Iustum Aequum Salutare
XI. 2015. 4. • 123–129.

SUMMA

EFFICIENCY AND TRUTH IN CIVIL FACT-FINDING: THE EVOLVING ROLE OF THE JUDGE IN MAINLAND CHINA AND HONG KONG AND THE EFFECT OF THE POLICY PREFERENCE FOR COURT MEDIATION ON FACT-FINDING IN THE PEOPLE'S COURTS

Peter C. H. Chan

China's attempt to enhance efficiency was mainly effected by devolving the responsibilities of fact-finding from the judge to the parties and strengthening the adversarial principle in its civil procedure. Parties are playing an increasingly crucial role in fact-finding. As a general duty, a party is required to produce evidence in support of the facts on which the party's allegations are based. However, it would be a misconception to view fact-finding in China as purely a party driven exercise. In fact, the judge retains extensive powers in shaping the landscape of fact-finding. The extent to which the judge should be allowed to participate the fact-finding process is worth close academic scrutiny, particularly given that procedural reforms in China are intended to confer greater autonomy to parties in proceedings.

In Hong Kong, a converse development has been witnessed. The Civil Justice Reform substantially expanded the court's powers in case management. The court is now equipped with greater discretionary powers to enforce procedural deadlines, limit discovery and administer the litigation timetable. These powers have immense implications for the fact-finding process in Hong Kong, particularly in enhancing efficiency in fact-finding.

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MOST RECENT MODIFICATIONS OF THE NEW HUNGARIAN CRIMINAL CODE WITH REGARD TO CORRUPTION OFFENCES

Miklós Hollán

The new Hungarian Criminal Code modified the regulation on corruption offences. The new code had come into force 1st of July 2013. Several provisions on corruption offences have already been modified by Act No. LXXVI of 2015 (in force from 1st of July 2015). The author summarizes principal novelties, including a) the coherent regulation with regard to the „undue" nature of advantages and b) the conceptualization of breach of duty (with special regard to fulfilment of duty in exchange of extorted advantages). The author also analyses whether it was beneficial c) to criminalize giving or promising of advantages to pseudo-public officials, d) to provide the possibility of unlimited mitigation for cooperating defendants being passive or active influence traders, and e) penalizing public officials for failing to report passive or active trading in influence.

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THE DEFENSE OF SUFFRAGE LAW AND ITS CONNECTION TO CRIMINAL LAW IN HUNGARY BETWEEN THE TWO WORLD WARS

Gábor Hollósi

The study does not examine any historical suffrage abuses that occurred, but rather the specifics of the law that established the legal consequences (penalties) for suffrage abuses in Hungary in the twenties and thirties. Referencing the period literature, we not only provide an introduction, but also call attention to the undeniable anomalies in the system, and we make an effort to uncover the most significant problems of the system as determined by today's generation of law historians. On the other hand, we also interpret criminal law sentencing in the widest scope; that is, we take a look at the impact that a criminal record had on suffrage before we present the suffrage crimes and the penalties associated with them. Moreover our goal is to gather all of the criminal rules of the period related to suffrage in one place, so that we may conveniently analyze them. Although Vol. 7 of Pál Angyal's handbook, who was one of the most famous Hungarian criminal law professors of the era, acquaints us with the suffrage crimes, we believe it to be unnecessary to include the precise dogmatics of the special part of the criminal law, which he applied in his handbook. From a distance of ninety years, it would seem to be unnecessary; our goal is only to provide the reader with a summary about this topic from a historical aspect.

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DAMAGES CAUSED BY ACTIVITIES THAT ENDANGER THE HUMAN ENVIRONMENT IN THE HUNGARIAN JUDICIAL PRACTICE

Judit Ábrahám

The Hungarian regulation is characterized by the complexity of the protection of environment, but the most exciting question is the non-contractual liability for the environmental damages. The basic regulation could be found in the Civil Code (Act V of 2013). According to section 6:535 para (2) the provisions on liability for hazardous operations shall also apply to persons who cause damage to other persons through activities that endanger the human environment. The specific acts on environmental protection, the conservation and the waste management include other provisions, however the judicial practice decides case by case which activity and damages shall be judged by this form of liability. The other specialties in connection with this liability – like the causal relationship, the joint responsibility, the exemptions from liability, the contributory negligence, the instruments can be used in the event of the presence of imminent danger – also up to the judicial practice to determine.

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THE JUDICIAL PRACTICE OF REFORMATORY EDUCATION IN HUNGARY

Henrietta Regina Farkas

The study examines the juvenile detention system, which tries to respond to juvenile crime with education and attitude change attempts: this is the reformatory education. The juvenile detention system must serve the education and should try to change the youth's attitude with educational methods.

The paper explores and analyses the Hungarian judicial practice. Particular attention is paid on the factors which laid judges to impose remedial education, as well as on the legal sources and circumstances which influence their decisions. Factors, which determine the court's decisions related to the time of detention, are also analysed. The case-law analysis was based on 55 court decisions, and considered the following factors: the type of the crime which was committed, the number and seriousness of the crime, the personal circumstances of the offender and the offender's recidivist nature. My conclusion is that the courts' decision to impose juvenile detention is affected by the type of the crime, the criminal record and personal circumstances, and the duration of the sanction is affected by the number and seriousness of the crime.

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THE PROTECTION OF IMAGES OF THE MEMBERS OF THE POLICE – THE CURRENT STATE OF THE DEBATE

Veronika Szeghalmi – János Tamás Papp

In the post-millennium years, especially after 2006, there has been a debate about the Hungarian media representation of the police, in connection with their recognizable faces while they are in uniforms fulfilling their duties.

According to the established case law, police officers are not considered public figures, thus publishing their images without their consent is against the law. Taking advantage of this, the police force launched several lawsuits against various media companies, which resulted in media providers keeping away from publishing recognizable pictures of the force – a clear "chilling effect" phenomenon.

Is this a good practice? It may be so, because after publishing the face of a policeman, they become identifiable to people who otherwise wouldn't be able to recognize them. This puts them into a dangerous position regarding their personal safety as well as that of their families'. Is this a bad observance then? After all, it is legitimate public interest to know who these people are. Because of the authority bestowed upon them by the people, it is a rightful expectation to have them operate in a transparent way. The current practice is damaging the freedom of the press by driving the media to self-censorship and is limiting the public's right to information.

In our research we attempted to find answers to these questions by examining the existing legislation and court decisions, the Constitutional court decision and the unity-of-law decisions of the Curia on this case.

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INTERPRETING THE INTELLECTUAL PROPERTY CLAUSE IN THE COPYRIGHT LAW OF THE UNITED STATES

Dávid Ujhelyi

The paper aims to outline the purpose and the possible interpretations of the Intellectual Property Clause, to understand the functions of copyright law legislation, and what power did the Congress did receive from the Constitution, because a lot of legal instrument are for fact derived from U.S. law in continental legal systems. This analysis helps to better understand these derived instruments, and copyright law in whole. Doing this, firstly the paper introduces the reader to textualism and originalism, the two main methods of out mining the content of the Constitution, and the use and misuse of these methods. After this, the paper focuses on the IP Clause, and analyses it part-by-part, to see how these parts are separately – and regarding the whole clause – the interpreted. Eldred v. Ashcroft and Golan v. Holder decisions are also mentioned in connection with the interpretation of the IP Clause.

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DAS VERHÄLTNIS DES EINZELNEN ZUR GEMEINSCHAFT IN DER VERFASSUNGSGERICHTLICHEN RECHTSPRECHUNG

Kinga Rita Zakariás

Im Grundgesetz ist explizit keine allgemeine Aussage über das Verhältnis Individuum – Gemeinschaft enthalten. Das Bundesverfassungsgericht hat jedoch mit der Menschenbildformel über die Einbindung des Menschen in die Gemeinschaft Stellung genommen.

Der Begriff Menschenbild des Grundgesetzes taucht zum ersten Mal in der Investitionshilfe-Entscheidung des Bundesverfassungsgerichts aus dem Jahre 1954 auf und ist Teil der ständigen Rechtsprechung des Gerichts geworden. Die Menschenbildformel enthält zwei Grundaussagen über das Wesen des Menschen: den Menschen zeichnet zum einen seine Eigenwert, seine Eigenständigkeit aus, gleichzeitig wird er aber als gemeinschaftbezogen und gemeinschaftsgebunden beschrieben. Das Bundesverfassungsgericht hat mit dieser Formel eine Formulierung des ehemaligen Präsidenten des Bundesverfassungsgerichts Josef Wintrich aufgenommen, die er im Blick auf die Bayerische Verfassung entwickelte. Trotzdem kann festgestellt werden: das Menschenbild des Grundgesetzes beruht sich auf die vom Bundesverfassungsgericht zitierte Grundgesetzbestimmungen. Die Eigenständigkeit des Menschen beruht auf Art. 1. Grundgesetz, die Gemeinschaftsgebundenheit des Menschen auf Art. 1. Abs. 2 und 3, Art. 2. Abt. 1, Art. 12 Abs. 2, Art. 14. Abt. 2 und 3, Art. 15, Art 19. Abs. 1, Art. 20 Abs. 1 Grundgesetz. Das Menschenbild hat in der Auslegung der Grundrechte zwei Funktionen: die inhaltliche Präzisierung der sachlichen Schutzbereichs und die Bestimmung der Schranken der Grundrechte.

Das ungarische Grundgesetz – im Gegensatz zum deutschen Grundgesetz und zur vorherigen ungarischen Verfassung – enthält eine allgemeine Aussage über das Verhältnis Individuum – Gemeinschaft. So taucht in der Rechtsprechung des Verfassungsgerichts der Menschenbildformel auf deutsche Muster auf.

Die vorliegende Arbeit versucht erstens das deutsche Modell darzustellen und danach untersucht die Bezugnahme auf das Menschenbild des Grundgesetzes in der Argumentation der ungarischen verfassungsgerichtlichen Entscheidungen.