Iustum Aequum Salutare
XIII. 2017. 3. • 299–306.

# SUMMA

## THE CRITERIA OF DISCERNMENT IN THE LAW-MAKING AND GOVERNANCE OF THE CHURCH

Péter Erdő

Pope Francis puts a stress again on the importance of pastoral deliberation, but at the same times he warns about the dangers of the casuistry. This article examines the role of discernment (*discernimento)* in the operation, legislation, jurisdiction and public administration of the Church government.

The eternal tension between the legal certainty and the justice of the law is – originating in the characteristic of the humankind and the society –, what makes such deliberational mechanisms necessary, which overstep the boundaries of the pure logical deduction. We have to establish the relationship between the word-by-word usage of the law and the reality of the situation by ethical and theological deliberation. The discernment is not only the expression of the desires and wills, not only the correlation of the wishes living in the society, but it has to be based on the objective reality of the things. In the Church this objective reality in the Church includes the mission and the theological dimension of the Church, too.

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## CATEGORICAL AND ORDINAL ELECTORAL SYSTEMS

Csaba Cservák

This study, rather than focusing on party politics, endeavours to categorise the various voting systems based on the electoral choices available to citizens. Such an approach remains somewhat atypical, though certainly not unheard-of in legal works. During a categoric vote, citizens are stood before a clear choice: they are to make an unequivocal selection from the candidates presented without the option to split their votes or put them in an order of selection. An ordinal vote, on the other hand, opens up a realm of wider possibilities. The electorate may now form orders of preference, designating their most and least preferred candidates, eliminating the need to commit to a single party or candidate.

Placing under scrutiny a veritable plethora of electoral systems, the study begins with the absolute majority vote; particularly the „absolute-absolute" and „absolute-

simple" methods, differentiated by the vote threshold requirement in the second electoral round. Next, the author presents us with an overview of block voting, single-list and cumulative single-list alike, before moving on to preferential systems, where - nomen est omen - citizens casting their ballots are entitled to more than a simple choice. The premium list, the vote-transfer, the Droop quota and the personalised PR system all merit a subchapter. In his closing words, the author compares the previous Hungarian electoral system, last employed in 2010, with its present-day counterpart, highlighting changes and similarities alike.

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## VITIA TOTIUS CIVITATIS CORRIGERE

### *Certain Questions of Leges Sumptuariae in Roman law*

János Erdődy

Sumptuary laws, legislative measures of the Roman republic and early imperial era, were aiming to restrain extreme and extravagant expenditures via limiting the amount of money to be spent on feasts, funerals, weddings, games and other social events. In primary literature the *sedes materiae* stem from the works by Gellius and Macrobius who, besides describing the content of these *leges*, define the general outline of sumptuary laws. As the authors point out, the aim of these laws is to promote *parsimonia* and *tenuitas* as basic republican virtues. In the secondary literature not much interest is shown in sumptuary laws: contemporary jurisprudence simply regards it as a limitation of property, while a minority of authors deem these laws the results of a social legislation. Earlier secondary works put a stress on the historic impact of these laws. As a first step in the detailed research of the topic of sumptuary laws, this paper intends to give an outline of the actual content of these laws, in a chronological order. Such a primary source-based analyses could serve as the first step towards a better understanding of the Roman concept of limitation of property.

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## DER SEKTORALE KOLLEKTIVE RECHTSCHUTZ IN DEUTSCHLAND

Viktória Harsági

Die Einführung und Fortentwicklung von kollektiven Rechtschutz steht in Deutschland seit vierzig Jahren auf der Agenda. Davor waren den Parteien nur die traditionellen „Zusammenschaltungsformen" der Zivilprozessordnung (ZPO) zugänglich, wie zB, die Streitgenossenschaft oder die die Vereinigung der Klagen. Heute können die

sog. Verbandsklagen als eine weit verbreitete kollektive Rechtsschutzform angesehen werden. Deren Merkmal sei, dass die Vereinigungen, die das Verfahren einleiten, nicht die Rechte und Interessen ihrer Mitglieder durchsetzen, sondern auch öffentliche Interessen vertreten. Das traditionelle System der Verbandsklagen wurde später durch das Gesetz über Musterverfahren in kapitelmarktrechtlichen Streitigkeiten (KapMuG) ergänzt, das im Jahre 2005 ein neues Verfahren (ein Musterverfahren) zur effektiven Durchsetzung der Schadenersatzforderungen in Zusammenhang mit Finanzinvestitionen einführte. Dieses duale System wird vom dem Beitrag dargestellt und analysiert.

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## THOSE WHO "VOLUNTARILY" LEFT: THE 1948 AGREEMENT CONCERNING THE RESIDENTS WHO LEFT THE AREA CEDED TO CZECHOSLOVAKIA

Gábor Hollósi

The current work is the second part of *The Meaning of "Human and Civic Rights" in Connection with the Enlargement of the Pozsony Bridgehead* study, which was published in IAS 3/2016. In that work we presented how the delegation of the Hungarian government attempted to ensure human and civic rights on behalf of the residents of Dunacsun, Horvátjárfalu and Oroszvár, three Hungarian villages ceded to Czechoslovakia. Moreover we looked at how Czechoslovakia failed to honor the accompanying agreement between the two states. Together with the constant grievances that the entirety of the ethnic Hungarian population of Czechoslovakia had to endure, these resulted in that provision of the Paris Peace Treaty addressing the "voluntary" leaving from ceded settlements coming to the fore. In this context, however, execution issues soon emerged.

On October 12th, 1948, the Hungarian–Czechoslovakian Boundary Commission successfully reached an agreement concerning "voluntary" leaving from the ceded territory. In our work we show how the 2nd Supplementary Minutes, which dealt with the matter, tracked the progress of the negotiations. Nevertheless, our historical investigation is but a starting point, for we also look to answer how the 2nd Supplementary Minutes was linked to the population exchange agreement signed on February 27th, 1946. Additionally we examine what significance the two sides imparted on the relevant part of the peace treaty, which is to say, could the 2nd Supplementary Minutes be considered as a resettlement agreement? We follow the progression of the legal measure via the drafts of the supplementary minutes. Our source materials come from the legacy documents of the Hungarian Ministry of Foreign Affairs found at the National Archives of Hungary.

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## ERWÄGUNGEN ÜBER DIE PFLICHT UND DAS RECHT DES DIE PERSON IN IHRE WÜRDE BEKLEIDENDEN KULTIVIERTWERDENS

Géza Kuminetz

Die Menschenrechte und -pflichten dienen grundlegend dazu, dass sie die in moralischem Sinne genommene Entfaltung der menschlichen Würde am meisten schützen und fördern. Der Bezug auf die menschliche Würde und die Menschenrechte ist nur eine Fiktion und Illusion, wenn wir der wahren Erziehung keinen Raum bieten, die die Persönlichkeit so entwickelt, dass die heilsam vorhandene und wirkende Authorität des Erziehers der ihre Identität suchenden Person ihre grundlegenden Verbindlichkeiten zum Bewusstsein bringt und sie dazu zwingt.

Die Deklarierung der die menschliche Würde ausdrückenden und schützenden grundlegenden Menschenrechte und die Bestimmung ihres wesentlichen Inhalts hängt jedoch davon ab, welche messianistische Idee (Programm) sowie welcher Leiter hinter ihm steht und ob der Leiter das verkörpert.

Von dem Recht des Kultiviertwerdens machen wir dann richtig Gebrauch, wenn wir Kultur und Bildung geben, zusammen mit den Kenntnissen auch die Persönlichkeit entwickeln, was eine Aufgabe des Erziehers ist, denn die Erziehung ist dazu berufen, die ganze Persönlichkeit zu pflegen; die Ausbildung bedeutet nur die Entwicklung von bestimmten Fähigkeiten der Persönlichkeit.

Auch der Universitätsprofessor hat erzieherische, das heißt persönlichkeitsformende Aufgaben, sogar vielleicht eben darin besteht ihre erstrangige Berufung. Und zum Amt eines christlichen Rechtsprofessors gehört auch das, dass er seine Studenten mit Christus, dem wahren Messias verbindet.

Herr Professor Gábor Jobbágyi hat an unserer Universität in diesem Geiste gewirkt. Darum möchten wir ihm unseren Dank und unsere Dankbarkeit aussprechen.
Gott erhalte ihn, hoch und lang soll er leben!

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## SURROGACY BEYOND BORDERS

### *with Particular Respect to the Decisions of the European Court of Human Rights*

Zoltán Navratyil

The article explores the international aspect and discrepancies of surrogacy agreements, the widely controversial form of treating infertility.

Recent cases of the European Court of Human Rights (ECHR) suggest, that national laws of the member states of the European Convention of Human Rights are problematic from the viewpoint of the ECHR.

The basic controversy is that the national legal fremeworks relating parenthood are often contradictory to the law of the foreign country (e. g. Ukraine or India) where the surrogacy agreement was made lawfully. Consequently the national authorities tend to remove the child from his or her intended parents, as they do not recognize a foreign birth certificate which is considered unlawful under national law. Notwithstanding the ECHR generally rules that there is an interference with the applicants' private and family life enshrined in the Article 8 of the Convention.

The study tries to summarize the conflict of laws on this field, and poses a special emphasis on the rights of the child born through (international) surrogacy.

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## THE ROLE OF SELF-REGULATION WITHIN MODERN REGULATION STRUCTURE

Ildikó Sarkady

The role of self-regulation within the regulatory system of the end of the 20th century began to become all and more important as a response to the almost complete globalization of world economy and it is associated with the all and more complicated regulatory issues the aim whereof is to eliminate and fight back unethical market trends and tendencies. The public political regulatory system of state power, i.e., legislation, can all lesser perform the comprehensive regulatory role in media and the advertising industry, something that worked perfectly in the era of the traditional world of media. Vocation self-regulation has become widespread within the media industry now everywhere in the world: it was brought to existence in the first third of the 20$^{th}$ century and is related to control over the press. Its role within advertising and communication industries is significant from the very outset. Following a brief introduction of the history of self-regulation, based on international documents of law and other resources, the essay proves the need for a multi-level regulation and the setting up a complex regulatory system necessitated by the globalized economic and social environment.

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## BETWEEN SHARIA AND LEGAL PLURALISM. TRADING OPPORTUNITIES IN THE OTTOMAN EMPIRE

### *Trade Patterns, Loopholes and „Forum Shopping" in the Ottoman Empire*

Katalin Siska

In the 18th-19th century Ottoman Empire the main features of the commercial life amongst the Muslim Ottoman subjects were: stagnation, organizations of family businesses and low capitalization. The main reason of the economic stagnation in my opinion was the legal system, including legal pluralism. The parallel presence of the different legal systems in the Ottoman Empire (valid rules of European law, sharia, and special rules of the different millets) in conclusion led to the general phenomenon that the strictest Islamic law was ultimately unsuccessful at the implementation of trade agreements. This explains the small Muslim Ottoman companies and its special capitalization, the possibility of judicial benefits of non-Muslims against Muslims in the Ottoman trade, the omission of Muslim Ottomans from the significant European trade and ultimately the ineffectiveness of the 19th-century saría based Ottoman reforms and final acceptance of the European commercial models.

The first part of my study I analyze the main rules and features of the saría-rooted trade habits amongst the Muslim Ottomans, then I examine the trading habits of non-Muslim Ottomans focusing on their legal possibilities which made them possible to avoid saría courts against their Muslim rivals.

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## E-SEX INDUSTRIAL REVOLUTION

Erzsébet Tamási

The study is addressing the consequences of and changes in internet mediated prostitution. The wider availability of the internet was one of the factors driving the gradual migration of prostitution from the streets into closed, less observable spaces. Web based solutions accelerated and facilitated the move of supply and demand toward equilibrium. The internet brought changes in security and processes, but it has also changed the moral view of prostitution. Anonymity protects against stigmatization. The choices are visible, the terms are clear, the experiences gained about the offered services are evaluated publicly, decreasing the risk of getting defrauded for both parties and eventually reducing the likelihood of violence or any "surprises". No noise, no littering on the streets, little to no police harassment changed the structure of prostitution and the social background of the participants. The question is, does the legal system and criminal policy follow this "revolution"?

## DIFFERENT PERSPECTIVES OF HUMAN BEHIND THE KOL RESEARCHES

Andrea Jankó-Badó

The study attempts to investigate the different perspectives of human behind the KOL (Knowledge and Opinion About Law) researches. In this relation it highlights the perspective of human of four theoretical schools which have been put onto the incomprehensive list based on the review of the scientific references. The psychological perspective of human is also listed, as the study wishes to point the attention to the fact that, legal culture could be the subject of other social sciences (including among others psychology) other than jurisprudence. The cooperation between the social sciences could facilitate the deeper understanding of legal culture.

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## REASONS OF THE ESTABLISHMENT OF THE EUROPEAN PUBLIC PROSECUTORS' OFFICE

Liliana Láris

Protection of financial interests of the Euroepan Union is important because of the stability of the internal market. Acts detrimental to the financial interests disorganize the balance: they regroup material resources trough illegal means. If the competition becomes injured, the internal market is being injured, too, and trough that the integration itself is endangered, also. Member States are the principal defenders of the common budget but their efforts seem to be insufficient.

Substantive legal background of the establishment is fragmented regulation: only the PFI documents are in force, their implementation differs from Member State to Member State and is not appropriate.

Procedural legal backgrounds of the establishment are: forms of traditional mutual legal assistance are slow, can not assure fast gathering of evidence in a way that they are later addmissable before national courts, development of norms based on mutual recognition goes step by step and takes long time, in the course of their application occur human rights queries.

Institutional background of the protection of the Union's financial interests is also fragmented. Decisively, administrative organizations have competences which proceed in creation of the Union's budget and supervision of its execution, they make suggestions how to make arrangements against acts detrimental to the Union's financial interests more effective. OLAF only can conduct administrative investigations, organs of criminal cooperation like Europol and Eurojust take part in coordination and information exchange in concrete cases but they have no real investigative competences.

## THE HUMAN RIGHTS ASPECT OF THE EXTERNAL RELATIONS OF THE EUROPEAN UNION AND ITS ROLE AFTER THE TREATY OF LISBON

András Kásler

The European Union has become a determining economic factor at global level. One of the achievements of the Treaty of Lisbon is that the EU got legal personality. On the entry into force of the Treaty of Lisbon, EU policies, including the common commercial policy, are based on a common framework and on uniform principles, especially on human rights. The Treaty of Lisbon lays down that the Charter of Fundamental Rights of the European Union shall have the same legal value as the Treaties. One of the main issues is whether the EU is willing to apply the human rights provisions in priority over economic interests and goals. Within the framework of development policy, the EU provides support to underdeveloped partner countries. In this context, it must be emphasized that agreements with third countries and regional associations contain the human rights and democracy clause as one of the most crucial elements thereof.

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## THE IMMUNITY OF JUDGES FROM THE ASPECT OF CRIMINAL LAW AND JUDICIAL STATUS

Áron László Tóth

In general the immunity of judges is considered as a less important and rarely used part of legislation. However, during the application of these regulations one can face such problems that cannot be solved by the sole application of the relevant acts.

Jurisprudence made an attempt to solve the problems occurred during the application of these regulations – but not every question emerged has been answered.

In this article I tried to give a quick overview of the past legislation process, how the immunity of judges had evolved in the last century and what are the relevant questions today. Is immunity a necessary part of judicial status? Does the jurisprudence handle cases where the question of immunity occurs in a proper manner? Is the interpretation of legislation coherent with the principles of the criminal procedural code? I tried to answer these questions as well as I tried to give some brief ideas about how the relevant legislation and jurisprudence should be developed.