

PRO PATRIA LEX

Revistă de studii și cercetări juridice
Volumul XV, Nr. 2 (27)/2015

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I. D R E P T

REGLEMENTĂRILE UNIUNII EUROPENE ÎNTRE TENDINȚA ASIGURĂRII SECURITĂȚII INTERNE ȘI NECESITATEA RESPECTĂRII DREPTULUI LA VIAȚĂ PRIVATĂ

NICOLETA DIACONU¹

Abstract

The EU has developed legislation to protect the right to privacy.

Protection of personal data is a way of guaranteeing the right to privacy.

After the terrorist events that occurred in the US on September 11, 2001, the EU was forced to make a compromise to the regulations on fundamental human rights, consisting in adopting legislation allowing controls over electronic communications and telephone (Directive 2006/24 / EC), the risk of infringing the fundamental right to privacy.

In 2014 Court of Justice of the European Union overturned the directive, which has consequences for the national measures implementing the Directive.

In this context, the European Union must find solutions that simultaneously meet two goals: prevent terrorism and respect their privacy.

Keywords: *European regulations, the right to privacy; prevention of terrorism.*

ROMÂNIA LA CONSILIUL NAȚIUNILOR UNITE AL DREPTURILOR OMULUI

ION DRAGOMAN*

Abstract:

The United Nations noted that Romania had admitted frankly both the key areas where progress has been made and where further efforts are needed in promoting and protecting human rights and its achievements, including improvement of national legislation, formulation of national policies and programmes of action, and establishment of national institutions. It highlighted this frank and self-critical approach as a good result for human rights in Romania. As a staunch supporter of the Human Rights Council from its very beginning, Romania has undertaken resolute actions in all human rights sector, on the normative, institutional and implementation levels and is determined to continue its efforts in this regard. Its mandate as a member of the HRC, as well as the presidency of the Council was exercised tirelessly and with resolute commitment by the Permanent Representative of Romania to UN Office at Geneva.

Keywords: *Government of Romania, Human Rights Council, member of HRC, national legislation on human rights, Permanent Representative of Romania to UN Office at Geneva, presidency of the Council, universal periodic review, working group*

EXPLICAȚII PRIVIND ÎNȚELESELUL „PIEȚEI” ÎN CONTEXTUL DREPTULUI CONCURRENTIAL AL UNIUNII EUROPENE

VLAD-TEODOR FLOREA¹

Abstract

The article focuses on the problematic of market definition and market power and the EU's institutions approach on this matter. As we will see, there are problems that practitioners may come across, some of which were clarified by the European Court of Justice or Commission, and other issues that have received different explanations from authors in the field of EU competition law.

The analysis of “market” takes into account the three pillars of EU competition law: cartels, abuse of dominant position and merger regulation. Even though, none of the rules that govern these three pillars do not mention the concept of “market power”, many authors, including the author of this article, have underlined the importance of understanding this concept and they have tried to clarify its meaning.

The notion of “undertaking” and “market” are the most important key elements in the analysis and the assessment of an anticompetitive conduct.

Keywords: *EU competition law, market definition, geographical market, product market, market power.*

STATUTUL PRIZONIERILOR DE RĂZBOI ÎN DREPTUL INTERNAȚIONAL UMANITAR

DAVID UNGUREANU¹

Abstract:

Prisoners of war are those persons, members of the armed forces, parties to the conflict, which were seized by the enemy. Given that their situation is very serious, being virtually at the mercy of the capturing armed forces and considering the sad experience of the Second World War in this area, the international humanitarian law has provided a series of regulations which improve a lot the life of those in this situation, protecting their life, dignity and health.

Keywords: *international law, war, prisoners, captivity*

CONCEPTUL DE SECURITATE INTERNĂ A UNIUNII EUROPENE - DEZIDERAT SAU REALITATE

VIOREL VELIȘCU¹

Abstract

Awareness of the risks and vulnerabilities that may arise, but also awareness of the need for implementing such concepts, such as internal security strategy developed by the European Union, of particular importance.

The strategy aims to correlate the policies of Member States in certain fields of interest and presenting to the public the existing EU instruments that already help to guarantee the security and freedom of EU citizens.

The strategy envisages joint development of policies and procedures by using an integrated approach that addresses the causes destabilization of security, not just their effects.

EU Internal Security is a concept that involves the safety of the national territory, population and State policies and include both military and non-military elements. The concept involves identifying objectives and characteristics of the state to be protected or improved, underlying interests, threats, risks, vulnerabilities and national resources.

Keywords *European Union, Internal Security, goal, concept, reality*

MODALITATI DE ALEGERE SI DESEMNARE A ORGANELOR LOCALE – UNELE ASPECTE DE DREPT COMPARAT

ANDREEA CÎRCIUMARU¹

Abstract

Countries of the European Union go through a general revision of public policies modeled to better serve the citizens and permit them to exercise their right to live well in their own country, in their own region, in their own town.

In all legal systems analyzed there is at least one, but often two or three levels of government under the central government and in all there are more such administrative levels generally, such as communes or municipalities, and the system of electing representative bodies, although they know significant variations from one state to another, have although a single overall objective - ensuring good local administration and implementation of the principle of participatory democracy.

Keywords *European Union, public policies, local administration, democracy*

SCURTE CONSIDERAȚII PRIVIND EVOLUȚIA EXCEPȚIEI DE NECONSTITUȚIONALITATE ÎN DREPTUL ROMÂNESC ȘI CEL FRANCEZ

BOGDAN NICOLAE ȚONEA¹

Abstract:

Compromisul între teoria lipsei controlului de constituționalitate și cea a controlului juridic al legislației din punct de vedere constituțional, îl reprezintă delegarea acestei forme de control unei instituții speciale, Curte sau Tribunal, care funcționează în afara sistemului juridic regulat. Excepția de neconstituționalitate devine astfel, un procedeu eficient de apărare a drepturilor și libertăților publice, ea privește o cauză aflată pe rolul unei oarecare instanțe judecătorești, proces în care cel interesat poate să atace legea în baza căreia instanța a pronunțat hotărârea sa, considerând legea ca neconstituțională.

Keywords: *control de constituționalitate, excepție de neconstituționalitate, drepturi subiective, drept comparat*

PROBLEMA AVORTULUI ÎN CONTEXTUL PROTECȚIEI JURIDICE A DREPTULUI LA VIAȚĂ

OANA-MIHAELA VIȘAN¹

***Abstract:** Along with the death penalty, cloning human beings, organ transplantation, euthanasia, abortion is one of the controversial issues concerning the right to life. Legal analysis of the issue of abortion, the voluntary interruption of pregnancy, based on the analysis of the right to life, requires consideration of the beginning and end of legal protection of the right to life of a person. Abortion is one of the most discussed issues in the literature and not only should be analyzed from many points of view both legal and moral or religious, philosophical, economic, demographic, etc.*

***Keywords:** human rights, European Court of Human Rights, right to life, abortion issue.*

OBICEIUL JURIDIC ÎN SISTEMUL DE DREPT ROMÂNESC

GABRIEL MOINESCU¹

Abstract:

Legal habit quintessential experience gained by a human community life and practices crystallized during its historical evolution.

Keywords *Law, introduction to law, interpretation, legal norms, legal rules, cases, enforcement bodies, history.*

SCHIMBĂRILE CLIMATICE: DE LA RIO DE JANEIRO LA PARIS

ELENA- LOREDANA PÎRVU¹

Abstract:

Faced with the threat of the global warming and aware of the need version adoption of urgent measures to reduce emissions of greenhouse gaze, European Union, is among the most active actors of this effort an international dimension.

Aware much of the complexity and seriousness of the phenomenon of the global warming and climate change, Members States of the United Nations, among other important documents, adopted the version of the World Conference in Rio de Janeiro in 1992, the Convention - United Nations Framework on Climate Change Convention which was ratified by Romania by Law no . 24/1994 and published in the Official Gazette no. 119 of 12 May 1994.

Based on the United Nations Framework Convention on Climate Change the Kyoto Protocol was adopted and after, ratified by Romania through the Law No. 3 / 2001, which strengthens the obligation of the parties in order to reduce anthropogenic emissions of greenhouse gases by at 5% below the calculated production of 1990 by 2008-2012.

The Kyoto Protocol is one of the most important international documents devoted to achieve the objectives of reducing greenhouse gas emissions, generating so-called post- Kyoto strategy.

Keywords: *climate change post Kyoto strategy, emissions of greenhouse*

**NECONSTITUȚIONALITATEA DISPOZIȚIILOR PRIVIND
REȚINEREA DATELOR GENERATE SAU PRELUCRATE DE
FURNIZORII DE REȚELE PUBLICE DE COMUNICAȚII
ELECTRONICE ȘI DE FURNIZORII DE SERVICII DE COMUNICAȚII
ELECTRONICE DESTINATE PUBLICULUI**

NEGRUȚ GINA¹

Abstract:

The provisions governing how to obtain data generated or processed by providers of public electronic communications networks or providers of publicly available electronic communications expressed the Constitutional Court.

We find that highly motivating decisions of the Constitutional Court regarding the unconstitutionality of Law no. 82/2012 and Law on cyber security grounds resemble the EU Court of Justice, which overturned Directive 2006/24 / EC for failure by the minimum requirements so that persons whose data are have retained sufficient guarantees to enable the protection of their personal data against the risk of abuse and against all misuse of such data.

Keywords: *surveillance of communications data generated or processed by providers of public communications networks, data generated or processed by providers of publicly available electronic communications services.*

PROBLEMATICA DREPTURILOR OMULUI IN CONTEXTUL POLITICII EXTERNE A UNIUNII EUROPENE

ADRIAN CRĂCIUNESCU¹

Abstract:

All human rights diplomacy or combatant procession (actions, efforts, arrangements) became a new and distinct chapter of world diplomacy -These dynamics with a significant loss in international relations.Promoting human rights protection mechanisms within the EU has become the privileged experience of European political cooperation and the common foreign and security policy .

Human rights issues have a prominent place in EU regulations. There are three sources - grounds of protection of fundamental rights - national constitutions, European Convention on Human Rights and the Charter of Fundamental Rights of the EU, we face a multiplicity of regimes of protection and might create tensions and create confusion and harmed legal certainty could erode fundamental rights, undermining the very consignee- citizens .

Keywords: *Human rights diplomacy, European protection mechanisms, European Convention on Human Rights,european citizenship.*

SCHIMBARE DE ACTORI GEOPOLITICI IN ORIENTUL MIJLOCIU

GEORGE GRUIA¹

Abstract

This paper presents a clear direction that Russia will occupy mostly the western part of Syria and will not leave this area. Despite diplomatic efforts that NATO countries make, tensions emerged between Russia and Turkey after the shooting down of the Russian fighter jet by the Turkish army and are more emphasized than ever. The relationship between the two leaders called by the international media Czar and Sultan was already tense ever since Russia decided to get involved in the war in Syria. The role of this article is to present an interpretation of Russian's geopolitical situation from Middle East in a general way and with direct correlation to the war in Syria. In this regard, the article describes an overview of the actions on the medium and long-term of Russian actions which directly influence the regional geopolitics and last but not least world geopolitics with repercussions over EU countries, America, Arab countries and Israel, despite the current economic problems of Russia.

Keywords: *Russia, Syria, Turkey, the economic crisis*

CARACTERISTICILE RELAȚIILOR INTERNAȚIONALE CONTEMPORANE

GABRIEL TAUBER¹

***Abstract:** The state is the subject of the will that sets a legal order and, as a potential expression of society, it is even the subject of legal order in which the common life of the people, having two material constituents (the people and the territory as assumptions required in fact) and one formal (legal relationship) but essential.*

***Keywords:** state, international relations, human communities, peoples.*

PRACTICA RELAȚIILOR INTERNAZIONALE DE LA PACE ȘI COOPERARE LA DIFERENDE ȘI LITIGII

LAURA TOADER¹

Abstract

The truth is that humanity has always concerned about their own peace and great thinkers have analyzed it in depth. However, until now peace has not found a positive definition, the known definition remains the same negative situation where there is no war, as an indication of health in the absence of disease.

Keywords: *peace, cooperation, disputes, litigation, international relations.*

IMPUTAREA LIBERALITĂȚILOR NERAPORTABILE REALIZATE ÎN FAVOAREA UNUI MOȘTENITOR REZERVATAR (I)

LAURENȚIU DRAGU¹
ION IORGA²

Abstract:

By imputing liberalities we must understand how to calculate liberalities made by the deceased or the quota available either on reserve. In other words, excessive liberalities imputation is to determine the portion of inheritance (or crank backup available) that needs to be calculated liberalities made by the deceased, for if the attribution is made to the reservation, available quota form the subject of other special favors, and if done on available quota, it will be gradually reduced by successive liberality to exhaustion, subsequent liberties remained without effect as a result of their total quota.

Keywords: *liberalities, available quota, portion of inheritance, successive liberality, subsequent liberties*

AUTORITATEA PĂRINTEASCĂ ÎNTRE DOCTRINĂ ȘI JURISPRUDENȚĂ

VALERIA GHEORGHIU¹

Abstract:

Desiring to ensure better living conditions for children or family or parents or children are displaced from their habitat voluntarily. Thus, growth, education and maintenance of minor children family moves from the state. The family is affected by amputation relations between family members, through their breakup. Migration favored freedom of movement within the European Union resulted in profound changes in the family matrix. Consequently, migration of separated parents not only children but also among themselves wives who were thus prevented care of each other and in a short time to reach divorce. Separation of the parents of children or spouse, the phenomenon of migration generates true family drama. In these circumstances, the organization of future protection of minors has become a necessity that requires relevant legislative measures.

Keywords: *parental authority, family, parents, children, the child's best interest, divorce, child custody*

REGIMUL JURIDIC AL CONTRACTULUI DE TRANSPORT FLUVIAL ÎN DREPTUL COMPARAT

ION IORGA¹
LAURENȚIU DRAGU²

Abstract:

The agreement regarding the river transport in France has a double subordination in relation with the legal regime. Internal transports fall under the land transport legislation, art. L 133-1, L133-7 from the French Commercial Code. French Renane transports fall under the incidence of the German law regarding the domestic navigation from June 15, 1895, which partially gives more contractual freedom (mainly the exonerations of liability), its dispositions coming from the maritime law.

Regarding the German transport the legal regime of the contract is governed by the new dispositions in the Commercial Code (HGB) adopted in 1998, which ended the particular character of the river law. In this way a new legal framework has been crated, applicable to all kinds of transport, be it on land, air or water.

Keywords: *river transport, French Renane transports, French Commercial Code, German Commercial Code (HGB)*

II. ORDINE PUBLICĂ

CONSIDERAȚII PRIVIND DREPTURILE DE PROPRIETATE INTELECTUALĂ ȘI PERSOANELE PRIVATE DE LIBERTATE

MARIUS PANTEA¹

Abstract:

This article brings to the attention of the reader the rules that regulate the possibility of detainees to reduce the period of detention by writing and publishing scientific papers or patents. The two rights of intellectual property are regulated by national rules. The way they have been used lately by the detainees who are politicians, public persons or businessmen accused of economic crimes, tax evasion or grand corruption only minimizes the impact of this opportunity given by the law maker.

Keywords: *copyright, patent, detainee, penitentiary, scientific paper*

ASPECTE ACTUALE PRIVIND MODALITĂȚILE DE TRAFICARE A SUBSTANȚELOR STUPEFIANTE

GIUREA LAURENȚIU¹

Abstract

Drug-related crime, its consequences for social, economic, medical and political causes considerable harm not only the interests of the state, but endanger human life and health. Millions of people falling as victims are added annually to the "white death", an alarming percentage entering the sad category of those hopelessly lost for society.

Keywords: *drugs, organized crime, criminal networks, traffic.*

CRIMINALITATEA INFORMATICĂ – FACTOR DE RISC LA ADRESA SIGURANȚEI NAȚIONALE

GIUREA LAURENȚIU¹
SAMSON GRIGORE²

Abstract

The paper draws the attention of various challenges of cybercrime, given the rapidly evolving and increasingly sophisticated forms of manifestation of this type of crime and the extremely serious consequences for state institutions and individuals.. Since these acts can occur anywhere the need to cooperate at European and international level is increasingly highlighted, and there are formulated some proposals in this regard

Keywords: *hacker, virus, vulnerability, server, computer, crime.*

INVESTIGAREA CRIMINALITĂȚII ÎN DOMENIUL TRAFICULUI ȘI CONSUMULUI DE DROGURI

SECĂREANU MARIAN¹

*„Este interzis omului, sub
pedeapsa decăderii și
morții intelectuale, să
tulbure condițiile
primordiale ale existenței
sale și să rupă echilibrul
facultăților sale!”
Charles Bandelaire*

Abstract:

The drug problem has become a social issue with broad implications on the livelihoods of people. Therefore, the fight against drugs must be fought primarily at national level by using legal instruments such as laws, decrees and regulations, and internationally, with the support of both the effective legislation and specialized organizations or institutions. Social factors (family, friends, school, neighborhood relations, neighborhood groups, low school education, etc.) have a strong influence on a young person's decision to dope or not, to enter the trafficker's network of illicit drugs.

Key words: *drugs, crimes, traffic, consumption, law*

IZVOARELE DE DREPT ÎN MATERIA NEDISCRIMINĂRII ÎN ROMÂNIA

dr. Asztalos Csaba Ferenc

Abstract:

For ensuring the effective enforcement of the principle of equality and non discrimination, states have a negative and a positive obligation. Negative obligation is expressed by the state abstaining to commit any act of discrimination in the exercise of the three main powers (legislative, executive and judiciary) and the positive obligation takes into consideration the state duty to create a legislative framework that provides legal and reasonable instruments for the citizens in order to prevent and sanction all forms of discrimination. This article deals with the legal framework of Romania in the field of preventing and sanctioning all forms of discrimination.

TENDINȚE ALE METODICII DE ANTRENAMENT PENTRU DEZVOLTAREA ABILITĂȚILOR DE AUTOAPĂRARE ȘI AUTOCONTROL

MIHAI CRISTIAN NEGOESCU¹

Abstract

Current trends in Self Defense training methods and Auto Control involves two fundamental components who influence each other. These are physical component and mental component. Educational process of students must take them of all but also by the heterogeneity of the students class.

Keywords: *self-defense, self-control, the art of conversation, communication, physical part, the mental part, martial arts techniques.*

LA PRÉVENTION ET LA LUTTE CONTRE LA CORRUPTION DANS LES ETATS DU PARTENARIAT ORIENTAL, SELON LES POLITIQUES DE L'UNION EUROPÉENNE

PREDA EMANUEL-IONUȚ¹
GHÎȚESCU MELANIA-GEORGIANA²

Résumé

Corruption is one of the biggest threats to states, both those in which it is present, and the neighbouring countries. Thus, the European Union made considerable efforts regarding the fight against corruption, especially in the states of Eastern Europe. To this end, it created the Eastern Partnership as a tool to allow EU to provide support in strengthening the efforts of these countries to prevent and combat corruption, and also to share EU experience, standards and procedures in this area. The six states of the EaP, namely Armenia, Azerbaijan, Belarus, Moldova, Georgia and Ukraine, are, according to the index of Transparency International, use different standards in what regards the measures taken in the fight against corruption, which makes also the measures adopted by EU in the area to be also differentiated. However, despite the efforts of the EU, some countries, such as Armenia, Azerbaijan and Belarus, abandoned at various stages, participation in the EaP, which shows gaps in actions taken by the EU.

Mots-clé: *Partenariat Oriental, Union Européenne, corruption*

CONSIDERAȚII GENERALE PRIVIND TRAFICUL DE FIINȚE UMANE

ANA-MARIA CHIȚA¹

***Abstract:** Human trafficking is a complex issue related to a wide range of issues, including the gender, migration and border management, organized crime, labor market, ethnicity and armed conflict.*

Although there is no panacea for trafficking, the situation can not improve unless, in the sector of defense public order and national security are identified effective and legitimate ways of action that respects human rights.

***Keywords:** human trafficking, prevention, control, pimping, slavery.*

ASPECTE JURIDICE PRIVIND ACTIVITĂȚILE EXTRAATMOSFERICE

DR. CORINA FLORENȚA POPESCU*
DR. MARIA-IRINA GRIGORE-RĂDULESCU**

Abstract

The exploration and use of outer space, including the Moon and Other Celestial Bodies, determined and stimulated the process of concluding treaties on general and specific principles governing relations between states in the conduct of space activities.

Keywords: outer space, space law, exploitation and use of outer space, outer activities.

EXCEPȚII DE LA INTERZICEREA TRATAMENTULUI DIFERENȚIAT – MĂSURILE AFIRMATIVE

DR. ASZTALOS CSABA FERENC

Abstract:

*Not every different treatment is an act of discrimination. The knowledge exceptions to the prohibition of differential treatment are necessary in order to avoid any abuses in applying the non-discrimination principle. The principle of equality has a series of exceptions established by most states. These exceptions **aim to achieve effective equality** for persons belonging to a disadvantaged group or objectively justified by a legitimate aim and the means of achieving the aim are appropriate and adequate or proportionate to the aim pursued. Exceptions shall be subject to rigorous testing and must fulfill a number of conditions to be accepted as such in practice.*

*Specialized literature knows two exceptions to the principle of equality: **affirmative action or positive action** and **genuine occupational requirements**. This article deals with the legal status of affirmative measures.*