LEGAL TRADITION AND NEW LEGAL CHALLENGES

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TABLE OF CONTENTS

KEYNOTE SPEAKERS

Dr. Antonio Saccoccio*

ROMAN LAW, CODIFICATION, DECODIFICATION AND UNIFICATION OF THE LAW

Roman law, from its origins, has an evident propensity for universality. It is clearly manifested at the 'foundation' of the system, in the Constitutions with which Justinian accompanies the launching of the CJC (VI cent. A.D.), but it undoubtedly goes back as far as the Romans' identification of *ius gentium*, at the basis of which is recognized the '*naturalis ratio*'.

Statual-legalism has not been able to cut this umbilical cord with Roman law and with the natural reason underlying it.

Modern Codifications, both in Europe and Latin America and even in China (from 2021) are actually the fruit of this complex and long legal tradition, which goes back to the thought of Roman jurists as collected by Justinian. To use an effective image, we could say that civil codes and modern legal orders of each State are like islands, floating in the common sea of Roman law: Roman law touches all the islands, while allowing the islands their proper space of independence.

Roman law, in force even though no longer effective, is the driving force behind modern codifications, and must be cherished by modern legal jurists as a true common heritage of humanity.

The preservation of the values it represents, which revolve around the centrality of the human person (bona fides, aequitas, libertas, voluntas, etc.) represents the challenge that all of us, as jurists, must prove ourselves capable of taking up and defending.

Keywords: Roman Law, Codification, Decodification, Unification, *bona fides, aequitas, libertas, voluntas.*

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Dr. Iole Fargnoli*

THE ROMAN LAW OF ERROR BY PHILIPP LOTMAR AND HIS LOST LEGACY IN MODERN LAW

For decades the German-Swiss scholar Philipp Lotmar (1850-1922) has repeatedly and insistently focused on the subject of error in Roman law. In a monumental work, Lotmar set out to examine the countless relevant Roman sources in every area of law inside as well as outside the Corpus Juris Civilis, thus providing the material basis for his view on the doctrine of error in contract law. It was also a fascinating subject for him, he started his book with the imagine of a town looked by Faust in the masterpiece of Johann Wolfgang von Goethe, Mephistopheles is with Faust at the court of emperor Maximilian I in Augsburg: the chancellor says that the real world and our representation often are not the same. From far away everything looks tidy, but if someone is looking it closer, it is a world of error. The error is every aspect of life and the task of law is to find solutions, when it is present in the concrete cases.

But Lotmar couldn't publish his book before dying. His work has been slowed down or even interrupted, when he was attracted by labour law regulations and published his successful work on labour law in 1902 and 1908, becoming one of the fathers of labour law in Europe. Only after his labour researches Lotmar finally returned to the error, but was unable to publish it before his death. The 2000 pages in historical German handwriting were published posthumously as a book on two volumes after nearly one hundred years and were edited by me.

With his work Lotmar certainly aimed at solving the eternal question of the definition and effects of errors, in particular to what extent the contract is binding in the event of a error – until today one of the core questions of private law. But he wanted also to comment critically on doctrine of error by Karl Friedrich von Savigny (1769-1871), which also shaped the later work of codification not only in Germany and in Switzerland, but nearly in whole Europe.

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If Lotmar had published his book before the German and the Swiss codifications, his main work in Roman law could perhaps have had an impact on law of error in Europe. His research on the Roman sources would have had a lot to contribute in the area of misconceptions. Especially Lotmar offered solutions to the issue of dissent and error about the future that are often different from the modern one. However, he would certainly have welcomed the most famous provision of Swiss law on errors, Art. 24 (1) n. 4 Code of Obligation, through which the external error can also become considerable. It is a norm that even today could be a model for the law of obligation everywhere.

Keywords: Roman Law, Error, Philipp Lotmar, Swiss Code of Obligations.

347.78:271.222(497.11)

*Milan Andrić**

LEGAL EFFECT OF THE REGULATION ON COPYRIGHTS OF THE SERBIAN ORTHODOX CHURCH AND ITS ARCHBISHOPS (PATRIARCHS, METROPOLITANS AND BISHOPS) AND ITS POSSIBLE SCOPE OF APPLICATION WITHIN THE LEGAL SYSTEM OF THE REPUBLIC OF SERBIA

This one work engages Regulation on copyright the rights of the SPC and its archbishops, as well as hers possible ranges according to question immediate applications in legal to the RS system. The same is acclaimed after decade's old legal disputes and doubts which are existed in the everyday life Churches according to question legal protection intellectual properties. Namely, according to as a rule state legislation not enoughmeasures appreciated legal nature, as well as canonical regulations which concern author's works like intellectual creations dignitary ours Saints Churches.

Regulation is brought on basis constitutional position of the SPC in the legal field portrait of the RS. Namely, by provision Article 44. Paragraph 2, of Constitution of Republic of Serbia provided is "churches and religious community independently arrange their own internal organization and independently manage their own affairs." In turn, by provision Article 44. Paragraph 2 of the state of the Constitution provided for is principle separation churches from states. From these of principle constitutional provisions specific ones also emerge rights foreseen By the Law on Churches and Religious communities , which provisions is prescribed "Serbian Orthodox church authorized independently regulates and implements own order and organization and independently performs own internal and public affairs (paragraph 6. Paragraph 3 of the Law). Provisions this one of the law is provided and "State no can

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disturb application autonomous regulations of the SPC", Objective of work is application principal de *lege lata* and de *lege ferenda*, show possible ranges these Regulations in the office system of our country, in particular bearing in mind on everything bigger number judicial and others procedures in the field protection author's rights in the church system, application autonomous regulations churches and religious community works fair and on regulations based solutions for these exceptionally important legal relationships .

The mentioned Decree was adopted after several decades of legal disputes and doubts that existed in the everyday life of the Church regarding the legal protection of intellectual property. Namely, as a rule, the state legislation did not sufficiently respect the legal nature, as well as the canonical regulations regarding author's works as intellectual creations of dignitaries of the Serbian Orthodox Church and the specific principled legal regime of inheritance of these works that exists in the Serbian Orthodox Church. (Article 38 of the Constitution of the Serbian Orthodox Church)

This general act was adopted as a special autonomous regulation in the performance of internal and public affairs of the Serbian Orthodox Church, and an unusual but legally feasible retroactive application of up to 50 years is foreseen in all court proceedings before the state bodies of the Republic of Serbia, and territorially in the entire canonical area of the Serbian Orthodox Church (on the territory of the Republic of Serbia and on the territory of all the states created on the territory of the former Yugoslavia, as well as the countries in the diaspora) if the legal order of those countries allows the application of the autonomous regulations of the Serbian Orthodox Church.

After the legally binding conclusion of these proceedings, a certain judicial practice will be created on the basis of which it is possible to see how and to what extent the legal order of the Republic of Serbia recognizes the autonomous regulation of churches and religious communities, the framework of which was defined by that legal order in its regulations.

The essence and legal nature of this Regulation is only to regulate those issues that the Law on Copyright and Related Rights does not prescribe, and which issues relate to the specific, constitutional and

legal position of the Serbian Orthodox Church, its patriarchs and metropolitans/ bishops, and not to do otherwise regulates this area, and hence the Regulation in question cannot be in conflict with the Law on Copyright and Related Rights, given that this Law does not regulate these issues in a different way, which are the subject of regulation in the Regulation in question.

Keywords: SPC (Serbian Orthodox Church), autonomous regulations of churches and religious communities, intellectual property of SPC, archbishops of the Serbian Church, copyright, scope of application of autonomous acts in the Republic of Serbia legal system, property component of copyright, moral rights of authors, official material of SPC in the light of copyright.

349.2:[331.108.22:373.3/.5(497.11)

*Dr. Aleksandar Antić**
*Dr. Danilo Rončević***

RESOLVING REDUNDANT EMPLOYEES IN PRIMARY AND SECONDARY SCHOOLS IN THE REPUBLIC OF SERBIA

Redundant employees at the employer appear due to certain technological, economic, or organizational changes, due to which the need to perform the work of all or part of the employees at the employer has ceased. For employees whose work has ceased to be necessary, the employment relationship ends with the termination of the employment contract, which the employer issues. Due to the consequence, which is reflected in the termination of the employment relationship, the issue of redundant employees is susceptible in the field of labor law.

The provisions of the Labor Law of the Republic of Serbia are devoted to the solution of redundant employees. The procedure for resolving redundant employees is provided, which takes place within the program for resolving redundant employees. According to the Labor Law, it is determined when the employer is obliged to adopt it and what are the rights of employees whose work has ceased to be necessary. However, the norms of the Labor Law, which refer to the solution of redundant employees, are often too detailed regarding certain issues related to this issue. For example, in the Labor Law, the criteria that the employer must be guided by when determining the employees whose work has ceased to be necessary are not specified, and the measures for dealing with redundant employees are not additionally specified, i.e. in what way the employer can undertake them.

Solving the surplus of employees in primary and secondary schools contains numerous solutions that are original and represent the elabo-

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ration of the basic provisions of the Labor Law. The provisions related to the solution of redundant employees are contained in the Law on the Basics of the Education System and the Special Collective Agreement for employees in primary and secondary schools and student dormitories.

The criteria for determining employees whose work has ceased to be needed in primary and secondary schools are contained in the Special Collective Agreement for employees in primary and secondary schools and student dormitories. These are criteria that have been applied since 2015 and are based on objective indicators of employees' work and their social and economic status. After analyzing the criteria, we can conclude that more emphasis is placed on the results of the employee's work, than on his social and economic position, during scoring, which is the basis for determining the employee whose work has ceased to be necessary.

After scoring the employees at the employer, it is determined which employees are no longer needed, and they are referred to the list of employees whose work is completely or partially no longer needed. These lists are kept for each school administration and representative trade unions actively participate in its formation.

The Special Collective Agreement for employees in primary and secondary schools and students' dormitories and the Law on the Basics of the Education System contains norms that govern the measures the employer must take, before determining that the need for the employees' work has ceased. Namely, before the termination of the employment relationship, employees in primary and secondary schools must be allowed to take over at another employer, i.e. another primary or secondary school, for almost a year, and only if the employee is not assigned to other jobs at the same employer within a year or taken on other suitable jobs at another employer, i.e. second elementary or secondary school, the employee's employment relationship ends, after payment of severance pay.

The position of employees whose work has ceased to be necessary is additionally protected by the employer's obligation, that before establishing an employment relationship in a vacant position, he must try to fill the vacant position by taking over employees from the list of employees whose work has completely or partially ceased to be necessary. Taking over employees whose work has ceased to be necessary, before

establishing a working relationship with new employees, is the obligation of all primary and secondary schools, regardless of whether the need for the work of employees has ceased or not. This obligation to fill a vacant position is permanent, unlike the provisions of the Labor Law in which it is time-limited.

Keywords: redundant employees, primary schools, secondary schools, taking over employees, solving redundant employees.

347.468:34(37)
347(436)"1811"

*Dr. Michael Binder**

CONSOLIDATION OF CREDITOR AND DEBTOR. *CONFUSIO* IN ROMAN LAW AND IN THE AUSTRIAN CIVIL CODE (ABGB)

The consolidation (unification) of the creditor and debtor is the result of a succession. Such a succession can occur if the creditor becomes the debtor's heir or vice versa. In law textbooks about Roman law or Austrian Civil law, the consolidation of the creditor and debtor is often referred to but not subject of a detailed analysis. Often, only the general rule, which states that the debt and the claim expire, is mentioned. Such a process can be characterised with the Latin word *confusio*.

This general rule is unquestionably true if only two parties are involved. In such a case, there is no interest in preventing a *confusio*. One person – or legal entity – shouldn't be creditor and debitor at the same time. It could be a waste of resources to try to fulfil such an obligation with an actual payment.

However, in a multipersonal legal relationship a different solution seems possible. Some obligations can depend on another obligation. This is for example the case with the obligation of the guarantor. If the obligation of the principal debtor extinguishes, the guarantor is no longer liable (accessoriness principle).

Therefore, a third party could be freed in case the main obligation would extinguish due to *confusio*. It is questionable, why a third party – e. g. a guarantor or a joint debtor – should benefit from a *confusio.* If a third party would no longer be liable in case of a *confusio*, there would be a strong incentive for the creditor to renounce the inheritance of his debtor.

Whether *confusio* should take place in a multipersonal legal relationship was already discussed by the Roman jurists. The Roman jurist

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Paulus denied *confusio* if a consolidation of the creditor and a joint debtor occurred (D. 46.1.71 pr.; Paulus *libro quarto quaestionum*). Therefore, a *fideiussor* (guarantor) or *mandator* was not automatically freed.

Also, in Austrian Civil law the same problem occurs. In the in Austrian Civil Code (ABGB) the consolidation of the creditor and debtor is regulated in § 1445, where the general rule according to which the debt and the claim expire can be found. However, also certain exceptions are listed. For example, § 1445 ABGB (Austrian Civil Code) states (in the last sentence) that a guarantor should not be freed in case the creditor becomes the principal debtor's heir and a conditional declaration of acceptance of inheritance was made.

In my presentation, I want to analyse the concept of *confusio*. Therefore, first it is necessary to list the arguments for and against the concept of *confusio*. The subject of my presentation is to compare the foundations in Roman law to the modern Austrian Civil Code (ABGB). In Roman law, the source D. 46.1.71 pr. (Paulus *libro quarto quaestionum*) will be the starting point of the analysis. Surprisingly, Paulus, who was dealing with the consolidation of the creditor and a joint debtor, already made a comparison to suretyship. Since suretyship has (also) nowadays outstanding practical importance, the case that the creditor becomes the principal debtor's heir is mentioned in § 1445 ABGB (Austrian Civil Code).

Keywords: *confusio*, consolidation, suretyship, Roman law, Austrian Civil law, legal comparison.

331.31:004
349.2

*Dr. Darko Božičić**

RIGHT TO DISCONNECT AS EMPLOYMENT LAW INSTRUMENT IN THE DIGITAL AGE

Working time represents the time period in which the employee is obliged to work and has the right to work. It is about one of the most important institutes of labour law. Regarding this institute, the conflict of interests of the employee and the employer is extremely pronounced. The employer's interest is that the employee works as long as possible, and the employee's interest is the opposite, that he works as short as possible. After all, the first laws by which the state intervened in the sphere of labor relations concerned precisely the shortening of working hours.

The fact that the first convention adopted within the framework of the ILO referred to the shortening of working hours shows how important working hours are in the labor relations issue. The limit was set to eight-hour working hours and a forty-eight-hour work week. However, this convention only applied to employees in industry. After this convention, the ILO adopted several more instruments that limit working hours, but what is characteristic is that the limitation of working hours by ILO conventions is carried out selectively, for certain activities and certain categories of workers. In addition, at the regional level, Directive 2003/88/EC also stipulates that the working week cannot last longer than forty-eight hours, including overtime. From the above, it can be inferred that the protection of employees in terms of the duration of working time went in only one direction – its limitation.

Starting from such a broad normative framework, as well as from different types and manifestations of working time, significant differences in the field of working hours of employees around the world have been observed, whereby the development of digital technology is con-

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sidered one of the main factors that cause changes in the field of working time organization.

The main change that digital technology has brought regarding the organization of working time is that it has made it possible for employees to be available for work at all times. This circumstance produced two consequences. On the one hand, the constant availability of the employee blurs the line between his professional and private life. On the other hand, constant availability for work raises the issue of protecting the employee's right to privacy. However, we are of the opinion that the development of technology is only one of the causes of the constant availability of an employee, and we cannot even consider it as a cause, but as an instrument that enables this effect. The main reason is the employer's desire for employees to be constantly available for work. This is also helped by the attitude of employees towards this issue, who have accepted the possibility of constant business communication as a normality of life and professional processes. However, the other side of this story is the issue of employee productivity. Because digital technology has made it possible for employees to work more, but more working hours does not result in higher work productivity. Thus, in employees who work longer than 60 hours a week, a decrease in productivity, an increase in absence from work and injuries at work were observed.

However, in recent years there has been a trend of raising awareness among employees about the unwanted effects of constant presence at work, even when they leave the employer's business premises. This trend resulted in the legal introduction of the so-called right to disconnect. In the simplest terms, the right to be disconnected from work implies the right of employees to no longer be available for work after the end of their working hours. France was the first to do so, in 2016, when amendments to the labor code were adopted, where Article 55 paragraph 1 provided for the right of employees to be excluded. This provision entered into force on the first day of 2017. Nevertheless, the entire procedure of introducing this right into the legislative framework lasted more than a decade. First, the Court of Cassation of France ruled on this issue on two occasions, so that after that the right to exclude employees would be provided for by the autonomous regulation of individual employers, so that, as we said, only from January 1, 2017, this

right would have its own legislative framework. After France, Belgium, Italy, and Spain followed the path of legal regulation of the right to exclude employees from work.

The right to disconnect from work is particularly present in Germany, although in this country it is not provided for by law. This right is present in autonomous acts passed by the employers themselves, or jointly with the employees, that is, their representatives. Moreover, the ministry in charge of labor affairs has introduced an internal rule that prohibits business communication between employees after the end of working hours, in order to provide a positive example to employers that they should organize working hours themselves.

With this research, the author tries to examine the effectiveness of the right to disconnect as an instrument for limiting working hours.

Keywords: right to disconnect, digital age, employment law, regulation.

34.02:343.1

*Dr. Snežana Brkić**

ON THE GROUND OF LEGAL INSTITUTIONS

1. Discovering the ground of a legal institution involves seeking some fundamental proof that would confirm, justify, conceptualize, partially or fully dispute, limit, or relativize that institution. Such proof could be sought and found in another legal institution, law, principle, value, idea, or reality. This implies that the foundation of a legal institution does not necessarily need to be exhausted in its legal basis. It can also have a meta-legal, ideological, or sociological character.

This, in turn, implies that considerations about the ground of a legal institution move along the axis of *ground – founded*, regardless of whether they belong to the same or different categorical levels. What matters is that they differ in one characteristic – contestability. The institution whose ground is being examined can be disputed to a greater or lesser extent *de facto or de jure,* but the ground found for it should not be disputed at that moment: neither disputed nor disputable.

2. Identifying the ground of a legal institution involves determining the existence or non-existence, type, quality, and quantity of that legal, meta-legal, or non-legal undisputed factor on which the given institution rests or from which it is derived. In this sense, a legal institution can be shown to be *founded or unfounded.* While unfoundedness is exhausted in just one form, which could be described as an *insufficient ground*, foundedness can be graduated through the establishment of an *absolute ground, sufficient ground, or relative ground*. Recognizing an insufficient ground would lead to such a critical approach to the given institution, resulting in its complete disputation, i.e., pleading for its abolition, with or without its replacement by another institution. Recognizing an absolute ground would lead to the conclusion of the unconditional need for such an institution. On the scale between these two extremes, there

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would be a sufficient ground and a relative ground. A sufficient ground would imply merely justifying an institution as such, without noticing the current need for its limitations and/or exceptions, but with an open latent possibility to see such a need in the future. Identifying a relative ground would lead to the conclusion of the justification of the given institution's existence, along with the necessity of its correction with one or more exceptions established by the legislator or law enforcer.

3. We should also consider that the re-examination of the ground of an institution can be determined by corresponding temporal-spatial coordinates. What is recognized as a sufficient ground at one moment (t1) can be disputed at another moment (t2), and vice versa. In this sense, on the evolutionary line of an institution, several points representing corresponding time periods may be fixed, expressing the existence or non-existence of an appropriate foundation and its different quantitative and qualitative characteristics.

Also, what is recognized as a sufficient, relative, or absolute ground of a legal institution in one national law may not be assessed as the same ground in the law of another state. This may be due to the complexity of the legal system, which consists of several elements and subsystems that interact with each other. Some of these elements may be more pronounced in one country, less pronounced in another, quite faint in a third, and non-existent in a fourth country. For example, a legal institution in one legal system may rest on an absolute ground, without the need for any limitations or exceptions, while the same institution in another legal system may have only a relative ground, due to the necessity of making minor or major concessions to other values, ideas, or interests. This phenomenon is perhaps best illustrated by the principle of immediacy, which is supported by an absolute ground in the Anglo-Saxon model of criminal procedure, unlike the European continental type of criminal procedure, where it is attributed only a relative ground.

Identifying the ground of a legal institution with the corresponding qualitative and quantitative characteristics leads us to conclude that it is more or less well-founded. Just as a well-rooted tree finds firm support in its deep and branched roots, withstanding all storms, so too can a legal institution find its support in a good rootedness in some undisputed foundation that justifies it and to which it owes its resilience and

longevity. And just as in nature the depth to which the roots of a tree penetrate can be greater than its height and its branching much wider than the canopy itself, so too in law the foundation of an institution can be much deeper, firmer, and stronger compared to the institution derived from it. However, if an institution is well-founded, that does not necessarily mean that it is also completely legitimate, i.e., that it is shaped in a completely legitimate manner.

Keywords: legal institutions, absolute ground, sufficient ground, relative ground, insufficient ground.

366(061.1EU)

*Dr. Dan-Adrian Cărămidariu**

THE RISE AND FALL OF A MODEL: INFORMATION DUTIES IN EU CONSUMER LAW

Information duties in consumer contracts were a highly debated issue in the 1960s and 1970s. While the debate focussed on the efectiveness and usefulness of the information model, it became widespread in implementation, in particular as a pre-contractual information model. Its theoretical and political origins must be searched in the American law & economics literature, on one hand, and, on the other, in German consumer protection policies of the same period. The EU lawmaker adopted the pre-contractual information model as it had been underlined in theory, only to recognise later that a more refined approach was needed.

The results of behavioural sciences, explicitly the long list of studies carried out by psychologists, economists and, last but not least, by legal scholars bound to the behavioural law & economics approach, as well as the rise of digitalisation, put into question the actual information model largely exercised by the EU lawmaker and the CJEU.

It is well known that the current pre-contractual information model aims at indirect consumer protection. However, many recent trends show not only the limitations of such a model but also the need to transform it. Behavioural economics has shown the limits, both theoretical and practical, of any impact of pre-contractual information delivered to the consumer at the conclusion stage. At the same time, behavioural economics has drown attention to new ways of nudging or incentivising consumers towards more protective behaviours.

The present paper aims at showing that contractual information duties must be transformed in order to make them more effective with

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regard to a better-defined aim. In order to achieve this objective, the paper will first define the current normative information model and its purposes (I), then it will focus on the limits of information duties, as they have been underlined in the relevant behavioural law & economics literature (II). In order to do so, the paper will highlight the average consumer standard, as it has been established by the CJEU, showing at the same that there are other consumer representations which are already taken into consideratiion by EU law and which may shift the average consumer standard on to a more realistic approach. Thirdly, it will explain how the information model could be transformed, concentrating on better ways to provide the consumer with the information needed, so that the structural imbalance specific to business-to-consumer transactions may be rebalanced (III). The paper will end by assessing whether withdrawal rights or post-contractual help could be of greater effectiveness in addressing the need to consumer empowerment (IV).

Keywords: information duties, pre-contractual information model, EU law, behavioural law & economics.

336.2(497.11)

*Dr. Cvjetana Cvjetković Ivetić**
*Dr. Luka Baturan***

PUBLIC UTILITY FEES IN SERBIA: FEES OR TAXES?

According to the theory of tax law, the fee is a payment made to the governement for some special benefit enjoyed by the payer, i.e. price for a specific public services. The amount of the fee should depend on the total costs of providing services, the benefit that the tax payer has from the services rendered, as well as the existence of a general interest in a specific service or action.

The Law on the Budget System defines fees within the guidelines set by the theory of tax law. According to the law, fees are a type of non-tax public revenue for the provision of a specific public service. They can only be introduced by a law, which can prescribe their height, or that law can give the right to a local authority to determine their height. The fee is charged for the directly provided public service, i.e. the procedure or action carried out, which was provided or carried out by the user of public funds. It is also prescribed that the amount of the fee must be appropriate to the costs of providing a public service or conducting a procedure or action, and must be determined in absolute amount, i.e. it cannot be determined as a percentage of the variable base, unless otherwise prescribed by law.

There are several different criteria by which fees are classified. According to the level of government that introduces the fees, or to which the collected revenues belong, fees are divided into central, provincial and local. Local fees are those introduced by the assembly of the local self-government unit, and they belong to the local budget.

According to the type of authority that provides the appropriate service, fees are divided into administrative, judicial and public utility

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fees. According to the Law on Financing of Local Self-Government, local public utility fees are defined as a type of duties introduced by assemblies of local self-government units for the use of rights, items and services. In the Republic of Serbia, local self-government units can introduce local public utility fees for use of advertising boards, for holding motor vehicles, except agriculture vehicle and machinery, as well as for holding game assets.

If one accepts the definition according to which fees include only those levies that are determined and charged for the provision of some public service, then the three local public utility fees that exist in the Serbian fiscal system do not meet this condition. Since their payment is not directly related to the use of a public good or the performance of a specific form of public service, they can only be understood as taxes in the narrower sense. This is supported by the fact that their amount is sometimes determined according to the economic power of the payer (which is the case with taxes), instead of according to the value of a public service.

The fee for use of advertising boards is, by its legal nature, a tax on the performance of business activities. Municipalities rarely decide to charge the maximum amount of the fee allowed by law. It has been noticed that in some local self-government units, large legal entities that perform specific activities (sugar production, meat processing and canning, transport, etc.) are excluded from the general regime, in such a way that rather high amounts of fees are prescribed for them. The abundance of the fee for use of advertising boards is not great. Thus, its average participation in total budget funds in local self-government units is less than 1%.

The fee for holding motor vehicles, except agriculture vehicle and machinery, which is paid during their registration, is essentially a tax on the ownership of individual forms of property. Its fiscal importance cannot be precisely determined due to the uneven presentation of these revenues in the final budget accounts, but it is estimated to be around 1% of total budget revenues.

The fee for holding game assets is a tax on the performance of certain forms of business activities. The extremely small abundance of this tax, reduced by the costs of administration, calls into question the

justification of its existence. Probably for this reason, in some local self-government units, the fee was not introduced at all.

Keywords: fees; local public utility fees; fee for use of advertising boards, fee for holding motor vehicles, except agriculture vehicle and machinery, fee for holding game assets.

340.132:323.1(497.1)"1945"

*Dr. Dragana Ćorić**

HOW LAW CAN BE MISUSED- THE CASE OF ERASING BUNJEVCI AND SHOKCI IN 1945 FROM NATIONAL STRUCTURE OF LIBERATED YUGOSLAVIA**

All legal acts in a country stand in specific hierarchy, which guarantees the order of their application. Within the framework of the European-continental legal system, the order of application of acts is determined by the legal force of that act, which is previously determined by the strength and legitimacy of the state body that passes that type of act. Hierarchy also represents the relationship of subordination and superiority of legal acts to each other. From this relationship arises the obligation of every legal act that is lower on the hierarchical ladder to be in harmony/compliance with the acts that have more legal force than it and are located higher on that ladder (material compliance/material legality), as well as to be adopted by the authority, in the procedure and in a material shape determined by some previous, higher legal act (formal compliance-formal legality).

Also, the hierarchical organization of legal acts allows a lower legal act to deviate from the content of a higher legal act if it provides a greater scope of a right or freedom established by a higher legal act.

However, our legal history also knows cases where a lower legal act abolished not only a right that was previously established by a corresponding higher legal act, but also when an entire nation was abolished. This is exactly what happened to Bunjevci and Shokci, who were erased from the national structure in 1945 by notification of the Main People's Liberation Committee of Vojvodina. Although treated as a decision, this

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act does not have the form of a decision, because formally it does not have the basic parts that make it a legal act in general. With its content, it also violated the norms of the still valid Constitution of the Kingdom of Yugoslavia from 1931 (which was formally in force until the adoption of the Constitution of the Federative People's Yugoslavia in 1946), which guaranteed the equality of all citizens and the equal protection of all citizens' rights, and that in the roughest way – by decision of a lower authority.

The paper presents a nomotechnical analysis of the named act, as well as the procedure for its annulment, which occurred several decades later, with an act of the same force as the one being repealed.

The above example is extremely important for two reasons – because it represents a flagrant example of the violation of all the postulates of legal science and practice due to what represents another reason for our concern for this topic- it was a political decision that was targeted and aimed at discrimination and complete erasure of two national communities – in favor of a third national. community. It was a case where clearly politics overpowered law and even common sense. We strongly believe that making the general public aware of such an example of bad practice can contribute to the prevention of similar acts in the future.

Keywords: legal acts, hierarchy, erasure, Bunjevci, Shokci.

331.31:004(061.1EU)
349.2

*Dr. Dunja Duić**
*Barbara Đurić***

THE IMPACT OF THE DIGITAL REVOLUTION ON WORKERS
The Right to Disconnect After Working Hours in the EU

The digital revolution has brought new opportunities for workers. In modern working conditions, information and communication technologies such as email and internet have become an integral part of our daily lives. Such communication technologies and devices that we use daily raise a range of complex legal issues, presenting challenges to legal science and the profession. In 2021, the European Parliament called on the European Commission to present a legislative proposal that would allow employees to disconnect from work outside working hours without consequences and to establish minimum standards for remote work. In December of the same year, the European Commission presented the Proposal for a Directive on new rules for platform work, on which the Council and the European Parliament reached an agreement in December 2023. In the meantime, EU member states are regulating these issues in various ways within their national labor laws.

The aim of this paper is to analyze the new challenges that have arisen from the use of new information and communication technologies, with a particular focus on the issue of using digital devices that blend work and private life, enabling workers to stay "connected" to their jobs outside working hours. The paper seeks to explore the impact of email and other digital innovations on the protection of workers' rights and health and to analyze existing EU legislation, as well as the legislation in the process of adoption related to the right to disconnect after working hours. Additionally, the goal is to compare existing legal

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frameworks within selected EU member states, along with the case law of the European Court of Human Rights and the Court of Justice of the European Union in order to answer the question of whether sufficient measures have been taken in the EU and its member states to ensure the protection of workers' rights and the right to disconnect after working hours.

Keywords: Digitalization, EU, right to disconnect after working hours, working hours.

352:005.412(497.5)
711.45:004.78

*Dr. Jelena Dujmović Bocka**
*Dr. Danijela Romić***

THE RIGHT TO GOOD GOVERNANCE THROUGH THE LENS OF THE SMART CITIES/MUNICIPALITIES CONCEPT IN THE REPUBLIC OF CROATIA

The application of European principles and standards within the European Administrative Space mandates the involvement of citizens in the creation of local policies. Citizens of the European Union have the right to be informed about the activities of their local community to understand what their local leaders are doing to improve the quality of life in those areas. This is closely linked to the realization of citizens' right to good governance. The term "smart" involves the application of various information and communication technologies in the development of the local community. The authors begin by defining the term "smart" (what we mean by this term, how students perceive the term "smart"). Thus, the first part of the paper deals with the definition and terminological determination of the term "smart," the central part presents empirical research and its results, while the concluding part discusses and analyzes the research results. This part of the paper provides certain proposals for improving the potential of individuals in the community and increasing the activities of all citizens (through the use of digitized administrative services, smart lighting, smart transportation, smart infrastructure, nature, and environmental protection, etc.). The concept of a smart city/municipality requires cooperation between citizens and authorities, encourages citizens to lead a more active lifestyle, and creates the need for the development of a "smart" community. The paper analyzes the management of cities/municipalities in the Republic of Croatia. The hypothesis of the paper is: The role of cities/municipalities in

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creating smart cities/municipalities is recognized by young people who will participate in administrative processes in the future. The aim of the paper is to examine the opinions of students from the Faculty of Law in Osijek and students from the "Lavoslav Ružička" Polytechnic in Vukovar regarding their level of knowledge about the application of the smart cities/municipalities concept. The sample consists of students from these institutions. The research was conducted in the summer semester of the 2023/2024 academic year. The research results were processed using descriptive statistics, and the authors believe that these results will serve all relevant actors at the local levels to gain insight into the views of young people on the development of the smart city or smart municipality concept. Additionally, the research results will show how young people in the Republic of Croatia think about the application of such a concept, its purpose, whether it changes the governance system in local self-government, and what they think could be potential challenges at the local level in the future, as well as the most adequate suggestions for improving such a concept. The fact is that without the development of "smart," there is no good governance of the local community. Given that we live in a digital age, there is a great need to educate all citizens, understand the purpose of developing "smart" cities/municipalities to create a community that will be attractive for citizens to live in worldwide. In this way, the needs of citizens would be met, and the efficiency of work at the local level would be improved. Local leaders should focus on creating smart solutions for financing projects related to the development of local communities.

Keywords: right to good governance, smart cities, smart municipalities, local self-government reform.

364-053.9
364-783

*Dr. Marija Dragićević**

MAIN CHALLENGES OF THE LONG-TERM CARE SYSTEM IN EUROPEAN COUNTRIES

Long-term care includes a whole range of services that are provided to persons with reduced functional capacity, mental or physical in nature, who, consequently, are dependent for a long time on the help of others in performing basic life activities. Long-term care does not aim to eliminate disease, but to alleviate suffering, reduce discomfort, offset the effects of limitations caused by illness and disability, and maintain people's best possible levels of physical and mental functioning.

The existing legal framework for long-term care in Europe is the Revised European Social Charter, a binding document of the Council of Europe, Article 23 of which regulates the right of the elderly to social protection. Through this article, Member States undertake to enable elderly persons to freely choose their way of life and to lead an independent life in their family environment, by providing them with the health care and services they need in their condition. European countries implement this policy through an open method of coordination. It is a soft method, shaped by pre-agreed goals, standards, guidelines, indicators, monitoring arrangements, and member states choose how to meet the expectations. For this reason, the provision of long-term care in Europe is characterized by significant differences between (and within) countries, mainly in the way the system is organized (by public, non-profit or for-profit providers), according to the type of benefit (cash benefits or formal care services) and the way resources are generated (voluntary private insurance, compulsory social insurance or general taxation). In addition to the different situations in the countries, some additional factors make the coordination of long-term care policy challenging: the complexity of the system (a mixture of health and social care); difficulties

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in monitoring, due to the informal nature of most services and the absence of agreed outcome indicators and (reasonably) comparable data. However, although there is no one-size-fits-all solution, the challenges that countries face are largely the same: the adequacy challenge of the long-term care system due to the underdevelopment of formal services financed by the state and the lack of complementarity between formally and informally provided services; the quality challenge, because demographic changes will increase tensions between the volume of care and its quality; the employment challenge, that is, the problem of a high frequency of informal care and undeclared work in this area; and finally the finansial sustainbiity challenge, associated with an aging population and increasing public spending on long-term care. The primary goal of this article is the analysis of the main challenges faced by long-term care systems in European countries. In order to achieve the stated goal, the author gives a brief description of the main characteristics of national long-term care systems in European countries, and then analyzes the above-mentioned four challenges of national long-term care systems. In addition, the paper will identify the reforms of individual European countries that aim to overcome these challenges. Finally, based on the analysis, the author will give a brief overview of recommendations aimed at overcoming the existing challenges and providing the highest quality services from the long-term care system.

Keywords: long-term care, institutional care, home care, carers.

502/504: 314.15
342.7

*Dr. Jordanka Galeva**

RIGHT TO CLEAN AIR, REASON FOR ENVIRONMENTAL MIGRATION?

July 2024 was the warmest July on record globally, according to NOAA's 175-year record. The global surface temperature was 1.21°C above the 20th-century average of 15.8°C, making it 0.03°C warmer than the previous record set in July of last year. The global land-only July temperature was the warmest on record, at 1.70°C above average, while the ocean-only temperature was the second warmest, at 0.98°C above average. Record-warm July temperatures were observed across large parts of northern and southern Africa, southeastern Europe, and significant portions of Asia, as well as areas of the western U.S. and western Canada. According to UN reports, climate change refers to long-term shifts in temperatures and weather patterns, with human activities—primarily the burning of fossil fuels like coal, oil, and gas—being the main driver since the 1800s. The Intergovernmental Panel on Climate Change (IPCC) recently stated in its most recent report on climate adaptation that "disasters fueled by the climate crisis are already worse than scientists originally predicted". Natural disasters such as floods, droughts, cyclonic storms, earthquakes, and tsunamis are key push factors for environmental migration, which is expected to become one of the most significant causes of forced migration in the 21st century. In this context, the question arises: can pollution be considered too a push factor for environmental migration, and would people migrating for these reasons be classified as migrants or refugees? To answer these questions, it is essential to define the terms "refugees", "migrants" or more specifically, "environmental migrants".

The 1951 Refugee Convention defines a refugee as a person who, "owing to well-founded fear of being persecuted for reasons of race,

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religion, nationality, membership of a particular social group or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country". Or in other words refugees are people who have fled their countries to escape conflict, violence, persecution and have sought safety in another country. They flee conflict zones where they may lose their lives or feel their lives are in danger.

At the international level, there is no universally accepted definition of the term "migrant."

According to the International Organization for Migration (IOM), a migrant is a person who moves away from their place of usual residence, either within a country or across an international border, temporarily or permanently, for a variety of reasons. This term includes various legal categories of people, such as migrant workers and smuggled migrants, as well as those whose status is not specifically defined under international law, like international students. Additionally, it includes individuals who, due to sudden or progressive changes in the environment that adversely affect their lives or living conditions, are compelled to leave their homes, whether temporarily or permanently, and move either within their own country or across international borders.

In July 2022, the United Nations General Assembly passed a historic resolution declaring that everyone on the planet has the right to a healthy environment, including clean air, water, and a stable climate. Although this resolution is not legally binding on the 193 UN member states, advocates are hopeful it will prompt countries to enshrine the right to a healthy environment in national constitutions and regional treaties, encouraging states to implement such laws. Considering that pollution is a silent killer, the research question in this paper is do people who migrate out of fear for their lives due to pollution have the right to be treated as refugees or as regular environmental migrant, and whether they would have the same rights?

Keywords: right to clean air, environmental migration, human rights, migrants, refugees.

342:004.8

*Dr. Wladimiro Gasparri**
*Francesca Tesi***

THE SUBSUMPTION OF THE SUBJECT INTO THE CALCULATING MACHINE: PUBLIC ADMINISTRATION AND ALGORITHMS

AI has become essential, and its implications affect all sectors. It offers many opportunities and benefits, but it also brings risks. The European AI Act was adopted by the European Parliament last March: it defines the rules for the use of AI and regulates the conditions for its development and use.

The introduction of AI and the progressive digitalization of the social spheres in which citizenship takes place and its contents are realized, involves the Public Administration, the way in which it operates and the contents of its decision and imposes on the European and state legal system a new challenge constituted by the 'sustainability' of AI.

Italy experienced an initial digitalization with the aim of simplifying and 'modernizing' the administrative system. The application of AI, however, goes beyond the mere 'outward' profile and affects the contents of the decision, because it introduces tools and technologies that modify power in terms of the definition of its contents through the use of different algorithmic technologies.

There are many experiences already underway in the various legal systems: the paper focuses on the Italian case, examining the story of the so-called 'Good school', the Automatic image recognition system (Sari) and the methods of application of the Daspo, the automation processes of financial administration.

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In addition to retracing the varied legal debate that accompanied this change, the question that arises is whether the current 'administrative law' is adequate for the new situation.

Information technology has certainly initiated the change in the organizational methods of activity, contributing, in some ways, to the realization of the principle of 'good performance', but the mere technological application has not in itself been able to transform inefficiency into efficiency, complexity into simplicity, bad administration into good administration.

The problem that arises now, however, is different: not the use of information technology, but the possible transition towards artificial intelligence systems with which to achieve progressive automation connected to the predictive activity itself. That is, the advent of algorithms capable of processing information and making decisions previously developed and taken solely by human intelligence. Certainly, an automated State, a digital administration, could be imagined as the full realization of the perspective that identifies the 'government' with a neutral Public Administration: the 'algorithm' is better than the 'bureaucrat', even if now the 'bureaucrat' is the 'algorithm'. The desirability of this end point can be reasonably questioned and, in any case, there are multiple critical aspects.

The introduction of AI and algorithms in the fulfillment of a specific administrative function affects both the macro-organizational profiles and the concepts and institutes that allow the PA, in its different forms, to structure its functions and define legal relationships internally and with other subjects of the legal system.

The assertion that existing administrative law principles can already include the widespread adoption of automation in the production of related activities must be taken with caution. Even those who say this then remember that that sort of 'human empathy', namely. the 'possibility of comparison' before and beyond the algorithm, must not be lost.

Beyond the possible dystopia, long confined to science fiction, all this claims an update of the regulatory framework and not only in terms of the confidentiality of big data. And its definition presupposes the answer to at least three questions.

The first one concerns the who of the process: who decides to rely on the AI (the Public Administration within it or it comes within the scope of application of the legal reserve pursuant to art. 97, c. 2, Constitution), which governance of the processes of AI especially in reference to the definition of the systems through which the P.A. they equip themselves with AI systems.

The second question concerns how to use AI systems: which tasks and which objectives allow the use of AI? Does AI intervene in an auxiliary function or in a decision-making role?

The third one concerns which AI and which control: which AI is applicable and which control on the machine to correct any operating defects?

But the real question is of a political-constitutional nature: is this instrumental-calculating rationality, built on the subsumption of each individual into it through digitalization and big data, desirable? Is it consistent with the centrality that the national and European legal systems assign to the 'person'?

Keywords: artificial intelligence, law, algorithm, predictivity, administrative decision, adjustment, fundamental rights.

334.72:502.131.1

*Dr. Sanja Gongeta**

EVALUATING THE DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE: IMPLICATIONS AND CHALLENGES

The paper delves into the comprehensive analysis of the new European Union's legislative framework intended to enforce sustainability practices within corporate operations. The Directive on Corporate Sustainability Due Diligence, represents a significant legislative effort to embed sustainability within the corporate governance framework across the European Union. The Directive mandates companies to conduct due diligence with respect to sustainability, aiming to ensure that their business practices align with environmental, social, and governance (ESG) standards across their entire supply chains.

This paper evaluates the Directive's potential impact on corporate behaviour and its broader implications for global trade and environmental policies. By employing a legal analysis framework, the paper scrutinizes the contents of the Directive, focusing on its scope, the obligations it imposes on companies, and the enforcement mechanisms it establishes. It also examines the challenges and opportunities that arise from its implementation, particularly in terms of compliance costs, competitive implications, and the integration of sustainable practices.

The paper outlines the Directive's scope, which includes both EU-based companies and non-EU companies with significant operations in the EU market. Companies are required to develop and publicly disclose their due diligence policies, which must encompass risk assessment, impact identification, and the implementation of measures to prevent or mitigate adverse impacts. The Directive also stipulates the necessity for grievance mechanisms and regular reporting on due diligence activities.

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The anticipated impacts of the Directive are multifaceted. For businesses, the Directive is expected to enhance risk management practices, foster long-term value creation, and improve stakeholder relations by demonstrating a commitment to sustainable practices. However, it also presents challenges, particularly for SMEs, which may face resource constraints in implementing robust due diligence processes. The Directive's extraterritorial application to non-EU companies raises questions about enforcement and compliance in diverse regulatory environments.

Moreover, the paper examines the Directive's potential to drive systemic changes in global supply chains. By setting a high standard for due diligence, the EU aims to influence corporate behaviour beyond its borders, encouraging companies worldwide to adopt similar practices. This could lead to a harmonization of due diligence standards and greater protection of human rights and the environment globally.

By providing a detailed and forward-looking review of the directive, the paper aims to contribute to more effective and sustainable corporate practices that are aligned with both regulatory expectations and societal values.

Through this comprehensive examination, the paper highlights the pivotal role of legislative frameworks in shaping the future of corporate sustainability and underscores the need for continuous adaptation and cooperation to achieve global sustainability objectives.

Keywords: sustainability, due diligence, corporate governance, legislation, compliance.

347.7:342.7
341.63

*Mr. Manuel Heise**

THE ROLE OF ARBITRATION IN BUSINESS AND HUMAN RIGHTS

Over the past decades, the awareness raising Corporate Responsibility, in the form of the trend of holding multinational companies responsible for their business activities in regions with weak human rights enforcement through legal norms and treaties has become established. This has led to the development of Business and Human Rights (BHR) as a highly sensitive field of law with high impacts on different stakeholders of global supply chains. BHR aims to ensure the respect, protection, and promotion of human rights of business activities. It establishes legal frameworks and standards, provides access to remedy for aggrieved parties, identifies and minimizes adverse impacts and promotes sustainable business practices.

In many regions, there is a lack of opportunities for effective law enforcement. Due to its far-reaching enforceability, arbitration is used as an alternative and preferred method for the final resolution of disputes in international business transactions. In accordance with the view of the UN Business and Human Rights Arbitration Working Group, disputes with a human rights dimension should also be resolved through arbitration (in the future). Finally, arbitration offers a quick and comprehensive solution to disputes, especially when ordinary courts are not or not sufficiently available. International arbitration thus has another pioneering role, which has been repeatedly affirmed in relation to human rights issues.

Until 2019, arbitration proceedings with human rights implications were mostly based on the UNCITRAL Arbitration Rules. The introduction of the revolutionary "Hague Rules on Business and Human Rights Arbitration", the "ICC Note to Parties and Arbitral Tribunals on the Conduct

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of the Arbitration – 01-01-2021" as well as the "2022 ICSID Convention, Regulations and Rules" showed the indisputable trend that BHR-significant aspects must be intensively considered in arbitration proceedings and thus marked a historic turning point in BHR arbitration.

A key innovation of the new "Hague Rules on Business and Human Rights Arbitration" is the special personal and professional requirements for arbitrators in order to ensure the qualified examination of human rights violations. Furthermore, regulations aim to remove access barriers for aggrieved parties and to make procedural transparency individually controllable.

As BHR legislation, based on the UN Guiding Principles on Business and Human Rights, progresses globally, contract law instruments play a crucial role in dispute resolution at arbitration tribunals. In this context, it is important to keep an eye on the development of future and existing international law (particularly Transnational Collective Agreements) and civil law (particularly Global Framework Agreements) contracts. Arbitration clauses, such as those of the Agreement Among the Azerbaijan Republic, Georgia and the Republic of Turkey Relating to the Transportation of Petroleum Via the Territories of the Azerbaijan Republic, Georgia and the Republic of Turkey Through the Baku-Tbilisi-Ceyhan Main Export Pipeline, the Dutch Agreement on Sustainable Garments and Textile and in particular those of the Accord on Fire and Building Safety in Bangladesh provide a practical basis for analyzing requirements on arbitration clauses, considering necessary BHR-aspects.

It is obvious that arbitration will play an important role in the context of BHR proceedings and thus contribute significantly to the further development of BHR in the long term.

In view of the recent extremely dynamic developments in the field of BHR and based on the professional experience of the author, the paper aims to analyze the role of arbitration in the specific context of recent developments in BHR legislation and contractual BHR initiatives. Considering the fundamental question of whether BHR disputes can be meaningfully resolved through arbitration for the parties involved, the limits of the objective arbitrability of BHR arbitration and any subsequent proceedings must be scrutinized. In light of the recent introduction of several BHR arbitration rules, the author will further analyze

whether and which procedural aspects of BHR arbitration proceedings require modification. Finally, the results will be used to identify the specific substantive requirements of BHR arbitration clauses.

Keywords: Business and Human Rights, BHR arbitration, Corporate Responsibility, global supply chains.

347.61/.64:616-089.888.11

*Dr. Lucia Irinescu**

METHODS OF TRANSFER OF PARENTAGE IN THE SURROGACY

In matters of filiation, we are witnessing a veritable reproductive revolution, triggered by the development of reproductive medical techniques, which seems to be leaving behind presumptions of maternity and paternity. Despite the principle *mater in iure semper certa est* that many states want to preserve, the establishment of maternity has begun to move towards an area of legal uncertainty. The last decades of the 20th century were marked by the galloping development of genetic engineering, which even allowed the creation of an artificial human uterus, independent of reproduction, in which an embryo could develop. From an economic perspective, some states have identified the reproductive industry as a good source of income for the state budget and have adopted very permissive legislation to allow the development of reproductive tourism. Medically assisted reproduction also gives single people the chance to procreate: women can use a third-party donor, while men can become parents with the help of a surrogate mother. The phenomenon of surrogate mothers, which denounces a ,,commercialization" of the human body, claims the most ethical and legal controversies stemming either from the lack of a unitary regulation at the international level, or from the total lack of legislation at the national level. Scientific progress in the field of medicine, coupled with the development of and access to the Internet, has created the conditions for the emergence of a veritable industry in the field of medically assisted human reproduction with a third party donor, referred to in the literature as the ,,cyber-procreation era". Parallel to the online environment that connects people who want to have a child with surrogate mothers, sperm or egg donors, medical reproductive tourism has seen accelera-

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ted growth in recent years exponentially with the rise in infertility. The right to free movement allows interested persons to undergo medically assisted human reproduction procedures in any of the countries with more permissive legislation. Given that the vast majority of legislation prohibits surrogacy, the outsourcing of motherhood thus frequently acquires a transnational character, with the woman who uses the ,,surrogacy service for another'' acting as a ,,surrogate mother'', outside the borders of the country of residence or citizenship. In the first part of the study an overview of surrogacy will be given, and in the second part the main (possible) ways of transmitting maternity will be analysed. In the vast majority of legal systems, filiation to the mother is established by the fact of birth. In these circumstances, solutions must be found to ‚transfer' maternity from the woman who gave birth to the child, who is legally considered to be the child's mother, to the intended mother. Courts, including those in Romania, are still confused when they are called upon to rule on situations arising from ,,uterine surrogacy'' techniques. Therefore, we will analyse the practice of the ECHR in this matter and of the courts, the possibility to resort to the option of adoption of the child born by surrogate mother by the intended parents, the recognition of the birth certificate issued abroad in the country of origin of the parents who resorted to surrogacy, as well as the contract of assisted human reproduction with surrogate mother. The maternity transfer contract represents a realistic approach as an effect of the practice and of the accentuated commodification of the human being, and, at the same time, perhaps, an alarm signal for the awareness of the extent of the phenomenon and the finding of solutions, including legislative ones.

Keywords: maternity, human reproduction, surrogacy, legal solution.

347.962:342.565.2(497.6)

*Dr. Cvija Jurković**
*Ivan Tomić***

COMPOSITION AND METHOD OF ELECTION OF JUDGES OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA IN COMPARATIVE PERSPECTIVE

The composition and method of election of constitutional judges is one of the most important constitutional matter in every constitutional system. The peculiarity of the constitutional judiciary, which according to some authors is such that it cannot be classified as one of the three branches of the state government, so it is designated as a separate, fourth branch of government, is clearly reflected in the composition and method of election of constitutional judges. Unlike judges of ordinary courts, who are usually chosen by a special expert body within the judicial branch, in the selection of judges of constitutional courts two other branches, executive and legislative, prevail. There are two basic ways of electing constitutional judges in comparative law. According to the first method, the judges of the constitutional courts are elected by the parliament independently, and as a rule, a qualified majority is required for passing such decision. The second method implies the participation of the executive and legislative with equal powers in the selection of constitutional judges or one branch has decisive influence.

The specificity of the composition of the constitutional courts is also reflected in the criteria that a candidate for a constitutional judge must meet. Since these are not career judges, there are constitutional models in which these judges do not have to meet the standard criteria that apply to ordinary judges. Candidates for the constitutional court do not necessarily have to pass the bar exam or work experience in the judiciary. It is not uncommon for constitutional judges to be chosen from

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among university professors, lawyers or politician. As a rule, judges are elected for a specific mandate, the length of which is in function of judicial independence.

In Bosnia and Herzegovina, as a complex, federal state, there are three constitutional courts, the Constitutional Court of Bosnia and Herzegovina and the entity constitutional courts. The Constitutional Court of Bosnia and Herzegovina has an atypical composition, unknown in comparative law. In addition to six domestic judges, the Constitutional Court of Bosnia and Herzegovina also consists of three foreign judges chosen by the President of the European Court of Human Rights. Judges chosen by the President of the European Court of Human Rights cannot be citizens of Bosnia and Herzegovina or any neighboring country. The composition of the Constitutional Court of Bosnia and Herzegovina also reflects the federal organization of the state, considering that out of six domestic judges, four members are elected by the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina, and two members are elected by the National Assembly of the Republic of Srpska. The Constitution does not prescribe any specific requirements to be met by a candidate for constitutional judge, since anyone who is a distinguished jurist of high moral standing can be elected to this court. The mandate of judges of the Constitutional Court of Bosnia and Herzegovina lasts up to 70 years, unless they resign or are dismissed by consensus of other judges.

In the article, the authors analyze the composition and method of election of the Constitutional Court of Bosnia and Herzegovina in a comparative perspective and examine to what extent the domestic norms differ from the comparative constitutional norms. The analysis is particularly focused on foreign judges, the (non)existence of ethnic and federal criteria in the selection of judges and normative solutions that regulate the procedure for electing the judges. This procedure has a dual nature. On the one hand, it is a legal procedure that regulates the process of appointment of new judges of the Constitutional Court. On the other hand, this procedure is a top political issue considering the state and social complexity of Bosnia and Herzegovina. Such a conclusion is confirmed by political reality of country. The impossibility of reaching a political agreement led to the incomplete composition of the Constitu-

tional Court of Bosnia and Herzegovina. Due to the incomplete composition, the exercise of the competences of the Constitutional Court may be endangered as well as the legitimacy of the Court decisions.

Keywords: composition of constitutional courts, method of election of constitutional judges, election criteria, Constitutional Court of Bosnia and Herzegowina, incomplete composition.

35:004.8

*Dr. Mirko Klarić**

AI IMPLEMENTATION AS THE KEY ELEMENT FOR THE PUBLIC ADMINISTRATION MODERNIZATION

Public administration has significant role in economic, social and political relations of modern society. It takes important part as one of the main development factors of social community. Modernization of society, economic reforms and dynamics in political relations influences on reform of public administration. In modern society, public administration is divided on central government administration, local government units and public services established to fulfill various public needs of community users. Those parts of contemporary public administration satisfy different types of community needs and takes different position in citizens' expectations. Artificial intelligence represents technological breakthrough with economic and political implications for development private and public services. AI implementation represents additional step of smart digitalization development in public services providing. According to the main division of public administration, it can be monitoring implementation of AI application in central government administration, local government units and public services. AI implementation in government services represents additional step in providing better public services by implementing of smart digitalization conception. Smart digitalization represents implementation of smart technological solutions with horizontal and vertical integrations of various digital services. Digital services integrated in common digital platform usually provide unique approach to various public digital services. Those services can be divided on e-democracy services such as e-discussion, e-petition, e-referendum or e-election, or e-administration, which include various digital public services from central or local government authorities, or public entities or institution. Important part of smart digitaliza-

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tion is integrative approach to digital services independently on the type of public authority – political or administrative, central or local, public enterprise or public institution. Digital services are interconnected and assure friendly use interface, with possibility of combining services from different providers. The next step in improving of smart digitalization is implementation of AI technological solutions. In European Union is adopted, Regulation of Artificial Intelligence, popularly called AI Act, with the main purpose to regulate general aspects of AI technology implementation. Main approach in regulation of AI implementation is based on types of risk, which can be predicted by using of AI technological solutions. There is gradation on four categories of risks in AI technology implementation: unacceptable risk, high risk, limited risk and no risk category. Unacceptable risk is connected with AI application which can be dangerous or harmful for the citizen's safety, their rights or livelihoods. High risk category of AI implementation influences on education, social infrastructure or safety components of the market products. Limited AI category of risk defines interaction between humans and AI technological systems, such as chatbots. The lowest category of risk in AI technology implementation is minimal or no risk category, with implementation of AI technological solutions with minimal influence on humans or social relations, such as spam filters. Future development of AI technology implementation will be regulated according to the common European standards for AI applications. They will be legal pattern for implementation and control over AI technology beyond EU borders, and contribute to implementation and development of AI application in various aspects of societal life in European Union and beyond.

Keywords: Artificial intelligence, digital services, public administration, regulation, modernization.

354.21:342.565.4(497.11)
336.225

*Dr. Svetislav Kostić**

THE CONSTITUTIONALITY OF THE BINDING NATURE OF THE OPINIONS OF THE SERBIAN MINISTRY OF FINANCE

In 2015 the Law on Tax Procedure and Tax Administration was amended to introduce a provision under which the interpretations provided in the opinions of the Serbian Ministry of Finance were binding for the Serbian Tax Administration. Such a solution was meant to resolve a crucial problem of legal uncertainty caused by diverging interpretations between the Serbian Ministry of Finance and the Serbian Tax Administration of identical legal issues. Serbian legal scholarship has so far primarily dealt with the question of the inadequacy of the opinions of the Serbian Ministry of Finance as a legal instrument to achieve the desired result and have provided useful and detailed proposals for their replacement with binding rulings (Popović, Ilić-Popov, 2020).

This paper wishes to draw on the existing jurisprudence and ask several previously undiscussed issues. Firstly, the author wishes to contemplate on the boundaries of legal questions what can be elaborated within an opinion of the Serbian Ministry of Finance. In other words, when is the Serbian Ministry of Finance obliged to refuse to answer a question tabled by a taxpayer. Furthermore, the author will attempt to determine if the Serbian Ministry of Finance is respecting such boundaries. Secondly, the relevance of the opinions of the Serbian Ministry of Finance in secondary administrative proceedings will be analyzed as these are no longer (in comparison to 2015) within the prerogatives of the Serbian Tax Administration.

Finally, the crucial issue of the interaction between the binding nature of the opinions of the Serbian Ministry of Finance and judicial proceedings before the Administrative Court will be the topic of deliberation. Existing jurisprudence of the Serbian Administrative Court shows

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a notable level of confusion as to the authority and legal nature of the opinions of the Serbian Ministry of Finance. What is even more perplexing are the obligations of the first instance authority (i.e. the Serbian Tax Administration) when faced with two diverging interpretations of the same provision of the tax legislation, one provided within the binding opinion of the Serbian Ministry of Finance and the other in the, again binding, decision of the Administrative Court.

Finally, the author will raise the issue of whether, in light of the potential consequences for the taxpayer of not abiding by the interpretation found in the opinion of the Serbian Ministry of Finance, it would be legally necessary to provide for some form of an appeals procedure against an opinion of the Serbian Ministry of Finance or introduce some forms of a protective mechanism for those taxpayers who choose to test the legal basis on which such an opinion was founded. All of the deliberations mentioned above will lead to the fundamental question is the binding nature of the opinions of the Serbian Ministry of Finance constitutional, particularly due to the paradox that an instrument which was introduced with the primary intent to lower legal uncertainty may be, especially within judicial proceedings, the very cause of the same problem.

Keywords: legal certainty, binding opinions of the Serbian Ministry of Finance, Administrative Court, Serbian Tax Administration.

347.9(497.11)"1865"(094.5)

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*Dr. Milan Milutin***

GENERAL RULES AND ORGANIZATION OF THE JUDICIARY ACCORDING TO CODE OF CIVIL PROCEDURE OF SERBIA FROM 1865

The second rule of Prince Mihailo Obrenović (1860-1869) is characterized by dynamic and intensive legislative activity, among others, in the field of civil procedure law. Vigorous young ruler showed great interest in conducting legal reforms in all crucial domains. Codification of civil procedure is certainly their important part. Particularly since previous proceeding codes from 1853 and 1860 were heavily criticized in legal theory and practice and, therefore, both of them were removed from Serbian legal system soon after enactment as they proved to be completely inadequate. Hence drafting durable, long-lasting code was a high-priority project, and it had been successfully completed in 1865 when new Code of Civil Procedure was passed. This well-crafted, clear and concise code was efficient and easily applicable by legal practitioners and judicial authorities and, as such, remained in force for 64 years, until 1929, when it was replaced by the Code of Civil Procedure of Kingdom of Serbs, Croats and Slovenes.

Having regard to great volume (523 provisions) of the Code from 1865, authors narrowed their field of research to code provisions concerning general rules and judicial organization.

Minister of justice Rajko Lešjanin prepared the draft relying mainly on Austrian General code of civil procedure from 1781, and consigned it to State Council for approval. Although the lawmaker had put great effort into avoiding jargon and overly excessive legal terminology so that text can be easily understandable not only by scholars, but also by com-

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mon readers, part of the draft regarding general provisions and organization of courts was not accepted in its initial version, but only after certain changes and supplements. Sometimes Council's remarks were related to formulation of provisions, their structure or content, sometimes to technical terms used in code, while a few times members of Council highlighted problems regarding style and language that the legislator used in text. Valuable source for all aforementioned remarks followed by thorough and detailed discussion between the author of the draft and the State Council's Commission, as well as for accepted additions and corrections of previous text is archival material stored in the fonds of the State Council, in The State Archive of Serbia. Besides legal history analysis of code provisions regarding general regulations and organization of the judiciary adopted in 1865, authors will dedicate special attention to unenacted draft consisting of proposed amendments to some original provisions, crafted by then minister of justice Stojan Veljković in 1872. Although above-mentioned draft never came into force, constructive debate that had developed between the author of the draft, State Council's Commission and district courts served as a base for partial revision of certain code provisions, among which the most important is introduction of two-stage decision making in municipal courts (§ 15). Despite the fact that original text of Veljković's draft has not been preserved, since in the fonds of the Ministry of Justice in The State Archive of Serbia one can find opinions of State Council's Commission and district courts regarding aforementioned text, its content can be reconstructed to a great extent. Hence above-mentioned opinions will be used as a primary historical source for writing the article.

Keywords: Civil proceedings, general rules, organization of the judiciary, draft, Code from 1865.

347.72
347.72.033

*Dr. Vladimir Marjanski**

CREATION OF PREREQUISITES FOR THE IMPLEMENTATION OF INCREASE IN SHARE CAPITAL FROM NET ASSETS (CONVERTING RETAINED PROFITS OR RESERVES INTO SHARE CAPITAL)

The increase in the share capital from the assets of the company represents a nominal increase in the share capital, which is carried out by converting undistributed (retained) profit or dedicated reserves into share capital. Before implementing this method of increasing the share capital, it is necessary to fulfill certain legal and accounting prerequisites. The focus of the analysis relates to the creation and fulfillment of the legal and accounting assumptions for the conversion of undistributed profit and reserves into share capital. In this context, material and formal-legal suitability for converting undistributed profit and reserves into share capital is mentioned.

Material suitability means the possibility (ability) to transform certain balance positions (realized profit and reserves) into the share capital. When it comes to realized profit, in Serbian law there is a possibility that only the so-called retained earnings be transfered into share capital. Retained earnings is the profit that is stated in the annual financial report, and which was formed by the accumulation of net profit during the business years that preceded the year in which the financial report is drawn up. Current net profit should be distinguished from retained earnings. In contrast to undistributed (retained) earnings, profit from the current business year that has not yet been declared, i.e. included in the regular annual financial report, according to the Serbian Companies Act, cannot be used for conversion into share capital. In comparative law, it is often legally possible for current profits to be eligible to be

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converted into share capital, provided that after the adoption of the regular annual financial report (balance sheet), the so-called interim balance sheet (extraordinary financial statement) in which this profit will be shown.

The share capital, in addition to the undistributed profit, can also be increased at the expense of reserve funds established for that purpose. Although the Serbian Companies Act mentions reserves in various places as a source of funds from which the share capital can be increased, the Serbian Companies Act does not contain provisions on the initial source from which they can be formed, nor does it regulate in detail the legal procedure for their formation. According to the source or origin of funds from which they are formed, there are reserves that are formed from realized profit (so-called profit reserves) and reserves whose source (origin of funds) is not realized profit (so-called capital reserves). In relation to the nature of certain categories of reserves that can be part of the capital in the balance sheet, it is important to first determine whether they belong to dedicated (so-called tied) or free (so-called untied reserves).

In addition to the above, although reserves in general and even special reserves are mentioned in several places in the Serbian Companies Act, that law only partially regulates certain issues related to their formation. In connection with the formation of dedicated reserves for increasing the share capital we note that the Serbian Companies Act contains a norm that the assembly makes a decision on the formation of reserves from realized profits, provided that they are provided for in the founding act (statutory reserves). On the other hand, however, there is no designated authority that makes the decision on the formation of these reserves if their formation is carried out at the expense of capital reserves. Furthermore, the Serbian Companies Act does not specifically regulate the question of the majority for making a decision on the formation of dedicated reserves for increasing the share capital, regardless of the source of funds on which they are formed, which causes certain inconsistencies in the legal text. In addition to the above, certain rules on the formation of reserves are also found in certain accounting regulations.

Finally, in order to proceed with the successful implementation of the increase of the share capital from the company's funds, it is necessary to have the so-called formal eligibility related to proper financial reporting. Undistributed profit and dedicated reserves for increasing the share capital can be converted into share capital only if they are properly stated in the last annual financial report adopted at the assembly, on the basis of which the decision to increase the share capital from the company's net assets is made. In certain cases provided by law, the financial report on which the decision to increase the share capital from the company's assets is based must be provided with a positive opinion of the auditor.

Keywords: Company law, share capital, increasing in share capital from net assets, retained profit, reserves.

343:340.134(430)

*Dr. Ivana Marković**

CANNABIS AND SELF-DETERMINATION – ON THE CURRENT DEVELOPMENTS IN GERMAN LAW AND CRIMINAL POLICY

This paper analyzes two most recent and controversial developments in Germany that have direct impact (as the *Gesetz zum kontrollierten Umgang mit Cannabis und zur* Änderung *weiterer Vorschriften – Cannabisgesetz*; *Law on the Controlled Handling of Cannabis and Changes to Other Regulations – Law on Cannabis*) or indirect (like the *Gesetz* über *die Selbstbestimmung in Bezug auf den Geschlechtseintrag – Law on Self-Determination with regard to gender Entry; Law on Self-Determination – Selbstbestimmungsgesetz*) implications on Criminal Law. The first one deals with the partial legalization of Cannabis.

As of April 1, it will namely be allowed to recreationally use marijuana, within certain limits. Adults (over 18 years of age) can possess up to 25 g of Cannabis in public, and up to 50 g at home. In addition, they can grow up to three plants per household. In specific public areas it will be forbidden to smoke joints, e.g. within of schools, sport centers or in pedestrian zones at certain hours. From July 1 on, it will further be possible to obtain the drugs from growers` associations or "social clubs" that will be established for that purpose. However, various problems arise and are to be solved – from the enforcement of the Law, up to control mechanisms (where and how should it be performed), unclear allowed (limited) values of the substances in traffic control, possible retroactive amnesty, and other questions.

The first part of the paper hence deals with the new German Law on Cannabis, the prior legal regulations on the use and possession of drugs, the reasons for the new Law, unresolved questions, and the

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broader contextualization of the new regulations within German Criminal Policy of the recent years.

The second part of the paper will put focus on another vast change in the German legal (and social) landscape. In the same period, on April 12, the Law on Self-Determination was passed. Replacing the prior *Transsexuals Law* (*Transsexuellengesetz*) from 1980 and its complex expert procedure and the necessary judicial recognition of the changes, with the new Law, a simple declaration at the registry office (*Standesamt*) to change the gender and the first name suffices. This change can be done once a year, with no exclusion of possible further changes in the future. With such a facilitated way of changing the gender, numerous problems and legal insecurities will arise. Regarding Criminal Law, the order in gender divided penitentiary facilities can be relativized. But even before that, prior exclusively female spaces will become open for basically anyone who declares himself female, so that the commitment of offences will become easier as well. Furthermore, as the naming the trans person with its prior name ("deadname") has become an offence, legal uncertainties in this area will arise as well. The second part of the paper will therefore deal with the criminal law implications of this Law that initially regulates foremost a different area of law.

Keywords: Germany, Criminal Law, Criminal Policy, Cannabis, Self-Determination.

331.5:004.8
349.2

*Milica Midžović**

TRANSFORMATION OF EMPLOYMENT IN THE ERA OF DIGITAL AUTOMATION AND ARTIFICIAL INTELLIGENCE

The traditional concept of employment has undergone significant changes due to accelerated technological advancement, automation and digitization. This metamorphosis brings forth new challenges and opportunities, reshaping the way individuals perform their duties and contribute to society. In this paper, the author explores the impact of digital automation and artificial intelligence on contemporary work environments, with a focus on the legal and ethical implications they have on employment and the overall labour market. With rapid technological development, artificial intelligence transitions from the realm of futuristic concepts to reality, influencing all aspects of our society, including employment. Automation and intelligent algorithms that "lead" artificial intelligence have already changed many work practices. While it is undeniable that artificial intelligence and the direction towards automated work can contribute to efficiency and simplify tasks, the author points out the danger of jeopardizing the rights of employees, as well as privacy, data security, algorithmic decision-making, and discrimination in the hiring and promotion processes. On the other hand, digital skills "impose" the need for continuous learning and improvement, from artificial intelligence engineers to big data analysts, new jobs are constantly shaping to meet the needs of modern society, which also requires constant workforce improvement. The author emphasizes the importance of incorporating legal and ethical principles into the development and application of artificial intelligence, which is crucial for sustainable integration of these technologies into the work environment. It is necessary

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to establish a legal framework regulating the use of artificial intelligence in the labour market, ensuring effective protection for all participants in the work process. In this context, the paper highlights the importance of dialogue within the scientific community, legal experts, industry representatives, labour unions, and other stakeholders to build a sustainable work environment that harnesses the benefits of digital automation and artificial intelligence while simultaneously mitigating potential risks and challenges they pose.

Keywords: employment, labor market, digitization, automation, artificial intelligence.

334.72:342.7
341

*Dr. Davor Muhvić**

THE 2024 EU DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE: AN ARGUMENT FOR DIRECT INTERNATIONAL HUMAN RIGHTS OBLIGATIONS OF TRANSNATIONAL CORPORATIONS?

The discourse on human rights obligations of transnational corporations and other business entities in international law has gone through a very dynamic path in the last twenty or so years. One of the most important questions in the framework of that discourse was that of the orientation of relevant international legal obligations to (transnational) corporations directly or indirectly – by obliging states to impose appropriate legal obligations on them through their internal legal systems. One of the main arguments against direct international legal obligations of corporations was that imposing such obligations would represent a significant departure from the prevailing model of imposing obligations on non-state actors in international law. To be specific, international law, as a rule, imposes obligations on non-state actors indirectly, through the internal laws of states (the exception would be international crimes, such as genocide, crimes against humanity and war crimes). The 2011 UN Guiding Principles on Business and Human Rights confirmed this existing model of international law in dealing with non-state actors' obligations in differentiating state duty to protect human rights (which is grounded in international law) and corporate responsibility to respect human rights (which does not have to be grounded in international law). Furthermore, it was pointed out in this discourse that international mechanisms do not have or could not have sufficient resources to control (transnational) corporations regarding human rights violations. Namely, there are many more transnational corporations (and even more

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other business entities) than about 200 states that have been under the magnifying glass of such bodies until now. The number of supervised states is even smaller within the frameworks of regional human rights protection systems. The new 2024 Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence is very interesting in this context. It uses clear quantitative criteria (number of employees and a net turnover worldwide) in defining the companies covered by the provisions of the Directive. The paper analyzes the idea of applying this model of one supranational legal order – European Union, in the context of the ongoing initiative to adopt an international treaty on business and human rights under the auspices of the United Nations. More precisely, it deals with the issues of possibility and value of implementing a model of direct obligations of limited number of largest transnational corporations in international law (quantitatively defined similarly as in the Directive), compared with the now prevailing idea of indirect international legal obligations of not only transnational corporations, but all companies (accompanied by extraterritorial jurisdiction).

Keywords: human rights obligations, international law, transnational corporations, the 2024 EU Directive on corporate sustainability due diligence, (in)direct obligations.

336.22:796(494)

*Alexandra Münger**

TAX EXEMPTION FOR INTERNATIONAL SPORTS FEDERATIONS BASED IN SWITZERLAND: AN ANALYSIS OF THE ISSUES AND CRITICISM

Switzerland is an attractive location for international sports federations, with many headquartered in cities such as are Bern, Basel, Zurich, and Lausanne. Over the past century, more than fifty sports federations have established themselves as associations in Switzerland. One of the main reasons for Switzerland's appeal as a domicile for these federations is the explicit exemption from direct federal taxes for international sports federations and their subsidiaries on the international stage.

Around 14 years ago, the Swiss Federal Council issued a communication on the harmonization of taxation for international sports federations based in Switzerland, following requests from the cantons. The Federal Council relied on Article 56 lit. g of the Federal Direct Tax Act (DBG) and Article 23 para. 1 lit. f of the Federal Act on Harmonization of Direct Taxes of the Cantons and Municipalities (StHG). Accordingly, the tax exemption was justified based on the nonprofit status and pursuit of public purposes by legal entities. This justification primarily rests on promotion of sport or international understanding and peace.

However, the tax exemption granted to internationally based sports federations in Switzerland has often been a subject of discussion and public criticism. In recent years, multiple scandals in the sports sector and sports associations have led to growing discontent regarding this tax privilege for international sports federations. Notably, FIFA has faced significant criticism in recent years. While (sports) associations benefit from tax advantages, there is also an increasing demand from national sports federations for complete tax exemption at the federal level. This

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raises the question of fair treatment compared to national sports federations, which are not exempted from direct federal taxes and are more dependent on state financial aid. Unlike national federations, which could struggle to survive without the support of sponsors, organizations like FIFA or UEFA operate more like commercial enterprises.

The study primarily examines whether an international sports federation such as FIFA or UEFA, with substantial financial resources, can fulfil the requirements of Art. 56 lit. g DBG and be legitimately considered a non-profit organization. This issue is analyzed in light of the economic nature of these associations, given that both international and national sports federations engage in economic activities, whether through marketing or the exploitation of rights. This analysis raises a fundamental question: Can these associations truly be considered charitable organizations under Art. 56 lit. g DBG?

From this central inquiry, several related questions arise:

1) Does the tax exemption granted to international sports associations violate Swiss constitutional law by crating unequal treatment compared to national sports associations?

4. Was the Federal Council's unilateral action in issuing the circular justified – does it have the authority to do so?

These questions converge on the broader issue of whether international sports federations in Switzerland are justifiably favored by tax policies.

Keywords: tax exemption, international sports federations, Federal Direct Tax Act of Switzerland, Switzerland Tax Law, Sports Tax Law.

343.222:343.346.5

*Dr. Cristina Nicorici**

HIT AND RUN – ANALYSIS OF CRIMINAL RESPONSIBILITY IN THE CASE OF A DRIVER WHO HITS A VICTIM AND THEN ABANDONS IT

Criminal responsibility for omission is a controversed and debated subject in Romania, as it is in other European countries (Spain or Germany, for instance). As part of this debate comes the situation of a driver who hits a victim, and then abandons the victims, when we either talk about an action that is criminally relevant (hitting the victim), or an inaction (not helping the injured person) that can be the basis for the engaging criminal responsibility. Besides from the factual things such as whether the driver was drunk or not, the conditions of the vehicle and the roar, other questions must still be answered in order to correctly establish the criminal responsibility. As for the form of guilt of the crime committed, in appearance, the case is not difficult: the driver of a vehicle hits the victim that was walking on the road – it can be an intentional or negligent crime. However, the criminal responsibility in this case is difficult to analyze once we particularize the situation: what speed did the driver had? the victim was visible on the road? Was the victim walking on the right side of the road? The agent realized he hit the victim? He realized the severity of the injuries he created? He abandoned the victim immediately, or he waited for a few minutes? He abandoned the victim at the place of the accident or he took the victim someplace else? He at least stopped to analyze the state the victim was in? the answers to these questions can dramatically change the severity of the criminal sanction applied to the driver, as it will be analyzed in this article. The answer to all these questions can also justify the ground for the criminal responsibility – an action of the agent that is causal to the

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result (injuries or death of the victim), or an inaction of the agent (abandoning the victim). The answer to these questions and others can make a difference between an intentional or negligent crime, meaning a difference in years of prison and other consequences on the life of the agent. In some cases, the distinction can also be difficult to make: when the agent hits the victim unintentionally, and then he takes the victim from the place of the accident and tries to hid the injured person. In this case, it is difficult to establish whether the action of the driver – negligent, or its inaction – intentional, or maybe the former conduct (hiding the victim) – an action, should be the basis of the criminal responsibility. This analysis is of particular importance, as the criminal responsibility for an inaction is the exception, and can only be engaged if certain conditions are met. We all omit to do an infinity of things when doing others, and our responsibility cannot be based on all the things we did not do *per se*. On the contrary, when talking about criminal responsibility for omission, whether proper or improper omission, the principle of strict interpretation of criminal law should be used with even more importance. As it shall be demonstrated in this article, only by respecting the general principles of criminal law, we can engage criminal responsibility of a person in a predictable and law-based manner.

Keywords: criminal liability, omission, commission by omission, intention, negligence.

347.728.2:347.65/.68
347.724

*Dr. Anna Nikolova**

ON SOME ISSUES ABOUT THE INHERITANCE OF A COMPANY SHARES IN A LIMITED LIABILITY COMPANY

The limited liability company is among the most commonly used legal organizational forms for conducting business activities. Often partners in the company are natural persons, which explains, why the question of inheriting a company share in a limited liability company has not only an important theoretical, but also a practical significance. Over time, it will become increasingly relevant. The Bulgarian legislator with the provision of Article 129 of the Commercial code: "A corporate interest shall be transferable and heritable" allows in principle the possibility of inheriting a company share.

Surprising the same article provides only rules regarding the transferring of company share, but not of its inheritance. The absence of express rules regarding the procedure of inheriting a company share, gives grounds for advocating different opinions, and also raises both theoretical and practical questions. The first of them is whether only a person with legal capacity can inherit or can an heir also be a person with limited legal capacity. The arguments in support of the opinion that minors and heirs, which are full interdiction cannot acquire membership rights, are reasonable. In the event that the legator has two heirs, a minor and an adult, is it fair that the first should receive the equivalent of only the property rights of his legator, and the second should acquire membership in the company. This question does not arise when inheriting the membership in a joint-stock company, since it is assumed that even minors can inherit shares.

According to the legal theory, the company share has a broad and narrow meaning, which is why it is necessary to clarify the question of

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what is inherited – the membership in the limited liability company or only the property rights of the partner. In judicial practice, the prevailing understanding is that membership in a limited liability company is not inheritable, but only the company share in the narrow meaning of the word is inheritable.The question of how the heirs become partners in the company also remains unexplained. It is true that the question of inheritance of the company share can be an element of the optional content of the of Memorandum of Association of the limited liability company, but very often the founders do not regulate these issues in it or they just repeat the provisions of the Commercial code.

The report examines the different opinions in the doctrine, analyzes both legislation and the judicial practice (without claiming to be exhaustive in view of the limited volume of the report). Only in this way can it be explained how a company share is inherited and whether a change in the regulations is necessary.

Keywords: limited liability company, company share, inheriting a company share.

343.1:004.738.52(497.6)

*Mr. Filip Novaković**

INNOVATING JUSTICE? THE USE OF AUDIO-VIDEO LINKS IN CRIMINAL TRIAL IN BOSNIA AND HERZEGOVINA

The advent of digital technology has revolutionized numerous sectors, including the judiciary. In Bosnia and Herzegovina, the integration of online trials in criminal proceedings presents both promising opportunities and significant challenges. This article examines the viability and impediments of conducting *online* trials within the context of the country's complex legal framework, with a particular focus on the legislative solutions implemented in the Brčko District of Bosnia and Herzegovina. The Brčko District stands out for its progressive stance, as evidenced by the inclusion of provisions in its Law on Criminal Procedure that permit the use of audio-video links in situations of public danger. This legislative innovation aims to ensure the continuity of judicial processes while safeguarding public health and access of justice. The District's approach serves as a potential model for other jurisdictions in Bosnia and Herzegovina, highlighting the benefits of modernizing legal procedures to adapt to contemporary challenges. This study begins by exploring the legal context of criminal proceedings in Bosnia and Herzegovina, emphasizing the need for reform in response to the COVID-19 pandemic and other emergencies that disrupt traditional court operations. The analysis then shifts to the Brčko District's legislative framework, detailing the specific conditions and procedural safeguards associated with the use of audio-video technology in criminal trials. Key elements include maintaining the rights of the accused, ensuring the integrity and confidentiality of proceedings, and the technical standards required for effective implementation. Moreover, the article addresses several critical obstacles to the broader adoption of *online* trials in Bosnia and Herze-

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govina. These challenges encompass legal, technical, and practical dimensions. Legally, there are concerns about ensuring the right to a fair trial, including effective communication between parties and subjects of criminal proceedings, the ability to present and challenge evidence, and public access to judicial proceedings. Technically, the infrastructure required for reliable and secure audio-video communication is not uniformly available across the country, leading to potential disparities in access to justice. The practical implications of training judicial personnel, legal practitioners, and other stakeholders to effectively use digital tools also present a significant hurdle. This necessitates substantial investment in both human and technical resources, along with a commitment to continuous education and adaptation. Through a detailed examination of the Brčko District's legislative approach and the broader context of Bosnia and Herzegovina's legal system, this study contributes to the ongoing discourse on the modernization of criminal justice processes. It underscores the potential of *online* trials to enhance the efficiency, accessibility, and resilience of the judiciary while highlighting the imperative of carefully balancing innovation with the protection of fundamental legal rights.

Keywords: *Online* trials, criminal proceedings, Bosnia and Herzegovina, audio-video link, judicial efficiency, fair trial rights, digital technology in judiciary.

343.611-055.2(497.6)

*Dr. Denis Pajić**
*Dr. Maja Čolaković***

CRIMINAL REGULATION OF FEMICIDE IN BOSNIA AND HERZEGOVINA

In recent years, in Bosnia and Herzegovina and its neighboring countries, the number of women, victims of gender-based murder, has been constantly and drastically increasing. It is most often carried out by their current or former marital / common-law partners, but it also happens that such an act is carried out by men with whom women refuse to establish a partnership or an emotional relationship. There are even cases of gender-based murders of women-mothers by their sons. The most common motives are jealousy, hatred, revenge against the woman for her adultery or her refusal to enter into a relationship with the perpetrator of the murder, etc. The genesis of this phenomenon lies in the patriarchal understanding of a woman as a being who can never be equal to a man, but subordinate to him, which is why he is the "owner" of her life.

Unlike Croatia, which standardized femicide as an independent criminal offense in mid-2024, there are currently only a small number of countries in Europe that have done so. Even in the criminal legislation of Bosnia and Herzegovina, femicide is still not legally qualified separately, so such murders are treated like any other, regardless of the perpetrator, victim, gender or motives. This very often results in the imposition of an insufficiently harsh punishment for the perpetrator, which negatively affects the prevention of violence against women.

After analyzing the concept and forms of femicide, in this paper the author provides a comparative legal overview of the criminal legislation relevant to the prosecution of femicide in European countries, and then

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focuses on the relevant provisions of the criminal laws valid in the territory of Bosnia and Herzegovina and their application to cases of gender-based murders of women in B&H judicial practice. Their goal is to determine whether sanctioning femicide as a separate criminal offense would be justified and necessary. At the end of the paper, they provide proposals for the regulation of the criminal offense of femicide *de lege ferenda* in the law of Bosnia and Herzegovina.

Keywords: murder, Istanbul Convention, misogyny, gender, violence.

347.44:368.911.7(497.7)

*Ana Paneva**
*Elena Trajkovska***

AGING WITH SECURITY: LIFETIME SUPPORT CONTRACTS AND ELDERLY PROTECTION IN THE MACEDONIAN SYSTEM COMPARED TO THE EUROPEAN LEGAL FRAMEWORK

The Charter of Fundamental Rights of the European Union recognizes and respects the rights of the elderly to lead a dignified and independent life, in a way that will allow them to participate in social and cultural life. The purpose of the Charter is to establish the basic principles and rights necessary for the well-being of all those who depend on others for support and care because of age, illness or disability. In addition, the European Social Charter requires the member states of the Council of Europe to take appropriate measures against the abuse of the elderly. Such measures could be legislated in a way that would enable states to assess the extent of the problem and raise awareness of the need to eradicate elder abuse and neglect.

The elderly have the right to long-term care and support from their families and communities, enabling them to live safe, healthy, and dignified lives. This right imposes a positive responsibility on families, communities, and the state to ensure the necessary care and assistance is provided without exception. In the context of Macedonian law, the lifetime support contract serves as a bilaterally binding contract where the provider commits to offering lifetime support to the recipient or a designated third party. In exchange, the recipient transfers all or part of their property to the provider, with the actual transfer occurring only upon the recipient's death. This mechanism, which originated in Mace-

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donia after World War II, establishes mixed rights: inter vivos (during life) and mortis causa (upon death) for both parties involved.

However, critical questions arise regarding the effectiveness of lifetime support contracts in protecting the elderly within the Macedonian legal system. A significant concern is that recipients may be influenced or pressured into transferring their entire property, which could lead to the exclusion of necessary heirs and the prioritization of a single designated "heir." Addressing these questions is crucial for enhancing the legal framework surrounding lifetime support contracts, ensuring that it not only provides for the needs of the elderly but also protects their rights and those of their heirs.

To align with European Union standards, North Macedonia is consistently working to harmonize its legislation with the EU's legal framework, particularly in areas such as human rights, social protection. However, there remain significant opportunities for improvement to enhance the protection of vulnerable groups, including the elderly. This paper focuses on analyzing the legal aspects of lifetime support contracts within the context of the EU Charter of Fundamental Rights, which recognizes and respects the rights of the elderly to lead dignified and independent lives. By examining these contracts through the lens of European standards, we can identify existing gaps in the Macedonian legal framework. The aim is to propose several potential solutions that not only ensure compliance with EU standards but also strengthen the social welfare system in North Macedonia. By implementing these recommendations, we can achieve long-term improvements in the legal and social protection of the elderly, aligning with the principles enshrined in European law and ultimately fostering a more inclusive environment for elderly.

Keywords: lifetime support contract; EU law; Macedonian legal system; elderly protection.

341.24:551.583
502.131.1:646.7

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THE EUROPEAN CLIMATE LAW AND SUSTAINABLE AVIATION TRANSPORT

The European Climate Law, adopted in 2021, is a pivotal component of the European Union's Green Deal, establishing legally binding targets to achieve climate neutrality by 2050 and a 55% reduction in net greenhouse gas emissions by 2030. This legislative framework significantly impacts the aviation sector, mandating the inclusion of aviation in the EU Emissions Trading System (ETS), promoting sustainable aviation fuels (SAFs), and supporting international agreements like the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). This paper examines the influence of European climate law on sustainable aviation transport within the broader context of EU transport policy, which has progressively integrated sustainability since the 1970s.

Since the inception of the European Economic Union in 1957, transport has been recognized as a vital catalyst towards establishing a unified European Market. Still, policymakers needed to be made aware of its adverse external effects. It was not until the 1972 Paris Summit that the community heads of state agreed that economic expansion should be accompanied by improvements in the "quality of life," leading to a greater emphasis on environmental issues. During this period, a strong sectoral approach to transport policy-making prevailed. Although transportation was acknowledged as a crucial element of economic prosperity, policy initiatives in this sector were not embedded with a comprehensive or well-structured framework. Steered by the European Commission's sectoral transport policy, the transport sector has experienced

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unprecedented growth over several decades. However, the notable externalities associated with transport benefits, such as environmental concerns and escalating congestion, have prompted a shift in policy focus. There is now a growing imperative to integrate various policy domains and to change the types of governance to address environmental protection and sustainable transport.

The concept of sustainable development, most commonly defined by the Brundtland Report as development that meets the needs of the present without compromising the ability of future generations to meet their own needs, is central to this shift. Sustainable development balances the need to enhance quality of life, promote social welfare and peace, and preserve the environment as a crucial asset for both present and future generations. Over the past four decades, there has been significant emphasis on embedding sustainability principles within all modes of transportation. The EU's transport policy exemplifies this focus, emphasizing sustainable development by integrating social and environmental objectives. Sustainability involves more than merely adding various requirements; it necessitates understanding how these requirements interact and connect.

The analysis explores the historical evolution of EU transport policy, highlighting the shift from sectoral approaches to comprehensive frameworks that incorporate environmental and social objectives. It underscores the importance of good governance, policy integration, and the challenges of regulatory overlap between EU and international bodies like the International Civil Aviation Organization (ICAO). The study also addresses the complexities of global environmental governance, the role of the EU as a climate leader, and the tension between EU-wide standards and member states' sovereignty.

Furthermore, this paper will analyze the EU Green Deal and its implications for sustainable aviation transport, focusing on how the EU Green Deal's initiatives and regulations aim to balance economic growth with environmental protection. The research will address the question: Will the EU Climate Law contribute to global sustainable aviation? Despite the theoretical frameworks and policy tools available, the governance characteristics specific to sustainable aviation remain elusive, necessitating ongoing adjustments to align strategies with resource avail-

ability and environmental conservation. The paper argues for enhanced cooperation between the EU, its member states, and global bodies to achieve sustainable aviation transport, emphasizing the need for policy coherence, transparency, and accountability.

Keywords: sustainability, aviation transport, European Climate Law, EU Green Deal, global environmental governance.

347.79(497.13Dubrovnik)"12/13"

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*Marija Štambuk Šunjić***

MARITIME LAW PROVISIONS IN THE STATUTES OF THE COUNTSHIPS OF THE ISLAND OF DUBROVNIK (on the occasion of the 715th anniversary of the Statute of Lastovo and the 680th anniversary of the Statute of Mljet)

In this paper, the authors analyze the maritime legal provisions in the statutes of Lastovo of 1310, Mljet of 1345 and in the Statute (*Matricula*) of the Lopud Fraternity of Our Lady of Šunj of 1416.

In the introductory part of the paper, the authors point out the specific position of Lastovo and Mljet as areas with the more liberal legal status of communities in science known as Universitas, which, unlike other areas of Dubrovnik, enjoyed special autonomy or self-government within the medieval Dubrovnik Commune, later known as the Republic.

The administrative unit of Lopud belonged to Šipan and Koločep, headed by a Count seated on Lopud.

In the second part of the paper, the maritime statutory provisions of the Statute of Lastovo of 1310 and the Statute of Mljet of 1345 are analyzed and compared with the statutes of other Dalmatian and Kvarner communes and communes of the wider Mediterranean area.

The analysis of notary records or archival material seeks to determine the extent to which maritime law institutes were applied in maritime practice.

The authors pay special attention to some important institutes such as found property (following its evolution from Roman to medieval law) mentioned in several provisions of the Mljet Statute (Articles 55, 56, 62).

The authors divide statutory provisions into categories of maritime-penal and maritime-environmental provisions and protectionist and

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public health provisions. Of special significance among the maritime penal provisions is theft of animals, theft of ships and boats in Art. 7 of both statutes.

The maritime ecological provisions (criminal-law protection of the environment) include those related to the prohibition of logging for firewood (Article 71, 96, 109 of the Lastovo Statute, Article 47 of the Mljet Statute) prohibition of the extraction of tree roots (Article 77 of the Lastovo Statute). Protectionist provisions include the provisions on the prohibition of importing wine (Lastovo Statute, Article 102) and the prohibition of exporting wood from the island (Mljet Statute, Article 25). Among the public health provisions is Art. 30 of the Mljet Statute of 1778, which stipulates the obligation of quarantine under threat of death penalty for all those who arrived on the island by ships from abroad. Health officials, like other islanders, were obliged to keep watch over the arrival of ships on the island of Mljet (decision of the *Consilium Rogatorum* of 1528).

The third part of the paper analyzes the maritime provisions of the Statute (Matricula) of the Confraternity of Our Lady of Šunj on Lopud of 1416 and compares the provisions with the statutes or matricula of other maritime fraternities: St. Nicholas the Sailor in Split of the 14th century, St. Nicholas in Kotor, brotherhood of St. Nicholas Spirit in Kotor, Zadar's Brotherhood of Sailors and Fishermen of 1475. The provisions of the Statute (Matricula) of the Confraternity of Our Lady of Šunj refered to matters of assistance to a brother who had fallen ill (or died) outside the island within the range of one hundred miles, when members of the confraternity were obliged to send assistance with an equipped boat (Art. 3) and to the issues of payment of gifts to the church of Our Lady of Šunj by the parun and sailors (Art. 7). The Order of the Assembly of 1656 introduced regulations related to the hunting and sale of fish, as well as to the manner of dealing with a danger that threatened the island of Lopud. The same provision contained public health measures to prevent the spread of infectious diseases, including the prohibition of touching objects found on the seashore and the duty to inform the Count of the findings.

In the fourth part of the paper, the authors compare the solutions of the statutory provisions of the Lastovo and Mljet Statutes with the

solutions of the Statute (matricula) of Our Lady of Šunj, trying to determine the extent to which they coincide in regulating maritime legal matter with the solutions of statutes and matricula from the region.

The authors point out the intertwining of secular and ecclesiastical jurisdiction in maritime law matters and the interaction of legal cultures in statutory provisions, which indicates the alignment of maritime legal provisions of the Statutes of Lastovo and Mljet with the roots of the legal systems of modern European integrations.

Keywords: Statute of Lastovo of 1310 , Statute of Mljet of 1345, Statute (Matricula) of the Lopud Confraternity of Our Lady of Šunj in 1416, notary records, maritime law.

351.74/.75(497.11)

*Dr. Nenad Radivojević**

AUXILIARY POLICE IN THE REPUBLIC OF SERBIA – MODERN OR ANACHRONIC APPROACH TO ACHIEVING PUBLIC SECURITY?

The basic task of the police is to achieve an optimal state of public safety. This is achieved through the daily engagement of regular police units and police officers. However, in certain security-threatening situations for the state, society and its citizens, there is a need for increased involvement of a large number of police officers. Contemporary security problems such as the catastrophic floods in 2014, the migrant crisis and the security of the state border (especially in 2015 and 2016), the epidemic caused by the corona virus in 2020 (as a result of which a state of emergency was declared) were particularly burdensome for police work in previous years. In such situations, in order to perform police tasks, it is necessary, in addition to hiring regular (professional) police personnel, to hire a larger number of additional personnel and resources (such as some sorts of a reserve/auxiliary police force).

The aforementioned was recognized in the current Law on Police from 2016 through the regulation of the auxiliary police institute. It should be said that the formation of the auxiliary police is a kind of "heir" of the so-called instituteof the reserve police force, which was regulated by the Law on Internal Affairs from 1991. After the expiration of the Law on Internal Affairs, the formation of the now "auxiliary police" was originally regulated by the Law on Police from 2005. This law changed the concept of public security and now, in contrast to the principle of obligation and mobilization of conscripts, the principle of voluntariness (voluntary registration of interested employed or unemployed persons for service in the auxiliary police) was introduced. Secu-

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rity reasons when the auxiliary police can be engaged are situations in which internal security is threatened in peacetime conditions, as well as for the implementation of preparations for work in a state of emergency or war. The law stipulated that in addition to the special conditions for working in the Ministry of Internal Affairs (MoI), retired police officers up to the age of 60 can participate in the auxiliary police. More detailed conditions regarding the formation of the auxiliary police were regulated by the Regulation on service in the auxiliary police and the rights and duties of auxiliary policemen from 2006.

With the adoption of the new Law on Police in 2016, the possibility of forming auxiliary police was retained, while the detailed conditions of its forming are regulated by the Regulation on service in the auxiliary police, which was adopted in the same year. The provisions on the possibility of engaging the auxiliary police in cases of threats to internal and public security (situations of high security risk, in natural and other disasters, securing the state border and in other cases when internal security is threatened) have been retained, as well as the principle of voluntariness for engagement in the auxiliary police, but now on the basis of a public competition announced by the MoI. What the law failed to regulate were the conditions for the selection of candidates, so those issues were regulated by the Regulation (persons older than 18 and younger than 50). Due to public pressure regarding certain provisions in the said Regulation, already at the beginning of 2017, the Government passed a Regulation on the termination of the validity of the Regulation on service in the auxiliary police. The repealed Regulation was in force for only seven days, and from then until today there is no regulation in the legal system of Serbia that would regulate the forming of the auxiliary police, and therefore there is no auxiliary police formed.

In the end, it should be said that when it comes to the execution of police tasks, tasks in which police powers are applied, in special security situations the existence of an additional police force is necessary. Also, in a state governed by the rule of law, the basic issues of the existence of such a composition of the police in modern conditions must be regulated by law and elaborated more closely with by-laws. The questions that need to be regulated by Law and by-laws are: on what principles will the concept of auxiliary police be based (voluntariness or obligation),

in which security situations and conditions can the said personnel be engaged, what are the conditions that candidates must meet in order to be engaged (age, psycho-physical ability, employed and/or unemployed, previous work in security authorities), what knowledge and skills candidates must possess, basic and specialised training, how and who will perform the selection of candidates, who will make the decision on their engagement, what are the rights and duties of persons engaged in the auxiliary police (application of police powers, wearing of official identification cards and uniforms, compensation for employment, protection of confidentiality of data, etc.).

Keywords: internal affairs, public security, police, auxiliary police.

347.191:004.8

*Dr. Dragi Rashkovski**
*Dr. Veronika Rashkovska***

ARTIFICIAL INTELLIGENCE AS THE THIRD TYPE OF LEGAL ENTITY?

Religion teaches us that God created man. Natural sciences teach us that nature created man as homo sapiens through evolution. Regardless of which point of view is correct – religious or biological, the law does not indulge into it but it gave man legal entity as a natural person. In contrast to the division of opinions about who is the creator of the natural person, it is indisputable that man is the creator of the legal entity as a subject of law. The purpose of differentiating the physical person from the legal person, as well as the internal differentiation between natural and legal persons as a whole, is to accurately determine the entity of the one who invested in a legal relationship.

Artificial intelligence as the latest form is the creation of both natural and legal entities, so its entity should not be questioned just because it is someone's creation, just as the subjectivity of legal entities is not questioned therefor.

Our intention as authors is open, and that is to show through an argumentative presentation of our theses that artificial intelligence should receive legal subjectivity, and at least equal in legal force and legal form to the one that legal entities have.

We are aware that equating the legal subjectivity of AI with natural persons will meet with a sharp reaction from the above-mentioned – religion and biologists. Some will take it as an insult to God, and others to the entire set of natural sciences from millions of pages of scientific

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literature. That's why we enter such a comparison very cautiously in the paper, especially since this issue will still experience legal and technical discussion on a global level, so the intention is to make a contribution to the general introductory and philosophical legal thinking in this period when it is still in the stage of basic debate.

The several types of ability that the legal entities have (legal, business, delict and procedural) are also superficially presented on the artificial intelligence, in order to determine their complementarity with how it was established, how it was conceived, but also how it technically functions itself. Each of these abilities has its own specifics that can be assigned to AI, but their use by itself and by other persons will require additional legal regulations, which must be global, because the technique has no feelings towards law as an artificial work, unless imposed on it from the outside, easily copes with different languages and the geographic coordinates do not change the algorithm.

In this paper we will address the comparison between the biological processes and phenomena that give a human being the subjectivity of a natural person versus the properties of artificial intelligence that could be somewhat equalized.

Additionally, it is easier to compare the properties of legal entities that have full legal subjectivity, as opposed to the properties of artificial intelligence, as we would give our opinion, whether artificial intelligence "deserves" legal subjectivity.

Given that the issues that will be raised in this paper will still cause a social reaction, and even later we can expect a legal framework for this issue, the paper uses the philosophical speculative and comparative method as its basic method.

Keywords: artificial intelligence, legal entity, new type of legal entity.

342.7-053.2:004.738.5

*Dr. Sandra Samardžić**

THE CHILD'S RIGHT TO PRIVACY

A child's right to privacy is one of the rights enshrined in Article 16 of the 1989 Convention on the Rights of the Child. This right stipulates that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation'. Furthermore, 'the child has the right to the protection of the law against such interference or attacks'. The wording of this article is based on Article 17 of the International Covenant on Civil and Political Rights, which, in turn, draws from Article 12 of the Universal Declaration of Human Rights. A significant issue that arose at the time of the Convention's adoption was whether a child's right to privacy usurps or limits parents' rights to privacy or the right to respect for the family, which are guaranteed by many international instruments. It is clear that this concern did not influence the potential deletion of this article; on the contrary, as explained, 'if parents should be protected from states, the child should be protected from parents.'

Although the emergence of the right to privacy is predictable and expected, the meaning of this right is by no means constant. The Convention on the Rights of the Child itself was adopted almost four decades ago, when the Internet was in its infancy. Therefore, the Convention does not contain terms that are a product of today's digital environment and that have become everyday for today's children. The digital environment, however, in addition to a number of benefits it brings, also brings a large number of challenges, but also dangers for children, and endangering their privacy is certainly one of the extremely important issues that need attention.

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As noted, Article 16 of the Convention prohibits arbitrary or unlawful interference with a child's privacy, as well as interference with family, home, or correspondence, and unlawful attacks on their honor and reputation. However, it appears that the issue of unlawful attacks on children's honor and reputation has not garnered much attention from the Committee. A review of the preparatory documents, which serve as a source of information on the development and final formulation of this right, reveals no details on how states expected this aspect of the provision to be applied to protect children. Nevertheless, it should not be concluded that children are immune to attacks on their honor and reputation – quite the contrary.

Considering the above, this paper will primarily focus on protecting children's privacy in the digital environment. In this sense, the paper will first analyze the issue of protecting children's privacy, as well as possible ways of endangering this right in the digital environment. After that, the issue of privacy threats by parents will be analyzed separately. Namely, although children have largely gained a certain degree of autonomy, parents still significantly influence their lives and guide them in realizing their rights. However, even parents have not remained immune to the challenges of today's digital world, particularly social media. Often, their actions—such as sharing photos and other personal information—raise concerns about children's privacy rights. This leads to questions about whether and how parental actions can be restricted in this context. In this regard, the paper analyzes the judgment of the Supreme Court of Cassation of Serbia, as well as the practice of the European Court of Human Rights. Finally, the paper will analyze a specific threat to children's privacy, which includes the publication of texts in print and online media, which seriously violate the rights to respect and protect children's rights, particularly the right to privacy.

Keywords: children's rights, right to privacy, digital environment, media.

343.575(497.11)

*Miljan Savović**

LEGALIZING DRUGS AS A MEAN OF FIGHT AGAINST ILLEGAL DRUG TRAFFICKING IN SERBIA?

It is undisputable that illegal drug trafficking is causing great and exhausting disputes between law researchers and scientists all around the world, and at the same time a different array international level problems (economic, health, legal…). Mutual consensus is nowhere to be found.

Current and contemporary means of fighting against illegal drug trafficking are not giving wanted results. The quoted problem stands as one of the most flagrant problems of modern society.

All of the conventional methods are failling to suppress this highly alarming problem. So, maybe it is time to resort to unconventional meassures? At first glance, it seems that legalizing any type or form of drugs will only increase manipulation and devastating consequences of illegal drug trafficking. But, does it really have to be like that?

There are a lot of positive legal systems in international community that are legalized some type of drugs as a mean of fighting with illegal drug trafficking and that are giving good results in it, and at the same time helping in decreasing number of consuments and other consequences.

I strongly believe that legalizing some type of drugs is an effective mean in previously mentioned fighting. We have countries like Netherlands who are profiting enormously from legalizing some form of drugs.

The main premise and the main focus of this scientific article are going to revolve around potenital legalizing some type of drugs in Serbia. In which ways and how, it will be presented through the example and comparison with Netherlands and some other countries.

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I am a firm believer and I strongly advocate for legalization. There are literally infinite number of possibilities that we can achieve only if we legalize some form of drugs. For example, our tax rates regarding potenital legalized drugs can be very high. That way, we can invest that money in infrastructure, education, health, welfare… We can transfer and relocate that money into upgrading everyday life of each responsible Serbian citizen.

It is easy to access drug nowdays, literally everybody can acquire it. So, why do not we legalize it, tax it and use that money to do some good for community?

Facts quoted in previous paragraphs of this abstract are going to be main focus of scientific article regarding these particular topics.

During the making of this article I will primarily use next methods: analytical, critical and method of comparison. I optimistically believe that some of my conclusions regarding the main topics of this article are going to be innovative.

Some of my suggestions are going to revolve around de lege ferenda hypothetical possibilities and concrete and various solutions in different situations, for example: Which drugs specifically could be legalized, all of them or some? What amounts are going to be borderline between legal possesion and illegal category (for example 2, 4 or 10 grams for personal use)? Is there going to be a legal limit regarding number of purchases that one person can do during one week, one month or one year (for example 10, 20 or 50 grams per week, month or year)?

I have already imagined most of the hypothetical scenarios and their outcomes, so after i finish with making of this article, I sincerely hope that I will give some level of contribution to scientific community about these legal institutes and that the principles that I am advocating for are going to be implemented in the times to come.

Keywords: illegal drug trafficking, drugs, legalization, de lege ferenda.

342.727(497.6)
316.647.5/.8

*Dr. Antonija Skoko**

NORMATIVE FRAMEWORK OF BOSNIA AND HERZEGOVINA REGARDING HATE SPEECH BASED ON EUROPEAN AND AMERICAN MODEL – DE LEGE FERENDA

Freedom of expression, as one of the fundamental human rights, is the subject of numerous discussions – social, scientific, and even political. The importance of freedom of expression is evident from a whole series of international and regional documents regulating freedom of speech. However, it is crucial to mention that freedom of expression is not an absolute right. It is subject to certain limitations, especially when it is misused to threatens the rights of others. There is still no unified opinion about the justification of the mentioned restriction, given that freedom of speech has an instrumental value in preserving democracy. One cannot talk about freedom of expression without mentioning hate speech, that is speech for which, despite all efforts, there is still no generally accepted definition. This is proof that conflicts are a phenomenon that cause problems both in science and practice. Many authors who deal with human rights, and especially freedom of expression, raise the question of the limits of freedom of expression and hate speech. The Greek philosophers Plato and Socrates already emphasized how important, but controversial, unhindered freedom of speech is. They are considered as qualified creators of today's conflicting legal systems regarding the regulation of freedom of expression.

The European system emphasizes value pluralism and the need for legal restrictions, while the American system rests on liberal philosophy, which means that, according to the interpretation of the First Amendment of the Constitution, freedom of speech is unlimited. The reason for this is the different historical experiences of Europe and America,

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as well as the rhetoric of totalitarian regimes, which includes the deportation of ethnic groups. As for the European soil, the European Convention on Human Rights is a living instrument for the preservation of human rights, especially through of its specialized Court, which has developed standards that member states must pay special attention to when deciding on cases in the field of freedom of expression. On the other hand, the practice of American courts shows a high degree of tolerance towards offensive or vulgar speech, emphasizing that such speech can only be condemned in social and not in legal frameworks. Although the concept of hate speech is associated precisely with America, today this speech is nothing but free speech to which every individual has an equal right. Despite the above, it must be emphasized that direct invocation of violence (which is obviously going to happen) is not within the protection of the First Amendment, which nevertheless shows a minimal restriction of freedom of speech.

Bosnia and Herzegovina, as a country with a specific constitutional and legal system, is fertile ground for the development of hate speech. There is no explicit ban on hate speech, except through the criminal offense of Inciting racial, religious, and national intolerance. Regarding to other discriminatory characteristics, criminal law regulation is deficient. Considering the recent war, but also the fact of the heterogeneity of Bosnian society, the question of sustainability and efficiency of the existing normative framework is raised. The paper will deal with the practice of the European Court of Human Rights and the practice of American courts regarding freedom of speech with a detailed analysis of conflicting reactions to almost the same phenomena in practice. The best solutions from both systems will serve as a recommendation to the existing legislation and to create a sustainable model in the fight against hate speech.

Keywords: freedom of expression, hate speech, European model, American model, case law.

342.53:342.34(38)

*Dr. Vojislav Stanimirović**
*Una Divac***

FORMING THE ASSEMBLY AS A LEGISLATIVE BODY OF AUTHORITY IN ANCIENT GREECE

Ancient civilizations, although centuries removed from the present day, can still offer us insights that are crucial for understanding the historical context of the emergence and functioning of modern institutions. To better understand current issues in law-making, it is sometimes necessary to look back to the very beginning and analyze how the first societies overcame the same or similar challenges. Since ancient Greece, and especially ancient Athens, is considered the cradle of democracy, analyzing the formation of the assembly as a legislative body in ancient Greek civilization could lead to useful conclusions that would contribute to the overall goal of this research, which is a deeper understanding of the roots of the popular assembly and its role as a legislative authority today.

Over time, the popular assembly in ancient Greece evolved from the least significant to the most important bearer of legislative, and even other branches of power. The three most prominent city-states typically studied in the context of ancient Greek law and government are Sparta, Gortyn, and Athens, and they will also be the focus of this research. The rudimentary and unwritten Spartan law represents the first step in the evolution of Greek law, where the popular assembly, the Apella, had very little influence on the proposal and adoption of laws. Composed of all adult male Spartans, its authority did not extend beyond accepting or rejecting legislative proposals drafted and presented by the Gerousia, on the initiative of the five ephors— the two most important aristocratic bodies of authority in Sparta. Voting on legislative proposals in the Apella was done by acclamation, where the presiding

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ephors decided whether the 'for' or 'against' side was louder, which opened the door to manipulation of the voting and adjustment of the voting results to the will of the ruling elite. From the above, it is evident that legislative power in Sparta essentially did not lie 'in the hands of the people,' and the role of the popular assembly was purely formal and secondary.

Gortynian law is often cited in the literature as an evolutionary link between the underdeveloped Spartan and the developed Athenian law; as a step closer to the developed democratic system for which ancient Athens became known. Unfortunately, the legislative procedure in Gortyn is not fully illuminated, but there is an assumption that the Gortyn Code was enacted in a secular procedure before some collective body, which is often referred to in the literature as the popular assembly (although there are opposing views). The notion of a collective legislative body is also suggested by the fact that no individual is mentioned in the preamble of the Code as attributing the enactment to themselves, which was common in the laws/codes enacted by ruler-legislators of ancient civilizations. The authors will attempt to discern which body was the main bearer of legislative power in Gortyn and to what extent it was in the hands of the people.

Legislative power in Athens also underwent a gradual evolution, transitioning from an aristocratic system to a democratic one over time. In classical Athens, the most significant body of authority became the popular assembly, the Ecclesia, which was composed of all adult Athenian citizens. On the other hand, all full citizens could apply for positions in other state bodies and offices, completely eliminating the aristocratic character of authority. The governing council, the Boule, drafted the proposed laws, which were then voted on in the popular assembly, and every citizen had the right to oppose a legislative proposal or to demand a change to an existing law through a lawsuit called *graphe paranomon*. This does not mean that such a democratic mechanism was without its flaws and that Athens did not struggle with corruption, which will also be addressed in this paper.

Keywords: National assembly, legislation, democracy, ancient Greece.

342:004.8

*Dr. Violeta Stratan**

A CLASH OF TITANS? ADMINISTRATIVE LAW PRINCIPLES IN THE DIGITAL AGE

Romanian cities are taking steps in using modern technologies to improve administration and increase the standard of living of their citizens. However, the projects are at an early stage, the road to the implementation of large-scale solutions, such as a high-performance systems in public administration, still being long. Opportunities were created for reform in this respect, via the Romanian Recovery and Resilience Plan, with RRP-funded investments targeting online provision of key public services. The alleged aim of such investments was to modernize the public administration through advanced technologies and a focus on citizens' and businesses' needs, by increasing productivity and resilience, and reducing error and processing time with the help of automating laborious, repetitive, and rules-based tasks. The quality of public services is also likely to be enhanced by the enactment of the national legislation on the exchange of data between IT systems and the creation of the National Interoperability Platform. Applicable to both central and local public administration, Act no. 242/2022 provides the legislative framework necessary to regulate data exchange between IT systems, thus guaranteeing the centering of public services on citizens as end users. Furthermore, access to electronic public services has been facilitated with the launch of the ROeID mobile application, last year, allowing the creation of the unique electronic identity of each Romanian citizen. At the beginning of this year, e-invoicing has become mandatory in Romania, its important benefits for businesses and government resulting from smoother transactions and increased transparency. New technologies, such as AI, can play a significant part in the modernisation and overall improvement of the functioning of public administration.

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Nevertheless, a guarantee of the transparency, correctness and security of the data processed is also essential. Therefore, the use of AI in public administration should be limited by the principle of legality and the need to ensure a high degree of reliability of any technologies used, as well as the need to ensure respect of citizens' rights (ELI, 2022). Public administration is, as a result, confronted with important challenges in the use of AI and algorithmic decision-making systems (ELI, 2022). The development of these techniques raises specific problems relating to the particular requirements arising from the principle of good administration. In addition, concerns such as transparency, accountability, compliance and non-discrimination are particularly relevant in the context of public administration. In this paper, we propose to tackle the potential advantages of successfully implementing AI in the public sector, while enhancing accordingly the observance of the principles likely to safeguard citizens' rights, in order for such "titans" as traditional administrative law principles and increasingly challenging AI do not clash.

Keywords: artificial intelligence, public administration, public services, transparency, accountability.

342.731:28-4435-055.2(4)

*Dr. Amila Svraka Imamović**

FREEDOM OF RELIGION OR BELIEF IN EUROPE: CONTEMPORARY CHALLENGES AND PERSPECTIVES

Wearing a headscarf in a public space is an integral part of the right of the freedom or belief. This right is seriously threatened in a number of European countries, where the Republic of France is definitely a lider. Interpreting the hijab as a practice that is difficult to reconcile with the principle of gender equality, tolerance and European values, the legislators have banned wearing a headscarf in schools.

An example of the UK served as evidence that all the arguments of France and other European countries, supported by the European Court of Human Rights, were not based in practice. British Muslims perform conscientious educational and work tasks at the same time wearing a headscarf. It doesn't matter to the British "What a cat, black or white color, it's important to hunt mice."

On the other hand, Bosnia and Herzegovina have not yet chosen their way. Silence of the public, apart from a few political points that representatives of individual parties have tried to pick up, approve of existing limitations in the context of wearing a headscarf in the military and judiciary. The negative feelings or prejudices against a headscarf, should not serve as a justification for adopting regulations that discriminate against a certain number of Muslim women.

The real policy should definitely ensure that wearing a headscarf must be a matter of personal choice, not imposing a family or religious community, but beyond it must not go. Then when individual freedom and interest are protected, in a common space they should not be limited to wearing clothing that manifests one's religious and cultural

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beliefs. This practice sends us a message that this system is tolerant, pluralistic, that we respect everything equally.

Keywords: manifestation/expression of religion, religious clothing, religious symbols, headscarf, ECHR, laicism, multiculturalism.

271.222(497.11) "1983-1986"
342.7(=163.41) (497.115)"1983-1986"
323.28(=18)(497.115)

*Branko Šaponjić**

THE SERBIAN ORTHODOX CHURCH AND THE SERBIAN PEOPLE IN KOSOVO AND METOHIJA (1983 – 1986)

The status of the Serbs in Kosovo and Metohija was extremely complicated in the middle of the second half of the 20th century. The creation of a new state that was supposed to be based on "brotherhood and unity" gave the suffering Serbs hope that, at last, after five years of hardship, they would be able to live in peace. The Arnaut separatists, however, were determined to succeed in their mission at all costs. Specifically, their objective — ethnically pure Kosovo as part of Great Albania — was not forgotten after the end of the Second World War. Numerous records from the archives of the diocese of Raška-Prizren provide us an insight into the situation in the territory of today's southern Serbian province. This paper aims to outline the key incidents and challenges that shaped the destiny of the Serbian Orthodox Church and the Serbian people in Kosovo and Metohija in the period between 1983 and 1986, respectively. More specifically, a plethora of records from the eparchy of Raška-Prizren bear witness to Arnaut's heinous crimes against the Serbian populace, as well as against monks and Serbian Orthodox Church clergy. All peoples and nationalities were guaranteed equal status under the laws of the FRY (Federal Republic of Yugoslavia) and the SFRY (Social Federal Republic of Yugoslavia) throughout the federation's territory. However, as this paper will demonstrate, while the 1974 Constitution and umpteen legal acts in the region of Kosovo and Metohija guaranteed the safety and equality of Serbs with Arnauts, in actuality, these guarantees were not met. The silence of the provincial authorities, who covered up every instance of Arnauts' violence against the Serbian people, monks and priests, bears witness to the aforementioned. As an

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inevitable consequence of Arnauts' violence and the Priština authorities' hypocritical attitude, the emigration of Serbs was a daily occurrence. In his book "*From Kosovo to Jadovno*," Bishop Atanasije Jevtić lists numerous instances of Serb emigration. Although the Law on the Prohibition of Inciting National, Racial or Religious Hatred, Discord or Hostility (1945) guaranteed the equal position of all peoples and nationalities on the territory of the entire federation, in the territory of Kosovo and Metohija, Arnauts violated every article of the aforementioned law. Ethnically motivated crimes against Serbs and the Serbian Orthodox Church were skillfully concealed, despite the fact that the law for causing racial and religious discrimination stipulated a severe punishment, ranging from two to fifteen years in prison. In 1982, a group of monks and priests led by Bishop Atanasije Jevtić and Amfilohi Radović appealed for the protection of Serbian life and its sanctuaries in Kosovo, since the Priština authorities were unresponsive to the sufferings of the Serbian people. Newspapers in Yugoslavia, particularly in Zagreb, portrayed the appeal as an act of nationalism by the Serbs. The Serbian Orthodox Church Synod endorsed the same appeal and stated that the suffering of the Serbian people needed to end immediately. However, the appropriate authorities did not respond at all to this request.

Even now, Arnauts still use violence against the Serbs in Kosovo and Metohija. Despite multiple international and domestic acts that ensure the safety of the Serbs and their sanctuaries (UN Resolution 1244, the Constitution of the Republic of Serbia), the attempt to expel the Serbs from their centuries-old hearths is becoming more and more intense. In the period from the 1980s until today, the Arnauts destroyed a great deal of churches and churchyards and expelled hundreds of thousands of Serbs from their centuries-old hearths. To present the aforementioned facts, we will employ the historical, sociological, comparative, and normative approaches.

Keywords: Kosovo and Metohija, SOC (Serbian Orthodox Church), Arnauts, Serbia, crime.

343.611-055.2(497.5)

*Dr. Marissabell Škorić**

FEMICIDE IN THEORY AND PRACTICE WITH THE SPECIAL REFERENCE TO THE NEW LEGAL SOLUTION FROM THE EIGHT AMENDMENT OF THE CRIMINAL CODE OF THE REPUBLIC OF CROATIA

Femicide as a social phenomenon has been the focus of not only scientific but also general public interest in the last few decades. Although the term has a theoretically broad spectrum of meanings, its contemporary understanding is inevitably linked to the concept of gender. Numerous studies confirm that women are mostly murder victims within their family circle, that death is often the result of the escalation of previously endured violence, and that the roots of femicide lie in a patriarchal culture where unequal power relations and the inferior position of women compared to men dominate. It is precisely this gender component that forms the fundamental distinction between femicide, as the most extreme form of gender-based violence against women, and the criminal acts of murder and aggravated murder.

At the beginning of this century, femicide was transformed into a criminal law term. This trend began in Latin American countries, where almost all of them have defined femicide as a separate criminal offense or as a qualified form of murder. In recent years, this trend has spread to several European countries, including the Republic of Croatia. Namely, in April 2024, amendments to the Criminal Code came into force, incorporating the criminal offense of aggravated murder of a female person, which states: *Whoever commits a gender-based murder of a female person shall be punished by imprisonment for a term of at least ten years or long-term imprisonment.* Additionally, the legislator prescribed that when determining this criminal offense, it will be considered *whether*

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the crime was committed against a close person, a person previously abused by the perpetrator, a vulnerable person, a person in a subordinate or dependent relationship, or if the crime was committed in circumstances of sexual violence or due to a relationship that places women in an unequal position, or if there are other circumstances indicating gender-based violence. Furthermore, Article 87, paragraph 32, defines gender-based violence against women *as violence directed at a woman because she is a woman or that disproportionately affects women*, and it is prescribed that gender-based violence will be considered an aggravating circumstance, except in cases where the Criminal Code already explicitly prescribes a more severe penalty. In this way, the legislator aimed to emphasize the need for more severe punishment of perpetrators of gender-based violence against women.

The introduction of this criminal offense has sparked numerous debates, raised certain legal questions, and reignited the issue of an adequate response to violence against women. A legal framework for combating violence is necessary, but the focus should finally be placed on the implementation of existing regulations on the protection of victims and the responsibility of individuals who are in charge of their enforcement. Additionally, continuous efforts must be made to improve the work of relevant judicial bodies and to invest in the systematic education of all those who encounter victims of gender-based violence in their work, as well as to change societal awareness of this issue and raise public sensitivity to its victims.

Keywords: femicide, violence against women, gender-based violence, Criminal Code of the Republic of Croatia.

352/353:341.176(4)

*Mr. Mateja Tomašević**

THE ROLE OF THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE IN STRENGTHENING DEMOCRACY

The need for lower territorial forms of government appeared in the early fifties of the last century when the Conference of Local Authorities was founded. However, in the seventies, with the emergence of increasing regionalization, there was a need and advocacy for greater democracy of local and regional dimensions. Great recognition of local and regional democracy came in 1985 when the European Charter of Local Self-Government was adopted, while in the early nineties, the Congress of Local and Regional Authorities of the Council of Europe was established, which replaced the previous Conference of Local Authorities. Since then, the democratic aspect of the division of power into local and regional has been advocated increasingly in Europe. Throughout the history of signatory states, it can be seen how membership contributes to local and regional self-government development. Since then, Congress has established several instruments to preserve and promote democracy at lower levels of government. To consolidate territorial democracy, and to ensure the uniform application of local and regional democracies, the Congress strengthened cooperation with member states and established three committees that evaluate national legal frameworks, exchange good practices, and guide local and regional democracies of signatory states. At the same time, the Congress ensures the protection and respect of fundamental political and civil rights and freedoms. Delegating numerous authorities to lower territorial units means bringing the government closer to citizens, and their participation. The additional protocol to the European Charter of Local Self-Gov-

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ernment, adopted in 2009 as an amendment to the European Charter of Local Self-Government, gives all citizens the right to participate in local government affairs. All the mentioned factors and instruments show that regional democracy is impossible without regional autonomy, and the European Charter of Local Self-Government serves as a source of inspiration for countries that decide to establish or reform their local and regional authorities, as well as a guideline and guiding thought for signatories who already act according to it. By comparing different local democracies with the same key principles, we can see how the proper functioning of local democracies is ensured, which represents one of the foundations for peace and stability within the European Union. All these factors contribute to one of the key fundamental values of the European Union, which is strengthening democracy.

Transferring authority to lower territorial forms promises the development of democracy. With the development of society, the need for local and regional authorities is increasing, and the future is reflected in the democracy of local and regional self-government forms.

This paper aims to bring closer the significance of the Congress of Local and Regional Authorities, as a body responsible for strengthening democracy and bringing democracy closer to every citizen and to compare the level of democracy in countries that signed the European Charter of Local Self-Government.

Keywords: democracy, local, regional, Congress, European Charter of Local Self-Government.

334.755:347.74(439)(091)

*Dr. Norbert Varga**

CARTEL CONTRACTS IN JUDICIAL PRACTICE: HISTORICAL BACKGROUND TO EVOLUTION OF THE HUNGARIAN CARTEL PRIVATE LAW

The elimination of legal uncertainty is the most important task of legislation and jurisprudence. The regulation of economic law institutions came up as a necessity in the 19th and 20th century. In order to protect the consumers' interests, the state interfered private law affairs and regulated sharking procedures, unfair competition and cartel law. By taking European regulation results into account, Hungarian cartel regulation organisations were introduced by the Cartel Act (20th Act of 1931). In this lecture, I will present the practice of Curia related to the cartels before and after the first Hungarian cartel act.

I want to present the creation of legal certainty in the context of cartel law on the basis of practice. On the one hand, it is necessary to examine the role of the Curia as the highest court before the entry into force of the first Hungarian Cartel Act. Since the Curia of Hungary used the principle of good morals to create inter alia the legal practices concerning cartel agreements before the first cartel law of Hungary was introduced in 1931. In my presentation, I will focus on the practice of the Curia in the light of the principles of private law. I intend to answer the question of how the Curia decided the cartel case in the absence of legislation. The relevant decisions (e.g. decision no. 2.254/1883, 8.377/1893, 2.254/1883, 8.377/1893) of the Curia will be systematically analysed in my study, supplemented by the theoretical background published in the Hungarian literature (e.g. Károly Szladits, Károly Dobrovics).

Another important step in the creation of legal certainty was the regulation of cartel law at the statutory level. The Hungarian cartel act

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created legal certainty by regulating cartel supervisory authorities. This act regulated the unfair economic agreements in Hungary at the first time. The law-enforcing role of the court is an important instrument for creating legal certainty, which contributes to the protection of consumers and to ensuring freedom of competition. In the provisions of the Hungarian cartel act, the Cartel Court (the specialised court within the Curia) has the most important role in creating legal certainty. In the second part of my presentation, I will discuss the case law of the Cartel Court (e.g. decision no. 3013/1932, 5261/1932, 4642/1933).

Cartel organisation, permitted in the first half of the 20th century, grew exponentially in Hungary, and courthouses played a vital role in keeping them within the law, pressuring and affecting the operation of companies that played the greatest role within economic life and the formation of said economic life. The joint task of the courts and the legislature is to create legal certainty.

Keywords: Cartel Private Law, Hungarian Cartel Act, freedom of competition.

347.78:342.7-056.26

*Univ. mag. iur., spec. iur. Narcisa Vrbešić-Ravlić**

COPYRIGHT EXCEPTIONS AND LIMITATIONS ON REPRODUCTION IN THE AVAILABLE FORMAT ACCORDING TO THE MARRAKESH TREATY: SOCIAL AND HUMANITARIAN DIMENSION

Modern society and legal systems guarantee the protection of vulnerable groups in their economic, social, health and cultural rights. Their rights are guaranteed by a network of international, European, and national documents from the beginning of the concept of human rights protection after the Second World War until today, when one of the most important international documents of the 21st century is the UN Convention on the Rights of Persons with Disabilities. People with disabilities, as an extremely heterogeneous vulnerable group, are often deprived of the everyday, practical enjoyment of human rights despite guaranteed rights. Blind and partially sighted people are one of the groups of people with disabilities whose rights are threatened, despite the complex network of protection and guaranteed rights. For positive law to correlate with the rights of international documents, in some cases, inter alia, positive discrimination must be applied to ensure the guaranteed rights equally. This work therefore focused special attention on the adoption of a higher level of human rights through the provisions of exceptions and limitations of other legally regulated rights. The paper used common methods in social sciences, inter alia, the historical method, the method of analysis and synthesis, the method of induction and deduction, and the method of analyzing the Treaty itself. The research objectives of this paper are aimed at determining whether and to what extent the rights of blind and partially sighted people have been realized in the context of the rights guaranteed by the Marrakesh Treaty. Through the perceived

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need to solve the problem of accessibility of published works for people with disabilities who are unable to read standard print, because it is limited by copyright protection, a model was offered that would level human rights and copyright protection, i.e. intellectual property. Exceptions in copyright law when creating available formats enabled free access to new knowledge and information, which until then had been prohibited by law. The Marrakesh Treaty (full name of the Treaty: Marrakesh Treaty to Facilitate Access to Published Works for Blind and Visually Impaired Persons and Persons with Other Disabilities in Reading the Printed Text) from 2013 is the first international treaty of its kind which, through limitations and exceptions, on the one hand guaranteed human rights of the other party. The Treaty entered into force in September 2016 under the supervision of the World Intellectual Property Organization and is also the first such copyright agreement based on human rights principles from the Universal Declaration of Human Rights and the UN Convention on the Rights of Persons with Disabilities. This Treaty offered a solution to overcome the challenges faced by persons with disabilities in the inability to access and use copyrighted materials. One of the extremely important roles of the unrestricted availability of materials relates to education. Thus, the mission and policy of the unique educational space and the right to education are placed as part of the economic, social, and cultural category of human rights. Of special international, humanitarian, social and political importance is the regulation of the possibility of cross-border exchange of available materials established by the Treaty. The analysis of the Treaty will show the establishment of an international legal framework based on which the member states of the Treaty should regulate exceptions and limitations of copyright in their national legislation in the field of copyright, considering that the signing of the Treaty also created the obligation to harmonize with national documents. It is unquestionable that modern society strives for globally open and accessible information. However, in the creation of a universal and equally accessible solution, it is necessary, first, to achieve compliance with exceptions and limitations to ensure the equal enjoyment of human rights through a unique legal and binding norm.

Keywords: copyright, human rights, persons with disabilities, Marrakesh Treaty.

343.143(73)

*Dr. Jelena Zovko**

PERJURY IN ANGLO-AMERICAN LAW

The notion of perjury as a common law crime as "swearing falsely, under oath, in judicial proceedings, about material issue" was defined as late as mid-seventeen century and as such was received in the early common law and statutes of English North American colonies. Slow evolution of legal concept of perjury of witnesses corresponded to late development of modern procedural role of witnesses in common law courts, but maybe it is even more so due to the complex religious and legal nature of an oath.

The concept of an oath predates law itself. Oath is older than both legal and religious systems and is rooted in human belief of his or her own magic whose vehicle was the spoken word. An oath was a form of self-curse in conditional form, to be autonomously performed upon the realization of the uttered condition. It was essentially a means of guarantee of fulfillment of the promised. With the development and pervasiveness of religion, gods and other deities became the agents whereby oaths were supposed to operate. Monotheistic religions allowed oaths only as affirmations of the faith, to be performed after invocation of the only God. With its usage in the legal systems, oaths transformed to the form of the ordeal, not to be performed by an act of God as in healing of the wounds of the ordeal of hot iron, but as a form of judgment itself. At that time this kind of judicial oath was not identical to testimonial evidence. However, its judgment-like character along with its religious nature left the sanction for oath-breaking or perjury to God's retribution, causing the external sanctions, legal sanctions, for perjury to develop rather late in the history of oaths.

The oath never quite shook off its primitive, mystical and religious aspects and its legal nature is still debated in the legal systems of the

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different legal families, as well as in the Anglo-American law. Perjury, as an elemental part of an oath, acquired similar controversial legal character. Having in mind the long past of the oath, secular sanctions for perjury in England are rather recent development that occurred firstly in the Court of Star Chamber. Although there are some doubts to prior existence of the perjury as a common law crime, earliest statutory sanctions of some instances of the subordination of perjury were regulated by 1540 statute of King Henry VIII. Perjury itself gained statutory punishment by The Elizabethan Statute of 1563 which prescribed penalties for perjury and the subornation of perjury.

In the United States of America perjury is defined both on federal and the state level. All fifty states have perjury statutes which vary in their provisions, but most define four essential elements to perjury: "the statement must be made under oath; the statement must be false; the speaker must intend to make a false statement and the statement must be material to proceeding".

In this paper the author analyses some aspects of the evolution of perjury in Anglo-American legal history and law. Complex legal nature of an oath, the late development of modern procedural function of witnesses in common law courts as well as the changing role of the jury being main subjects of the analysis.

Keywords: Perjury, oath, Anglo-American law, witness, jury, false statements.