INTERNATIONAL CONFERENCE:

CONTEMPORARY CHALLENGES IN ADMINISTRATIVE LAW FROM AN INTERDISCIPLINARY PERSPECTIV

- 6th Edition. May 19, 2023 -

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Section I.

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

Friday, May 19, 2023

Online on Zoom

Keynote speakers:

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

*Lecturer **Ovidiu MAICAN**, Faculty of Law, Bucharest University of Economic Studies*

*Associate professor PhD. habil. **Cătălin-Silviu SĂRARU**, Faculty of Law, Bucharest University of Economic Studies*

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

SCIENTIFIC PAPERS

10.00 - 11.00

LEGAL NATURE OF CONCESSIONAIRE AND PUBLIC – PRIVATE PARTNERSHIP CONTRACTS

Dr. Edmond AHMETI
Barleti University, Tirana, Albania
Dr. Elona BANO
Barleti University, Tirana, Albania

Abstract

This paper aims to analyze the legal nature of concessionaire and PPP contract in Albanian Legislation and through the perspective of European legislation analyzing mainly the legislation and doctrine in this area. The main hypotheses that this paper aims to address is related to the fact, if it is enough to categorize these kind of contracts with a hybrid status between the public (administrative) and private (civil) law, or being the fact that so many countries appellate more and more to concessionaire and PPP contracts is the momentum to create a separate law discipline as so many universities in France, USA, Japan do. Also this paper aims to make a comparative study of Albanian legislation in the area of concessionaire and PPP contracts with the European legislation being the fact that for Albania this is a new area, and is a considerable lake of doctrine and legal studies that analyze the specifics and characteristics of such kind of contracts, putting at the last instance not only the Albanian contractual authorities but also the national courts in difficulties of implementation and interpretation.

THE DISCRETIONARY POWER OF MEMBER STATES AND NATIONAL PUBLIC ADMINISTRATIONS IN ACCORDING THEIR CITIZENSHIP (IUS PECUNIAE)

Dr. Elona BANO
Barleti University, Tirana, Albania
Dr. Edmond AHMETI
Barleti University, Tirana, Albania

Abstract

The exercise of discretionary power by the administration when it performs regulatory or implementation tasks may be necessary, and sometimes politically expedient. It may, however, undermine business confidence and, more generally, citizens' allegiance to the political system. It is not therefore surprising that many governments are implementing policies for reducing or eliminating administrative discretion. Access to citizenship status is an important prerequisite for enjoying rights and privileges, such as migration and political rights, as well as for developing a sense of identity and belonging. Since the establishment of Union citizenship, all persons who are nationals or citizens of an EU Member State enjoy the status of EU citizenship, which confers on them a number of additional rights and privileges. However,

Member States retain full control over who can be recognized as a citizen. In the last years is also a phenomenon in which member states have proposed more liberal policies related to European citizenship acquisition based on the need to revive their economies and finances or also in order to attract more working forces due to their population which is aging quite fast. The objective of this study is to analyze the discretionary power of the administrative institutions and internal policies of member states in according their citizenship in relation to their obligations toward European Union mainly after February 2022.

The Role of Council of Europe Law and ECtHR Practice in the Protection of Refugee Rights

Yuliya M. Hryshyna
People's Deputy of Ukraine of the 9th convocation, Ukraine
Maryna Barsuk
Northern Commercial Court of Appeal 23, Ukraine
Ivan Y. Kaylo
Kononenko, Kaylo & Partners JSC, Ukraine
Volodymyr O. Havrylyuk
Prosecutor of the Zakarpattia region, Ukraine
Dmytro V. Tkachenko
Boryspil city and district court of the Kyiv region

Abstract

Despite the fact that international law is aimed at the settlement of any disputes through negotiations and litigation, and the principle of peaceful settlement of disputes is one of the fundamental principles of international law, there are still subjects of international law in the world who prefer the military way of dispute settlement and violate the fundamental principles of peaceful interstate relations. One of the most striking examples is the armed aggression of the Russian Federation against an independent European state — Ukraine. Russia not only violated the fundamental principles of international law, such as peaceful settlement of disputes, respect for the sovereignty of the state, etc. but also caused a huge number of human rights violations. As a result of the armed aggression, many Ukrainian citizens were forced to seek refuge abroad in European countries. Thus, the issue of legal regulation of the rights of refugees in Europe is relevant both for the European countries that accept and protect such refugees, and for the citizens of Ukraine who are forced to obtain such status. The author of the article paid special attention to the protection of refugees' rights within the framework of the Council of Europe law and the ECtHR case law, as these institutions are key to the protection of human rights in the European space. Thus, the study of the role of the Council of Europe and the ECtHR will provide an opportunity to understand the overall picture of refugee protection in the region. In general, the growth of annual migration volumes makes it necessary to pay special attention to this issue, especially in relation to forced migrants who are vulnerable and in need of protection by the host state. The purpose of this article is to explore the role and significance of the law of the Council of Europe, as well as the ECHR in the protection of the rights and freedoms of refugees in the European region, as well as the current issues faced by Ukrainian refugees in European countries. In addition, the article examines the fundamental approaches to the understanding of the concept of refugee in the theoretical and legal plane.

ENVIRONMENTAL LIABILITY. STUDY FOR A FUTURE AMENDMENT OF EUROPEAN LEGISLATION

Professor Cristina ARAGÃO SEIA
Law Faculty of Lusíada University in Oporto, Portugal
CEJEA - Centre for Legal, Economic and Environmental Studies

Abstract

The great challenge of this century is to figure out how we can achieve development, combat climate change, conserve wildlife, and protect our common resources, in global terms, while maintaining a balance between the environment and social and economic considerations. Environmental liability, conceived by the European Union and the Member States as an instrument of administrative law in substantial and sanctioning terms, is one of the preferred for protecting the environment and ensuring sustainable development. It is a new approach to the environment as an injured party, allowing the repair of pure ecological damage, and ensuring its prevention. Given the particular characteristics of environmental damage, namely the fact that the environment is a collective good and has no geographical limits, environmental liability must focus on a cross-cutting and transnational approach. A European environmental liability regime was adopted and entered into force about 15 years ago. This work aims to assess the current usefulness of that regime and the need for its possible modification, through a comparative and critical analysis of the options took by some of the Member States, particularly Portugal, and the data available in this matter, and suggest aspects in which the regime can be improved.

11.00 - 12.00

THE NEW TRENDS IN ADMINISTRATIVE DECISIONS IN PORTUGAL - THE SIMPLEX PROGRAM AND THE ADEQUATE PURSUIT OF PUBLIC INTEREST

Associate professor Raquel CARVALHO
Universidade Católica Portuguesa, Faculty of Law,
Research Centre for the Future of Law, Portugal

Abstract

The trend towards the acceleration and simplification of administrative procedures is not new in the Portuguese legal system. However, the globalization of economies, which need to be reconciled with the protection of multiple public interests, has been pushing the legislator to pursue this path. This paper proposes to analyse DL no. 11/2023, of February 10th, included in the simplex programme, which has introduced several simplification and acceleration changes in many legal systems, especially in the environmental field. This is a particularly complex area, which requires great care when implementing solutions that facilitate decision-making, at the serious risk of not adequately pursuing public interests. The preamble of this law clarifies that it " aims to initiate the simplification reform of existing licencing, through the elimination of licences, authorisations, acts, and dispensable or redundant procedures linked to the protection of environmental resources, simplifying the activities of companies without compromising environmental protection (...), the Public Administration focusing, particularly, on monitoring, co-

responsibility, and self-control by economic operators. Is simplification reconcilable with environmental public interests? Will it be sufficient, given the irreversibility of much ecological damage, to rely solely on monitoring and surveillance functions, leaving aside the preventive and precautionary functions?

THE ADMINISTRATIVE COURT SYSTEM AND ITS IMPACT ON ALBANIAN PRIVATE ENITITES

Lecturer Linert LIREZA
Head of Law Department, Faculty of Political Science and Law,
University Aleksander Moisiu, Durrës, Albania

Abstract

The establishment of Administrative Courts in Albania is an important step done in the justice system. The law on administrative courts approved by the Assembly was expected to strengthen the justice system of the country, improve access to justice for citizens and businesses, and facilitate faster procedural actions and trials. Administrative Courts decisions have a direct influence in creating an appropriate climate between public administration and private entities and solving with efficiency the disputes between them. This reform was considered as necessity with the sole purpose of creating a more peaceful climate for the progress of the reports between Public Administration and Private Entities. The purpose of this paper is to investigate the impact of administrative court on Albanian private entities. The Law on Administrative Courts has defined and directed the limits of judicial control over the legality of administrative actions towards three aspects: facts, time and discretionary power. The paper analyzes the activity of the Administrative Court and innovations of this law. Judicial control constitutes the strongest guarantee for individuals in their dealings with the administration in particular and with any public powers in general that their rights will be upheld. At the end, the paper presents the findings produced by survey data collected.

CURRENT ISSUES OF THE SERVICE RELATIONSHIP OF SECURITY FORCES MEMBERS IN THE COURT OF JUSTICE CASE LAW AND THE IMPACT ON PUBLIC SERVICE PRACTICE

Associate professor Zdenek FIALA
Police Academy of the Czech Republic
PhD. student Kristyna MLEZIVOVA
Police Academy of the Czech Republic
Associate professor Olga SOVOVA
Police Academy of the Czech Republic

Abstract

The paper examines selected decisions of the European Court of Justice concerning the dismissal from service of members of the security forces. The article focuses on members' health capacity loss. The paper also highlights related issues such as ordering and reimbursing overtime work and duty readiness. The paper points out how the European Court of Justice case law influences the decision-making activity of service officials in general. The Czech armed corps practice and case law exemplify research issues. The authors place the solution to individual questions in the broader context of legal regulation to enable a

more comprehensive understanding. The authors underline the critical attributes on which the service relationship of members of the security forces is conceptually built and controlled. Considering the most significant judgments of the European Court of Justice, the authors pond over the implementation of service relationship principles into European member states' legal and managerial practice. The authors examine the mentioned challenges through desk research and analyses of European and national legal legislation and case law. In conclusion, the authors evaluate the practical service needs of the security forces concerning the medical fitness of their members. Future legislation should consider the demands for physical fitness and psychological resilience, as well as the need for digital literacy of a public servant.

THE ENIGMA OF RECOGNITION OF ADMINISTRATIVE ACTS ISSUED BY NON-RECOGNISED REGIMES

Full professor Jakub HANDRLICA
Faculty of Law, Charles University, Czech Republic
Assistant professor Gabriela PROKOPOVÁ
Faculty of Law, Charles University, Czech Republic
Ph.D. candidate Liliija SERHIICHUK
Faculty of Law, Charles University, Czech Republic
Assistant professor Vladimír SHARP
Faculty of Law, Charles University, Czech Republic

Abstract

The emergence of several non-recognised regimes on the periphery of Europe implies a myriad of challenges in law. Despite an absence of international recognition for these regimes, they produce their own law and, at the same time, apply and enforce these laws within their territory. With regard to the application of the law, as established by these non-recognised regimes, the question of potential recognition arises. Will a driving licence, issued by the State Palestine, gain any legal effects in those States that haven't yet recognised Palestine as an independent entity? Is a university diploma, issued by the Abkhaz State University, recognised abroad, even though a recognition of Abkhazia is absent? Can a refugee demonstrate his identity by an official document, issued by the Lugansk or Donetsk Peoples Republics? This paper aims to offer a solution to answer these topical, albeit so far virtually unexplored, questions.

12.00 - 13.00

SIGNIFICANT INVESTMENT AND SCREENING OF FOREIGN INVESTMENT IN SLOVAKIA

Professor Ing. Ľubica BAJZÍKOVÁ
Faculty of Management, Comenius University in Bratislava, Slovak Republic
Professor JUDr. Daniela NOVÁČKOVÁ
Faculty of Management, Comenius University in Bratislava, Slovak Republic
JUDr. Jana VNUKOVÁ
Slovak Academy of Management in Bratislava

Abstract

A key priority at the moment is the definition of rules for a more sustainable and fair globalization, where investments and trade play an important role. The current economic environment faces challenges in order to promote social justice and environmental sustainability. The economic reality in Slovakia entails appropriate measures that are taken, including a stable macroeconomic policy, a non-discriminatory approach to commercial companies and prudent supervision of the investment activities of investors. A part of these measures taken in Slovakia include granting investors the status of "significant investment in the public interest" and the implementation of the regulation of the European Union on the screening of foreign direct investment into the Union. The benefit of this scientific study both for theory and practice is the analysis of EU legal acts that have an impact on the development of investment relations and on the formation of a common investment policy within the European economic area.

PUBLIC ADMINISTRATION AND ANIMALS

Full professor **Boris BAKOTA**
Faculty of Law, Josip Juraj Strossmayer University of Osijek, Croatia

Abstract

Humans and animals have co-existed throughout history. Animals were used for food, clothing, work, but Tobit's dog in Bible is probably one of first pets ever mentioned. Not just Bible, but other written documents show those relations, mainly concerning either selling animals or resolving damages incurred by animals or by human to someone's animal. Public administration played its role in trials towards animals and in conducting imposed sentences. Veterinarians have been providing inspections concerning animal health, food safety, etc. Lately, as our behaviour towards animals changed, public administration started providing protection for pets and later for abandoned and lost animals. The objective of this study is to show how relations drastically changed in less than 200 years. Previous legal documents concerning animal status and protection were analysed. The empirical research was conducted among 555 Croatian local self-government units. The results will show current situation vis-à-vis protection of abandoned and lost animals, and financial implications for local self-government units. Concluding remarks are based on survey results suggesting need for certain legal changes.

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MACEDONIAN STATE COMMISSION FOR PREVENTION OF CORRUPTION: CAN IT EFFECTIVELY CONTROL AND PREVENT CORRUPTION IN THE PUBLIC ADMINISTRATION?

Professor Ana PAVLOVSKA DANEVA
Faculty of Law "Iustinianus Primus"
Ss. Cyril and Methodius University in Skopje, North Macedonia
Assistant Konstantin BITRAKOV
Faculty of Law "Iustinianus Primus"
Ss. Cyril and Methodius University in Skopje, North Macedonia

Abstract

This paper deals with the core preventive anti-corruption authority in the Republic of North Macedonia (hereinafter: Macedonia), which is the State Commission for Prevention of Corruption (hereinafter: SCPC). The main research question is: can and does the SCPC effectively control the public administration as per its legal competencies and does it therefore prevent corruption successfully? The final objective is to provide critical observations in terms of the SCPC's functions, tasks, and powers, as well as its performance and the effects of its work, which would later allow for recommendations for improvement. In other words, the paper will indicate that a discrepancy exists. By law, the SCPC is the key authority for prevention of corruption in the public administration. In reality, the SCPC's successes are rather humble – the administrative corruption has hardly been eliminated. The content of the paper reflects its object and the idea behind it. It shall pay attention to the existing researches in terms of the prevalence of corruption in the Macedonian public administration (so that the national context is given), the role of the SCPC by law and its performances.

WHERE NEXT, LOCAL SELF-GOVERNMENTS?

Senior lecturer Ádám VARGA
Faculty of Law and Political Sciences, Pázmány Péter Catholic University, Hungary

Abstract

Local self-governments are faced with many challenges in the 21st century. Efficiency plays an increasingly important role in the functioning of public administrations everywhere, and one of the main tasks of public authorities is to provide a good service to citizens. Local communities also expect local self-government to carry out its tasks well. But local self-governance is not just about getting local tasks right; it also necessarily involves making local rules. And all this is carried out by democratically elected bodies. In this paper, I will examine the principles on which we need to look at local self-government if we are to find a place for it in 21st century democracy. I will seek answers to this question primarily by analysing and comparing different terms. In my view, the essence of local self-government cannot be sought in its decentralised nature alone, nor can it be treated as a purely efficiency issue. Local self-governments are also autonomous bodies which, in the principle of subsidiarity, also claim the right to carry out tasks that genuinely serve the local community.

13.00 - 14.00

DIALOGUES OF NATIONAL ADMINISTRATIVE LAW WITH INTERNATIONAL LAW

Associate professor Cristian CLIPA
Faculty of Law, West University of Timişoara, Romania
Lecturer Violeta STRATAN
Faculty of Law, West University of Timişoara, Romania

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.

COMPARATIVE ADMINISTRATIVE LAW. E-GOVERNANCE AND ADMINISTRATION BETWEEN POLITICAL ECONOMY AND ECONOMIC POLICY

Postdoctoral researcher Nicolae PANĂ
Bucharest University of Economic Studies, Romania

Abstract

This article is part of the author research work in the postdoctoral program of ASE Bucharest - Faculty of Law and focuses on the fact that political economy has been replaced by economic policies that support the implementation of participatory globalization. We want to emphasize the importance of economic policies based on economic-social balance both in developed EU countries and in developing countries. The general objective of the postdoctoral work and of this article is to develop a multidisciplinary and transversal study that highlights the role of public policies in government programs and the importance of their application in accordance with the real needs of society. At the same time, the study also includes a comparative analysis of the impact that certain projects had and the analysis of the different repercussions at European and national level in medium and long-term (policies regarding the granting of social benefits, the guaranteed minimum income, raising the retirement age, labor taxation of the AI systems etc.). The author used for this study the usual research methods, the empirical approach corroborated with the historical approach, which emphasized the practical relevance of theses proposed by well-known authors in the field. Among the results and implications, we mention the dissemination of

knowledge of the concepts and their analysis to the academic community and beyond, and the study can be useful in correcting/completing public policies that are not suited to the mentality of certain social layers, ethnic groups, or local/regional communities.

100 YEARS OF CONSTITUTIONAL REGULATION OF THE ROMANIAN ADMINISTRATIVE CONTENTIOUS

Associate profesor **Elena Emilia ȘTEFAN,**
„Nicolae Titulescu" University of Bucharest, Romania

Abstract

29 March 2023 will mark 100 years since the adoption of the Romanian Constitution of 1923. In our opinion, that moment had a great emotional charge for generations of patriotic Romanians who contributed to creating the framework suitable for the adoption of this Fundamental Act, those times when the wheel of history was full of unpredictability, after the First World War. The Constitution of 1923 meant a glorious moment for the administrative law: the constitutional regulation of the Romanian contentious administrative. From this point of view, the topic we propose is of present-day, this being a tribute year, but, at the same time, it is important because it proposes a leap in time, by analyzing the moment of the emergence of the contentious administrative in our country, by providing information for the experts in the legal field, but not only. Furthermore, the scope of this paperwork is to document and try to clarify if there was any normative act in force in our country, before the adoption of the Constitution of 1923, which made reference to the contentious administrative and what the respective document included. From this point of view, the structure of the paperwork proposes a number of three sections, in order to fulfill the scope of the research. The final part of the study consists of short conclusions that we have reached after analyzing the proposed topic.

ADMISSIBILITY OF THE INADMISSIBILITY OF THE REFERRAL REQUEST FOR PRELIMINARY QUESTIONS TO THE COURT OF JUSTICE OF THE EUROPEAN UNION - NATIONAL CASE-LAW VS. EUJC CASE-LAW

Professor Vasilica NEGRUȚ
„Dunarea de Jos" University of Galati, Romania
PhD. student Ionela Alina ZORZOANĂ
„Nicolae Titulescu" University of Bucharest, Romania

Abstract

The purpose of this study is to highlight the importance of the CJEU's referral with preliminary questions, but also to sound an alarm about the laxity with which some national courts allow such requests. We also wish to point out that more and more national courts tend to send requests for preliminary questions to the CJEU which actually appear to be asking for guidance from the Court on the national dispute and not for clarification or interpretation of the Treaties or European law. In order to achieve the objectives of this approach, using the comparative and logical method, we shall analyse the specific legislation, the relevant case law of the Court of Justice of the European Union as well as the practice of national courts. The starting point for the analysis shall be the provisions of Article 267 of the Treaty on the Functioning of the European Union, through which we shall analyse the conditions for the admissibility

of a reference for a preliminary ruling. We shall also highlight the importance of the role of the national court in analysing the usefulness of the referral to the CJEU, in relation to the subject matter of the dispute, as there is no obligation per se to refer. We have proposed this scientific approach as an observation of the superficiality with which national courts are increasingly granting requests for referral to the CJEU, without a rigorous analysis of both the express conditions of Article 267 TFEU and the usefulness of a possible response from the Court in the specific case.

14.00 - 15.00

THE IMPACT OF RULINGS RELATING TO QUESTIONS OF LAW ON ADMINISTRATIVE ACTS

Lecturer Anamaria GROZA
Faculty of Law, University of Craiova,
Judge at the Olt Tribunal, Romania

Abstract

To say of law that it is an evolving system is already a truism. The values of society change, and legal rules sooner or later align with the new directions of social development. Legal institutions interact and produce unexpected consequences at the time of their regulation. Such consequences affect the normative pyramid more or less widely, in relation to the level at which the transforming legal event took place. The normative pyramid is readjusting, and the validity of certain normative acts must be reassessed. Such an effect can be produced by the preliminary rulings on questions of law, pronounced by the High Court of Cassation and Justice. The following article presents an analysis of the validity of some normative administrative acts in the context of Decision no. 65/26.10.2020, pronounced by the HCCJ – The Panel for preliminary ruling on questions of law. Our research is descriptive and explanatory, and contains relevant case law. The purpose of the article is to analyze the solutions in case of a conflict between a preliminary ruling and an administrative act. The caducity of the administrative act can be one of them and it is especially entailed by the moment from which the preliminary rulings become binding erga-omnes.

THE CHANGES BROUGHT BY LAW NO. 102/2023 TO THE ADMINISTRATIVE LITIGATION LAW, ONLY APPARENTLY MINOR

Lecturer Anamaria GROZA
Faculty of Law, University of Craiova,
Judge at the Olt Tribunal, Romania

Abstract

At first glance, the changes brought by Law no. 102/2023 to the administrative litigation concern (only) the deadlines: the starting moment of the limitation period regarding the introduction of the action to annul the administrative act for which the prior complaint is no longer mandatory; the term in which the suspension of the administrative act that can no longer be revoked can be requested before the introduction of the substantive action for its annulment and the term in which the annulment action must be introduced

if the suspension was requested according to art. 14 of the Administrative Litigation Law; the maximum term until which the execution of an administrative act can be requested to be suspended in respect of which the annulment action has already been filed. Instead, some deadlines are shortened drastically, and other solutions are atypical both from the perspective of the civil process and the traditional rules in administrative litigation. The changes are also important for the fact that they concern administrative acts for which the prior complaint is no longer mandatory, and most of the administrative acts fall into this category (since they immediately produce legal effects). The article is a point-by-point analysis of the most recent amendments to the Administrative Litigation Law, apparently minor, but with a potentially significant impact.

CONSIDERATIONS REGARDING THE APPEAL AT THE COURT OF ADMINISTRATIVE DISPUTES OF THE EVALUATION REPORT OF THE INDIVIDUAL PROFESSIONAL PERFORMANCE OF PUBLIC OFFICERS

Associate professor Eugenia IOVĂNAȘ
„Aurel Vlaicu" University of Arad, Romania

Abstract

Performance indicators are established to assess the degree of achievement of the individual objectives of civil servants. The establishment of individual objectives and performance indicators must take into account the correlation with the attributions and objectives of the institution where the civil servant works. Within the process of evaluating the individual professional performances of public servants, the professional training requirements of public servants are established. The objectives are established in accordance with the attributions in the job description, by reference to the public position held, its professional degree, the theoretical and practical knowledge and the skills necessary for the exercise of the public position held by the civil servant and correspond to the objectives of the compartment in which the civil servant carries out his activity public. The performance indicators are established for each individual objective, in accordance with the level of attributions of the holder of the public office, by reference to the requirements regarding the quantity and quality of the work performed. In all situations, the individual objectives and performance indicators are brought to the attention of the civil servant at the beginning of the period evaluated. In this article, we propose to debate relevant aspects regarding the analysis of the evaluation report of the annual individual professional performances of civil servants. analyzing the two methodologies for evaluating the annual professional performances of civil servants, stated above, by referring to the judicial practice in the matter.

THE COMPENSATION MECHANISM OF EXPROPRIATED PURSUANT TO LAW NO. 255/2010. VULNERABILITIES AND POSSIBLE SOLUTIONS

Lawyer Ioan PARASCHIV
Bucharest Bar Association, Romania

Abstract

The objective of the study is to analyse the compensation mechanism for the persons affected by the expropriation procedure necessary to achieve the objectives of national interest, according to Law no. 255/2010, highlighting its deficiencies and possible legal remedial solutions. The analysis carried out was

based on the deductive method and essentially reveals the fact that in order to respect and strengthen the constitutionally regulated pillars of the compensation mechanism within the expropriation procedure regulated by Law no. 255/2010, respectively of the "just" and "preemptive" character of the compensation of the affected persons, a legislative reform in the field of expropriation is necessary to provide the expropriators with the modern legal instruments, necessary for the fair establishment of compensation even from the administrative phase of the expropriation procedure, with the consequence of increasing confidence in the state institutions that act as expropriators or representatives of the expropriator, relieving the state budget of additional expenses and the courts of disputes that can be prevented.

15.00 - 16.00

THE LATEST LEGISLATIVE CHANGES OF THE ADMINISTRATIVE LITIGATION LAW NO. 554/2004

Lecturer Adriana DEAC
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

Recently, the Administrative Litigation Law no. 554 of 2004 was amended successively, in a very short period of time. This unusual fact caught my attention and led me to scientifically analyze these legislative changes. It is very true that the entire normative act was not amended, but only certain articles regarding the procedure for resolving administrative law disputes, namely the suspension of the execution of the disputed administrative act, the forced execution of final court decisions and the regressive action granted to the public institution against the official or dignitary who improperly issued, late or did not issue the administrative act in dispute. It is obvious that the changes made to the law were imposed by the practical demands of resolving administrative law disputes. The scientific approach aims to analyze the specific changes made to the Administrative Litigation Law no. 554/2004, to criticize them, identifying the positive and negative aspects, if any. Also, considering that jurisprudence was the one that imposed these changes, I will try to identify some court decisions relevant to this scientific approach.

ABOUT THE COMPETENT COURT IN THE MATTER OF A LITIGATION REGARDING THE ANNULMENT OF A DECISION WHOSE OBJECT IS THE RELEASE FROM A PUBLIC MANAGEMENT POSITION, IN THE LIGHT OF THE RECENT APPROACH OF THE HIGH COURT OF CASSATION AND JUSTICE (DECISION NO. 5746/2022, PRONOUNCED BY THE SECTION OF ADMINISTRATIVE AND FISCAL LITIGATION)

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

Abstract

The present study will analyze the aspects related to the competent court in the matter of the request for annulment of a decision ordering the release from a public management position, from the perspective of decision no. 5746/2022 of the High Court of Cassation and Justice. The supreme court in Romania

established that in the mentioned situation the provisions of the Administrative Code prevail over the provisions of Law no. 554/2004 of the administrative litigation. This decision, which is based on a litigation registered before the Dolj Court, has a particularly important role in the matter of jurisdiction in a delicate issue of administrative law.

THE GOVERNMENTAL CASTLING – A GENUINE CONSTITUTIONAL SOLUTION OR AN ILLUSION, DISCRETIONARY ONE?

Lecturer Oana ȘARAMET
Transilvania University of Brașov, Romania

Abstract

Democracy also means majority, a majority that is increasingly difficult to obtain as a result of holding an election to appoint, elect representatives in Parliament. However, the governance of a state must be ensured, which is why the constitutional legislator has the difficult task of finding constitutional solutions to constitute such a majority. However, such majorities will always be fragile, and those who constitute them will try to find the most surprising solutions to ensure their survival. Could such a solution also be the government castling thought of by the current parliamentary majority in Romania? Can the constitutional rules regarding the formation of a government be interpreted and applied in a discretionary power? Through this study, we aim to identify possible constitutional solutions for such a castling, their viability, including by analyzing the jurisprudence of the Constitutional Court, but also the constitutional norms regarding the appointment of the government in states with a political regime similar to ours, such as Portugal, Finland; as well as the limits of a possible discretionary power in making such a castling.

ASPECTS OF COMPARATIVE LAW REGARDING ADMINISTRATIVE LITIGATION IN CHINA AND ROMANIA

Associate professor PhD. habil. Cătălin-Silviu SĂRARU
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

Chinese law has historically been influenced by a variety of legal systems, including the Romano-Germanic legal system, the Anglo-Saxon legal system, and traditional Chinese legal practices. However, the dominant influence on Chinese law in the modern era was the Romano-Germanic legal system. In China for a long time disputes between citizens and the government were resolved through administrative procedures or through petitions addressed to the government. In 1989, the Chinese government passed the first Law on Administrative Disputes, which established a formal administrative litigation system that allowed citizens to challenge administrative decisions in court and provided for the possibility of compensation to citizens for damages caused by illegal administrative acts. Since the adoption of the Law on Administrative Disputes, the Chinese legal system has continued to develop and refine its administrative litigation procedures. In Romania, administrative litigation was established for the first time by Law no. 167/1864 for the establishment of the State Council, having a tortuous evolution until its regulation by positive law by Law no. 554/2004. The comparison between the administrative litigation procedures in the two countries will highlight the way in which the balance between public and private interest is achieved

in the activity of the public administration and the ways to make the access of the citizen injured by administrative acts to justice more efficient.