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SUMMA

THE COURTS AND THE SEPARATION OF POWERS ACCORDING TO THE HUNGARIAN CONSTITUTION

Nóra Balogh-Békesi

The study describes the changes concerning the separation of powers in judiciary according to the current Fundamental Law. It objectively presents cases those occured in the national and international courts, for instance the general retirement age for judges or transferring cases to another court. It reviews changes of the administration of courts and changes in judicial competence. The study focuses on the novelties of the relationship between the Constitutional Court and ordinary courts, such as the review of judicial decisions upon constitutional complaint or the competence of norm control granted to the Curia.

It can be followed by the study that the modification in the competences result in a change both in the judicial praxis and in constitutional adjudication.

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THE "HAINING PRINCIPLE": IDENTITY, STABILITY AND FLEXIBILITY OF CONSTITUTIONS

Lóránt Csink – Johanna Fröhlich

"If they needed me in time of peace, now they need me much more in time of war" said Jane Haining Scottish missionary when she was warned to leave Hungary at the World War. The situation is much the same in the case of constitutions. During great social difficulties one has to cling to the constitution rather than neglecting it. Constitutions have to be stable.

On the other hand, constitutions have to be flexible; they have to be in accordance with the changing social circumstances. The article examines when it is worth amending the constitution and when it is not.

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COMMENTS ON THE DIRECTIONAL CHANGES OF THE PRACTICE OF THE FREEDOM OF ASSEMBLY

Barnabás Hajas

The author reviews possible restrictions on freedom of assembly in Hungary, while thinking through legislative measures and court decisions. As examining the further mentioned, the essay makes comments about changes in the direction of practicing freedom of assembly. Firstly, general restrictions on freedom of assembly are outlined, concentrating also on former amendments of the Assembly Act and Constitutional Court decisions. After seeking through the general frames - such as that the exercise of the right of assembly cannot constitute committing a crime or cannot incite someone to commit a crime, and may not result in the violation of the rights and freedoms of others - exact reasons of prohibition are followed by. Summing up, the author reflects on the challenges of written law restrictions on freedom of assembly in the domestic legal practice, from the beginning until today's latest CC decisions.

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POINTS OF CONTINUITY WITH THE RÉGIMEN OF 1848

László Salamon

The purpose of the lecture is to focus on the points of continuity comparing the form of government created in 1848 and form of government regulated in our present Fundamental Law. In 1848 version, Act III of 1848 contained the fundament of Parliamentarism, primarily by way of regulating the responsibility of government in front of Parliament as well as introducing the requirement of governmental responsibility (via countersignature) in case of decisions taken by the Head of State. The written rules were embedded into constitutional common law and as such jointly impacting the character of the Hungarian Parliamentarism. Excluding the four decades of communist dictatorship, this form of government characterizes the major aspects of our constitutional life, aligning with actual historical situation and respective changes. The underlining thesis of my lecture is that the Parliamentarism, as a form of government, was the achievement of our historical constitution, and – despite certain differences in detailed rules – it has been living on in our Fundamental Law.

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THE COMPETENCES OF THE LEGISLATIVE IN THE SYSTEM OF DIVISION OF POWERS OF THE FUNDAMENTAL LAW

Péter Smuk

This paper gives an overview on the competences of the legislative of Hungary, in the light of the principle of division of powers. The National Assembly of Hungary has a handful of powers that can be exercised without any contribution of other state powers or further actors. Among these, the constitutive and constituent power and the election of certain state officials are the most striking examples for demonstrating the overwhelming powers of the legislative. On the other hand, the parliament interfered in the recent years into the competences of other branches of power, where the conflicts with the judiciary and the Constitutional Court worth to be introduced. The almost complete sovereignty of the legislative could be limited from inside too – the rights of opposition however are rather weak according to the standing orders.

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ACHIEVEMENTS OF THE HISTORICAL CONSTITUTION OF HUNGARY WITHIN THE COMPULSORY RULES OF THE BASIC LAW

András Zs. Varga

One of the symbolic regulations of the Basic Law of Hungary is the elegant solution of the paradoxon of adoption of a unified („written") constitution and its continuity with the ("unwritten") Historical Constitution. The dilemma could not be decided in a trivial manner. The long set of laws forming the Historical Constitution that lost their effect between 1946 and 1949 could not be simply reentered in force, hence legislation and legal practice of 60-65 years could not be hidden. On the other hand ignorance of importance of legal contituity could have left the new constitution unrooted. The Basic Act gave an unusual but convincing rule: "Provisions of the Basic Law shall be interpreted in accordance with (...) the achievements of our Historical Constitution. » Thus the Historical Comstitution is not in force but it is a permanent and copulsory framework of interpretation. In the same time the Basic Law is a unified text but it belongs in an organic manner to the Historical Constitution: new sprout from the ancient root.

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PROTECTION AND SUPPORT OF THE FAMILY AND FOETAL LIFE IN PRESENT HUNGARIAN LAW WITH DEMOGRAPHIC STATE OF AFFAIRS

Antal Hámori

Through the presentation of the demographic situation, the contemporary laws regulating the protection of the family and foetal life in Hungary are discussed in this paper, covering the practice, the still existing problems, the reasons for, the means to avert or remedy childlessness, the issues of a life and family friendly society and eventually recommendations are formulated for further measures. This is made in the confidence that once we will live in a life and family friendly society overwhelmed by the *love* as expressed also in the National Confession.

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USE OF FORCE AGAINST ISIL IN IRAQ AND SYRIA

Gábor Kajtár

This paper aims to analyze the possible legal justifications for the use of force against ISIL in Syria and Iraq. First, it outlines the evolution of the conflict and introduces its main players. Second, the paper addresses the different legal justifications that the intervening States invoked or could have invoked to preclude violating Article 2(4). The following justifications are examined in detail: (i) intervention by invitation, (ii) Security Council authorization, (iii) the right to individual or collective self-defense, and (iv) humanitarian intervention. The conclusion sums up the main findings. Syria serves as a battlefield of two simultaneous struggles. One is of a military nature, and takes place between states and non-state actors. Although this war is extremely brutal and devastating for both Syria and Iraq, it is unfortunately not unprecedented and hopefully will not last for too long. The other fight is of doctrinal nature and appears to be more lasting. The tendency of states to rely on the vague concept of unable and/or unwilling test can either be a turning point in state practice towards hollowing out the general prohibition on the use of force, or it can signal exactly the opposite; namely, that the use of force against non-state actors is far from being established in customary international law.

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WAS JESUS A REVOLUTIONIST?

Pál Sáry

According to Reza Aslan's new book „Zealot," Jesus was a political revolutionary figure who advocated an armed struggle against Roman occupation of his homeland. This idea is not new at all: beginning from the 18th century, many scholars (Reimarus, Kautsky, Eisler, Carmichael, Brandon and others) have already taken this view. The present paper examines the main arguments of these scholars, and points out that the portrait of the revolutionary Jesus is entirely false: the takers of the revolution theory evidently misinterpret the words and actions of Jesus by taking Gospel passages out of context, and by ignoring information that might provide a different interpretation. These authors frequently connect facts which are really independent of one another, but they do not realize the real connections. They accuse the Gospels of tendentiousness, but they themselves are tendentious. Finally, the paper concludes that Jesus was not a rebel: it is much more probable that the historical Jesus is identical with the Christ of the faith.

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JÓZSEF BÁNK AS HEAD OF THE DEPARTMENT OF CANON LAW AT THE THEOLOGICAL FACULTY OF BUDAPEST

Szabolcs Anzelm Szuromi, O.Praem.

The science of canon law and its scholarly engage in this discipline has a long historical tradition in Hungary. For illustration here is enough to refer to Card. János Chernoch (and his active contribution in the first codification), Card. Justinian Serédi O.S.B. (and his indispensable work in the process of the codification and in the composition of "Fontes" to the *Codex iuris caninici* [1917], in close cooperation with Card. Pietro Gasparri), then to József Bánk (who was active as consultor in the Commission for Code-Revision since 1966 with his good friend, Urbano Navarrete S.J.). Prof. Bánk – as head of department of canon law at the Theological Faculty of Budapest between 1943 and 1964, then bishop and archbishop – had made indispensable contribution in the professional work of the Second Vatican Council and the revision of the Code of Canon Law (promulgated on January 25th 1983). He focused his scientific activity particularly on description of Justinian Serédi's scholarly canonical work, but Prof. Bánk composed one of the most important canon law handbook on marriage law for the world-wide instruction (i.e. *Connubia canonica,* Rome 1959), moreover, he also published the most significant Hungarian canon law handbook in two volumes, which defined and influenced not only the instruction, but the jurisprudence, canonical processes and ecclesiastical legislation in Hungary until 1992 (*Kánoni jog*, I–II 1960-1963). On the very

day when József Bánk died (September 7th 2002), Peter Erdő mentioned about him: "Without any doubt, he was the greatest Hungarian canon lawyer after World War II."

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THE DEVELOPMENT AND HISTORICAL OVERVIEW OF ANIMAL PROTECTION

Judit Embersics

Publishing in the field of animal protection is a big challenge due to the peripherality of the topic. The author's intent with this publication includes, but is not limited to present how the perception of 'animal' as a living being has changed throughout history, how they have been treated by society and law, and accordingly, how their protection has been developed.

The most important aspect in need of clarification regarding the research focusing on how animal protection has been developed, is clarifying what has been meant under 'animal', therefore what is the object of protection. Animal as a term has had a long developmental trajectory, but not necessarily in a positive direction; parallel to social development they were degraded from transcendent beings to things. According to this, from 'protection' being evident – which is not exactly a form of true protection, because there was nothing against what they needed to be protected, it is rather a humane treatment of them – we have arrived at deliberate animal protection, where protection is guaranteed by written rules and laws. Regarding the development shown in this publication we can see, that this protection exists only when society has a will to achieve this protection. However, is this protection sufficient? Is it imaginable, furthermore, is it necessary to provide stronger protection for animals? Maybe the next step in animal protection will be empowering them with rights, through which stronger protection is realized. The author's intent with the questions posed regarding animal rights is to acquaint the thought of animal rights with the reading audience.

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ON THE PUBLICITY OF THE FIDUCIARY ASSET MANAGEMENT (TRUST)

Péter Miczán

In this paper, I present the issues concerning the publicity of the fiduciary asset managment (trust) relationship recently introduced by the new Civil Code. In my view its present status is suboptimal. In order to improve it, it is necessary to create the registry of such relationships the registrion into which should be a requirement for the relationship to have effects on third parties. Similarly the creation of the certificate

of the fiduciary asset management relationship issued by the registrar in a publicly authentic deed should in my view also be a requirement. Since such certificate could verify the powers and their restrictions towards would-be trust creditors, who would be obligated to check the certificate. To support such proposals I present in this paper among others certain trust law solutions to the publicity problem, the original views on the desired level of publicity of the fiduciary asset management held by the experts preparing the original draft of the Civil Code bill. Evaluating the presently effective legal provisions on the registration of such relationships, I present the private law basic values affected, and the interests of the concerned parties as well.

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DIE GRÜNDE DER VERANTWORTUNGSBESTIMMUNG DES GREMIUMS IN DER GESETZLICHKEITSUNTERSUCHUNG IN DEN INSTITUTEN DES HOCHSCHULWESENS

Zoltán Rónay

Die Rolle der ungleichartigen Gremien ist traditionell bestimmend in der Funktion der Instituten des Hochschulwesens. Diese Gremien können bei der allgemeingültigen Bestimmung der Fachliteratur kollektives, kollegiales und gemischtes Gremium eingeordnet werden. Diese Einordnung hängt von der Kategorie ab, ob sie einen peremtorischen Wirkungskreis oder nur eine begutachtende, konsultative Rolle oder sogar beide besitzen. In Ungarn kann man auf alle Fälle Beispiele finden. Die zwei wichtigsten Gremien, sowohl der Senat als auch das Konsistorium sind solche gemischten Gremien, in denen der kollektive Charakter dominant ist. Trotzdem sind die Verantwortungsregeln der Gremien und der Mitglieder unausgeführt, und das Verfahren, das die Geeignetheit der Entscheidungen erstellen kann, ist nur teilwiese und ohne ausreichende Genauigkeit ausgeführt. Die gerichtliche Prüfung beschränkt sich wesentlich nur auf zwei Fragen: einerseits auf die Entscheidung des Senaten in Beziehung mit der Studentenselbstverwaltung, andererseits auf den körperschaftlichen Beschluss über den Rechtsmittelantrag der Studenten. Die Studie beschreibt die Mittel, die der Gesetzgeber ausgebildete, um die rechtliche Geeignetheit der körperschaftlichen Beschlüsse zu bestimmen.

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DETERMINATION OF THE APPLICABLE LAW TO MAINTENANCE OBLIGATIONS IN THE EUROPEAN UNION

Károly László Simon

In the early 1990s, the issue of cross-border recovery of child support and other forms of family maintenance being hindered by the significant number of the applicable international regulations as well as their conflicting interpretations and enforcement had been recognised by the Hague Conference of Private International Law. In the early 2000s, the Hague Conference began to elaborate a set of new regulations concerning the matters of jurisdiction, mutual recognition and enforcement of judicial decisions, legal assistance, and applicable law in order to rationalise the procedure of enforcing international maintenance claims. On 23 November 2007 the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and the Hague Protocol on the Law Applicable to Maintenance Obligations were concluded.

In 2009, the Hague Protocol was adopted by the European Community. As a result, the applicable law to maintenance obligations is currently determined by the Protocol in 26 member states of the European Union including Hungary.

The aim of this study is to present the scope of the Protocol as well as its regulations concerning the choice of applicable law, the applicable law in the absence of choice, their possible interpretations and certain issues of practice.