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### **Argumentum a contrario and Implicatures in Law**

In the Croatian legal science, *argumentum a contrario* is often described as being a logical argument. For example, it is said that from the Article 387., para. 2. of the Croatian Criminal Procedure Code („Any person of age may be present at the trial.“), it can be logically (*a contrario*) derived to no underage person may be present. *Prima facie*, this provision could be translated into logical form by using a conditional which would render the „derived“ norm clearly invalid since from adults being allowed to trial, it certainly does not follow that minor are not. Yet, it seems clear that any lawyer or judge who would reach this conclusion would, quite simply, be mistaken. This presentation aims at explaining this intuition.

Obvious choice seems to be the theory that aims to explain this phenomenon in everyday conversation, H. P. Grice's theory of implicature. For Grice, the chief goal of most communication is the cooperative exchange of information, which is governed by conversational maxims for securing its efficient achievement. In virtue of these maxims is the speaker considered committed to certain content, over and above what one asserts, called implied content.

The plausibility of applying this theory to the legal system depends on the communication between the legislature and courts indeed being cooperative. Andrei Marmor doubts this and considers the communication in the legislature and between the legislature and the courts to be strategic. Strategic conversation is characterized by a misalignment of interest between the parties and a certain degree of uncertainty about adherence to the maxims of conversation. In other words, speaker has an interest in trying to imply more than he would be willing to commit himself to, or would deny that he is committed to anything beyond what his words literally mean. The hearer's interest is maintaining some plausible deniability of the uptake of the implication, acting as if he did not grasp or hear it. In the context of legal system, strategic speech is present in the legislature during the legislative process because legislators try to agree on the wording of the law, while trying to advance their own legislative agendas. As a result of this it becomes difficult to determine which aspects of the legislative process are relevant to determining the implicated content of the legislative speech and which aspects ought to be ignored. Furthermore, these difficulties enable the court itself to engage in strategic communication with the legislature, thus giving courts a greater power in determining legal results.

Communication between courts and the legislature in systems which are not characterized by such strategic communication during the legislative process might be much more cooperative. This is exactly the case with the Croatian legal system and, presumably, most other parliamentary democracies. Legislative process in Croatia can hardly be called one where legislative results are a matter of hard-fought compromise. Moreover, prevailing political ideas about the proper relationship between courts and the legislature determine that the right interpretative technique is the one where implicatures are taken as content which ought to be realized by the courts.

Finally, these arguments demonstrate the difficult position of the national courts in the context of the EU. Court of Justice of the European Union, unlike the national parliaments, communicates strategically. Therefore, relying on the implied content in its decisions might not make sense.