SUMMA

A DEBATE FOR LIFE? AGENDA AFTER A DECISION OF THE STARSBOURG COURT

Ádám Békés

Regulation of the life imprisonment is not only a professional challenge for criminal jurists, but it is a legislative task which constitutes high priority issue for the whole society, so it may not be decided only by applying legal theories or methods of comparative law. For the politics the sanction of life imprisonment will be always philosophical and socio-ethical issue aggravated with the assumption of the society's interest for strict and deterring sanctions. Therefore, it is difficult to create the set of rules of application and execution of life imprisonment in such way which is in compliant with section 3 of the European Convention on Human Rights (ECHR) but at the same time it has to be appropriate for protection of citizens from serious violent crimes by the state by keeping the offenders in prison whose personality is seriously dangerous. ECHR determined the frames for the national legislation with the cases: Kafkaris v. Ciprus, Vinter and others v. United Kingdom, Törköly Tibor v. Hungary, and Magyar László v. Hungary. According to these judgments the purposes above can be achieved by a regulating system, which grants to the convict the possibility of reconsideration of his actual life imprisonment and the hope for a possible probation, furthermore rules have to be clearly determined for the enforcement bodies and for the convicts as well, compliance with them may result for the convict the release on probation. However it is to be emphasized, that release on probation must remain a possibility only, so convicts does not comply with the predetermined rules, may not be released, because in such cases protection of the society will prevail. Therefore, it can be stated, that actual life imprisonment is to be reconsidered by the Hungarian legislators and they have to make efforts to create legal regulation in compliance with national criminal-political purposes and international obligations of Hungary as well.

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CRITICAL ASSESSMENT OF EMPLOYEE SHARING

Gábor KÁRTYÁS

Probably the main tendency of the recent decades in labour law has been the proliferation of various forms of employment. Even the cornerstones such as the employment relationship between one employee and one employer are changing. Hungarian labour law has been built on the idea of the typical employment relationship involving two parties. However during the last 15 years new concepts and institutions were introduced in the labour law. One of the newest elements is employee sharing in the new Labour Code, where an employee is contracted with two or more employers. This study explores the reasons why the regulation of this new instrument was necessary and how an employment relationship involving more employers could fit in the system of labour law. After comparing similar scenarios – like temporary assignments and agency work – the study gives a detailed assessment of the relevant provisions on employee sharing with special regard to remuneration and termination of employment.

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THE LOSS OF CHANCE OF RECOVERY AS A BASIS FOR DAMAGES IN THE LIGHT OF THE COURTS' CASE-LAW

Klára BODONOVICH

Health-care liability actions introduced specific cases into discussion in which the patient's injury or death is caused not only by the doctor's or medical personnel's breach of duty of care, but also by the patient's disease developed by so-called natural causes. In the absence of proper medical treatment, the patient's chances of recovery or survival decrease or, in the worst-case scenario, completely vanish. Having regard to the fact that the loss of chance as a basis for damages is not covered by statutory regulation, it remains for the courts to assess situations in which the doctor's negligence led to the decrease or loss of the patient's chances of recovery. As a result of the above, the jurisprudence raises the questions of how the loss of chance should be integrated into the existing tort law system and how it should be included in the scope of traditional damage; on the other hand, where the boundaries of the notion of the loss of chance should be and how the rate of chance should be interpreted; in addition, which party should bear the burden of proof in such cases where there are several factors of uncertainty.

In accordance with the now consistent case-law of the courts, the chance of recovery is considered a value that has a close and characteristic link with the patient's personality. Therefore, the chance of recovery is deemed to be a personality

right protected by law, and the decrease or loss of such chance entitles patients to claim compensation for their non-pecuniary damage. Health-care institutions are to be held fully liable for damages that arose from the loss of chance of recovery, and it follows that there is no scope for "mitigating damages" or reducing the amount of damages to be awarded by a proportion appropriate to the rate of chance. In these instances, it can also be established that the traditional tort law system does not fully apply, since the different elements of tort, *id est* injury, unlawfulness, causation and liability, cannot be examined in a separate manner, as these elements tend to significantly "intermingle" with one another.

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THOUGHTS ABOUT THE NOTION OF CRIMINAL PROCEDURE AND THE THEORETICAL BACKGROUND OF EVIDENCE

Tamás Hágер

The person who seriously violates the order of human society and the norms laid down by the state authority can expect to be impeached and to suffer legal disadvantage, as has been the case since ancient times. As early as when there were societies of clans and tribes, but especially since the birth of state, social relations and the relation between the individual and the state have become regulated, only based on customary law first, and later also in greater detail by written sources of law. There are such human behaviors, endangering social co-existence and state authority, that have been entailing punishment for millenia. The study strives to provide a presentation of the criminal procedure determining criminal impeachment and, as a part of this, of the historical and theoretical background of verification. The paper will consider the thoughts of the significant, and primarily Hungarian, authors of the field of law literature from the 19th century on, also mentioning the accomplishments of the Anglo-Saxon legal science. Furthermore, by summarizing the results of law development, it will try to offer such a definition of criminal procedure and verification, that could be a guideline in modern law as well, taking the European standards in consideration.

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THE QUESTIONS CONCERNING THE LEGAL INSTITUTION OF THE CHARGE BARGAIN IN THE MIRROR OF USA'S EFFECTIVE RULES

Boglárka Juhász

Between devices accelarating of the prosecution – because of their effiency – those legal solutions figure on distinguished place which is made possible arranged criminal cases apart from negotiating hall. The question of simplification of criminal prosecution has been employing the European Union for many years, and in parell with it, big part of member states have introduced rules like that, wich one made possible the negotion, agreement of charge and protection during the criminal procedure. Firstly in the common law countries – because of the tradition of client litigation – could turn of development of the legal institution of charge bargain, and it's acception and codification, but application of it mostly becomes popular in the United Stated of America. Before the reconsideration of hungarian prosecution's rules could proves to be useful canvass those foreign legal acts, altough between local relations, but uphold the arranges of criminal fact. With attention that way, that member states of United States of America have independent legislative powers, so it is worthy to handle the relevant sections of Federal Rules of Criminal Procedure which went through several modifications and amendments under a past decade.

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THE DOMESTIC REGULATION AND ENFORCEMENT OF THE RIGHTS OF PERSONS WITH SPECIAL NEEDS

Szilvia Kellner

At first, it is necessary to clarify that, why call I the disabled people of the „persons with special needs" in my work. The reason is that, along with the word of "disabled" or "handicapped" suggests a negative connotation to society. The continued use of this concept, reinforces of the already existing and difficult to overcome stereotypes, and it undermines the existence of integration, of the acceptance.

At this right forced the state to act It is not enough to refrain, but is oblige to take measures to promote integration. The special needs' rights into legislation and enforcement has led to a long and bumpy road.

In my study you can read about a short overview of the historical development of disability rights.

Insights can do the Hungarian legal background and its impacts on the rights of the disabled people.

ON THE UNILATERAL FIDUCIARY ASSET MANAGEMENT (TRUST) RELATION

Péter Miczán

Summary of content: The new Act on the Hungarian Civil Code, which introduced the legal institute of fiduciary asset management into the Hungarian law, permitted to create such legal relation in a quasi unilateral form, in which the party providing the assets (settlor) declares herself to be the asset manager (trustee) as long as there is at least another person ascertainable as beneficiary, although the settlor-trustee may be a beneficiary as well. In this paper I present and propose answers to certain ambiguities in the construction of the handful legal provisions applying to the quasi unilateral fiduciary asset management relations and to those arising from the lack of legal provisions specifically applying thereto. During which I put forward analogies as well from current model trust laws and from the Hungarian private law of legal persons.

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THE ENFORCEMENT OF THE PRINCIPLE ABOUT THE RIGHTS WITHIN THEIR MEANING AND INTENT, WITH SHORT OUTLOOK TO THE ADVANCE TAX RULING

Ildikó Szabó

At first, I presented the results of my survey about the principle about the rights within their meaning and intent and its origin from the Ancient Greek documents to the Gustav Radbruch. This principle appears in the legal theory and the acts about the civil law. After that, I describe the relationship this principle and the prohibition of abuse of rights. This principle has the important role in the labour law, so I have a short outlook to these provisions. Later, I presented the enforcement of this principle in the tax administration law, and Laszló Hadi's, István Simon's and my opinion about the role of this principle conflicts in this study. According to my opinion this principle could be an effective tool in the fight against tax evasion, for example in the advance tax ruling.

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EXTRADITION OR RIGHT TO ASYLUM?

Árpád Szép

Asylum means protection against extradition however the protection should be granted even if the person in question does not apply for asylum and is not considered as a beneficiary of international protection.

In the Hungarian system there is absolute no correlation between the organization responsible for extradition and the one responsible for asylum. Because of this the guaranties should be present in the procedures. This is valid in the written law however in practice it does not prevail. The concerned judicial bodies are restrict themselves to the supervision of the criminal elements of the request for extradition and do not cope with other issues, like chances of torture or inhuman treatment in case of extradition. The decision of the Minister of Justice regarding extradition is not based on open sources and lacks accessible reasoning.

The required guaranties are only prevailing if the person requested to be extradited seeks asylum. In order to prevail such guaranties in every case the change of the legal environment is not necessary although it would be beneficial.