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Editorial

The current Special Issue of Právny Obzor is devoted to the issue of human rights. While human rights are an integral element of a democratic state governed by the rule of law, the concept remains one of the most contested topics in legal thought, with theoretical disputes continuing over the optimal justification of human rights, their universality and their impact on the integrity or well-being of society. Human rights are also a pivotal issue in the debate between legal positivism and natural law theory, and they constitute a friction point between various competing political ideologies.

Beyond these more abstract aspects, human rights also give rise to arguments in practice, especially in terms of their authoritative application by constitutional, international and supranational courts. How do we balance the need for adequate judicial protection for human rights while maintaining a balanced separation of powers at both horizontal and vertical levels? Can specific institutional arrangements for state power be enforced through international and transnational means of protecting human rights? Can the proportionality test be conceived as a universal human rights application method? Does European legal pluralism also imply pluralism in the methodology of the application of human rights? Is the doctrine of margin of appreciation a concession to the universalism of human rights? All these questions confirm that human rights are not only a significant issue in social terms but also an extremely interesting academic topic.

One of the aims of this Special Issue of Právny Obzor is to offer an opportunity for Central European scholars to present their original research to a broader international audience. In this issue you can find articles by a new generation of Central European legal scientists who are actively engaged in dialogues on human rights with world-renowned authors, reflecting the national specificities of their home countries. The selection of articles also reflects the thematic diversity of the topic which was outlined above.

Linda Tvrdíková, a PhD student at the Department of Legal Theory at the Law Faculty of Masaryk University in Brno, examines the idea of human rights as a product of cultural evolution. Human rights are not natural in the sense that they somehow arise directly from the structure of the universe, but rather that they spring from interactions between people; that is, between discursive beings capable of constructing normative worlds. Tvrdíková is convinced that the creation and completion of rules based on cooperation is a more effective evolutionary strategy than that of ruthless competition. From this perspective, human rights can be perceived as a means by which interpersonal cooperation can move from the national to the global level, an essential evolutionary leap to ensure that we prevent future international conflicts and the atrocities associated with them.

The author of the next text, Tristan Florian, is also based at the Department of Legal Theory in Brno. In his article, Florian explores the universality of human rights within the context of the distinction between human and non-human species. It is a commonplace, or perhaps even a tautology, that human rights are inherent to all human beings, but how did we arrive at such a conclusion? Florian tests a series of commonly used characteristics which are considered exclusive to humans, suggesting that since individuals will always exist who lack such human characteristics, "human" rights might also apply to non-human beings. Florian's methodological scepticism leads to an uncompromising conclusion: either we concede that the human rights which we understand as natural rights should also be extended to animals or we must accept that there are, in fact, no such things as natural human rights.

The next article, by Zdeněk Červínek, an assistant professor at the Department of Constitutional Law, in the Faculty of Law of Palacký University in Olomouc, shifts the focus from legal philosophy to constitutional law through its analysis of the so-called necessity test, a component of the proportionality test used in constitutional reviews. Briefly put, a law fails the necessity test if its objective can be achieved by a means that is more in line with the concept of human rights. Červínek examines how this test has evolved in the case law of the Czech Constitutional Court and concludes that current jurisprudence requires the Court to consider whether more rights-friendly alternatives to the law under review can achieve the law's objective at least to the same or similar extent as the existing legislation. This approach allows the Court to avoid the two extremes of excessive activism and excessive restraint.

In the final article, Roman Blahuta from Lviv State University of Internal Affairs discusses the issue of the right to an impartial trial from the perspective of European standards and the Ukrainian efforts to comply with them. Blahuta begins with a dogmatic analysis of the notion of an impartial trial which he sees as an essential component of the rule of law. The author complements his analysis with comparative law findings and a summary of relevant Strasbourg case law, concluding his article by presenting judicial reforms that are intended to bring the Ukrainian judiciary closer to European requirements. It is clear that the right to an impartial trial is a key precondition of the adequate protection of other rights, but Blahuta's article also suggests that the right to a fair trial is perhaps one aspect that has distinguished the West from the East.

Marek Káčer
Editor-in-Chief of the Special Issue