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SUMMA

„DAS KIND ALS SCHADEN“

Neueste rechtsvergleichende Auszüge aus dem Themenkreis von menschlicher Geburt als Schadensursache

József Benke

Der Beitrag setzt sich aus drei Teilen zusammen. Das erste Kapitel macht einen Auszug der wichtigsten antropologischen, demografischen Beziehungen des Themas in Ungarn und weltweit, zusätzlich erklärt die Grundfragen vom Recht des Lebens und Todes und die Zusammenfassung der neuesten Tendenzen in ungarischer Rechtsprechung. Der zweite Abschnitt handelt von den Streitigkeiten der Terminologie von *wrongful pregnancy, birth, conception, life, death, abortion, adoption* und *parentage actions*, zuzüglich erläutert er auch die problematische Redensart „*wrongful*“, und befürwortet den Gebrauch der Phrase von „*reproductive torts*“. Der größte Teil des Ausatzes handelt sich um die weltweiten Auszüge der Gerichtspraxen verschiedener Nationen nach 2010, und folgt die thematische Richtschnur, wie: von geschädigten Kindern angestrengte Prozesse gegen Ärzte und Eltern; die Klagen der Eltern gegen Ärzte aufgrund von der deutschen Beispiel; von gesunden Kindern angestrengte Prozesse gegen Ärzte und Eltern wegen Existenz (*Anti-Natalism, Right to Consent*) oder genetischer (Rasse, Geschlecht, Haut-, Augen-, Haarfarbe, Sommersprosse, Größe) oder sozialer Eigenschaften (wie die Unehelichkeit der Geburt) des gesunden Kindes.

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A HÁZASSÁG *IN FAVOREM FIDEI* FELBONTÁSÁNAK 2001-ES NORMÁI ÉS A HITTANI KONGREGÁCIÓ GYAKORLATA

Johannes Fürnkranz
Fordította: Tóth Tamás

A cikk a nem szentségi házasságok *in favorem fidei* felbontásának eljárásáról szól: A részegyházi hatóságok, illetve a Hittani Kongregáció házassági szekciója vizsgálatainak leírását a közigazgatási gyakorlatra gyakorlati utalások egészítik ki.

THE RIGHT TO HUMAN DIGNITY, AS CIVIL LAW RIGHT RELATING TO PERSONALITY AGAIN HUMAN LIFE AND EVEN BEYOND?

Issues of Death and Right in Memoriam

Balázs Landi

The right to human dignity was considered on the one hand as a 'subsidiary fundamental right', which includes inter alia the rights to free personal development, self-determination and privacy (incl. right in memoriam), and which might be relied upon by the Constitutional Court to protect an individual's autonomy when no particular constitutional right was applicable. On the other hand, the right to human dignity is considered in conjunctions with the right to life and even with the right to legal capacity and euthanasia. Both of them are in connection with right relating to personality (incl. right in memoriam) in civil law. In their interactions, these three rights comprise the legal expression of the specific human status (even in case of human's death).

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THE RIGHT OF MARRIAGE, IUS CONNUBII IN THE LIGHT OF CANONICAL IMPEDIMENTS

Lóránd Ujházi

Anybody can contract a marriage except for those who are prohibited by law. Canon 1058 is a deep summary and consensus between *ius connubii,* the right to contract a marriage and legal prohibition. The legislature leaves no doubt in the current Code of Canon Law that marriage is among God's plans, unwaivable right of human and this *ius connubii* is the core element of marriage law. It is possible to restrict this fundamental right, which can be led back to human nature, only via the legislature's utmost restraint.

However, impediments created within boundaries cannot be considered as unauthorized restriction of matrimonial rights. As the marriage is a bond between two people, namely between a man and a woman, the partner's dignity deserves legal protection. The institution of marriage itself, its dignity and in case of the marriage of two Christians its sacramental dignity must be legally protected as well. It is the interest of the community – *bonum commune* – that marriage should get legal protection and that marriage cannot be contracted under certain circumstances.

In this study I am trying to clarify the principles regarding matrimonial impediments. To understand the current system we have to perform an outlook on history of law, while we cannot forget that basically our goal is not an introduction on history of law. Similarly, any referral to the practice and regulation of Eastern Churches will arise in a

comparative aspect, as well as referrals to impediments serve the better understanding of general basic principles.

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LAW AND ITS SIMULACRA

Competition within and outside the Proper Domain of Law to Determine what the Law is

Csaba Varga

What the law is at any time can be defined in rivalry amongst law's sub-complexes (as it is positivated, enforced, and/or socially lived) or as it gets defined through a set of layers (of positive law, judicial practice, and/or legal dogmatics). Once human rights claims, constitutional court jurisprudence or soft law enter the scene as law-generating force, the first picture, dinamic by itself, will only show one of its components broken further, whilst the second one, as a static construction, is to have already a new layer wedged in on the top or elsewhere. Contemporary law being dissolved to a large degree, it has become open to invervention by pressure groups and non-governmental organizations equally, either domestic or foreign, in order to unduly shape local or national policies. This produces fluctuation in the process of law-generation, shocking perhaps but in itself in repetition of what legal development has taken for millennia, with clashing novative ideas and ideals, orientations and trends. For law is hardly more than specific problem solving in the humanity's challenge-and-response paradigm. Accordingly, once priorities or services offered to the practice of human rights, constitutional adjudication or soft law turn to be a problem itself (as it is in Hungary), cure can be searched for in either legal policy measures or the state machinery's regulative intervention.

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SOME THOUGHTS ON THE CONFINEMENT

Mária Bagossy

Act C of 2012 on the Criminal Code has introduced new penalties and measures to the Hungarian criminal sanctioning system. One of these new sanctions was the confinement which was adopted from the administrative law. Confinement can be regarded as a short-term imprisonment because its duration is determined from 5 to 90 days and it has to be enforced in prison. In this paper I would like to examine the question whether internatonal obligations relating to the prohibition of torture can be applied to the enforcement of confinement. According to the relevant decisions of

the European Court of Human Rights, ill-treatment must attain a minimum level of severity if it is to fall within the scope of this prohibition. Can such a short duration attain this minimum level? To answer this question, I would like to present the reports and recommendations of the United Nations and the Council of Europe relating to short-term imprisonment, furthermore the relevant judgments of the European Court of Human Rights.

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THE EXTENSION OF THE ARBITRATION AGREEMENT TO NON-SIGNATORIES IN INTERNATIONAL ARBITRATION DISPUTES

Imola Bencsik

Arbitration is an alternative dispute resolution procedure based on an agreement between the parties. The aim of the study is to analyze the principle of party autonomy, paying particular attention to the consent to arbitration with a reduced consensual character. Due to the complexity of the contractual relations of the parties, arbitration disputes often involve third parties. An agreement between the parties is a prerequisite for arbitration, but in some cases the arbitration agreement may extended to third parties who were not formal signatories of the arbitration agreement.

Based on the judgement of the Thomson CS.F. S.A. v. American Arbitration Association case, the study examines the legal theories to the issue including incorporated by reference, assumption, agency, veil piercing and estoppel and provides an overview of the issue of the assignment of an arbitration agreement and the question of legal succession in this matter.

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CRIMINAL INTERVENTION IN THE CASE OF PREVENTING THE EXERCISE OF VISITATION RIGHTS

Bernadett Csapucha

The study examines the theoretical and empirical approaches to the statutory definition of crimes preventing the exercise of visitation rights. The theoretical part of the study is based on the criminal law in force, and the practical part is based on a case study and its results. I was primarily interested in practices of sentencing sentenced practice. It can be stated that more than half of the 30 final judgements resulted in the imposition of some kinds of measures. There was one case which resulted in imprisonment.

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OPERATIONAL DIFFICULTIES OF THE EUROPEAN CITIZENS' INITIATIVE AND THE REVISION OF THE ECI REGULATION

Balázs Tárnok

The Lisbon Treaty introduced the European Citizens' Initiative (ECI) as a new instrument of transnational participatory democracy in the EU aiming to bring the Union closer to its citizens. According to the experiences of the first few years, the main objective of the ECI was evidently not fulfilled. Consequently, many academics, stakeholders and several other actors, including EU institutions, have criticized the legal framework of the ECI and called for the revision of the Regulation on the European Citizens' Initiative (ECI Regulation). The revision process started in 2017 and ended with the new Regulation entering into force on 1 January 2020. The paper examines the operational difficulties of the ECI encountered during its practical functioning, and analyses the suggestions made by various actors and EU institutions during the revision process. The study presents the new ECI Regulation and attempts to predict the possible remaining problems of the ECI after the revision of the Regulation.

THE INTERNATIONAL ASPECTS OF THE RIGHT TO A NATIONALITY

Blanka Ujvári

Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality – as set forth under the Universal Declaration of Human Rights, a document considered to be a milestone step in the evolution of human rights. Harmonizing states' national laws governing nationality proved to be crucial, therefore, the international community decided to create a convention relating to the rights of stateless persons in 1954. Statelessness is a form of human rights' violation, a violation of the right to nationality, the notion of equality and non-discrimination. A stateless person is stripped of the basic rights that every national enjoys.

Statelessness is the legal consequence of unequal and discriminatory acts which lead to the exclusion and marginalization of the persons concerned. Even where the legal status of such marginalized people is resolved by the government, because they have no legal existence in the past, they continue to face serious obstacles and bureaucratic problems.

The development of international citizenship law in the 20th century is introduced in this study taking into account the case law on international citizenship law as well.

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THE LEGAL STATUS OF THE ORIGINAL OWNER AND THE GOOD FAITH PURCHASER IN PROCEDURES FOR THE RESTITUTION OF CULTURAL PROPERTY

Vanda Vadász

The study addresses the legal position of the two parties, the original owner and the *bona fide* purchaser, who are fighting for the recovery of cultural goods. The study deals with the internal rules of certain countries with continental (Hungary, Germany, Italy), and with common law jurisdictions (United States of America and the United Kingdom). Following the characterization of the two parties, the study presents the due diligence requirements of the original owner and the protection mechanisms provided to the good faith purchaser. The article emphasizes the differentiated attitudes of the legal systems towards the good faith purchaser and proposes harmonization in order to overcome regulatory diversity.