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CONFERENCE ON COMPARATIVE AND INTERNATIONAL LAW

- International Conference -

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Section II.
Comparative Private Law

Friday, June 27, 2025

Online on Zoom

Moderator:

Associate professor ***Radu Ștefan Pătru,*** *Faculty of Law, Bucharest University of Economic Studies*

! Each paper will be presented within 15 minutes
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SCIENTIFIC PAPERS

MEDIATION IN CIVIL CASES ACCORDING TO THE POLISH CODE OF CIVIL PROCEDURE

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Abstract

The provisions on mediation were introduced to the Polish Code of Civil Procedure in 2005. The legislator's goal was to popularize alternative methods of resolving disputes among private law entities, so as to relieve the courts from the impact of civil cases, including family and commercial cases. Currently, in practice, only a few mediation proceedings are conducted and, as a result, only in a few percent of court cases do the parties end the dispute by way of a settlement concluded before a mediator. In this study, the Author has analyzed the current provisions of the Polish Code of Civil Procedure in terms of the reasons for the very low level of mediation between parties to civil disputes. The aim of the research undertaken is not only to diagnose the current situation, but above all to propose new legal solutions that may influence the popularization of mediation. Moreover, the aim of the study is to compare Polish provisions on mediation with the regulations of Italian and Lithuanian law. The study uses various research methods, i.e. formal-dogmatic, linguistic, historical-legal and legal-comparative methods. The analysis results in defining the social and legal reasons for the low number of mediation proceedings conducted in civil cases and the small percentage of disputes resolved through mediation. The author also formulated postulates for changes in the provisions of the Polish Code of Civil Procedure on mediation, including references to solutions in foreign law. The results of the conducted research may constitute a basis for the legislator to change procedural law.

THE INTERFERENCE OF PRIVATE LAW IN PUBLIC DEBT MANAGEMENT - NORMATIVE ANALYSIS, SYSTEMIC RISKS AND REGULATORY STRATEGIES

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Abstract

The legal relationship between private investors and states is an essential area of analysis in the context of contemporary economies, marked by financial interdependencies and the permanent need for financing the public sector. Although, at first glance, government bonds belong to the sphere of public law, in reality, the relationships generated by these financial instruments are predominantly governed by the rules of Private Law, based on standardized contractual mechanisms. This legal ambiguity generates a series of theoretical and practical challenges regarding the delimitation of normative and jurisdictional powers, as well as the rights and obligations of the parties involved. The article aims to explore the foundations and legal implications of the relationship between private *investors and states, with a focus on the contractual nature of government bonds, investment mechanisms and the legal protection of creditors. The principles of Civil Law applicable to this type of relationship are analyzed, in parallel with the limitations brought by state sovereignty, especially in contexts of crisis or public debt restructuring. The interactions and overlaps between Private Law and Public Law in the management of government bonds are also discussed, including through the lens of international jurisprudence and investment protection treaties. The paper provides a comparative perspective, highlighting good practices from several European jurisdictions and analyzing the Romanian legislative framework in this regard. Finally, proposals are formulated for improving the legal and institutional architecture regulating the state-investor relationship, considering objectives such as legal certainty, contractual transparency and sustainable attraction of private capital.*

HIERARCHY, AUTHORITY AND SOCIAL ROLES: STRUCTURES OF THE SOCIAL WORLD REFLECTED IN ROMANIAN AND CONTINENTAL CIVIL LAW

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Abstract
Law does not emerge in a social vacuum, but from a world already structured by roles, expectations and typifications. From a phenomenological perspective, the social world is not a passive background, but a constitutive field of lived meaning, where notions such as role, authority and hierarchy are intersubjectively sedimented. Starting from Alfred Schutz's theory of typifications and the analysis of social acts proposed by Adolf Reinach, the present study examines how these fundamental scopic structures are reflected in Romanian and continental civil law. The principle of "respondeat superior" - the liability of the principal for the behaviour of the principal - provides an eloquent example in this respect. This form of liability expresses not merely a technical construction, but a normative logic of social dependence: authority implies responsibility, even in the absence of personal fault. What we propose, in conclusion, is a phenomenological interpretation of civil liability, anchored in real hierarchical relations and a philosophical revalorisation of civil law as a form of institutionalisation of the lived world.

COMPARATIVE LAW ASPECTS IN THE APPLICATION OF THE LEASE AGREEMENT

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Abstract
The article examines from a comparative perspective the way in which the lease contract is regulated and applied in various legal systems, with an emphasis on Romanian civil law, the law of the Republic of Moldova and the main models in European law (especially French and German). The similarities and differences in the formation, execution and termination of the lease contract are analyzed, highlighting the historical and legal influences and modern trends in legislative harmonization in the context of economic and social mobility. The paper emphasizes the importance of tenant protection in lease relationships, as well as the balance between the rights of the lessor and the

lessee. It also addresses issues related to the duration of the contract, the obligations of the parties, repairs, the right of pre-emption and the regime of the lease of residential versus commercial premises. The article offers relevant conclusions for legislators and practitioners in the analyzed states, proposing solutions to improve the regulatory framework by taking over good practices from other jurisdictions.

PARTICULARITIES REGARDING THE CONTRACT OF SALE OF A FUTURE GOOD. PRACTICAL APPLICABILITY AND PROPOSALS DE LEGE FERENDA

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Abstract
The sale of a future good is a legal institution that allows the transfer of ownership of a good that does not yet exist but is to be created or acquired later by the seller. In Romanian law, this legal operation is regulated by the Civil Code and raises a series of legal aspects regarding the formation of the contract, risks, conditions, and effects. This legal institution is differentiated from the bilateral promise of sale, which represents the agreement in which both parties commit to finalize, in the future, a sale contract regarding a specific good, at a fixed price or one that can be determined later. This represents an instrument that allows parties to secure their interests before concluding a definitive, ownership-transferring contract. The article analyzes the legal regime of the sale of a future good, the conditions of validity, and the implications for the contracting parties, in comparison with the legal nature of the promise of sale, its effects, and its practical implications in contractual matters. The present study also presents the applicability of the sale of a future good in various fields of activity, performs a comparative analysis of national and European legislation regarding the legal instruments that real estate developers use for the sale of future properties, and finally develops „de lege ferenda" proposals for improving the current legislative framework.

THE ROLE OF THE ADVISORY OPINIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING THE REVISION OF CRIMINAL CASES

Associate professor **Andreea Elena MATIC**
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Abstract
In the present paper we will analyze the case of revision of the criminal cases, based on an advisory opinion given by the European Court of Human Rights on questions of principle related to the interpretation or application of the fundamental human rights and freedoms. At first, we will refer to the content of the Protocol no. 16 of the European Convention on Human Rights, which is the legal source of the Romanian Criminal Procedure Code in 2022. In the second part of the paper we will analyze the case of criminal revision based on the article 465 of the Criminal Procedure Code, the initial content and the modifications brought to this article in 2022. We will also refer to the meaning, content and possible consequences of the European Court's advisory opinions. In the second part of the paper, we will analyze the main reasons which led to the adding of this new reason. In the end we will present present several significant case studies in this matter.

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THE EXPRESS ACCEPTANCE OF THE MANDATE BY THE DIRECTOR

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Abstract

Acceptance of any offer to conclude a contract represents, as a general rule, the moment of concluding the contract. Therefore, the mandate contract is no exception. Moreover, the Romanian Civil Code provides clear rules regarding its conclusion. In the case of companies, the rules regarding the conclusion of the director's mandate stipulated by the special law apply with priority. At the same time, public company-enterprises are subject, first and foremost, to another set of rules provided for in the legislation on corporate governance. In practice, however, the issue of a contractual relationship between a public company-enterprise and the person managing its assets arose, without there being an express acceptance of the mandate. The case was resolved by the High Court of Cassation and Justice of Romania, by emphasizing the condition ad validitatem of the express acceptance of the mandate and, implicitly, of the written form. The article does not aim to cover this topic exhaustively, but only to mention the most relevant aspects regarding the conclusion of the mandate contract in the case of companies and to briefly analyze the court decision.