

SUMMA

THE CASE OF THE NON-APPLIED FOREIGN LAW: POSTING OF WORKERS IN HUNGARIAN COURT PRACTICE

Gábor KÁRTYÁS

The EU rules on posting are a result of a compromise: while the posted worker remains subject to the labour law of the posting state, the rules of the host state apply to the basic working conditions. In regulating so, the EU legislator balances the interests of the sending and receiving states and those of employers and workers. Out of this complex conflict of interest, I highlight the following practical question: to which extent EU rules on posting apply in domestic court practice? I examined this question based on the case law of the Kúria (the Hungarian Supreme Court), dating back to the date of EU accession (2004). The analysis of around 20 cases reveals that EU standards created by difficult compromises have hardly been incorporated into Hungarian legal practice. The purpose of this study is to explore the reasons for this and to draw conclusions to help improve legal practice.

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CRITICISM OF THE CORPORATE SOCIAL RESPONSIBILITY IN VIEW OF THE CATHOLIC SOCIAL THOUGHTS

Klára KATONA

This study attempts to define the conception of the model of corporate social responsibility (CSR) and present the essential elements of the economic discussion on the validity of it. Some economic schools have argued that CSR is not a legitimate corporate activity for many reasons. This criticism is part of a general academic discussion on the purpose of the economy, but this study outlines only those relevant arguments in this debate, which affect the essence of CSR theory directly. The speciality of this study is to explain this model and the economic debate on it from the view of catholic social teaching (CST). The study aims to reveal how CST can contribute to the economic discussion on CSR and how it may enrich it.

THE GOVERNMENT'S SPEECH. THE FIRST AMENDMENT PARADIGM AND THE CONSTITUTIONAL LIMITATIONS OF "GOVERNMENT SPEECH" IN THE UNITED STATES

Péter SMUK

The First Amendment of the US Constitution seems to leave open the question: how to approach a situation when the government itself declares an opinion, communicates certain views, when the actors of government are not censors but speakers. The case law on the interpretation of the free speech doctrine tackles this problem only in the recent decades and started to identify the constitutional limitations of government speech. In government activities, political struggles are intertwined with the functions of the state, such as education, socialization, information, maintaining public libraries, supporting research and culture, protecting the state, citizens or the environment, etc. Thus, a total ban on state or government communications cannot be expected. The American literature seeks a framework of interpretation in which the positive functions and communication of the state can be distinguished from dangerous deflections (such as war incitement, propaganda, advocacy of a belief, or supporting the re-election of an incumbent politician, etc.). In order to set up these (understand) constitutional boundaries, this article intends to review and analyze the most important tests or doctrinal propositions of First Amendment jurisprudence.

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ARGUMENTS FOR THE PROTECTION OF A YET UNBORN HUMAN BEING

Reflection on a paper regarding abortion

Antal HÁMORI

This article reflects on a feminist study on abortion: it contains arguments and reflections for the adequate protection of the lives of yet unborn women and men. Nowadays, the topic is remarkable and topical on a national and international level as well. The article first introduces the abovementioned feminist viewpoint and arguments and then the judgment thereof follows. Within this context, the article contemplates the tragedy of abortion, the value and protection of human life, the hierarchy of values, responsible family planning with references of published data, the responsibility of men and women. The article includes relevant decisions of the Constitutional Court, the situation of the foetus's father, the rules on the coverage of costs of induced abortion (allowances, exemptions – cf. e.g. criminal indication), the obligatory non-neutral (and non-one-time) counselling, the resistance of health workers and the regulation thereof.

BALANCE OR SAFEGUARDING THE WORKERS' RIGHTS?

Current questions of collective labour rights with regard to the recent case law of the CJEU and the EPSR

Márton Leó ZACCARIA

The present paper examines some actual and significant questions of collective labour law in European law and judgments of the Court of Justice of the European Union (CJEU). More precisely, the main topic is focused on the fundamental collective labour rights that all workers in the European Union (EU) are entitled to. The main sources of these rights are the following: Article 155 of the Treaty on the Functioning of the European Union (TFEU), Article 27 and 28 of the Charter of Fundamental Rights of the European Union (CFREU) and as the latest step of development Article 8 of the European Pillar of Social Rights (EPSR). Additionally, some recent judgments of the CJEU are also analysed from the point of view of the legal interpretation and the limitation of these fundamental labour rights. The hypotheses of the research is based on the need for high-level protection of such rights to help overcoming the social and employment problems the EU is facing nowadays. Collective labour rights – especially the most emphasised right to take collective action, right to enter into collective negotiations with social partners and the right to information and consultation – can play a key role in achieving the primal goals of the EPSR concerning labour market balance and workers' legal protection.

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LEGAL STATUS OF THE PERSON LIABLE SOLELY TO THE PAYMENT OF TAX FROM THE PERSPECTIVE OF THE FUNDAMENTAL RIGHTS. CHANGE OF STATUS?

Gábor KECSŐ

In the Hungarian tax procedure distinction has been made between the taxpayer and the person whose liability is restricted solely to the payment of tax since the transition in 1989/90. The latter person shall not be construed as a taxpayer, but he may also exercise the rights vested in the taxpayer by law. The taxpayer has the original tax liability. The liability of the person liable solely to the payment of tax is derivative. The rules on the derivative tax liability in the Hungarian tax law can be divided into three parts. First covers the general conditions; second is about the list on the potential persons to be obliged such as the taxpayer's heir, donee, successor, parents etc.; third is the miscellaneous section. The general part is the following: in the event of a taxpayer's failure to pay any taxes due and such cannot be collected from him, the persons listed

in the special part may be obliged by resolution of the tax authority to pay such taxes.

The extent of right to appeal of the obliged person has been challenged from the perspective of the fundamental rights in front of the Hungarian Constitutional Court between 2013-2017. In the jurisprudence of the Hungarian courts so far the appeal was restricted against the resolution of the tax authority issued to the derivative person. Consequently, he was not able to appeal against the resolution issued to the original taxpayer. The Hungarian Constitutional Court has required the full extent of appeal. Consequently, person liable solely to the payment of tax shall have the effective opportunity to challenge the resolution issued to the original taxpayer. This right flows from the fundamental right to appeal embedded in the Hungarian Basic Law (Art XXVIII Para 7).

This paper discusses the development of the status. It focuses on decisions of the Hungarian Supreme and Constitutional Courts. It argues that a change in status can be observed: the derivative person equals to the original taxpayer from the very beginning of the tax procedure regardless the rule in effect according to which the person liable solely to the payment of tax shall not be construed as a taxpayer.

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PROTECTION OF FAMILIES ON “INTERNATIONAL WATERS”

Bernadett CSAPUCHA

The paper aims to review the most important international documents related to the establishment of the family protection system, paying particular attention to the international aspects of child protection. In my opinion it is necessary to have a look into the guidelines, and documents pertaining to these subjects, because this group of society in question is exposed to constant vulnerability. There will be basically examined the International documents of the UN and the Council of Europe, giving a comprehensive picture of the historical development and the current situation as well as the level of protection.

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SHOULD THERE BE UNITY IN DIVERSITY? THE MOST IMPORTANT ISSUES IN DISCIPLINARY PROCEDURES IN PROFESSIONAL CHAMBERS

Márta PÉTER-DELBÓ

According to the Act CXXX of 2010 on law-making when making laws, it shall be ensured that laws fit into the unity of the legal system and the professional content of the law should be developed rationally.

Although, the chambers did not have a uniform disciplinary and ethical process. The most important provisions were included separately in the sectoral laws regulating the operation of the individual chambers. These laws had many similarities, but there were also significant differences e.g. the names of the procedures, the consequences of the misconduct and the acting body did not have a uniform regulation.

In the last few years many modifications affected the regulation on the different types of professional chambers. The Hungarian Parliament adopt new laws e.g. on the professional activities of attorneys-at-law and the judicial experts. The question arises whether the regulation has become more explicit thanks to these changes?

The purpose of this study is to describe the most important changes in the regulation and examine the possibility of a more uniform regulation.

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IMPORTANCE OF ALTERNATIVE ECONOMIC MODELS FOR ENVIRONMENTAL POLICY

Szilvia BARTA-GYURKÓ

Alternative economic models are playing an increasingly important role in the pursuit of sustainability and the reform of environmental policy. The European Union has set itself the goal of a complete paradigm shift in responding to environmental problems. Changing production and consumption patterns can lead to economic, environmental and social transformation. To achieve this, the EU has created the Circular Economy Package, an important element of which is the restructuring of waste management and legislation. The goals and conditions for change are clear. The proper use of economic instruments should be reconsidered and re-regulated, providing a legal framework for the adoption of the principles of the circular economy, which could encourage resource efficiency measures, enhance recycling, and eco-design.

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LOOPHOLE IN THE EUROPEAN STATE AID LAW REGULATION WITH SPECIAL REGARD TO MCDONALD'S CASE

Tamás Zoltán WÁGNER

Multinational companies have been seeking to optimise their tax liability for a long time by developing several tax avoidance strategies such as profit shifting, hybrid entity etc. In this regard, they often cooperate with governments who create favourable

conditions for them. The existence of these special tax jurisdictions called tax havens and the tax avoidance strategy pursued by multinationals have direct impact on state budget. Although several studies showed – with special regard to developing countries – that this did not result in growing investment and in making new jobs, it is still popular among many governments. In addition, several EU member states also concluded secret arrangements – the so-called sweetheart deals – with multinationals endangering the internal market. Luxemburg and the McDonald's case are a typical example. After dealing with the authorities concerned, it did not have to pay taxes both in the USA and in Luxembourg.

In the following study we examine the decision of the European Commission by highlighting the different views of the academic literature and the international actors. Finally, we briefly touch upon the issue whether state aid investigations are an effective tool for the European Commission to tackle tax avoidance strategies pursued by multinationals.