

INTERNATIONAL CONFERENCE OF COMPARATIVE AND TRANSNATIONAL LAW

- June 25, 2021 -

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Section I.

Comparative Public Law

Friday, June 25, 2021

Online on Zoom

Keynote speakers:

Associate professor ***Cătălin-Silviu Săraru***, Faculty of Law, Bucharest University of Economic Studies

Lecturer ***Ovidiu Horia Maican***, Faculty of Law, Bucharest University of Economic Studies

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! Fiecare lucrare va fi prezentată în maxim 15 minute

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SCIENTIFIC PAPERS

PARADISE OF TERRITORIALITY LOST RETHINKING EXTRATERRITORIALITY IN ADMINISTRATIVE LAW

Associate professor Jakub HANDRLICA

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Abstract

*Traditionally, the scholarship of administrative law has paid only very limited attention to the phenomenon of extraterritoriality. Hereby, the scholarship has reflected the theoretical considerations concerning the sovereignty of the State, which have implied that administrative authorities execute their functions exclusively in the territory of the State. At the same time, the scholarship of international public law has traditionally acknowledged that – as based on a corresponding international agreement – a State may allow the administrative authorities of a foreign State to execute certain functions in its own territory. This article aims to reconcile these two approaches, demonstrating that the phenomenon of extraterritoriality has emerged to represent an integral part of the system of administrative law in various jurisdictions. This article also argues that this perception of administrative law does actually not represent any new feature, but is based on traditional concepts, existing in public law of Europe. Thus, extraterritoriality must be considered as a part of *ius publicum europaeum commune*.*

CHALLENGES AND NEEDS OF LEGAL-JUDICIAL PROTECTION OF COPYRIGHT AND RELATED RIGHTS IN KOSOVO

Professor Armand KRASNIQI

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Abstract

The paper examines the specifics of legal and judicial protection of copyright and related rights in case of their violation. Under the term of "copyright", the subjects of protection are material goods which through the economic function enable a subject of law an economic benefit precisely from their use. Judicial protection of copyright stems from the fact that these rights are created by engaging a more creative human potential with the investment of large financial resources. However, in our country the legislation adopted in the last two decades, although in formal term is in full compliance with regional and international standards in the field of defence, still the practical implementation has huge difficulty. Copyright is one of the least recognized and respected fields in Kosovo. The authors and theorists of this subjects to this legislation, judicial and prosecutorial institutions and the general public, have limited knowledge not only about the protection that the law gives to their work but have not identified what is the limit of a violation between criminal, civil or administrative areas of copyright and related rights.

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THE FOUR MAIN CONSTITUTIONAL GAPS REGARDING THE PRESIDENTIAL VETO IN NORTH MACEDONIA AND THEIR FILLING IN THE LIGHT OF COMPARATIVE CONSTITUTIONAL LAW

Professor Jeton SHASIVARI

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Abstract

The President of North Macedonia has at his disposal a constitutional legal instrument which influences the legislative activity of the Parliament. It is about the right of veto over the laws approved by the Parliament, which temporarily suspends the adoption of laws which, according to the President of North Macedonia, are not in the interest of the state or the citizens. The Constitution of North Macedonia regulates this constitutional legal instrument within the part that refers to the Parliament, and not to the President of North Macedonia, which means that the right of veto first of all has a legislative function because it is one of the stages of the legislative procedure. It is interesting that, within the constitutional system of North Macedonia since its first President from 1991 onwards after independence from the former Yugoslav Federation, there is an unwritten rule according to which if the President of North Macedonia is close to the ruling parliamentary majority or acts as a duo with this majority, in the vast majority of cases, it does not use or very rarely uses the right of veto, and on the other hand, after the ruling parliamentary majority is changed, the duel between the new ruling parliamentary majority and the President also begins, therefore, presidential activism in the use of veto increases. This issue is very important because in the constitutional law and practice of relations between the Parliament and the President of North Macedonia there are four main constitutional gaps regarding the presidential veto, which promoted the views that without the signature of the president there are no laws otherwise such views in fact turn the weak presidential veto into a absolute veto or legislative sanction against the Parliament which is unacceptable in contemporary constitutional law. Therefore, the main purpose of this paper is through the theological interpretation of constitutional norms as a whole and in close correlation with the guarantees of fundamental freedoms and rights and rule of law principle as well as through regional comparative constitutional analysis to reach an adequate and effective constitutional solution to such constitutional gaps and cases.

APPLICATION OF THE DOCTRINE OF LEGALITY IN LESOTHO: LESSONS FROM SOUTH AFRICA

Professor Hoolo NYANE

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Abstract

The doctrine of legality is emerging as the single most important device of constitutionalism throughout the world. Despite the clear ascendancy of legality, its application in Lesotho has always been unclear. Previously the courts in Lesotho relied on the common-law doctrine of ultra vires to review the actions of other branches of government that do not comply with the prescripts of the law. This orthodox

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approach was limited to an enquiry about legislative intent. Therefore, it has always been unclear whether the doctrine of legality, as it is understood in South Africa, is part of Lesotho's constitutional law. Recent decisions of the superior courts in Lesotho – both the High Court and the Court of Appeal – seem to have ended this prevarication. The courts emphatically decided that the doctrine of legality is the cornerstone of constitutionalism in Lesotho. In doing so, they relied to a great extent on South African constitutional jurisprudence. While this development of constitutional law in Lesotho is laudable, the extent to which South African jurisprudence can guide Lesotho on this subject continues to be a controversial matter. The purpose of this paper is to investigate the importation of the doctrine of legality from South African jurisprudence, the lessons that Lesotho can learn, and the future development of the doctrine in Lesotho.

CONSTITUTION AND THE INSTITUTIONS, THE BENIGN NEXUS IS ON FALL: A COMPARATIVE STUDY OF INDIA, NEPAL AND MYANMAR

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Adamas University, India

PhD. student Swargodeep SARKAR
Indian Institute of Technology Kharagpur, India

Abstract

A society constitutionally manifested, where institutions for it stands inevitably the major organs, voice of the people resting through it usher to be the ethos of democracy at large. Leon Duguit in his saying of “social solidarity” asked for the interdependency, and to it anything stand against shall be the reason of rejection for the initiatives. India, Nepal and Myanmar, are of the fact witnessing bitter for the said principle, not satisfying the institutions in work of their absolute veneration, rather from their imbedded values they are in strips. The paper in its endeavour would in roll to assess different of the institutions in work for the countries named, where for the world at large a significant social solidarity is in need to hammer the knock on power, to which challenges and imperils for the citizenry rest at large. The methodology for the paper is doctrinal, which the author in assessing the institutional works of the countries will employ, where crisis of the present times, constitutional provisions in strip and jurisprudential approach for the democracy, would be the part of analogy.

A COMPARATIVE ANALYSIS OF STATE DILEMMAS ON THE LEGAL FRAMEWORK OF CRYPTOCURRENCIES – ALBANIAN CASE

Lecturer Oljana HOXHAI
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Abstract

Technological developments are increasingly creating new dimensions concerning time and geographical space. Society is looking for instruments that facilitate access and mitigate costs. A novelty of the last decade is cryptocurrencies, which have already become a new reality in conducting a series of online transactions, without the need for intermediation by the banking system. This paper aims to analyze

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in a comparative plan the approach of states on legal regulations of cryptocurrencies. Pragmatism and reluctance to take concrete initiatives have characterized the position of many countries, which are currently considering the possibility of careful interventions in their legislations. Cryptocurrencies are not issued or controlled by state bodies. In this context, there is a need to mobilize national authorities to assess the regulation of this activity. Our analysis will extend to the innovations of the Albanian legal framework, which a year ago paved the way for the official use of virtual currencies.

LEGISLATIVE TECHNIQUE (FORMAL LEGISTICS) - AUXILIARY BRANCH OF LAW. FUNDAMENTAL ELEMENTS OF COMPARATIVE LAW

Professor Emilian CIONGARU

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Abstract

The legislative system includes several categories of legislative acts between which there are specific relationships that create a hierarchy within this system. It follows, therefore, that the external form will determine the legal force of the legislative act, the relationship with the legislative acts within the whole system, as well as with those drafted in the same matter, the consequences that the new regulation may have on the existing regulation. Choosing the external form, of legal expression of the regulation has, as it follows from those shown above, significance not only on the legal level, but also on the level of the entire constitutional organization of the principles which govern state organization.

LEGISLATIVE ELECTION DURING PANDEMICS – CHALLENGES TO DEMOCRACIES

Associate professor Claudia GILIA

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Abstract

The Covid-19 pandemic challenged the democracies. A representative democracy is the favorite instrument mainly used to express the sovereign will of a people. Any democratic system is based on free, periodical elections. The election procedure is the natural way in which peoples participate indirectly in political decision-making. The conduct of the election in special conditions, as were the conditions which the health crisis imposed, did not remain without consequences, particularly in terms of legitimacy. The pandemic-affected countries have taken a number of precautions to ensure safe voting to voters, however a number of shortcomings marked the organization and carrying on of the election processes, such as lack of funding, technical errors, quarantined people's inability to vote, low attendance, and legitimacy issues. In our study, we are analyzing the carrying on of legislative elections in Romania, Slovakia, Croatia, and Lithuania. After the end of the electoral processes which have been developed under these special conditions, it is necessary to rethink the way of carrying on of the electoral processes, in order to allow all voters to participate in the election of political decision makers.

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LEGAL REGIME OF COMPETITION IN CANADA

Lecturer Ovidiu-Horia MAICAN

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Abstract

Canada's Competition Act is the federal law governing most business conduct in Canada. It contains both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace. While the Canadian law is similar in many aspects with the law of the United States (the Sherman Antitrust Act) it is different in a number of important ways. One aspect is that Canadians use the term competition law rather than antitrust law, which is more common in the U.S.