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PRO PATRIA LEX
Revistă de studii și cercetări juridice
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I. DREPT PUBLIC

PROCEDEE TEHNICE DE ENTROPIE* ȘI CREAȚIE ÎN LEGIFERARE (EVENIMENTELE LEGISLATIVE)

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Abstract:

After the entry into force of a law, its existence may occur during legislative events, such as the repeal, amendment, supplement, republish, exemption, suspension, rectification.

Keywords: law, legislative events, repeal, amendment, supplement, republish, exemption, suspension, rectification

PRINCIPII FUNDAMENTALE ALE PROCESULUI PENAL REGLEMENTATE ÎN NOUL COD DE PROCEDURĂ PENALĂ (LEGEA NR.135/2010)

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Abstract:

In addition to the principles already enshrined in the Code of Criminal Procedure of 1968 (the legality, truth finding, the presumption of innocence, the right to defense of human dignity, the official language), the new Criminal Procedure Code (Law no.135/2010) expressly covers new fundamental principles of the criminal process: the principle of separation of judicial criminal proceedings, the fairness and reasonableness of the trial period, the obligation criminal action closely related to the alternative of opportunity and the principle of "ne bis in idem".

Keywords: Fundamental principle; criminal process; legislative changes; the new Code of Criminal Procedure.

REPERELE JURIDICE ALE UNIUNII EUROPENE PRIVIND ÎNVĂȚAREA PE TOT PARCURSUL VIEȚII

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Abstract:

Globalization process, consisting of interdependence of national economies in the world, and information and communication technology revolution has led to the need for a strategy to keep people active in all fields. The European Union has adopted a program of lifelong learning, setting objectives, consignees and procedures for continuing professional education.

Keywords: learning, life long learning, program of action, monitoring and evaluation.

ROLUL ONU ÎN SOLUȚIONAREA PAȘNICĂ A DIFERENDELOR INTERNAȚIONALE

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Abstract:

The preamble of the United Nations Charter contains the commitment of States parties to accept the principles and establish methods to ensure that it will not make use of armed force only in the common interest. On this basis, it was forbidden to use force, and provision was made for only about the peaceful settlement of disputes. United Nations organs which the Charter assigns to the explicit powers in matters relating to the peaceful settlement of disputes are the Security Council and the General Assembly, and under certain conditions the Secretary General of the organisation.

Keywords: United Nations Organization, the peaceful settlement of international disputes, the Security Council, the General Assembly, the Secretary-General.

SISTEME REGIONALE DE PROTECȚIE A DREPTURILOR OMULUI

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Abstract:

Globalization and integration have accelerated the process of granting normative and operational skills relating to fundamental rights and freedoms by the international organizations. The new forms of super-national organization have progressed slowly, but inevitably and persevering, into methods of increasingly specific regional and global governance, as intrinsic to social nature of man as the state government, bringing with it new achievements in knowledge, science and technology, education and culture, but also in the cooperation of the states for international peace and security.

Keywords: human rights, globalization, regionalization, international organizations

ORGANE SPECIALIZATE ÎN DOMENIUL CONTROLULUI FINANCIAR-FISCAL

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Abstract:

It is shown the need of the state cash funds establishment in the same time with the realization of a proper control to find the spending way of the public financial resources. Furthermore is a presentation of the Ministry of Public Finance and its specialized financial and fiscal control organs in the light of the current legal framework. To sum up, are the medium budgetary perspectives, the fight against tax evasion and the insurance of financial resources necessary for the sustainable development of the country.

Keywords: budgetary classification – revenues and expenses are grouped in an obligatory order and by uniform criteria; tax record – means of tracking and recording fiscal discipline; public debt – all tax obligations; tax evasion – an illegal practice to avoid paying tax liability; budget owner – person authorized to dispose and to approve financial operations.

SCURTE CONSIDERAȚII PRIVIND CONFLICTUL DE INTERESE

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Abstract:

Conflict of interest involves a conflict between the duty to the public and private interests of a public official. If the public official acts both as a public official and as a private person, he can inadequate influence the performance of official duties and responsibilities. Here's the conflict of interest has become a matter discussed and followed up increasingly more often. This article aims to make a brief analysis of the theory of conflict of interest both in terms of the Law no. 161/2003 and the Law no. 176/2010, and from the point of view of criminal law.

Key words: conflict of interests; duty; public official; responsibilities; private interests

ASPECTE PRIVIND INTERZICEREA DISCRIMINĂRII NAȚIONALE ȘI ETNICE

Laura MACAROVSKI¹

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Abstract:

The article intends to address the question of the prohibition of racial and national discrimination, in the context of the general principle of non-discrimination institution, as was enshrined in international treaties in the field of human rights. We have defined the concepts of racial discrimination and religious, illustrating with examples from case law of the ECHR.

Keywords: discrimination; national minority; racial minority.

DREPTURI SOCIALE ȘI SOCIETATE CIVILĂ ÎN CONFLICTUL DE LA ROȘIA MONTANĂ

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Abstract:

The main goal of this article is to analyze the social conflict generated by the controversial problem of the opening the mining exploitation at Roșia Montană on the basis of the entitlement and social rights concept.

Key words: social rights, entitlement, civil society

UNIUNEA ECONOMICĂ ȘI MONETARĂ (UEM). REALIZĂRI ȘI PROVOCĂRI ÎN CONTEXTUL ANULUI 2013

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Abstract:

The economic and monetary union (EMU) was established to bring prosperity and stability across Europe. It is a cornerstone of the European Union. Today the EMU is facing a fundamental challenge; it needs to be strengthened to ensure economic and social welfare. Therefore, this study tries to highlight efforts at European level to achieve a deep and genuine Economic and Monetary Union with a strong and stable architecture in the financial, fiscal, economic and political domains.

Keywords: economic governance, economic growth, economic integration, economic and monetary union, euro area, single currency

NOI REGLEMENTĂRI CU PRIVIRE LA IMPRESCRIPTIBILITATEA UNOR INFRAACȚIUNI

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Abstract:

This study presents the new regulations regarding the imprescriptibility of the crimes. The first category is represented by the crimes against peace and mankind, stipulated in Title XI, in Special Part of the Criminal Code. The novelty comes from the provisions of Law no. 27/ 2012 on the modifications and completion of Criminal Code of Romania and of the Law no. 286/ 2009 on New Criminal Code, establishing imprescriptibility of criminal liability for crimes referred to in art. 174-176 of the Criminal Code and for crimes committed with intent, followed by the death of the victim.

Key words: imprescriptibility, new regulations, crimes against peace and mankind, crimes committed with intent, followed by the death of the victim.

UNELE ASPECTE DE DREPT COMPARAT PRIVIND MECANISMELE DE EVALUARE ȘI ASIGURARE A CALITĂȚII ÎN ÎNVĂȚĂMÎNTUL SUPERIOR

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Abstract:

The concept of the external quality assessment system in higher education covers various aspects of university life, such as the quality of curricula, the recognition of diplomas obtained, the structure and logistics of universities, the scientific research.

The aim of the present scientific study is to present, analyze and compare the defining features of the external quality assessment systems in higher education as they are found today in a few of the European countries, the conclusions of it being susceptible to serve and benefit the Romanian legislator in the realization of the ongoing education reform.

Keywords: higher education, quality assessment mechanisms, comparative law

UNIUNEA EUROPEANĂ – SUBIECT DE DREPT INTERNAȚIONAL

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Abstract:

European Union, de jure, came with the entry into force by means of the Treaty on European Union in 1993, as shown in art. A par. (1) of this Treaty: „(...) The High Contracting Parties establish among themselves a European Union, hereinafter the Union”. According to para. (3) of the same article, „the Union is based on the European Communities and the policies and forms of cooperation provided for in this Treaty”, i.e. foreign and security policy and cooperation on justice and home affairs. But what are the European Communities? What is the connection between these Communities and the European Union? What is the relationship between the achievement of the European Union, the legal personality and the quality of subject of international law? To answer these questions we begin our approach to identifying the definition that classical international law gives the term „international organization”, and then we analyze some aspects of the legal personality of the European Union.

Key words: European Union; Lisbon Treaty; legal personality; international organization.

FENOMENUL MIGRAȚIEI LA SCARĂ INTERNAȚIONALĂ

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Abstract:

In the article "Global migration phenomenon" we have attempted to underline the interdependence between the global economic development and demographic growth, which determines a massive movement of persons; in addition, a comparison between this kind of situation between European Union and U.S.A. leads us to conclude that such a phenomenon is irregular.

Keywords: migration, permanent migration, economic migration, irregular migration, global migration, domestic migration.

CALIFICAREA NOILOR TIPURI DE CONFLICTE ARMATE DIN PERSPECTIVĂ DOCTRINARĂ

David UNGUREANU¹

Abstract:

The 1949 Geneva Conventions have expanded the frontiers of international humanitarian law: the first three conventions have updated existing treaties and the fourth broke new ground by having detailed provisions regarding the treatment of civilians. But the major novelty represents Article 3, common to all four conventions, which for the first time introduced the principles of the Geneva Conventions to the non-international conflicts.

Keywords: international humanitarian law, doctrine, military conflicts, war

ATRIBUȚIILE JUDECĂTORULUI DE DREPTURI ȘI LIBERTĂȚI ÎN MATERIA PERCHEZIȚIEI INFORMATICE DIN PERSPECTIVA DISPOZIȚIILOR NOULUI COD DE PROCEDURĂ PENALĂ

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Abstract:

The current legal framework allows discovery and criminal liability of those who committed computer crimes. Answering to judge the rights and freedoms layout tasks on computer search of a guarantee of respect for human rights and fundamental freedoms throughout the criminal process, this measure, in line with ECHR can only be taken by an independent magistrate specializing in this regard.

Keywords: computer crimes, the judge of rights and freedoms, means of evidence, informatics search

II. DREPT PRIVAT

DECLARAREA JUDECĂTOREASCĂ A MORȚII

Petrică TRUȘCĂ¹

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Abstract:

The legal capacity to use of individual ceases with the cessation of that person. According to realities, civil law regulates the establishment of the date of death for the two possible hypotheses: hypothesis of physical death observed directly (by examining the body), in case of a natural cause of death and in case of a violent cause of death and disappeared hypothesis, in which case it is not possible to examine the body, although the person's death is certain or almost certain, this assumption is applied to the missing person and the legislature created the institution of judicial declaration of death.

Keywords: individual, legal capacity to use, judicial declaration of death.

CONSIDERAȚII PRIVIND ACȚIUNILE POSESORII

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Résumé:

La possession comme maîtrise de fait est directement défendue par les actions des possesseurs contre tous les troubles causés par les tiers. Les réglementations du Code civil et du nouveau Code de procédure civile apportent des modifications importantes dans ce domaine, mais sans épuiser les problèmes posés par la doctrine et la jurisprudence antérieures.

Mots-clé: possession, trouble, dépossession, action possessoire

STUDIU ASUPRA LEGII APLICABILE CAMBIEI ÎN DREPTUL COMERȚULUI INTERNAȚIONAL

Aida Diana DUMITRESCU¹
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Abstract:

The material elaborated entitled "Study on the applicable law in international trade law for the bill of exchange" contains a gradual structure that starts from the necessity of placing into the legal landscape concepts as "titles of values", "effects of commerce" and "bill of exchange", develops the problem of domestic and international regulations on the law applicable for the bill of exchange and concludes on the topic in question. The core of this study is represented by comparative analysis of rules on the law applicable to the bill of exchange, made by reference to the provisions of the Geneva Convention (Convention including uniform law on bills of exchange and promissory notes, 1930), the UNCITRAL Convention from New York (United Nations Convention on international bills of exchange and promissory notes, 1988) and the Romanian civil Code.

Key words: titles of values, effects of commerce, bill of exchange, competent law.

SCURTĂ INCURSIUNE ISTORICĂ CU PRIVIRE LA STATUTUL FEMEII CĂSĂTORITE

Laura MAIEREAN¹

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Abstract:

Gender equality must be a central objective of any Democrats who want to take action that views women and men enjoy the same weight and influence. A true advocate for women's rights mean to tend to a company to show generosity and tolerance that can create full and equal civil rights for all.

Keywords: women's rights, civil rights, tolerance, generosity

OBSERVAȚII REFERITOARE LA CLAUZA CU PRIVIRE LA FORMAREA PROFESIONALĂ

Paul BĂLȚĂȚEANU¹
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Résumé:

La formation professionnelle organisée par l'employeur peut être négociée et peut faire partie du contrat individuel de travail dès sa signature, sous la forme d'une clause de formation professionnelle ou comme un acte additionnel, quand les parties établissent certaines conditions concernant la formation professionnelle, soit qu'il s'agit d'un contrat de qualification ou d'adaptation professionnelle ou d'un contrat d'apprentissage ou un autre contrat qui a comme objet la formation professionnelle. L'introduction d'une clause concernant la formation professionnelle a déterminé plusieurs discussions sur lesquelles nous nous sommes arrêtés dans cet ouvrage.

Mots-clé: contrat individuel de travail, formation professionnelle, clause

PARTICULARITĂȚILE CONȘIMȚĂMÂNTULUI ÎN MATERIA CONTRACTULUI DE CREDIT PENTRU CONSUM

Dana Simona ARJOCA¹
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Résumé:

L'Ordonnance d'urgence du Gouvernement nr. 50/2010 relative aux contrats de crédit pour les consommateurs² définit, dans l'art. 7 alin. 2, le contrat de crédit à la consommation comme « un contrat par lequel un créateur accorde, promet ou stipule la possibilité de donner à un consommateur un crédit sous forme de remise de paiement, prêt ou d'autres facilités financières similaires, sauf les contrats pour la prestation de services d'une manière continue ou pour la fourniture des biens semblables, lorsque le consommateur paie en tranche durant leur fourniture », en prenant la définition de la Directive nr. 2008/48/CE et en ajoutant l'hypothèse de la stipulation, par les parties, dans le contrat, des possibilités de donner un crédit, à l'avenir, en fonction de l'accomplissement de certaines conditions. Les règles de droit commun s'appliquent aussi en ce qui concerne le consentement et le crédit à la consommation, mais grâce à ce contrat et à la nécessité de protéger le consommateur on a mis en place certaines règles spécifiques, applicables seulement dans ce cas.

Mots-clé: crédit à la consommation, consentement, information, publicité, précontractuel, vices

PRESCRIPȚIA ACHIZITIVĂ ÎN DREPTUL ITALIAN

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Abstract:

Acquisitive prescription represent the legal institution through the medium of witch is acquired the property (or other real rights such as right of superficies, right of usufruct, right of use, right of habitation, right of easement and the right of emphyteusis), under continuous possession for a certain period of time, period witch varies depending of the nature of the goods forming the subject of possession, and, depending on the existence of certain elements such as good faith, transcription, unaffected by the revocation or invalidation title.

Keywords: acquisitive prescription, the general principles of acquisitive prescription, right of property, Italian acquisitive prescription requisites

*III. ORDINE PUBLICĂ ȘI
SIGURANȚĂ NAȚIONALĂ*

DAUNELE MORALE. PROPUNERE DE CRITERII PENTRU PREJUDICIILE MORALE

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Abstract:

The principle that governs the field of paying moral prejudice is a fair one, and the problem is not to apply this principle but to quantify the prejudice and to identify the criteria in order to do that. This article comes with a proposal for changing the law which is based on principles and rules already used in the EU and which may be applied in our country as well.

Keywords: moral prejudice, ensurance, damage, civil liability, bodily harm

INFRAȚIUNEA DE VIOLARE A SECRETULUI CORESPONDENȚEI ÎNTRE CODUL PENAL DIN 1968 ȘI NOUL COD PENAL. DREPT COMPARAT

Corina SCARLAT¹

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“The saddest aspect of life right now is that science gathers knowledge faster than society gathers wisdom”. Isaac Asimov, scientist and writer (1920-1992)

Abstract:

*„Secrecy of letters and all other forms of free correspondence or communication shall be absolutely inviolable. The guarantees, under which the judicial authority shall not be bound by this secrecy for reasons of national security or for the purpose of investigating especially serious crimes, shall be specified by law”.*²

Keywords: secrecy of correspondence, inviolability of postal and telegraphic communications, democratic freedoms of the individual, respect for private and family life, human dignity

REGLEMENTĂRI EUROPENE INCIDENTE DOMENIULUI JOCURILOR DE NOROC. DIRECTIVA 98/34/CE A PARLAMENTULUI EUROPEAN ȘI A CONSILIULUI, DE STABILIRE A UNEI PROCEDURI PENTRU FURNIZAREA DE INFORMAȚII ÎN DOMENIUL STANDARDELOR ȘI REGLEMENTĂRILOR TEHNICE

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Abstract:

The norms that regulate the industry of gambling in Europe are subject to Community provisions so that each change to the legal provision in the field has to be announced by a notification according to Directive 98/34 EC of the European Parliament and the Council from 22 June 1998. It establishes a procedure to give information regarding the technical standards and regulations to the other Member States which have the possibility to formulate opinions regarding the legality and the possible breaches of the European law in the field of services. This article deals with the legal and technical issues that have to be complied with by the EU Member States when they change the legal framework in the field of gambling, even if this field is a state monopoly.

Keywords: gambling, National Office for Gambling, online gambling, state monopoly, lottery, infringement

O PERSPECTIVĂ ISTORICĂ ASUPRA REGLEMENTĂRILOR CIRCUMSCRISE CRIMINALITĂȚII INFORMATICE

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*Motto: „Răul nu vine de la tehnologie, ci de la cei care o
folosesc în mod greșit, intenționat sau accidental.”*

Jacques Ives Cousteau

Abstract:

Nowadays, cybercrime is not only a complex matter of national interest, but also a specific element for almost any type of crime committed at the international level. It is like an octopus whose tentacles embrace all layers of the society. Unfortunately, it is a growing problem and specialists seem to be unprepared to face this challenging and profitable phenomenon. All we need is a strong international cooperation and updated legislation in order to fight against organised groups involved in cybercrime.

Keywords: cyber war, phishing, international cooperation, computer crime, computer related crime.

CONSIDERAȚII GENERALE PRIVIND CORUPȚIA

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Abstract:

The enhancement of corruption and mismanagement of public resources, which generate social inequities and the proliferation of the underground economy represent an aspect linked to the vulnerability of the internal situation of the state. Corruption brings into discussion both the general state of morality within a society and the effectiveness of the elements with a moral influence (family, school, church, organizations, media). Thus, we may not ignore the moral influence of some factors outside the country (import of morality or immorality).

Key words: corruption, underground economy, organized crime, media, organization

Unele aspecte privind clasarea și renunțarea la urmărire penală

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Abstract

According to the New Criminal Law, the waiver of the prosecution is a measure which can be taken by the prosecutor, in case of criminal offenses having as criminal sanction the payment of a fine or imprisonment for a period of up to 7 years, as long as he can prove that there is no public interest in continuing the investigation, based on the criminal act content, the way and means of acting, the purpose and particular circumstances, the consequences of such a conduct, obtained or potentially obtainable.

Key words: prosecution dismissal, waiver of prosecution, public interest

Aspecte privind reluarea urmăririi penale în conformitate cu prevederile Noului Cod de procedură penală

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Abstract

Resuming prosecution is the criminal proceeding act consisting in reopening the investigation in case:

(i) The cause of prosecution dismissal is no longer existing, the preliminary chamber judge ordered the restitution of cause, the reopening of the criminal case has been ordered,

(ii) None of the situations preventing commencement of the criminal proceedings exist.

Reopening of prosecution is an exceptional criminal measure, meant to bring the criminal proceeding on a normal flow, by reactivation of criminal investigation, in those specific situations provided by the law.

Key words: (criminal) prosecution suspension, restitution of the case, reopening of the investigation.