Iustum Aequum Salutare
III. 2007/4. · 263–271.

SUMMA

AN OUTLINE OF THE HUNGARIAN NONPROFIT LAW AND THE DIRECTIONS OF THE RESEARCH

ZOLTÁN CSEHI

The present study deals with the basic points of a problematic field of Hungarian legislation, the Hungarian nonprofit law. The introductory section lists the various interpretations of the concept of nonprofit and wishes to give a theoretical definition to the term before examining the legal concept itself. The paper analyses the benefits coming from Hungarian charity law and possibilities of tax allowances. Chapter 1 gives a thorough analysis of the legal forms of the nonprofit and treats the questions of founding and seizing an organisation.

Chapter 2 describes the taxation of nonprofit organizations focusing on charity and non-registered charity organizations considered nonprofit. The rules of the VAT and the so-called "1% rule" are also mentioned—the latter means that Hungarian private persons may give 1% of their tax to one of the listed churches, while another 1% according to the decision of the private person may be given to any nonprofit organization by the state (chapter 3). Chapter 4 discusses the duties of the management, a really dubious area of the Hungarian nonprofit law since the principles and rules of the for-profit business cannot be applied directly. The lack of rules for incompatibility and exclusion regarding not registered charities are also touched. The new theory called the "duty of obedience" is also examined from the Hungarian point of view. In Chapter 5 about the control of the nonprofit organizations the internal and external (state) controls are mentioned with raising the question of how to the possibilities of external control are to be strengthened. Chapter 6 describes the lack of fund raising regulation in Hungary since the law for advertising, for broadcasting and for non-competition does not cover this issue. The business activity and the investments of the nonprofit organisations are dealt with under the regulations of the protection of the creditors.

The present paper is not intended to be a short summary of the nonprofit law; the real purpose is rather to give inspiration to and to define directions for further studies concerning the questions of the nonprofit.

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DIFFICULTIES FOR CARTEL DAMAGES CLAIMS IN HUNGARY

KATALIN SZAMOSI

The article takes a detailed look at the difficulties of damages claims in Hungary. This includes an outlook to the contractual and tort claims for damages in the Hungarian legal system also taking into account the proposal for a new Hungarian Civil Code. Having done this the author analysis next the rules for establishing *locus standi* in damages claims in competition cases and the role of the national competition authority (Gazdasági Versenyhivatal) in procedures for private damages. The article also highlights several difficulties of damages claims because of the leniency policy and the uncertainty of estimation of the exact amount of damages and finally it also takes into account the consequences of nullity. The final conclusion of the author is that private damages claims are a possible way forward and the Hungarian courts are well prepared to deal with such cases, but it is reasonable to start with follow-on actions for the first few cases.

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THE EUROPEAN COMMUNITY'S ADHERENCE TO TREATIES ADMINISTERED BY THE UN WORLD INTELLECTUAL PROPERTY ORGANIZATION AND THE WORLD TRADE ORGANIZATION CONCERNING INTELLECTUAL PRODUCTIONS

GYÖRGY BOYTHA

Since all states of the European Union are members of both the UN system and the WTO it has proven necessary that the European Community, endowed with legal personality within the Union and enjoying observer status at the UN Assembly as well as membership in the WTO, actively participates also on its own behalf and within its competence in the development of international treaties administered by those organizations. The Treaty establishing the Community originally conferred on it but a few explicit exclusive or shared powers to conclude international agreements, whereby also non exclusive powers have become exclusive whenever the community had taken related action. Interpreting Community competence the European Court of Justice expounded internal powers explicitly adjudicated to the Community as also entailing implied powers indispensable for their realization. If either explicit, or implied powers cover only a part of the whole subject matter of an international treaty, the Community may not sign it alone but only jointly with its Member States. Regarding matters concerning intellectual productions and in consideration of the relevant limits of the Community's external powers explained by the European Court in its opinion about the then impending adherence of the Community to the GATS and TRIPS agreements, the 1997 Amsterdam revision conference deemed it necessary to empower the council to unanimously extend those competences to matters of rendering services and intellectual property beyond the trade aspects originally enumerated

is the founding treaty. As to intellectual property in particular, further provisions were set forth during the 2000 Nice revision: The Council has been directly empowered to conclude international treaties also in this field, explicitly restricted, however, to merely commercial aspects of intellectual property. The Council has been also authorized to go beyond such aspects in external relations, however only by taking unanimous decision, and not going beyond the Communities' internal powers at large. Preparing the access to the 1996 WIPO Treaties, the Community still has problems with harmonizing the Member States legislation on copyright and neighboring rights. Regarding the UN human rights acts warranting the creators moral and economic interests, the European Union in its Charter of Fundamental Rights can provide merely for the protection of the economic rights of authors and owners of neighboring rights termed intellectual property not encompassing related moral rights.

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COUBLE STANDARDS ON FAMILY REUNIFICATION RIGHTS?

Immigration policy: An analysis of EC Directive on the family reunification of third country nationals

LAURA GYENEY

Family reunification is one of the main sources of immigration to the European Union. Family reunification measures are not only a way of bringing families back together, but they are also essential to facilitate the integration of third-country nationals into the EU. In 2003 the EU Council of Ministers approved a directive on the right of third country nationals legally established in a European Union Member State to family reunification. It determines the conditions under which family reunification is granted to third-country nationals as well as the rights of the family members concerned. Under certain circumstances, hovewer, the directive allows Member States to apply national legislation derogating from the rules that apply in principle. For instance, when a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may verify whether he or she meets an integration condition provided for by its existing legislation on the date of implementation of the directive. In addition, Member States may require applications for family reunification in respect of minor children to be submitted before the age of 15, as provided for by their existing legislation on the date of the implementation of the directive.

The above mentioned provisions of the Directive were challenged in front of the ECJ by the European Parliament on the basis that they are contrary to fundamental rights, in particular the right to respect for family life and the right to non-discrimination. The Court dismissed the action. It recalled that fundamental rights form an integral part of the general principles of law and that it is a main task of the Court to ensures its observance. For that purpose, the Court draws inspiration from the guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories. First and

foremost the Court relied upon the ECHR case law in its judgement. The ECHR however, has never been viewed as a specifically child-friendly document, especially within the context of the correspoding jurisprudence on the right to respect for family life. The Court, thus held that the ECHR does not create an individual right for a family member to be allowed to enter the territory of a State. It could not be interpreted as denying Member States a certain margin of appreciation when they examine applications for family reunification. So, because the Directive confers no greater discretion on the Member States than they already enjoy under the ECHR, the Directive itself does not breach the rights guaranteed by the Convention. Similar concerns can be raised with respect to some provisons of the Directive in the light of the Tampere Conclusions. Here the European Union has set the goal to go for equal rights of citizens and third-country nationals as far as possible. The present article intends to compare the relevant provisons of the 2003/86/EC Directive on Family Reunification with that of the 2004/38/EC Directive regulating the free movement of EU citizens and their family members.

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FIFTY YEARS OF EUROPEAN SOCIAL POLICY

From the theory of automatic convergence towards a 'European Social Deficit'?

NIKOLETT HŐS

In the last fifty years European social policy was evolving as a prisoner of an economic model which subordinated the social objectives of the Community to its economic ones. Even though the European Court of Justice (ECJ) has emphasized that the European Community Treaty is based on the equality of goals the European Union still has two faces. While it has strong powers to put forward its economic objectives, the EU is still less powerful when it has to enforce its social objectives. This paper intends to elaborate the evolving concept of social policy harmonisation with regard to the legal, economic and political context in which it has emerged in the 1950s. The *Viking* and *Laval* cases, just pending before the ECJ, will be used to address the question whether the traditional rationale for social policy harmonisation is viable when the interpretation of the powerful fundamental freedoms is threatening to destabilize the underlying coherence of national social models. With 27 Member States the EU must be prepared to decide on such politically salient issues. However, some argue that for this the Institutions must be given effective legal means to reinforce the political objectives of the integration project otherwise the EU risks to fall into the trap of a 'European Social Deficit'.

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THE CONCEPT AND PROTECTION OF CULTURE IN THE LAW OF THE UNESCO AND THE EUROPEAN COMMUNITY

PETRA LEA LÁNCOS

The long-standing problem of determining the concept of culture as well as the dual character inherent in cultural manifestations have been aggravated by the phenomenon of globalization and the continuing liberalization of international trade in the past decades. At the core of the debate is the question whether trade in cultural products may be legitimately restricted and justified with reference to the special nature of culture and its pivotal role in creating and maintaining social identities. On the international plane the UNESCO and the European Community (EC) are aiming at establishing a viable international instrument which may serve as a legal basis for protectionist measures in the ambit of trade in cultural goods as opposed to the legal commitments under the WTO regime. At the same time the EC seems less eager to concede to Member States' demands for cultural exceptions within the internal market. A legal assessment of the protection of culture on the international level presupposes the elaboration of the concept of culture as well as the harmonization of legal commitments enshrined within the framework of the UNESCO, the WTO and the EC. The present article sketches the implications of culture and trade, the essential points of the relevant sources of law and the main problems to be tackled in the future.

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CONSUMER CONCERNS DURING 50 YEARS OF THE EC TREATY

HANNES RÖSLER

On the occasion of the 50th anniversary of the EC Treaty, this paper takes a look at how consumers' interests are protected by EC law. The Internal Market, based on law and the principle of free market economy, also includes consumer freedoms in need of legal protection and a common consumer market, which stimulates both competition and welfare. The inclusion and extension of consumer interests into the EC Treaty took place in a gradual, two-step process: At first, consumer interests were only one among many aims pursued in guaranteeing free competition and the four basic freedoms. Yet in addition to this market-opening *Cassis de Dijon* philosophy, a positive integration by means of regulations and directives has taken place. This integration in turn allows consumers to take full advantage of the cultural and economic potential of an internal consumer market. The paper goes on to criticise both the Proposal for an EU Constitution as well as the Proposal for a Reform Treaty. Both texts, which are identical in many respects, do not allow for progress in terms of the legal situation, nor do they present a suitable answer to the challenges posed by digitalisation and network industries or to the necessities of consolidation and extension of EC consumer law (*cf.* Art. III–172 of the Proposal for an EU Constitution or Art.

94 of the Draft of the Treaty on the Functioning of the Union; Art. III–253 or Art. 153, respectively). The article does, however, emphasize the importance of consumer rights as a central protective element in secondary EC law.

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FIFTY YEARS OF COMMUNITY COMPETITION POLICY (ANTITRUST LAW) – FROM MECCA TO MEDINA AND FURTHER TO PARIS

PÁL SZILÁGYI

The article is intended to be a reference article. Books with hundreds and thousands of pages deal with Community competition law. This article highlights some of the most important events, cases and legislation of the last fifty years and comments shortly on some of them. We have concentrated more on the early years of Community practice than on the developments of the last decade. The article is one piece of a series where the lecturers and colleagues of Pázmány Péter Catholic University intended to remember on the fifty years development of Community law.

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QUESTIONS OF A REFORM OF THE SECURITY COUNCIL FROM THE POINT OF VIEW OF MEMBER STATES OF THE EUROPEAN UNION

ALLAN F. TATHAM

In order to understand the context in which a reform of the UN Security Council from the point of view of EU Member States might be accomplished, the author first deals with the current legal rules in the field before discussing the politics and current practice of EU co-ordination on Security Council matters. Finally, there is an outline of a number of possible reforms that may occur in the coming years.

The focus of the work concerns the very controversial topic of giving a voice to the EU at the United Nations' top table. This article examines how, on the basis of current Treaty provisions, the EU has developed its role within the Security Council through co-ordination, and concertation not only between the permanent members (the United Kingdom and France) and non-permanent members but also the practice that has evolved among all EU Member States. Nevertheless it remains to be seen whether the presence of a single EU seat (and veto) as opposed to different EU "voices" on the Security Council is a realistic prospect in the near future. Since the author considers this possibility as remote as ever, he argues that the EU Member States could still achieve a greater influence in the Security Council through improving lines of communication and rendering their input more effective at an earlier stage in Security Council deliberations. In such way, the EU would benefit from its Member States' presence on the Security Council while engaging indirectly in UN policy formation and implementation at the top table.

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LIMITS OF TORTIOUS LIABILITY

MIKLÓS BORONKAY

Every legal system has to face the problem, where and how the limits of tortious liability should be drawn. In this paper, I try to investigate this question and propose a draft text for the new Hungarian Civil Code (HCC).

First, I summarize the most frequently used methods of limiting liability, such as the theories of adequate causation, forseeability, risk, scope of the rule, interruption of the chain of causation etc. I agree with the conclusion of the most important comparative studies (above all those of von Bar, Honoré, Zweigert – Kötz and von Caemmerer), that these criteria do not give the judge sufficient help in deciding hard cases, these are merely guidelines, helping to give reasons for a judgment.

Secondly, I investigate the Hungarian law (the draft civil codes, legal literature and the cases) and come to the conclusion that the issue of limiting tortious liability has not been dealt with very thoroughly – at least if we compare it with the foreign literature and case-law. Recent authors take the view that forseeability should be the only limit of both contractual and tortious liability. This approach has been adopted by the new draft Hungarian Civil Code as well.

In the maybe most unusual part of my paper, I try to find out, *why* liability should be limited. This question has not been raised by the Hungarian legal theory after the political change in 1989. I conclude that there are many grounds on which liability should be limited: allocation of risk, economic and moral reasons, forseeablility etc. These considerations cannot be summarized in one single formula. It is, however, my belief that in certain case-types, one can reasonably balance the arguments for and against (full) liability. I investigate five such types, most of which cannot be fairly dealt with by only using the forseeability-test. I therefore conclude that the new draft HCC unfortunately oversimplifies the problems involved.

Finally, I investigate the two important tort law unification documents (European Civil Code – Tort Law paper; Principles of European Tort Law) which adopt a rather flexible, multi-factor approach. I follow this way and propose a new Article for the draft HCC. I suggest that the judge should be free to limit liability, but the grounds on which he might do so are listed non-exhaustively.

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JOG A VÁLASZADÁSHOZ

KOLTAY ANDRÁS

A sajtó-felületekhez való közvetlen hozzáférést biztosító válaszjogot eredendően *a* személyiség hatékonyabb védelmének szüksége hívta elő. A megtámadott fél úgy védheti meg leghatékonyabban becsületét, jó hírnevét, ha alkalmat kap a válaszadás-

ra, mégpedig lehetőleg ugyanazon közönség előtt, amely előtt az eredeti, sértő vagy hamis kijelentés is elhangzott. A válaszjog kiegészíti a rendelkezésre álló egyéb személyiségvédelmi eszközöket, a leggyakrabban alkalmazott kártérítéstől eltérően a jogsértés által megbomlott egyensúly valós helyreállítását szolgálja, magában foglalva a hamis állítások, sértő kifejezések cáfolatát, az igazság közzétételét, vélemények esetében pedig a szemben álló álláspont megismertetését.

A második érv a válaszjog mellett az általa megvalósuló szélesebb körű tájékoztatás, a sajtó demokratikus feladatai hatékonyabb ellátásának lehetősége. Ezen érv szerint immár háttérbe szorul a személyiség hatékonyabb védelme: a közönség joga válik elsődlegessé, az a jog, amelynek lényege a közösség sorsát érintő véleményekhez, eltérő nézetekhez való minél szélesebb hozzáférés. A sajtó ezen feladatát persze kevesen vitatják: a hozzáférést általában véve is ellenzők inkább azzal érvelnek, hogy a kívánatos, hatékonyabb információáramlás csak az állam beavatkozása nélkül, a szabad sajtópiacon képes megvalósulni.

A kérdés az 57/2001. (XII. 5.) AB határozat idején nagy vitákat kavart Magyarországon is. Ezen írás a válaszjog jelenlegi állapotát kívánja bemutatni az angol, az amerikai jogrendszerekben, illetve az európai uniós szabályozásban, valamint az Európa Tanács szempontjából.

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ÜBERGANGEN AUF DEN GRENZEN DES SACHBEGRIFFES – VON DEM ASPEKT DER JURISPRUDENZ

István Serák

Ich wollte in dieser Dissertation einen Grundbaustein des Privatrechts, den Sachbegriff analisieren, von dem Aspekt der vermögenswertigen Rechte. Ich forschte in meiner Dissertation die ungarische juristische Tradition, aber das ungarische Recht entwickelte sich zusammen mit dem österreichischen und deutschen Recht, deshalb musste ich auch diese zwei Recht-Systemen kurz durchsuchen und mit dem ungarischen vergleichen.

Seit den römischen Zeiten unterschieden Juristen zwischen körperlichen und unkörperlichen Sachen, als Gegenständen des Eigentumsrechts. Viele Juristen stellten ihren Standpunkt dar, um einen klaren Begriff zu finden, der der Bedürfnisse entspricht. Die Kodifikatoren des 19. Jahrhunderts erschafften einen weiteren Begriff, wie im ABGB steht, dass unkörperliche Sachen auch Gegenstände sein können. Seit dem BGB in den europäischen Zivilgesetzbüchern – wie in dem heutigen ungarischen Gesetzbuch – findet man einen engeren Begriff.

Ich habe während meiner Forschung fünf Übergangen gefunden. Diese Übergangen sind rechtsvorschriftlichen und richterlichen Lösungen, die viele so genannte „Sachen" uns lassen – vorzüglich die vermögenswertigen Rechte – wie eine körperliche Sache zu behandeln.

Der erste Übergang ist das, dass die vermögenswertigen Rechte die heutigen gesetzlichen Begriffskategorien erfüllen. Aus diesen Kategorien war für mich nur die

wichtigste als Relevant. In ABGB und auch in BGB findet man Definitionen für die bestimmungsvollen Kategorien, aber in dem ungarischen Zivilgesetzbuch stehen keine, sie verwenden sie nur. Meisten Rechtsinstitute haben verfassungsrechtliche Basen, deswegen musste ich das Problem des Sachbegriffes auch als Verfassungsproblem behandeln. Zuerst forschte ich die Eigentumsvorschriften eines Paares osteuropäischen Verfassungen durch und auch die Praxis der ungarischen und deutschen Verfassungsgerichts. In allen osteuropäischen Ländern sind die immateriellen Güterrechte unter dem Schutze der Verfassungen, also ist die Handlung dieser Sachen verfassungsrechtlich möglich. Der dritte Übergang ist im Gebiet der Erwerbung des Eigentums, wo ich die Erforschung machte, dass die Relevanten Rechte des Eigentümers verwendbar auf die immaterialen Güterrechte sind. Bei dem Unterschied zwischen Kauf und Zession ist der vierte Übergang, wo ich der Meinung bin, dass wir die Probleme der Übergabe mit Kauf besser behandeln können. Und zum letzten, die Versuchungen im Zusammenhang von Übergabe als Sicherheitsleistung zeigen diese „unkörperlichen Sachen" als beste Gegenstände dieses Vertrags.

Ich bin doch der Meinung, dass Behandlung der immateriellen Güterrechte mit den Vorschriften des Sachenrechts gangbar ist, obwohl die Erschaffung den Vorschriften schwer ist. Aber Recht ist eine Antwort auf eine veränderliche Welt, deshalb müssen wir auch das Recht immer verändern. So ist es mit den Grundbegriffen, auf welchen wir besonderen Akzent legen müssen.

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A FEW PROBLEMS CONNECTED TO THE CURRENT LEGAL REGULATION OF VIOLENT CRIMES AGAINST SEXUAL MORALS

László Tóth Áron

This article is trying to deal with some of the problems connected to "Rape" (197. §) and "Assault against decency" (198. §) that are present in the current Hungarian Criminal Code and judicial practice. Some of these problems occurred in the '90-es with the inevitable, but sometimes not considered enough changes of the Criminal Code. But yet there is for example the legally undefined substance of the term "sexual intercourse", which is a problem for more than a hundred years. It is also a problem that the Criminal Code still uses the term 'sodomy' for every sexual activity other than sexual intercourse, which is not the proper denomination for these kind of acts. There are views in the contemporary jurisprudence, which suggest that is was a failure to criminalize the violent sexual intercourses and other violent sexual activities committed in a conjugal community. And some even doubt that men should be treated as potential victims of violent sexual crimes. In the article I try to compose my own opinion about the problems and I try to give a solution for some of them. I hope my suggestions will not remain unnoticed and they can be a part of the argument about the future legal regulation.