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Section II.

Comparative Private Law

Friday, June 25, 2021

Online on Zoom

Keynote speakers:

Lecturer **Radu Pătru**, Faculty of Law, Bucharest University of Economic Studies

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SCIENTIFIC PAPERS

THE COMMON FRANCO-GERMAN MATRIMONIAL PROPERTY REGIME OF THE COMMUNITY OF SURPLUS

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Abstract

On February 4, 2010, Germany and France signed an international treaty that broke new legal ground. The intention of both states was to introduce a new, common elective matrimonial property regime that would apply equally in both countries. This was implemented on 01.05.2013. The provisions of this elective matrimonial property regime are based primarily on the provisions of the statutory German matrimonial property regime, the “statutory matrimonial property regime of the community of surplus”, but also incorporate important elements of French matrimonial property law. Other EU member states can accede to the agreement as well. As a result of this matrimonial property regime, a common substantive law has been created in the contracting states, which has not yet existed in this form in the EU. The intention is to standardize the matrimonial property regimes within Europe.

VIOLATIONS OF THE RIGHTS OF EMPLOYEES IN PUBLIC AND PRIVATE SECTOR IN KOSOVO

Lecturer Muhamet BINAKU
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Abstract

Persons who are in work, except rights also have other obligations. Rights arising from employment are rights determined by law, the company's internal acts and collective contract, but at the same time, they are rights guaranteed by the Constitution and international Convention. Judging by these criteria, fair labor relationship are treated as inalienable rights and unlimited. The employer, company and institution are obligated to respect and to allow workers to realize rights from employment which belong. In any case when the employer or institution does not respect the rights of workers, or have discontinued the realization of any rights, from labor relations comes up labor dispute. The labor dispute is a dispute that arises when violated the rights provided by law, from employment or when not carried out certain obligations to workers arising from employment or related to labor relations. In the case of labor dispute, or violation of any rights of employees arising from employment, are defined in labor law some mechanisms through which it can require the implementation of any right which he has offended.

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WINNER PRESCRIPTION AS A WAY OF GAINING THE RIGHT OF REAL SERVITUDE ACCORDING TO THE LEGISLATION IN KOSOVO WITH A COMPARATIVE VIEW WITH SOME EUROPEAN COUNTRIES

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Abstract

The winning prescription, both in the right of ownership and in the right of servitude has a special importance, because it is a legal title which is created by the possession of the thing in an uninterrupted manner, for a long time and without hindered by anyone. This means that the property right, respectively the right of ownership or even the right of servitude can be created if the conditions provided for the winning prescription are met. We know that all property rights must be registered in case we want to become the holder of any property right. As in this case, the right of servitude in case it is thought to be acquired even with a winning prescription it must be registered in the real estate books. For this reason, we can say that the winning prescription has a great importance in both the acquisition of the right of ownership and the right of real servitude, because a large number of subjects of law have only the de facto power over the thing yes. Thus, he possesses this right in good faith. It happens to him that people possess someone else's thing thinking that he only had a right over that thing, but the truth is that he had no legal right, so he did not have it registered in the public books to use it right. According to the legislation in Kosovo, the right of real servitude is not foreseen whether it can be acquired by winning prescription, but based on the legislations of other countries, whether regional or beyond, it is said that the right of real servitude can be created and through the winning prescription. Particularly based on some legislations of European countries, the right of servitude can be acquired through winning prescription, if the conditions of winning prescription are met. The purpose of this paper is to compare the legislation of European countries and as a conclusion to conclude that in the legislation of Kosovo should be determined that the right of real servitude is acquired by winning prescription.

ESTABLISHING A FAMILY BY THE NEW TECHNOLOGIES FOR ARTIFICIAL REPRODUCTION ACCORDING TO THE POSITIVE LEGISLATION OF NORTH MACEDONIA IN THE LIGHT OF COMPARATIVE FAMILY LAW

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Abstract

The time in which humanity lives today, it has changed the conventional paradigms of the natural and biological parameters. As such, this time has given mankind today the courage to challenge, as well as change, some of the natural consequences of man's well-being as a social being - first and foremost as

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a biological being. Therefore, through theoretical dilemmas and scientific successes elsewhere, man well-builds his own future, which on one hand gives him knowledge of the power of rational knowledge, and on the other hand adds great responsibilities, perhaps even enigmatic and unseen before. It is about the consequences that man can have from inconsistent interventions in nature, and the alternation of social structure in this context. When it is known that for each intervention man pays the price, changing the same conventional cohesive structure within the family will give its own price in the near future. In this paper the authors present the facts based on the development and application of artificial reproduction technology (artificial insemination, in vitro fertilization, surrogate motherhood, post-mortem reproduction) are evidence for redefining the concept of family which in this respect undermines the principle of conceiving a child naturally. In this paper the authors emphasize that the plurality of forms for establishing parenthood, which became possible with the rapid development of medicine and biotechnology, allows the application of new reproductive technologies, expands the possibility of family planning on one hand, but on the other hand questions the genetic status of the child born through these methods. The authors have considered it reasonable that through this paper to give their recommendations for filling the legal gaps that exist in the family and biomedical legislation of the RNM. The authors place special emphasis on the urgent need to overcome legal contradictions which currently affect the best interest of the child born with any of the methods of artificial reproduction. In addition to the analysis of domestic legislation, the text also provides a comparative framework on the legal regulation of the status of members of family (children and parents) established by the methods of artificial reproduction.

THE INAPPLICABILITY OF PERSONAL EXCEPTIONS BETWEEN JOINT DEBTORS, UNDER ROMANIAN AND FRENCH PRIVATE LAW

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Abstract

The paper examines the problematics of invoking personal exceptions between joint co-debtors, while proposing a comparative approach to the incidental legal provisions and jurisprudential guidelines under Romanian and French private law. As stated in a recent decision of the French Court of Cassation (Fr. Cass., 2nd Civ., dec. of 20th May, 2021), the guarantee exception based on the existence of an insurance contract against the risks related to death, concluded by a co-debtor constitutes a purely personal exception to the latter, which cannot be invoked against the debtor by the co-obligor jointly liable for the payment of the debt. On the other versant, the provisions of art. 1448 of the Romanian Civil Code omit to make express references regarding the inapplicability of personal exceptions between the joint co-debtors, postulating, instead, in the second thesis of art. 1448, para. (1) of the Romanian Civil Code that, against the common creditor, the joint co-debtor cannot use the means of defence that are purely personal to another co-debtor. Viewed in „parallel mirrors”, the provisions of art. 1313 of the French Civil Code capture the attention of the analyst by retaining that “Solidarity between debtors obliges each of those to pay the full amount of the debt. The payment made by one of the co-debtors is releasing the other co-debtors towards the common creditor for the paying of the debt”; following the desideratum to avoid bearing the risk of insolvency of other co-debtors by the debtor who made the payment, the French legislator provided,

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in the text of art. 1310 of the Civil Code, that such solidarity „cannot be presumed”, except for commercial relations.

THE EFFICIENCY OF THE LEGAL FRAMEWORK IN FIGHTING DOMESTIC ABUSE. COMPARATIVE STUDY ROMANIA - UK

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Abstract

The present paper aims to identify, with the instruments of comparative law, similar provisions, namely differences that can be adopted in national law, by reporting Romanian legislation on combating domestic violence to the legal provisions in the UK. As a novelty, I have included a survey conducted on an accessibility sample of 50 lawyers from the Bucharest Bar, with experience in domestic violence, respectively 50 employees of barristers firms in the UK, to evaluate, comparatively, how they relate to the quality and efficiency of the legislative framework, respectively to the changes that have been brought to it or are still to be brought. The conclusions of this paper derive both from the comparative analysis of the legal norms applicable to domestic violence, in the two legislative systems, and from the analysis of the answers obtained to the questionnaire that I include in the Annex.

ASPECTS OF COMPARATIVE LAW REGARDING THE REGULATION OF CIVIL PROCEDURAL CAPACITY IN ROMANIAN AND SPANISH LAW

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Abstract

This study aims to address an important topic of great interest, both from a practical point of view and from a theoretical point of view. The main objective of the research will materialize especially on the analysis of the current regulation of Romanian law (current Code of Civil Procedure) of procedural capacity, as an essential condition for exercising a civil action in court. Similarly, the research will seek to identify and analyze the provisions of Law no. 1/2000 on procedural capacity in current Spanish law. The study will also focus on identifying possible similarities and differences between the two regulations of procedural capacity, in order to provide a more realistic picture between the legislative approach of the institution in the two legal systems under study. In carrying out this research, mainly specialized works will be used, but especially the legislation in force regarding the procedural capacity, both in Romania and in Spain.

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SETTLEMENT OF DISPUTES IN HORECA

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Abstract

As the HoReCa industry has been developed, by improving the quality of products and services offered, the number of customers and beneficiaries in bad faith - bad payers - has also increased. The present paper, as it is entitled, presents the most common aspects in practice, which the field of HoReCa faces, in case of non-compliance with the contractual obligations of customers / beneficiaries. In this sense, we highlight the possibility of resolving disputes in the mentioned field, by amicably settlement, in order to avoid as much as possible, the legal action in the court. From this perspective, the advantages and disadvantages of using this procedure are summarized.

LEGAL REPORTS IN THE CONTEXT OF HORECA: OWNER OF THE BOOKING PLATFORM, HOTEL, END CUSTOMER

Legal advisor Laura Ramona NAE
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Abstract

Legal relationships in the field of HoReCa involve specialized contractual partners for this activity. Among them we mention: the owner of the reservation platform, called wholesaler, hotel, client. The specificity of these contractual legal relationships is also determined by their complexity, both in their conclusion and in their development. Through the tourism contract, a complex activity is performed which involves contractual legal relations of: transport, accommodation, curative treatments, rest, seasonal sports, tourist circuits of historical or leisure interest, medical assistance, etc. Of course, the paper involves a brief presentation of some categories of legal relationships.

CURRENT ASPECTS OF COMPARATIVE LAW REGARDING THE EXERCISE OF THE RIGHT TO STRIKE IN THE STATES WITHIN THE EUROPEAN UNION

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Abstract

The right to strike, as a fundamental right of workers, is not regulated by the European Union in any main or derived source. The International Labor Organization is in the same position, so the right to strike along with issues of pay, lock-out and trade unions do not have their own regulations, not being regulated by conventions and recommendations issued by ILO. In this context, an investigation of the way in which the member states of the European Union regulate the strike is necessary, in the context in which the collective labor law is in a stage of regression, especially in the exercise of collective rights by workers.

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In the present study, the author will analyze the situation of the regulation and concrete exercise of the right to strike within the European Union states, the conclusions will reveal the concrete situation of the exercise of this fundamental right in the matter of labor relations.