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Section III.

International Law

Friday, June 25, 2021

Online on Zoom

Keynote speakers:

Assistant professor **Andreea Stoican**, *Faculty of Law, Bucharest University of Economic Studies*

Associate scientific researcher **Cristina Elena Popa Tache**, *Institute of Legal Research of the Romanian Academy*

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SCIENTIFIC PAPERS

VENICE COMMISSION: THE ROLE IN THE PROCESS OF INTERNATIONAL AND NATIONAL LAW INTERPRETATION

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Abstract

The article aims to study the Venice Commission's role as one of the leading international law interpreters. This role has gradually strengthened in the process of scientifically substantiated promotion of legal norms and standards concerning democracy, human rights, and the rule of law. Using system-structural, formal-legal, comparative-legal, empirical, and anthropological methods, one has drawn essential conclusions regarding implementing the Venice Commission's interpretive activities. As a result, it has been proved that the nature of the Venice Commission's interpretive activity demonstrates the existence and growing contradiction between the prevailing interpretive practice at the supranational level and the provisions of the classical theory of law interpretation. Ukraine's ongoing dialogue with the Venice Commission is vital to develop and improve legislation, especially laws, implementing new constitutional provisions on justice, the drafts of which have already been designed or are being developed, as well as indubitable compliance with these laws. Venice Commission's general documents should be for the Ukrainian legislator the source to base the preparation of relevant legislation.

SPACE FORCES AND THE PURPOSE OF EXCUSE FOR THE MILITARIZATION OF OUTER SPACE: AN INTERNATIONAL CRIME AGAINST PEACE

Professor Adnan JASHARI
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Assistant professor Vedije RATKOCERI
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Abstract

Triggered by the recent establishment of the U.S. Space Force, the concept of developing national space forces raises many questions concerning peace and humanity, which simultaneously contradict the

guarantee of peace and safety. It is generally assumed that the militarization of outer space manifested by space forces would represent a symbol of the threatening power and dominance of space-faring nations. Considering outer space as a contemporary war zone, however, would legally represent a violation of the Outer Space Treaty, even though the treaty itself contains major loopholes legally allowing hostile extraterrestrial activities. The main purpose of this paper is to legally analyze the militarization of outer space from two contrasting perspectives: national security versus international crime against peace, where national predispositions that lead to the initiation of extraterrestrial wars of aggression are recognized as international crimes against peace, meaning that space forces would likely run afoul of international space law.

TERRITORY OF STATE AS INDIVISIBLE WHOLE AND THE NORMS OF CONSTITUTION

Professor Leonid TYMCHENKO
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Associate professor Valerii KONONENKO
V. N. Karazin Kharkiv National University, Ukraine

Abstract

In the study of the substantive legal grounds for the resolution of territorial disputes, the judicial form is characterized by the priority of the grounds of legal title (agreemental title, uti possidetis) based on international treaties, or legal acts of the state possessing sovereignty over the grounds of actual title (effective occupation and governing of the territory, tacit recognition, prescriptional acquisition). Like the initial occupation, the acquisition of territory on the basis of prescription has a long and effective occupation of territory as a prerequisite. The possession of alien or contested territory without a treaty may be legal and enforceable only when there is an inviolable, uninterrupted and undisputed exercise of possession. Where the disputable territory is in fact administrated by a state other than that which holds title, the International Court of Justice gives preference to the title holder.

LEGAL CHARACTERISTIC OF EU-KOSOVO RELATIONS

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Abstract

This paper will analyze the process of Europeanisation of the legal system of Kosovo and presents a dynamic impact of the European Institutions and Missions in Kosovo which were introduced and operate even Kosovo officially is not recognized by Eu institutions and all Eu member states. This paper will be focused on analyzing the legal treatment and sui generis relations between EU and Kosovo, especially during the UNMIK time, with EULEX mission, difference of singing and content of SAA, Office of Specialist Chambers of Prosecutors and Judges and including the recommendations for legal cooperation in certain circumstances during the fulfilling above mention obligations and integration process. The main question addresses by this article is how the EU has influenced the rule of law in Kosovo and international legal

cooperation. Also, results are that this is sui generes legal cooperation and helps not to stop integration process and research strategies for the further cooperation. I will test this hypothesis by measuring inclusion and application of the main European standards in cooperation with the third states. Also, comparative method will be used finding similarities and differences with other cases.

EUROPEAN COOPERATION RATHER THAN EU INTEGRATION. ICELAND AND THE EUROPEAN UNION

Professor M. Elvira MÉNDEZ-PINEDO
University of Iceland

Abstract

Why some European countries prefer cooperation than integration? In 2019 Iceland celebrated twenty-five years of cooperation with the European Union (EU) under the European Economic Agreement (EEA). Since 1992-1994, this country has preferred international/regional cooperation rather than full supranational integration. This study summarizes some important dates and facts which explain some of the most important reasons why integration in the EU does not seduce Icelanders. Methodology is both descriptive (informative) and analytical (critical comment). All legal issues are approached from a wider economic, political and sociological context (law in context approach). A provisional finding is that the European legal integration project (and general pooling of sovereignty) will probably never fully convince Iceland for historic, geographic, legal, political and economic reasons. Lacking a history of nation-wars and situated geographically as the ultra-periphery of Europe, for this small nation rich in natural resources and scarce in population; supranational integration is neither a political imperative nor an economic necessity in ordinary circumstances. With the exception of the years 2009-2013, after a major financial crisis when Iceland was a candidate country to the EU…. the EEA Agreement and European cooperation are preferable to full EU legal integration unless a situation of national emergency happens again…

NATIONAL COURTS AS AN ACTOR IN POST-INVESTMENT ARBIITRATION AWARD: INDIAN PERSPECTIVE

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Abstract

The great Greek philosopher Aristotle remarked, "and the end is the chief thing of all". Indeed, an apposite observation in the province of investment arbitration. Because winning a final and binding award in the ISDS is not the end since a few conspicuous issues appear in the post-investment award stage. As the ISDS tribunals lack authority to enforce investment awards, the national courts have emerged as significant actors in the post-investment award phase. The national courts might either expedite or impede the post-investment award proceedings. It is to be kept in mind that the distinctive features of the self-contained regime's ICSID awards absent in Non-ICSID awards. While ICSID awards are not subject to review by national courts under ICSID Convention's self-contained regime, non-ICSID awards do not get such

protection and are subject to judicial scrutiny. Many times, such judicial crusading against an investment award under the blanket of authority to review, the national courts could violate a few rules of a BIT such as denial of justice, or general principles of international law such as rules of state responsibility, states have experienced in the past. The paper is aimed at exploring the practice of Indian judiciary- whether Indian judiciary expedites or delay the post-investment award proceedings. An assessment will be made of Indian practice, and the author will contribute to improving the same if it lags behind international standard practice. The author will employ the classical approach or doctrinal research to analyse the international treaties – bilateral or multilateral, national legislation, case laws to arrive at his proposed conclusion.

THE SPECIAL AND DIFFERENTIAL POLICY MEASURES FOR THIRD WORLD COUNTRIES IN WTO's AGREEMENT ON GOVERNMENT PROCUREMENT

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Abstract

With the emergence of the multilateral trade regime, third-world countries' active participation became a crucial challenge. To facilitate their participation while catering to their developmental, Special, and Differential Treatment (S&D), policy measures were incorporated in 1971. Today, S&D measures have become central features of all WTO agreements. In the Agreement on Government Procurement (GPA), S&D policy measures play a critical role as membership to GPA is optional to WTO members. These policy measures are available in technical cooperation, concessions, waiver, and other transitional measures for the new members, subject to their negotiations with other GPA parties before accession. These policy measures aim to offset the competitive advantage of GPA member countries over third world states and address challenges they may face in and after joining the Agreement. Now, the question is whether these S&D policy measures have been able to evolve in accordance with the changing developmental needs of third-world countries. Whether these measures have facilitated increased participation/involvement of the third world countries in GPA. Whether the individual negotiation-based model has been able to achieve the desired results. This paper proposes to examine the efficacy of S&D policy measures incorporated in GPA in the liberalization of the international public procurement market for third-world countries. In this background, the first section will provide a detailed account of the S&D in the WTO system. The second section will be focused on the S&D policy model incorporated in the GPA text to improve. The third section aims to explore and examine the measures adopted to incentivize participation in GPA and their effectiveness. To conclude, the fourth section will underline real challenges that need to be addressed to achieve the object of these policy measures and make some specific recommendations to ensure third-world countries' active participation.

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BREXIT – AN INQUIRY INTO THE SOCIOECONOMIC AFTEREFFECTS FROM AN INTERNATIONAL AND EUROPEAN PERSPECTIVE

Associate professor Nives MAZUR KUMRIĆ
Minister Plenipotentiary at the Permanent Representation of the Republic of Croatia to the EU
PhD. Ivan ZEKO-PIVAČ
Minister Counsellor at the Permanent Representation of the Republic of Croatia to the EU

Abstract

The withdrawal of the United Kingdom from the European Union (Brexit) has attracted wide scholarly and public attention in the past five years, i.e. since the 2016 referendum when people in the UK voted to leave the EU. This paper provides a fresh outlook on the latest positions of the European Union and the United Nations regarding the socioeconomic and political consequences of Brexit. A special emphasis is put on the ongoing codification initiated by the European Commission in December 2020 to counter the adverse effects of Brexit in the EU Member States by providing them with appropriate allocations to cover financial losses in the area of trade, fisheries, employment, customs and others. Apart from careful examination of the Proposal for a Regulation establishing the Brexit Adjustment Reserve, the paper also investigates a selected number of other provisions regulating Brexit's direct effects on citizens and economies. Although Brexit is primarily seen as a matter of European provenance, its impact is additionally assessed from the perspective of the international community as a whole. The paper represents legal-dogmatic research which explores current positive law, doctrine, principles and concepts with the aim of obtaining a detailed understanding of the latest legal framework and trends appertaining to Brexit.

EUROPEAN PROTECTION OF RETAIL INVESTORS IN INSURANCE-BASED INVESTMENT PRODUCTS: PRODUCT INTERVENTIONS UNDER PRIIPS

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Abstract

The main goal of the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs) is to enhance investor protection standards for retail investors, in particular enabling them to better understand and compare the key features, risk, rewards and costs of different PRIIPs, through access to a short and consumer-friendly Key Information Document (KID). The regulation does not regulate advertisement information and does not aim to intervene in the measures associated with particular products other ways than in connection with the investment component. However, it contains authorisation for both EIOPA and the national regulators to set up remediation measures and restrict the distribution of particular products with investment component or particular types of financial activities. PRIIPs thus presents a kind of negative regulation of product development. The envisaged intervention mechanism is similar to those established in the framework of MiFID II and MiFIR. The authors mainly use the research

methods of legal comparison, critical analysis, synthesis and deduction. The objective of the study is to clarify the impact of the above-mentioned rights of the regulatory bodies to the autonomy of will and the freedom of contract. The result of this study implies that the restrictive measures envisaged by PRIIPs may be applied only ultima ratio and are associated with private law liability.

APPLICABILITY OF E-PRIVACY DIRECTIVE TO NATIONAL DATA RETENTION MEASURES FOLLOWING INVALIDATION OF THE DATA RETENTION DIRECTIVE

Associate professor Nina GUMZEJ
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Abstract

The paper analyses rules pertinent for examination of national data retention measures regulating data processing activities of providers of electronic communication services following invalidation of the Data Retention Directive in 2014, on which subject the CJEU issued a total of five judgments up until June 2021. Focus of this analysis is the issue of applicability of EU law as interpreted in the CJEU case law, most specifically Article 15, paragraph 1 of the ePrivacy Directive containing legal safeguards for the restrictions of rights and obligations in that directive on the confidentiality of communications as well as the processing of traffic and location data. Such restrictions are as a rule manifested in different national data retention measures, which may pursue law enforcement and public security, as well as national security objectives. This examination is supported also by analysis of rules on the scope of ePrivacy Directive and its relationship with the general personal data protection framework. Overall findings in the paper provide a frame for further detailed research on the topic of future regulation of retention measures at national/ EU level (Proposal for ePrivacy Regulation, possible new EU data retention legislation) and a comparative assessment of relevant CJEU jurisprudence with that of the European Court of Human Rights in respect of compatibility of retention measures with the guarantees of fundamental rights and freedoms and allowed restrictions thereof in the European legal system.

IMPACT OF SCIENCE AND TECHNOLOGY ON HUMAN RIGHTS

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Abstract

Throughout history, science and technology were rudimentary in the development of human beings. Currently, human rights are increasingly being regarded as a starting point for estimation and judgment of legal conformity and impact of science and technology regulations. This is validated by the growing doctrinal knowledge on the interaction between human rights and science and technology, international and national science and technology regulations that are based upon fundamental rights, as well as consistent jurisprudence. On the other hand, there is unrest about the impact that the lack of suitable and effective science and technology regulation can cause on the guarantee of human rights. This paper surveys current challenges in the field of science and technology and human rights, while examining critical

scholarly literature and relevant case-law. Although these challenges are in some cases controversial or complex, the paper tries to clarify several aspects of the interaction between human rights and the progress of science and technology, as well as underlines the need to balance the development of fundamental rights, by elucidating doctrinal issues and incorporating solutions provided by jurisprudence.

THE HUMAN RIGHT TO SECURITY IN THE IMPLEMENTATION OF THE CONCEPT OF THE "RIGHT TO HEALTH PROTECTION"

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Yaroslav Mudryi National Law University, Ukraine
PhD. Olena VOLIANSKA
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Abstract

Legal support of human security in the field of health care includes the guarantee, protection and protection of rights and freedoms in the field of health care, which is the main function, as well as the goal and duty of the state. This paper describes certain aspects of the legal regulation of the implementation of the "human right to security in the health sector" and the problems of its enforcement. The research methodology is based on a system of methods of the philosophical, general scientific and special scientific level. The main goal of this scientific article is to define the concept, principles, types and directions of implementation of the "human right to safety" in the concept of "the right to health protection". The general principles of the implementation of the "human right to security in the health sector" are disclosed. It is emphasized that the legal mechanism for the implementation of the "human right to security in the healthcare sector" is the activity of legal entities, lawmaking and law enforcement agencies, and the existing legal norms governing their activities in the healthcare sector. The investigated human right to safety should be understood as a complex of rights related to the protection of the patient's legitimate interests in the healthcare sector from unlawful encroachments and threats. The author's understanding of the definition of "patients' right to safety". It is argued that human security in the field of health care belongs to the basic needs of a person - the implementation of this need is determined by the level of development of a country, its economic and cultural components, the level and quality of life of a person living in this country, an effective health care system. It is concluded that the main goal of legal ensuring human security in the healthcare sector is to create the minimum necessary (safe) conditions for the implementation of these rights and obligations when receiving medical services.

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CONVENTION FOR INTERNATIONAL SALE OF GOODS AND THE INTERNAL LAW

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Abstract

Vienna Convention is one of the most important conventions on trade of goods. It is one of the unified conventions on transport of goods from a country to the other. This convention had a unification effect towards unifying the obligatory law in the entire world. It has directly influenced the international trade and the transport of goods as well as the relationships between countries on the trade and the transport. It had influenced a lot the interstate relationships related to the free market and the customs and their unification, especially those between neighboring states that aspire membership in various international organizations. Hence it has achieved to unify the civil law in the entire world which was not achieved by drafting a Civil Code in Europe even though it was an attempt. Vienna Convention has its structure which is divided into several articles that are part of most of the domestic legislations in the countries of Europe. The author using methods of comparison analysis, systemic analysis and the historical analysis tries to analyze the impact of Vienna convention in the Kosovo positive domestic legislation.

PROMOTING EU VALUES IN INTERNATIONAL AGREEMENTS

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Assistant professor Janka PÁSZTOROVÁ
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Abstract

Within the framework of external relations policy as a subject of international law, the European Union has the right to negotiate, conclude, amend and terminate international agreements on its own behalf, i.e., it has competences granted on it in this area by the Treaties. International agreements concluded at European level are results of an agreement between parties and belong to the sources of European Union Law. Current practice in concluding international agreements at the level of the European Union proves that trade and investment agreements contain provisions concerning civil society, labor relations and environment. The scientific study opens a discussion on a new model of international agreements which, in addition to trade relations, contain provisions on the social status of employees of the parties and on sustainable development. This new model of international treaties is supported by all Member States. The systems analysis shows that the European Union no longer acts as an economic-integration grouping towards third countries, but as an international organization that takes into account high level of environmental protection and the protection of employees' industrial relations.

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LEGAL ASPECT OF LETTER OF CREDIT

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COMPLIANCE WITH THE LEGAL TREATMENT STANDARDS OF INTERNATIONAL INVESTMENTS DURING THE GLOBAL ECONOMIC CRISES. BETWEEN YES AND NO

PhD. Cristina Elena POPA (TACHE)
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Abstract

International investment are under the protection of international law by setting standards of legal treatment which the governments of the host states have undertaken to comply with in their investment treaties. Therefore, these standards of protection must be respected even in times of crisis, regardless of the reason that generated it, the policy of attracting and maintaining an investment climate favorable to international investment being an attribute of each state. Nothing can stop an investor from changing the geography of his business, in order to protect the investment made. The issue of violation of one or more standards by states is one of the most debated at the moment, because the international arbitration practice has decisions to oblige states to significant compensation. In my study I used as a research method interdependent analysis and synthesis through analogies developed in a comparative method. At EU level, following the entry into force of the Treaty of Lisbon, FDI is now within the exclusive competence of the EU, which continues to fight to define a European investment policy that meets the expectations of investors and beneficiary states, as well as the objectives foreign policy and the EU's broader economic interests.

EUROPEAN COUNCIL - COUNCIL OF THE EUROPEAN UNION - COUNCIL OF EUROPE. COMPARATIVE STUDY

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Abstract

At present, in the period of rapid development of scientific and technological progress, it is impossible for states to exist without their interaction. The interaction between states is achieved through both economic and political relations. In the modern world, cooperation between states is achieved with the help of international organizations. International organizations not only regulate interstate relations, but also make decisions about the global problems of our time. The purpose of creating any international organization is to unite the efforts of states in one field or another: political, military, economic, monetary and financial and others. The purpose of this article is to study by comparison three European international organizations, in their diversity and their role in the international political process. To reveal how they

were formed, the historical evolution, the role and positions of these international organizations on the European scene. The study presents their legal personality, the analysis of the differentiation of concepts such as competence, authority and capacity of international organizations.

TRANSNATIONAL LAW — A NEW SYSTEM OF LAW?

Lecturer Alexandru BOSTAN
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Abstract

The paper presents the emergence and evolution of the concept of transnational law, from the Philip Jessup's 1956 novation to the latest approaches, mainly from the western legal scholarship. In the legal writings from Romania or Republic of Moldova, the phenomenon of transnational law remains unexplored or, at best, mentioned incidental as a synonym of a modern "lex mercatoria". Likewise, in Russian scholarship, research on transnational law bears a strong private imprint and ubiquitous reluctance may be noted. This article aims to discuss, from the perspective of legal pluralism, the loss of the state monopoly in law making, the pluralization of sources of legitimacy for transnational actors, and the reconsideration of the scope of the law, by de-territorializing it. Transnational law is seen thus not just a private regime, but as a system of normative law that transcends international or national law, acts in a distinct social space and addresses specific actors, not only private, but also public or hybrid. In Romanian legal knowledge this approach is missing.

LEGAL INSTABILITY IN CYBERSPACE AND OSCE'S MITIGATION ROLE

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Abstract

After the international legal community widely endorsed the application of international law to cyberspace, many open questions remain on the concrete interpretation of existing rights and obligations to the cyber realm. In pursuit of its mandate to promote human rights and conflict prevention, the OSCE can play a major role to support operationalization of international law and application of existing principles to cyberspace. This paper examines some key steps in the aftermath of the creation of norms of behavior, and transparency and confidence-building measures. After a brief analysis of the norm-creation process, this piece identifies several pressing cybersecurity challenges on the international landscape and offers suggestions for consolidating the voluntary non-binding norms States agreed upon. Using lessons learned from other domains, the analysis will focus on mechanisms of building further stability and transparency in cyberspace, in particular by reference to the due diligence principle and States' human rights obligations.

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THE FLEXIBILITY OF THE REGULATORY FRAMEWORK APPLICABLE IN INTERNATIONAL ARBITRATION AND THE INTERPLAY BETWEEN ITS COMPONENTS

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Abstract

This paper is a broad analysis of the norms applicable in international arbitration. Its purpose is to outline the way these norms interact, by reference to the characteristics of arbitration as an alternative dispute resolution method, mainly pertaining to party autonomy, but also considering elements outside of the parties' control. The research method employed is the comparative one. Nevertheless — since a detailed analysis of such aspects would exceed the limits of this exercise — no direct comparison will be made neither between commercial arbitration and investment arbitration, nor between institutional arbitration and ad-hoc arbitration, while the differences between the aspects pertaining to procedure and those applicable on the merits of the disputes will not be insisted upon. Rather, the focus will be on the overlapping issues. The results will highlight the advantages of corelating the applicable law with the arbitral rules, as well as with other relevant norms, such as mandatory norms (e.g., public policy - whether national, supranational, or transnational/international) on the one hand, and soft law instruments on the other hand.

PREVENTIVE ACTION ON POLLUTION OF WATERCOURSES WITH WASTE – A COMPARATIVE PERSPECTIVE OF THE MAIN INTERNATIONAL, EUROPEAN AND NATIONAL REGULATIONS

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PhD. student Stelian-Mihai MIC
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Abstract

The impact of pollution of watercourses with various types of waste – such as municipal, industrial or construction waste – is often irreversible, the full restauration to the initial state of affected water-courses not being always possible. Thus, prevention manifested in relation to the pollution of water-courses with waste becomes essential, being fundamental for ensuring the protection of this natural resource. In this context, this study undertakes to identify the most relevant international, European and national regulations applicable to watercourses located on the Romanian territory, the purpose of which is to prevent pollution of watercourses with waste. The main conclusions reached by the authors are in the sense that, while the international regulations offer a framework in which general obligations for states materialising the prevention principle are affirmed, the European regulations set specific directions within this framework. Further, the Romanian national legislation includes numerous obligations that can be considered as representing components of the prevention principle; however, in the authors' view, due to their fragmented character and lack of unity, they are not de-signed to offer a real protection against pollution of watercourses with waste.

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INTERNATIONAL CRIMINAL COURT, RESTORATIVE OR RETRIBUTIVE JUSTICE?

Lecturer Ioana - Celina PAŞCA
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Abstract

This study examines the impact of the rigors of international justice on a community accustomed with informal, "authentic" means of resolving conflicts. The elements of this impact are assessed in relation to the interaction between the traditional restorative justice and the retributive justice specific to the International Criminal Court, especially with regard to the conflict in northern Uganda, which is the object of a lawsuit pending before this court. National jurisdictions and the International Criminal Court cannot be analyzed as opposing, alternative institutions, but only as complementary institutions, acting to restore peace and maintain security. Justice and peace are common goals of both jurisdictions. Peace can only be restored through justice, be it national or international. By analyzing the principle of complementarity, and the role of national restorative measures, we conclude that their interference in the proceedings of the International Criminal Court is impossible, both in relation to the provisions of the Statute and to their nature, their character being eminently ethnic, tribal.

EUROPEAN LAW AND THE COMPETITION POLICY

PhD. student Oana Andreea ICHIM
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Abstract

We are aiming to stress which role the European Commission has in competition domain. It is generally known that this institution does several activities in reassuring an equitable competition for the Companies of the Member states meanwhile striving for the wellbeing of the consumers. We aim in this paper to identify which are the legal norms that applies in competition field and in which measure they are respected by those interested. At the same time, we try to identify the role of the European Commission in consolidating the European policy and those of the European Juge. Our Analysis is based mainly on the jurisprudence of the European Court.

CONTEMPORARY CHALLENGES REGARDING BULLYING BEHAVIOR. LEGISLATIVE PROVISIONS AND EDUCATIONAL EFFECTS

Assistant professor Tudorita GRADINARIU
„Alexandru Ioan Cuza" University of Iaşi, Romania

Abstract

This paper aims to highlight the main changes to the Romanian National Education Law on the prevention of bullying behavior. The increased incidence of violent acts among students required a

legislative framework focused on this type of behavior. Thus, the legislator emphasizes the prohibition of bullying in educational institutions and in spaces intended for education. At the same time, the importance of continuous professional training of teachers is emphasized in order to acquire the skills to identify bullying and to implement effective prevention strategies. In this context, we will present aspects of comparative law and analyze European legislation from the perspective of the role of the school in preventing and combating bullying (see Canada which implemented a similar law in 2012). The novelty of this paper derives both from the identification of strategies to prevent and combat bullying mentioned in national and international legislation, and from the presentation of the results of representative studies for this issue.

TAX FRAUD IN ECOMMERCE - IMPACT OF COVID-19 PANDEMIC IN ROMANIA AND EUROPEAN UNION

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PhD. student Roxana Adriana MITITELU
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Abstract

Over the recent years, tax fraud in ecommerce has increased significantly in the EU and Romania because of the continued growth in online transactions. The situation was exacerbated by the increase in the COVID-19 pandemic, which worsened the situation because many people were unable to shop physically and opted for online transactions. A survey by the tax collection revenue agency in Romania revealed that the online retailers did not pay VAT taxes for their sales because most sales were made in cash. The Romanian government hired additional inspectors and monitors to ensure al/online retailers are complying with the VAT regulations and paying their taxes. The research question was assessed by the evaluation of data on the VAT tax rate, losses of VAT revenues, and the value of the ecommerce transactions in the Romanian economy. Based on the multiple regression analysis, the authors analyzed the various variables associated with tax fraud: VAT tax rate, losses of VAT revenues, and the value of the ecommerce transactions. The results show that the tax fraud increased in Romania and the EU because of the losses of VAT revenues, growth in the value of ecommerce, and the higher VAT tax rate in the economy. The variables were statistically significant in influencing tax fraud in ecommerce.

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JUDICIAL EXPERTISE - TOOL FOR COMBATING TAX EVASION

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PhD. student Roxana Adriana MITITELU
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Abstract

The main aspects present: the role of expertise in carrying out the act of justice; the multidisciplinary nature of judicial expertise; dysfunctions found in carrying out the activity of judicial expertise; expert fees; urgency promoted as a matter of urgency of a normative act amending and supplementing the Government Ordinance no. 2/2000 regarding the organization of the activity of judicial and extrajudicial expertise.

LAW AND SECURITY: LEGAL AND INSTITUTIONAL ASPECTS

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Abstract

The paper aim is to analyse the legal aspect of the security domain and the role and institutions having competences in the domain.

THE IMPACT OF THE RECOGNITION AND ENFORCEMENT OF THE EUROPEAN CONFISCATION ORDER ON THIRD PARTIES OF GOOD FAITH

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Abstract

This study aims to bring to the attention of specialists the laudable approach of the Union co-legislator on the adoption of Regulation (EU) 2018/1805 on orders of unavailability and confiscation, a legal step taken to harmonize the legislation on the subject of analysis. The research methods used in our study are: a) the logical-concretized method by using the union and national framework norms in the matter of confiscation; b) the comparative method - in order to perform a comparative analysis of the main institutions of material and procedural law. We note, however, that the provisions of this Regulation are in accordance with the obligation to respect fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union (TEU) in the sense that fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms constitute general rules of Union law. The union norm that represents the theme of this study aims at ensuring the effectiveness of the recovery process of the assets derived from the commission of crimes, respecting the fundamental rights, especially of the third parties in good faith. Specifically, we refer to those exceptional situations, when

there are good reasons to believe that, based on specific and objective evidence, the recognition and enforcement of a confiscation order would lead to a manifest violation of a relevant fundamental right of a third party of good faith. For such a situation, the judicial authority of the executing State must reconsider the automatic recognition of the confiscation order, relevant being the fundamental rights, in particular, the right to an effective remedy, the right to a fair trial and the right to defence and not least the right to the guarantee of private property.

BRIEF CONSIDERATIONS ON THE COMPLIANCE WITH THE RIGHT TO FREE MOVEMENT WITHIN THE UNION SPACE UNDER THE CONDITIONS OF THE EU DIGITAL COVID CERTIFICATE

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Abstract

The current study aims to bring to reader's attention the arguments of supporting the communitarian initiative in the implementation of the electronic document – the EU Digital Covid Certificate, provided that it fully respects the fundamental rights of citizens, including the protection of personal data. We will thus try to demonstrate that the possession of a green electronic certificate will not be a precondition for free movement, and those who do not hold such a certificate will not be discriminated against in any way. The research methods used in this paper are: a) logical-concretized method by using the main legal instruments, opinions, recommendations, regulations; b) comparative method; c) sociological method. The result of the current article can be resumed in the meaning that the green certificate provides a solution for the EU to guarantee the fact that both the communitarian nationals as well as their family members and extra-communitarian citizens but who legally reside within the EU area, shall enjoy a digital instrument created to support free movement with the Union. This Union document transposed at the level of each Member State is the result of a coordinated and predictable "Union institutions – Member States" approach.

GENERAL ISSUES REGARDING THE RISK OF WATER POLLUTION

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Abstract

Global water resource protection policy has, over time, undergone a constant process of transformation and adaptation, in the sense that it has faced a number of challenges and uncertainties dominated by economic, political, cultural, climatic and to solve the problems generated by humanity through the actions taken for its survival and well-being on earth. For its welfare there has been a substantial increase in civilization, for some states, and an accepted technological and scientific progress, but which over time have unbalanced and degraded the environment and especially there have been massive pollution of water resources. This material discusses general elements on the risks of water

pollution with a summary classification of forms of pollution and a summary of the legal instruments governing the area in question, with a presentation of the risks to humanity and the environment in general. The protection against any forms of degradation and pollution of water resources is done by sustaining and streamlining the field with the involvement of all actors in the world, from the public to the private sector.

TOURISM IN THE EUROPEAN UNION IN THE CONTEXT OF THE COVID 19 PANDEMIC CRISIS

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Abstract

Tourism is based on the recent legal basis of the Treaty on the Functioning of the European Union, namely December 2009, given the importance of this area. Although it does not have a separate budget in the multiannual financial framework (MFF), it contributes significantly to the European Union's Gross Domestic Product and remains a good job seeker. The special measures at EU level, which have been taken in the field of tourism, concern: the interest of travelers and/or tourists, the interest of the tourism sector and regions. This area remains the most affected by the COVID 19 Pandemic; this is the direction in which actions and measures are directed in the EU Member States.