

SUMMA

STUDIES ON KNOWLEDGE AND OPINION ABOUT LAW IN THE SOCIALIST HUNGARY

Balázs FEKETE – István H. SZILÁGYI

This paper is devoted to a special field of the Hungarian Socialist jurisprudence: studies on knowledge and opinion about law. It offers a detailed and in-depth overview of the developments from 1965 to 1989. Basically, the paper is focused on the oeuvre of the two prominent personalities of this age, Kálmán Kulcsár and András Sajó, both fellows of the Institute for Legal Studies of the Hungarian Academy of Sciences. The paper argues that sociology of the law – with special regard to empirical studies – was a very developed field of the Socialist jurisprudence, mostly because the authors keenly followed the international developments of the scholarly literature. In conclusion, the oeuvre of Kulcsár and Sajó can certainly be regarded as path-breaking in the Hungarian jurisprudence.

* * *

ABOUT THE WORKFLOW AND TOOLS OF CODIFICATION – THE FIRST STEPS

Balázs GERENCSÉR

Legislation does not begin with the first draft of the legal text, but at the inner decision, which rises in the drafting person: the legislator. This is beyond the positive law, and cannot be kept within legal frameworks. It is undisputed, however, that the quality of the legislation actually depends largely on how the legislator approaches and what tools he/she uses at work. In this article the lesser-known first pre-steps of legislation are assembled according to the works and teachings of three major Hungarian legislators with the aim to wake up the legislators to be aware of their equipment. These steps (workflow) are: 1) three kinds of impulses trigger legislation; 2) first examination of the legislator: whether legislation is needed or not; 3) second examination of the legislator: planning. At this step the legislator defines the type of regulation, clarifies the task, assesses the instruments and adequate competencies.

ISSUES RELATED TO THE PRACTICAL APPLICATION OF RESTRAINING ORDERS

Erzsébet TAMÁSI – Orsolya BOLYKY

The purpose of the research project was to assess to which extent the three legal institutions of restraint have been able to fulfill their functions since the introduction of restraining orders. The research effort included the collection of the legal, dogmatic and procedural law anomalies of restraint, the disclosure of the problems in the application of law arising from the functioning of the three legal institutions and the criminological aspects of the efficiency of restraining orders. The restraining orders were analyzed on the basis of 2011 and 2012 statistics and files extracted from the same period. For all three of these legal institutions, it can be clearly established that personal, subjective factors such as professional competence, the standards of legal knowledge, experience, practice, etc., are at least as critical factors in determining the efficient operation of restraint as the lack or availability of resources to legal and social institutions, or the anomalies arising from the law.

* * *

THE ROLE OF HUNGARIAN CUSTOMS AUTHORITIES IN THE PROTECTION OF ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Iván Ákos BUJDOS

The protection of nature and our environment is society's common goal, and with regard to the activities of mankind in the 21th century, these are integrant parts of the ciceronian concept of "utilitas publica".

The legislation regarding the international trafficking of living organisms is an important although indirect instrument of nature preservation. As far as this study is concerned, the part of this legislation to be examined is in connection with the duties and legal status of the Hungarian customs administration, namely the National Tax and Customs Administration. The research should be done in three fields: regarding Environmental Law (international and EU-aspects and the implementation into Hungarian law as well), Administrative Law (mainly the role of customs authorities) and Criminal Law (analysing the criminal offence of "Damaging the Natural Environment" under Section 242 of Act C of 2012 on the Criminal Code).

The study gives an insight not only into the legislation on the trafficking of endangered species, but also into the relevant Hungarian law enforcement aspects through other studies, and recent cases of smuggling mainly from the practice of Airport Directorate No.1 of the National Tax and Customs Administration.

OVERTURE OF THE MILITARY CRIMINAL LEGAL DEBATE OF DUALISM

Ádám FARKAS

This paper aims to show the forgotten beginnings of the hungarian military criminal legal debate in the period of Austro-Hungarian Monarchy by the parlamental debate of the bill about the scope of military courts. The hungarian science of legal history disregards the questions of the state's armed defense, the military law, and the military ciminal law, while these questions were in the list of the dualism weaknesses, and weakened the strenghtening of rule of law in the hungarian civil state. The aim of the research is not only the development of military law history, but identificating our legal historical knowledge about the hungarian civil costitutional state. In addition, the paper presents a discussion so that hundreds of thousands of conscripted soldiers, and through them, the fate of the entire Hungarian society had a significant influence.

* * *

ADDITIONS TO THE CONCEPT OF „NECESSITY”

Ádám Zoltán MÉSZÁROS

Nowadays the technological progress and the modernization of our world started to accelerate. Our society has posed new threats. Despite fulfilling the definitional elements of a criminal offence, there may be circumstances in which the law is prepared to exculpate the actor even where the interests of an innocent person are set back by the conduct. Necessity is a possible justification for breaking the law in the face of danger. The central aim of this essay is to examine the development facilities of necessity in light of the new hungarian criminal code. It is relatively rare to see the issue of necessity raised in criminal cases under hungarian law, consequently the courts have not had many opportunities to state general rules. So in this essay I would like to clarify by means of use the hungarian and foreign cases the boundaries of criminal responsibility where the defendant is compelled to act to avert some harm to themselves or another.

* * *

CHANGES IN THE CRIME OF ASSAULT AGAINST PUBLIC OFFICIALS WITH A DEADLY WEAPON SINCE THE CRIMINAL CODE OF 1961 UNTIL NOWADAYS

Mariann MISKOVICS

Since the socialist Criminal Code has entered into force in 1961 the crime of assault against public officials with deadly weapons caused some serious interpretation issues for the judges and sometimes even for the creators of the laws. Regarding the special qualifying condition – assault with a deadly weapon – which has not been yet properly analysed and understood, a comprehensive and detailed presentation seems to be necessary, especially in connection with the crime of assault against public officer. Considering the changes since 1961 it can be pointed out that there have been some relevant and rather great changes on this crime, especially when committed with deadly weapons which is highlighted by the statistics and regarding which a trend for the number of these crimes can be drafted.

* * *

THE FUTURE OF THE EUROPEAN UNION'S LAW IN MARRIAGE

Sarolta MOLNÁR

This paper concentrates on the questions of the possible future of a European family law, especially focusing on marriage. A fundamentally economic union, as the now European Union started out, has made its way into remote areas of law such as family law. Why is there a need for a unified European family law at all, and is there a realistic chance to reach a common meaning of the much debated issues of family law in an international context that could not agree on its own common cultural values in a constitution? Seeing the obstacles a unique work of the Commission of European Family Law has taken the initiative to develop a family law system, step-by-step. While this work has its own values it is still doubtful whether it is a realistic undertaking to aim this to take the lead in the unification, but why? or why not? These are the ranges of questions that this works tries to retrace.

* * *

THE HISTORY OF THE COMMISSION ON THE STATUS OF WOMEN AND ITS CHANGING ROLE WITHIN THE UNITED NATIONS SYSTEM

Lilla OSZTROVSZKI

The issue of Women's Rights has been gaining prominence in the international arena. One intergovernmental body that has been responsible for this development is the Commission on the Status of Women (CSW).

The CSW is exclusively dedicated to the promotion of gender equality and the empowerment of women. It has been instrumental in shaping global standards on gender equality for more than six decades.

This article explores the role the CSW has played in furthering Women's Rights, the challenges it has overcome and its prospects for the future.

