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May 17, 2019

Section I.

Recent Developments and Perspectives of Evolution of Administrative Law at National and International Levels

Friday, May 17, 2019

***Room* Robert Schuman – 2nd Floor, ASE main building – Ion N. Angelescu**

Keynote speakers:

Associate professor **Cătălin-Silviu Săraru**, *Bucharest University of Economic Studies*
Lecturer ***Radu Ștefan Pătru,*** *Bucharest University of Economic Studies*
Lecturer ***Adriana Moțatu,*** *Bucharest University of Economic Studies*

! Each paper will be presented within 20 minutes
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SCIENTIFIC PAPERS

THE PRINCIPLE OF TRANSPARENCE OF PUBLIC ADMINISTRATION AND THE GDPR

Professor José Caramelo GOMES
Vice Rector for Research,
Universidade Portucalense Infante D. Henrique, Portugal
Researcher Noémia Bessa VILELA
Universidade Portucalense Infante D. Henrique, Portugal

Abstract
Transparency, is one of the basic principles of good governance, and democracy allowing citizens to inspect the work of the public administration as well as the availability of instruments for monitoring the decision-making process. It's importance derives from the need to fight corruption and to increase the participation of citizens that is not possible without a sufficient level of information, which is possible only through transparent work. With the entry into force of the GDPR, issues have been raised as for the eventual collision of its provisions and the Principle of Transparency and the public right to access documents held by public institutions. By undertaking a deep legal analysis to the GDPR having as a point of departure the principle of transparency we will determin whether this information can and shall still be available to the public and under which conditions and limitation

POLISH, FRENCH AND GERMAN EXAMPLES OF THE APPLICATION OF THE ACTIO PAULIANA TO TAX OBLIGATIONS

Professor Rafał SZCZEPANIAK,
Faculty of Law and Administration,
Adam Mickiewicz University, Poznań, Poland
Dr. iur. Marcin KRZYMUSKI
European University Viadrina in Frankfurt (Oder), Germany

Abstract
The inspiration to write the article was the judgment of the Polish Constitutional Tribunal of 2018 confirming the possibility of applying Actio Pauliana to tax obligations. This issue is focused on typical problems for the application of private law in the public sector. It is, among other things, the sense of division into public and private law. Actio Pauliana is included in private law, while tax law is included in public law. The author agrees with the ruling of the Polish Constitutional Court. He is an opponent of overestimating the importance of division into public and private law. The article uses the formal-dogmatic method as well as the comparative law method. The author also discusses the legal status in France and Germany in this respect.

TWO FACES OF "INTERNATIONAL ADMINISTRATIVE LAW"

Associate professor Jakub HANDRLICA,
Faculty of Law, Charles University in Prague, Czech Republic

Abstract
The term "international administrative law" (diritto amministrativo internazionale, droit administratif international, internationales Verwaltungsrecht) remains an enigma of public law. Since the 1900s, the term has been traditionally understood in two different ways. On one hand, some authors (J. Gascón y Marín, P. Kazansky, A, Rapisardi-Mirabelli) used this term regarding the administrative competencies of those various "international administrative unions". On the other hand, other authors (P. Fedozzi, K. Neumeyer, G. Biscottini) used the term to exclusively refer to the norms of national administrative law, which address certain foreign elements; i.e. as a parallel to the discipline of international private law. This article deals with these two different understandings of "international administrative law" and with their impact for recent developments in legal scholarship. The article also addresses currently renewed interest in the "international administrative law" and its consequences for the newly established doctrine of "global administrative law".

CHALLENGES AND PERSPECTIVES OF ADMINISTRATIVE JUDICIARY IN THE REPUBLIC OF NORTH MACEDONIA

Associate professor Jeton SHASIVARI,
Faculty of Law, South East European University, Republic of North Macedonia

Abstract
The development of administrative judiciary in the Republic of North Macedonia went through various phases after its independence in 1991. 16 years after its independence, in late 2007 the Administrative Court was established as one of the holders of the judiciary in judicial system. Before the establishment of this

court, the administrative dispute was under the jurisdiction of the Supreme Court. The Administrative Court appears as a guarantor for exercising the rights guaranteed by the Constitution and the laws before the administrative bodies, which provide court protection in the event of an unlawful conduct by the administration. For this reason, administrative justice plays a key role in the lives of citizens who seek it when they consider that state authorities are preventing the enjoyment of a constitutional or legal right, or that they are imposing an obligation outside the legal rules. With this paper author by explaining the process of development of the administrative judiciary using: normative legal method, comparative legal method, systematic and objective interpretative methods, will focus on the specific analysis of ineffectiveness of administrative justice in the practice, which is due, first of all, to the lack of a mechanism for implementing the judgments of the Administrative Court.

A COMPARATIVE PRÉCIS OF THE STATUTORY PROHIBITION OF INSIDER TRADING IN NAMIBIA AND SOUTH AFRICA

Associate professor Howard CHITIMIRA,
Faculty of Law, North West University, South Africa
Student Thabang Terrance MABINA,
Faculty of Law, North West University, South Africa

Abstract
Insider trading is statutorily prohibited in both Namibia and South Africa. Nonetheless, insider trading activities are reportedly still occurring with some degree of frequency in the Namibian and South African financial markets. Given this background, the article comparatively explores the regulation of insider trading in Namibia and South Africa. This is done to investigate and scrutinise the adequacy of such regulation. In this regard, the relevant provisions, penalties, remedies and other enforcement approaches contained in the Namibian and South African anti-insider trading legislation are discussed. The authors submit that the Namibian anti-insider trading regulatory framework is relatively more flawed and inadequate than that of South Africa. Accordingly, the article discusses the statutory prohibition of insider trading in Namibia prior to, and subsequent to 2004 in order to isolate such flaws. Thereafter, recommendations and enforcement approaches that could be incorporated in the relevant Namibian insider trading laws from the South African anti-insider trading regulatory framework are briefly discussed.

AN ANALYSIS OF THE ROLE-PLAYERS IN THE ENFORCEMENT OF THE ZIMBABWEAN INSIDER TRADING LAWS

Associate professor Howard CHITIMIRA,
Faculty of Law, North West University, South Africa
PhD. student Pontsho MOKONE
Faculty of Law, North West University, South Africa

Abstract
Insider trading is statutorily prohibited in Zimbabwe. This is primarily aimed at promoting public investor confidence, market efficiency and enhancing the integrity of the Zimbabwean financial markets. As a result, some activities that could amount to insider trading in the Zimbabwean financial institutions and financial markets are outlawed in the Securities Act 17 of 2004 [Chapter 24:25] as amended (Securities Act). Despite these comendable efforts, various flaws and gaps in the aforesaid statute have somewhat impeded the role and effectiveness of the anti-insider trading regulatory bodies and enforcement authorities in Zimbabwe to date. Given this background, the article investigates the role of the relevant enforcement authorities and other key role-players in the detection, investigation and prosecution of insider trading activities in Zimbabwe. This is done by discussing the role of the Securities and Exchange Commission of Zimbabwe (SECZ), the Zimbabwe Stock Exchange (ZSE) and the courts.

LEGAL REGULATION OF PROCEDURE FOR ADVANCE PRICING AGREEMENTS IN UKRAINE

Researcher Pavlo SELEZEN,
University of State Fiscal Service of Ukraine
Researcher Igor HRYTSIUK
University of State Fiscal Service of Ukraine

Abstract
Advance pricing agreements (APAs) are globally widespread as an instrument of providing the balance of interests between bona fide taxpayers and fiscal authorities. Ukraine has attempted to use such instrument since the introduction of the transfer pricing control. Nevertheless, no APA has yet been concluded in Ukraine. The authors use methods of comparative legal analysis, historical analysis and legal modelling to describe the evolution of the normative regulation of the procedure for APAs and reveal the factors which have impacted on the attractiveness of APAs for taxpayers. There are also a few propositions on improvement of the procedure for APAs in Ukraine, which are formulated on the basis of best practices of developed and developing countries. Proposed

changes concern the opportunity to revise APAs, the introduction of special features in the procedure for APAs in case of their bi- or multilateral character and the alignment of the access to the procedure for APAs in Ukraine.

THE IMPACT OF THE NEW CHINESE FOREIGN INVESTMENT LAW 2019 ON THE ADMINISTRATIVE LEGAL SYSTEM GOVERNING FOREIGN INVESTMENTS AND IMPLICATIONS FOR THE INVESTMENT RELATIONS WITH LUSOPHONE MARKETS

Associate professor M.P. RAMASWAMY,
Faculty of Law, University of Macau, Macau SAR

Abstract
In March 2019 China revamped its domestic legal regime governing foreign investments with a new Foreign Investment Law that will enter into force in 2020 ('FIL-2020'). The proposed paper will first reassess how the new law impacts the administrative control of foreign investments in China. Given the past approach of China using administrative legal measures in diverse legal instruments to regulate foreign investments, how the FIL 2020 abolishing/consolidating those instruments increases or decreases the scope of administrative control of foreign investment is an intriguing question facing foreign investors and administrative law scholars alike. In a similar vein, the potential implications of the new FIL 2020 upon specific foreign investment relations becomes equally significant. The FIL 2020 could not only trigger new reciprocity concerns viz-a-viz certain host states, but also may demand the revision of some existing Chinese BITs with foreign states. The paper will make a comparative study to identify the key implications of the new law upon the investment relations with specific Lusophone host markets (for which, Macau SAR is the official facilitator of Economic Relations). Based on the findings, the paper will conclude by drawing some relevant caveats and recommendations for potential foreign investors from other (any) jurisdiction.

PERSPECTIVES OF EVOLUTION OF LEGAL SOLUTIONS CONCERNING ENTRUSTING BY LOCAL SELF-GOVERNMENT UNITS THE PUBLIC TASKS TO PERFORM WITH OTHER ENTITIES AGAINST THE BACKGROUND OF POLISH LAW

Assistant professor Wioleta BARANOWSKA-ZAJĄC,
Faculty of Law and Administration, University of Szczecin, Poland

Abstract
On the local self-government units - municipalities, counties and voivodships - exercising public administration in Poland on the principle of decentralization of public authority, there are numerous public tasks to perform, including in particular the own tasks serving the collective needs of members of local government community. These tasks could be carried out by local self-government units using their own entities - organizational units, budgetary establishments, as well as municipal companies created, but could also be entrusted to perform with other, separate entities, including non-public entities. The forms of entrusting by local self-government units the tasks with entities outside self-government structure are regulated by Polish Act of 1996 on Municipal Management. With entrusting by local self-government units the public tasks to separate entities, including non-public entities, there are connected numerous problems that have not been solved so far. They concern the subjective scope of entities to which it is possible to entrust public tasks by self-government units, the basis and nature of the entrustment, the scope of entrustment, the legal status of the entity entrusted with tasks, obtained as a result of entrusting public tasks, the principles on which the entrustment is based, the effects of entrusting, the responsibility for performing the entrusted tasks. Taking the above into account, the scientific purpose of the research is an identification and determination of specific problems related to entrusting the performance of public tasks by local self-government units with separate entities, including private entities against the background of Polish law and determination of the perspectives of evolution of legal solutions concerning such entrusting. The scientific method that has been applied is based on dogmatic scientific research and the typical for dogmatic of law - the logical-language analysis of legal text. It has been supplemented by the use of systemic interpretation and functional interpretation. The results of the study lead to a conclusion that it is advisable to create a coherent, clear model of entrusting tasks by local self-government entities with entities outside the structure of self-government, including non-public entities, and the evolution of legal solutions concerning such entrusting should aim at creating such a model.

ADMINISTRATIVE DEMOCRATIZATION: THE PARTICIPATION OF CITIZENS IN THE PORTUGUESE ADMINISTRATIVE SYSTEM

Assistant professor Bárbara Magalhães BRAVO,
IJP - Institute for Legal Research, Portugal
Research assistant Isabela Maria Botelho DE MELLO
Instituto Jurídico Portucalense, Portugal
Student Carlos BRANCO
Instituto Jurídico Portucalense, Portugal

Abstract
This article is the result of a set of research related to Administrative Law and its evolution in Portuguese national territory. It takes as its starting point the evolution of the Portuguese Constitutions in the political systems since the first Republic in 1911 until today, taking into account its importance and its direct

relationship with Administrative Law. In fact, the Constitution as a legal diploma is the basis of the entire Portuguese legal system, and thus the basis of all public law. In parallel it is analysed the participation of portuguese citizens in the evolution of the Portuguese Administrative System, and in that sense the way it is affected and inspired some of its Fundamental Principles. It will be also discussed some of those structural principles in the system and, as well, how the right of participation is behind some of the changes in the rule of law. Subsequently and as a consequence of the theoretical development, practical issues will be addressed in relation to the powers admitted in the discretionary exercise of the Public Administration, such as the privilege of prior execution based on the public interest. All of this is based on the Administrative Procedure Code of 2015.

A PERSPECTIVE ON CONSERVATION OF UNDERWATER CULTURAL HERITAGE WITH REFERENCE TO INTERNATIONAL CONVENTIONS AND ADMINISTRATIVE LAWS BY THE STATE

Ph.D. Harsh PATHAK
Advocate, Supreme Court of India

Abstract
That sheer quantity of submerged human history has led monuments and wrecks to be considered in terms of "cultural heritage" rather than mere submerged objects. And it has become a subject of conservation through convention and proper legislation by the state as cultural heritage. It implies something worth preserving and warranted an active state legislative and administrative action for its conservation. This paper is based on importance of underwater cultural heritage (UCH) and UNESCO convention, as guiding principle for the state to frame appropriate legislation, regulations and administrative actions to conserve underwater cultural heritage.

BRIEF CONSIDERATIONS REGARDING REQUESTS FOR INTERVENTION IN DISPUTES CONCERNING PUBLIC PROCUREMENT CONTRACTS

Public manager Adelina VRANCIANU
Ministry of European Funds, Romania

Abstract
Brief considerations regarding requests for intervention in disputes concerning public procurement contracts. The public procurement procedure is a complex procedure that is carried out in accordance with the provisions of Law no. 98/2016 and Law no. 99/2016 and in accordance with the steps and rules described in the normative acts already mentioned. The procurement procedure involves the start of the public procurement procedure, the publication of the contract notice, the stage of the tender preparation, the technical, financial and qualification assessment stage, as well as the signing of the procurement contract. Because in the procedure are involved factors with own interests and often contrary, Law no. 101/2016 provided the legal possibility to challenge any act of the contracting authority/entity contrary to the provisions of the normative acts. Thus, as injured persons, economic operators can attack administrative acts and administrative contracts, but, at the same time, they can intervene in the processes opened by other parties involved. The most commonly used tools are the application of the main voluntary intervention, as well as the application for accessory voluntary intervention. The paper aims to treat these two working tools provided to the economic operators by the civil procedure code from the perspective of their applicability, the legal conditions of their application, their evolution, as well as the jurisprudence of the courts of law.

EUROPEAN AND INTERNATIONAL INSTITUTIONAL CONNECTIONS OF THE NATIONAL COUNCIL FOR COMBATING DISCRIMINATION

Professor Cristian JURA,
Secretary of State, National Council for Combating Discrimination, Romania

Abstract
The main scope of this research is to present and analyze European and international institutional connections of The National Council for Combating Discrimination, one of the national institutions with a permanent relation with most of the international organizations: UN, Council of Europe, OSCE, European Union and other. The National Council for Combating Discrimination (NCCD) was established in august 2002. he National Council for Combating Discrimination was established pursuant to the adoption of Government Ordinance no. 137/2000 and Government Decision no. 1194/2001 on organization and function of NCCD. These legal acts represented the transposition of the community legislation in the field at national level. At European level there are institutions assigned to human rights protection and combating discrimination but NCCD is unique, its activity combining 14 discrimination criteria, no other institution having such a vast sphere of action, including sanctioning. The National Council for Combating Discrimination (NCCD) is the autonomous state authority, under parliamentary control, which performs its activity in the field of discrimination. The main method of research used in the elaboration of this study is the content analysis – simple or comparative, as the case may be – approached in a manner specific to the research in the field of social-human sciences, respectively in the field of legal sciences and history. Therefore, this analysis in mainly qualitative (broadly speaking) and less quantitative, a few statistic aspects being however emphasized there where they are naturally completing the analysis of some qualitative aspects. Also a very important role was played by my personal experience in the last almost 20 years in the field of public international law. As a result of these research we will reach a better understanding of the role and the place of the NCCD into society and may a model of international connection of a national institution.

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PAPERS ASSOCIATED TO THE ADMINISTRATIVE ACTS, AND LEGAL UNILATERAL WILL, IN THE FRAME OF THE ADMINISTRATIVE DECISIONAL MECHANISM

PhD. student Dumitru Ștefan COMAN,
West University of Timisoara, Romania

Abstract
The issue of the administrative act is extensively analyzed in the specialized doctrine, in the context in which it represents the essential form of materialization of the whole activity of the public administration. Administrative acts are a manifestation of unilateral will through which the public administration authorities define their practical character, expressing themselves in this sense, as a public power. The characteristics of the administrative acts are those attributes which, as a result of the cumulative reunification of the essential elements and the conditions of validity, distinguish these acts from other categories of legal acts. By features of administrative acts, we understand those traits that individualize these acts with respect to other legal acts.

THE INSTITUTION OF CIVIL SERVANTS AND CIVIL SERVANTS IN ROMANIA, ACCORDING TO CURRENT LEGISLATION

Lecturer Viorica Cornelia GRĂJDEANU,
"Aurel Vlaicu" University of Arad, Romania

Abstract
The main objectives of this study are to define the notion of public office and civil servant in Romania. The two major components of public office in Romania have been identified, as well as the state public office and the territorial public office positions. The most important activities that involve the practice of the prerogative of public office have also been set forth. We presented the three categories of public office in Romania, that is: - the state public office; - the territorial public office; - the local public office; We emphasized the occupational groups for civil servants, according to their studies, that is: 1) public office that corresponds to the category of senior civil servants; 2) public office that corresponds to the category of leadership civil servants; 3) public office that corresponds to the category of executive civil servants; In the end of the study we have focused on these three main categories and the civil servants included. The research methods employed in this study were: the research and analysis of legal instruments, courses, studies and materials of the administrative field in Romania, corroborated with their descriptive and exploratory interpretation. This study is meant to be introduced to the students of both the Bachelor's and the Master's Programme of "Aurel Vlaicu" University of Arad, major "Public Administration" in order to support them in carrying out their duties in their capacity of civil servants of administrative institutions, being also useful as a guide for their personal professional furthering.

PUBLIC OFFICE AND THE CIVIL SERVANT IN THE EUROPEAN UNION

Professor Petru TĂRCHILĂ
"Aurel Vlaicu" University of Arad, Romania
Lecturer Viorica Cornelia GRĂJDEANU,
"Aurel Vlaicu" University of Arad, Romania

Abstract
The main objectives of the study are the analysis of the European public office and the necessary steps to be taken for holding such a position. The notion of civil servant has been defined as well as the two groups of the European public office, that is: - the group of the administrative position; - the group of the assistant position; We presented a descriptive table of the different positions belonging to the two categories above-mentioned according to the European Community Civil Service Status. The requirements and conditions a natural person has to comply with in case he/she wants to hold a European public office position have also been analyzed. We emphasized the legal regulations of the European public office. In the end of the study we focused on the length of work for the European civil servants, on their rights and obligations. The research methods employed for drawing up this study were: the research and analysis of legal instruments, of courses, studies and materials in the field of public office and European civil servant, corroborated with their descriptive and exploratory interpretation. This study is meant to be introduced to the students of the Master's Programme of "Aurel Vlaicu" University of Arad, major "Public Administration in European Context" in order to provide them with the opportunity to analyze and compare the requirements for holding public office in Romania and in the institutions of the European Union, being also useful for their personal professional furthering.

COMMAND ACTS OF MILITARY NATURE. CONSIDERATIONS ON THE ACTUALITY OF THE REGULATION

Lecturer Dan Constantin MÂȚĂ,
Faculty of Law, "Alexandru Ioan Cuza" University of Iasi, Romania

Abstract
Command acts of military nature are traditionally regulated in Romanian law as absolute exceptions to the legality control of administrative litigation courts. The notion is mentioned in the Constitution of 1923, and it was later seen in the laws on administrative litigation in 1925 and in 1990. Currently, the Romanian Constitution of 1991, as revised in 2003, stipulates the command acts of military nature as exceptions to the judicial control of the administrative acts of public authorities, by way of administrative litigation. The administrative litigation law no. 554/2004 duly regulates this category of legal acts, including through the

establishment of a definition. In spite of this complex, constitutional and legal regulation, the command acts of military nature have benefited from minor attention from the doctrine. Right from the beginning of the regulation, the extrajudicial character of the notion was emphasized, based on the need to ensure the discipline of the military and the conditions specific to the military operations. Besides the treaties and the academic law university courses, the interest of the doctrine in the legal regime is limited, the main cause being considered the lack of relevance in the practice of administrative litigation courts. Legal controversies regarding the legality of the Decree of the President of Romania no. 1331 / 28.12.2018 have brought back the interest in command acts of military nature, and therefore it is necessary to re-value this notion under the current demands of doctrine and practice. The article analyses, from a critical perspective, the controversial issues in relation to the main doctrinal approaches and the jurisprudence trends in this field.

RULE OF LAW AND THE NEW REGULATIONS CONCERNING THE DISCIPLINARY LIABILITY OF THE MAGISTRATES

PhD. student George Marius MARA,
West University of Timisoara, Romania

Abstract
The paper address the functioning of the rule of law, starting from the separation of powers, but also it offers a brief perspective over several theories that were developed as this principle evolved from one period of time to another. Closely linked to the principle stating the rule of law there is another one, proclaiming the imperative of an independent judicial authority and which, in performing its duties according to the rules that govern a fair trial, contributes to the implementation of the separation of powers but also of the checks and balances system and loyal cooperation between these authorities. We also presented an anlysis of the new regulation regarding the disciplinary liability of the magistrates, following the legislative changes adopted at the end of last year, and their eventual impact on the principles mentioned above. The research methods used in order to achieve this aim are the comparative method, the analytic and historical methods.

THEORETICAL AND PRACTICAL ASPECTS REGARDING THE MODIFICATION OF THE CIVIL SERVANTS' EMPLOYMENT RELATIONSHIP. COMPARATIVE ANALYSIS WITH THE EMPLOYEES' SITUATION.

Lecturer Radu Ștefan PĂTRU,
Department of Law, Bucharest University of Economic Studies, Romania

Abstract
According to Law no. 188/1999 on the status of civil servants, their employment relationship may be modified by delegation, posting, transfer, transfer within the public authority or institution or within another structure without legal personality of the public authority or institution, according to the law, and for a temporary public management function. In the case of employees, the modification of the employment relationship is made by delegation, posting, but also unilaterally by the employer in cases of force majeure, as a disciplinary sanction or as a protection measure of the employee, in the cases and under the conditions provided by the Labor Code. The elements of differentiation between the two categories of workers will highlight the particularities of the change in the employment relationship of civil servants, which, unlike the legal status of employees, is better outlined by the legislator. On the basis of theoretical analysis, as well as of the elements of jurisprudence de lege ferenda proposals will be formulated in this field.

THE PEOPLE'S ADVOCATE, MEDIATOR BETWEEN CITIZENS AND PUBLIC ADMINISTRATION IN NATIONAL AND EUROPEAN CONTEXT

PhD. student Denis-Roxana GAVRILĂ,
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National School of Political and Administrative Studies, Romania

Abstract
The institution of the Ombudsman or the People's Advocate, both at international and national level, was created in order to protect the rights and freedoms of the citizens in their relationship with public authorities. Through the role conferred by the legislator, the Ombudsman, as a mediator, seeks to observe human rights, the principle of good administration foreseen in the Treaty on the Functioning of the European Union. The research method used is the comparative analysis, both in Romania and in the member states of the European Union. The results will show that the People's Advocate, as a result of its control exercised through the means of intervention provided by the law, can determine the public administration to work for the benefit of the citizens, Romanian and European. Knowing the role of the Ombudsman institutions, the European citizen will be not only informed, but stronger in the face of abuses of public administration.

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UNFAIR COMPETITION IN COMPARATIVE LAW. ANTITRUST LAWS, SPECIFIC TO AMERICAN LAW

PhD. student Cristina IUHAS,
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Abstract
The paper aims to show how unfair competition is presented in the American law. In this approach we will refer to the constitutional and legal consecration of unfair competition in America. We also want to highlight the benefits and obligations that have an effect on the US-funded mechanisms. Using the comparison method, we have concluded that the concept of "trust" represents an arrangement by which the shareholders of commercial companies in a certain field merged under the patronage of an administrator in order to benefit from a share of the consolidated profits of the jointly managed companies.

CONSTRUCTION AND EXECUTION OF WORKS CONTRACT. CONTRACTUAL BALANCE IN THE APPLICATION OF CONTRACTUAL REMEDIES STAGE

PhD. student Eugen SÂRBU,
Faculty of Law, University of Bucharest, Romania

Abstract
Through this study, we analyze how the regulations in the field of general theory of obligations have influenced the field of administrative contracts. By the way of issuing the model of purchase agreement for design and execution of work, adopted by the Decision no. 1/2018, the field of administrative contracts took over the mechanisms of balancing the contract laid down by adopting the Civil Code from 2011. Through the research method of document analysis, we show that, also in the field of administrative contracts, an efficient contractual relationship is dependent on the existence of principles that allow the contract to be fulfilled, by providing concrete mechanisms for responding to unpredictable situations. In the present article we will analyze how the administrative contract model applies the rule "favor contractus", the practical impact of our effort is to guide the actors involved in the development of such contracts, so controversial in the Romanian space, by showing the concrete ways of applying the contractual remedies in equilibrium with the gravity of the violated obligation or the impediment involved in the fate of the contract.

THE EUROPEAN LEVEL OF R&D PUBLIC FUNDING POLICY

PhD. student Oana Iuliana RUJOIU,
Bucharest University of Economic Studies, Romania

Abstract
The study presents some indicators that characterize the Romanian public funding policy in comparison with other European countries. An alarming lack of project-based funding accompanies the lack of Romanian public R&D resources. The data indicate that the most industrialized European countries tend instead to strengthen and differentiate the mixture of policy instruments, to reach leadership positions in particularly promising fields for prospective developments; Romania does not follow this trend, making it more challenging to extract the benefits of this strategy. The orientation towards a performance-based distribution of institutional financing is the most significant change in Romania's scientific policy. However, the allocation of public funds for R&D had a massive contribution to the decline of this sector. The organization of the Romanian research system maintains a strongly hierarchical mold based on ministerial actors, and there are no autonomous bodies able to elaborate policy instruments suitable for supporting sectors, structures, territories and activities. That's why the public intervention is necessary mediating between the various governmental interests and the demand for funding coming from the research community, the scientific organizations, and corporates.

DEBATES ON SOME LEGAL ISSUES REGARDING THE ESTABLISHMENT OF THE NATIONAL COUNCIL FOR THE DEVELOPMENT OF HUMAN RESOURCES IN PUBLIC ADMINISTRATION

Assistant professor Andreea STOICAN,
Department of Law, Bucharest University of Economic Studies, Romania

Abstract
At the beginning of 2019, Law no. 69/2019 on the establishment of the National Council for the Development of Human Resources in Public Administration entered into force. It is an advisory, with no legal personality, non-permanent body that functions alongside the General Secretary of the Government under the Prime Minister's coordination. Although the role of establishing such a body has been intensely debated and appreciated as being of particular interest in the existence of a strategy to strengthen the administrative efficiency of the Member States of the European Union, including a reform of the public administration, the entry into force of this law was not exempt from contradictory discussions, culminating even with the claim of its unconstitutionality, through the submission in court of the exception of unconstitutionality.

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THE PROPORTIONALITY PRINCIPLE USED AS STANDARD BY THE EUROPEAN COURT OF HUMAN RIGHTS WHEN ASSESSING THE EXCESS OF POWER

Lecturer Oana ȘARAMET,
Transylvania University of Brasovs, Romania
Assistant professor Georgeta-Bianca SPÎRCHEZ,
Transylvania University of Brasovs, Romania

Abstract
The study herein aims at examining the implementation of the proportionality principle in the European Court of Human Rights case law, as a means of controlling the activity of the national authorities, namely limiting the excess of discretionary power. The main motivation for such an approach consists in providing the guidelines in the decision-making process of restricting certain fundamental rights and freedoms, so that the provided substantiation to form the belief that all relevant factors have been taken into account and that the measures implemented in those cases are transparent, non-discriminatory and accountable.

THEORETICAL AND PRACTICAL ASPECTS OF LIABILITY IN ADMINISTRATIVE LAW

Professor Iulian NEDELCU
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Abstract
Human behavior has a diverse sphere of manifestation, but with all the complexity of behavior, man is referring to some principles, norms, values within the limits of what he considers to be good - bad, allowed - not allowed, right - unfair, licit - illicit. At the moment of choosing the individual's choice for a certain behavior (of all possible), the mechanism of establishing its social responsibility is triggered. This is due to its rational capacity to opt for a certain behavior, knowing, or having to know that the deed falls within the limits of generally accepted principles, and will have to bear the consequences for its negative conduct. Legal liability is the most serious form of social responsibility. Traditionally, legal liability is considered as a fundamental institution of law, an institution that tends to occupy the center of law in its entirety. Referring to this idea, Louis Josserand argues that in every matter, this problem of responsibility, in public law and in private law, in the field of persons or family, and in the field of goods, is at all times and of all situations, responsibility becomes the common neuralgic point of all our institutions, reflecting the stage of evolution of the whole society, the level of social conscience and responsibility. Legal responsibility, irrespective of the legal branch to which we report, has both a preventive educational purpose and a sanctioning purpose, meaning by this last aspect and the character of the remedy in case of material and / or moral damages.

INTERNATIONAL MONEY-LAUNDERING

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Abstract
Being an organized crime activity, money laundering has become a major issue in recent decades. From the point of view of the general consideration of the notion of money laundering, the context of this crime as a whole is to legalize an unlawful income. Money laundering is and will remain a complex and dynamic phenomenon of great diversity, both in the public and private spheres, manifesting itself both actively and passively, being also a phenomenon unrecognizable to ordinary people. Regarding the content of the offense, it is presumed that it is a crime without victim, being considered without "emotional implications" in the offense category. The word best describing this type of offense is "discretion" because this kind of crime is one of the most difficult to identify, and one of the difficulties encountered by the investigators. Money laundering includes various methods and procedures that make it possible to obtain money or other assets from the illegal activity and conceal by disguising their origin or by giving a seemingly legal aspect of their source. Thus, it becomes one of the most widespread types of economic fraud, both nationally and internationally.

THE FINANCIAL INDEPENDENCE OF THE ROMANIAN PARLIAMENT

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Abstract
Romania is a unitary state and constitutional democracy organised under the principle of the separation of powers between the three branches of government – legislative, executive, and judicial – and the checks and balances between them. Since its creation in 1862, the Romanian Parliament has traditionally been a bicameral legislature, except during the communist era, a period during which it only had a single house. The desire to put an end to the

top-down policies that characterised the communist era was an impetus for Romanian voters to return the legislature to its former bicameralism by recasting the Romanian Parliament as a legislature composed of two houses, the House of Representatives and the Senate. Senators and representatives are elected to four-year terms by universal suffrage in free, secret, and equal popular elections. Both representatives and senators are elected via the same voting mechanism, that is, by party-list proportional representation. The manner in which the two houses are organised and function, as well as their funding, is set out in the Constitution and in a number of legislative and regulatory texts. In a first part ***(I)****, this article will analyse the rules for creating, implementing, and auditing the budgets of the two houses – which are the result of a patchwork of laws and regulations governing the Romanian Parliament – setting the stage, in a second part* ***(II)*** *for the evaluation of the quantitative change in the two houses' budgets, as well as the different ways of overseeing their spending.*

ADMINISTRATIVE ACTS THAT ARE WHOLLY EXEMPT FROM THE LEGALITY CONTROL OF ADMINISTRATIVE COURTS

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Abstract
The judicial control over the administrative acts is exercised, according to the provisions of art. 52 (2) of the Constitution, within the limits provided by the organic law. In applying this constitutional provision, Law no. 554/2004 of the administrative litigation has revealed these limits by establishing categories of administrative acts that are totally exempt from the legality control of the administrative contentious courts (absolute exceptions) and certain categories of administrative acts that have a legal regime specific to the legality control exerted on them by their extraordinary rendition.

GENERAL DETAILS ABOUT EXTRASTATUTORY CONVENTIONS

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Abstract
Statutory and extra-statutory conventions are contracts, plurilateral (thus, typically, voting unions), or corresponding services (typically blockades): a common feature is that they remain foreign both to society and to associations and third parties who are not part of it. The rules laid down in the Italian Civil Code to Articles 2341-bis and 2341-ter only deal with conventions aimed at stabilizing the joint stock company which is the subject of such agreements: these provisions provide for lasting limits (when stipulated for a specified period, can not exceed three years, whereas for an indefinite period, each party may give up an ad with a notice of one hundred and eighty days) and, by limiting ourselves to the so-called open societies, advertising obligations (communication to the company and declaration at the opening of the assembly). There is no restriction, however, on the form that the parties may adopt for the purpose of that stipulation.