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SUMMA

HARD AND SOFT LAW IN EU'S INTEGRATION POLICY

Laura Gyeney

This article aims to give a brief overview of EU rules and policy aiming to integrate persons on the move. The paper will highlight that there is a dual normative framework on integration consisting of EU immigration/asylum law on the one hand and the EU Framework on Integration on the other hand. The former constitutes a typical example of secondary law. The EU institutions have issued a number of important and binding directives which have indirect implications for integration policies in member states through the integration measures and conditions included therein. The latter in contrast needs to be understood as a quasi open method of coordination making use of soft law policy tools, exchange of information mechanisms on best practices, evaluation of integration policies,etc. This contribution intends to explore the potential effects of the progressive europeanization of the above domains with a special respect to the relevant CJEU case law.

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RECOMMENDATION ON COMMON PRINCIPLES FOR COLLECTIVE REDRESS MECHANISMS

E. Írisz Horváth

After long preparation, the European Commission adopted the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU). The aim of Recommendation is to facilitate access to justice, stop illegal practices and enable injured parties to obtain compensation in mass harm situations caused by violations of rights granted under Union law, while ensuring appropriate procedural safeguards to avoid abusive litigation. Thus, all Member States should have collective redress mechanisms at national level for both injunctive and compensatory relief, which respect the basic principles set out in Recommendation. The Member States had to implement the principles set out in the Recommendation in national collective

redress systems by 26 July 2015 at the latest and the Commission had to assess the implementation of the Recommendation on the basis of practical experience by 26 July 2017 at the latest.

If we read the Recommendation and its history is known to us, the question can easily be raised, whether this is a real recommendation or a quasi-directive, because the Recommendation does not carry any of the features of either the recommendations or the directives, but rather as a specific mix of directive-level regulation and recommendations The paper seeks to answer this question.

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ON THE ROLE OF SOFT LAW IN AN ENVIRONMENTAL REGULATRORY AREA

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. 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. Globally, there are 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.

The expansion in the production, distribution and consumption of GMOs, has produced discussions about pros and cons concerning their legal regulation. Efforts to regulate genetically modified organisms have taken place at both international and regional levels. At the international level, the Cartagena Protocol on Biosafety, based on the precautionary principle, is one of the first legally binding international agreements to regulate the transboundary transfer of GMOs.

The inclusion of the precautionary principle in the GMO controversy has engendered even more debate, especially in the area of the state's right of decision.

This principle relies on anticipatory action in the absence of firm scientific evidence. While this principle has the potential to protect the environment from the uncontrolled spread of GMOS, it has been trapped in an endless debate over its application and compatibility with existings laws.

In order to restrict or prohibit the cultivation of GMOs, some Member States had recourse to the safeguard clauses and emergency measures pursuant to Article 23 of Directive 2001/18/EC and Article 34 of Regulation (EC) No. 1829/2003 as a result of which, depending on the cases, new or additional information made available since the date of the consent and affecting the environmental risk assessment. Other Member States have made use of the notification procedure set out in Article 114(5) and (6) TFEU which requires putting forward new scientific evidence relating to the protection

of the environment or the working environment. In addition, the decision-making process has proved to be particularly difficult as regards the cultivation of GMOs in light of the expression of national concerns which do not only relate to issues associated with the safety of GMOs for health or the environment.

In that context, it appears appropriate to grant Member States, in accordance with the principle of subsidiarity, more flexibility to decide whether or not they wish to allow the cultivation of GMOs on their territory without affecting the risk assessment provided in the system of Union authorisations of GMOs, either in the course of the authorisation procedure or thereafter, and independently of the measures that Member States cultivating GMOs are entitled or required to take by application of Directive 2001/18/EC to avoid the unintended presence of GMOs in other products. The grant of that possibility to Member States is likely to improve the process for authorisation of GMOs and, at the same time, is also likely to ensure freedom of choice for consumers, farmers and operators whilst providing greater clarity to affected stakeholders concerning the cultivation of GMOs in the European Union. This Directive should therefore facilitate the smooth functioning of the internal market.

The EU has given governments more power to decide whether to plant genetically modified crops, which are highly restricted in Europe. In 2015, he European Parliament has passed a new law giving states more flexibility by a large majority.

The author of this study introduces a long regulatory path from the soft law rules of GMO-free regions to the current EU directive.

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MAIN FINDINGS AND CURRENT CHALLENGES OF EU SOFT LAW RESEARCH

Petra Lea Láncos

Soft law, in particular international soft law has been the subject of intensive research, yet it continues to intrigue lawyers, who have discovered the soft law of the European Union as a new and ever changing context of soft regulation. The present article provides an overview of the current status of EU soft law research. First, attempts at defining soft law and approaches overcoming the binarity of hard law/soft law are presented. This is followed by a classification of different soft law instruments and a brief introduction to challenges presented by hybrid forms of soft law (‚directive-like recommendations'). Finally, some new areas of empirical soft law research are suggested, with special emphasis on the persuasive effect of soft measures on national legislation and administrative practice.

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AGRICULTURAL LAND LAW: SOFT LAW IN SOFT LAW: MIGHT THE VOLUNTARY GUIDELINES CHANGE THE PRESENT PRACTICE OF THE CJEU IN CONNECTION WITH CROSS-BORDER ACQUISITION OF AGRICULTURAL LANDS?

János Ede Szilágyi

In the present article, soft law is assessed in a field of the EU law, namely in connection with the cross-border acquisition of agricultural lands, in which field EU soft law documents have been used infrequently. Three institutions of the European Union (European Economic and Social Committee, European Parliament, European Commission) have recently issued separate documents concerning the cross-border acquisition of lands, and these documents include certain findings that vary from one document to another. All of these documents might be capable of providing a basis of informal reference for the Court of Justice of the European Union (CJEU) in cases regarding the acquisition of lands. This situation raises the following questions, namely, on the one hand, whether the CJEU will refer to these documents, on the other hand, which of these document(s) will be applied by the CJEU, and finally (if more than one document is cited by the Court), how the CJEU will choose the acceptable finding(s) from the contradicting statements. Is there any hierarchy among the different soft law documents in the practice of the CJEU? Besides, all three institutions of the EU deal with the voluntary guidelines of the UN FAO, namely the Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the context of national food security (VGGT). Additionally, two of them (European Economic and Social Committee, European Parliament) recommend the substantive application of the VGGT in the EU law and in the national laws of the Member States. Consequently, the VGGT might be applied even in the practice of the CJEU concerning the cross-border acquisition of lands. Namely, the food security concept of the FAO and (in a certain sense) even some aspects of the food sovereignty might be referred to by the CJEU, which situation may significantly amend the present CJEU practice concerning the cross-border acquisition of lands.

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OBLIGATION TO PROVIDE SUPPORT FOR CHILDREN IN HIGHER EDUCATION AND THE EXTENT OF THE INSTITUTION'S OBLIGATION TO INFORM THE PARENT

Zoltán Navratyil

Higher education may very well serve the economy and so the society in the long term, not only the trainee individual. However, it is important to emphasize the duty of institution giving the training and education to inform the providing parent. Since otherwise the obligated parent may not know whether the conditions – for providing support – are met by the child's academic performance. For it is not mandatory for the parent to provide support if the child fails to comply with his study and examination obligations at the fault of his own. This paper lays special emphasis on this latter issue.

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LEGAL REGULATION OF THE PRESS RELEASE IN THE OTTOMAN EMPIRE

Katalin Siska

The press life of the Ottoman Empire began in the early 18th century. In the empire, the media as a means of communication did not exist before. The appearance of the Ottoman press is one of the results of Ottoman modernization efforts. The first newspapers emerged as a result of the modernization of state institutions, and the first legislation of the press was adopted during this period, which has become the key roots of the modern Turkey and the modern Turkish press. In this paper I briefly summarize the main stages of the development of Ottoman rule of the press law until the press law of 1931 with a special focus on judging censorship. Turkey has a live press and there is no excessive censorship, but the terrain for independent journalism is getting harder. The quotation is the conclusion of the report analyzing the press freedom of the Republic of Turkey. The statement, however, could characterize the Ottoman press two centuries ago. According to a survey conducted by the Turkish Media Council (*Meclis Maarif*) in 1995 152 laws mentioned and declared freedom of the press in Turkey's legal system, and at the same time there are restricting provisions in accordance with the freedom of press. Thus studying the roots of Ottoman rule and law as the roots of modern Turkish law can help to understand the Turkish press life of today.

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THE COURT'S RIGHT TO CHANGE ADMINISTRATIVE DECISIONS IN ASYLUM PROCEDURES – THOUGHTS ON A PRELIMINARY RULING PROCEDURE

Árpád Szép

The Administrative and Labour Court of Pécs referred a question to the European Court of Justice in a preliminary ruling procedure. The question is about the right to effective legal remedy in circumstances where a judge in asylum cases can not change or reform the decisions and recognize the applicant as a refugee or as a beneficiary of subsidiary protection but can only annul the decision of the asylum authority and order it to conduct another procedure.

As it happened in the case before the Hungarian Court it may occur that there are several annulling court decisions in the same case thus questioning the effectiveness of the judicial decisions.

To answer the seemingly easy question it is good to know that in Hungary the Courts dealing with asylum cases had the right for decades to change/reform the administrative decisions but this right was revoked by the Hungarian legislation at the peek of the migration crisis of 2015. The reasoning behind the revocation was to mainstreaming the asylum judiciary as the general rule in Hungary for administrative Courts was the right to annul, but not to change or reform; cessation instead of reformation.

However, when the legislative approach changed in the beginning of 2018 and the right to reformation became the general rule this was not followed by the asylum cases. To change the administrative asylum decision is still prohibited for the respected Courts and there is no legislative reasoning behind the upholding of this restriction.

Due to the new rules an asylum case – as the one referred in the preliminary ruling procedure – can take as long as several years although all of the amendments of the Act on Asylum of 2007 aimed to fasten up the asylum procedures. Right now the Hungarian judicial system in asylum cases is a decentralized one-trier system without the possibility of appeal against the Court's decision, where the court can not reform the administrative decision. Beside the question of effectiveness also emerges the question of divergent court rulings in comparable cases.

There are several solutions for the problem. One is to grant the right to change or reform the decision for the Courts if the previous administrative decision was annulled by a Court. The other is to reinstall the two-trier judicial system of pre-2004 where the lower level Courts has the right to change or reform a decision made by the asylum authority but there is a chance to appeal against the judicial decision.

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CODIFICATION IN THE PERSPECTIVE OF THE PAST, THE PRESENT AND THE FUTURE

Csaba Varga

An overview originally drafted for the *Encyclopedia of the Philosophy of Law and Social Philosophy* under preparation by the publisher Springer, the paper characterises the history of codification, its changing forms and functions, through several thousands of years, in paragraphs dedicated to Historical Developments, Present-day Variations and Considerations, Common Law Queries, as well as the Stand of Codification Today in the Light of Civil Law and Common Law Traditions Compared, all leading to Summations, and, then, to the closing Conclusion. In the perspective of appreciations today, codification at large is an instrumental choice that increases both the probability of formal changes, statutory amendments and drafts of bills and the probability of legislative borrowing and of interest groups intermingling, all to the detriment of—as a deficit to—democratic involvement, while its action may be a practice "prompting the courts to focus more on the meaning of individual words than on the overall policy goals of enactment and to rely more on external sources, such as legislative history." And, as such, ultimately "codification has accelerated the very problems in the legal system it was supposed to resolve." Moreover, some years ago the Supreme Commission for Codification as the leading engine of the movement in France concluded that "the age of drawing up new codes is probably reaching its end." By generalising from the perspectives of the result, developments of information technology may now offer the key. The eventual replacement of the centre of gravity in the future is certainly not a criticism on what codification has achieved under various conditions for millennia but sober acknowledgment of the fact that by times and availabilities changing, "What had been the good aims of codification are being pursued in very different ways."

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KÖZÉP- ÉS KELET-EURÓPAI TAPASZTALATOK ÉS AJÁNLÁSOK AZ ENSZ FENNTARTHATÓ FEJLESZTÉSI CÉLRENDSZERE VÉGREHAJTÁSÁHOZ[1]

Zlinszky János – Hidvéghiné Pulay Brigitta – Bonifertné Szigeti Márta

Történelmi léptékkel mérve a közép-kelet-európai régióban épp, hogy csak véget értek a mélyreható társadalmi-gazdasági átalakulások, és máris újabb, még teljesebb körű változás elébe kell néznie. A változás ezúttal nem regionális, hanem globális léptékű, és azok a peremfeltétel-változások kényszerítik ki, amelyeket maga az emberiség – ezen belül is elsősorban a politikai 'Észak' – okozott. Alternatíva a tekintetben maradt, hogy a politikai elitek tervezett, szervezett, alkalmazkodó társadalmi és reálgazdasági átalakulási folyamatot indítanak-e és hajtanak-e végre, vagy pedig megvárják, hogy a természeti erőforrások peremfeltétel-változásai kényszerítsenek ki és határozzanak meg egy spontán, kaotikus átalakulást. Az ENSZ Közgyűlése az első alternatíva programjaként határozattal fogadta el a „Világunk átalakítása – a fenntartható fejlődés 2030-ig megvalósítandó programja" című részletes munkatervet, benne a Fenntartható Fejlesztési Célrendszert (FFC, angolul SDG). A tanulmány szerzői a közelmúlt közép-kelet-európai transzformációs tapasztalatai fényében amellett érvelnek, hogy érdemes az első alternatívát – azaz a Célrendszer végrehajtását – még a kényszerítő körülmények beállta előtt megkockáztatni, és ajánlásokat fogalmaznak meg a különböző kormányzati szintek számára a végrehajtáshoz. Az ajánlások alapjául szolgáló kutatást 74 szakértő bevonásával végezték, akik tapasztalataikat a helyi, országos vagy EU-szintű közigazgatásból, üzleti életből, illetve a témával összefüggő tudományos munkából merítették, és állampolgárságuk tekintetében jól képviselték az egész közép-kelet- és dél-kelet-európai régiót.

A főbb ajánlások:

A FFC végrehajtása minden kormányzati szinten és minden társadalmi érdekcsoportban prioritás kell hogy legyen. A FFC végrehajtását társadalmi részvétellel kell megszervezni és végrehajtani, a szubszidiaritás alapján. A globális FFC alapján nemzeti szintű FFC-t kell meghatározni, majd ebből meghatározni a helyi szintek feladatait, méghozzá a teljesség igényével. Tény- és tudásalapú politikákra és programokra van szükség. 'Élő' stratégiákat és terveket kell alkotni, a rendszeres és gyakori ellenőrzés és módosítás érdekében. Nagymértékű és tartós erőfeszítést kell vállalni minden társadalmi szereplő, de elsősorban a kormányzatok részéről.

Az oktatásnak-képzésnek illetve az ismeretterjesztésnek kulcsszerepe van a sikeres átmenet egész folyamán, mind a kapacitások biztosítása, mind a társadalmi támogatás biztosítása érdekében. A közoktatás minden szintjének támogatnia kell a folyamatot.

[1] A közlemény alapjául szolgáló kutatási anyagot a szerzők a Közép- és Keleteurópai Regionális Környezetvédelmi Központ e tárgyban tartott munkaértekezlete keretében gyűjtötték 2016-ban.

A közelmúlt közép-kelet-európai átalakulásai azt mutatták, hogy a társadalmi csoportok felkészítése, és a folyamatos nemzetközi tapasztalatcsere a siker fontos tényezői voltak. A tájékoztatás, tapasztalatcsere és egy újfajta intézményi szintű együttműködés a FFC végrehajtásához is szükséges lesz. A tudomány és a politika párbeszédének fenntartása elengedhetetlen. A folyamatot magas kormányzati szinten kell összefogni és irányítani. Fontos mindvégig biztosítani, hogy ne maradjanak le, vagy ne kerüljenek kirekesztésre térségek vagy csoportok.

Az EU-csatlakozás különböző fázisaiban lévő országok szakértői hangsúlyozták, hogy a csatlakozási folyamatban is szükség van a FFC-végrehajtással kapcsolatos képzésekre, valamint hogy az EU-intézményekben is intézményesíteni kell a végrehajtás koordinálását. A tagországi kormányzati struktúrákat is meg kell feleltetni a FFC feladatrendszerének.

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THE LEGAL ISSUES OF CREATING VIABLE CITIES AND OTHER HUMAN SETTLEMENTS IN HUNGARY IN THE LIGHT OF THE UNITED NATION'S SUSTAINABLE DEVELOPMENTS GOALS

Vivien Benda

The United Nation adopted the Sustainable Development Goals (SDGs) on 1 January 2016, which followed the so-called Millennium Development Goals. Fulfilling the SDGs the Parties ought to make effort to end poverty, protect and maintain our planet and provide prosperity for all the people. The goals are not legally binding but the countries – Hungary too – are expected to achieve the goals until 2030. The 11th goal aspires to create inclusive, safe, resilient and sustainable cities because half of humanity is living in the cities, which are the cradle of culture, commerce, social development and hopefully sustainability and resilience. Unfortunately, Hungary must face and solve a lot of problems to implicate the goals. For example the issue of the properly habitation, the lack of green areas and trees in the city centers and existence of the potentially dangerous industrial facilities. In this paper, we will examine the problems to be solved to fulfill the 11th goal of the SDGs in the light of the resolution of the Deputy Commissioner for Fundamental Rights Ombudsman for Future Generations.

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CONSUMER RIGHTS AND CERTIFICATION ISSUE OF NOTARY IN EXECUTIVE PROCEDURE

Krisztina Juhász

After the economic crises in 2008 many people failed to repay the mortgage installments to the banks. This phenomenon was typical in Central European countries, in Spain. In Hungary the situation was the most difficult, on the one hand these types of mortgage loans were in foreign currency and on the other hand the number of that type of loans was very high. Many people signed the mortgage loans in the certificate documents were made by notaries. It is a legal opportunity for a faster execution in the case of failure's obligation of payment. These mortgage loans were consumer contracts and were under the scope of the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. This article introduces the ECJ's practice on that aeria by the cases Aziz /C-415/11/ and Erste v. Sugár /C-32/14/ and Hungarian legal background. It recommends a solution for protection of consumer rights in legal disputes about mortgage loans.