savings is to establish a stable and trustworthy scheme capable of contributing, in the long term, to dignified material security in old age. In contrast, the employer's obligations under this scheme are a critical element in the balance between individual responsibility and collective solidarity. In view of demographic developments, it is necessary to shift a greater share of responsibility for retirement income from the State to the individual, which increases the significance of the third pillar and the need to support it.[16]

As the critical analysis shows, however, this duty is not unproblematic in terms of the employer's contractual autonomy, its economic burden,

[16] SLEZÁKOVÁ, A. Právne inštitúty a návrhy de lege ferenda potenciálne vedúce k zvýšeniu účasti na doplnkovom dôchodkovom sporení. *Studia Iuridica Cassoviensia* [online]. 2017, roč. 5, č. 2, pp. 98-99 [cit. 2025-11-03]. ISSN 1339-3995. Available at: https://sic.pravo.upjs.sk/files/9_slezakova-_faktory_motivujuce_k_uzavretiu.pdf.

or equality among actors in the labour market. The current legislative and economic environment is changing rapidly, creating a need to strengthen the third pillar's functionality, effectiveness, and fairness. *De lege ferenda*, therefore, there is a requirement to seek solutions that preserve the scheme's protective function while mitigating its problematic aspects and enhancing legal certainty for participants.

First, it appears necessary to refine and tighten the criteria for mandatory participation. The current model ties the duty to occupational risk classification under special legislation, which, in practice, leads to differing assessments of comparable work activities and an uneven distribution of the burden among employers. Legislation should more precisely define the situations in which mandatory participation is objectively justified by increased wear and tear on the workforce or by physiological limits on the duration of professional performance. It should ensure a more effective mechanism for periodic review of risk classification in response to technological development, changing risk factors, and improved working conditions. This is linked to the need to clarify provisions of the Act No. 650/2004 Coll., in particular those governing the commencement and termination of the contribution duty following changes in risk classification or the transfer of employees to another employer, and to introduce precise procedural mechanisms for notifying such changes and determining their legal effects.

A further area for reform concerns proportionality and equality among employers and professions. The current legal framework assumes that only hazardous work and certain artistic professions justify mandatory contributions to supplementary pension savings. However, societal developments suggest that other occupations involving high physical or psychological strain should also be included. *De lege ferenda*, legislative revision should, therefore, take into account findings in the field of occupational health and safety and enable a more flexible response to evolving risk factors, either by expanding the range of affected professions or by creating mechanisms for the more agile inclusion of new groups of employees. Such solutions could strengthen the scheme's preventive function while reducing inequalities among employers.

At the same time, strengthening the role of collective bargaining and sectoral agreements appears promising. Mandatory contributions are currently based primarily on peremptory statutory rules. For the future, it would be appropriate to consider allowing greater scope for higher-

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level collective agreements or sectoral arrangements to specify the manner and extent of employer participation in the third pillar with due regard to the particularities of individual sectors. Such an approach could contribute to a fairer allocation of costs, greater acceptance of the scheme by employers, and a perception of the third pillar as the result of social partnership rather than unilateral imposition.

Particular attention should also be paid to the relationship between mandatory contributions and alternative forms of retirement provision. At present, the employer is, in principle, tied to supplementary pension savings as a specific product. *De lege ferenda*, one might consider a model of "functional equivalence", under which part of the employer's duty could be fulfilled through other legally defined and supervised instruments – such as internal occupational pension schemes, collective life insurance with a savings component, or other long-term benefits. Such a solution would enhance contractual autonomy while preserving the scheme's social function.

Regarding employee participation, an automatic enrolment model with an opt-out option appears to be a suitable approach. This "soft" regulatory mechanism would be based on default employee participation with the possibility of subsequent withdrawal. It could increase participation rates, particularly among younger cohorts, without undermining the principle of voluntariness, and would align with current European pension-law trends centred on informed participant choice.

Finally, the further development of the scheme requires improvements in tax and contribution incentives, transparency, and administrative simplicity. Reassessing tax relief – taking into account the real capacities of small and medium-sized enterprises – could increase the attractiveness of voluntary employer contributions. At the same time, it is desirable to support the digitalisation of communication among employers, supplementary pension companies, and the National Bank of Slovakia, to introduce more efficient reporting of obligations, and to strengthen participants' direct access to information on contributions paid. This would reduce employers' administrative burden, enhance participants' trust, and improve the overall functionality of the third pillar.

These *de lege ferenda* considerations confirm that employer obligations in supplementary pension savings cannot be regarded as a closed normative system. Their future direction should lie in seeking an appropriate balance between the protection of dignified old-age living stand-

ards and respect for contractual autonomy, economic realities, and the evolving nature of the social State, with social partnership among the State, employers, and employees playing a decisive role.

Conclusions

The legal regulation of supplementary pension savings constitutes a significant pillar of the social security system in the Slovak Republic, distinguished by the interlinking of public-law objectives with private-law instruments. Employer obligations within this scheme cannot be viewed in isolation as merely technical or administrative measures; instead, they form part of a normatively considered framework in which the need for long-term old-age security intersects with the protection of the employer's contractual autonomy and economic stability.

The hybrid nature of the third pillar – combining voluntary and mandatory participation – reflects the legislature's effort to strike an appropriate balance between participant autonomy and enhanced protection for selected categories of employees. Mandatory employer participation for hazardous and physically demanding professions has a clear teleological justification and builds on the tradition of compensatory mechanisms within the pension system. At the same time, it is an institution that interferes with the organisation of employment relationships, increases labour costs, and may raise issues of proportionality and equality among market actors.

The analysis demonstrates that employer participation in the third pillar may be understood as a two-dimensional institution. On the one hand, it fulfils an important social function and contributes to the stability of the multi-pillar pension system; on the other hand, it requires continuous reassessment of the scope and form of employer duties in light of constitutional principles, legal certainty, and economic feasibility. *De lege ferenda*, it, therefore, does not appear appropriate to strengthen mandatory employer participation unilaterally, but rather to develop a normative framework that preserves the scheme's protective function while creating greater space for contractual autonomy, collective bargaining, and functionally equivalent solutions.

Ultimately, the employer's duty to contribute to supplementary pension savings may be seen as a legal compromise between the requirement of adequate material security in old age and the protection of entrepreneurial freedom and individual responsibility. The future legitima-

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cy of this institution will depend on the extent to which this balance can be maintained and on whether the third pillar remains a component of the pension system that is not only financially sustainable, but also normatively defensible.

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Publication of contributions in the journal SOCIETAS ET IURISPRUDENTIA is realized exclusively without any contributor's claim for author's fee (royalty). Also, the processes of receiving, reviewing and publishing of contributions in the journal are carried out exclusively free of charge. Submission of contributions for publication understands the editorial office of the journal SOCIETAS ET IURISPRUDENTIA as a manifestation of the will of the authors, through which the authors all at once knowingly and voluntarily:

- express their own agreement with publication of submitted contribution in the journal;
- declare that the contribution presents their original, hitherto unpublished work;
- declare their own agreement with specifying their workplace and contact e-mail address in the section "Authors' Contact List".

Accepted can be only texts submitted for publication sent by their authors/co-authors directly and with their written permission for publication; text submissions sent mediated through non-authors or non-co-authors of a submitted text delivered to the editorial office of the journal SOCIETAS ET IURISPRUDENTIA cannot be accepted for the following review procedure due to the absence of the author's/co-authors' consent.

Contributions are accepted in the English, Slovak and Czech languages. Favouring the English language in contributions is welcome.

Publication of the contribution texts will be provided exclusively in the bilingual Slovak-English standardized letterhead template of the journal SOCIETAS ET IURISPRUDENTIA, synchronously in the form of complete versions of individual journal numbers as well as in the form of single authors' contributions. Publication process follows in corresponding sections on the journal's official website: https://sei.iuridica.truni.sk/international-scientific-journal/.

Structure of Contribution

Title of Contribution in Original Language:

- please specify title, eventually subtitle of contribution in original language;

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Title of Contribution in English:

- please specify title, eventually subtitle of contribution in English *not required in the case of English as the language of the original*;

Author of Contribution:

- please specify author's given name, surname and all academic degrees;

Abstract in English:

- please specify abstract in English, circa 10 rows *not required in the case of English as the language of the original*;

Key Words in English:

- please specify key words in English, circa 10 words *not required in the case of English as the language of the original*;

Abstract in Original Language:

- please specify abstract in original language, circa 10 rows;

Key Words in Original Language:

- please specify key words in original language, circa 10 words;

Text of Contribution:

- please specify in following structure: introduction, main text, conclusions; text broken down into chapters, eventually subchapters; the contribution may include sheets, charts, figures, pictures, etc., but it is necessary to indicate their sources with all obligatory bibliographic details in the full extent; notes and references to literature, please, specify in the footnote according to current citation standard ISO 690 *Note: all obligatory bibliographic data must be included to the full extent – both in references in the footnote as well as in bibliography list at the end of contribution; it is also essential that all of literature referred in the footnotes of the contribution's text fully corresponds to the sources listed in the bibliography list placed at the end of the contribution and vice versa*;

Literature:

- please specify a complete bibliography of all sources according to current citation standard ISO 690
  Note: all obligatory bibliographic data must be included to the full extent – both in references in the footnote as well as in bibliography list at the end of contribution; it is also essential that all of literature referred in the footnotes of the contribution's text fully corresponds to

the sources listed in the bibliography list placed at the end of the contribution and vice versa;

Author's Contact:

- please follow the below mentioned model structure of contact information on the author of contribution:

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Faculty of Law
Trnava University in Trnava
Kollárova 10
917 01 Trnava
Slovak Republic
jana.koprlova@gmail.com
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Contribution manuscripts can be accepted only in electronic version in the format of the text editor MS Word document. Applying the standardized types and font sizes, line spacing as well as text formatting in the contribution manuscripts is highly recommended.

Your contribution manuscripts send, please, to the e-mail address of the journal's editorial office sei.journal@gmail.com.

In the case of any uncertainty or necessity of providing additional information send your questions, please, to the e-mail address of the journal's editorial office sei.journal@gmail.com.

We are looking forward to your contribution!

Yours faithfully,

Team SOCIETAS ET IURISPRUDENTIA

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Etický kódex

Článok I. Všeobecné ustanovenia

Medzinárodný internetový vedecký časopis SOCIETAS ET IURISPRUDENTIA (ďalej len „časopis“) vydáva Právnická fakulta Trnavskej univerzity v Trnave a tematicky sa zameriava najmä na spoločensky významné prierezové súvislosti otázok verejného práva a súkromného práva na národnej, nadnárodnej, ako aj medzinárodnej úrovni. Jeho cieľom je poskytovať podnetnú a inšpiratívnu platformu pre vedecké a celospoločensky prínosné riešenia aktuálnych právnych otázok a ich komunikáciu na úrovni najmä odbornej právnickej, ale aj zainteresovanej širokej občianskej verejnosti v kontexte ich najširších interdisciplinárnych spoločenských súvislostí, a to nielen na národnej, ale aj na regionálnej a medzinárodnej úrovni.

Redakcia časopisu sídli v priestoroch Právnickej fakulty Trnavskej univerzity v Trnave na Kollárovej ulici č. 10 v Trnave.

Časopis má charakter vedeckého recenzovaného časopisu, ktorý vychádza v on-line elektronickej podobe pravidelne štyrikrát ročne na oficiálnej webovej stránke časopisu https://sei.iuridica.truni.sk. Publikovanie textov príspevkov sa uskutočňuje v dvojjazyčnej slovensko-anglickej štandardizovanej hlavičkovej šablóne časopisu, a to súčasne v podobe kompletných verzií jednotlivých čísiel, ako i samostatných autorských separátov uverejnených v zodpovedajúcich rubrikách na webovej stránke časopisu.

Časopis ponúka podnetnú a inšpiratívnu platformu pre komunikáciu na úrovni odbornej právnickej aj občianskej verejnosti, a rovnako aj pre vedecké a celospoločensky prínosné riešenia aktuálnych otázok z oblastí najmä verejného práva a súkromného práva.

Webová stránka časopisu ponúka čitateľskej verejnosti informácie v bežnom grafickom rozhraní, a súbežne aj v grafickom rozhraní Blind Friendly pre slabozrakých čitateľov paralelne v slovenskom a anglickom jazyku. V uvedených jazykoch zabezpečuje redakcia časopisu aj spätnú komunikáciu.

Článok II. Zodpovednosť a publikácia príspevkov

Časopis prijíma a publikuje výhradne iba pôvodné, doposiaľ nepublikované príspevky, ktoré sú vlastným dielom autorov, ktorí ich na uverejne-

nie v časopise predkladajú. Autori príspevkov vedecky či pedagogicky pôsobia v zodpovedajúcich oblastiach zamerania časopisu a majú ukončené zodpovedajúce akademické vzdelanie na úrovni minimálne druhého stupňa vysokoškolského štúdia.

V súlade s vyššie uvedeným ustanovením sa automaticky so zodpovedajúcim odôvodnením zamietajú príspevky už preukázateľne publikované, ako aj príspevky, ktoré napĺňajú skutkovú podstatu plagiátu či neoprávneného, respektíve nezákonného zásahu do autorského práva podľa autorského zákona v platnom znení.

Informácie pre autorov zverejnené na webovej stránke časopisu sú záväzné. Príspevky sa prijímajú v anglickom, slovenskom a českom jazyku. Uprednostňovanie anglického jazyka v príspevkoch je vítané.

Zodpovednosť za dodržanie všetkých nevyhnutných predpokladov a požiadaviek kladených na príspevky publikované v časopise nesú odborní garanti z radov členov redakčnej rady a redakčného okruhu časopisu zodpovedajúci za konkrétne prierezové sekcie vo vzťahu k vedeckej stránke príspevkov, hlavný redaktor vo vzťahu k formálnej stránke príspevkov a výkonný redaktor vo vzťahu k uplatneniu metodologických, analytických a štatistických otázok v príspevkoch.

Publikácia príspevkov v časopise sa uskutočňuje výhradne bez akéhokoľvek nároku prispievateľov na autorský honorár. Rovnako výhradne bezodplatne sa realizujú v časopise aj procesy prijímania, posudzovania a publikácie príspevkov. Predloženie príspevkov na publikáciu posudzuje redakcia časopisu ako prejav vôle autorov, ktorým autori vedome a dobrovoľne súčasne:

- prejavujú svoj súhlas s uverejnením predloženého príspevku v časopise;
- potvrdzujú, že príspevok je ich pôvodným, doposiaľ nepublikovaným dielom;
- potvrdzujú svoj súhlas s uvedením ich pracoviska a kontaktnej e-mailovej adresy v rubrike „Kontakty na autorov“.

Texty príspevkov je možné prijímať len zaslané priamo ich autormi/spoluautormi a s ich priloženým súhlasom na publikáciu príspevku; texty príspevkov zaslané sprostredkovane prostredníctvom osôb, ktoré nie sú autormi, prípadne spoluautormi príspevku doručeného do redakcie časopisu, nie je možné prijať na následné recenzné konanie z dôvodu absencie súhlasu autora/spoluautorov.

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Článok III. Recenzné konanie

Posudzovanie zaradenia príspevkov na publikáciu v časopise sa uskutočňuje nezávisle a nestranne na základe obojstranne anonymného recenzného konania zaisťovaného uznávanými externými odborníkmi pôsobiacimi v zodpovedajúcich oblastiach. Konečné rozhodnutie o zaradení príspevkov na vydanie prijíma redakčná rada časopisu na základe výsledkov recenzného konania.

Na recenzné konanie môžu byť odovzdané len príspevky obsahujúce všetky povinné súčasti v súlade s predpísanou štruktúrou príspevku. Pred odovzdaním príspevkov na recenzné konanie sa formálne preveruje pôvodnosť textov kontrolami náhodne vybraných reťazcov textov príspevkov prostredníctvom internetových vyhľadávačov.

Zápis o výsledkoch recenzného konania sa vykonáva a archivuje na štandardizovaných formulároch.

Súhrnnú informáciu o výsledku recenzného konania, spolu s usmernením ohľadom ďalšieho postupu, obdržia predkladatelia príspevkov prostredníctvom e-mailovej odpovede bezodkladne po doručení vyhotovených recenzných posudkov redakcii časopisu a záverečnom posúdení výsledkov recenzného konania redakčnou radou.

Príspevky sa so zodpovedajúcim písomným odôvodnením automaticky zamietajú v prípadoch, pokiaľ:

- autor príspevku preukázateľne nemá ukončené úplné vysokoškolské vzdelanie, t.j. vysokoškolské vzdelanie druhého stupňa;
- príspevok preukázateľne nezodpovedá minimálnym štandardom a štandardným kritériám vedeckej etiky, ktoré sa kladú a sú všeobecne vedeckou verejnosťou a vedeckou obcou uznávané vo vzťahu k príspevkom danej kategórie (štúdie, eseje, recenzie publikácií, informácie alebo správy), či už z hľadiska rozsahu, náplne, metodologických východísk, použitej metodológie, a podobne, ako aj z hľadiska správneho, úplného a vedecky korektného uvádzania všetkých použitých bibliografických odkazov podľa platnej citačnej normy ISO 690.

Článok IV. Vyhlásenie o pristúpení ku kódexom a zásadám publikačnej etiky Komisie pre publikačnú etiku

Časopis v plnej miere uplatňuje a dodržiava kódexy a zásady publikačnej etiky Komisie pre publikačnú etiku (Committee on Publication Ethics

(COPE)) zverejnené na webovej stránke Komisie pre publikačnú etiku https://publicationethics.org/. Uvedené zásady a pravidlá publikačnej etiky sú záväzné pre autorov príspevkov, redakčnú radu časopisu, redaktorov a redakciu časopisu, recenzentov príspevkov, ako aj vydavateľa časopisu.

Časopis odmieta a striktne odsudzuje akékoľvek vedecky a publikačne neetické a akademicky nečestné praktiky, medzi ktoré patria, okrem iných, plagiátorstvo, manipulácia s citáciami či falšovanie, pozmeňovanie, selektívne vypúšťanie a fabrikácia údajov a prameňov.

Redaktori a redakčná rada časopisu aktívne vyvíjajú všetko úsilie smerujúce k predchádzaniu, a rovnako aj ku eliminácii rizika vzniku akýchkoľvek prípadov vedecky a publikačne neetického a akademicky nečestného konania všetkých participujúcich subjektov.

V prípade, že sa redaktori, redakčná rada alebo vydavateľ časopisu dozvedia o akomkoľvek prejave vedecky a publikačne neetických a akademicky nečestných výskumných praktík uplatnených v súvislosti s predloženým alebo už v časopise publikovaným príspevkom, redaktori alebo vydavateľ sa budú pri riešení a náprave zisteného skutkového stavu riadiť pokynmi Komisie pre publikačnú etiku (COPE) https://publicationethics.org/guidance, a to v súlade s prijatými zásadami a odporúčaniami platnými pre nasledovné oblasti:

- Odhalenia vedeckých a publikačne neetických alebo akademicky nečestných výskumných praktík a ich riešenie
  https://publicationethics.org/misconduct
- Autorstvo a prispievateľstvo
  https://publicationethics.org/authorship
- Sťažnosti a odvolania
  https://publicationethics.org/appeals
- Konflikt záujmov/konkurenčné záujmy
  https://publicationethics.org/competinginterests
- Zdieľanie a reprodukovateľnosť údajov
  https://publicationethics.org/data
- Etický dohľad
  https://publicationethics.org/oversight
- Duševné vlastníctvo
  https://publicationethics.org/intellectualproperty
- Správa a riadenie časopisu
  https://publicationethics.org/management

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- Recenzné konanie
  https://publicationethics.org/peerreview
- Diskusie a opravy po vydaní
  https://publicationethics.org/postpublication

Článok V. Nezávislosť a nestrannosť

Časopis je nezávislým a nestranným medzinárodným vedeckým internetovým periodikom.

Článok VI. Rozhodný právny poriadok

Časopis a všetky s ním súvisiace právne skutočnosti a právne úkony sa riadia právnym poriadkom Slovenskej republiky.

Trnava 31. december 2013

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Code of Ethics

Article I. General Provisions

International scientific online journal SOCIETAS ET IURISPRUDENTIA (hereinafter only "journal") is published by the Faculty of Law at Trnava University in Trnava, and it thematically focuses mainly on social relevant interdisciplinary relations on the issues of public law and private law at the national, transnational and international levels. Its aim is to provide a stimulating and inspirational platform for scientific and society-wide beneficial solutions to current legal issues and their communication at the level of primarily legal experts, but also the interested general public in the context of their broadest interdisciplinary social relations, in like manner at the national, regional and international levels.

The journal's editorial office resides in premises of the Faculty of Law at Trnava University in Trnava in Kollárova Street No. 10 in Trnava, Slovakia.

The journal has the nature of a scientific peer-reviewed journal, which is issued in an electronic on-line version regularly four times a year on the official website of the journal https://sei.iuridica.truni.sk/international-scientific-journal/. Publication of the contribution texts will be provided exclusively in the bilingual Slovak-English standardized letterhead template of the journal, synchronously in the form of complete versions of individual journal numbers as well as in the form of single authors' contributions. Publication process follows in corresponding sections on the journal's official website.

The journal provides a stimulating and inspirational platform for communication both on the professional legal level and the level of the civic society, as well as for scientific and society-wide beneficial solutions to current issues mainly in the areas of public law and private law.

The website of the journal offers the reading public contributions in the common graphical user interface as well as in the blind-friendly interface, both parallel in the Slovak and the English languages. In all those languages the journal's editorial office provides also feedback communication.

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Article II. Responsibility and Publication of Contributions

The journal accepts and publishes exclusively only original, hitherto unpublished contributions written as the own work by authors those are submitting the contributions for publication in the journal. Contributors are scientifically or pedagogically engaged in areas corresponding with the main orientation of the journal and they have completed adequate academic qualification, at least the second degree of academic education.

In accordance with the foregoing provision shall be automatically with the adequate justification rejected contributions those have been provably already published as well as contributions those constitute the merits of plagiarism or of unauthorized, respectively illegal interference with the copyright under the protection of the Copyright Act in force.

Information for authors published on the journal's website is binding. Contributions are accepted in the English, Slovak and Czech languages. Favouring the English language in contributions is welcome.

Responsibility for compliance with all prerequisites and requirements laid on contributions published in the journal have special supervisors within the journal's editorial board responsible for specific interdisciplinary sections in relation to the scientific aspects of contributions, editor in chief in relation to the formal aspects of contributions and executive editor in relation to the application of methodological, analytical and statistical questions in contributions.

Publication of contributions in the journal is realized exclusively without any contributor's claim for author's fee (royalty). Also, the processes of receiving, reviewing and publishing of contributions in the journal are carried out exclusively free of charge. Submission of contributions for publication understands the editorial office of the journal as a manifestation of the will of the authors, through which the authors all at once knowingly and voluntarily:

- express their own agreement with publication of submitted contribution in the journal;
- declare that the contribution presents their original, hitherto unpublished work;
- declare their own agreement with specifying their workplace and contact e-mail address in the section "Authors' Contact List".

Accepted can be only texts submitted for publication sent by their authors/co-authors directly and with their written permission for publi-

cation; text submissions sent mediated through non-authors or non-co-authors of a submitted text delivered to the editorial office of the journal cannot be accepted for the following review procedure due to the absence of the author's/co-authors' consent.

Article III. Review Procedure

Reviewing the contributions for publication in the journal follows with a mutually anonymous (double-blind) review procedure realized independently and impartially by recognized external experts working in corresponding areas. The final decision on the inclusion of contributions for publication is made by the journal's editorial board based on the results of the review procedure.

Only contributions containing all mandatory parts in accordance with the prescribed structure of the contribution may be submitted for review procedure. Before the contributions are submitted for review procedure, the originality of the texts is formally checked by checking randomly selected strings of the texts of the contributions through the Internet search engines.

Report on results of the review procedure is made and archived on standardized forms.

Comprehensive information on results of the review procedure, together with guidance on how to proceed with submitted contributions, will contribution's submitters receive through an e-mail answer immediately after receiving the reviewers' written opinions by the journal's editorial office and final judging the results of the review procedure by the editorial board.

Contributions will be with adequate written justification automatically rejected in cases, if:

- the contributor hasn't provably completed the entire university education, i.e. the academic qualification of the second degree;
- contribution provably doesn't comply with the minimum standards and standard criteria of scientific ethics, which are imposed and generally respected by the scientific public and scientific community in relation to contributions of the given category (studies, essays, reviews on publications, information or reports), whether in terms of extent, content, methodological assumptions, applied methodology and similarly, or in terms of a proper, complete and scientifically cor-

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rect indicating all the bibliographic references according to current citation standard ISO 690.

Article IV. Declaration of Accession to Codes and Principles of Publication Ethics of the Committee on Publication Ethics

The journal fully exercises and observes codes and principles of publication ethics of the Committee on Publication Ethics (COPE) published on the website of the Committee on Publication Ethics https://publication-ethics.org/. Listed principles and guidelines of publication ethics are binding for contributors, journal's editorial board, journal's editors and editorial office, contribution reviewers as well as journal's publisher.

The journal rejects and strictly condemns any scientific and publishing unethical and academically dishonest practices, which include, among others, plagiarism, manipulation of citations or falsification, alteration, selective omission and fabrication of data and sources.

The editors and the Editorial Board of the journal actively make every effort to prevent as well as to eliminate the risk of any cases of scientifically and publicationally unethical and academically dishonest behaviour of all participating subjects.

In the event that the editors, the Editorial Board or the publisher of the journal are made aware of any manifestation of scientifically and publicationally unethical and academically dishonest research practices applied in connection with a submitted or already published paper in the journal, the editors or the publisher will follow the Committee on Publication Ethics's (COPE) guidance https://publicationethics.org/guidance in dealing with and correcting the revealed state of affairs, in accordance with the accepted principles and recommendations applicable to the following areas:

- Allegations of misconduct
  https://publicationethics.org/misconduct
- Authorship and contributorship
  https://publicationethics.org/authorship
- Complaints and appeals
  https://publicationethics.org/appeals
- Conflicts of interest/Competing interests
  https://publicationethics.org/competinginterests
- Data and reproducibility
  https://publicationethics.org/data

- Ethical oversight
  https://publicationethics.org/oversight
- Intellectual property
  https://publicationethics.org/intellectualproperty
- Journal management
  https://publicationethics.org/management
- Peer review processes
  https://publicationethics.org/peerreview
- Post-publication discussions and corrections
  https://publicationethics.org/postpublication

Article V. Independence and Impartiality

The journal is an independent and impartial international scientific online journal.

Article VI. Determining Law

The journal and all the related legal facts and legal actions are governed by the law of the Slovak Republic.

Trnava, Slovakia, December 31st, 2013

SOCIETAS ET IVRISPRVDENTIA

SOCIETAS ET IURISPRUDENTIA

Medzinárodný internetový vedecký časopis zameraný na právne otázky v interdisciplinárnych súvislostiach

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