# SUMMA

## FREEDOM OF THOUGHT, FREEDOM OF SPEECH, AND LANGUAGE RIGHTS

György Andrássy

This paper argues for three propositions. First, that there exists a lesser-known fundamental freedom, freedom of language which is just as a universal human right as is freedom of thought and freedom of speech. Second, that freedom of language derives from freedom of thought, freedom of speech and freedom of religion. Third, that if the two previous assertions prove to be true, freedom of language should also be recognized in international and national human rights law. The paper approaches the issue of freedom of language from three directions. The first falls in political philosophy, the second uses the means of grammatical and logical interpretation of law, and the third seeks support from history of law. The paper does not provide a detailed definition of freedom of language as the issue requires a separate study, especially concerning the legal institution of official language.

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## LEGAL ISSUES IN BANKING REGULATION

### *Trends – regularities – irregularities*

Anna Halustyik

Examining the limits/borderlines of financial law the general finding is the interaction of the regulations between different legal fields. The main line to divide financial law fields is: public and private finances and their regulation. In both areas the representation and the role of the state is crucial – regardless whether any relevant state institution acts as lawmaker or supervisor. Naturally very different roles may be found in taxation, budgetary norms, banking, securities, insurance and other financial law subjects.

The focus of examination is the changes in Hungarian banking regulation started from early 1990's, other words the beginnings of the transitory economic period. The transition from planned economy into market economy has been a unique historical movement in Central-Eastern Europe (not yet finished) including all regulated

economic issues. Consequently the 'regularities' in banking cover mostly classic market economy issues while the irregularities show the process of 'making the fish out of the fish soup' or the special regulations of the transitory economy.

The first period is the commencement of the transition itself, its regulations showing changes in banking regulation from a planned economic system into the first steps trowards market economy. Second phase covers the establishment rules for commercial banking including the institutions, operation and state supervision, the handling of international financial transactions etc. Thirdly the major bank privatizations may be classified and their different legal methods. Partly parallel with the privatizations an important stage has started: to introduce European Union regulations into Hungarian banking – the legal harmonization process started in 1996. Finally the effect of the 2008 financial crisis cannot be left out from this historically very short 25 years of Hungarian banking regulation – however it is not possible to evaluate the legal effects, only the regulatory steps may be enumerated.

That is why the banking regulation may be categorized as irregular because a unique way of economic transition has started (without historical examples) in this part of the world. On the other hand the irregularities in the banking regulation have been maintained by the internationally detectable procedure of changing financial law borderies since the last part of 20th century. And finally the irregularities cover the non-typical role of the state in banking regulations.

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## RÉSZVÉTELI DEMOKRÁCIA: NEMZETKÖZI ÉS EURÓPAI TENDENCIÁK, ALKOTMÁNYOS KERETEK A VISEGRÁDI EGYÜTTMŰKÖDÉS ORSZÁGAIBAN, MAGYARORSZÁGI INTÉZMÉNYEK ÉS TAPASZTALATOK

Komáromi László

A tanulmány a 2014. április 25. és 27. között Prágában tartott „Central European Dictionary of Political Concepts" konferenciára készült munkaanyag módosított változata. A részvételi demokrácia növekvő nemzetközi normatív keretrendszere kapcsán röviden bemutatja az Aarhusi Egyezmény releváns rendelkezéseit és a Lisszaboni Szerződés által bevezetett európai polgári kezdeményezés tapasztalatait. Ezután a V4 országok alkotmányait veszi szemügyre, áttekintve a bennük foglalt, az állampolgári részvételt elősegítő különböző intézményeket. Ezt követi egy részletesebb bemutatás a magyarországi részvételi demokrácia eszközeiről, kezdve az országos népszavazással, folytatva az ún. népi (nemzeti) konzultációkkal, a jogszabályok előkészítésében való társadalmi részvétellel, majd a helyi részvételi lehetőségekkel, mint a helyi népszavazás, a közmeghallgatás, a falugyűlés és a helyi önkormányzatok gyakorlatában élő egyéb intézmények. Az áttekintést a környezetvédelmi ügyekben biztosított állampolgári részvételi jogok rövid leírása zárja.

# SEESORGE UND VORBEREITUNG ZUR EHESCHIESSUNG IN BEZUG AUF DAS KANONISCHE RECHT (1063–1072. KAN.)

Lóránd Ujházi

Der Gesetzgeber spricht in dem ersten Eherechtskapitel - nach den sogenannten Einführungseherechtskanonen - über die Tätigkeiten vor der Eheschliessung. Das alte Recht behandelte auch den Brautstand gemeinsam mit anderen Eheschliessungstätigkeiten. Der kirchliche Gesetzgeber nimmt schon die veränderten gesellschaftlichen Situationen in Betracht und verarbeitet den Brautstand und die Vorbereitung zur Eheschliessung getrennt. Die neun auf den Vorbereitungsprozess bezogenen Kanonen bilden aber ein Kapitel mit unterschiedlichen Charakteren. Die Kanonen 1063-1065 und 1072 wurden eher aus dem pastoralen, aber die Kanonen 1066-1071 aus dem rechtlichen Gesichtspunkt formuliert. Der Kanon 1071 fasst die jenen Situationen – die Eheverbote – zusammen, falls die Ehe nur durch Ordinariuserlaubnis zu schliessen ist. Diese Kanonen geben eine Einheit, deren Verhandlung einen anderen Studiumsstoff betrifft. In diesem Aufsatz werden die Eheschliessungsvorbereitung und derer Untersuchung geprüft, die immer durchzuführen ist, wenn mindestens der eine Brautteil zu der Katholischen Kirche gehört.

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# THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL IN PROTECTING WOMEN IN ARMED CONFLICT (SECURITY COUNCIL RESOLUTIONS: WOMEN, PEACE AND SECURITY)

Lilla Osztrovszki

Vulnerability of women in armed conflict has been gaining visibility in the international arena.

It is estimated that approximately 90 per cent of recent war casualties are civilians, and the majority of them are women and children. Armed conflict has a disproportionate and unique impact on women because of their sex and their status in society.

This article explores the role that the UN Security Council plays in protecting women in armed conflicts and what the Council does to further women's participation in peacebuilding.

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## VARIATIONS FOR THE VERTICAL METHOD OF SEPARATION OF POWERS

### *Autonomy models and opportunities in the 21st Century Europe*

Krisztián Szaniszló

There are two methods of the separation of powers: the horizontal and the vertical one. The more widespread and more often used process is the horizontal separation of powers, which is the principle of the rule of law and every representative democracy. The vertical separation of powers can describe the legal framework of the federations and confederations, especially the balance of power between the federal government and the subnational governments. Herbert Küpper and some other authors tend to use the concept of vertical separation of powers to describe the connection between the central government and the local governments.

The different forms of autonomies are the examples of the atypical vertical separation of powers. The implementation and forms of autonomies differ from each other significantly. According to their origin, the autonomies can be the results of bilateral and international agreements (e.g. The land-islands, South Tyrol), reform of the central and local governments (e.g. the devolution of powers in the United Kingdom in 1997) and amendment of the constitutions (e.g. the Autonomous Province of Vojvodina inside the Republic of Serbia) or statues (different from province to province), which are given by the national legislation (e.g. regionalism of Spain).

This essay aims to illustrate and describe the different forms of territorial autonomies in Europe and to show the reasons of their genesis and their organic development.

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## JUSTICE VERSUS JUSTICE?

### *Reflections on the relationship between legal carteinty, justice and fair trial*

Ádám Varga

It is the subject of an eternal debate that in the contest of justice and legal certainty which legal principal shall enjoy priority against the other. According to my opinion, the legal certainty is also a value-based definition, which shall not be against justice, but the more is intended to serve the completion of that, therefore it is worthwhile to examine that parallel to justice. It can be stated, in the event that the legislator or the law enforcement bodies consider the realization of the justice by giving priority to the legal certainty, it also risks the emergence of justice as well.

On the other hand, in case of these two important legal principals collide, then the searching of the subjective justice above all, may leads to an even higher injustice eventually. The legal certainty shall get priority for the purpose of the above. Finally, when a rule is premised as injurious for the legal certainty, it can be easily said that the rule is: unjust.

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## »HUNGARIANS IN THE WORLD«

### *Alexander Nekam (1905–1982), student of legal entity, African customary law, and comparativism*

Csaba Varga

Born from Pest downtown high middle class doctors' family, having graduated in Budapest and postgraduating at the London School of Economics and the Harvard Law School, he became a law clerk at the Ministry of Justice, the Prime Minister's Cabinet and the Ministry of Foreign Affairs. After WWII the first embassador in Bucharest and an envoy to Moscow, he had to exile following the Communist take-over in 1948. Visiting several American universities, he became professor at the Northwestern University Law School (1957–1974). With *The Personality Conception of the Legal Entity* (Harvard University Press 1938) in the background, as a fairly debated author in the United States in amalgamation of American Legal Realism and Scandinavian Legal Realism, he was reflected by A. H. Campbell, Roscoe Pound, Max Radin, among others. As a field work legal anthropologist after WWII, he could describe tribal customs in action in their original setting, i.e., before the transformative westernising restatement could reduce them to rules. To this very day, his scholarly activity has remained unnoticed in Hungary.