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THE APPLICATION OF THE LEX MITIOR PRINCIPLE TO CRIMINAL OFFENCES WITH ELEMENTS DEFINED BY PRIVATE LAW OR ADMINISTRATIVE LAW

Miklós Hollán

Hungarian Criminal law recognizes the principle of lex mitior, namely criminal law provisions come into effect after the commission of the offence shall be applied retroactively if they are favourable to the offender. The regulation of the Hungarian Criminal Code makes the lex mitior principle applicable if criminal statutes are modified (abrogated). It provides no explicit regulation for the adjudication of cases when the criminal law provisions are remain unaltered, but the modification (abrogation) affects private law and/or administrative law regulations fulfilling the framework of the offence definition. The author examines the related court decisions and the relevant legal literature to elaborate a normative framework might be utilized by legal practitioners and legislative organs.

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CHANGES TO THE ETHICAL REQUIREMENTS OF HUNGARIAN JUDGES FROM 1993

Ágnes Tahyné Kovács

The author places the code of ethics of legal profession in the field of soft law. She briefly writes about today's Hungarian ethics codes in the legal profession and about the circumstances that generated the codification of ethical rules. It shows how changes took place in the ethics code of judges between 1993 and 2015, what arguments were made.

The article analyzes code development in the post 2015-period. It refers to the regulations of other countries as well.

It details the Code of Ethics of Judges. The purpose of the Code was to establish the moral norms to be followed by judges to strengthen public confidence in the judiciary. It sets out the ethical requirements of the judicial profession as a guideline, provides support for knowing ethical risks and defends judges attentive to their profession. For example, judges must exercise their judicial functions independently and free

of external influence. Judicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all legal entities.

The Hungarian Constitutional Court's related decisions are also included in the description, especially in connection with judicial independence.

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THE REFORM OF THE FAMILY LAW CHAPTER OF THE NEW PIL CODEX

Ildikó Bereczki – Katalin Raffai

On January 1, 2018 entered into force the new Act of XXVIII of 2017 on private international law. The international family law is one of the area most significantly affected by the changes of the new Act. In this field there are several international and European legal instruments, which exercise decisive influence on Hungarian private international law. However, since this broader legal environment for the time being is fragmented, actually the legal harmonization is only partial, thus for the aspects remaining outside of this, the practitioners have to apply the rules of the new Hungarian PIL Code. The present study provides a detailed overview of the new family law rules of the Hungarian PIL Code, comparing it the previous ones. It presents the main principles of the new regulation (the role of the common nationality in respect of marriage issues, the primordiality of the best interest of the child), as well as the changes occurred in relation to the connection rules (limited choice of law, the coming into the spotlight of the habitual place of residence, the application of the Hungarian law as the more favourable law). According tothe overall conclusion, the new Hungarian Code offers a modern framework for resolving the international family law disputes, in line with the existing EU regulations and international conventions, while preserving the traditional principles of the Hungarian private international law, by this way creating an internal legal framework more in harmony with the global and EU context, and also giving an embraceable tool in the hands of the Hungarian lawyers.

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THE REGULATION OF INTEGRATION FOR BENEFICIARIES OF INTERNATIONAL PROTECTION IN HUNGARY – NATIONAL SECURITY ASPECT

Árpád Szép

In the last years most of the terror attacks in Europe were done by persons with foreigner background living in the country for a long time or even in their whole life. In such cases the question of social integration is raised rightly. Integration is a two-

way process which requires a foreigner wanting to integrate into the host society and an open, welcoming society. If one part is missing there is no real chance for a successful integration.

The beneficiaries of international protection are a certain group of foreigners where there is an explicit obligation for the host countries for social integration. In 2013 a new integration system was set up in Hungary, where the beneficiary of international protection signed an integration contract with the asylum authority. According to this contract the foreigner had to cooperate with social care services. This was a step forward in a good direction. However even before the whole system were set up, due to the migration crisis in 2015 almost any kind of state-supported integration was abolished, only (mostly EU-funded) project-based integration possibilities remained in place.

In lack of proper integration system the chances of failed integration are growing rapidly. Failed integration can lead to radicalization, extremism or even terrorism. Due to growing frustration of failed integration risk to national security can evolve. On the other hand the very existence of un-integrated beneficiaries of international protection can increase the racist or xenophobic tendencies in certain members of the host society. This can grow to national security risk as well.

There should be a state-funded system in place capable to offer the chance to successful integration. This system should operate under the supervision of the social administration and should be executed on local level as close to the beneficiaries of international protection as possible (e.g. by local governments). There is a need to set up a warning system which can notify the national security agencies in case of a beneficiary of international protection not willing or not able to integrate to the host society.

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FORERUNNERS OF THE IDEA OF SOVEREIGNTY: BALDUS DE UBALDIS

Baldus' de facto and theocratic justification of regal power

Szilárd Tattay – Ákos Tussay

In this paper, in search of the precursors of the modern idea of state and state sovereignty, we take a look at the 14th Century Commentator, Baldus de Ubaldis' ideas on *de facto* sovereignty and the pre-eminence of the royal estate. As opposed to the imperial idea of sovereignty, Baldus introduces a completely nuanced idea of a web of several sovereign bodies by his application of the canon lawyers' former distinction of *de facto* and *de iure* sovereignty. Yet, from another point of view, Baldus seems to cling to the traditional and conventional description of majesty in his argumentation, which is proven by his widespread use of theocratic topoi for the justification of regal power. In the second part of our paper, after focusing on a brief enumeration of these

arguments, we turn to a historical inquiry regarding the possible sources of Baldus' ideas. Thereby we argue in favour of the possible influence of the Byzantine Patristic idea of *lex animata*.

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THE QUESTION OF MEDIATION'S APPLICABILITY IN ADMINISTRATIVE COURT PROCEEDINGS

István Bereczki

As a result of the new administrative procedure act's entry into force, now it is possible to mediate in administrative law disputes. This novelty of the new act is highly disputed among scholars and practicing lawyers as mediation was not allowed in administrative court proceedings so far. In comparison to court proceedings, mediation offers a fast, cheap and mutually beneficial dispute resolution for the parties. However, it might also be true that mediation encompasses certain hazards when it comes to e.g. equal treatment or judicial control of administrative acts. Notwithstanding the foregoing, this study tries to prove that mediation has its place when it comes to dispute resolution in administrative law. This paper attempts to identify and categorize certain group of cases where mediation is prohibited, not supported and supported. On the basis of the categorization it is clear that mediation cannot be utilized in all administrative law cases. However it is important to note, that quit a few cases are likely to be suitable for mediation. Due to the fact that mediation might be highly beneficial for the parties, in cases where it has its place mediation ought to be used beyond disputes.

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AZ EU–UKRAJNA TÁRSULÁSI MEGÁLLAPODÁS, A 2016-OS HOLLAND REFERENDUM ÉS VÍZUMLIBERALIZÁCIÓ A MEGÁLLAPODÁS ALAPJÁN

Daniel Haitas

A tanulmány az Európai Unió és Ukrajna között megkötött és 2017 szeptemberében hatályba lépett társulási megállapodást vizsgálja, kitérve ennek keretében a megállapodás hátterének bemutatására, sajátosságainak és fő tartalmi elemeinek elemzésére. Ezenkívül elemezzük azt a 2016-os hollandiai népszavazást is, amelynek az volt a célja, hogy megakadályozza a társulási megállapodás ratifikálását a holland kormány részéről. Végül a társulási megállapodás egy fontos, mind szimbolikus, mind gyakorlati jelentőséggel bíró eredményét, az ukrán állampolgárok Európai Unióba történő vízummentes utazásának kérdését vizsgáljuk.

DETERMINATION OF SEXUAL ORIENTATION OF ASYLUM-SEEKERS

Anita Rozália Nagy-Nádasdi

Sexual orientation is one of the reasons why asylum-seekers were or would be persecuted. Determining that claimed sexual orientation is a challenging and sometimes controversial task for the refugee authority and for the courts as well. In this article would assist all who are interested in that matter by introducing the international obligation derives from the Convention Relating to the Status of Refugees signed in Geneva 1951 and interpretation of its treaty body, the United Nations High Commissioner for Refugees. Yogyakarta Principles relating to sexual orientation and gender identity is a universal guide to human rights and provide an other angle to the topic. The EU has further developed the refugee law in the framework to Common European Asylum System and it has been implemented into the national legal systems. The interpretation of EU law rests with Court of Justice of the European Union. The case law of the court in sexual orientation provides the binding interpretation of membership of a particular social group. All these aspects should take into account by decision-makers in order to provide a fair procedure and uphold the human dignity of asylum-seekers.

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CONSTITUTIONAL QUESTIONS IN THE UNITED STATES OF AMERICA RAISED BY THE FIRST 3D PRINTED GUN

Balázs Pardy

In 2012, Cody Wilson, a law student at the University of Texas and some of his friends have founded Defense Distributed and decided to design a functional, 3D printable plastic gun. They made it, however three days after the publication of the CAD files the U.S. Department of State requested them to remove these files from the internet. Cody's main aim was to give everyone the chance to create their own guns at home faster and cheaper than ever. According to the Second Amendment of the United States Constitution „the right of the people to keep and bear Arms, shall not be infringed", but from the other side Defense Distributed were not trading weapons but published files. Since Cody's original aim was what I have described above, these files are entitled to the protection of free speech. In pursuance of the First Amendment to the United States Constitution „Congress shall make no law [...] abridging the freedom of speech". According to several judges and writers these files can be regarded as functional language and source codes such as these, are protectable speech.

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OPERATION OF THE PRISON CHAPLAINCY

The organizational framework of the right to freedom of religion in correctional facilities

Miklós Tihanyi

The author investigates the legal basis and practical work of prison ministries in Hungary. The Hungarian legislation handles prison chaplains similar to psychologists and correctional officers, and expects their main aim to be to help the reintegration of offenders. Based on his personal research in prisons and his interviews with prison chaplains, the author comes to the conclusion that despite of the expectations of the State, prison chaplains are mainly chaplains whose overall aim is to spread the gospel. Prison chaplains lead the same type of religious services they would do in any church outside the prison. They have no special tools or special religious occasions for reintegration, so chaplains simply apply their tools used in any ministry to the situation of prisons. In order to be able to spread the word of the gospel, prison chaplains adapt to the circumstances of prisons and to the cultural background of inmates. This is the key to help the offenders understand and accept their message. In order to be true and credible witnesses of their faith, they need to translate their message to the language and culture of prisons, which are decisively influenced by prizonization processes. The aim of prison chaplains meet the goal of the State in a way that converting to Christianity and accepting religious teaching brings about a change in morals, which helps prisoners avoid becoming re-offenders.

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EFFORTS TO FORGE A COHERENT AND COMPREHENSIVE SOIL POLICY AT EU LEVEL

Zsolt Tóth

Soil degradation is one of the most challenging environmental problems both at EU and global level. In acquis communautaire, however, there is no EU legislation explicitly aimed at soil protection up to now. Therefore, in the classical sense, we cannot speak about the legal regulation specifically related to soil. The existing provisions, even if fully implemented, result in fragmented and incomplete soil protection due to their different objectives and scope, as they do not cover all known soil types and threats to soil. At the same time, the EU is increasingly paying attention to soil protection and intends to make efforts to raise awareness and integrate soil-related aspects into decision-making. This paper aims at presenting major steps towards a coherent and comprehensive EU soil policy. It provides an overview of the main EU documents including the first Commission communications about the Soil Thematic Strategy, the

proposal of Soil Framework Directive with its main shortcomings and reasons for the rejection.

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THE CONNECTION BETWEEN GENDER DISCRIMINATION AND STATELESSNESS

Blanka Ujvári

Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality – as set forth under the Universal Declaration of Human Rights, a document considered to be a milestone step in the evolution of human rights. Harmonizing states' national laws governing nationality proved to be crucial, therefore, the international community decided to create a convention relating to the rights of stateless persons in 1954. Statelessness is a form of human rights' violation, a violation of the right to nationality, the notion of equality and non-discrimination. A stateless person is stripped of the basic rights that every national enjoys.

Statelessness is the legal consequence of unequal and discriminatory acts which lead to the exclusion and marginalization of the persons concerned. Even where the legal status of such marginalized people is resolved by the government, because they have no legal existence in the past, they continue to face serious obstacles and bureaucratic problems.

National laws failing to ensure women equal rights in conferring nationality to their children are one of the main causes of statelessness. Despite the adoption of the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) there are still 25 countries which do not grant mothers the same rights as men in conferring their citizenship to their children.

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UNIÓS KISEBBSÉGVÉDELEM: EGYEZTETÉS A SEMMIRŐL VAGY ELŐREMUTATÓ FEJLŐDÉSI IRÁNY?

Varga Csilla

Az őshonos kisebbségek az Európai Unió kb. 9 százalékát teszik ki, ami a gyakorlatban azt jelenti, hogy hét európai állampolgár közül egy valamilyen nemzeti, őshonos kisebbséghez tartozik vagy beszéli e regionális, kisebbségi nyelvek egyikét. Köztudott azonban az is, hogy az EU nem rendelkezik átfogó kisebbségvédelmi szabályozással, amire a nemzeti kisebbségek képviselői hagyatkozhatnának. Jelen tanulmány bevezetőjében a "kisebbség" fogalmával kapcsolatban említ néhány definíciót, majd rövid

áttekintést ad a nemzeti kisebbségek történelmi hátteréről. Ezt követően az esszé fő célja, hogy felsorolja és röviden elemezze a kisebbségi szempontból legfontosabbnak tekinthető uniós kiindulási pontokat (melyek főként az EU-s szerződésekben vannak lefektetve), valamint az ezek mögött fellelhető, kisebbségek szempontjából releváns alapelveket. Az elemzés során néhány nemzetközi és Európa Tanács keretében született „vívmány", szabályozás is megemlítésre kerül majd annak érdekében, hogy tisztább képet kapjunk, hogy ezek a sztenderdek használhatók lennének-e az Unióban. Az egyik legérdekesebb kérdés, mellyel a tanulmány szintén foglalkozik, hogy szükségük van-e egyáltalán az uniós nemzeti kisebbségeknek „speciális" vagy „többletjogokra", értelmzhetőek-e így a biztosított jogkörök?

Végül, az említett témák vizsgálata után az esszé különböző akadályokat, valamint lehetőségeket vet fel az uniós kisebbségvédelemmel kapcsolatosan, példaként említve néhány eddig alkalmazott gyakorlatot.

Közlemény

2017. évi 4. számunkban Keszely László cikkének („A különleges jogrend a védelmi igazgatás gyakorlati, jogalkalmazói szemszögéből") első lábjegyzetéből kimaradt a hivatkozott mű egyik társszerzőjének neve. A hivatkozás helyesen: Bódi Stefánia – Szuhai Ilona: A civilizációk összecsapása? A tömeges bevándorlás által életre hívott migrációs válsághelyzet elemzése és a különleges jogrend. *Hadtudomány,* 2016/1–2. 45. Az érintettől elnézést kérünk.