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SUMMA

DIFFERENTIATION OR DISINTEGRATION

Preserving by Renewing

János Martonyi

The notion of differentiation has to be clearly distinguished from the question of the share of decision-making competences between the member states and the institutions of the European Union. While the latter relates to the area of competences conferred to the Union by its members, differentiation only has relevance within the field of the conferred competences and refers to the question: to what extent differences are acceptable in the area of those competences and – in particular – what are the various legal techniques by which they can be put in place by individual member states or, more important, by certain groups of them. Differentiation has been an established practice in the European integration right from the beginning and developed numerous techniques ranging from transitional and special arrangements, derogations, opt-outs, enhanced cooperation to out-of-treaty legal instruments. It has been a useful device, a preferably transitional „second best solution" necessitated and tolerated by concrete situations, but has never been and must never become a goal or a constituting principle of the integration process. For this reason, it is only acceptable within strict limits and special care has to be taken so that the risk of fragmentation of the process can be averted. The Treaties and the jurisdiction of the European Court of Justice enable the Union to reinforce its external action from foreign and security policy to trade policy. The existing differences or divides are not carved in stone and cannot serve as a basis for permanent institutional differences. A „two speed" or two-tier Europe would lead to the fragmentation of the structure and would risk the disruption of the up till now most successful European project.

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THE ROLE OF CONSTITUTIONAL COURTS IN THE PROTECTION OF NATIONAL/CONSTITUTIONAL IDENTITY

Zs. András Varga

Constitutional courts as developers of balance: On one hand common traditions as international or supranational values will be protected later on by the ECJ which perhaps will maintain the primacy of the EU law against national constitutions. But on the other hand just the TEU gives a strong background for the standpoint that the common European constitutional heritage must not be opposed to national constitutional identity and vice versa. The two set of values should be equilibrated. It means that constitutional identity of the different nations cannot be dissolved in an artificially constructed common imperial formula. The common values contain what is common, the national values cover what is not common. But values that are not common are also values and these values also need legal protection. If constitutional identity disappears, the common part also loses its importance, it will be reduced to a mere imperial order.

From institutional aspect this means that if the common European heritage is developed and protected by international and supranational courts, the ECJ and the ECtHR, the equilibrium needs a similar court protection. This protection is vested in the constitutional courts of the member states of the CoE and the EU.

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FROM THE TREATY OF ROME TILL THE ROME DECLARATION

Scenarios on the Future of the European Union

Miklós Király

Although it is difficult to make reliable projections on the future development of the European Union, the paper makes an attempt to evaluate some challenges and trends. It describes the shock-waves of the past decade, starting with the economic and monetary crisis, burdened by a massive flow of migration, the growing threat of terrorism and the Brexit. Naturally one should not forget about the long term problems caused by demographic decline in the continent. The Rome Declaration, signed on 25 March 2017 by political leaders and the White Paper on the Future of Europe elaborating five different scenarios are at the forefront of the analysis. However, the more sceptical approaches and the role of the so called Visegrád Group are evaluated as well. The final assessment emphasizes the importance of the European integration as a peace project and the common interest to keep it.

THE PRELIMINARY RULING PROCEDURE AFTER ALMOST SIX DECADES OF BEING IN USE

Réka Somssich

By the preliminary ruling procedure, as established in the founding treaties, the EU has created a unique way of cooperation between national courts on the one hand and the Court of Justice of the European Union on the other hand in order to ensure that EU law is interpreted in a uniform manner throughout Europe. Its importance and influence on the EU law can by no way be contested: the most important guiding principles of EU law – like its supremacy or the direct effect of certain of its provisions - have seen the light under this procedure. Pending the ratification of protocol No 16 of the European Convention of Human Rights, no similar procedure has been established for the interpretation of supranational instruments. Despite the fact that the preliminary ruling procedure is every year more popular with the highest number of references in 2016 ever referred by national courts, its full-fledged application is still today facing some obstacles. The present paper aims to identify these obstacles examining them according to three different categories. The first category includes obstacles to access the procedure, the second one identifies the so-called functional obstacles while under the third category those cases are analysed in which the safeguarding the prestige of the preliminary ruling procedure resulted in the emergence of new kind of obstacles. Categorisation and enumeration of the potential obstacles is of course not exclusive but rather tentative.

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THE 60 YEARS OLD TREATY OF ROME'S PROVISIONS ON COMPETITION LAW: WHAT HAVE BEEN CHANGED, WHAT HAVE NOT, AND WHAT HAVE BEEN LEFT OUT

Tihamér Tóth

This essay discusses fields of EU competition law and policy which largely survived the past 60 years without changes in the Treaty of Rome, those which have undergone changes, and also those which have not been incorporated into the Treaty. It is presented how changing economic theories, political ideas, economic conditions, and personalities influenced law and its enforcement by the EU Commission, EU Courts and also national institutions.

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PUBLIC PROCUREMENT POLICY AT THAT TIME AND NOW – TURNING POINTS IN LEGAL HARMONISATION I.

Ágota Török

The article addresses the economic and institutional evolvement of the current law of public procurement in Hungary from the entry into force of the Treaty of Rome to the present. It summarizes and provides useful overview of the development of the regulatory regime of Hungarian public procurement law in relation to the Treaty of Rome and on how the Single Market promotes growth; it provides a picture on the development and changing of the basic principles and the current scheme of public procurement in Hungary and also on the various stages of its regulation. The article also discusses how the EU fulfils its international obligations existing in respect of countries outside the European Union, in procedures involving tenderers and goods located in third countries; whether a contracting authority may impose restrictions regarding tenderers' location or determine where the goods should originate from. The article also demonstrates the purpose of technical descriptions in current Hungarian legislation in respect of public procurement law and describes the specific application of technical descriptions.

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PUBLIC PROCUREMENT POLICY AT THAT TIME AND NOW – TURNING POINTS IN LEGAL HARMONISATION II.

Anita Németh

In the framework of this Conference the EU public procurement policy is also worth exploring and drawing up more general conclusions if we take the developments of this horizontal policy and legislation, as well as certain problems in this field and Union-level responses to them. This article examines the significant changes in the target system, sums up the process of widening and deepening of the scope of the EU legislation and assesses certain landmark cases of the Court of Justice of the EU as turning points in the legal harmonisation tendencies. A few present and future challenges of public procurements are also mentioned. The goal of this article is to call attention to the still existing substantial cross-border effects in the award of public procurement contracts in the European Single Market, at the same time to the importance of the principles and rules of competition, non-discrimination, equal treatment and transparency as values to be maintained and reinforced also in public procurement procedures. There is still more to do in the future to achieve a really open and well-regulated, well-functioning public procurement market in the EU.

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THE MAIN DISTINGUISHING FEATURES OF THE COMMON FOREIGN AND SECURITY POLICY IN THE EU LEGAL AND INSTITUTIONAL ORDER

Csaba Törő

The Common Foreign and Security Policy (CFSP) has preserved its particular distinguishing characters in comparison with the operation of other common policies of the European Union since its introduction in 1992. The main differences can be identified through a brief review of the institutional platforms (Foreign Affairs Council as well as the Political and Security Committee) for the preparations and adoption of CFSP decisions, the rules of decision-making (the general, prevailing requirement of consensus with permissible exceptions when qualified majority voting may be sufficient for decisions) and the purpose (non-legislative acts) and nature of the decisions (legally binding but not enforceable acts by means of judicial procedures in the Court of Justice of the EU). In spite of the significant developments in the scope, intensity and range of applicable instruments, CFSP remained a discernible subset of intergovernmental coordination specific institutional, legal and procedural features existing parallel with much closer forms of integration within the EU with its.

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THE ROAD OF ENVIRONMENTAL LEGISLATION IN EUROPEAN INTEGRATION, ILLUSTRATED WITH EXAMPLES

Gyula Bándi

Only ten years passed after the adoption of the Treaty and the first signs of environmental legislation could emerge. The few examples have been backed by the development of a special environmental policy series – today we are using the seventh in the row – and a rapidly growing set of secondary legislation, expanding to more and more areas. Since the SEA environmental law could also get a solid basis in primary legislation. The Court (ECJ/CJEU) also plays a positive interpretative function from the beginning. Still we should know that environmental policy and law are greatly dependent of the main focus of integration, namely economic integration. Instead of going into the analysis of the many different fields of environmental law, we highlight some characteristic examples to show the trends – waste law is probably the best, having one of the longest history in EC/EU law, while the Environmental Liability Directive is relatively new and still improving.

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AZ AZONOS NEMŰ HÁZASTÁRSAK SZABAD MOZGÁSI ÉS TARTÓZKODÁSI JOGOSÍTVÁNYAI A TAGÁLLAMI NEMZETI IDENTITÁS TÜKRÉBEN

A C- 673/16 sz. Coman és társai ügy analízise

Gyeney Laura

Az Európai Unió Bírósága előtt egyre több ügy merül fel, amely tényállását bár a priori tagállami hatáskörbe tartozó – így a harmadik országok állampolgárainak beutazási és tartózkodási jogára vonatkozó – rendelkezések szabályozzák, azok mégis szoros összefüggésben állnak az uniós polgárok szabad mozgáshoz és tartózkodásához való jogával. Más megközelítésből, az uniós polgárok szupranacionális jogainak érvényesítése bizonyos esetekben megkívánja, hogy az uniós jog behatoljon olyan tradicionálisan a tagállami szabályozás körbe eső igen érzékeny területekre, mint a tagállami állampolgárság elvesztésének kérdésköre, a bevándorláspolitika, vagy, ahogy majd jelen tanulmányban is láthatjuk, a családi jog szférája.

A tanulmány tárgyául szolgáló jogeset, így a Coman ügy is a fenti esetek közé tartozik. Az ügy fókuszában egy igen érzékeny és egyben igen összetett problémakör, az azonos neműek házasságának házasságkötés helyétől eltérő tagállamban való elismerésének kérdése áll, kifejezetten a szabad mozgási jogok gyakorlásával összefüggésben. Az azonos neműek házasságára vonatkozó egyes tagállami szabályozások, ill. a releváns strasbourgi gyakorlat liberalizációjával, várhatóan egyre többször vetődik majd fel a kérdés, mi történik abban az esetben, ha az egyik tagállamban érvényes házasságra lépett azonos nemű pár élni kíván a szabad mozgási jogával. Vajon ez esetben vindikálhat-e a pár uniós szintű 'családegyesítési jogosítványokat'? Másképp fogalmazva, a házaspár harmadik országbeli tagja elnyerheti-e az az uniós polgárok és családtagjaik tagállamok területén való szabad mozgására vonatkozó 2004/38/EK irányelv szerinti 'családtag' státuszt és az e státuszból fakadó – elsősorban tartózkodási – jogosítványokat? Épp e kérdés vizsgálatára irányul az előzetes döntéshozatal céljából az EUB elé terjesztett Coman eset. Bár az ügy még folyamatban van, mégis érdemes körbejárni, vajon az uniós jogfejlődés jelenlegi állapotára figyelemmel, a kérdéses ügyben milyen döntés várható, különös tekintettel a nagyfokú várakozásra, amely azt a politikusok, a jogvédők, és nem utolsósorban a tudományos élet képviselői részéről övezi.

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THE NEED FOR LEGAL REGULATION WITH RESPECT TO GMO-S

Ágnes Tahyné Kovács

Genetically modified organisms (GMOs) are living organisms whose genetic material has been artificially manipulated in a laboratory through genetic engineering. This creates combinations of plant, animal, bacteria, and virus genes that do not occur in nature or through traditional crossbreeding methods. However, new technologies are now being used to artificially develop other traits in plants, such as a resistance to the ageing of apples, and to create new organisms using synthetic biology. Despite promises from the biotech industry, there is no evidence that any of the GMOs currently on the market offer increased yield, drought tolerance, enhanced nutrition, or any other consumer benefit. An increasing evidence connects GMOs with health problems, environmental damage, and violation of farmers' and consumers' rights. More than 60 countries around the world – including Australia, Japan, and all of the member States of the European Union – require GMOs to be labeled. Globally, there are also 300 regions with outright bans on growing GMOs. In the absence of credible independent long-term feeding studies, the safety of GMOs is unknown. GMOs impact on the environment is significant. Most GMOs are a direct extension of chemical agriculture and are developed and marketed by the world's largest chemical companies. The longterm impacts of these GMOs remain unknown. Once released into the environment, these novel organisms cannot be recalled and their impact thereon cannot be neutralized. Over the past decade, the United States and the European Union have implemented widely divergent regulatory systems to govern the production and consumption of GM agricultural crops. In the United States, many products have been tested and commercially produced and marketed, while in the EU, few products have been approved and a *de facto* moratorium has limited the production, import, and domestic sale of most GM crops. These divergent approaches have led to a conflict over the implications for international trade in genetically modified products, to the point where the US, Canada and Argentina succeeded in establishing a World Trade Organization dispute panel to begin to test the legality of European policy towards imports of GM foods in September 2003. Data shows that GM policies of the EU are substantially altering trade flows.

The purpose of this article is to draw attention to the fact that the use of GMOs without legal regulation is dangerous and to summarize the factors that have already been established and within the regulation. These factors can be grouped as follows: partially unrecognized risks, economic and competition concerns, political implications and a major part of agricultural cultivation.

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DAMAGES IN TORT LAW AND LAW AND ECONOMICS LITERATURE

Parallels and Differences

Ákos Szalai

In the law and economic scholarship, compensatory damages are regarded as a means for rising the utility of the victim to the level before the damage. But normative economics presents numerous exceptions when the victim should not be compensated fully. The concept of total damages in tort law coincides (perhaps, surprisingly) with this economic concept in many aspects. But in other aspects the two concepts diverge. (For example, the compensation for personal values exceeding the market values of a good.) Methods of calculating the amount of damages are discussed – in order to demonstrate that the process of calculation requires answers to several legally relevant questions. Judges should be aware of these questions, and should have a word in choosing among the different calculation methods leading to higher or lower damages. The economic and legal concepts of non-pecuniary damages are also compared. The economic concept seems to justify compensation for a wider scope of loss which is provided by tort law.

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COMPARATIVE ANALYSIS OF FRENCH LOCAL GOVERNMENTAL LAW ENFORCEMENT

József Bacsárdi

After a short historical review, the paper presents the most important features of the local governmental (municipal) law enforcement in France. The most important French local governmental law enforcement institutions are compared with the Hungarian local governmental law enforcement institutions so that the differences and similarities in the regulation of the municipal law enforcement of the two countries can be showed. Among the outstanding findings of this paper is that after an organic development of the French local governmental law enforcement, a complex local governmental law enforcement system has been established, which contains municipal police, field guards and road safety inspectors. The French local governmental law enforcement system can effectively assist the work of state police, partially relieved it, partially supplemented it and it can enforce effectively the law enforcement policies of the local governments.

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WHEN THE THIEF CAUGHT IN THE ACT BECOMES A ROBBER

Iván Ákos Bujdos

„See what things are in themselves, dividing them into matter, form, and purpose." wrote Marcus Aurelius in his Meditations. His thoughts serve as a guiding principle for this study.

There are two standard forms of robbery according to Section 365 of Act C of 2012 on the Criminal Code. The first can be called „conventional robbery" when the application of force precedes the taking of the property. The second standard form is the „retentive robbery" when a thief is caught red-handed with the stolen property and in order to keep it, he applies force. The stealing comes first and the application of force second in this case. This study focuses on the the actus reus of the second form.

There are no exact problems in the centre of this examination, and there are no recommendations de lege ferenda. The writer of this study only took the advice of Marcus Aurelius and began to take a „thing" apart to see what it is in itself.

The detailed examination shed light on some unique problems from a new angle. It is enough to mention a few points: the problem of disabling the victim by rendering him unconscious or incapable of self-defence which is an integral part of the conventional form, but not the retentive form; the dilemma of vis compulsiva; or the problem of the quick transfer of possession in some situations. The question on the number of standard forms of robbery is crucial for understanding robbery itself. In this study, the points mentioned above are all analysed in a thoroughly detailed fashion.

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THE FIRST HABSBURG-HUNGARY (1437–1457), PART III

On the way of consolidation – The governance of Ladislaus (V) of Habsburg (1453–1457)

Zoltán Attila Liktor

After the end of the unpopular guardianship of Frederick of Habsburg over Ladislaus of Habsburg king of Hungary and Bohemia, archduke of Austria (1440-1457) the hungarian delegation leaded by governor Hunyadi, the estates of the realm brought his young king from Vienna to Hungary. At the diet of Pozsony (1453) the relationship between the young Habsburg king and the nation was arranged, the authority to govern formally was given to him. The injured legal continuance were also restored by both of them. The king took an oath to the estates of the realm as well as the king administered an oath to the estates of the realm too. Although governor Hunyadi resigned at the diet, the main political influence over the country and the governance stayed in his hands.

He got the title of chief military captain of Hungary and he remained the explorer of the finance too. Ladislaus had no power to break down the potency of the powerful barons, many constitutional results were reached by the nobility. The fall of Constantinople at the same year (1453) was a significant moment in the struggle between the Osman Empire and the Christianity. Despite all this under the leadership of the exgovernor with the adequate help of the Borgia pope Callixtus III Hungary was able to stop the Ottoman conquest at Nándorfehérvár (1456).