IDEA FINAL CONFERENCE

Artificial Intelligence, Labour Law and Access to Justice

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When are two cases legally similar? Predictive justice and its limits in labour dismissal disputes

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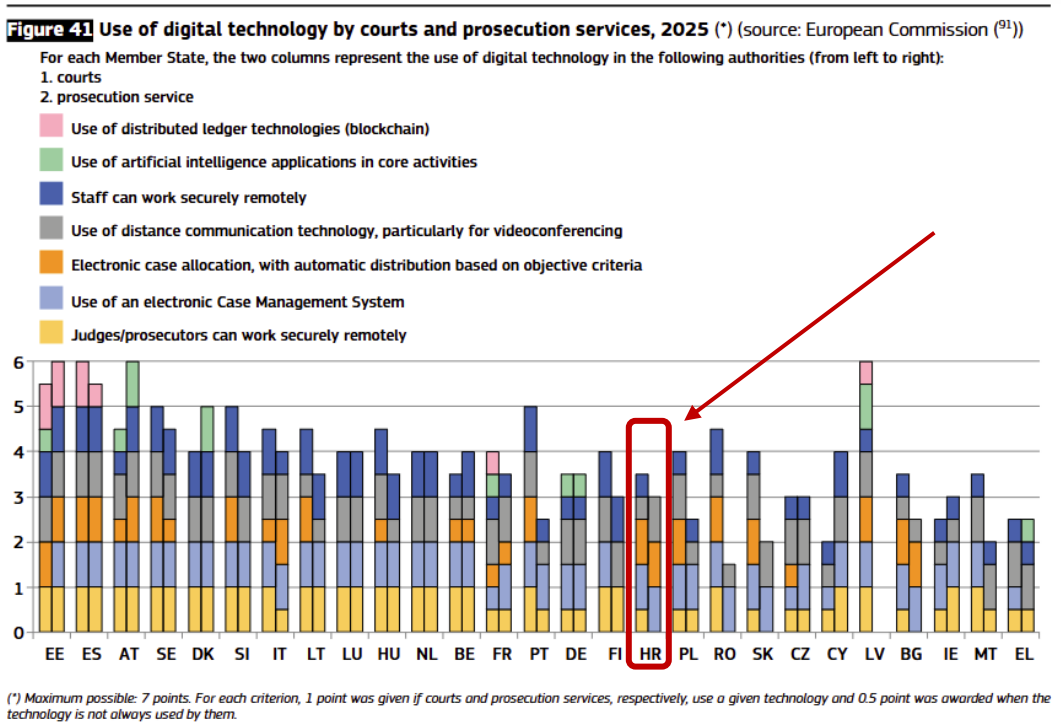
- Faculty of Law University of Zagreb -

- What can be predicted in labour disputes – identification of potential predictive targets

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Current status: infrastructure

- Factual hurdles for introduction – digitalization, half-done reforms…
- EU Justice scoreboard – Croatia scores mid-to-lower half
- Legislation – no considerable problems expected

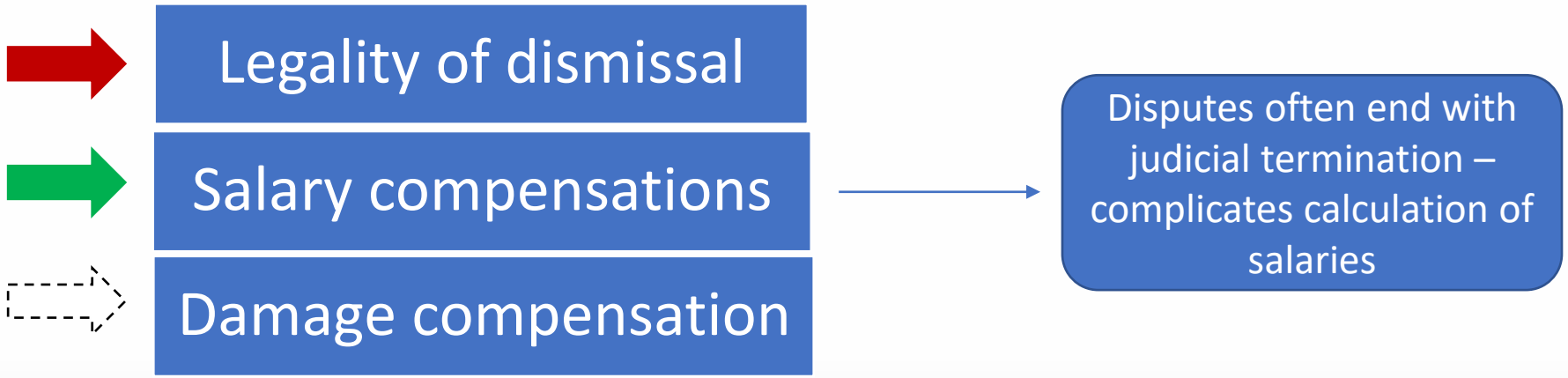


Source: EU Justice Scoreboard for 2026; URL: [EU Justice Scoreboard - European Commission]

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Predictive targets

- Costs – relatively simple (fixed lawyer's fee, no court fee, expertise?)
- Duration – variations possible (legal deadlines)
- Complexity, issues and hurdles – most likely
- Outcome?



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Labour dispute

Limits of predictive justice

- Dismissal
  - **Extraordinary** (serious breach of duties or other important reasons)
  - **Ordinary**
    - Business-related reasons – social criteria (!)
    - Personally conditioned
    - Breach of duties
  - Termination by agreement

- Procedure before dismissal
  - 15 + 15 + 15 deadline
  - Notice period

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Labour dispute

Limits of predictive justice

- Salary compensations
  - **Unlawful dismissal** (starting point) – employee entitled to payment of salaries + unpaid benefits
  - Severance payment
  - Easy to calculate – BUT precision depends on inputs and duration (all applicable regulations)

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Labour dispute

Limits of predictive justice

- Damage compensation
  - Different scenarios:
  - Employer → Employee
    - Unlawful dismissal + employee seeks court termination – 3-8 salaries
  - Employee → Employer

- Damage amount can be predetermined (no relation to statistics)
- Special regulations can set up specific rules for reduction of damage
- Immaterial ↔ Material damage

Prerequisites for liability:

Subjects + Damage + Action + Causal link + Fault or strict liability

Prescription period

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Labour dispute

Limits of predictive justice

Decisive nuances:

- Details that alter the understanding of the dispute
- Open-ended standards (serious breach, good faith, due care, proportionality…)
- Other specific circumstances or special regulations
- Factual similarity ≠ Legal similarity ≠ Predictive similarity

- Problem of quantity? ‘Big data tragedy’[1]; yet crucial facts are obfuscated

1. Stazi, A., *Legal Big Data: From Predictive Justice to Personalized Law,* Comparative Law Review, 11(2), 139-158

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The story of 4 „different” cases

- Dismissal for economic reasons -

- Case 1 (Pr-2/25; MC Dubrovnik)
  - Teacher (mother) fired as surplus
  - Union rep. refused to consent
  - Dismissal **unlawful** – ranking not correct
- Case 2 (Revr-224/05)
  - Teacher (also a mother) fired as surplus
  - Union rep. refused to consent
  - Dismissal **lawful**
- Case 3 (Pr-1210/20; MC Split)
  - Teacher (mother) fired as surplus
  - Works council provided consent
  - Dismissal **lawful**
- Case 4 (Revr-632/06)
  - Teacher (mother) fired as surplus
  - Unknown whether consent was sought / required
  - Dismissal **lawful**

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Written warning

- Prerequisite for dismissal (breach of duties) -

- Highly circumstantial – a key step before dismissal, BUT failure to provide a written warning does not automatically make dismissal unlawful:
  - Not needed but helpful in case of extraordinary dismissal (Revr-469/13)
  - If breach is evident – no need for written warning (Revr-455/07)
  - Erroneous warning – cannot be challenged – but the employee can challenge it in challenging the dismissal (Revr-363/03) – calls for a change in doctrine?
  - How long can a warning represent a basis for dismissal?
  - Basis for dismissal different from the warning (Rev-38/19)

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Limits of predictive justice

Strong points

- Reduction of information assymetry – employer ↔ employee
- Costs, hurdles, potential benefits (in the outcome)

An excellent basis for negotiation or mediation



- Granularization or personalization of justice[2]

Weak points

- Seems more applicable in cases with objective and specifically determined legal prerequisites
- Open-ended standards – decisions often based on subjective evaluation of judges
- Parties „twisting" the facts
- Multitude of regulations that often change, changes in the court practice

2. Williams, S., *Predictive Contracting*, Columbia Business Law Review, 2019, 2, 621-695
3. De Franceschi, Busch, *Granular Legal Norms*

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Thank you for your attention!

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