SUMMA

A SVÁJCI POLGÁRI PERJOG EGYSÉGESÍTÉSÉNEK MÓDSZERE – VALÓBAN LEHETNE MODELLÉRTÉKŰ EURÓPA SZÁMÁRA?

Harsági Viktória

Az elmúlt években többször felmerült a gondolat, hogy a polgári anyagi, illetve eljárásjog területén Svájcban alkalmazott jogegységesítési módszer például szolgálhatna Európa számára is. Az európai polgári eljárásjog további fejlesztési lehetőségeinek mérlegelése során magától értetődően át kell tekinteni mindazokat a projekteket, amelyekben hasonló problémákkal kellett megküzdenie a szakembereknek. A 2011. január 1-jén hatályba lépett új svájci polgári perrendtartás (schZPO) kodifikációja során a legjelentősebb akadályt valószínűleg a svájci jogi kultúrán belül tapasztalható sokféleség és többnyelvűség képezte. Egy esetleges európai szintű eljárásjogi egységesítésnél feltehetően hasonló problémák jelentkeznének, ám vélhetően erőteljesebben mértékben. Tudatában annak, hogy az európai jogegységesítés határa mindig a jogalkotási kompetencia függvénye is, a tanulmány azt vizsgálhatja, hogy az új svájci polgári perrendtartás kodifikációjának menete elméletileg modellként szolgálhatna-e Európa számára. Ebből következően a tanulmány tárgya nem az új helvét szabályozás hatálya és tartalma, hanem csupán *a módszer általánosságban és annak alkalmazhatósága*. Válaszra vár az a kérdés is, hogy a perjogi jogegységesítés svájci metódusából nyerhetők-e olyan tapasztalatok, felismerések, melyek *egy szélesebb jogi kulturális környezetben, európai szinten* is éppoly sikeresen alkalmazhatók. Így nem magukat az egyes intézményeket kell megvizsgálni, hanem egy általános képet alkotni arról, miként hozták közös nevezőre a korábbi kantonális polgári perrendtartásokat. Tehát az érdeklődés középpontjában *a „hogyan" kérdése* áll. Nem cél a régi kantonális szabályozások részletes összehasonlítása, pusztán annak a koncepciónak, illetve a munkamódszernek a feltárása, amellyel az egységesítést megvalósították.

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REFUGEE STATUS DETERMINATIONS AND THE LIMITS OF MEMORY

Hilary Evans Cameron

Refugee status decision makers typically have unreasonable expectations of what and how people remember. Many assume that our minds record all aspects of the events that we experience, and that these memories are stored in our brains and remain unchanged over time. Decades of psychological research has demonstrated, however, that our memories are neither so complete nor so stable, even setting aside the effects on memory of trauma and stress. Whole categories of information are difficult to recall accurately, if at all: temporal information, such as dates, frequency, duration and sequence; the appearance of common objects; discrete instances of repeated events; peripheral information; proper names; and the verbatim wording of verbal exchanges. In addition, our autobiographical memories change over time, and may change significantly. As a result, while gaps or inconsistencies in a claimant's testimony may in some cases properly lead to a negative credibility finding, such aspects are often misleading and should never be used mechanically, and the bar must be set much lower. Many decision makers must fundamentally readjust their thinking about claimants' memories if they are to avoid making findings that are as unsound as they are unjust.

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EMOTIONS AND JURISPRUDENCE: A PLAUSIBLE APPROACH. A DRAFT ON THE LAW AND EMOTIONS SCHOLARSHIP

Balázs Fekete

The separation of law and emotions stems from the philosophy of the Enlightenment making a sharp distinction between rationality (*ratio*) and emotions (*emotio*). Modern legal thinking from the 19th century has not really questioned this separation so far since it tried to explain legal phenomena as rational ones. However, the study of emotions in a legal context has been revitalized from the 80s as the interdisciplinary approaches have become more and more popular and fashionable in the jurisprudence of North America. These kind of interdisciplinary studies focusing on the interactions of law and emotions (the role of emotions in the work of courts and judges, the importance of emotions in legal education, the affective impact of legislation) have gradually forged out a distinct way of jurisprudence: the so-called law and emotions scholarship. This paper discusses the most important step of this

evolution that started with the famous speech of William J. Brennan, Jr. arguing for more passion in the interpretation of the US constitution.

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NOTES TO THE CANON LAW HISTORICAL IMPORTANCE OF THE COUNCIL OF UDVARD (1307)

Szabolcs Anzelm Szuromi

The *Decretum Burchardi Wormatiensis* – that canon law collection which was very possible used in the canonical legislation in Hungary during the 11th – 12th century – ordered to convoke the provincial council two times per year. The first one should be after than the third week of Easter and the second should hold on October 15th. Obviously, beside these occasions was possible to convoke further councils by necessity. The Council of Udvard – probably hold at the end of May 1307 – was in session based on a crystalized order of councils (i.e. *ordo de celebrando concilio*) and in the atmosphere of a political debate concerning the legality of King Charles Robert († 1342). The Council's text is organized into four canons. The first canon is the most interesting one which regulated in detailed form the prayer "Angelus".

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SPORTRECHTLICHE GRUNDLAGEN

Viktor Bérces

Sportrecht ist eine typische Querschnittsmaterie, was bestellt aus vereinsrechtliche, arbeitsrechtliche, gesellschaftsrechtliche, wirtschaftsrechtliche, verwaltungsrechtliche, strafrechtliche und europarechtliche Regeln. Die Inhalt dieser Materie ist so ziemlich komplex, und erläutert nicht nur **organisationsrechtliche**, sondern verfassungsrechtliche Fragen, auch im internationalen Kontext.

Diese Publikation macht die Aufmerksamkeit besonders auf die Autonomie des Sportrechts. Diese bedeutet, dass die staatliche Regelung muss nebensächlich bleiben, und die Sportorganisationen muss die Freiheit haben, ihre eigene Normen und Zentralverwaltung auszubilden. Es gibt viele verschiedene Regelungsgebiete, worauf diese Freiheit zur Geltung kommen muss: Meisterschaftsregeln, das Dopping, finanzielle Lösungen, etc.

In Ungarn ist es leider nocht nicht gelungen, ein adekvates Sportgesetz zu bringen. Die hauptliche Problemen sind, dass die Finanzierung von Sportorganizationen nicht

gelöst ist, und die Grenzen des Staatseingriffs nicht genau vorschreiben sind. In dieser Schrift möchte ich eben auf diese Fragen fokussieren.

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LEGAL STATUS OF THE INTERVENOR IN CONSIDERATION OF JUDICIAL PRACTICE

P. Zoltán Pintér

There are some sensitive questions where the practice of the courts and the legal regulations are not in harmony. We studied the Hungarian legal regulation and the effective judicial practice in the special field of intervention and we analyzed it in the light of authoritative legal literature. We showed some dysfunctional practice where (because the Hungarian law is not precedential one) the legislation has to find solution by modification the existing, but overgone regulations. We suggested solution to the modification, too. The basic question: when the intervenor has rights and obligations in the litigation from. The answer to this question has effect to legal status of the intervenor: which information are reachable to the intervenor without abuse of rights in the term between the notification and the effective approval, furthermore it has effect to the lawfulness of intervenor's appeal, too. We indicated that completeness of access of the file before the court permits the intervention can hurt interests of the parties and we offered that in the mentioned period only the claim form could be available for the intervenor.

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HOW MUCH ABOUT US WITHOUT US?

Beáta Bakó

This paper examines the opportunities of direct emergence of popular sovereignty in parliamentary democracies. It discusses the functions and choices of direct democracies via a comparative analysis of public law in Hungary and Germanist countries, which our system of law is affected the most, such as Switzerland and Austria. The comparative analysis includes the constitutions and the acts about referendums and elections, taking into account the possible subjects of referendums, quorums, binding power and institutions of direct democracy, also not forgetting about the changes in the new Hungarian constitution.

While in Austria already the essential elements of direct democracy, popular initiative and enforceability are injured, in Switzerland, theoretically, even direct

popular domination could occur. The regulation of Hungary is between these two extremes.

Beside the opportunities given by the law it is necessary to see, how all these work practically. In Switzerland a referendum can be held on any tasks, but the questions are – often at a low participation – mostly rejected. In Hungary, a large part of the initiatives can not even reach to set a referendum, however, the Hungarian regulation could seem quite liberal at the first sight. Like in Switzerland, it is enough to collect quite few signatures in a broad term to initiate a binding referendum, but in Hungary, the too high quorums and many forbidden subjects can easily pull back real citizen initiatives.

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THE IMPERATIVE OF RESPONSIBILITY AND FREEDOM

Gábor Horvath

The concept of responsibility should be used in a responsible way, in order that we may recognise its scope and the ways of grounding and applying it. My essay focuses on the ‚Prinzip Verantwortung' developed by the German philosopher Hans Jonas. This 'principle of responsibility' is intended to be a willingly and reasonably accepted harness of the power of humankind, one that is able to restrain the human strive for self-fulfilment, which is now destroying the very basis of human existence, society, and identity.

Political communities of the 21st century need to develop a conception of responsibility that extends to all domains of the public sphere. Responsibility is more than just a necessary correction of or possible addition to justice and fairness: it is the source of the never-ending improvement of law, legislation, and social institutions.

To provide sufficient grounds for such a conception of responsibility, I examine the emergence of non-reciprocal responsibility through the phenomenon of Ehrfurcht, the formation of the 'ability to be responsible' in the sphere of purposes and means, the role of values in the system of Sein and Sollen, and the contemporary change of sequence between Sollen and Können. Finally,on the basis of the asymmetric nature of responsibility, I seek to describe the functioning of political responsibility, and the duties of the Staatsmann in particular.

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CONTRACTS CONTRARY TO GOOD MORALS

Zita Vajna

Legal norms always arise from moral norms, which are accepted by the society. So that the concept of law and moral is inseparable from each-other.

For the subject of my enquiry I have chosen from the wide range of general clauses the general clause, which is concern to the prohibition of the conclusion of contracts contrary to good morals. It's role is to implement rules from the moral sphere within closed system of positive law.

In my paper I try to solve 'legal but immoral' problematics with the examination of the general clause, and with the close study of the legal institution concerning prohibition of contracts contrary to good morals.

I try to find an answer for the question, what is the function of good morals in the legal system, and how can we interpret and concretise this notions in the right application.

The main purpose of my work is to give a paramount picture on the subject and to contrast point of views and opinions of the authors concerning the subject matter.

Based on these premises I draw up my point of view, conclusions, and proposals.

The emphasis is to examine the judicial practise of the last 20 years in Hungary, which is introduced by the case circuit envolved by the author of this paper.

I pay attention to examine the connection of good morals and the public policy, and I propose the implementation of the public policy to this place of this measure as the limit of the liberty of conclude a contract.

As a conclusion I will analyze the possibility of the application of the general clause of good morals within the EU, and I propose the extension of the general clause of good morals, because it would be a basic requirement, to reiterate contracts should not only be legal but also moral.

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THE FRAMEWORK OF LANDPROPERTY IN THE EUROPEAN LAW

Péter Zlinszky

Hungary have to relegislate his landproperty law, as the land monatory on agricultural land property is reaching its end on the 30th of april in 2014. This essay introduces the reader to the European framework of the Member States legislature.

The Common Agricultural Policy doesn't give any conditions about this topic. The Treaty on the Fuctioning of the European Union (TFEU) reaches these regulations

throught the four freedoms of the internal market. Two of these , the free movement of persons – especially the freedom of establishment – and the free movement of capital are binding the MS's.

Using the well known Dassonville formula (C-8/74) these freedoms are giving a broad prohibition of regulation which could hinder the freedom of establishment and even more, the free movement of capital.

There are two direction for MS's to justify derogatory regulation. One is the taxative lists of exeptions in TFEU. The other is the possibility of justification improved by the practice of the European Court of Justice (Gebhard case C-55/94).

Using the European examples the Hungarian legislators may find the way not to break the European Law, but still defend the domestic interest, which is to help the hungarian families living from the land.