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INTERNATIONAL CONFERENCE:

CONTEMPORARY CHALLENGES IN ADMINISTRATIVE LAW FROM AN INTERDISCIPLINARY PERSPECTIV

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Section I.

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

Friday, May 27, 2022

Online on Zoom

Keynote speakers:

*Lecturer **Radu Ștefan PĂTRU,** Faculty of Law, Bucharest University of Economic Studies*

*Associate professor **Marieta SAFTA,** Faculty of Law, „Titu Maiorescu" University of Bucharest*

! Each paper will be presented within 15 minutes
! Fiecare lucrare va fi prezentată în maxim 15 minute

SCIENTIFIC PAPERS

THE ADMINISTRATIVE LAW OF THE CZECH REPUBLIC AND THE PUBLIC LAW OF UKRAINE: A STUDY IN INTERNATIONAL ADMINISTRATIVE LAW

Professor Jakub HANDRLICA
Faculty of Law, Charles University, Prague, Czech Republic
Ph.D. candidate Vladimír SHARP
Faculty of Law, Charles University, Prague, Czech Republic
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Abstract
The military actions taking place in Ukraine brought a major influx of refugees to the Czech Republic. A majority of them, being either citizens or residents of Ukraine, were carrying various official documents (such as residence permits, driving licences, university diplomas etc), issued by the competent authorities of their state of origin. The massive circulation of these persons in the Czech Republic automatically implied a necessity to deal with the implications of such documents, or with their absence (such as in the case of students, not carrying any educational certifications). This article deals with how the administrative law of the Czech Republic addressed the fact that various documents, issued by the authorities of Ukraine are being used for various purposes in the Czech Republic. Taking into consideration that one may expect further influx of Ukrainian citizens to our territory and their residence in the Czech Republic, this article also aims to outline a way forward.

DILEMMAS OF JUDICIAL CONTROL OF ECONOMIC ADMINISTRATION - ON THE EXAMPLE OF POLISH LAW

Assistant professor Rafał WASILEWSKI
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Abstract
According to European standards of procedural guarantees, economic administration bodies - as administrative bodies - should be subject to appropriate control. Also under domestic Polish law, the activities of economic administration bodies are subject to judicial control. On the basis of Polish constitutional law there are basically two types of courts, i.e. common courts and administrative courts, and the constitutional provisions themselves do not determine which of these courts exercise control over the economic administration. The aim of the paper is to indicate the constitutional regulations of judicial control of economic administration, as well as to analyse the system of judicial control of economic administration exercised by common courts and administrative courts, using specific examples of economic administration bodies and indicating the differences and problems related to the dualism of these regimes of judicial control. The considerations are based on a doagmatic-legal analysis.

PREVENTION AND SETTLEMENT OF CONFLICTS OF INTEREST IN HEALTH CARE OF UKRAINE AS AN ADMINISTRATIVE LEGAL INSTITUTE

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Postgraduate student Anastasiia YAROVA
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Abstract

The purpose of the study is to analyze certain legal problems in the development of the administrative-legal institution for preventing and resolving conflicts of interest in the healthcare sector. This article is based on an interdisciplinary approach using methods of analysis and synthesis, as well as comparative legal, dialectical and systemic methods. The concept of "prevention and settlement of conflicts of interest in the field of health care" is proposed, and the design of "administrative-legal institution for the prevention and settlement of conflicts of interest in the field of health care" is defined and its types are established. The analysis of the concept of "conflict of interest" in the scientific literature, national and international legal documents, in the legislation of foreign countries was carried out, the definition of "conflict of interest in the field of healthcare" was proposed. It has been established that in the legislation of certain foreign countries, the legal provision of a conflict of interest in the field of health care is carried out at the level of a special law "On Conflict of Interest", or provided for in laws on the prevention of corruption, or (in some states) also in a regulatory legal act in the field of health care. The elements of a conflict of interest in the field of healthcare (real or potential) are disclosed, their content is clarified. The elements of a conflict of interest in the field of healthcare (real or potential) are disclosed, their content is clarified. Two ways of resolving a conflict of interest in the healthcare sector have been identified: external and independent. It is established that the prevention and resolution of conflicts of interest in the healthcare sector consists of the following components: (1) prevention, (2) informing, (3) refraining from actions or decisions, and (4) settlement.

ADMINISTRATIVE BURDENS IN THE PROCESS OF LEGAL REGULATION

Associate professor Manol STANIN
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Abstract

The orientation of the mechanism of legal regulation towards the protection and improvement of legally relevant public relations is accompanied by the opposite process. Its numerous manifestations are collectively verbally referred to as administrative burdens. They are not unequivocally negative. Achieving and maintaining a reasonable balance in this unity of opposites is a challenge not only for the executive power but also for the legislature and the judiciary. This balance is important because it depends on the state of the right to good governance and good administration, including the confidence of citizens in the normative system of law and the democratic foundations of society. Its refinement is a difficult task, given the potential of administrative burdens to be reproduced, as well as because the concept of good administration lacks in-depth study of the relation between good administration - good citizens. Their

systemic conditionality predetermines the application of a systematic method of scientific research to find acceptable and effective solutions for both the legislature and the executive, as well as for citizens. Revealing the importance and role of dialogue in achieving these goals justifies the use of discursive analysis.

THE CHALLENGES OF ARTIFICIAL INTELLIGENCE IN ADMINISTRATIVE JURISDICTION

Assistant professor Bárbara MAGALHÃES
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Abstract
In view of the recent transformations in the field of digitalisation, namely artificial intelligence and its implementation within the scope of justice, it is necessary to consider the feasibility of its application in the context of administrative justice, both within the State or within the scope of alternative dispute resolutions forms. If, on the one hand, through the use of algorithms in the processing of the suit and delivery of jurisdictional decisions, we can have a faster, more effective, efficient and less expensive justice, on the other hand, we recognize the existence of some challenges that are difficult to solve, from the outset, ethical issues, problems of liability arising from the exercise of the judicial function, guarantees of transparency, which is especially important in the legal administrative field, data protection issues, and even difficulties in the application of automated Administrative law, namely in the valorative interpretation of undetermined concepts, widely used in this area of law With the present work, we will make a contribution to the identification and consideration of some challenges that may arise regarding the use of technology in administrative justice, presenting some attempts to solve them.

THE SIGNIFICANCE OF ARTICLE 102 OF THE TFEU IN THE ASSESSMENT OF DISTRIBUTION CONTRACTS

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Abstract
In addition to article 101 of the TFEU, the abuse of a dominant position prohibited by article 102 of the TFEU is important for the analysis of the conformity of distribution contracts towards the UE Competition Law. The clauses of the distribution contracts often contain practices that are likely to represent an abuse of a dominant position, censured by article 102 of the TFEU. In fact, one of the types of conduct qualified by article 102, (b) of the TFEU as abuse of a dominant position is the limitation of "production, distribution or technical development to the prejudice of consumers", covering not only restrictive practices resulting from the dominant company's internal behavior, but also conducts which, by conditioning third parties, pursue such restrictive purposes. Exclusive purchase obligations and loyalty and fidelity discounts are of relevance in the distribution context. Tying also arises, frequently, in the context of distribution, and is frowned upon, according to article 102, (d) of the TFEU, if the company is using the dominant power in one market to obtain an advantage in another market, excluding rivals. Bundling and multi-product rebates, so common in distribution, are also practices that may constitute

exclusionary conduct by dominant companies. The existence of abusive behavior regarding price, namely, the use of predatory pricing, excessive pricing or margin squeezes, prohibited by article 102, (a) of the TFEU is also common in distribution. The refusal to supply products and services is an abuse that may result from the clauses in distribution contracts and the way distribution networks are built, with the intention of excluding rivals, with particular emphasis when related markets are concerned. On the other hand, it can be one of the instruments to prevent parallel imports, segmenting the internal market, which will be severely censured by the CJEU. Vertical restrictions can also be considered an abuse of a dominant position if they correspond to unfair commercial conditions, expressly referred to in article 102, (a) of the TFEU as far as prices are concerned, and to a discriminatory treatment of commercial partners, through unequal conditions that put them at a disadvantage in competition, present in article 102, (c), which includes, for example, loyalty discounts. The European Union case law, in turn, has reflected the concern of the competition authorities in the analysis of abusive behavior of companies towards distributors and suppliers. In this paper, considering the relevance recognized by the Commission and European Union case law to exclusionary conduct in distribution and the correspondence of some of these abuses with vertical restraints, we will analyze exclusionary conduct, referring, whenever justified, exploitative abuses and market segmentation.

EMPLOYEES' RIGHT TO FREEDOM OF EXPRESSION THROUGH SOCIAL MEDIA IN SOUTH AFRICA

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Student Osman Bantu FAKU
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Abstract
Dismissal for social media misconduct is a common practice in South African constitutional and labour laws. It generally occurs when employees exercise their right to freedom of expression in social media which sometimes affects the employers' right to a good name or reputation. Prior to the transition to democracy in 1994, employees experienced challenges in exercising their right to freedom of expression. Under the current constitutional era, this right is enshrined in the Bill of Rights and contains internal limitations and can also be limited by the law of general application. Nevertheless, there is no specific statute which deters the misuse of social media in South Africa. Employers often exercise disciplinary measures and dismiss employees for conducts that impede on their right to good name and reputation. It is often difficult for employers to dismiss employees as there are no specific guidelines on the regulation of social media misconduct with regard to the potential conflict between the employees' right to freedom of expression and the employers' right to dignity or good name in South African workplaces. This often leaves employers with no remedy when the conduct of the employees on social media, in their own personal capacity, has potential to damage the reputation of their employers either directly or indirectly. Employees should be responsible in the use of social media and always avoid any conduct that can damage the reputation of their employers. They can be held liable in case they damage the good name of their employers through social media.

POWER AND INCLUSION OF STUDENTS IN THEIR OWN POSTGRADUATE LEARNING JOURNEYS

Senior lecturer **Jean Chrysostome KANAMUGIRE**
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Abstract
Supervisors have a duty to develop students into independent researchers. Types of supervision include one-on-one supervision, co-supervision, and group supervision. Postgraduate students pass through different stages to acquire their appropriate degrees. They include proposal stage, data collection, progression to masters or PhD, and completion. Supervisors have to internalise the needs of postgraduate students and facilitate research in their areas of specialisation. They assist students to realise their potentials. They can influence and motivate students to complete their postgraduate studies. Supervisors need to understand and accommodate the diversity of students. They have to include all students in all the scholarship activities and ensure they respond to the needs of each specific student. Students should be responsible for their postgraduate studies. At the same time, supervisors have to provide feedback on the works of the students within a reasonable time. A Memorandum of Understanding is crucial to manage and maintain the good relationship between a student and a supervisor. The throughput rate can be increased if there is a good working relationship between the supervisors and students.

COMPARATIVE ASPECT - VOLUME AND DYNAMICS OF SUICIDES IN A PART OF THE WORLD AND IN KOSOVO 2000-2019

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Lecturer Veton VULA
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Abstract
Suicide (mors voluntaria) is violent and voluntary termination of one's life, undertaken by a mentally-healthy person, who in the condition of pathological affect experiences internal battle with suicidal motives. By committing the suicidal act, the individual achieves his or her primary goal: escaping from oneself. Alongside other phenomena, suicide is also a social pathology, widespread all over the world. There is no similar predisposition of increase or decrease of this phenomenon. Taking into consideration the data throughout the years and decades from different countries, this issue is very relative. In some countries there is a predisposition of decrease of suicide rate, in others there is an increase, and in some countries it is difficult to determine it. This paper is based on historical, statistical, comparative methods and interviews. It addresses the volume and dynamics of suicides in Kosovo throughout several decades. In the comparative aspect, the paper addresses also the volume and dynamics of suicides in Albania and other countries of the world. Regarding quantitative analysis, the WHO and Eurostat data were used for other countries, whereas the data used for Kosovo are the official recently updated data of the KAS up to 2019. Scientific sources were used due to lack of official data for the past decades, whereas other sources were used for 2000 and 2001. In regard to Albania, scientific data were used presented in the conference proceedings, which referred to archival sources and INSTAT. The data in the paper were presented through tables and graphs.

DIALOGUES OF NATIONAL ADMINISTRATIVE LAW WITH INTERNATIONAL LAW

Associate professor Cristian CLIPA
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Abstract
The study aims to systematically analyze the relationship between national administrative law and international law, respectively with those regulations of inter-, supra- or trans-national origin. In essence, the analyzes undertaken in this study will focus on the ability of national administrative law to take over from the inter-, supra- or trans-national legal order, a whole series of principles, rules and legalities, with the help of which it could be reconfigured. the theory of large institutions subsumed to the theme of this legal discipline. At the same time, the study will insist on the defense mechanisms used by national administrative law to delay, hinder or even prevent the phenomena of ideological and, implicitly, terminological interpenetration, manifested in the very complex relations between national administrative law and international law. The aim of the author of this study is, among other things, to determine whether and to what extent the six ideological foundations of administrative law - public authority, public power, public administration, public service, public interest and public order - have the capacity to strengthen or, on the contrary, to weaken the ideological and, of course, terminological exchange between national administrative law and international law.

SUSPENSION OF PUBLIC SERVANTS - CONSTITUTIONALITY ISSUES OF ARTICLE 513 PARAGRAPH (1) LETTER L) OF THE ROMANIAN ADMINISTRATIVE CODE

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Abstract
The entry into force of the Romanian Administrative Code has maintained, unfortunately, a controversial legal provision, regarding the suspension of the public servant's employment relationship, in case legal proceedings are taken against the public servant, if commited certain acts. From our perspective, article 513 paragraph (1) letter l) of the Romanian Administrative Code raises serious concerns regarding the presumption of innocence and the right to work of the public servants found in such situation. The present study tries to bring a multidisciplinary legal interpretation of the authors regarding the analysed legal provision and certain arguments for considering this provision able to be declared, soon, unconstitutional.

ELECTION AND DISMISSAL OF THE DEPUTY MAYOR ACCORDING TO THE ADMINISTRATIVE CODE

Associate professor Mihai Cristian APOSTOLACHE
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Abstract
The position of deputy mayor has been under regulation since the beginning of the post-December legislation, the deputy mayor being qualified as an assistant of the mayor. Depending on the rank of the locality, there may be one or two deputy mayors. As an important feature, the deputy mayor enters both the executive and the deliberative power, acting as a link between the two authorities at local level, the mayor and the local council. The paper deals with the procedure of appointing the deputy mayor, as well as the loss of this quality, by dismissal, as they are regulated in the Administrative Code.

The development, purpose and tasks of forensic science

Lecturer Aurel Octavian PASAT
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Abstract
The study deals with introductory notions about forensics, addresses the concept of forensics by making a brief history of the development of this science and the laws underlying the development of forensic science. It also examines the conceptual issues of the purpose of forensic science, analyzing the views of different scientists on the issue under consideration. Thus, the purpose of forensic science is to develop methods, tools, techniques and recommendations for organizing practical activities. The general task of forensics is to scientifically support the activities of law enforcement agencies in the field of combating crime.

MORAL DAMAGES IN COMPARATIVE ADMINISTRATIVE LAW

Associate professor Elena Emilia ȘTEFAN
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Abstract
At present, the national legislation does not provide criteria for assessing the moral damages for prejudice suffered by the victim of an activity of the administration. In this sense, the judge will be the one who will analyze on a case-by-case basis whether he will grant moral damages and in what amount. We are currently witnessing an interference of civil law with administrative law regarding the forms of administrative-patrimonial liability. From this perspective, the present paper aims to analyze the case-law of French law in order to outline such a tendency of the judge, whether from the Administrative Court or the Council of State, on whether or not to grant moral damages arising from the idea of risk in the activity of public administration. Through law-specific research methods, we will investigate two current cases that can provide an insight into the contribution of case-law to shaping the legal regime of administrative liability. This highlights the way in which the administrative judge grants moral damages if the state is held

liable sans faute. From this point of view, the topic is interesting for legal specialists who will find in this paper information about the practical applicability of the concept of administrative liability.

PERSPECTIVES FROM THE CASE LAW OF THE EUROPEAN COURT OF JUSTICE ON COMPARATIVE ADVERTISING

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Abstract
Advertising transcends state borders and affects the common market. Moreover, it can lead to distortions of competition. One purpose of the regulation of advertising comes from the imperatives of consumer protection. They are the recipients of the advertising message and their interests may be harmed by advertising. Misleading advertising is prohibited, as is comparative advertising, in certain situations, in expressly determined cases. In concreto analysis of two such facts, in the reflection of the decisions given by the European Court of Justice, is the theme of the present study. At the same time, we will analyze the sanctions regulated at national level in the hypothesis of committing the facts that constitute illicit comparative advertising, as well as the administrative bodies empowered to apply the sanctions in order to rehabilitate the competitive environment.

PRACTICAL CONSIDERATIONS ON THE ADMISSIBILITY OF THE PLEA OF ILLEGALITY IN ADMINISTRATIVE LITIGATION

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Abstract
The plea of illegality allows the control of the legality and validity of individual administrative acts, without any time limit. At least, the literal and grammatical interpretation of article 4 of the Law on Administrative Litigation leads to such a conclusion. Unfortunately, the case law "has created" several limitations on the use of this judicial review tool, and most of them do not have a solid legal basis. The protection of the res judicata principle, but also other situations that would circumvent the legal regime of the action for annulment, as well as the broad category of fiscal-administrative acts were considered grounds for the inadmissibility of the plea of illegality, administrative acts outside its scope respectively. What is worse is the fact that the limitations in question may constitute restrictions on the right of access to justice, more precisely to the procedural route of the plea of illegality. The study aims to analyze the legal basis of the cases of inadmissibility of the plea of illegality, created by case law and their compliance with the will of the legislature. The author's goal is to produce a paradigm shift with regard to this legal institution and to increase its degree of effectiveness. The research conducted is descriptive and explanatory, underpinned by relevant case law and doctrine.

THE EFFECTS OF JUDGMENTS ON THE SUSPENSION OF NORMATIVE ADMINISTRATIVE ACTS AND THEIR CONCRETE CONSEQUENCES

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Abstract
The judgments ordering the suspension of administrative acts, whether individual or normative, have effect only between the parties to the dispute in which they were given. If in the case of individual administrative acts, this effect is fully justified, in the case of normative administrative acts, the situation becomes problematic. The study aims to analyze the legal basis of the two proposed solutions regarding the effects of judgments ordering the suspension of normative administrative acts: inter partes effects vs. erga omnes effects. The research conducted is descriptive and explanatory, supported by relevant case law and doctrine. If a normative administrative act has been suspended by the court (all the more so when the judgment has become final), that act might be suspected of illegality. In this case, one of the three presumptions on which its enforceability is based, the presumption of legality respectively, has been temporarily removed. The principle of the legality of administrative acts justifies the removal of the enforcement of this act also in relation to the persons who did not have the quality of party, but who can bear the consequences of a seemingly illegal act. At the same time, the specifics of the normative administrative act, as well as the principles of the predictability of the law and legal certainty, argue in favour of this solution.

THE DOCUMENTS ISSUED WITHIN THE SURRENDER PROCEDURE BASED ON THE EUROPEAN ARREST WARRANT ACCORDING TO LAW NO. 302/2004 ON INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS – TYPICAL ADMINISTRATIVE ACTS

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Abstract
The administrative law`s formation as a distinctive branch of law has been generated by the necessity to organize the complex activity of the public administration, the social relations within this sphere being, therefore, regulated also in relation to other branches of public and private law. Except for the well-known inner connection between the contravention and criminal matters from the perspective of the guarantees provided to the individuals, the administrative law is highly connected to other branches of public law, such as criminal executional law, as we will present further. The current paper aims to present the peculiarities of the surrender procedure based on a European arrest warrant from the perspective of the issuing of administrative acts that can be subject to the control of lawfulness before the contentious administrative Court.

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THE LAW ON METROPOLITAN AREAS, THE INTENTION OF THE LEGISLATOR TO REGULATE ONE OF THE FORMS OF ASSOCIATION OF LOCAL COMMUNITIES

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Abstract

The forms of association of local communities are the intercommunity development association and the metropolitan area. These two forms of association of local communities can be formed into private entities of public interest. In contrast to inter-community development associations, metropolitan areas may have a limited territorial jurisdiction of up to 30 km compared to the county municipality where they can be established. In addition, according to the normative acts in force, metropolitan zones can only be established around municipalities of county or municipalities declared. Although the legislator wished for a difference between intercommunity development associations and metropolitan areas, even though there was no express text of the law that could be applied for differentiation, local public authorities understood to establish metropolitan areas in the same way as inter-community development associations. Realizing that the metropolitan area can be used to determine financial and social growth within the communities that compose it, the legislator, through the relevant ministry, published on its virtual page, on March 8, for public consultation, on the Metropolitan areas Law, wishing to know the position of the citizens in relation to the changes they wish to make in relation to this form of association of local communities. In the present study, we analyze the provisions of the draft law on metropolitan areas quantitatively, showing what essential changes are to be made within this form of association of local communities if the law is to be promulgated, what are the financial and social benefits for the local communities that make up a metropolitan area and what changes could be made to the draft normative act. For the administrative-territorial organization of the Romanian state, the legislation on metropolitan areas represented a step toward a modern administrative-territorial organization of European type, respecting the principle of subsidiarity more than it is currently respected.