



INTERNATIONAL CONFERENCE:
“CONTEMPORARY CHALLENGES IN
ADMINISTRATIVE LAW FROM AN
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Section I.

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

Friday, October 9, 2020

Online on Zoom

Keynote speakers:

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

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

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SCIENTIFIC PAPERS

CURRENT ISSUES OF THE PUBLIC SERVICE AND ADMINISTRATION. THEORETICAL BASES AND EXPERIENCE IN THE CZECH REPUBLIC

Associate Professor Zdenek FIALA
Police Academy of the Czech Republic
Associate Professor Olga SOVOVA
Police Academy of the Czech Republic

Abstract

In the introductory remarks, the paper highlights the shared past of the central European countries and the most important historical moments for the development of the public administration. Further, the paper points out various theoretical approaches to the definition of the term public service, public administration and its classification concerning the academic background in the Czech Republic. Subsequently, the primary public service legislation in the Czech Republic is referred out. On this basis, public service and administration challenges and issues are formulated. The authors approach the concept of public service in a broader sense, focusing on public service in general, service of the state officials, officials of territorial self-governing municipality units, as well as public services provided by the private sector. The paper examines the new role of the public administration in the global health and public services crisis. The authors evaluate the possibilities of the new governance methods for re-directing the public service and administration to the new role of the crisis and post-crisis managers.

LEGAL FRAMEWORK FOR CITIZEN PARTICIPATION IN DECISION MAKING PROCESSES AT THE LOCAL LEVEL - THE CONTEXT OF KOSOVO

Lecturer Avni ALIDEMAJ
International Business College of Mitrovica, Kosovo

Abstract

Public participation is essential to the promotion of democratic governance, the rule of law, social inclusion and economic development, including the fulfillment of human rights. Each country should create the legal framework for giving effect to the right to participate in public affairs by ratifying relevant international and regional treaties and incorporated them in national laws, policies and practices in order to ensure that equal right to participate in public affairs is recognized and protected within national legal framework. Despite being a fairly young democracy, Kosovo has a progressive legal framework. It has been developed with a strong support of the international community whereby majority of international instruments are incorporated within constitutional provisions and numerous positive laws. Consequently, the right to participate is entrenched in constitutional provisions, laws and bylaws of Kosovo. This paper explains the efforts undertaken in Kosovo to increase the participation of citizens in decision-making process using: normative legal method and qualitative method, by focusing on the specific analysis of the legal framework for citizen participation by comparing it with established practices which are often in conflict with the legal basis as a result of interference by political institutions.

SOCIAL LICENSE AND ADMINISTRATIVE LAW: A CHALLENGE OF RENEWABLES

Professor Oleg Zaichuk
*Vasyl Stefanyk Precarpatian University,
Educational-Scientific Institute of Law, Kyiv, Ukraine*
Student Yuri ZAICHUCK
*Vasyl Stefanyk Precarpatian University,
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Abstract

The goal of the European Green Deal to convert the EU into a climate neutral economy presents an opportunity for administrative law across the EU to develop a coherent approach toward a large scale deployment of renewables. Due to their physical attributes, modern renewables create a number of obstacles for their wide scale deployment. The purpose of the paper is to investigate whether a top-down approach to creating a homogeneous streamlined approach to the development of the renewables-oriented set of administrative regulations across the EU is likely to facilitate the goal of the European Green Deal or, alternatively, the introduction of renewables should be left for individual EU countries to pursue at their own comfortable speed. The paper uses a comparative legal analysis by looking into a similar regulatory approach which has been tried in Canada. The paper concluded that a unification of the EU-wide administrative renewables' placement regulations, if attempted, should be sufficiently slow and well-structured not to disturb a fragile balance between a need to expand the use of renewables and the right of local communities' to accept their deployment at their comfortable speed.



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**OF INTERNATIONAL ADMINISTRATIVE LAW AND OTHER DEMONS. A VENTURE IN A “DELIMITING
LAW”**

Associate professor JAKUB HANDRLICA
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Abstract

In scholarship, it was argued for existence of an "international administrative law" (internationales Verwaltungsrecht, diritto amministrativo internazionale, droit administratif international) as a special branch of municipal administrative law. Under this understanding, international administrative law constitutes a special (sub)discipline, providing for norms governing administrative relations with a foreign element. However, this concept wasn't overall accepted in the scholarship of administrative law and some authors have argued, international administrative law represents more a field of emerging study, than an established legal discipline. This article aims to discuss thorny issues of the concept and summarise dogmatic considerations, expressed vis-à-vis international administrative law in the scholarship. At the same time, this article aims to settle these dogmatical considerations and to present international administrative law as a "delimiting law", constituting a part of both substantive and procedural administrative law. Lastly, this article argues, that the parallel emergence of international administrative law in several jurisdictions echoes existence of this field as a part of an (administrative) ius commune.

**CHALLENGES OF CONSTITUTIONAL JUDICIAL CONTROL OF THE DELEGATED LEGISLATIVE POWER
DURING THE COVID-19 PANDEMIC IN THE LIGHT OF INTERNATIONAL STANDARDS: THE CASE OF
NORTH MACEDONIA**

Professor Jeton SHASIVARI
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Tetova, Republic of North Macedonia
Associate professor Bekim NUHJA
Faculty of Law-South East European University,
Tetova, Republic of North Macedonia

Abstract

In order to effectively prevent the COVID-19 Pandemic, for the first time in the history of the Republic of North Macedonia by decision of the President of the Republic on March 18, 2020, a state of emergency was established, which in addition to intensified measures to protect public health, also implied the introduction of a special legal regime whose basic characteristics are: deviation from the constitutional principle of separation of powers and taking over by the Government of legislative powers and the opportunity to limit basic human rights and freedoms and to take intervention measures by the executive power in economics, education, labor relations, and other spheres of social life. In this regard, the declaration of a state of emergency has activated the constitutional authority of the Government to perform its legislative function. Unlike other constitutions that regulate in more detail the powers of the Government, parliamentary control, enactment of decrees with the force of law and other regulations, as well as the restriction of human rights in a state of emergency, the Constitution of North Macedonia does not contain special provisions on the government powers, except enacting decrees with the force of law. Due to such a constitutional gap, the question remains whether such regulations remain in the legal system even after the state of emergency ceases. The Constitution of North Macedonia only stipulates that the authorization of the Government to adopt decrees with the force of law lasts until the end of the state of emergency, which is decided by the Parliament, without considering the situation when the state of emergency is declared not by the decision of Parliament but by the decision of the President of the Republic. With this paper authors by explaining the principle of the Rule of Law as a generally accepted International and European standard in such situations, using: normative legal method, comparative legal method, intentional, systematic and objective interpretive methods, will focus on the specific analysis of the judicial control of decrees with the force of law by the Constitutional Court of North Macedonia, in terms of, to what extent the principle of proportionality was respected in the adoption of such decrees which derogated existing laws in order to protect the public health of citizens.

**THE GENESIS OF ISLAMIC EXTREMISM IN
THE WESTERN BALKAN**

Associate professor Kole KRASNIQI
University of Peja, Kosovo

Abstract

After the annexation of Bosnia and Herzegovina by the Austro-Hungarian Forces in 1908, the Serbians focused their attention on expanding their territory towards Kosovo and Macedonia. During this year, young Turks tried to encourage the Islamic population of Bosnia to migrate to the territory of Kosovo and northern Macedonia as a Turkish population. So, the Young Turks began to use Islamic religion for its geostrategic interests in the Balkans. During 1908, efforts were made to organize an anti-Ottoman uprising in Kosovo. Observing these efforts and the beginnings of the unification of the Albanian population, despite their religious differences, in 1909, the Serbian consul in Prishtina had informed his government in Belgrade that "as soon as I came here I saw that it is necessary to inflict a conflict between Muslim and Catholic Albanians". For this purpose, he engaged the Serbian national Andra Savić from Gjakova, who committed on the night of Bajram of 1908, the slaughtering and cutting off of pig heads in some mosques in various villages and cities mixed with Albanian Catholic and Muslim population.



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THE FORMATION OF THE RADICAL ISLAMIST MOVEMENTS IN THE WESTERN BALKAN

Associate professor Kole KRASNIQI
University of Peja, Kosovo

Abstract

Since the end of the war in Bosnia and Herzegovina and Kosovo, various demands and ideas have been presented to form an Islamic movement or political party in the Western Balkan. The need for the establishment of such a political entity was also reviewed in the magazine of the Islamic Community of Kosovo "Takvim". According to these ideas and demands, so far, in Kosovo, some Islamist political subjects have been established, aiming to change the new democratic power that was established with the help of international community in Kosovo, with the intention of establishing an Islamic power and acting according to the laws of Shari'ah and the model of contemporary Islamic states. So, the following Islamist political organizations have been founded during the last years on top of the large number of Islamist NGOs and humanitarian associations operating mostly as branches of Turkish-Arabian organizations in the Western Balkan.

**FREE COMPETITION IN EU: UN EXPLORATORY STUDY ABOUT TAX BENEFITS TO FOREIGN
INVESTMENT AS A DISTORTION MEASURE OF FREE COMPETITION**

Associate professor Maria do Rosário ANJOS
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Lusófona University of Porto, Portugal*
Associate professor Maria João MIMOSO
*IJP - Portucalense Institute of Legal Studies
University Portucalense, Portugal*

Abstract

This is an exploratory and comparative study about the political and institutional constraints of tax harmonization in EU and its effect on free competition. Objectives: to explore and compare the different tax systems in EU members, in order to answer three questions: there are or not a disloyal competition resulted from the differences in tax between EU countries? Which is the impact in foreign investment in EU countries? Why EU don't have more tax harmonization in order to fight against tax disloyal competition between members States? Methodology: we used the comparative study about income taxes in several EU countries and the relation to GDP, as well the deductive method to analyse the results we find and some reference studies on the subject. Results: the principal reason for less tax harmonization is the great advantages for the biggest and strongest economies in EU. Secondary, they did and still do use the tax system for introduce a new way of disloyal and dissimulated competition between countries members. European governments don't want tax harmonization. Some of them has used tax benefits to catch more foreign investment, economic growth and avoid an effective free commercial competition.

**CONSTITUTIONAL/JUDICIAL RESISTANCE TO EUROPEAN LAW IN ICELAND. SOVEREIGNTY AND
CONSTITUTIONAL IDENTITY VS. ACCESS TO JUSTICE UNDER THE EEA AGREEMENT**

Professor M. Elvira MENDEZ-PINEDO
University of Iceland

Abstract

In the context of occasional constitutional resistance to international and European Union (EU) law in other countries, we find a similar tension in Iceland vis-à-vis the European Economic Area (EEA) Agreement and the Icelandic constitutional/statutory domestic system (EEA Act 2/1993). The authority and effectiveness of EEA law seem disregarded with negative consequences for the judicial protection of individual rights. The EFTA Surveillance Authority (ESA) sent official letters to Iceland in 2015, 2016 and 2017. In its view, in too many recent cases, the Supreme Court has discarded and set aside validly implemented EEA law in order to give precedence to conflicting Icelandic law. In some cases, individuals have no proper remedy to exercise their European rights (State liability for judicial breaches of EEA law not admissible). It is uncertain at this time whether actions for infringement of EEA law will be brought by ESA to the EFTA Court. This study reviews this sort of judicial, legislative and/or constitutional resistance to EEA law in Iceland and argues that the use of concepts such as sovereignty (public international law) and constitutional identity (EU law) can never justify the denial of access to justice and effective judicial protection under the EEA Agreement.



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ADMINISTRATIVE LAW CHALLENGES OF THE POST-CLEARANCE AUDIT IN SERBIA

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Abstract

Most of the imported/exported goods is not controlled at the border by the customs authorities. This enables fast release of the goods and better functioning of international trade. The backbone of this system is made of customs declarations filed by the importers/exporters, selective border control based on the risk assessment and the post-clearance audit (PCA) of the accepted customs declarations. This paper deals with the questionable practice of the Serbian Customs Administration with regard to the conduct of PCA. Particularly, its relation with the Law on General Administrative Procedure and the issues related to the classification of goods within the customs tariff. The author identifies four major issues with regard to the regulation and implementation of PCA in Serbia: 1) the Customs Administration does not publish its internal acts, used for interpretation of the Customs Tariff; 2) it changes its interpretations and does not take responsibility for the change; 3) it fails to use legal remedies prescribed by the pertinent regulations; 4) the time limit for conducting PCA is inadequately set. Additionally, the author contests the (internationally recognized) practice of changing the classification of goods in accepted customs declarations. The author proposes possible solutions for mentioned challenges.

**INTERNATIONAL TREATY AS A SOURCE OF FINANCIAL LAW
IN UKRAINE**

Professor Yuriy ONISCHYK
Academy of Labour, Social Relations and Tourism, Ukraine
Professor Olena MAIDANNYK
Academy of Labour, Social Relations and Tourism, Ukraine
Associate professor Yaroslav ZHURAVEL
Academy of Labour, Social Relations and Tourism, Ukraine
Senior researcher Pavlo SELEZEN
University of State Fiscal Service of Ukraine, Ukraine

Abstract

Double taxation agreement is one of the most widespread type of international treaty regulating financial relations. The efficiency of its application as a source of financial law depends on the features of the legal basis for implementation of its provisions into domestic legal orders of contracting states. Based on the practice of Ukraine, there is an attempt to describe key challenges in application of provisions of international treaties in the context of the requirements of the Tax Code of Ukraine based on the application of comparative method: 1) the legal status of double taxation treaties of Ukraine that are still in effect based on the fact of legal succession of Ukraine; 2) the legal status of protocols to international treaties concluded between competent authorities of contracting states; 3) the legal status of mutual agreements concluded on the basis of the provisions of double taxation treaties.

**REGULATORY FRAMEWORK OF ADMINISTRATIVE LAWS FOR RATIONAL UTILISATION OF NATURAL
RESOURCE IN INDIA WITH REFERENCE TO IMPACT ON ENVIRONMENT AND CLIMATE CHANGE**

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

Abstract

Minerals are substances that are formed naturally in the Earth. Minerals are solid, inorganic, non-renewable, limited natural resources and are important raw material used in the core sectors of the economy. In India, there is a huge deposit of several types of mineral resources. Mineral industry plays a vital role in India. The extraction of minerals from nature leads to global warming and often creates imbalance which adversely affect wildlife, fishery, climate, rainfall and ecology. Climate change presents a complex challenge for India, which is reflected in its evolving set of climate change laws and policies. The government has adopted various initiatives to comply with the Kyoto Protocol. The central national initiative on climate change is the National Action Plan on Climate Change. Action under NAPCC is premised on the principle of sustainable development, which for the purposes of climate change means achieving growth while at the same time minimizing greenhouse gas emissions.



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**ADMINISTRATIVE PROCEDURE AS A KEY FACTOR IN DEVELOPMENT OF CONTROL OVER
ADMINISTRATIVE POWER - A EUROPEAN PERSPECTIVE**

Assistant professor Robert SIUCIŃSKI

Faculty of Law and Administration, University of Lodz, Poland

Abstract

European Parliament resolution of 9 June 2016 and ReNEUAL Model Rules on EU Administrative Procedure constitute two attempts to answer to the lack of transparency and protection of citizens rights in decision-making process before administrative bodies. Despite that, EU still has not adopted a legally binding act regulating administrative proceedings before its all authorities. The key for understanding this situation is a constitutional shape of EU institutional system with Commission as the biggest administrative power which blocks legal initiative at that field. It brightly contrasts with a long tradition of codification of administrative procedure in the vast majority of member states. Furthermore, nowadays we have to deal with a new wave of codifications. That arrives not only to countries with well established achievements, but extends on those usually reluctant to that kind of provisions. The analysis of factors which led to current state of affairs requires therefore the extensive use of comparative and historical method. However, the results of research can have a crucial importance for understanding of EU administration and may be used in future for amelioration of procedural law.

**SELECTED CHALLENGES ASSOCIATED WITH THE RELIANCE ON CUSTOMER DUE DILIGENCE
MEASURES TO CURB MONEY LAUNDERING IN SOUTH AFRICA**

Professor Howard CHITIMIRA

Faculty of Law, North-West University, South Africa

Master student Sharon MUNEDZI

Faculty of Law, North-West University, South Africa

Abstract

Customer due diligence is a means of ensuring that financial institutions know their customers well through know your customer (KYC) tools and related measures. Notably, customer due diligence measures include identification and verification of customer identity, keeping records of transactions concluded between a customer and the financial institution, ongoing monitoring of customer account activities, reporting unusual and suspicious transactions and risk assessment programmes. Accordingly, financial institutions should ensure that their customers are risk assessed before concluding any transactions with them. The regulation of money laundering is crucial to the economic growth of many countries, including South Africa. However, there are still numerous challenges affecting the banks and other role-players' reliance on customer due diligence measures to combat money laundering in South Africa. The challenges include the failure to meet the identification and verification requirements by some South African citizens, onerous documentation requirements giving rise to other persons being denied access to the formal financial sector and the lack of express provisions to regulate the informal financial sector in South Africa. Given this background, the article discusses the challenges associated with the regulation and implementation of customer due diligence measures to enhance the combating of money laundering in South Africa.

**ATYPICAL ADMINISTRATIVE ACTS – THE SILENCE OF THE ADMINISTRATION AND THE ABSENCE OF
THE ADMINISTRATIVE ACT**

Professor Dr. Habil. Iulian NEDELCU

“Andrei Rădulescu” Institute of Legal Research – Romanian Academy

Abstract

The normative acts from the last period confirm the thesis according to which the silence of the administration signifies a tacit authorization. The doctrine expresses also the opinion according to which the refusal to settle, that is the unjustified refusal, and the silence of the administration would have the meaning only of “facts assimilated to administrative acts”. According to Law 554/2004 on administrative litigations, the concept of administrative act is extended compared to its ordinary meaning; within this concept, next to the unilateral express manifestation of will (the typical administrative act), the law introduces also the silence of the administration, respectively the unjustified refusal (the atypical administrative acts). It should be noted that not all refusals to solve a request according to the petitioner's will can be qualified as an unjustified refusal, but only when the refusal is an abuse, meaning in fact the excess of power of the administration over the person requesting the satisfaction of a legitimate interest. In administrative law, there have been discussions about the admission or not of the theory of absolute and relative nullities; the admission or not of the theory of annulment; the admission or not of the theory of non-existence and the relationship between nullity and revocability.



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**THE INSTITUTION OF SOCIAL ENTREPRENEURSHIP AND CONFLICT OF INTEREST ACCORDING TO
REGULATION (EU) 2019/819. CONSIDERATIONS REGARDING THE MEASUREMENT OF SOCIAL IMPACT**

PhD. Adela SAFTA

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Student Lavinia POPESCU

Bucharest University of Economic Studies, Romania

Abstract

Social entrepreneurship institution from the perspective of Regulation (EU) no. 346/2013 of the European Parliament and of the Council of 17 April 2013 on the European Social Entrepreneurship Funds reaffirmed by the importance of the need to supplement Regulation (EU) no. 346/2013 of the European Parliament and of the Council regarding conflicts of interests, measuring the social impact and informing investors in the field of European social entrepreneurship funds. Naturally, the measures aimed to protect the interests of the eligible social entrepreneurship fund or its investors, in which case the managers of the eligible social entrepreneurship funds should take the additional measures necessary to protect these interests. Those measures should include informing the senior management or other competent internal body of the eligible social entrepreneurship fund and making the decisions or taking the necessary actions to act in the best interest of the eligible social entrepreneurship fund or its investors. Administrators of eligible social entrepreneurship funds should adopt procedures and measures to ensure that the persons involved in such commercial activities carry out the respective activities in the best interest of the eligible social entrepreneurship funds and of the investors in these funds. In order to achieve a harmonized level of investor protection in the Union and to enable the respective administrators to adopt and follow a consistent and effective practice to prevent, monitor and manage conflicts of interest, a minimum set of measures in their conflict of interest policy. In order to avoid unnecessary administrative burdens, while ensuring an adequate level of investor protection, conflict of interest policies should be tailored to the nature, size and complexity of the administrators' activities. However, the procedures and measures provided for in conflict of interest policies may be insufficient. In order to prevent conflicts of interest and to ensure that the voting rights of the respective administrators are exercised both for the benefit of the eligible social entrepreneurship fund concerned and of its investors, it is necessary to specify the detailed requirements regarding the exercise of those respective voting rights. The importance of ensuring the legal security of the rights as well as the obligations of the managers of the entrepreneurship funds and their active role in the management of the companies in which they invest the eligible social entrepreneurship funds, are the ones that we will approach in the following.

IMPLEMENTING QUALITY MANAGEMENT IN PUBLIC ADMINISTRATION

Assistant professor Alexandra IANCU

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Abstract

The increasing needs of citizens, their requirements in terms of the quality of services received, as well as the increase in the number of enterprises providing services to the community have led to pressures on public organizations to plan their activities in order to provide quality services to citizens. The implementation of a quality management system in public organizations has the objective of reducing administrative costs, increasing the level of customer satisfaction, which in this case are citizens, reducing bureaucracy, rational utilization of the organization's resources, increasing the transparency of the administrative act and implicitly increasing the quality of services provided by the administration. In public administration, the introduction of a total quality management system is based on the following arguments: - Cost reduction: Effective use of the organization's resources contributes to the gradual development of the institution and to the satisfaction of a larger number of clients in the shortest possible time. - Increased revenue: satisfied users will tend to use the service they are satisfied with. - Increasing productivity: Quality assurance increases productivity, decreases the number of errors, and resources are used efficiently. - Improving the image: The image of the organization is better as the service provided is better for citizens' needs. Public recognition through awarding awards and certificates greatly improves the image of the institution. - Increasing competitiveness: it is driven by some cost reductions, while promoting better image among citizens (customers). We can recall examples of public services: health, education, social security, police. Nowadays, more and more people are turning to private businesses to benefit from the aforementioned services. - Improving the environment in which the civil service operates. - Proactive posture: Better planning canals the effort to solve major issues and does not waste it on repairing errors that may occur.

**CONSIDERATIONS ON THE ADMISSIBILITY OF THE ENFORCEMENT APPEAL REQUESTING THE
REDUCTION OR ELIMINATION OF THE PENALTIES ESTABLISHED FOR THE NON-ENFORCEMENT OF A
COURT DECISION PRONOUNCED IN THE MATTER OF ADMINISTRATIVE LITIGATION, UNDER ART. 24.
PARA. (4) OF LAW NO. 554/2004**

Lecturer Nicolae-Horia ȚIȚ

Faculty of Law, „Alexandru Ioan Cuza” University of Iași, Romania

Abstract

The study analyses the admissibility of the enforcement appeal formulated pursuant to art. 906 para. (5) C. pr. civ., in case there have been established penalties for the non-execution in due time of a decision pronounced in the matter administrative litigation, based on art. 24 para. (4) of the Law no. 554/2004. Herein are analysed the common law provisions comprised in the Code of Civil Procedure, their compatibility with the special procedure regulated by art. 24 of the Law no. 554/2004 and the relevant elements of distinction for formulating the conclusions are being highlighted. Arguments from the jurisprudence of the High



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Court of Cassation and Justice and the Constitutional Court, as well as the opinions expressed in the doctrine, both in civil procedural law and in administrative law, are used for the purpose of the analysis. The conclusions of the study also highlight the manner in which the current regulation could be improved, through *de lege ferenda* proposals.

**THE RIGHT TO INFORMATION AND CONSULTATION OF CIVIL SERVANTS AND CONTRACTUAL STAFF
OF PUBLIC AUTHORITIES AND INSTITUTIONS IN THE COLLECTIVE DISMISSAL PROCEDURE**

PhD. student Maria Violeta DUCA
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Abstract

The paper analyzes the right to information and consultation of civil servants and contract staff within public authorities and institutions in the collective redundancy procedure, in view of the requirements of Article 11 on the right to organize and Article 14 on the prohibition of discrimination in the European Convention on Human Rights. Considering that this category of personnel was expressly exempted by the provisions of art. 74 para. (5) The Labor Code of the protection mechanism for workers affected by collective redundancies, the research seeks to identify whether, in domestic law, other special primary regulations provide for the right to information and consultation of employees of public authorities and institutions affected by collective redundancies. The study shows that the legislative protection mechanisms for this category of workers do not provide for a specific right of workers' representatives to be informed and consulted in the collective redundancy procedure. Given the evolution of the jurisprudence of the European Court of Human Rights, the paper highlights the need for a reflection on the right to information and consultation of employees in the collective redundancy procedure which can not be excluded from the content of the right to trade union without strong and convincing arguments. to support the proportionality test.

**THE COMMUNICATION OF ADMINISTRATIVE DECISIONS AND THE COURSE OF THE TIME LIMITS FOR
CHALLENGING THEM. COMPARATIVE LAW SOLUTIONS AND PERSPECTIVES OF EVOLUTION IN
ROMANIAN LAW**

PhD. student Nicolae-Alexandru CESLEA
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Abstract

The paper considers the mechanism of communicating administrative decisions in relation with the consequence over the course of the time limits for contesting them. The study begins with an analysis of the solutions found in comparative law and continues with the national perspective that includes a vertical approach, analyzing the normative versions of the last 30 years and those of today, as well as a horizontal approach, within the existing system in the current regulation. In the latter case, we target the provisions on the communication of administrative decisions to the beneficiary in relation to those on the communication to the third party, the regulation on the establishment of minimum and maximum time limits and the form that the communication must take to trigger the contestation time limits.

**THEORETICAL ASPECTS REGARDING THE ACTS EXEMPTED FROM CONTROL IN THE
ADMINISTRATIVE CONTENTIOUS. NOTIONS CONCERNING THE ACTS OF COMMAND
OF MILITARY CHARACTER**

PhD. student Dumitru Ștefan COMAN
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Abstract

In order to be in the presence of an act from this category, it must be about an act coming from a military authority (chief of the state, minister of defense, military commands, army corps, divisions etc.). Such acts cannot be issued by the civilian authorities, and also by the military authorities who because of their nature or purpose, they aren't commands. The complexity of the military activities and the importance of fulfilling the army's mission, by and large, it has been projecting during time a certain position the legislative body has been having regarding the notion of act of military command with military character, and especially concerning the intervention of the judicial power in the military decisional process. The law of the administrative contentious no. 544/2004 it preserves the same formulation present both in the Law no. 29/1990 and in the Law of the administrative contentious from the year 1925, the notion of "act of command with military character" which had been used for the first time, in the Romanian legal system in the article no. 107, final paragraph of the Constitution from the year 1923. The classification of a concrete administrative act in the sphere of the acts of command with military character it remains a question of court's appreciation, but this appreciation has to be done also from the point of view of the science of the public law.



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**SOME REFLECTIONS ON THE THE DEMARCATION BETWEEN THE NOTION OF INTEREST, IN THE
SENSE OF CONDITION FOR THE EXERCISE OF LEGAL ACTION, AND THE CONCEPT OF LEGITIMATE
INTEREST, AS DEFINED BY THE LAW ON ADMINISTRATIVE DISPUTES NO. 554/2004**

Assistant professor Raluca Laura DORNEAN PĂUNESCU
Faculty of Law, West University of Timișoara, Romania

Abstract

The present study aims to disseminate the appropriate distinction between subjective right and the legitimate interest in administrative litigation, a topic currently studied in a tangential way, under the aegis of the doctrinal custom of administrative law, as well as the demarcation between the notion of interest, in the sense of the condition for the exercise of legal action, and the concept of legitimate interest, as defined by the Law on Administrative Disputes No. 554/2004. The deepening of the study tends to use various research methods to achieve the proposed research objectives, such as the historical method, as it highlights the analysis of evolution over time, by presenting the legislative regulation, the comparative method, because interdisciplinary aspects are presented, the logical method, which tends to outline a more rigorous legislative exposition, the critical method, in order to present the opposing approaches and opinions supported in the doctrine, as well as the systemic method, which tends to bring scientific research a cardinal importance through contributing aspects of research. The novelty in relation to the existing doctrinal research lies in treating the study of this issue from the perspective of civil procedural law, taking into account the importance of interdisciplinary approach to the subject, meaning that the author understands to make important references about the general condition of exercising an action, respectively the justification of an interest.

**PRACTICAL ASPECTS AIMING AT THE REPRESENTATION OF THE TERRITORIAL ADMINISTRATIVE
UNIT IN THERMAL ENERGY SUPPLY CONTRACTS**

Associate professor Sandra Felicia GRĂDINARU
„Alexandru Ioan Cuza” University of Iași, Romania

Abstract

The issue analyzed in this paper refers to the mandate given by the territorial administrative unit of Iași to a company with state capital. This mandated company has as object of activity the administration of condominiums. The mandate was conferred by a Local Council Decision by which the administrator (agent) could sign contracts with public service providers on behalf of the administrative-territorial unit. Beyond the fact that the limits of the mandate were expressed by Local Council Decision, and the specialized literature and judicial practice is the majority in appreciating that this local council decision can be equivalent to a mandate given by the territorial administrative unit for the condominium administrator to conclude contracts. with suppliers, we aim to analyze a distinct judicial practice. By Sentence no. 6882/17.08.2020 The Iași Court decided that the mandate given to the condominium administrator is not an express one, and in the local council decision it is mentioned that the administrator will conclude the contracts with the suppliers in his own name. For this reason, the court considered the mandate given to the administrator to be inefficient. During the paper we will demonstrate the judicial error of the court because the phrase "in its own name" found in the local council decision can be assessed only in the sense that the administrator will represent the territorial administrative unit when concluding contracts for public utilities. The interpretation of the court is wrong because it claims that the territorial administrative unit mandated a company with state capital to conclude contracts with suppliers in its own name. Obviously, the mandate was given to the administrator to conclude the contracts for the provision of public utilities on behalf of the territorial administrative unit.

**PARTICULARITIES OF THE ADMINISTRATIVE OVERSIGHT IN THE CONTEXT OF THE EXERCISE BY
THE PREFECT OF THE ACTION FOR ANNULMENT BASED ON THE PROVISIONS OF LAW NO. 554/2004
AND THE ADMINISTRATIVE CODE**

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Abstract

The present research aims to carry out a complete and objective analysis of the institution of administrative oversight following in particular the observation and study of the action for annulment formulated by the commissioner. The first objective of the study is to present the relevant legislation on administrative protection as well as to observe the main legislative changes that have had an impact on the research topic. The second objective aims at making a short presentation of the commissioner's institution, based on which it is possible to analyze particular procedural aspects such as the specificity of the standing to bring proceedings conferred by the law no. 554/2004. Given that this research aims to fully analyze the institution of administrative oversight, in this context could not omit the control of specialized oversight exercised by the National Agency of Civil Servants. Regarding the research methods used in this study, the deductive method was used, which involved theoretical documentation starting from the applicable normative material and the literature, as well as the inductive method, which involved the analysis of concrete situations existing in jurisprudence in order to observe various solutions. Regarding the implications of the study, it mainly aimed to analyze the functioning of administrative oversight in the context of legislative changes in both administrative and procedural legislation.



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**ADMINISTRATIVE REVIEW AND REFORM MOVEMENTS FROM THE PERSPECTIVE OF INTERNATIONAL
INVESTMENT LAW**

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Abstract

The study aims at the administrative implications generated by the regulation or non-regulation of the legislative ensemble with an impact in this field. The combination of these pieces in a legal mechanism or, better said, the assembly between international investment law and administrative law is a cascade of sources of legislation, jurisprudence and doctrine, trialism of great use for the evolution and reform of both areas of law, and for the realization of this study were required a coherent mix between transdisciplinary research methods, being used in this context, the methods: qualitative, comparative and quantitative. Taking into account these review movements, administrative law and administrative issues arising at almost all levels, including the institutional ones, are in front the manifestation of a particularly active role conferred by this unprecedented moment, in which states and investors must rely on a comprehensive legislation, in which to find complete regulations and harmonized with the international law of foreign investments.

**SOME REFLECTIONS ON LOCAL PUBLIC ENGAGEMENT PLATFORMS AS A NEW UNIVERSAL AND
DEMOCRATIC VACCINE**

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Abstract

In an international context of serious low trust between citizens and governments, the role of participatory platforms becomes crucial in the following years. Citizens consultation and participation in decision making especially at the local level must have a constant character and transform into a good practice providing new improved tool of two-way interactions. In this article, we explore and analyze the use of these platforms and other practices for local innovation in the European Union and US, underlining their main goals and activities which need to be implemented.

THE SOCIAL BODY CONCERNED AND ADMINISTRATIVE LITIGATION. THE STAGES OF A DISPUTE

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Abstract

The notion of social body is provided in the Romanian Constitution, in connection with the fulfilment of the Government's duties, and defined in Law no. 554/2004 of the administrative litigation. This category includes non-governmental structures, trade unions, associations, foundations and any other private legal person, the object of activity of which is the protection of the rights of different categories of citizens or, as the case may be, the proper operation of public administrative services. The law of administrative litigation assimilates the notion of social body to that of a person injured by a public authority by means of an administrative act or by the failure to settle a request within the legal term. Through the action drawn up, the social body may claim the damage of a legitimate public interest or of the legitimate rights and interests of certain natural persons. Considering these legal provisions in the doctrine and case law of administrative litigation, a long dispute has emerged regarding the category of litigation triggered by the action filed by the social body. In one case, it was considered that we are in the presence of an objective litigation, and therefore the social body can file the action on the basis of a damage to a legitimate public interest, without the possibility to claim damage compensation. In another case, representing the majority in both the doctrine and case law, it was stated that the action filed by the social body triggers a subjective litigation, and therefore the petitioner must justify the injury of a subjective right or of a legitimate private interest. The High Court of Cassation and Justice clarified this issue regarding the situation in which the subject of referral to the administrative litigation court is represented by an association. By Decision no. 8/2020, a second appeal was settled in the interest of the law, being established that an association, as social body concerned, can claim the legitimate public interest alternatively to the claiming of a legitimate private interest. The article analyses, from a critical perspective, the evolution of this controversy in relation to the main doctrinal approaches and to the tendencies of the case law in this matter.

**REFLECTIONS ON THE COMPARATIVE EVOLUTION OF CULTURAL HERITAGE REGULATIONS IN THE
ROMANIAN AND FRENCH LAW SYSTEM**

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Abstract

The legal protection of the cultural patrimony, natural or result of the human creation, mobile, immovable or intangible, represents a relatively new institution of law that has crystallized and has known a spectacular evolution in the last two centuries. Modern history shows us that the French legal system was a model of inspiration for the Romanian one, often followed closely. The various social, political and geographical circumstances that followed made the practices and



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solutions proposed and adopted in Paris to be followed to a greater or lesser extent by the authorities in Bucharest at various intervals. This study aims to bring to attention some of the main reference moments of this evolution and to reflect on the development perspectives of the legal protection of the cultural heritage in general and of the mobile one in particular.

**SOME CONSIDERATIONS REGARDING THE ADMISSIBILITY CONDITIONS OF THE EXCEPTION OF
ILLEGALITY. SPECIAL LOOK AT BI OR MULTILATERAL ACTS**

Lawyer Cosmin SOARE-FILATOV
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Abstract

The admissibility conditions of the exception of illegality are four in number and result from the content of the provisions of art. 4 of Law no. 554/2004 of the administrative contentious.

**SOME DISCUSSIONS REGARDING THE ESTABLISHMENT AND CHALLENGE OF FISCAL INSURANCE
MEASURES**

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Abstract

The precautionary measures represent means of preserving the patrimony of the taxpayers and, at the same time, of guaranteeing the execution by them of the fiscal obligations. Being used by the fiscal bodies and having an impact on the economic activity of the taxpayers, the precautionary measures present a special theoretical and practical interest. For this reason, the author aims to detect doctrinal and jurisprudential controversies in connection with certain procedural aspects regarding the establishment of precautionary measures, such as, for example, the hearing of the taxpayer under the conditions of art. 9 of the Fiscal Procedure Code, arguing its own opinion on the fulfillment by the fiscal body of this precondition that is limited to the taxpayer's right to be heard. The author also aims to highlight, from a critical perspective, the legislative inconsistencies, on the one hand, regarding the procedure for challenging the acts establishing and applying precautionary measures and, on the other hand, regarding the order of priority provided by law for the unavailability of the taxpayer's assets and income. At the same time, the author highlights the legislative inconsistencies in the matter of fiscal and criminal precautionary measures from the perspective of Decision no. 581/2019 pronounced by the Constitutional Court of Romania, as well as the practical implications of this non-correlation. Finally, capitalizing on these controversies, inconsistencies and legislative inconsistencies, the author formulates several proposals for de lege ferenda.

**IDENTIFYING THE RIGHT OF A PERSON AGGRIEVED BY A PUBLIC AUTHORITY IN THE CONSTITUTION
OF ROMANIA, IN THE CONSTITUTION OF REPUBLIC OF MOLDOVA AND IN COMPARATIVE LAW**

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Abstract

The current study aims to present selective aspects regarding the right of a person aggrieved by a public authority and the findings in the Constitution of Romania, in the Constitution of Republic of Moldova and in comparative law. The right of a person aggrieved by a public authority is regulated by the Article 52 of the Constitution of Romania. The right of a person aggrieved by a public authority in Romania ensures and protects the manifestations of will of the citizens in relation with the public authorities, as well as with other rights, freedoms and citizens' interests, thus ensuring a good administration of the state in favor of the citizens. The methods used in drawing up this study are: the comparative method, the historical method, the logical method, the sociological method and the quantitative method. The results of this research have highlighted the findings in the Constitution of Romania, in Constitution of Republic of Moldova and in comparative law about the right of a person aggrieved by a public authority.

ASPECTS OF FORENSIC TACTICS IN THE CASE OF LISTENING TO WITNESSES

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Abstract

The means of proof used in criminal cases differ depending on the content of the crime and the circumstances in which it was committed. Each test medium has its own administration procedures. So means of proof represent a legal category that designates the ways or operations by which the content of the evidence is discovered and valued under the law. The witness's statement, as a means of proof, has been known since ancient times, and can be considered the first means



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of proof used in judicial probation, because in the periods when those who were literate were few. Doctrine has long shown that witnesses are the "eyes and ears" of justice. The reports made by the witnesses, the criminal investigation or court bodies have acquired over time different names: testimonies, testimonial evidence, witness testimony, witness statements, etc. In the Romanian criminal process, in the current regulation made by the new Code of Criminal Procedure, Art. 97, this means of proof is called the statements of witnesses. The new Code of Criminal Procedure defines the notion of witness as the person who has knowledge of facts or factual circumstances that constitute the evidence in the criminal case, Art. 114. to obtain written evidence were witnesses.

CONSIDERATIONS REGARDING THE TERMINATION OF EMPLOYMENT OF CIVIL SERVANTS

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Abstract

According to art. 516 of the Administrative Code, the service report of the civil servant may cease a) *de jure*; b) by agreement of the parties, recorded in writing c) by dismissal from public office d) by dismissal from public office e) by resignation. Each of these modalities has certain peculiarities, related to the specifics of the civil service. In the present study, we will present the main aspects that outline the legal regime of the termination of the employment relationship of civil servants, following that from the analysis performed to formulate proposals of *de lege ferenda*.