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SUMMA

WHEN SHOULD THE LEGAL ORDER BE SPECIAL?

Lóránt Csink

Freedom and security have always been concurring aims in history. Special legal order is a state in which security is especially endangered, therefore people need to sacrifice even more of their freedom. Irrespective to how great the threat is, it is pointless to give up all freedom. The article analyses the basic notion of special legal order and examines the pertaining constitutional regulations. The outcome of the paper is that not the detailed regulations but the effective control can be the efficient guarantee of people's freedom. It argues that the constitutional regulation should be abstract and flexible that ensures a margin of appreciation to the organ that acts during special legal order. On the other hand, effective control mechanisms have to be established to prevent the misuse of power. The paper also argues that the constitution does not have to establish special rules on human rights; the same standards are applicable.

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BEYOND THE RULE OF LAW, TO SAVE THE RULE OF LAW

Thoughts about the nature, importance and place of an emergency legal order in the modern rule of law

Ádám Farkas

The study aims to counter the negative prejudice against a special legal order. The author views emergency legal orders as the historical achievement of civilian state administration. He interprets the institution as part of the state's armed defence system and looks at it as public law's ultima ratio regarding the rule of law's defence. The study accentuates that the emergency legal order is not an absolute institution for the concentration of power, but a defence purposed special legal institution, which means a limited and purposeful power. The main goal of the paper is not to protect the emergency legal order's Hungarian rules, but to attract attention to historical and systematic baselines for critical analysis and eventual reform. According to the author, the whole system of armed defences requires survey and the emergency legal order can be reviewed and reconsidered in these frames.

ARE STATE OF EXCEPTIONS RULED BY LAW?

The Theory of a State of Emergency, Following Two Rival Interpretations

Gábor Mészáros

The most serious fear regarding to state of emergency is that it is brought into to the law, or it is become the law. Therefore it is possible to see the law as a tool or as an instrument against itself: law is used to suspend itself. This problem is already featured in the relevant literature. In this article I will try show the two rival standpoint regarding the above mentioned problem. Carl Schmitt thought that this problem is solely a problem to liberal theories, because liberalism tries to banish state of emergency from the legal order and they want to justify that political autority is ruled by law. As we will see in Schmitt concept the exception is not relevant for the law. His response: „Sovereign is he who decides on the exception" makes it clear that political authority of the state is not constituted by law. Meanwhile in Dicey's concept of state of emergency one could recognize that he denies that the sovereign has the authority to use law to suspend the law. Although he asserted that the rule of law is the most important constitutional requirement of the legal order, he also seems to suggest that it is possible that a statue (indemnity act) can suspend it.

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LES RÉPONSES DU SYSTÈME JURIDIQUE HONGROIS AU TERRORISME ÉVENTUEL

Andrea Noémi Tóth

Cette étude voudrait analyser l'état du système juridique hongrois, notamment du droit pénal, si un attaque terrorisme se passait en Hongrie. Avec la sixième modification de la loi fondamentale, le danger du terrorisme s'est intégré à celle. On doit voir que c'est un état exceptionel à la loi fondamentale hongroise, et il y a beaucoup de conditions de la déclaration du danger du terrorisme. On voudrait savoir quelles sont les réponses du droit pénal et quelle est la pratique des tribunaux, si un délit de terrorisme se passe (sans déclarer la danger du terrorisme). L'étude fait voir quelques affaires ces dix années dernières qui étaient devant la cour de cassation ou au suprème degré. On doit remarquer trois groupes parmi les affaires selon les sanctions appliquées: des 11-12 années en prison au quelques mois et acquit. Il est nécessaire de participer à toutes les autorités: de la législation à la juridiction pour la sécurité nationale.

FUTURE CHANCES OF SIMPLIFYING THE SYSTEM OF THE HUNGARIAN SPECIAL LEGAL ORDER

Szabolcs Till

There have been fundamental changes in the system of the special legal order categories of the Fundamental Law and in the related task matrix of the Hungarian Defense Forces. The consequences were the institutionalization of the *crisis situation caused by mass immigration* and *the state of the terrorist threat* both codified in the period of 2015-16.

These changes made the system of special legal order more complicated, although the necessity and affordability of the original five categories inherited from the Constitution were already controversial. However, the constant governmental practice since 1990 has ignored the use of the most derogating categories. This practice has not changed at the different governments.

At the same time the alternative drafts related to terrorist threats and migration management raised the need for extending the military tasks related both to the peacetime framework and to the preparatory phases of some special legal order cases.

Based on the constitutional situation after 2016, it is expedient to evaluate the different causes and consequences of the elements of the special legal order, and as a secondary research objective to try to suggest a reduction at the category system.

In our view, the complexity of the regulation is too high by now: regarding to the six cases of the special legal order (and the two distinct proposal periods) as well as the peace-time migration-management are challenging for the users both from the point of the practical applicability and of the correct segregation of the alternatives.

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EMERGENCY LAW FROM PRACTICAL AND EXECUTIVE PERSPECTIVE OF THE DEFENCE ADMINISTRATION SYSTEM

László Keszely

The most important responsibility of Hungarian defence administration system is preparation for and implementation of emergency law tasks and functions. When fulfilling this mission numerous practical issues emerge that have returning effects back to theoretical researches and lawmaking, so it is indispensable to diminish theory-practice gap in this area as well. From practical viewpoint of defence administration, emergency law is a phase of crisis management when a crisis can not be effectively managed by means of normal legal measures. In this sense emergency law is a crisis management tool that will presumably be introduced at the most serious phase of the crisis. Experiences from practice indicate that in Hungary emergency law is overregulated at the level of the Constitution, while several legal measures necessary

for implementation are yet to be introduced. This tendency induces a permanent expectation in defence administration for simplifying emergency law measures in the Constitution and parallel creating effective implementation measures.

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METAMORPHOSIS OF SECTORAL AND PROFESSIONAL CONCERNS IN SPECIAL LEGAL ORDER

Focusing on the National Security Services in Particular

István Sabjanics

The static state administration becomes dynamic in special legal order, which makes us believe that it is in the best interest of the military, the police and the national security services. They claim and get more and effective powers to limit the fundamental rights of the people and it seems this serves their professional and sectoral goals well. However, some essential professional interests of the national security services are overlooked by the Government in times of crisis, in conclusion of the interests of the military and the police in line with the Governments political concern for crisis management.

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THE PROTECTION OF HUMAN LIFE, HEALTH AND PROPERTY AS WELL AS THE ENVIRONMENT IN THE REGULATION OF SPECIAL LEGAL ORDERS

Gotthilf Schweickhardt

The protection of human life can be primarily guaranteed by the states. Respect for human rights imposes obligations on every state and person. During periods other than the normal one, obviously an order, which is different from the normal order, has to be established, which limits the rights of the individual and the given community in order to ensure the protection of the human life and health. Such a period may a natural disaster or an industrial accident or any other social incident, which endangers the values of the individual and the given community. In such cases, constraints are needed. Another such case is when a threat coming from within the state endangers the fundamental rights and interests of the society, the community and the individual within the state. The restriction, the limitation of the individual's rights varies by time and place in different periods. In this paper, I explore the limitations of human rights for the sake of the protection of human life, health and property in different special legal orders related to disaster management.

PRESS RESTRICTIONS IN THE FIRST WORLD WAR

The Existence of a Fundamental Right in the Shadow of Regulating the Exceptional Power of the First World War

Roland Kelemen

In this study the author introduces the exceptional power actions in the case of war of the Act LXIII. of 1912 in relation to press freedom. During this, he points out the provisions declared in paragraph 11 of the Act, like the preliminary press review, the banning option of domestic press products and the press policing options against foreign press products. During the preliminary press reviews, he introduces its rules in detail, and he declares that this apparatus was applicable because of military interest only, and that was the reason it have never been generally ordained during the First World War. According to the author's opinion, the real tools of the press control were the so-called objective and subjective press banning options. Besides he describes in detail those rules of the First World War legislations which were ordain the ban of the domestic and review the foreign press products.

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DER AUSNAHMEZUSTAND IN DER WEIMARER REICHSVERFSASSUNG

Die Genauigkeit der Begriffe – der Beurteilungsspielraum des Rechtsanwenders

István Szabó

Einer der bekanntesten Artikel der Weimarer Reichsverfassung ist der Artikel 48 über das Notverordnungsrecht. Im Sinne dieses Artikels konnte der Reichspräsident den Ausnahmezustand erklären, wenn auf dem Gebiet des Deutschen Reiches die öffentliche Sicherheit und Ordnung erheblich gestört oder gefährdet war. Die Anwendung des Artikels zeigt, dass es sich bei dieser Formulierung um einen leicht formbaren Text handelte. Sein Bedeutungsinhalt hat im Laufe der Zeit Wandlungen erfahren. Abgesehen von dem Begriff der öffentlichen Sicherheit im Sinne des Polizeirechts wurde dieses Tatbestandselementes auch auf den Bereich der Steuerung der Wirtschaft ausgedehnt. Die Verfassung hat für die Zeit des Notstandes dem Rechtsanwender einen weiten Spielraum geboten. Einschränkungen waren nur für den Fall der Begrenzung von Grundrechten vorgesehen. Abgesehen von diesen Fällen verfügte der Reichspräsident im Hinblick auf die Wahl der Mittel über einen weitgehend freien Ermessensspielraum. Auch der in der Verfassung vorgesehene Grundsatz der Gewaltentrennung bildete keine Grenze, außerdem konnte der Reichspräsident im

Falle des Ausnahmezustandes in die Kompetenzen der Reichsversammlung eingreifen. In der Praxis hat sich der Reichspräsident auch über die im Zusammenhang mit der Beschränkung der Grundrechte vorgesehenen Grenzen hinweggesetzt.

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THE HISTORY OF MARTIAL LAW IN HUNGARY IN THE 19TH AND 20TH CENTURIES

Zoltan J. Toth

The present paper deals with the history of the normative regulation concerning martial law in Hungary in the 19th and 20th centuries. Within its scope, this essay, after a short historical preface, reviews, firstly, the era of legislation by decree regarding martial law in the 19th century. Then, this essay enumerates the laws enacted in 1912, which are deemed as the beginning of modern (that is, 20th century) martial law regulations, and, secondly, it presents the statutory rules made during World War I. After this, it analyses in detail the norms of criminal law and criminal procedure law in the Soviet Republic of Hungary, in the Horthy Era and during World War II. Finally, it introduces the martial law regulations enacted in the short interval of democracy, then those of the state socialist system before the year 1962, when implementation of martial law was abolished.

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STATES OF EXCEPTION IN THE FRENCH LEGAL ORDER

Permanent Exceptionality

Ádám Ságvári

The study gives a glimpse into the history and practical operation of the states of exception in the French legal order and draws attention to the dangers of a permanent state of exception, respectively. In consequence of international terrorism, the concept of security has changed, in response to which there is a general tendency to increase the weight of the executive power in order to fulfil the citizens' need for immediate action. In exchange for the desired security, the overwhelming majority of citizens are inclined to accept measures of greater power to enforce the law. Although there is no evidence that these are really suitable to the reduction of, among other things, terrorist threats. In a democratic legal system, however, exceptional legal instruments can only be applied for real and legitimate reasons. The French legal system shows how thin the border line is between the effective handling of the problem and the arbitrary exercise of power.

CONSIDERATIONS TO THE CANON LAW HISTORICAL RELEVANCE OF THE COUNCIL OF SZABOLCS (1092)

Szabolcs Anzelm Szuromi, O.Praem.

The Council of Szabolcs in 1092 is considered as the first national council of Hungary – apart of its having been convoked and presided by the monarch – was conducted in accord with contemporary conciliar regulations, with the participation of the Hungarian upper hierarchy (bishops and abbots), whose number was made up with the presence of the lords temporal. Regarding its topics of discussion, it provided chapters, effective for the whole territory of the country, in the entire circle of such ecclesiastical questions as were discussed in contemporary European councils. The most significant chapters were dedicated to the marriage cases, as well as the remarried deacons and priests, to the regulation of tithe; the arrangement of the feast days of the saints; and to the topic of ordeals. The Council of Szabolcs was destined for the comprehensive and stable arrangement of the Hungarian ecclesiastical relations, but taking over the Gregorian reforms was far from it.

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LEGAL CUSTOMS AS REPRESENTATIVES OF THE COLLECTIVE SELF

Or the available added message of investigations into popular customs

Csaba Varga

In contrast with written law as a personal creation through abstract generalisation, legal customs as popular customs are issued of experience, reflecting what has been summed up in standing practice from the mass of pragmatic problem-solutions. As part of, or substitute to, the law or legal order *hic et nunc* in force, they are to serve as the main popular means of preventing and/or processing conflicts. At the same time, in their spirit, in the direction of their practical wisdom, in the potential of their relentlessness aggressiveness, as well as in the way they prefer prevention, remedy or avengement to the others–that is, in all their properties–they are directly to feature and represent, embody indeed, the various characteristics of those peoples concerned. This is to mean that once the accumulation and processing of relevant data are finished and theoretical interpretation is given, by way of comparison with broad perspectives the research of legal customs has to reach its primary goal, which can not be else than a deeper sight of our self, our genuine being in the mirror of the past we have covered. In a sense, as generalised, this is a variant of self-characterology, to be reborn again.

THE FIRST HABSBURG-HUNGARY (1437–1457) I.

In focus of the decree of Albert of Habsburg (1439) and its surrounding practice

Zoltán Attila Liktor

Although the used terminology by me in the title '*first Habsburg Hungary (1437–1457)*' is an unusual determination of the period existed in Hungary between the reign of Sigismund of Luxemburg (1387–1437) and Matthias Corvinus (1458–1490) in the common- and legal historiagraphy, but it could be an acceptable appellation of these paradoxical decades. Of course the '*Habsburg Hungary*' – as expressing – is well known and used by the hungarian legal historigraphy, but it means the (permanent) Habsburg rule over Hungary (1526–1848) after the battle of Mohács. For this reason it would be pertinent to style the rulerships of Albert of Habsburg (1437–1439) and Ladislaus of Habsburg (1440–1457) as '*first Habsburg Hungary'*. Through these two decades – determinated provisional, full of disorder and civil war by common historiography – with a short intermission (1440–1444), the country basically was owned by Habsburg monarchs. Upon that fact it should be a reasonable denomination of this era as '*first Habsburg Hungary*'. Of course it is not really easy to find correct or balanced analysis of the relation which existed (1273–1944) between the Imperial & Royal House of Habsburg (also known as *House of Austria/ Domus Austriaca*) and the Kingdom of Hungary. Of all of this we would like to weighting the twenty years in question (1437–1457) in these essays in the reflect of the public law on the basis of available primery sources for us and the newest results of recently researches. We devide our essay – about that two decades – in three parts. In this first part of the „trilogy" we examine the heritage of Albert of Habsburg of Hungary's decree – published in 1439 – and it's surrounding legal practice.

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THE CONCEPTUAL CROSSROADS OF THE POLITICAL SYSTEM

The meanings of the separation of powers and its connections to the rule of law and the popular sovereignty

Krisztián Szaniszló

The main purpose of this study is to find the main conceptual and content components of the rule of law based on the separation of powers and democracy. The conceptual relations between the constitutionalism, the separation of powers and the rule of law, which are often overlapping with each other, can be compared to an onion diagram

or to the Russian matrjoska doll as an illustrative example. The constitutionalism contains the principle of the protection of human rights (which is enshrined in the catalogue of fundamental rights in a constitution), the principle of cooperation with the supranational organizations, the principle of the effective enforceability of the constitution, i.e. the protection of the constitution. These principles provide the extra meaning of constitutionalism to the rule of law, but, besides these principles, the rule of law constitutes a conceptual component of constitutionalism. And the material rule of law is a part of the separation of powers. In the onion diagram, the constitutionalism is outside; the rule of law is in the middle circle; and finally the core is the separation of powers.

The harmonious functioning of the rule of law (based on the separation of powers and democracy) requires the balancing and limiting role of three doctrines: the popular sovereignty, the rule of law, and the separation of powers in the framework of the public administration and in the everyday acts of the governmental agencies. The relations between the separation of powers and the popular sovereignty are expressed through the legitimacy chain, which validates the democratic legitimacy. Due to the protection of human rights or the separation of powers, the rule of law may limit the margin of maneuver of the elected leaders, but the rule of law can only be enforced with the support of, or at least tacit consent of, the majority of the political community.