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**JUSTICE IN THE PARADIGM OF COSMOPOLITANISM**

**551.01 GENERAL THEORY OF LAW**

Summary of PhD Thesis in Law

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The doctoral thesis and summary can be consulted at the Library of Moldova State University and on the web page of the National Agency for Quality Assurance in Education and Research.

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## **THE CONCEPTUAL REFERENCES OF THE RESEARCH**

### **The actuality and importance of the issue proposed for research**

The issue of justice (in a legal sense), by which is meant the system of administering justice (in a philosophical sense), is one of continuous actuality at both national and supranational levels, as reflected in the human rights discourse, in the requirements of participation in the international community or in European institutional structures, in the issue of the rule of law, in the consolidation of supranational justice, in the interest of the general public towards justice-related matters, etc. All of these presuppose the integration of certain concepts from the sphere of justice functioning, as well as the fulfillment of certain standards regarding justice systems, the thesis dealing primarily with the fundamental principles and values of any justice system, at all levels of manifestation.

The thesis deals with a paradigmatic shift from the contemporary international model, specific to the post-1945 period, to a model that has been particularly noticeable since the 1990s, the paradigm of cosmopolitanism. This model continues the pattern of centring the organization of the world in the declared interests of the individual, but proposes a global, transnational model, in which individuals are no longer seen essentially as members of their states, but as ‘citizens of the world’. The transition towards the model of cosmopolitanism, oriented towards the desideratum of achieving universal justice, calls for a reconsideration of the role and position of justice in the global society, in line with the need to focus on individuals, starting from those principles of justice that are common, general and universal.

The systematization, recognition and consolidation of the fundamental principles of justice as a system, for the benefit of each and every citizen of the world, contributes to the adequate and equal respect of the rights of individuals everywhere, with the assurance of certain common minimum standards of rendering justice (regarding access to justice, procedural fairness, etc.), clarifies the standards to be met by various entities involved in the delivery of justice, such as the limits of interaction between the political and the justice system, and contributes to enhancing the legitimacy of justice institutions and the public confidence in them.

### **Previous research findings**

While there is a large number of studies dealing with the fundamental concepts of the thesis, no complex, interdisciplinary studies have been identified that look distinctly at the fundamental principles of justice in the political and legal paradigm of cosmopolitanism, or the relationship between these concepts. Cosmopolitanism is widely studied in the universal

literature, but in the scientific literature in Romania there is only one work that deals with it exclusively and extensively<sup>1</sup>, and, in Republic of Moldova, only sporadic mentions are identified. These works do not, however, pay particular attention to justice and its fundamental principles. The phenomenon of justice and its fundamental principles have been widely addressed in the legal field, one noticing the value of the scientific work carried out by Andrei Negru<sup>2</sup>, Elena Aramă<sup>3</sup>, Rodica Ciobanu<sup>4</sup>, Nicolae Popa, Mihail-Constantin Eremia and Simona Cristea<sup>5</sup>, Traian Cornel Briciu, Claudiu Constantin Dinu and Paul Pop<sup>6</sup>, Ioan Leș and Daniel Ghiță<sup>7</sup>, as well as, in the universal literature, Shimon Shetreet<sup>8</sup>. This thesis carries out, however, an interdisciplinary problematization, approaching as a novelty the fundamental principles of justice in the paradigm of contemporary cosmopolitanism, with the idea of enshrining and applying them unitarily, for the benefit of individuals everywhere, of a quality justice at any level, and with the subsequent effect of increasing the legitimacy of justice institutions.

### **The aim of the thesis**

The aim of the thesis is to research the complex nature of the principles of the justice system in the key of the cosmopolitanism paradigm, in order to exemplify the advisability of enshrining unitary principles of contemporary justice systems.

### **Research objectives**

In order to achieve this aim, the fulfillment of the following objectives is proposed: to examine the problematic of justice and the principles of justice systems through the lens of contemporary approaches to justice; to explore the paradigm of cosmopolitanism in order to

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<sup>1</sup> NIȚU, Ciprian. *Cosmopolitismul. Către o nouă paradigmă în teoria politică*. Iași: Adenium, 2014. 280 p., ISBN 978-606-742-009-8.

<sup>2</sup> NEGRU, Andrei. Consolidarea justiției în statul contemporan democratic. Chișinău: Sirius, 2012, 240 p. ISBN 978-9975-57-039-8; NEGRU, Andrei. Valorificări teoretice și perspective praxiologice ale fenomenului justiției consolidate. In: *Legea și viața* [online]. 2012, nr. 11, pp. 52-58 [cited 02.09.2024]. ISSN 1810-3081. Available: [https://ibn.idsi.md/sites/default/files/imag\\_file/Valorificari%20teoretice%20si%20perspective%20praxiologice%20ale%20fenomenului%20justitiei%20consolidate.pdf](https://ibn.idsi.md/sites/default/files/imag_file/Valorificari%20teoretice%20si%20perspective%20praxiologice%20ale%20fenomenului%20justitiei%20consolidate.pdf).

<sup>3</sup> ARAMĂ, Elena. Reflecții privind sistemul și ordinea juridică. In: *Revista Națională de Drept* [online]. 2009, vol. 109, nr. 10-12, pp. 3-4 [cited 01.09.2019]. ISSN 1811-0770. Available: [https://ibn.idsi.md/ro/vizualizare\\_articol/9965](https://ibn.idsi.md/ro/vizualizare_articol/9965).

<sup>4</sup> CIOBANU, Rodica, ARAMĂ, Elena. Fundamentele guvernării și drepturilor omului în contextul social-juridic actual al Republicii Moldova (în loc de Introducere). In: *Contextul multidimensional actual al guvernării și drepturilor omului în Republica Moldova: conf. șt., 1 mai 2021*, Chișinău [online]. Chișinău: Tipografia Artpoligraf SRL, 2021, pp. 4-13, pp. 4-5 [cited 23.04.2025]. ISBN 978-9975-3498-3-3. Available: [https://ibn.idsi.md/sites/default/files/imag\\_file/4-13\\_6.pdf](https://ibn.idsi.md/sites/default/files/imag_file/4-13_6.pdf).

<sup>5</sup> POPA, Nicolae, EREMIA, Mihail-Constantin, CRISTEA, Simona. *Teoria generală a dreptului*. Second edition. București: All Beck, 2005. 296 p. ISBN 973-655-738-3.

<sup>6</sup> BRICIU, Traian Cornel, DINU, Claudiu Constantin, POP, Paul. *Instituții judiciare*. Second edition. București: C.H. Beck, 2016. 600 p. ISBN 978-606-18-0617-1.

<sup>7</sup> LEȘ, Ioan, GHIȚĂ, Daniel. *Instituții judiciare contemporane*. Second edition. București: C.H. Beck, 2019. 640 p. ISBN 978-606-18-0831-1.

<sup>8</sup> SHETREET, Shimon. Fundamental Values of the Justice System. In: *University of Cambridge Faculty of Law Legal Studies Research Paper Series* [online]. 2011, Paper no. 20/2011, pp. 1-18 [cited 01.09.2019]. Available: <http://dx.doi.org/10.2139/ssrn.1837486>.

determine its scientific authentication in the legal field and its connections to the legal field; to advance, substantiate and place in the scientific circuit the notion of procedural justice and to clarify the manner in which it contributes to legitimizing the delivery of justice; to contextualize the global legal order, as an effective manifestation of cosmopolitanism, through the lens of the issue of legitimacy; to identify, systematize and differentiate the fundamental principles of any justice system, be it national, regional or international; to analyze the recognition and reflection of the standards of justice in the global legal order, with application to international courts; to instrumentalize the recognition and enshrinement of the fundamental principles of justice as a criterion in assessing the legitimacy of international courts.

### **Identification of the scientific problem**

The scientific problem proposed for examination in this thesis consists in assessing the possibility of unitarily systematizing and recognizing the fundamental principles of the justice system in the international legal space by analyzing these principles in the context of the contemporary cosmopolitanism paradigm, determining both the reflection of protecting the rights of individuals, as a global reference point, as well as a greater legitimacy of international judicial institutions.

### **The research hypothesis**

Solving the research problem will start from verifying the research hypothesis according to which it is possible to unitarily systematize and enshrine the fundamental principles that define and govern the judiciary as a system of administering justice, while adequately integrating the issue of procedural justice, and leading to a greater legitimacy of justice institutions.

### **The methodological support of the paper**

The general approach of the study is an interdisciplinary one, reflecting the complexity of the issue under study (not only legal, but also philosophical, political, sociological, psychological). In the argumentation, therefore, scientific results produced in other fields of study were also used, advancing scientifically consistent foundations for the proposed approaches. The research tools are mainly represented by the primary reference sources, i.e. the fundamental works that included the theoretical perspectives under study, as well as normative texts relevant to the field of research. The research methods have a qualitative nature. From the point of view of the general methodology of socio-human sciences, content analysis, documentary research and case study were used. In terms of the special methods of legal research, in addition to doctrinal and normative research, the comparative method, the logical method, the hermeneutic method, the historical method, the sociological method, and the heuristic method were also used.

### **The scientific novelty and originality**

The paper addresses justice in the paradigm of cosmopolitanism, specifically, the manner in which the theoretical perspectives on the values and principles of the justice system relate to contemporary cosmopolitan thinking. This problematic is analyzed through the lens of the legitimacy of international norms and institutions, respectively those of international justice, with the integration of the specific results of the procedural justice approach. In the paper, the principles and values of the justice system are approached in an interdisciplinary manner and the cosmopolitanism paradigm is scientifically authenticated in the legal field; the concept of procedural justice is consolidated in the doctrinal space in Romania and the Republic of Moldova; the fundamental principles of justice systems are identified and systematized; a reconceptualization of the legitimacy of international courts is proposed and instrumentalized by introducing, as an evaluation criterion, the manner in which the principles and values of justice are ensured and respected.

### **Alignment to the scientific field 551.01 - General Theory of Law**

Although the thesis, in its essence, is significantly interdisciplinary, it is ultimately a theoretical study of justice. The conceptualization and defense of the thesis within the framework of the General Theory of Law are deeply argued by the nature of the research topic, namely the issue of justice through the lens of its fundamental principles, as well as by its aim, namely the complex research of these principles in the paradigm of cosmopolitanism. The investigation of the fundamental principles of justice as a system, as they can be recognized, enshrined and applied at all levels of justice, international, regional and national, cannot be framed within a particular branch of legal science. Since it targets the general, common and essential elements that shape, in itself, the system (any system) of administration of justice, the thesis is adequately framed within the scientific field of the General Theory of Law.

### **The theoretical significance and applicative value of the paper**

The proposed theoretical framework (justice, cosmopolitanism, principles of the justice system, rule of law, human rights, procedural justice, legitimacy) allows drawing some guiding lines for facilitating a standardization of the principles of any justice system. Viable solutions are thus formulated for the systematization, enshrinement and application of the fundamental principles of justice, starting from the international legislative and institutional framework, and with continuity in the subsequent reflection at the regional and national legislative and implementation level, with positive effects on ensuring an equal and fair justice for all individuals.

## THE CONTENT OF THE THESIS

*Chapter I*, on *The analysis of doctrinal-normative references*, is centered, in a first stage, on researching the doctrinal approaches regarding the essential concepts subjected to the study of justice in the paradigm of cosmopolitanism, in particular the cosmopolitan position of thought, procedural justice, institutional legitimacy, the phenomenon of justice and its fundamental principles.

The theoretical field of cosmopolitanism, which discusses justice through the concern for the welfare of all ‘all citizens of the world’, exhibits a particularly wide conceptual and thematic diversity, and even synthesizing its essential elements proves to be difficult. The concerns from the moral approaches of cosmopolitanism advocate for cosmopolitan moral standards or criteria for the evaluation of human moral agents, their conduct, social institutions and states of the world, and, in the contemporary period, they have developed widely in reaction to John Rawls’ theories of domestic and international justice<sup>9</sup>. These have launched the concerns for globally applied social justice and have contributed to the contemporary approach of institutional arrangements for ensuring equal fundamental rights and freedoms. Legal (or political, or institutional) cosmopolitanism refers to the theoretical concern with an institutional order of a cosmopolitan nature<sup>10</sup>. Implications of cosmopolitanism in the legal field are represented by issues such as human rights, global governance, international and/or global institutions and their legitimacy, and this justifies the need to distinctively study justice and its principles through this paradigm.

Within the sphere of concerns regarding justice, the value of the notion of procedural justice or fairness also stands out. The study of procedural justice seeks to identify the elements that make a procedure fair and the manner in which individuals evaluate the fairness of decision-making processes, their perceptions of the justness or fairness of those procedures. Authors such as Tom R. Tyler and Rebecca Hollander-Blumoff have analyzed the concept of procedural fairness in the specific area of legal proceedings. They have shown that, beyond the achieved outcome, individuals also evaluate the fairness of decision-making processes, and are more likely to comply with these decisions when they perceive that decisions have been reached through a

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<sup>9</sup> RAWLS, John. *A Theory of Justice*. Cambridge, London: Harvard University Press, 1971, republished 2005. 608 p. ISBN 0-674-01772-2; RAWLS, John. The Law of Peoples. In: *Critical Inquiry* [online]. 1993, vol. 20, nr. 1, pp. 36–68 [cited 01.09.2019]. ISSN 0093-1896. Available: <https://www.jstor.org/stable/1343947>.

<sup>10</sup> POGGE, Thomas W. Cosmopolitanism. In: Robert E. GOODIN, Philip PETTIT, Thomas POGGE, eds. *A Companion to Contemporary Political Philosophy*. Second edition, vol. 1. Malden, Oxford, Carlton: Blackwell Publishing, 2007, pp. 314-316. ISBN 978-1-4051-3653-2.

fair process, that also grants legitimacy to the decision-makers<sup>11</sup>. While the universal literature on procedural justice is extensive, long-standing and continuously developing, and reveals a multitude of arguments in support of the axiological character of procedural justice in relation to justice systems, it is necessary to introduce, consolidate and apply it in Romania and Moldova as well.

The issue of the legitimacy of global governance institutions, their rules and decisions, is all the more important in the current legal-political order. It has been extensively argued that states (including powerful ones) abide by rules that are in themselves powerless because they perceive them as legitimate (Thomas Franck)<sup>12</sup>. In a normative sense, the study of legitimacy is concerned with the objective standards by which international institutions can be evaluated, the qualities that grant them the ‘right to rule’, and, in a sociological sense, it is concerned with the acceptance, by states and other entities, of this right (Allen Buchanan, Robert O. Keohane)<sup>13</sup>. Important studies conducted specifically on international courts have indicated that normative legitimacy may influence sociological legitimacy, and by this, also the extent to which the activity of international courts is supported or undermined, as well as their impact in solving conflicts and shaping national legal orders (Nienke Grossman, Neus Torbisco-Casals)<sup>14</sup>. It is noticed, however, that none of the already established perspectives of approach and study of the legitimacy of international courts alone is sufficient to justify the legitimacy of international courts, and they do not seem to conclusively capture the essential particularity of a court of law, that of administering justice. A need is thus identified for a re-conceptualization of the legitimacy of international courts, taking as a reference point the manner in which such a court respects the fundamental principles of justice.

In discussing the phenomenon of justice in a global approach, the starting point is represented by the principles and values of the justice system. At national level, it is already

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<sup>11</sup> TYLER, Tom R. *Why People Obey the Law*. New Haven, London: Yale University Press, 1990. 273 p., pp. 115-123. ISBN 0-300-04403-8; HOLLANDER-BLUMOFF, Rebecca, TYLER, Tom R. Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution. In: *Journal of Dispute Resolution* [online]. 2011, nr. 1, pp. 1-19, pp. 6-7 [cited 01.09.2019, 01.09.2020]. ISSN 1052-2859. Available: [https://digitalcommons.law.yale.edu/fss\\_papers/4992/](https://digitalcommons.law.yale.edu/fss_papers/4992/).

<sup>12</sup> FRANCK, Thomas M. *The Power of Legitimacy Among Nations*. New York: Oxford University Press, 1990. 303 p., p. 3-25. ISBN 0-19-506178-0.

<sup>13</sup> BUCHANAN, Allen, KEOHANE, Robert O. The Legitimacy of Global Governance Institutions. In: *Ethics & International Affairs* [online]. 2006, vol. 20, nr. 4, pp. 405-437, p. 405 [cited 01.10.2020]. ISSN 0892-6794, 1747-7093. Available: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1747-7093.2006.00043.x>

<sup>14</sup> GROSSMAN, Nienke. The Normative Legitimacy of International Courts. In: *Temple Law Review* [online]. 2013, vol. 86, University of Baltimore School of Law Legal Studies Research Paper No. 2014-03, pp. 61-106, p. 64 [cited 01.10.2020]. ISSN 0899-8086. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2185304](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2185304); TORBISCO-CASALS, Neus. The legitimacy of international courts: The challenge of diversity. In: *Journal of Social Philosophy* [online]. 2021, vol. 52, nr. 4, pp. 491-515, p. 494 [cited 9.12.2023]. ISSN 1467-9833. Available: <https://onlinelibrary.wiley.com/doi/10.1111/josp.12452>.

widely theorized. Within the general theory of law, justice and its principles are dealt with in general studies, as elements of the state or through their connection with the rule of law, but also in a sui-generis manner, in the sense of studying the judicial authority as a protagonist of the legal phenomenon (Andrei Negru<sup>15</sup>, Elena Aramă<sup>16</sup>, Nicolae Popa et. al.<sup>17</sup>, Traian Cornel Briciu et. al.<sup>18</sup>, Ioan Leș and Daniel Ghiță<sup>19</sup>, etc.). The fields of constitutional law, human rights and their intersection (Rodica Ciobanu, Elena Aramă<sup>20</sup>) have also produced valuable results on the phenomenon of justice and its fundamental principles, nationally oriented. A particular attention on the supranational levels of justice comes from the sphere of international law, where it has been argued, for example, that respect for certain principles, such as independence or impartiality, influences the legitimacy and credibility of international courts (Daniela Cardamome<sup>21</sup>, Eyal Benvenisti and George W. Downs<sup>22</sup>, etc.). Beyond the national particularities regarding principles of justice, in the attempt to identify those minimal, common, general principles that define a justice system, a systematization of such principles appears as necessary.

The literature review broadly reveals that, while there are a multitude of highly valuable specialized studies reflecting all these concepts, there is a lack of an integrative perspective that establishes the relationships between these concepts and reflects their cross-disciplinary relevance. Given that the standards of ensuring the achievement of justice and the manner in which individuals perceive or experience or trust in what is called 'justice' have become

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<sup>15</sup> NEGRU, Andrei. Valorificări teoretice și perspective praxiologice ale fenomenului justiției consolidate. In: *Legea și viața* [online]. 2012, nr. 11, pp. 52-58 [cited 02.09.2024]. ISSN 1810-3081. Available: [https://ibn.idsi.md/sites/default/files/imag\\_file/Valorificari%20teoretice%20si%20perspective%20praxiologice%20ale%20fenomenului%20justitiei%20consolidate.pdf](https://ibn.idsi.md/sites/default/files/imag_file/Valorificari%20teoretice%20si%20perspective%20praxiologice%20ale%20fenomenului%20justitiei%20consolidate.pdf)

<sup>16</sup> ARAMĂ, Elena. Reflecții privind sistemul și ordinea juridică. In: *Revista Națională de Drept* [online]. 2009, vol. 109, nr. 10-12, pp. 3-4 [cited 01.09.2019]. ISSN 1811-0770. Available: [https://ibn.idsi.md/ro/vizualizare\\_articol/9965](https://ibn.idsi.md/ro/vizualizare_articol/9965).

<sup>17</sup> POPA, Nicolae, EREMIA, Mihail-Constantin, CRISTEA, Simona. *Teoria generală a dreptului*. Second edition. București: All Beck, 2005, 296 p. ISBN 973-655-738-3.

<sup>18</sup> BRICIU, Traian Cornel, DINU, Claudiu Constantin, POP, Paul. *Instituții judiciare*. Second edition. București: C.H. Beck, 2016. 600 p. ISBN 978-606-18-0617-1.

<sup>19</sup> LEȘ, Ioan, GHIȚĂ, Daniel. *Instituții judiciare contemporane*. Second edition. București: C.H. Beck, 2019. 640 p. ISBN 978-606-18-0831-1.

<sup>20</sup> CIOBANU, Rodica, ARAMĂ, Elena. Fundamentele guvernării și drepturilor omului în contextul social-juridic actual al Republicii Moldova (în loc de Introducere). In: *Contextul multidimensional actual al guvernării și drepturilor omului în Republica Moldova: conf. șt., 1 mai 2021*, Chișinău [online]. Chișinău: Tipografia Artpoligraf SRL, 2021, pp. 4-13, pp. 4-5 [cited 23.04.2025]. ISBN 978-9975-3498-3-3. Available: [https://ibn.idsi.md/sites/default/files/imag\\_file/4-13\\_6.pdf](https://ibn.idsi.md/sites/default/files/imag_file/4-13_6.pdf).

<sup>21</sup> CARDAMOME, Daniela. Independence of International Courts. In: Paulo Pinto de ALBUQUERQUE, Krzysztof WOJTYCZEK, eds. *Judicial Power in a Globalized World* [online]. eBook: Springer Nature, 2019. 685 p., pp. 91-104, p. 92 [cited 01.09.2021]. ISBN 978-3-030-20744-1. Available: [https://link.springer.com/chapter/10.1007/978-3-030-20744-1\\_6](https://link.springer.com/chapter/10.1007/978-3-030-20744-1_6).

<sup>22</sup> BENVENISTI, Eyal, DOWNS, George W. Prospects for the Increased Independence of International Tribunals. In: *German Law Journal* [online]. 2011, vol. 12, nr. 5, pp. 1057-1082, p. 1057 [cited 01.09.2021]. Available: <https://doi.org/10.1017/S2071832200017223>.

particularly important in both national and global societies, there is a specific need for a systematization of the principles of justice, one that adequately integrates the issue of procedural justice, that aims at legitimizing justice institutions and that is oriented towards the interests, rights and welfare of all individuals, ‘citizens of the world’.

In a second stage, the chapter outlines the framework of international, regional and national regulations that are essential in considering the fundamental elements of justice as a system at the axiological level. In part, they are subsumed within the human rights discourse, in particular by the enshrinement of certain standards of justice, such as access to justice, equality before the law, the presumption of innocence or the independence of the judiciary, in the content of the relevant declarations, covenants and conventions. At the international level, although these are widely and sometimes universally recognized, their effective legal force is still questionable. At the regional level, there is a greater effectiveness of the provisions in this field, as well as an emphasis on the relationship between fundamental elements of justice and the requirements of the rule of law (outlined, for example, in the *Rule of Law Checklist*<sup>23</sup>), reflected also in jurisprudence or accompanied by preventive and sanctioning mechanisms.

In addition, values and principles of the justice system are the subject of self-standing guarantees and standards formulated at the international level. Some of these, such as independence or impartiality, are embodied in instruments establishing and operating international courts, and therefore have legal force to the extent that they are ratified by States, or the jurisdiction of such courts is established by other means. Moreover, various standards referring to principles of justice have been formulated within the United Nations mechanisms, such as the *Basic Principles on the Independence of the Judiciary*<sup>24</sup> or *The Bangalore Principles of Judicial Conduct*<sup>25</sup>, or by specialized professional associations and groups, such as the *Mount Scopus International Standards of Judicial Independence*<sup>26</sup>. At the regional-European level, one can also note the interest for a better functioning of the institutions designed to protect certain principles, such as independence in the case of councils for the judiciary, starting from the very

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<sup>23</sup> Rule of Law Checklist [online]. European Commission for Democracy through Law (Venice Commission), 11-12 March 2016 [cited 01.09.2019]. Available: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e).

<sup>24</sup> Basic Principles on the Independence of the Judiciary [online]. United Nations, Milan, 6 September 1985 [cited 01.09.2019]. Available: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

<sup>25</sup> The Bangalore Principles of Judicial Conduct [online]. United Nations, The Judicial Group on Strengthening Judicial Integrity, 2001, revised 2002 [cited 01.09.2019]. Available: [https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf).

<sup>26</sup> Mount Scopus International Standards of Judicial Independence [online]. International Association of Judicial Independence and World Peace, 2008, consolidated version 2022 [cited 24.04.2025]. Available: <https://www.jiwp.org/mt-scopus-standards>.

guarantee of the independence of these institutions<sup>27</sup>. All these documents reflect a tendency towards generalization and standardization with regard to certain principles, as well as towards broadening the sphere of participants in the global legal life, yet they are devoid of legal force, and the actual manner of managing the principles of justice remains within the competence and power of the States.

It is noteworthy, from this point of view, the importance granted in international and regional legislation to certain essential characteristics of justice, which is sometimes also reflected in mechanisms for ensuring that they are respected, although these are not necessarily legally effective. Moreover, the existing regulatory framework covers specific issues, such as independence, judicial conduct, judicial ethics and court administration, but lacks a general, overarching and integrating vision on the fundamental elements of a justice system, on the principles that define the achievement of justice. In this context, it is all the more important to formulate an adequate scientific framework for analysing the possibility of amending the international, regional and national regulatory and institutional framework in order to achieve a greater uniformization and respect for the principles of justice, applicable at all its levels of delivery, so that all individuals of the world may benefit from reasonable standards of rendering justice.

*Chapter 2, on Constancies and particularities in approaching the paradigm of contemporary cosmopolitanism*, analyzes the fundamental theoretical references within which the principles and values of the justice system will be further studied, namely cosmopolitanism, procedural justice and legitimacy in the context of the global political-legal order.

Broadly speaking, the paradigm of cosmopolitanism places the individual as a ‘citizen of the world’ at the center of concerns, beyond one’s national affiliation. From the idea of ‘non-national affiliation’, or the act of the individual of declaring oneself a ‘citizen of the world’, to the concern for foreigners and *ius gentium*, a kind of law common to all peoples (and a key reference point in the creation and development of international law), cosmopolitanism was further influenced and reinforced by the enshrinement of human rights. Moreover, it has politically embodied the moral ideal of a universal human community, encompassing projects of international politico-legal orders or a ‘cosmopolitan law’, in which people and states are seen as ‘citizens of a universal human state (*ius cosmopoliticum*)’<sup>28</sup>. Thus, the development of

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<sup>27</sup> Opinion No. 24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems [online]. Consiliul Consultativ al Judecătorilor Europeni, Consiliul Europei, 2021 [cited 26.04.2025]. Available: <https://rm.coe.int/opinion-no-24-2021-of-the-ccje/1680a47604>.

<sup>28</sup> KANT, Immanuel. *Spre pacea eternă* [1795]. Second edition. Transl., introd. study, etc. Rodica CROITORU. București: Editura All, 2008. 208 p., p. 71. ISBN 978-973-571-624-0.

cosmopolitanism has also been directed towards legal and political frameworks, beyond ethical ideals or visions of justice at the non- and supra-national level. In the contemporary period, cosmopolitanism advocates the adaptation or formulation of a theory of justice at the global level, thus moving beyond the international, inter-state paradigm in favor of an increased focus on individuals as the essential unit of moral concern.

The typologies of cosmopolitanism are varied, with moral cosmopolitanism and political, institutional or legal cosmopolitanism being identified as the main areas of concern. The first category includes ethical, monistic and social justice cosmopolitanism, which discuss cosmopolitan moral standards or criteria for assessing human moral agents, their conduct, social institutions, etc. Legal, institutional or political cosmopolitanism discusses, for example, the global political-legal order and specific arrangements that lead to the realization of cosmopolitan ideals such as the protection of fundamental rights and freedoms for all. In the cosmopolitan global order, all persons have equivalent rights and obligations, in other words, they are citizens of a universal republic<sup>29</sup>. Central elements in any cosmopolitan position are, therefore, the equal moral worth of all individuals and their affiliation (also) to a universal community, of the entire world. In this context, global responsibilities, such as respect for the fundamental rights of all, can be identified.

The integration of these fundamental ideas has been and is steadily occurring in the legal field as well, revealing both an expansion of the theoretical reach of cosmopolitanism in the legal field, as well as a continuous reconfiguration of the legal field in a manner subsumed to cosmopolitanism. These can be seen, inter alia, in the concern for the status and rights of foreigners, in the development of private international law, in the recent concept of ‘judicial cosmopolitanism’, which addresses the application of foreign legal norms (of other states or international courts) within contemporary constitutional systems, as well as in the constitutionally established priority application of international human rights norms and treaties, and in the whole development of international law and the global institutional order.

From another approach of reference in the sphere of concerns about justice comes the notion of procedural justice (which most often includes formal justice), seen as distinct from substantive and material justice. The notion of procedural justice concerns fair and impartial decision-making procedures and seeks to identify those elements that make a procedure fair, as well as perceived to be fair.

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<sup>29</sup> POGGE, Thomas W. *Cosmopolitanism and Sovereignty*. In: *Ethics* [online]. 1992, vol. 103, nr. 1, p. 49 [cited 01.09.2019]. ISSN 0014-1704, 1539-297X. Available: <https://www.jstor.org/stable/2381495>.

In this respect, two essential approaches to procedural justice are distinguished. In an objective sense, it concerns certain objective standards or rules that make certain decisions more just than others, and is interested, as such, in the accuracy of the procedure itself in order to achieve fairness. In a subjective sense, procedural fairness is concerned with the elements that can create the appearance of fairness in proceedings and the ability of those proceedings to have a positive effect on the perception of fairness of those involved in them<sup>30</sup>. These two manners of evaluating procedures are theoretically independent of each other, since a procedure that is objectively fair may be perceived as unfair, while a procedure that is objectively unfair may be perceived as fair<sup>31</sup>. The fundamental meaning of this distinction is that, as research in the field of social psychology demonstrates, the fairness of a process or procedure, including a judicial one, is a concept distinct from the outcome obtained within it, and, moreover, it influences the manner in which said outcome is perceived.

The relevance of this is that the views on procedural justice of those involved in legal proceedings further shape the reactions of individuals to their experiences with legal authorities<sup>32</sup>, reflected in their acceptance of the outcome, even if a negative one, and their voluntary compliance with a decision, even an unfavorable one. Beyond the outcome obtained, therefore, individuals are more likely to obey the decisions and judgments of an authority when they perceive that the authority has reached its decision through a fair process.

In this respect, the relationship between perceptions of procedural justice and perceptions of the legitimacy granted to decision-makers or authorities has also been studied, with legitimacy being addressed both through the concept of procedural justice and the concept of ‘rule of law’<sup>33</sup>. The latter provides legitimacy through the equal application of existing, ‘fixed’ law to all individuals, and, in some views, through the requirement of respect for individual rights. Thus, while, in the narrowest and most formal approach to the rule of law, it concerns the requirement that everyone, including the state or its officials, obey the law, in contemporary times substantive requirements, such as the protection of fundamental rights, are increasingly taken into account in

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<sup>30</sup> LIND, E. Allan, TYLER, Tom R. *The Social Psychology of Procedural Justice*. New York: Springer Science+Business Media, LLC, 1988. 267 p., pp. 3-4. ISBN 978-1-4899-2117-8, 978-1-4899-2115-4. Available: DOI 10.1007/978-1-4899-2115-4.

<sup>31</sup> VIDMAR, Neil. The Origins and Consequences of Procedural Fairness. In: *Law and Social Inquiry* [online]. 1990, nr. 15, pp. 877-892, p. 879 [cited 01.09.2020]. ISSN 1747-4469, 0897-6546. Available: [https://scholarship.law.duke.edu/faculty\\_scholarship/127/](https://scholarship.law.duke.edu/faculty_scholarship/127/).

<sup>32</sup> TYLER, Tom R. Procedural Justice, Legitimacy, and the Effective Rule of Law. In: *Crime and Justice* [online]. 2003, vol. 30, p. 283, p. 286 [cited 01.09.2020]. ISSN 2153-0416, 0192-3234. Available: <https://doi.org/10.1086/652233>.

<sup>33</sup> HOLLANDER-BLUMOFF, Rebecca, TYLER, Tom R. Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution. In: *Journal of Dispute Resolution* [online]. 2011, nr. 1, pp. 1-19, pp. 9-10 [cited 01.09.2020]. ISSN 1052-2859. Available: [https://digitalcommons.law.yale.edu/fss\\_papers/4992/](https://digitalcommons.law.yale.edu/fss_papers/4992/).

assessing the rule of law. Elements from the sphere of rule of law, such as impartiality or the equal application of the law, also contribute to the manner in which subjective determinations are made about what behavior is fair, for instance in determining trust in the decision-maker. As for procedural justice in its subjective sense, it promotes legitimacy by providing individuals with a neutral and trustworthy decision-maker, by allowing them to have a voice, and by treating them with goodwill and respect<sup>34</sup>. The relevance of this approach is that, if individuals do not perceive the procedures as fair, legitimacy, including of the justice institution or of the judge enforcing a rule, will not be achieved, which negatively affects voluntary compliance to the adopted decision.

The issue of legitimacy is all the more significant in the context of contemporary international society and institutions of global governance, the decisions of which also affect the legal order and domestic policies of states. Moreover, given that the implementation of international decisions and agreements depends on the voluntary compliance or assistance of states, it has been shown that states' behavior in complying (or not) with international rules and decisions is determined by the legitimacy of the rules and processes through which they are framed<sup>35</sup>. 'Traditional' sources of legitimacy for international institutions are the consent of states and procedural justice, and recently the assessment of legitimacy in terms of whether international institutions and courts fulfill the purposes for which they were designed has also been discussed, which has acquired very strong substantive overtones, such as respect for human rights.

Assessing the legitimacy of institutions has distinctive and serious practical implications, such as the fact that, if an institution is legitimate, this legitimacy should also shape the nature of the response to its claims. Moreover, it is also important that these institutions are perceived as legitimate<sup>36</sup>, in the absence of strong coercive mechanisms, which may also lead to the voluntary compliance by international actors.

Although there are numerous aspects that can be improved legislatively in order to increase cooperation and unity between their members, it remains essential that the Member States themselves legitimize these systems by voluntarily complying with them, in light of the agreed common objectives. Among these common objectives and values, respect for human

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<sup>34</sup> Ibidem, pp. 9-10.

<sup>35</sup> FRANCK, Thomas M. *The Power of Legitimacy Among Nations*. New York: Oxford University Press, 1990. 303 p., p. 16. ISBN 0-19-506178-0.

<sup>36</sup> BUCHANAN, Allen, KEOHANE, Robert O. The Legitimacy of Global Governance Institutions. In: *Ethics & International Affairs* [online]. 2006, vol. 20, nr. 4, pp. 405-437, p. 407 [cited 01.10.2020]. ISSN: 0892-6794, 1747-7093. Available: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1747-7093.2006.00043.x>.

rights and the criteria of the rule of law stand out as essential, both contexts subsuming elements from the sphere of values and principles of the justice systems.

*Chapter 3, Systems of justice and levels of substantiation of the cosmopolitanism paradigm*, seeks to identify, given the new positions and roles of justice in contemporary global society, which are those principles and values of justice recognized as fundamental to a justice system, what are the essential distinctions between principles such as independence or impartiality and how their recognition is addressed in specialized documents.

The specialized literature has sought to identify, through elaborate and valuable contributions, fundamental principles of justice, of the organization and functioning of the judicial system, etc. In the doctrine analyzed, focused on the national level of rendering justice, what is mainly accomplished is a meticulous approach of those principles effectively established or identifiable in constitutions or national laws. These do not, however, clearly distinguish the fundamental, defining elements that are essential for upholding an act of justice, and it can be seen that, even within the doctrine of the same State, there can be quite varied opinions as to which provisions can claim the status of fundamental principle of justice. For instance, if the independence of the judiciary appears as a principle in most authors, other elements, such as the use of the official language and mother tongue in the judiciary, or the prohibition of extraordinary courts, do not receive the same recognition. In the universal literature, particularly in recent times, there has been an emerging tendency to address the most important features of justice systems in systematizations that are more general and more widely applicable. A referential systematization of this kind identifies as fundamental values of justice systems procedural fairness, efficiency, public confidence in the courts, access to justice and independence<sup>37</sup>.

The study of the doctrine also revealed the diverse and unclear use of concepts such as efficiency and effectiveness, independence and impartiality, which, in fact, have distinct meanings, and the need to consider them as separate principles has been addressed. Broadly speaking, efficiency seems to have a quantitative meaning, and can be associated with the idea of 'performance', whereas effectiveness is concerned with the actual achievement of the desired result, the characteristic or ability of justice to fulfill its aims, to achieve justice. Although the distinction between the two and a clear definition of effectiveness need to be further explored,

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<sup>37</sup> SHETREET, Shimon. Fundamental Values of the Justice System. In: *University of Cambridge Faculty of Law Legal Studies Research Paper Series* [online]. 2011, Paper no. 20/2011, pp. 1-18, pp. 1-2 [cited 01.09.2019]. Available: <http://dx.doi.org/10.2139/ssrn.1837486>.

the conceptual impact of ‘effectiveness’ on the evaluation of justice systems justifies its position as a fundamental principle of justice, separate from efficiency.

Independence and impartiality are also distinct concepts, which cover different factors of possible influence, and it is necessary to enshrine them as separate principles. Both independence and impartiality can be analyzed in both an objective and a subjective component. Within the framework of independence, the objective one prevails, which broadly refers to the conduct of judges’ work within an appropriate institutional framework that protects them from external influences and pressures, thus describing functional and structural guarantees against external intrusion into the administration of justice. Within the framework of impartiality, although notable adequate formal or institutional guarantees also exist, the subjective component is prevalent, reflecting the judges’ state of mind, their actual attitude towards the parties or the subject matter of the dispute, the exercise of reasoning without manifesting bias or subjective interests that the judge may have in relation to a party, etc., in other words, with no (or as little as possible) subjectivism.

Therefore, the following can be outlined as fundamental principles of any system of public justice, for the benefit of any individual, regardless of place of birth, citizenship or lack thereof, state of residence, etc.: access to justice, independence, impartiality, procedural justice or fairness, efficiency, effectiveness and public confidence.

To date, a multitude of instruments have been developed, adopted and recognized at the international level, having as their central concern the issue of values and principles of justice systems, or issues subsumed within them. The most numerous and most relevant cover judicial independence, impartiality, judicial conduct, etc. A tendency towards the systematization and standardization of justice principles, which also takes account of the most recent doctrinal developments, is also noticeable at the global conceptual and normative level, where, in a spirit of cosmopolitanism, a multitude of actors participate in the joint design of these values and standards. Together, states, international professional associations, specialists in the field, international governmental organizations, all contribute to the process of determining and clarifying the content of the justice principles and, at the same time, of guiding the conduct of national and international legislators.

For instance, *Basic Principles on the Independence of the Judiciary* systematizes certain fundamental principles concerning the judiciary, namely the independence of the judiciary, freedom of expression and association of members of the judiciary, their qualification, selection and training, conditions of service and tenure of judges, professional secrecy and immunity,

discipline, suspension and removal of judges<sup>38</sup>. The *Bangalore Principles of Judicial Conduct*<sup>39</sup> outlines six values of judicial conduct, namely independence, impartiality, integrity, propriety, equality, and competence and diligence, with related principles and matters concerning their application. These values and principles must be considered by States in ensuring the independence of the judiciary or in regulating judicial conduct.

The existence (not only formal, but also effective) of an independent and impartial judiciary at the national level is one of the fundamental conditions that States must meet in order to participate as members of the international community. At the same time, at the international level as well, various institutions have been established and are functioning with the aim of achieving justice, as part of the international legal-political system. They have legal subjects of different legal natures (states, non-governmental organizations, individuals, etc.), varied (sometimes even competing) competences, diverse fields in which they operate, and wide use and impact, not only on the parties to a conflict or the directly affected legal subjects, but also on the internal policies of states, national laws and national legal systems. Just as, at the national level, respect for the principles and values of justice must take precedence over the interests of governments and members of the state apparatus, similarly, at the international level, respect for the same values must constitute a priority, at least as far as permanent courts are concerned, such as the International Court of Justice or the International Criminal Court.

A number of steps in this direction have already been taken, through the various statutory provisions guaranteeing independence and impartiality. However, beyond the existence of formal guarantees, it is imperative that international courts and tribunals also enjoy de facto, effective independence, which, at both national and international level, means first and foremost eliminating or reducing to irrelevance the role and influence of the political element. It is imperative that states change their own approach to these institutions as sources of fulfilling particular interests and accept, instead, the delivery of justice in its essence, which can only be independent. As with national justice systems, the legitimacy of international courts rests to a large extent on their independence<sup>40</sup>, and both the legitimacy and credibility of international

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<sup>38</sup> Basic Principles on the Independence of the Judiciary [online]. United Nations, Milan, 6 September 1985, Preamble [cited 01.09.2019]. Available: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

<sup>39</sup> The Bangalore Principles of Judicial Conduct [online]. United Nations, the Judicial Group on Strengthening Judicial Integrity, 2001, revised 2002 [cited 01.09.2019]. Available: [https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf).

<sup>40</sup> CARDAMOME, Daniela. Independence of International Courts. In: Paulo Pinto de ALBUQUERQUE, Krzysztof WOJTYCZEK, eds. *Judicial Power in a Globalized World* [online]. eBook: Springer Nature, 2019. 685 p., pp. 91-104, p. 92 [cited 01.09.2021]. ISBN 978-3-030-20744-1. Available: [https://link.springer.com/chapter/10.1007/978-3-030-20744-1\\_6](https://link.springer.com/chapter/10.1007/978-3-030-20744-1_6).

courts will be crucially linked to the degree to which they are perceived as independent<sup>41</sup>. The increasing intertwining of politics and law, as well as the fragility of institutions, seem to call for an even more stringent application of the principles of independence and impartiality at the international level than at the national level<sup>42</sup>.

Therefore, an approach based on general values and principles is essential for ensuring the symmetry of conditions required for participation within the international community, for obtaining and maintaining public confidence from other States, individuals, international organizations, etc., and, ultimately, for obtaining and maintaining the credibility and legitimacy of international justice as a whole, which has significant effects on the national level, both through the decisions adopted and through the influence produced and the model it embodies.

*Chapter 4, Praxiology of the cosmopolitanism paradigm through recourse to the fundamental principles of justice in international courts*, starts from the changes in the purposes and roles of international courts and the shortcomings in their functioning, in which context the challenges to their legitimacy have also increased, and proposes an operationalization of the fundamental principles of justice as a distinct criterion in assessing their legitimacy.

While international courts were originally conceived in the spirit of ensuring peace and of striving for a politico-legal order the respect of which could be ensured through mechanisms of justice, thereby reducing international conflicts, over time, their functions, purposes and roles have changed considerably. They not only ensure the peaceful settlement of international disputes, but also create law, stabilize normative expectations, shape and promote certain normative regimes, influence national legal orders, etc., which also indicates a particular role for them in contemporary global governance.

The use of international courts, although widespread, also encounters significant systemic difficulties, such as the uneven geographical distribution (none of these courts has jurisdiction that effectively extends to all states), uneven use (some states use them much more frequently than others), and uneven thematic coverage (some areas have been judicialized more than others, and many aspects of law and international relations have been left outside these courts)<sup>43</sup>.

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<sup>41</sup> BENVENISTI, Eyal, DOWNS, George W. Prospects for the Increased Independence of International Tribunals. In: *German Law Journal* [online]. 2011, vol. 12, nr. 5, pp. 1057-1082, p. 1057 [cited 01.09.2021]. Available: <https://doi.org/10.1017/S2071832200017223>.

<sup>42</sup> CRAWFORD, James, MCINTYRE, Joe. The Independence and Impartiality of the 'International Judiciary'. In: Shimon SHETREET, Christopher FORSYTH, eds. *The Culture of Judicial Independence. Conceptual Foundations and Practical Challenges*. Leiden, Boston: Martinus Nijhoff Publishers, 2012. 639 p., pp. 187–214, p. 191, pp. 205-206. ISBN 978-90-04-18833-4.

<sup>43</sup> ROMANO, Cesare P. R. The Shadow Zones of International Judicialization. In: Cesare P. R. ROMANO, Karen J. ALTER, Yuval SHANY, eds. *The Oxford Handbook of International Adjudication* [online]. Oxford: Oxford University Press, 2014. 975 p., pp. 90-110, p. 90, pp. 103-104 [cited 01.09.2022]. ISBN 978-0-19-966068-1. Available: <https://doi.org/10.1093/law/9780199660681.001.0001>.

Another issue that fundamentally affects the potentially global functioning of international courts is represented by state consent, or lack thereof, with regard to States' participation in international justice mechanisms (a practical and effective impediment). In this sense, state consent is also an essential element in the traditional analysis of the legitimacy of international (including judicial) institutions.

Shortcomings are further identified in the area of procedural justice, which again corresponds to a traditional approach to the legitimacy of international courts. Procedural justice is associated, on the one hand, with the *audi alteram partem* principle, an approach limited, however, to the parties to a particular dispute, not to interested or potentially affected third parties beyond the courtroom<sup>44</sup>. Issues relating to the person and conduct of judges, such as independence or impartiality, are also subsumed under the concept of fair trial. Moreover, there is an institutional component of procedural fairness, which relates to the rules and procedures laid down in the acts governing such institutions, as well as to the conduct (in the sense of practice) of the institution itself. Codes of ethics have sometimes been adopted in international courts, but even these are not devoid of problems. The selection of cases at court level has also been scrutinized in terms of procedural fairness, and situations of court bias have been seen as procedural shortcomings. Regardless of how they are categorized, they have certainly drawn criticism related to legitimacy, including in the subjective sense, of perceived lack of legitimacy, and have produced concrete effects, such as intentions to withdraw and even withdrawal of some states from the justice mechanisms in question. The perceived legitimacy of an international court is therefore accompanied by a real risk of losing State Parties.

At the same time and in close connection with the growth of their role, but also with the identification of such dysfunctionalities, challenges to the legitimacy of international courts have also increased<sup>45</sup>. If concerns regarding legitimacy are not given due attention, are not understood and are not responded to, both the courts and the law they apply, interpret or create are at considerable risk. Especially in the absence of strong enforcement mechanisms to ensure compliance with international judgments, the question of their legitimacy becomes crucial, as it can lead to voluntary compliance by states, while its absence alienates states from international justice mechanisms.

Significant developments and reconfigurations of the manner in which the legitimacy of international courts is approached, particularized by reference to their institutional specificity and

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<sup>44</sup> GROSSMAN, Nienke. The Normative Legitimacy of International Courts. In: *Temple Law Review* [online]. 2013, vol. 86, University of Baltimore School of Law Legal Studies Research Paper No. 2014-03, pp. 61-106, p. 62-68 [citat 01.10.2020]. ISSN 0899-8086. Disponibil: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2185304](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2185304).

<sup>45</sup> *Ibidem*, p. 63.

role, have recently been developed through the appeal to democratic theory. This theoretical position presupposes an understanding of international judicial practice as an exercise of public authority and shows that, as autonomous actors exercising public authority, the actions of international justice require an authentic mode of justification that respects the basic principles of democratic theory. The starting point of these democratic justifications is represented by individuals, with the view that the idea of transnational and even cosmopolitan citizenship should further guide the democratic justification of the public authority of international courts<sup>46</sup>.

Along the same lines, various proposals have been advanced for the reconfiguration of procedural fairness in order to include the entities the rights and obligations of which are being judged before the courts<sup>47</sup>. The legitimacy of international courts is also analyzed in the light of their fulfillment of the purposes for which they were conceived, a perspective that has acquired increasing substantive emphasis, seeking to ensure that these courts produce morally adequate results.

It can be seen, from the analysis of the legitimacy of international courts, that none of these perspectives alone is sufficient to justify the legitimacy of international courts, neither the traditional nor the more recent ones. They also do not seem to capture conclusively the essential particularity of a court, which is to deliver justice, which also entails the fulfillment of specific standards that go beyond (but do not exclude) the sphere of procedural justice. Moreover, the dysfunctions identified and the criticisms directed at international courts have led to an extensive approach to the issue of their legitimacy, and it is worth noting that all these dysfunctions and criticisms, whether more general or more specific, essentially concern the fundamental principles of justice, namely access to justice, independence, impartiality, procedural justice, efficiency, effectiveness and public confidence in the courts. Thus, the thesis proposes a ‘key’ for analyzing the legitimacy of a court through the manner in which such a court, as a body designed to deliver justice, and thus essentially different from other, predominantly political, mechanisms, respects the fundamental principles of justice. Such an approach, on the one hand, encompasses all the study perspectives already formulated – consent, jurisdiction and participation are framed as issues of access to justice, procedural justice is a distinct principle, the substantive component can be subsumed under effectiveness, and the sociological meaning of legitimacy is integrated

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<sup>46</sup> BOGDANDY, Armin von, VENZKE, Ingo. In Whose Name? An Investigation of International Courts’ Public Authority and Its Democratic Justification. In: *The European Journal of International Law* [online]. 2012, vol. 23, nr. 1, pp. 7-41, pp. 7-8, p. 41 [cited 9.12.2023]. ISSN 0938-5428, EISSN 1464-3596. Available: <https://doi.org/10.1093/ejil/chr106>.

<sup>47</sup> GROSSMAN, Nienke. The Normative Legitimacy of International Courts. In: *Temple Law Review* [online]. 2013, vol. 86, University of Baltimore School of Law Legal Studies Research Paper No. 2014-03, pp. 61-106 [cited 01.10.2020]. ISSN 0899-8086. Available: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2185304](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2185304).

through the principle of public confidence. On the other hand, such a reconceptualization of the legitimacy of international courts emphasizes the fundamental particularity of the judiciary, namely the achievement of justice, starting from the very principles on which it is based.

In this respect, the fundamental principle of access to justice subsumes the issue of participation in the process of justice, as well as that of the jurisdiction of international courts, with a desire to further reduce the dependence on state consent in assuring the jurisdiction of international courts and thereby increase access to international justice. Also encouraged is the wider participation and intervention of more international actors in judicial proceedings, including individuals, and even before a court specialized on their rights and freedoms established at the global level. Procedural justice, including equal and fair treatment of the parties and the opportunity to present their arguments, must also be ensured at the international level, and must also be manifested towards interested non-parties. Transparency of international processes is likewise desirable. Independence must be ensured at both the institutional and the personal level of judges participating in the international legal order. Reducing the dependence on states of origin and the political influence of these states is fundamental in terms of both formal and de facto guarantees. Impartiality must similarly be 'educated' and promoted at both institutional and personal level, as its risks in de-legitimizing the courts are palpable. Efficiency and effectiveness need to be carefully balanced against the other principles, and implementation or coercive enforcement of international court judgments is expected to pose fewer problems as the legitimacy of institutions increases. Effectiveness, moreover, must be pursued through sustained normative regimes and the substantive valence of the decisions adopted. Strengthening public confidence in international courts has the real potential of increasing participation in justice mechanisms and voluntary compliance with judgments.

## GENERAL CONCLUSIONS AND RECOMMENDATIONS

The aim of the thesis has been represented by researching the complex nature of the principles of the justice system in the key of the cosmopolitanism paradigm, in order to exemplify the advisability of enshrining unitary principles of contemporary justice systems.

The analysis carried out has confirmed the research hypothesis and has led to solving the identified research problem, namely assessing the possibility of unitarily systematizing and recognizing the fundamental principles of the justice system in the international legal space by analyzing these principles in the context of the contemporary cosmopolitanism paradigm, determining both the reflection of protecting the rights of individuals, as a global reference point, as well as a greater legitimacy of international judicial institutions. The scientific results that have contributed to solving the scientific problem are as follows:

1. Examining the issue of justice and the principles of justice systems in relation to the contemporary typologies of justice, in an interdisciplinary key, integrating and potentiating approaches from other fields of study (philosophy, political theory, psychology, etc.), supports the consolidation of essential notions from the sphere of general theory of law (justice, principles of justice, rule of law) towards the stabilization of general, common and essential elements that configure, in itself, any system of administration of justice.

2. Cosmopolitanism stands as a paradigm reflecting the equal moral value of all 'citizens of the world', affiliated to a universal community, in which respect for their interests, rights and freedoms is fundamental. This paradigm manifests an interconnectedness with the legal field, in the sense that the legal field is continually reconfiguring itself in a way that can be subsumed under cosmopolitan ideals, and the theoretical sphere of cosmopolitanism has been widely expanded by reference to the legal field.

3. The field of procedural justice concerns the fairness of decision-making procedures. In an objective sense, it looks at standards that make a procedure fair, and, in a subjective sense, it looks at individuals' perceptions of the fairness of procedures. Both approaches lead to the legitimization of the decision-making authority, also facilitating voluntary compliance with decisions, and can be shaped into fundamental principles of justice. Introduced into international documents, constitutions and procedural codes, they would give effect to certain requirements of the rule of law, the efficiency of justice and the effectiveness of the law.

4. The international or global political-legal order, as a manifestation of cosmopolitanism, is characterized in part by the absence of strong mechanisms of coercion, which makes voluntary

respect and compliance with the adopted norms and decisions dependent, to a significant extent, on the assessment of their legitimacy. In evaluating the existence and degree of legitimacy of these institutions, one can observe both elements that can be ascribed to essential principles of rendering justice from an objective, institutional-systemic point of view, and elements that are associated with procedural justice in a subjective sense.

5. Every individual, regardless of place of birth, citizenship or lack thereof, state of residence, etc., should be able to enjoy a system of public justice that is characterized at least by: access to justice; independence, impartiality; procedural justice; efficiency; effectiveness; public confidence. Independence and impartiality are distinct principles, which address different factors of influence, and delimitations can also be drawn between efficiency and effectiveness. The enshrinement and application of these principles are necessary starting from the international or global level, in order to reflect their importance and to enhance the degree of protection of all individuals, and must have continuity, for ensuring their effectiveness, at the regional and national levels.

6. If the existence of a justice system that meets certain criteria is one of the fundamental requirements that States must meet in order to participate as members of the international community, at least the same standards, of access, independence, impartiality, procedural justice, efficiency, effectiveness and public confidence must also be met at the level of international justice. An approach based on adequate respect for these principles is essential for ensuring symmetry in the conditions required for participation in the international community, for obtaining and maintaining public trust from other States, individuals, international organizations, etc., and, ultimately, for obtaining and maintaining the credibility and legitimacy of international justice as a whole.

7. The analysis of the dysfunctions observed in the institutions of international justice, which also have the potential to negatively affect their legitimacy, indicates that they can be seen as essentially related to the fundamental principles of justice. For the purposes of a real global politico-legal order, respect for the fundamental principles of justice can be framed as a distinct criterion for assessing the legitimacy of international courts.

8. Justice in the paradigm of cosmopolitanism is a justice that aims at ensuring the rights, interests and welfare of all 'citizens of the world' in their relationship with justice through systems, institutions and acts of justice that are based on the principles of access, independence, impartiality, procedural justice, efficiency, effectiveness and public confidence in the courts, enshrined in law and applied at all levels of manifestation, from the global to the national, so that every individual benefits from an adequate administration of justice.

In the context of what has been investigated and argued in the thesis, the following recommendations can be considered:

1. A proposal is advanced for a minimal systematization of the fundamental principles of justice and its unitary global, regional and national legal enshrinement. It is recommended, *de lege ferenda*, the adoption of a legislative text such as: ‘Justice is based on the principles of access, procedural fairness, independence, impartiality, efficiency, effectiveness and public confidence’, at international, regional and national level.

2. It is recommended to use and build on the fundamental principles of the justice systems in clarifying, strengthening and realizing the standards of ensuring the rule of law.

3. It is recommended to introduce the principle of procedural justice or procedural fairness in procedural codes and to ensure compliance with it.

4. More attention needs to be paid to the terminology used in doctrine and legislation regarding notions such as independence/impartiality, efficiency/effectiveness. It is also recommended, as a further line of study, to carry out a comprehensive research on the notion of ‘effectiveness’ of justice, including its relationship with the notion, requirement and principle of ‘efficiency’.

5. It is recommended, as a research direction, to adequately study, in the Republic of Moldova and Romania, the standards of procedural justice in the subjective sense, with a view to strengthening public confidence in the justice system, as well as the effectiveness of justice.

6. It is recommended that the fundamental principles of justice are recognized as criteria for assessing the legitimacy of international and national institutions of justice, which would also facilitate their practical application.

7. In the process of systematizing and enshrining the fundamental principles of the justice system, it is recommended that as many international and national actors as possible are involved, in the spirit of democratizing decision-making processes. An appropriate model of participation may also represent a direction for future research.

8. It is desirable to ensure adequate means for the direct participation of individuals and other entities in international justice mechanisms, for instance, by identifying manners of selecting international judges that are as least politicized as possible, such as by designing and establishing independent selection bodies composed of specialists, or by increasing the theoretical and practical steps towards the establishment of a permanent international human rights court (along the lines of the European Court of Human Rights, with binding jurisdiction).

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## ANNOTATION

### Lavinia Andreea Bejan, “Justice in the Paradigm of Cosmopolitanism”, PhD thesis in law, Chisinau, 2025

**Thesis structure:** introduction, four chapters, general conclusions and recommendations, reference list of 284 titles, 222 pages of basic text. The results have been published in 12 scientific papers (3 chapters in joint volumes, 3 scientific articles, 6 publications in conference volumes), and 1 more paper is currently being evaluated for publication in a volume of conference proceedings.

**Keywords:** fundamental principles of justice, cosmopolitanism, procedural justice, legitimacy, international justice.

**Aim of the thesis:** to research the complex nature of the principles of the justice system in the key of the cosmopolitanism paradigm, in order to exemplify the advisability of enshrining unitary principles of contemporary justice systems.

**Research objectives:** to examine the problematic of justice and the principles of justice systems through the lens of contemporary approaches to justice; to explore the paradigm of cosmopolitanism in order to determine its scientific authentication in the legal field and its connections to the legal field; to advance, substantiate and place in the scientific circuit the notion of procedural justice and to clarify the manner in which it contributes to legitimizing the delivery of justice; to contextualize the global legal order, as an effective manifestation of cosmopolitanism, through the lens of the issue of legitimacy; to identify, systematize and differentiate the fundamental principles of any justice system, be it national, regional or international; to analyze the recognition and reflection of the standards of justice in the global legal order, with application to international courts; to instrumentalize the recognition and enshrinement of the fundamental principles of justice as a criterion in assessing the legitimacy of international courts.

**Scientific novelty and originality:** the interdisciplinary approach of the principles and values of the justice system through the lens of contemporary cosmopolitanism; consolidating, in the scientific space of Republic of Moldova and Romania, the concept of procedural justice; distinguishing the elements that can support a “cosmopolitanism of the principles of justice”; identifying and systematizing the fundamental principles of any justice system and considering them in relation to the procedural justice approach; the reconceptualization of the legitimacy of international courts by introducing, as a criterion of evaluation, the manner in which the principles and values of justice are ensured and respected; instrumentalizing this proposal through the vision of an adequate cosmopolitan justice.

**Achieved result that contributes to solving an important scientific problem:** assessing the possibility of unitarily systematizing and recognizing the fundamental principles of the justice system in the international legal space by analyzing these principles in the context of the contemporary cosmopolitanism paradigm, determining both the reflection of protecting the rights of individuals, as a global reference point, as well as a greater legitimacy of international judicial institutions.

**Theoretical significance:** bringing, in the doctrine of Republic of Moldova and Romania, certain contemporary concepts and theories of major relevance for the legal field; identifying relational elements between habitual concepts, such as rule of law or independence of the judiciary, and concepts of great novelty, such as the criteria of procedural justice, the principles of the justice system and the legitimacy of institutions; systematizing the standards and proposals regarding the principles of the justice system; reshaping the legitimacy of courts through the principles of justice.

**Applicative value:** formulating viable solutions for facilitating a uniformization of the principles of the justice system within the international and domestic legal and institutional framework, with positive effects on ensuring equal and fair justice for all individuals; shaping effective proposals for achieving greater institutional legitimacy in the international and national adjudicative field.

**Implementation of scientific results:** scientific publications of interest to the actors involved in the principled development of justice, theorists, practitioners, etc.

## ADNOTARE

### Lavinia Andreea Bejan, „Justiția în paradigma cosmopolitismului”, teză de doctor în științe juridice, Chișinău, 2025

**Structura tezei:** introducere, patru capitole, concluzii generale și recomandări, bibliografie din 284 titluri, 222 pagini de text de bază. Rezultatele obținute sunt publicate în 12 lucrări științifice (3 capitole în volume colective, 3 articole științifice, 6 publicații în volumele conferințelor), 1 altă lucrare fiind în curs de evaluare pentru publicare în volumul conferinței.

**Cuvinte-cheie:** principii fundamentale ale justiției, cosmopolitism, dreptate procedurală, legitimitate, justiție internațională.

**Scopul lucrării:** cercetarea caracterului complex al principiilor sistemului de justiție în cheia paradigmei cosmopolitismului, în vederea exemplificării oportunității consacării unor principii unitare ale sistemelor de justiție contemporane.

**Obiectivele cercetării:** examinarea problematicii justiției și principiilor sistemelor de justiție prin prisma abordărilor contemporane ale dreptății; explorarea paradigmei cosmopolitismului pentru a determina autentificarea sa științifică în câmpul juridic și raporturile sale cu câmpul juridic; înaintarea, argumentarea și plasarea în circuitul științific a noțiunii de dreptate procedurală și clarificarea modului în care aceasta contribuie la legitimarea înfăptuirii justiției; contextualizarea ordinii juridice globale, ca manifestare efectivă a cosmopolitismului, prin filtrul problemei legitimității; identificarea, sistematizarea și diferențierea principiilor fundamentale ale oricărui sistem de justiție, național, regional sau internațional; analiza recunoașterii și reflectării standardelor justiției în ordinea juridică globală, cu aplicare la nivelul instanțelor internaționale; instrumentalizarea recunoașterii și consacării principiilor fundamentale ale justiției drept criteriu în evaluarea legitimității instanțelor internaționale.

**Noutatea și originalitatea științifică:** abordarea interdisciplinară a principiilor și valorilor sistemului de justiție prin prisma paradigmei cosmopolitismului contemporan; consolidarea, în spațiul doctrinar din Republica Moldova și România, a conceptului de dreptate procedurală; distingerea elementelor ce pot susține un „cosmopolitism al principiilor justiției”; identificarea și sistematizarea principiilor fundamentale ale oricărui sistem de justiție și considerarea lor prin raportare la abordarea dreptății procedurale; reconceptualizarea legitimității instanțelor internaționale prin introducerea, drept criteriu de evaluare, a modului în care sunt asigurate și respectate principiile și valorile justiției; instrumentalizarea acestei propuneri prin viziunea unei justiții cosmopolitiste adecvate.

**Rezultatul obținut care contribuie la soluționarea unei probleme științifice importante:** evaluarea posibilității sistematizării și recunoașterii unitare a principiilor fundamentale ale sistemului de justiție în spațiul juridic internațional prin analiza acestor principii în contextul paradigmei cosmopolitismului contemporan, determinând atât reflectarea protejării drepturilor indivizilor ca reper de interes global, cât și o mai mare legitimitate a instituțiilor internaționale de justiție.

**Semnificația teoretică:** aducerea în planul doctrinei din Republica Moldova și România a unor concepte și teorii contemporane cu relevanță majoră în câmpul juridic; identificarea elementelor relaționale dintre concepte uzuale, precum preeminența dreptului (statul de drept) ori independența justiției, și concepte de mare noutate, precum criteriile de dreptate procedurală, principiile sistemului de justiție și legitimitatea instituțiilor; sistematizarea standardelor și propunerilor cu privire la principiile sistemului de justiție; reconfigurarea legitimității instanțelor prin intermediul principiilor justiției.

**Valoarea aplicativă:** formularea unor soluții viabile pentru facilitarea unei uniformizări a principiilor sistemului de justiție la nivelul cadrului legislativ și instituțional internațional și național, cu efecte pozitive asupra asigurării unei justiții egale și echitabile pentru toți indivizii; conturarea unor propuneri efective pentru obținerea unei mai mari legitimități instituționale în planul procesual internațional și național.

**Implementarea rezultatelor științifice:** publicații științifice de interes pentru actorii implicați în dezvoltarea principală a justiției, teoreticieni, practicieni etc.

**LAVINIA ANDREEA BEJAN**

**JUSTICE IN THE PARADIGM OF COSMOPOLITANISM**

**551.01 GENERAL THEORY OF LAW**

Summary of PhD Thesis in Law

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