INTERNATIONAL CONFERENCE:

CONTEMPORARY CHALLENGES IN ADMINISTRATIVE LAW FROM AN INTERDISCIPLINARY PERSPECTIVE

- 6th Edition. May 19, 2023 -

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Section II.

Interdisciplinary Approach in Administrative Sciences in the 21st Century

Friday, May 19, 2023

Online on Zoom

Keynote speakers:

Associate professor ***Cristina Elena POPA TACHE,*** *„Andrei Şaguna" University of Constanta*

Lecturer ***Cristina COJOCARU,*** *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

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SCIENTIFIC PAPERS

10.00 - 11.00

THE CHALLENGES OF ARTIFICIAL INTELIGENCE IN A ADMINISTRATIVE LAW AND ADMINISTRATIVE PROCEDURE

Assistant professor Bárbara MAGALHÃES
IJP - Institute for legal research, Porto, Portugal

Abstract

Artificial intelligence has had a considerable impact on the various branches of legal knowledge and Administrative Law has proved to be equally permeable to all the technological changes that have arisen in legal reality, a context intensified by the needs during the covid 19 pandemic. With regard to Procedural Administrative Law, the imperative needs of efficiency, economy, speed and effectiveness, in short, of good administration, impose a constant and growing disruptive process with traditional decision-making methods, using intelligent decision-making systems for this purpose. However, the use of these mechanisms raises some questions that constitute challenges to their use, namely issues related to the protection of legally protected rights and interests, as well as protection of the guarantees of individuals. The Code of Administrative Procedure, in its art. 14º nº3 provides for the need to maintain guarantee equality between traditional procedures and electronic forms of administrative action, which in some situations does not occur. The compatibility between the need to implement the values inherent in the principle of good administration and the safeguarding and guaranteeing protection of citizens has not proved to be acceptable in some domains, leading to difficulties in complying with fundamental values inherent in administrative action. On the other hand, from the point of view of administrative justice, throughout the 21st century we have witnessed a substantial increase in conflict and, therefore, in litigation. In this wake, there is a clear increase in recourse to the courts. In view of the scarcity of material and human resources in state justice, excessive formalities and the complexity of the matters under litigation, decisions become increasingly time-consuming and inefficient. Digital justice mechanisms proved to be a possible answer to the listed problems, and with the recent changes to which the Code of Procedure for Administrative Courts was subject, we are witnessing an attempt to dematerialize administrative justice. However, with the use of these means, we are faced with numerous challenges that have repercussions in the guarantee sphere of citizens, first of all the difficulty that some citizens may encounter in using electronic mechanisms, both from an economic point of view and from a practice, which will translate into serious discrimination in access to justice. On the other hand, we encountered several obstacles of a technical nature that we will explore further.

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PROBLEMS OF ADMINISTRATION OF DISPUTES ARISING IN CONNECTION WITH THE PUBLIC SERVICE: JURISDICTION AND THE POSSIBILITY OF MEDIATION

Associate professor Mariia KARMALITA
Department of International Law,
Educational and Scientific Institute of Law of State Tax University, Ukraine
Associate professor Maryna PYZHOVA
Vice-rector for scientific work of State Tax University, Ukraine

Abstract

The purpose of the publication is to clarify the legal grounds for delimiting the jurisdiction over disputes arising in connection with public service and the legal grounds for applying the institution of mediation in the field of labor relations. The article examines the legal basis for determining the jurisdiction of labor disputes in Ukraine based on their subject matter and peculiarities of the subject composition of the dispute, as well as the prospects for using mediation, especially in the context of the challenges posed by COVID-19 and martial law in Ukraine. It is stated that 1) labor disputes arising in connection with public service may be considered within the framework of administrative proceedings; 2) globalization of the economy, in particular, the integration of the Ukrainian economy, requires the introduction of new effective institutions regulating market relations, and thanks to mediation, the institution of labor disputes has been able to develop in a new vector. The author analyzes the correlation between the concepts of "civil service" and "public service" and offers recommendations for their differentiation. The author formulates the concept of "dispute in the field of labor relations and public service". The legal grounds for the use of mediation in the field of labor relations and public service are substantiated. The methodological basis of the research is such methods of scientific knowledge as: dialectical, comparative legal, dogmatic, logical methods of scientific knowledge.

CONTROL OVER THE ADMINISTRATION IN KOSOVO

PhD. student Artan MALOKU
Faculty of Law, University "St. Kliment Ohridski", Republic of North Macedonia

Abstract

The administration has a very important role in the functioning of the state, in addition to the special role it has, it must act according to the laws and rules that define the work of the administration. Therefore, in the administration we need supervision or control of the administration. The purpose of this paper is the research related to the notions of the activity of the institutions and the presentation of some acts which have been subjected to the control in the procedure. As for the methodology, we will treat the manuscript according to the historical, analytical, comparative scientific method. In the first part of this paper, we will get to know the role and importance of control in the administration's operation. Further, the paper will deal with the structure of the control elements, explaining what are the subjects, the object and the authorizations of the control which are developed by the concrete institutions where the basis for them is the exercise of control and the operation of legality.

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AUTHORITY OF RES JUDICIATA OF THE DECISION OF THE ADMINISTRATIVE COURT BEFORE THE CRIMINAL COURT

Lecturer Costel Cristinel GHIGHECI
„Transylvania" University of Brașov,
Judge of the Court of Appeal Brasov, Romania
PhD. student Vlad Mihai NEAGOE
„Titu Maiorescu" University of Bucharest,
Judge of the Court of Appeal Brasov, Romania

Abstract

A long-standing issue discussed in judicial practice is that of the effects that a final judgment of an administrative court should have when it has decided a question of fact or law that would be relevant to the existence of an offence that is the subject of a criminal case. The restriction before the criminal court of the authority of res judicata of a judgment of the civil court relating to a preliminary issue in criminal proceedings – in view of valid, substantial and compelling reasons, such as the lack of identity of the parties (including the prosecutor), the differences between the two actions, the distinction between the legal interests protected and the application of the principle that fraud corrupts everything (fraus omnia corrumpit) – is without prejudice to the principle of legal certainty as the basis of res judicata. From an objective point of view, the criminal court, which has the benefit of specific procedural means and special procedural safeguards, would have the power to overturn the civil court's ruling in order to restore legality and not to abolish the legal relationships established on the basis of the civil judgment. From a subjective point of view, the person concerned would have no legitimate expectation of opposing in criminal proceedings the right he had won before the civil court, since the fundamental differences between criminal proceedings and civil proceedings are well known.

11.00 - 12.00

THE "DOCTRINE" OF BICAMERALISM AND ITS APPLICABILITY IN CONSTITUTIONAL REVIEW IN ROMANIA

Professor Marieta SAFTA
Faculty of Law, „Titu Maiorescu" University of Bucharest, Romania

Abstract

Starting from the constitutional provisions that govern the relations between the two Chambers of the Romanian Parliament in the legislation procedure, the study explores the evolution of the interpretation of the constitutional provisions to the development of a genuine "doctrine" of bicameralism, as well as the way in which the landmarks thus fixed are respected by the Parliament. The analysis of the decisions of the Constitutional Court of Romania in which the principle of bicameralism has been invoked is meant to achieve an image of the legislative behavior in Romania, from the perspective of constitutional loialty, meaning the way of understanding the contribution of each Parliament Chamber to ensure the quality of the law and legal security.

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PUBLIC POLICIES OF INTERDISCIPLINARY COLLABORATION AT THE COMMUNITY LEVEL IN THE PROCESS OF EXECUTION OF SENTENCES AND NON-PRIVATE MEASURES OF LIBERTY

Associate professor Camelia Daciana STOIAN
„Aurel Vlaicu" University of Arad, Romania
Lecturer Cristian MĂDUȚA
„Aurel Vlaicu" University of Arad, Romania

Abstract

As the relationship with the persons under private law empowered to manage the execution of the range of non-custodial measures and punishments in this sphere is currently outlined at the legislative level, the nuances that limit access to the profession are identified. This aspect harms in practice both the person responsible for safety measurement and the judge who is delegated with the execution, the probation department and last but not least the professional mandated with the expertise regarding the state of health of the person in question. Since 2014, the Council of Europe's Report "A juvenile criminal justice adapted to children: from rhetoric to reality" has motivated the considerations regarding justice related to children, which mentions the need for minors in conflict with the law to have access above all to treatment and special staff. The proposed ferenda law restores the right to the vision required from the level of practitioners with reference to the recontouring of the provisions of article 20 of Law no. 253/2013 regarding the execution of punishments, educational measures and other non-custodial measures ordered by judicial bodies during the criminal process, in accordance with the goal of the regulation, namely to ensure the legal order by guaranteeing the balance that must exist between the protection of society and the reintegration in the community. At the same time, the terminations of the Ferenda law proposal will demonstrate the need for corroboration with normative acts that regulate the way of exercising the various liberal professions through units without legal personality necessary in terms of providing medical assistance at ambulatory level, both in the preventive and in the of recovery.

ADMINISTRATIVE SCIENCE OR SCIENCES? RESEARCH MUST REMAIN INTERDISCIPLINARY

Professor Phd. habil. Diana DĂNIȘOR
Faculty of Law, University of Craiova, Romania
Associate member of the Romanian Academy of Scientists

Abstract

If human sciences study behaviours, administrative science mobilizes a number of disciplines, raising administration problems from a double perspective – theoretical and practical. Since the points of view of specialists in these disciplines do not overlap, one speaks of plural administrative sciences rather than of a single, unified administrative science. Administrative science is generally approached within a single discipline, even if it requires a broader approach, with no need to integrate knowledge from different disciplines that have as their object the knowledge of public administration, as it is difficult to reduce the research results from these disciplines to a common denominator. But a theory of public administration common to all administrative sciences can only be achieved through the common approach of research

devoted to the current problems of public administration, research undertaken by representatives of administrative law, administrative procedure, administrative policy, sociology, history, political science, legal linguistics, etc. to focus on diverse and selective topics, to approach in a general way, but also in detail.

DIFFICULTIES IN IMPLEMENTING EUROPEAN CONTRACTUAL INSTITUTIONS IN NATIONAL COMMON LAW

Lecturer Camelia SPASICI
Faculty of Administration and Business, University of Bucharest, Romania

Abstract

Romania's accession to the European Union has produced profound legal changes, including in legislative, doctrinal and practical terms. In matters of contract, the provisions of the European directives on the regulation of legal relations between professionals and consumers have created and continue to produce disputes, especially in the field of the harmonisation of the new consumerist institutions to the common national law. At the present stage, the general theory of the contract is subject to pressure exerted by the new rules, full of vitality, of the law of consumption or competition law. The main consumerist institutions subject to the national implementation process are: pre-contractual obligations, unfair terms and the consumer's right of withdrawal. The study insists on the difficulty of harmonizing the above institutions, in the context of the new legislative changes in the field, especially of O.U.G. no. 58/2022. The work is structured in four sections: "The common law contract and the consumption contract", "Pre-contractual obligations: conditions of validity special to consumption", "Unfair terms: manifestations of pre-contractual will" and "Consumer withdrawal: denunciation of progressive consent".

12.00 - 13.00

MENTORING MANAGEMENT IN PUBLIC ADMINISTRATION PERFORMANCE DEVELOPMENT

Associated teacher PhD. Tincuța GUDANĂ VRABIE
„Dunărea de Jos" University of Galați, Romania

Abstract

The performance of the public administration is the guarantor of a public management based on the knowledge and adaptability of economic and social conditions to the actuality of the modern demands of society. Can the accumulation of ideas, experiences and performances obtained up to a certain point in the public administration be improved by providing public mentoring? The answer to this question will determine the conceptualization of mentoring for the public sector, as a way of achieving performance in the public sector, through sectoral participation in the individual and collective development of performance and implicitly the professionalization of the public sector. Encouraging the development of some skills and emphasizing some qualities of managers and non-managers, will determine a shaping of

the individual professional identity and the identity of the organizational culture. The optimization of mentoring programs is imposed by the flow and mobility of public administration personnel, who can achieve performance through the adaptability of the mentoring process to its demands, imposed by social, economic, cultural, political and professional conditions.

ANALYSIS OF THE CONDITIONS THAT CAN DETERMINE AN ADMINISTRATIVE-TERRITORIAL REORGANIZATION OF ROMANIA

Associate professor Cristi IFTENE
Faculty of Law and Administrative Sciences,
„Ovidius" University of Constanta, Romania

Abstract

Lately, the Romanian public space has been invaded by a semi-artificial debate regarding the need for administrative territorial reorganization of Romania. Specialists and non-specialists in the field argued why we need to rethink the organization of the national territory, sometimes even coming up with role models and benevolent advice. There is no doubt that this approach is a long-term one, which requires substantial changes to the normative framework, and in this context, each decision must be carefully weighed, each course of action must be well argued both by theorists of administrative law and administrative sciences and by practitioners. The problem of the administrative organization of the state's territory has always arisen since the existence of the state, but it arose more acutely during the establishment of larger, centralized states, determined by the need for unity of purpose and action on the entire territory under state sovereignty. At the beginning, the administrative organization of the territory was a problem of a practical nature, of good management by the state of its subjects, and less of a theoretical one, of substantiation, of explaining the political and social aspects that determine it. But, later, in the modern, centralized states, theorists began to outline the meanings and meanings of the various formulas that the states resorted to in the administrative organization of their territory, thus defining notions and concepts that would satisfactorily dress up the practical solutions imposed most of the time by the political power. The present paper tries to bring out some arguments and solutions that can be considered in this context.

CONTROVERSIES REGARDING THE WITHDRAWAL OF THE RIGHT OF USE OVER THE LAND ASSIGNED ON THE BASIS OF LAW NO. 15/2003 REGARDING THE SUPPORT GIVEN TO YOUNG PEOPLE FOR THE CONSTRUCTION OF A PERSONAL PROPERTY

Lecturer Raluca Laura DORNEAN PĂUNESCU
Faculty of Law, „Drăgan" European University of Lugoj,
Lawyer, Timiş Barr Association, Romania

Abstract

The main objective of the pending study is to highlight the legal controversies in the situation of the withdrawal of the right of use over the land that was assigned to the beneficiary based on Law no. 15/2003 regarding the support given to young people for the construction of a personal property. Specifically, the author investigates the possibility of establishing the suspension of the one-year term within the mixed

resolutive condition stipulated in both art. 6 para. 1 of Law no. 15/2003 which imposes on the beneficiary of the land the obligation to start the construction of the house within one year from the date of allotment of the land and to carry it out in compliance with the provisions of Law no. 50/1991 regarding the authorization of the execution of construction works, republished, with subsequent amendments and additions, as well as in the clauses of the award contract for free use. In the same sense, the fulfillment of the negative condition will be analyzed - as a modality of the civil legal act, namely the fact that the non-start of the construction within the one-year period may be due to the public authority, which, in bad faith, determined the non-realization of the event, by delaying the adoption of the decision of the local council regarding the Urban Planning Regulations, the blocking of the issuance of urban planning certificates/building authorizations and implicitly the impossibility of the beneficiaries to start construction in compliance with the legal provisions. The research methods to achieve the proposed objectives are varied, taking into account the comparative method, as interdisciplinary aspects between administrative law and civil law are exposed, the logical method, which tends to outline a more rigorous legislative exposition, the critical method, with the aim of presenting the limits of discretionary power, as well as the systemic method, which tends to the possibility of bringing scientific research a cardinal importance. The results and implications of the study will be major from the perspective of the application of the law and the interpretation of the legal provisions, taking into account the legal nature of the right to use a land assigned on the basis of the special law.

COMPLEMENTARITY BETWEEN CIVIL STATUS ACTS AND MITRICAL ACTS

Student Marius Vasile BÂRDAN
Faculty of Psychology, Behavioral and Legal Sciences,
"Andrei Șaguna" University of Constanța, Romania

Abstract

The present study aims to analyse the link that can be made between the acts of civil status and the acts that are related to the church. By presenting concrete examples, this article emphasizes both the similarities and the differences existing between them. This article also highlights the connection that has to be, from our perspective, in a society between these two institutions, the legal and the religious one and how they influence each other. No matter how important the mission of the law is, the religious framework can not be ignored when it comes to events directly related to civil status documents. Aware that both institutions imply their own way of organization, we will conclude with our vision on how they interfere, insisting upon the comparative dimension as well.

13.00 - 14.00

EUROPEAN COURT OF HUMAN RIGHTS - DEVELOPER OF LEGAL DOCTRINES - THEORETICAL BASIS

Lecturer Aurel Octavian PASAT
Cross-border Faculty, „Dunarea de Jos" University of Galati, Romania

Abstract

The purpose of the paper is to analyze the contribution of the European Court of Human Rights to its transformation into a viable solution for the protection of human rights, fulfilling its role as "developer of legal doctrines regarding human rights", a role conferred by the object and purpose of the European Convention on Human Rights, for the maintenance and development of the democratic society model. Moreover, the evolution of the European Court of Human Rights in the last two decades has undoubtedly had a major effect in order to mediate the applicants to access justice, but also on the national courts that must correctly interpret the Convention, in the cases that are subject to judgment, on the basis of the principle of subsidiarity.

EUROPEAN UNION MEMBERSHIP AND THE CONSTITUTION OF ROMANIA

Lecturer Ovidiu-Horia MAICAN
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

One of the problems that bring a strong lately (despite past failures in implementing the new European construction) is what effect it will have on Romania's accession to the European Union for the Constitution of our country. In the last years, much less attention has been given to the practical implementation of new institutional proposals included in the Treaty of Lisbon. Even a cursory examination indicates that the implementation of some of these proposals is likely to be uneasy, and in some cases could be a source of future problems or difficulties.

TREATY OF LISBON – AN EUROPEAN CONSTITUTION ?

Lecturer Ovidiu-Horia MAICAN
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

Europe has changed, the world has changed. The 21st century brings new challenges and new opportunities. The interaction of economies and peoples worldwide, whether by communication, trade, migration, shared security, concerns or cultural exchange, is in constant evolution. In such a globalised world, Europe needs to be competitive to secure economic growth and more and better jobs, in order to achieve an overall sustainable development. Climate change calls for a response that must be both global

and local. Demographic change has shifted some of the old certainties about the patterns of how society works. New security threats call for new strategies and policies. In all these areas, Europe needs to be equipped for change.

CHALLENGES OF LEGAL REGULATION REGARDING CRYPTOCURRENCIES

PhD. student Costin Răzvan CHIRIȚĂ
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

Being one of the essential cells of society, law adapts to the rhythm in which the economic, social, and political environment evolves. Through the lens of technological advances, new challenges arise for states and practitioners in regulating and understanding the mechanisms applicable to new technologies. It is undeniable that one of the biggest challenges is generated by cryptocurrencies, their mode of operation, their legal qualification, regulation, and transmission from a legal perspective. From this consideration, we consider it useful to look for the answers to the identified problems and, where appropriate, to analyze the solutions required for the regulation of this field so that we can ensure a legal framework that meets practical needs. Starting from these premises, we will analyze the way in which European legislation and Romanian legislation respond to the challenges both from the point of view of legislation and by analyzing the way in which it relates to the issue of civil capacity, identification of persons by ensuring a legal framework that subsumes the existing legal system.

14.00 - 15.00

CIVIL CAPACITY OF LEGAL PERSONS UNDER INSOLVENCY PROCEEDINGS WITH REGARDS TO PROPERTY TRANSFER DEEDS

PhD. student Costin Răzvan CHIRIȚĂ
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

The insolvency procedure is a special procedure, derogating from common law regarding the method by which commercial companies identify means of recovery of the activity in delicate moments of their existence. Under this aspect, we will analyze how the civil capacity is affected, the possibility of companies to conclude certain categories of property transfer deeds, both from the perspective of acquiring and from the perspective of alienating these rights. Our analysis will focus on answering to what extent the role of the receiver and the syndic judge represents a limitation of the civil capacity and especially if it can be discussed about a lack of it in the insolvency procedure. We will go through the legislation, jurisprudence, and doctrine at the national level, and where the answers will not be sufficient, we will tangentially analyze, through comparative law, the legislative solutions promoted at the level of European legislation and of other states that share a legal system like the national one.

ELEMENTS TO BE CONSIDERED PRIOR TO SUMMONING THE EMPLOYEE TO A DISCIPLINARY INVESTIGATION. ESTABLISHMENT OF DISCIPLINARY MISCONDUCT COMMITTED BY THE EMPLOYEE AND THE CONDITIONS FOR DISCIPLINARY LIABILITY

Lecturer Mihaela Emilia MARICA
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

Given the mandatory nature of the preliminary disciplinary investigation procedure, this disciplinary process to which employees are submitted can be divided into three main phases, namely the phase prior to the employee's summoning, the moment of the employee's hearing and the phase following employee's investigation. Clarity on these stages and the proceedings corresponding to each of them, is essential for the validity of the disciplinary sanction. As the disciplinary process is complex both in terms of the current regulatory framework and judicial practice, the present article addresses some aspects of the preliminary disciplinary investigation procedure, with special focus on the problems identified in the phase prior to the employee's summoning to the disciplinary investigation. We will consider both descriptive technical elements and elements that generate significant divergences or controversy over practical matters. The comparative law elements presented will also highlight how other legal systems regulate issues relating to the procedure for imposing disciplinary sanctions. The legal regulations of Bulgaria, the United Kingdom, Cyprus, New Zealand are presented.

REFLECTIONS ON THE SUCCESSIONAL REPRESENTATION OF THE UNWORTHY RENUNCIANT

Professor Natalia Veronica STOICA
Faculty of Law, Bucharest University of Economic Studies, Romania
PhD. student Liviu Alexandru NARLĂ
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

The efforts to adopt a new Civil Code, initiated in the period 1999-2004 and finalized in 2011, aimed to expand the scope of representation in succession cases, including cases involving unworthy heirs and renunciants. However, legislative stagnation partially prevailed, as the Law no. 287 of 2009 on the Civil Code, with amendments introduced by Law no. 71/2011 for its implementation, only regulated the possibility of representation for unworthy heirs and not for renunciants. The partial modernization of the rules on representation in succession raises new questions and the need for answers. In the current context of the regulation of representation in succession, we aim to address the legitimate question of whether an unworthy heir can renounce inheritance and, if so, whether a renunciant unworthy heir can be represented by their descendants. We note that in the legal doctrine associated with the Civil Code of 1864, no speculation was made regarding this legal situation, as an unworthy heir could not be represented in succession, and such a discussion would have been pointless. Therefore, we will present the historical and evolutionary journey of the institution of representation in succession, from Roman law to modern times,

as well as the winding path of adopting a new Civil Code in this area. By doing so, we can reach a valid conclusion regarding the issues addressed in this material.

CHALLENGES BROUGHT BY CLIMATE CHANGE IN THE FIELD OF ADMINISTRATIVE LAW

PhD. student Adina GUȚIU
Doctoral School of Law, Bucharest University of Economic Studies, Romania

Abstract

The paper wishes to analyze the challenges that the interdisciplinary approach on climate change and ancillary obligations will bring in the field of administrative law, by analyzing EU legislation in this respect.