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SUMMA

LEGAL SYSTEMS' COMPETITION ON THE MORTGAGE MARKETS: THE LESSONS OF THE GLOBAL FINANCIAL CRISIS IN HUNGARY AND POLAND

Dóra Győrffy

The article examines the possible strategies of legal system competition on the mortgage market. Prior to the global financial crisis, Poland and Hungary opted for different strategies in this competition and the consequences of their choices can be assessed only after the crisis. Their experiences have important theoretical implications concerning the competition of legal systems. Most importantly, the article shows that in the long-term the stability and coherence of the legal system is an important competitive advantage, which should not be jeopardized for the sake of short-term benefits. Participation in a deregulatory spiral is particularly dangerous especially when it aims to compensate general institutional weaknesses.

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IS THERE A GLOBAL COMPETITION OF SECURED TRANSACTIONS LAWS?

Tibor Tajti

While it has by now become commonly known, not only in Hungary and in the region but also in a growing number of jurisdictions worldwide, why are the reforms of secured transactions law of heightened importance, it is less known that, directly or indirectly, it is the so-called *'unitary concept of security interests'* enshrined in Article 9 of the Uniform Commercial Code of the United States of America has been increasingly the major source of inspirations. This model impacted most of the projects of various international organizations that were focused on this branch of law, including the most important recent vintage private law initiative of Europe, the *Draft Common Frame of Reference,*" Book IX of which (and partially also Book X on

Trusts) came forward with a similar unitary model (though the commentaries do not mention any connection with the American model).

At the same time, German law – that still ranks one of the major models in Europe – remained completely immune from these trends. As a result, German secured transactions law (*Recht der Kreditsicherheiten*) is a model offering solutions that are in many key respects the exact opposite of the American ones as a consequence of what it may be looked upon as the rival of the unitary model. As opposed to German law, English law, as another leading legal system, is far from being indifferent: the debate whether to embark on reforms along the lines of the unitary model (and to follow the suit of Australia, the Canadian provinces and New Zealand) has been ongoing for more decades now. For the time being, the City of London – preferring the status quo and the *'if not broken, don't mend it'* philosophy – has prevailed against a group of academics.

In the light of these developments, this article is an attempt to answer the question whether there is a genuine competition among various national secured transactions law models given the numerous international projects and national law reforms? And if yes, is it possible to identify, and based on what criteria, which are the competing models? The article casts a light also on the possible economic repercussions of the competition.

As the best illustration of the importance of the economy-secured transactions reform nexus suffice to point to the changed Chinese stance according to which it is, neither German, nor continental European (civil) law, the *only* source of inspirations for Chinese law-makers anymore; it is rather the model that could generate the most economic benefits for China. Consequently, it is not only capital markets and securities regulation but also bankruptcy and secured transactions law with respect to which the law of the United States is increasingly winning the ground in China. Having the increased economic and political importance of China in sight, it should come natural to presume that it should not be irrelevant to Europe either which secured transactions model is going to prevail in China and globally in the not so distant future.

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EFFECT OF DIFFERENT PRINCIPLES IN REGULATION OF ACCOUNTING SYSTEM AND CORPORATE TAXES ON COPORPORATE OPERATION

Klára Katona

The typical financial system determines the dominant accounting principles which form the accounting system in a country. Different dominant accounting principles results in different reported profit and loss, which have an influence on corporate taxes paid by firms. Because of the accounting and taxation system and regulation in the country where the firms operate there is a strong correlation between firms' goals such

as increasing the financial resources of the firms and optimizing their tax position. The firms' intentions are partly joint with the targets of government's economic policy, since only prosperous corporations can contribute to GDP growth, but in the other hand the government's duty is to provide the financial bases of public goods which depends on the taxation system fundamentally. Considering this complicated target functions I try to present the effects of Hungarian accounting and taxation law on the performance of the firms operate in Hungary.

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SITUATIONS OF ‚COMPETITION' IN EUROPEAN MEDIA LAW – ASSESSMENT OF THE TWFD IN LIGHT OF THE COMPETITION BETWEEN LEGAL SYSTEMS

Petra Lea Láncos – András Koltay

The legal, political and economic framework of the European Union is perhaps best suited for analyzing situations of competition between legal systems. In the following we analyze European integration and in particular the Television Without Frontiers Directive based on the premises established by Ugo Mattei in his theory on the competition of legal systems, further refined by Anthony Ogus and Roger Van den Bergh. Although the TWFD has since been replaced by the AVMS Directive, it is nevertheless a showcase for both regulatory competition, voluntary alignment and further harmonization.

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ALTERNATIVE DISPUTE RESOLUTION IN EUROPE – COMPETITION OF IDEAS OR FORUM SHOPPING POSSIBILITIES IN THE LIGHT OF NATIONAL REGULATION AND IMPLEMENTATION DUTY?

Rita Simon

The legislative freedom in EU Member States is limited in those economic sectors which are regulated by the European Union, particularly with regard to the legal questions that are stipulated by regulations or full harmonization directives. The national regulatory framework for alternative consumer dispute resolution was modified in 2013 by the European legislature by Directive 2013/11/EU on alternative

dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) and by Regulation on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR). This article deals with the comparison of the national implementation of consumer ADR provisions, which became mandatory in 2015. After a brief overview of the national institutional systems of alternative dispute bodies the paper seeks answers for two questions: how does national legislation support national institutional approaches or encourage incorporation of „best practices" from other Member States, so that „competition of ideas" can be carried out between the different legal systems? On the other hand: how far can institutional competition (forum shopping) be fulfilled in the European system of alternative dispute resolution? After a general analysis of competitive opportunities afforded by the Regulation and the Directive the article deeply analyzes the concrete application of other national ideas or best practices and forum shopping possibilities in the Hungarian and Czech alternative dispute resolution systems, with particular emphasis on missed opportunities of supporting competition.

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CIVIL LAW AND CIVIL LEGISLATION IN THE ERA OF GLOBALIZATION AND IN THE COMPETITION OF LEGAL SYSTEMS

István Serák

The scientific discussion concerning the competition of legal orders and institutes is to be considered mainly an economical approach to the fundamental systematic relations and characteristic of the legislation process and of course the law itself, and regarding an economical approach, one can easily associate this paradigmatic direction with just certain fields of law, such as tax law or company law. Nevertheless civil law and civil legislation can also be seen as an optimal choice for the assessment of the practical consequences of the theoretical aspects of legal competition, since the economic related fields of a legal system are based on private law and its fundamental institutes. In the age of globalization, the rules of a national civil code can bind not only the residing citizens or legal entities of a certain territory, but also other persons and organizations, who are underlying this national law. Since the appearance of competition is a decision of the legislators as competitors, making them the most relevant actors, not incidentally because globalization and the transformation of world economy did not change the fact significantly, that the addressee of a regulation has no influence on the discretionary decisions of a legislator, the pure theoretical possibility of a discretionary, so uncontrollable modification in the legal order is not only a quintessential attribution of a sovereign legislation, but also a notable risk factor. The author examines some

economically and legally relevant theoretical aspects of legal competition, focuses thereafter on some the main fields of civil law – family law, property law and the law of obligations –, and how legislation can facilitate or abolish competition, but remains skeptical of the appearance of legal competition in private law, though it can also not be stated, due to difficulties in legally examining the relation of a legislative decision and its economical and social consequences, that legal competition cannot occur.

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A PÉNZÜGYI VÁLSÁGOK HATÁSA A BELSŐ MIGRÁCIÓRA AZ EURÓPAI UNIÓBAN

Orbán Endre

A jogrendszerek közötti verseny egyik alapvető elméletének a „lábbal szavazás“ kérdésköre tekinthető, amit Thiebout fogalmazott meg 1956-ban. A kérdés Európai Uniós szinten is jelentősnek mutatkozik a munkavállalók szabad mozgása majd az úgynevezett uniós polgárság intézményének bevezetése miatt. A nagyrészt keletről nyugati irányba tartó migráció elől az 2004-es és a 2007-es uniós csatlakozás úgynevezett adminisztrációs akadályokat is elgördített, ha úgy tetszik, a migráció ára mára jóval alacsonyabb, a tranzakciós költségek csökkentek. Ezzel együtt a válság hatására némileg mégis mérséklődött a migráció mennyisége, így a válság a tranzakciós költségek egyféle ellenhatásaként értelmezhető. Jelen írás célja bemutatni egy, némely toló és vonzó erőt figyelembe vevő modellt, és azt kívánja körbejárni, milyen kimutatható összefüggések állnak fenn a válság és az Unión belüli népességmozgás között. Az eredmények alapján a válság erőteljes döntésbefolyásoló tényező mind a kibocsátó, mind pedig a fogadó államok esetében, a válság ugyanis az ország elhagyására ösztönöz, illetve bizonyos helyektől távol tart. A tanulmány további eredményei a munkalehetőségek és a hálózati hatások fontosságára mutatnak rá.

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LEGAL SYSTEM AND COMPETITIVENESS IN TURKEY

Tamás Szigetvári

The study focuses on the fundamental changes in the legal and institutional system in Turkey and on their impact on the competitiveness of the country. The adaptation of the Western legal system has already started in the 19th century, under the Ottomans. The merge of the two legal systems – the Western and the Islamic one - was unsuccesful

however, while the Empire was unable to compete with other great powers. The new Turkish nation-state has opted for a more radical take-over of the Western civilisation, but this experiment resulted in a mixed success as well. The Kemalist model has lost its dominance by the end of the 20th century. In the last decades we could perceive the re-emergence of Islam, previously forced to the periphery under the ruling Kemalist ideology, in the sphere of politics, economy, and in the society in general. In the framework of our study we assess the possibility of mixing Islam and Western modernisation in Turkey, and the possible impacts on the competitiveness.

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THE DECLINE OF THE CONSTITUTIONAL PROTECTION OF (FUNDAMENTAL) SOCIAL RIGHTS IN TIMES OF GLOBAL ECONOMIC CRISIS

Have the European welfare states gone into reverse gear?

András Téglási

Since the economic crisis began in 2008, many European States have introduced austerity measures in response to the economic crisis, which involved sharp cuts to social security benefits and in social expenditure. The Eurozone crisis and its management prompted dramatic changes to social rights and entitlements, specifically in the Member States which were most severely affected by the economic downturn. Fundamental rights, including fundamental social rights, from different sources can be a means to contest those crisis-imposed changes to social rights. The aim of this paper is to provide a comparative framing of fundamental rights challenges to social crisis measures in the Eurozone. The paper examines the decline in social rights in five Eurozone Member States (Greece, Ireland, Portugal, Spain and Italy) intensely affected by the crisis. The paper analyses the decisions and conclusions of the national and international fundamental rights bodies and courts (especially the Strasbourg Court and the constitutional courts) as guarantors of fundamental social rights in fundamental rights cases in times of economic crisis. A possible outcome of this paper is to find a possible answer to the question, whether the European welfare states have ceased to expand and instead have gone into reverse gear.

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COMPETITIONS AMONG LEGAL SYSTEMS IN THE FIELD OF MATRIMONY

A Supermarket for Relationships?

Katinka Bojnár – Balázs Schanda

The term ‘competition’ needs a special definition with regard to the peculiarities of the matrimony and of the different forms of cohabitation. How could legal systems compete in this field, and in what sense could the individuals choose among possible matrimonial regulations?

From the legislature’s point of view, legal interaction – as a form of competition - can be observed with the increase of the acceptance of same-sex marriage even in predominantly Catholic countries. On the side of the individuals the possibility of choice can lead to competition, if the choice among the jurisdictions is real. What makes a choice real? If the individual can choose the law of another country? And what price should the individual pay for this freedom of choice? Competition is possible between jurisdictions, eventually also between ecclesiastical and state jurisdictions within the same county. Competition may be based on convictions but may also be motivated economic and financial benefits.

Generally, the opportunity to choose is a value. From a formerly uniform law the legislations proceed towards a new kind of diversity. Besides marriage different types of cohabitations appear. These offer options but also increase uncertainty and as a side effect disturb competition.

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MEASURING THE RULE OF LAW WITH INDEXES

András Jakab

Both in public discourse and academic literature, we can often read generic statements about the quality of the rule of law „improving” or „deteriorating”. Based on generally accepted legal doctrines or case law, we are able to establish whether a concrete legal change improves or rather damages the rule of law, but if there are several changes which have opposing effects on the quality of the rule of law then summarising the results in such generic statements can easily seem arbitrary. In such cases we need a methodological toolkit that helps to quantify the changes which is, however, beyond traditional legal methods. There is a wide range of international literature on the methodological issues connected to these questions, and there are actually several institutions both in Europe and the US (e.g., Freedom House, Bertelsmann

Stiftung, World Bank, World Justice Project) which prepare rule of law indexes. The present paper is an introduction to preliminary questions of conceptualisation, data aggregation and interpretation of results.

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COMPETITION OF LEGAL SYSTEMS AND CONSTITUTIONAL DIALOGUE

Tímea Drinóczy

Competition between legal system is an existing phenomenon in certain fields of law, while in other areas it cannot necesserily be detected. This paper tries to answer the question whether competition paradigm is applicable at all in the field of constitutional law and what connections may be seen between competition paradigm and concept, methods and effects of constitutional dialogue. More precisely, the research question is as follows: whether political decision maker engaged with constitutional law matter applies ‚competition' or ‚dialogue' in the context of global and multy layered constitutionalism.

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THE INTERNATIONAL LAW ASPECT IN THE INTERPRETATION OF THE MIGRATION CRISIS

Tamás Ádány

Last year an unprecedented migration influx reached and passed through the so-called Western Balkans route, among many consequences claiming a constant place among the headlines for the issue of migration. A politically motivated public discussion was started, wherein the use (or omission) of certain terms became signs of taking sides. Without any such attempt, this paper re-explicates the terminology of international law applicable to international migration. The underlying assumption is that migration is a complex phenomenon, and a mass-communication simplification of the terminology may easily turn to be disruptive to the already extremely hard resolution of the crisis. Therefore the paper explains the differences between regular and irregular migration, and examines the fundamental right to seek asylum to the later. The terminology focuses on the law applicable for the Schengen-area countries.

This terminology is then used to introduce and to explain some less obvious features of the current migration wave beyond its sheer size: a qualitative difference is identified in the perceivable lack of co-operation.

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EVALUATION OF THE PRESENT EUROPEAN MIGRANT CRISIS: REFUGEES – 'ASYLUM SHOPPING' – INFILTRATING TERRORISTS

János Frivaldszky

In this paper I endeavour to demonstrate the complexity of the question of how to deal with mass migration. On the one hand, migrants whose life is threatened have a right to asylum, which entails an obligation for the neighbouring countries involved. Also countries not affected by migration have the duty to help the migrants, if by no other means then by offering financial support. Another of migrants, quite distinct from the former, comprises men between 25 and 35, many from Syria. Influenced by neo-liberal ideologies popular in Syria, they claim to have the right to come to the wealthiest European countries and benefit from their welfare systems. In this case, none of the countries have the duty to receive them, but may make a sovereign decision on the question. The third category is that of infiltrating terrorists, against whom the state is obliged to effectively defend its citizens. The problem is that in case of mass migration, it is quite difficult to discern among the former categories in particular instances. In Europe, we see no well-functioning examples of multiculturalism, that is the integration of migrants, which should make us reconsider the idea itself.

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THE DEVELOPMENT OF EU MIGRATION POLICY

Laura Gyeney

Since the beginning of 2015, approximately 1.000.000 people have arrived at European Union borders through irregular channels, fleeing conflict and violence at home or in search of a better life abroad. The migration crisis is rapidly becoming the largest challenge the European Union has ever faced. While generating intense political debates, the crisis highlighted a fundamental weakness of EU migration policy. It is clear, that new patterns of migration require immediate and forceful action. However, the EU itself is torn between two conflicting ideas. On the one hand it is committed to

the idea of democracy, the rule of law, and respect for fundamental human rights, which are also a key element of EU policy towards third countries. On the other hand it must protect its borders enabling free movement and guaranteeing the free movement of EU citizens. This study aims to delineate the EU's policy response to the rising migration influx first and foremost through presentation of the European Agenda on Migration presented by the Commission in May 2015. The European Agenda outlines both the immediate measures that will be taken in order to respond to the crisis situation in the Mediterranean as well as the steps to be taken in the coming years to better manage migration in all its aspects. The European Agenda on Migration is welcomed on the one hand as it provides a more comprehensive approach towards migration, however on the the other hand in many fields it deals merely with symptoms instead of addressing real causes, while providing only temporary solutions. One of the most controversial initiatives is the provisional EU relocation system, which is to be discussed.

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THOUGHTS ON THE MIGRANT CRISIS

Tihamér Tóth

Migration has been high on the political agenda in Hungary for more than one year. The drastic measures introduced by the Hungarian government in September 2015 aim not only to control but also to stop migration into and through the country. Most of these measures are also welcomed by Hungarian catholics. It is thus timely to recall the fundamental principles of Catholic social teaching concerning people on the move. I try to explore how these principles can be applied to this massive migration and whether they can accomodate worrying issues arising from the cultural and religious conflicts between weak post-Christian host societies and determined muslim refugees.

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WAYS OF PROVIDING PASTORAL AND HUMANITARIAN AID TO REFUGEES IN THE CATHOLIC CHURCH

Lóránd Ujházi

The article strives for a sophisticated presentation on the Vatican's mechanism of migration management. It presents the respective office of the Holy See, the Pontifical Council for the Pastoral Care of Migrants and Itinerant People, its history, operational legal framework and main fields of activity. At the same time, there are

also references made to the pillars of the Vatican's migration policy, the main ideas and their channels. Recent revelations of the Holy See – documents, conferences and papal messages – which concern current refugee issues are dealt with apart.

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FUNDAMENTAL PRINCIPLES OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT AND THEIR ACTIVITIES FOR MIGRANTS

Réka Varga

The components of the International Red Cross and Red Crescent Movement (Movement) are operating based on their seven fundamental principles, including neutrality, independence and impartiality, and have a unique international legal background. The Movement's founding body, the International Committee of the Red Cross (ICRC) is operating based on the confidentiality principle, which includes a confidential, non-disclosed dialogue with concerned authorities regarding their responsibilities based on international law and ways in which the ICRC can assist vulnerable persons. Due to its neutrality, the Movement does not take position on the handling of the migration problem, but is focused solely on assisting vulnerable people. The Movement is present all along the migration route – source, transit and goal countries – and thus has a unique opportunity to assist those in need. The national red cross/red crescent societies are assisting people on the move and in detention, while the International Federation coordinates national societies' activities. The ICRC's focus of attention regarding migrants is threefold: restoring family links, protection of detained persons and providing assistance in identification of dead bodies and ensuring a decent funeral.