SUMMA

THE CHARTER OF THE RIGHTS OF THE FAMILY

A Proposal of the Catholic Church

Jean Laffitte

The Family shall have the right to exist and flourish as a family, the right to transmit life and to educate their children, the right to believe and profess its faith. In one way or another, these rights are not always respected. There is another underlying reason why the Charter of the Rights of the Family was undertaken. There is an anthropological concept that refuses to reduce the human person to the individualistic vision that contemporary culture is promoting. Christian anthropology, in fact, sees man and woman created as free beings endowed with reason, subjects with an inviolable dignity, who are open to transcendence and to others. A strictly liberal society does not include *a priori* the possibility of weak elements such as the sick, infants, the dying or the unborn child. A society based on the family, however, incorporates *from the outset* and not after the fact, the fact that not everyone is autonomous, or physically or intellectually fit. From the beginning, the natural solidarity between people is supposed. The family is the place of this solidarity

Why does the family presuppose a good marriage? Already, the mere fact of contracting a marriage gives the experience of love its social dimension. It brings it out of the individual limits of intimacy between people and allows it to expand, by giving it a new meaning. From the point of view of the society itself, the existence of a conjugal, civil or religious, association means that society is not without interest in what happens between spouses, but rather considers their relationship as an asset; society is not indifferent to the good of the spouses: it will therefore, by its own authority, give this relationship stability.

The rights of the family are closely related to human rights: if the family is truly a communion of persons, its fulfillment depends mainly on the rights of the individuals who compose it. The Church has always claimed that certain rights should be attributed to those who bear the responsibility of a family, i.e. the parents, such as deciding how many children to receive and raise. Thus, the family is entitled to expect recognition from the State and the international community. It is important that its social subjectivity, which is linked to the very identity of marriage and the family, be recognized. The future of humanity passes by way of the family. Fair family policies cannot be made on a fundamental reappraisal of marriage and the family. Only the respect for the principle of subsidiarity permits harmonizing the

articulation family and State. This principle implies that the public authority should not deprive the family of the duties and tasks it alone can perform properly; and, on the other hand, this authority has a duty to support the family by helping it to assume appropriately all its responsibilities.

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THE PROTECTION OF CHILDREN AGAINST THE DANGERS OF MASS MEDIA

Katinka Bojnár

It is a common place today that children learn more easily how to use the internet because they are more flexible then their parents' generation. Beside its many advantages internet is a source of danger to children as well. Due to their age children are much more vulnerable and can be easily misled.

There are web sites which are dangerous with regard to the sound mental and bodily development of the children, and sites which are operated with the direct aim of the manipulation of the underage generation. Some services which are not offensive in themselves may cause serious troubles, for instance virtual games or social networks.

The parents bear the utmost responsibility here because they can prepare their children most effectively how to respond correctly to the challenges posed by the internet. There are already software products, solutions, filter programs and other techniques which help the parents to protect their children.

This paper analyses the above mentioned actual issues in the context of the available international legal instruments, especially in the light of the 1983 Family Law Charter.

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THE NOTION OF MARRIAGE IN THE FAMILY CHART AND CIVIL LAW

Sarolta Molnár

This paper confronts the different images of marriage of that of the Church and secular law systems. Evaluating the huge change the institution has been through since its secularization staring from the Code Civil of Napoleon to its current stance. In retrospect it can be observed more marriages are throne apart and less are contracted at all with the course of losing its original properties like indissolubility. However, since marriage is defined as a value to be protected by the highest sources of law human rights charts, international treaties and constitutions, the state has taken a side.

In order to live up to this some ideas from the original source of marriage law, the Church's rules, might be useful to be considered to be translated to civil law. Such an option, and thinking about is anyways, surly would add to the protection of this socially and individually important institution: marriage.

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THE CHARTER ON THE RIGHTS OF THE FAMILY AND THE INTERNATIONAL PROTECTION OF THE RIGHTS OF THE CHILD

Ildikó Németh

The Charter on the Rights of the Family was presented by the Holy See in 1983 in order to draw attention on the importance of the institution of the family. It collects the basic rights of the family and calls the states, international organizations, interested institutions and persons – irrespectively of being christian or not – to promote them. A relevant question is how the most vulnerable element of the family namely the child is protected in this Charter. Another relevant question is whether the Charter influenced other international instruments as regards the protection of the rights of the child.

We examined the Charter (1983), the UN Convention on the Rights of the Child (1989), the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996), the Charter of Fundamental Rights of the EU (2010), the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (2002) and the African Charter on the Rights and Welfare of the Child (1990). These all have different nature as we can find among them ideological statement, international convention, regional declaration, sectoral agreement. What is common is that they aim at safeguarding the children expressly.

Having compared the different provisions of the international instruments we could not demonstrate that the Charter would had a direct impact on the other instruments. Nevertheless it was clear that there were a lot of overlaps and parallelism among them despite of their different structure, character and binding force. We could discover all the rights of the child determined by the Charter in the other instruments. Once these rights took shape directly, other times they appear indirectly as reference to the UN Convention. That leads us to the conclusion that these rights are so important and fundamental that they require to be mandatory irrespective of their background. Thereby they can be treated as provisions of natural law for their universal character. Since these rights contribute to evolve the family which is the basic element of the society it is in our common interest to guard the family and its members – especially the most vulnerable ones.

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THE CHARTER OF THE RIGHTS OF THE FAMILY AND FAMILY OF ADULT (ELDERLY) FAMILY MEMBERS WITH REGARD TO THE NEW HUNGARIAN CIVIL CODE

Orsolya Szeibert

The Charter of the Rights of the Family considers family as a unit of its own. Although the basis of family is marriage according to the Preamble family keeps on remaining a family even if the parents have adult children or when sisters or brothers live together in a familial community without establishing an own family. The paper examines the legal situation of a family consisting of adult or rather elderly relatives in the light of the Charter and the civil law relations including the provisions of the new Civil Code.

Several provisions of the Charter suggest the importance of the familial relationships among the generations and the need of living together in solidarity. One is emphasized here which should have been chosen also as a motto: "the family is the place where different generations come together and help one another to grow in human wisdom and to harmonize the rights of individuals with other demands of social rights" (Preamble).

The Charter demands that the family should be managed as a unit by the state and the state provides regulation on the level of solidarity between the family members. Nevertheless, it is not only an issue of the family law but also that of the civil law as it concerns succession law, the property relations between the adult relatives living together in one household and the contract on maintenance. Besides, also other breaches of law are to be taken into attention as social law and labour law. In this context the paper gives a sight into a relevant decision of the ECtHR in Strasbourg, namely the Burden case.

The paper highlights the issue of solidarity from the viewpoint of contracts and also from the perspective of family law. The new Hungarian Civil Code includes the Family Law Book so the maintenance based upon family law rules are in the corpus of the Civil Code as well. The relevance of these regulations on solidarity is demonstrated even by the Basic Law.

The last part of the thesis gives an introduction to demand on solidarity between family members from the sociological view and an analysis of the Hungarian demographical situation based on the results of the last demographical researches. The real need of responsibility towards each other is the conclusion of the contribution.

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THE PRINCIPLES AND OBJECTIVES OF THE COMMON COMMERCIAL POLICY IN THE LIGHT OF THE EU'S INTEGRATED EXTERNAL RELATIONS

Balázs Horváthy

Prior to the Treaty of Lisbon, the objectives and principles of the Common Commercial Policy (CCP) were laid down in a relatively homogeneous structure, which was primarily governed by the principle of trade liberalization. The Lisbon amendment of the Founding Treaties, however, has essentially restructured the legal framework of the EU external relations. The Treaty has established the values, general principles and objectives of the EU's external activity, and all policies with external impact, including the Common Commercial Policy have been subordinated to this standardised set of principles and objectives. Although most of these principles and objectives are not directly related to international trade (eg. protection of environment, or supporting democracy, the rule of law, human rights etc.), these requirements must be considered in the trade area as well. The article attempts to reflect on these fundamental changes through the following main points. After examining the definitions, roles and functions of the categories at hand (values, principles, objectives), the article describes in detail the principle structure of CCP before and after the Lisbon Treaty. The article concluded that the consistency requirement of the Treaties between the principles of the external relations and the CCP can be regarded as a strict hierarchy between these fields, therefore the CCP must be adapted to the values, principles and objectives of the external relations, taking a major step towards a value-oriented trade policy governance in the European Union.

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THE POSSIBILITIES OF THE RESTRAINT OF MEDIA CONTENT

Prior to publication: licensing, registration, censorship, injunctions

András Koltay

In this paper the author argues in favour of the proposition that the term "censorship" should be used in the narrow sense, on the basis of which it is only applicable to arbitrary and prior restraints, i.e. restrictions that lack legal and judicial guarantees and are applied in advance, rendering publication impossible. Accordingly, the paper discusses *a posteriori* restrictions, i.e. restrictions applied subsequently to publication, although in everyday usage these, too, are often referred to as censorship. At the same time it discusses all known forms and manners of prior restraint in order to arrive at a definition of the term "censorship" that does not render the concept so broad

as to entirely devalue the buzzword, so often used by the heroes of press freedom throughout the centuries as a rallying cry against despotism.

Part I attempts to classify the forms of restriction applied prior to publication (distribution), also discussing the theoretical foundations of the state's obligation to remain passive and refrain from intervening over media content, then examining the pairs of the forms of advance restrictions: licensing–registration and censorship–prior restraint. Part II discusses, in greater detail, the relevant regulations and constitutional concepts of the United Kingdom, the United States and Hungary and shall mention the fundamental decisions of the Strasbourg Court pertaining to the subject. This review is intended to provide evidence that prior restraints exist and are constitutionally permissible to a greater extent than might be expected.

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MÁS NEMZETKÖZI BÍRÓSÁGOK GYAKORLATÁNAK FELHASZNÁLÁSA A NEMZETKÖZI BÜNTETŐ BÍRÓSÁG ELSŐ ÍTÉLETEIBEN

Kovács Péter

A tanulmány az ún. Lubanga ügyben hozott két ítéletet (ti. a bünösséget megállapító[1] valamint a büntetést kiszabó[2] ítéleteket) abból a szempontból tekinti át, hogy melyek voltak azok a más nemzetközi bíróságoktól származó ítéletek, amelyekre a Nemzetközi Büntető Bíróság hivatkozott, és a hivatkozások mely elvi vagy joggyakorlati kérdéseket érintettek.

A Nemzetközi Bíróságnak, a volt jugoszláviai területeken elkövetett emberiség elleni bűncselekmények nemzetközi törvényszékének (ICTY) és a ruandai népirtás felelőseinek megbüntetésére felállított nemzetközi törvényszéknek (ICTR) a joggyakorlata mellett az Emberi Jogok Európai Bíróságának valamint a Sierra Leone-i Különleges Törvényszéknek a joggyakorlata mindenekelőtt a nemzetközi vagy nemnemzetközi fegyveres összeütközések elválasztása, a *nullum crimen sine lege elv* és a normavilágosság, a gyermek-katonakénti besorozottság megállapíthatósága, a parancsnoki felelősség bizonyos vetületei, a bizonyítottság elve, a közvetlen (tettesi) felelősség és a bűnsegédi felelősség elhatárolásában nyújtott nagy segítséget a Nemzetközi Büntető Bíróságnak.

Az ICC hangsúlyt fektetett arra, hogy kimondja, bár közvetlenül nem kötelezi őt más nemzetközi bíróságok joggyakorlata, azonban az ezek által kimondottakat szabadon felhasználhatja és hivatkozhatja, különösen, ha ugyanazon nemzetközi szerződések ugyanazon szempontból történő értelmezéséről van szó.

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1 Prosecutor v. Thomas Lubanga Dyilo, Judgement pursuant to Article 74 of the Statute, 14/03/2012, ICC-01/04-01/06-2842

2 Prosecutor v. Thomas Lubanga Dyilo, Decision on Sentence pursuant to Article 76 of the Statute, 10/07/2012, ICC-01/04-01/06-2901

THE VALUES OF DEMOCRACY AND PLURALISM IN EUROPEAN MEDIA LAW

Petra Láncos

The Hungarian Act No. CLXXXV. of 2010 on media services and mass communication was subject to serious criticism from the side of the European Union, asserting that the new law infringed -among others - the values of democracy and pluralism. The present article aims at delivering an analysis of the content of said values in the specific context of media law. Due to the gradual convergence of the European Union and the Council of Europe in the ambit of fundamental European values, the relevant documents originating from the Council of Europe are also briely discussed.

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QUOTA REGULATION IN EUROPEAN AUDIOVISUAL MEDIA LAW – BETWEEN ECONOMIC AND CULTURAL CONSIDERATIONS

Levente Nyakas

The study reviews the history of the so called ‘quota rules’ (promotion and distribution of European works) of the Television Without Frontiers (now Audiovisual Media Services) directive of the EU. It surveys the legislative history, the main official and informal aims creating the rules and also the theoretical frame and debate (unity or/and diversity) which underlined their legislation. The study also contains a comparative part on the implementation of the quota rules which concentrates on the ‘national quota’ solutions of bigger and smaller member states. The study reveals that how the primary cultural (protectionist) legislative aim distorted into an economic direction (protection of the single market, promotion of global competitiveness of the EU) and also points out how the member states used the quotas in a cultural protectionist manner with legislation of ‘national quota’ rules during the harmonization. It also discovers the inconsistency between the expected cultural legislative aims and the content of the rules analyzing the definition of the rules. The author evaluates the quota rules as modest positive integration measures in the audiovisual field with slight effect.

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THE IMPORTANCE OF AUTHORS AND THE RELATIONSHIP BETWEEN AUTHORS AND THEIR WORKS

Where to go copyright law?

Anett Pogácsás

There are arguments that copyright law is in a danger due to its own expansion. However, not copyright law itself is expanding, but the various possibilities of creation and utilisation, resulting from the technical development. It is no longer a question whether more and more areas should be protected by copyright law. However, this is only the starting point, which can be shaded by several special circumstances.

The particular relationship between authors, on the one side, and their works, on the other, undergoes significant changes from time to time, and a lot of special border-areas can be discovered, as well. It appears to be an unchallenged fact that the individual and original performance of authors needs recognition. We must admit that the potential ways of such recognition, as well as the position of authors in general, has changed a lot in recent years. There are significant differences between authors, not because of their abilities but because of a series of other important circumstances.

Material benefits and personal advantages provided in relation to authors' works may create a clear and incentive environment. These benefits and advantages shall not mean the same for every single author, while such distinction shall not lead to the demolition of copyright law, but shall serve its further development.

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LAW AND ECONOMICS OF GROUP LITIGATION

Ákos Szalai

This paper attempts to demonstrate that the key difference between the working and not-working group litigation systems is not the choice between opt-in or opt-out mechanisms but the fact that the working systems are able to solve the collective action problem. The collective action problem is a general phenomenon present in many fields of social and economic life. Here, several people share a common interest and in case some of them successfully reach their common goals the non-participants will receive the same benefit as the participants do. As a result, members will not enter the group or in the extreme case none of them will fight for the common goal – collective action will be missing. This collective action problem may be solved by ensuring the participants some extra benefits in exchange for their participation.

Even if the collective action problem is solved, other difficulties may appear. The most important one is the agency-issue: the interest of the group, the interest of its representative and the interest of the lawyer may differ. The group must create

incentives for the representative and the lawyer ensuring that their choice will be optimal, maximizing the benefit of the group members. But creating such an incentive mechanism would require collective action from the group members – i.e. the collective action problem is back. Therefore, in the working systems, courts or other actors of the justice system check the choices of the representatives and the lawyers – acting as the protector of the interest of the group's members.

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PECULIARITIES OF THE *DECRETUM BURCHARDI WORMATIENSIS*, ESPECIALLY CONCERNING THE PERSONALITY AND COMPETENCE OF THE BISHOPS

Szabolcs Anzelm Szuromi

When the Caroling World had disintegrated, between 1008 and 1022 the *Decretum Burchardi Wormatiensis* canon law collection got a distinguished importance, especially in the Low Countries. Based on our above explained analysis clearly stands out a much more universal systematic canonical collection than before. This new collection was perfectly suitable to be a canon law handbook at many territories, and it could serve profoundly the daily canonical administration, the pastoral service of the clergy, but the canonical legislation too. Within this last one should be emphasized the conciliar legislation which can illustrate well by the decrees of Hungarian councils in the 11th – 12th century. We can organize into five different groups of the Episcopal discipline of the *Decretum Burchardi*: selection and consecration of the suitable persons a bishop; personality of the bishop; duties of the bishop; bishop, metropolitan, and their relations including the provincial council; finally, the juridical protection of the particular authority of metropolitan and primate. Burchard's Collection is an extraordinary example for that goal how compilers of the canonical collections were intended to collect all of the ecclesiastical discipline as complete as possible, in order to promote not only the canonical knowledge, but the day to day administration of sacraments and sacramentals based on the clear canonical regulations.

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ON THE LEGAL EFFECT ON THIRD PARTIES OF THE FIDUCIARY ASSET MANAGEMENT OBLIGATION WITH REGARD TO SOME MODEL RULES

Péter Miczán

Summary of content: Chapter XLIII of the new Act of 2013 on the Hungarian Civil Code shall introduce the legal institute of fiduciary asset management into the Hungarian written law. With respect thereto, and to the fact that according to some legal scholars the most characteristic feature of the trust – a sibling legal institute to the fiduciary asset management – is its legal effects on third parties, in this paper I analyze the legal effects of the Hungarian fiduciary asset management obligation on third parties with special regard to the some model laws, namely the Principles of the European Trust Law, the X. Book on Trusts of the European Draft of Common Frame of Reference and the American Uniform Trust Code.

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THE CONCEPT OF ABUSE OF LAW AND THE INSTRUMENTS TO COUNTER LAW ABUSE AS CONCEIVED IN THE VAT DIRECTIVE AND IN THE LEGAL PROVISIONS OF MEMBER STATES

Borbála Sólyom

The theoretical approach related to the concept of abuse of law can be considered entirely new both as practiced by the European Court of Justice and as implemented in the tax legislation of the European Union and its Member States.

However, the legal principle has special importance in combating tax abuse – that is, tax evasion and tax avoidance – not only in the application of but also in the making of law. Therefore, this article aims at presenting EU and Member States' laws whose anti-tax-abuse policies attest the use of this principle in the area of value added taxation.

The first part of the article focuses on the provisions of the EU VAT Directive that allow the Member States to act against tax fraud and tax avoidance. The author is convinced that the VAT Directive already provides a secure legal framework for acting against tax abuse, providing legal standpoints for reference to establish the case for the abuse of law. Effective action would however be greatly aided by a law – to be made in the future and focusing specifically on the abuse of law – that would function as a „general clause" regarding action against tax fraud and tax avoidance.

Based on what the VAT Directive allows law-makers to do to combat tax fraud and tax avoidance, the second part of the article presents the existing tools EU

Member States already use. Those discussed fall into two categories, depending on whether they are technical and/or procedural tools that aim at preventing or revealing instances of tax abuse, or tools relating to material content. The reason for doing so is that while dispositions of a technical nature are typically dealt with by Member States' procedural laws, tools relating to material matters are regulated, on the basis of the VAT Directive, by Member States' VAT laws.

The study concludes that although the VAT Directive and the solutions used in the Member States demonstrate that a number of tools already exist to combat tax fraud and tax avoidance in the EU, action against tax abuse would be more effective if there were a uniform principle of law applicable to it, elaborated and worked out in as much detail as possible.