Iustum Aequum Salutare
V. 2009/2. · 297–304.

SUMMA

WHERE IS THE SPIRIT OF MEDIA LAW? ON THE VOLUME TITLED "EUROPEAN MEDIA LAW"

ANDRÁS KOLTAY

Considering the fact that now we can read the 1400 pages long volume titled "European Media Law", it is not a brave suggestion—though in the past it was not always evident—that media law as a legal curriculum exists. Even European media law exists, which can be seen as the common wisdom of the EU member states as far as matters of media regulation. But where can we find its spirit? From Dr. Johnson's London in the 18th Century, to the great statesmen of the Hungarian reform age (first half of 19th Century), two things were common in all the discussions in the respect of the press: it is a powerful tool in maintaining the democratic process by developing human knowledge and autonomy (or in the case of Hungary in winning national freedom). The other is the common thought of the press being a useful forum for fostering and enriching national culture. Democracy and culture: these are the two foundations a European concept of media law can be built upon. In the language of the media law these are bind together in the notion of "pluralism". The most relevant European legal norms, as freedom of media services, regulation against hate speech or pornography, the right of reply, competition, merger and state aid rules etc. are all based on these. So if we carefully search, we can find the spirit of media law.

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L'ESSENZA E LA DESTINAZIONE DELLA CONSCIENZA ALLA LUCE DELLA SEDE CATTOLICA

GÉZA KUMINETZ

Lo sviluppo tecnico-scientifico, che così profondamente contrassegna la nostra realtà, pone sempre più in luce che, nel bene o nel male, il futuro dipende dalla nostra capacità e volontà di operare scelte valide. Le sofferenze e le ingiustizie, che constatiamo intorno a noi, si svelano in maniera sempre più netta come responsabilità dei singoli e delle comunità, non già come fatalità alle quali arrendersi passivamente. La questione morale è diventata il problema centrale della nostra vita sociale, soprattutto a livello politico ed economico. Il parlare della coscienza porta necessariamente a toccare le problematiche morali più gravi e urgenti.

Per questo motivo, in questo nostro studio di natura filosofica, cercheremo innanzitutto di evidenziare la consistenza e la profondità della coscienza. Poi la nostra

riflessione si sposterà sulla formazione della medesima, che appare sempre più come impegno etico fondamentale di ogni persona che voglia restare fedele alla propria dignità e attuarsi autenticamente nella libertà. Terzo, esamineremo la dinamica decisionale propria della coscienza morale. Quarto, analizzeremo il ruolo della coscienza nel contesto delle norme giuridiche, cioè, quando ci sono dei casi esimenti, quando si può parlare della epikeia, quando si può dispensare dalla legge. Ultimo passo della nostra riflessione sarà la trattazione della problematica sulla libertà di coscienza. Tutto sommato, la coscienza è il centro stesso della persona.

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INTERPRETATION OF LAW IN THE CHURCH

Lóránd Ujházi

The interpretation of law in the Church, just as in the civil law system, is a complex activity. Thus it is understandable that only a small part of this complex activity is presented in the Code of Canon Law (can. 16–18). The absence of any official definition of interpretation, and even of a private definition on the part of civil and canon lawyers, also testifies to the complexity of the question. Since this is linked to the whole tradition of debate surrounding legal theory in general, we find that the canon law system utilizes the expressions and hermeneutical methods which have been formed over the centuries and are present also in civil law systems. But sometimes the expressions have different meanings in the Church's law, which derive from its own particular structures and mission. The particular mission and hierarchical structure also imposes a limit on the possibility of using hermeneutical methods of interpretation derived from civil law. Thus we cannot accept and apply without criticism an evolving or progressive interpretation of law, which does not pay sufficient attention to the original mind of the legislator. Although in the broad sense the whole People of God participate in the interpretation of law, the Code of Canon Law mentions only one aspect of interpretation: direct, authentic interpretation, which incorporates also private interpretation. In the universal Church the Supreme Legislator, through the channels or offices authorized by him, has authority to give authentic interpretation with the force of law. A the level of the universal Church the Pontifical Council for the Interpretation of Canon Law has been encharged with law interpretation, the formulation of the interpreted text and its publication, following on the approval of the Roman Pontiff. This Council can interpret not only the canons of the Code of Canon Law, but has authority also to interpret other universal law texts either in the Latin Church or in the Eastern *sui iuris* Churches. The second type of authentic interpretation is the interpretation by judicial sentence and administrative decision. This is a matter of discussion among canonists. Many of them question whether this type of interpretation is authentic, if issued from an authority which does not strictly have legislative power to give it. Other canonists, however, recognize this interpretation, emanating from a judicial or administrative source, as authentic interpretation even when such an authority has only juridical or executive powers. There are arguments on both sides, but in the absence of definitive juridical norms,

we can not commit ourselves to either position. Private interpretation is another type of the classical forms of law interpretation. Canon 17 includes a precise, albeit for many canonists not exhaustive, list of the rules for private interpretation. Thus canonists have many different ways of understanding the principal rule and the four auxiliary rules. On the one hand this is understandable, because there are some truly objective aspects, for example canonical tradition (can. 6. §. 2.), or theological principles, which are not mentioned in canon 17, but which have to be taken into account for the interpretation of law. On the other hand the objectivity of the interpretation may be jeopardized if we unreasonably amplify the rules of law interpretation. The interpretation of law, which acts independently from the customary interpretation, is related to the rule which seeks the original mind of the legislator. Sometimes the legislator determines that you have to interpret the law strictly (can. 18.). These cases are, for instance, when a law prescribes a penalty, or restricts the free exercise of rights, or contains an exception to the law. In these last two cases the problem comes from a somewhat superficial formulation of the matter in question, but in the case of the interpretation of penal law a philosophical uncertainty appears. The substance of this question comes from the fact that sometimes you can, or even have to, depart from a rule of strict interpretation. This happened in the case of the authentic interpretation of the penal canon 1398, which refers to abortion. In this case the Pontifical Council for the Authentic Interpretation of Canon Law issued a broad and not a strict interpretation of this penal canon. It clarified that to eliminate the fertilized ovum, which has not yet been implanted in the womb, is also abortion. In this case the interpretation of the penal canon is contrary to the general practice of penal law interpretation. But this is understandable because the protection of human life cannot be subordinated to a law interpretation principle, but has to be protected to the maximum extent by every law system. This testifies that law interpretation is a complex activity and, despite the principles of law interpretation and its technical and hermeneutical norms, the interpreter has the possibility to give an interpretation which runs counter to them.

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LES SOIXANTE ANS DE LA DEFENSE DU DROIT DE CONSTRUCTION DE LA HONGRIE ET DU HERITAGE CONSTRUIT (1937–1997)

LEVENTE VÖLGYESI

Il n' y a pas longtemps de 10 ans qu'une loi des constructions nouvelle est en vigueur. Dans 20. siècle il y avait même trois lois qui règlait les constructions. La première loi a apparu en 1937 et il était impeccable dans le sens professionnel. Après la deuxième guerre mondiale la structure propriétaire a changée. Cette loi par contre a pu servir même la première partie de l'époque socialiste et une nouvelle loi n'est née qu'en 1964.

La loi créé en 1964 aussi évite les rédactions politiques et elle porte un niveau professionnel vigoureux. Elle porte très beaucoup d'éléments de la loi de 1937, très beaucoup la citations à la lettre de celle-là. C'est important parce que les constructions ne sont pas politisées ni même à l'avenir aussi mais elles utilisent les conquêtes

professionnel de l'époque ancien. La nouvelle loi devait quandmême, parce que les immeubles significatifs ont parvenu dans la main de l'état. Depuis cela la loi s'occupait à part avec le devoir investant, faisant le plan et practicien. Tous les trois functions se sont unis dans une main. Une nouvelle loi indépendante des questions de monuments historiques est née en 1881 à la Hongrie. En 1949, en même temps de la naissance de l'état socialiste une régulation de défense de l'héritage intégré est née où la défense du mobilier et immeuble est parvenu dans une unique règle de droit. Celui-ci est cessé de nouveau en 1964, jusqu'à 2001. La défense des immeubles monuments historiques l'héritage construit est parvenu dans la loi de construction de 1964, ça est devenu l'un des chapitres de celui-là.

L'état solide et moderne de la loi de 1964 montre qu'il est resté en vigueur mme après la cesse de l'état socialiste et une nouvelle loi n'est né qu'en 1997 qui ne s'occupe déjà des affaires monuments historiques mais elle parle de la construction entre la regle d'environnement. On a enregistré la règlation de monument historique dans une loi indépendante en 1997, et on a uni avec la réglation archéologique et d'objet d'art juridiques.

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DIE KONZEPTION DER WIEDERGUTMACHENDEN GERECHTIGKEIT

Bérces Viktor

„Wer mit Tätern arbeitet, kann sich nicht um die Opfer kümmern." Stimmt diese Prämisse? Die Aufspaltung in Täter und Opfer erleichtert die Rechtsprechung und schafft klare Verhältnisse für die Sozialarbeit – doch hemmt diese Trennung in Gut und Böse nicht auch die Lösung von Konflikten und die Entwicklung innovativer Ansätze in der Kriminalpolitik?

„Restorative Justice" oder „Wiedergutmachende Gerechtigkeit" setzt am Opfer und am Täter an. Diese kriminalpolitische Strömung sieht Kriminalität nicht primär und abstrakt als Schädigung der Gesellschaft, sondern als Verletzung und Schädigung konkreter Opfer. Der Rechtsfrieden soll nicht durch eine Politik des Strafens, sondern durch Versöhnung und Wiedergutmachung hergestellt werden. Damit wird das Opfer, aber auch der Täter in das Zentrum des Handelns gerückt. Beiden wird eine aktive Rolle in diesem Verfahren abverlangt. Täter wie Opfer erfahren dabei eine Aufwertung. Dieser Beitrag versucht, Überlegungen und Denkanstösse für eine Ausweitung des Restorative-Justice-Ansatzes im Strafrecht und in der Sozialarbeit zu geben.

Insgesamt sollte die Opferorientierung in allen Bereichen der Straffälligenhilfe als handlungsleitendes Prinzip und als methodische Grundhaltung durchgesetzt werden. Was es also braucht, ist ein Gesamtkonzept resozialisierender und wiedergutmachender Massnahmen, bei denen Opfer- wie Täterarbeit zusammengedacht und integriert werden. Natürlich braucht es weiterhin spezialisierte Opferhilfe- und Opferschutzeinrichtungen. Allerdings sollten „Täter-" wie „Opferorganisationen" mehr miteinander kooperieren, sei es im Einzelfall, sei es bei der Entwicklung gemeinsamer Projekte,vielleicht sogar in der kriminalpolitischen Beförderung von Elementen von „Restorative Justice".

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EPISODES FROM THE HISTORY OF LAW ENFORCEMENT

László Christián

"Understanding the history of the police also provides a better understanding of democracy." – says Leonard A. Steverson the American police researcher in the introduction of his book.

The Hungarian concept of law enforcement is essentially a danger preventive activity which incorporates the use of the legitimate physical force which aims to uphold the public order and the public security.

When did the police come into existence? – asks Ernyes Mihály in his writing on the history of the police, subsequently he gives the following answer: "The police have been existing since the appearance of the mankind, although it was not called as such. The sin is coeval with the mankind, which is the result of the violation of the prohibition. The need for security can be also deemed coeval with us."

The German influence on the European law enforcement is extremely significant. In Germany the law enforcement was identified with the whole public administration, therefore it is customary to say that the law enforcement grew from the public administration system. Later on the law enforcement was delimited by the Allgemeines Landrecht (1794) and by the Kreuzberg judgement (1882) to the classic danger preventive activity.

In France – which state is regarded as the prime country of the gendarmerie – the body has 800 years of history. We consider the French law enforcement as the model of the centralised state police of the continental law enforcement system.

England is the archetype of the bottom up organised police. This means that it was not the central authority which established the law enforcement bodies, but the community's demand for security inspired the formation of the police.

Hungarian law enforcement developed under the German influence for a long time, namely the danger preventive activity of the law enforcement bodies took place as a part of the public administration. During the four decades of the socialism our law enforcement system took a sharp turn and a highly militarized, centralised and politically dependent law enforcement system came into being. Hungarian specialities can be noticed in the history of the law enforcement activity, such as the need for the adaptation to the changing state borders and circumstances from the Turkish invasion until the Trianon Treaty or the dual system of the Austro-Hungarian Empire.

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DEMOCRATIC TRANSITION, THE SPANISH WAY– DIFFERENCES AND SIMILARITIES BETWEEN THE SPANISH AND THE HUNGARIAN DEMOCRATIC TRANSITION

Vajk Farkas

In this year we are celebrating the twentieth anniversary of the democratic changes in Hungary. Nowadays many people, experts, politicians express his opinion about the faults of our democratic transition. For this dissatisfaction I observed how Spain

managed with the same task and what similarities and differences can be mentioned between the two democratic transitions. After the description of the political system and state organization of the late Francoist Spain I presented the main steps of the Spanish democratic transition, underlying the importance of the Statute for the Political Changes which had a fundamental importance. As similarities it can be mentioned the lack of the democratic legitimacy of the main actors of the changes, the voluntary laying down of the bases of the new democracies, and the similar resolution of the problems of the relationship between the old and the new law and the problem of the lustration. The main differences are the acceptance of an entirely new constitution in Spain, which was adopted by a democratically elected Parliament and it was confirmed by a referendum, while in case of Hungary these things failed. Observing the two democratic transitions we can find a common feature which causes all differences and similarities and this is the principle of the legality. Notwithstanding the principle of the legality as a genus proximum, the Spanish way of building new democracy was better in the sense of basing the Spanish changes in the wider possible consent of the people and to guarantee the legality of the changes with a transitory legislation while in Hungary it was managed with the Constitution and it was one of the reasons for which have not accepted a new constitution.

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THE SOVEREIGNTY OF THE REPUBLIC OF PANAMA IN THE LIGHT OF THE TREATIES OF THE PANAMA CANAL

MARCELL HORVÁTH

The object of this paper is to present the regulation of the Treaties of the Panama Canal from the beginning and to analyse the effects that this regulation had produced on the sovereignty of the Republic of Panama.

The subject of my essay is—with regard to the huge material—one main aspect of the Treaties and the regulation, namely the sovereignty of the Panamanian state.

In this paper I analyzed the Treaties and examined that what were the objects of the signatories, what kind of ambitions and interests were effective in the regulation.

I started my essay with the Hay-Buanau-Varilla Treaty, 1903, which in fact determined all of the other treaties and at the same time it determined the life of the Panamanian state. It could be called as a treaty of cooperation which is necessary to understand the other treaties. In this treaty the Panamanian state gambled away its sovereignty.

After it I examined the Torrijos–Carter Treaties, 1977, which meant the beginning of a new period in the relationship of the two states. These treaties contained some abuses as well, what I have in mind is that USA accomplished some modification in the treaties which were against the international law, for example the De Concini Clause. But in spite of it, it can be say that these treaties fulfilled the historical objects of the Panamanian Nation, and nowadays the Republic of Panama is an independent and free country which is in the possession of the whole sovereignty.

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EINIGE VERTRAGSABSCHLUSSVORSCHRIFTEN AUF DER WAAGE DER PRIVATAUTONOMIE

István Serák

Die Privatautonomie ist ein Eckpfeil des Privatrechts seit der XVIII. Jahrhundert, trotz der Anzahl ihrer Beschränkungen in der Neuzeit. Die Lehre im heutigen Ungarn interessiert sich für die Problematik der Vertragsfreiheit außer den rechtsphilosophischen Arbeiten nicht. Wegen der Neukodifikation des ungarischen bürgerlichen Gesetzbuches (Ptk.) möchte ich die Vertragsabschlussvorschriften, die noch heute determiniere die Geltendmachung der freie Parteiwille, auf der Waage der Privatautonomie bewerten. Ich berücksichtige nur den Vertragsabschluss zwischen objektive gleiche Parteien, weil meiner Hypothese nach ich sicher, dass in diesem Bereich es Kontrast zwischen dem Prinzip der Privatautonomie und der alltäglichen Praxis, und auch den Regelungen der einzelnen Gesetzbücher gibt bin.

In der Arbeit durchsuche ich zuerst das beschränkte Vertragsrecht der römischen Zeiten, danach einpaar theoretische Themen, vor allem die Begriffsproblematik der Vertragsfreiheit, und allgemeine Fragen der Beschränkungen. Ich vergleiche die Standpunkte des ungarischen, des deutschen und des angelsächsischen Rechtssystems. Zwischen den praktischen Themenbereichen beschäftige ich mich nur mit denen, die die wichtigsten für den Vertragsabschluss sind, namentlich die Willenserklärung, die Arten des Willensmangels – der Irrtum, die Täuschung, der geheime Vorbehalt –, der Ungültigkeit des Vertrages aufgrund dessen, dass die Form- oder Inhaltsvorschriften verletzt werden. Die größte Frage meiner Arbeit ist: Was für ein Prinzip ist der, dessen Ausnahmen die Mehrheit in der wirklichen gesetzlichen und alltäglichen Praxis gibt? Die Privatautonomie ist doch ein Grundsatz, der begrenzt sehr schwer funktionieren kann, deswegen bin ich der Meinung, dass die Vorbedingungen des neuen Ptk. verändert werden sollen.

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ADOPTION OF RULES AND REGULATIONS OF A COMPETITION IN THE POSTAL SECTOR

Péter Urbán

In this dissertation I examined the adaptation of competition laws of European Union in the postal sector and put the previous and nowadays arising theoretical and practical questions—which I find worth emphasizing—in connection with this theme. I made every effort to demonstrate—where it is possible through real examples and legal cases—the features of the theoretical model created by institutions of the Community, and show effective practical functioning of those.

After finishing the work, as a conclusion, I should point out, that the existence of market lacking monopoly, honest and fair behaviour of rival service providers be suitable for interests of the socio-economic formation in the postal sector, too, because the monopoly surely goes hand in hand with welfare damage. However, the fair and honest competition means admission, practical function and compliance with rules and regulations of competition.

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EIGENTUMSBESCHRÄNKUNGEN AUS GRÜNDEN DES UMWELTSCHUTZES

ZOLTÁN VERES

Diese Arbeit will die Rolle des Rechts bei der Lösung der ökologischen Krise aufzeigen – hier eingegrenzt auf die Eigentumsbeschränkungen. Die entsprechende zivilrechtliche Fachliteratur erwähnt den Umweltschutz bei den Beschränkungen des Eigentums nicht eigens, und die wenigen Autoren, die sich damit befassen, setzen sich mit den konkreten Fällen nicht ausführlich auseinander. Dieses Thema stellt daher eine Neuerung dar – sowohl auf dem Gebiet des Zivilrechts, als auch beim Umweltschutz.

Konkret wird hier der Umweltschutz als Grund für Eigentumsbeschränkungen untersucht. Dazu wird zunächst kurz die Beschränkung des Eigentums in der Lehre dargestellt. Unter anderem wurden klassische Autoren der Zivilrechtswissenschaft, wie Bálint Kolosváry studiert, obwohl diese das Thema nicht aus umweltrechtlicher Hinsicht behandeln.

Es wurde folgende Methode angewandt: Zunächst wurde ein theoretischer Rahmen konstruiert, in dem dann die Fälle von privat- und öffentlichrechtlichen Eigentumsbeschränkungen eingesetzt wurden. Bei der Beschreibung dieser Limitationen wird den rechtshistorischen Prämissen weiter Raum gewidmet, weil der Umweltschutz nicht eine neue Mode ist, denn seine Wurzeln finden sich schon in alten ungarischen Rechtsnormen und Traditionen (z.B. im Dekret von König Könyves Kálmán, in der ungarischen Gesetzessammlung Tripartitum von István Werbőczy). Auch die Judikatur wird kurz dargestellt, soweit sie sich mit diesem Phänomen befasst. Wie sich zeigt, hat der Umweltschutz in der Rechtspraxis noch keinen entsprechenden Platz gefunden.

Die Konklusionen meiner Arbeit:

– Das Recht in sich selbst bildet kein ausreichendes Mittel gegen die ökologische Krise. Es müssen alle Elemente der Wissenschaft in diesen Kampf eingesetzt werden. Aber auch die Wissenschaft kann die ökologischen Probleme nicht allein lösen. Dazu ist die Erkenntnis der persönlichen Verantwortung unentbehrlich.
– Neben rechtlichen Zwangsmitteln benötigen wir dazu die Motivation des Einzelnen und eine richtige Einstellung. Dabei hat die Erziehung eine wichtige Rolle.
– Bei der Lösung sind moralische Aspekte wichtig, weil die ökologische Krise auch sittliche Wurzeln hat.
– Die ungarischen Rechtsnormen entsprechen im Bereich des Umweltschutzes dem europäischen Standard. Problematisch ist aber die Verwirklichung. Es wäre nützlich, in der Verfassung den Grundsatz zu verankern, dass der Umweltschutz nicht nur eine staatliche, sondern auch eine individuelle Aufgabe ist.