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SECTION III.

EUROPEAN UNION LAW. INTERNATIONAL LAW

Friday, November 16, 2018

Room Virgil Madgearu, (0004), main building – Ion N. Angelescu

Keynote speakers:

Lecturer **Ovidiu Maican**, *Bucharest University of Economic Studies*

Lecturer **Simona Chirică,** *Bucharest University of Economic Studies*

! Each paper will be presented within 15 minutes
! Fiecare lucrare va fi prezentată în maxim 15 minute

DECLARATION OF WAR BY PEOPLES, NOT GOVERNMENTS. A NEW PERSPECTIVE AT INTERNATIONAL LAW

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Abstract
There is no dispute that the right of legitimate defense or the right to self-defense is a guaranteed right in international law and the constitutions of the world's nations. Most cases of declaring war from one state against another are carried out through governments, not people, based on the powers granted to them by the constitution, in cases of aggression and aggression. The declaration of war by the government makes the people suffer from the scourge of war that was not the source of the decision. This paper sets out a new vision for the maintenance of international peace and security by preventing governments from declaring a state of war or even a state of self-defense except by referendum and by an absolute majority of the people with other guarantees to protect them from being part of a war in which they have no interest, It is a real application of the legal norm that people are the source of authority.

BITCOIN: LEGAL DEFINITION AND ITS PLACE IN LEGAL FRAMEWORK

PhD. student Olena DEMCHENKO
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Abstract
Present paper explains the role of the Bitcoin and its involvement in economic activity worldwide with practical examples of real business models. It reflects the modern views of legislators and judicial bodies on local (selective countries legislation and court practice) and international level (European Union legislation and international court practice), which are formed after Bitcoin's fast widespread in 2012. Current research examines in details various definition of the Bitcoin, used by legislators to place Bitcoin in already existing legal frames – virtual money, property, commodity or financial instruments. Bitcoin's proper definition has significant importance to legislators worldwide to regulate business activity related to Bitcoin: licensing of institutions issuing Bitcoin, if it is defined as virtual money; Bitcoin's place in stock market, if it is defined as a security or financial instrument; or transfer of property rights, if Bitcoin is defined as commodity or property. Moreover, this paper underlines the importance of amendments acceptance, based on certain Bitcoin's definition, to prevent money laundering, financial support providing to terrorism, to straighten the financial market and consumer protection procedures.

CONCEPTUALIZATION AND APPLICATION OF THE CONCEPT OF CORPORATE ACCOUNTABILITY IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract
The case law of the European Court of Human Rights (EctHR) pertaining to human rights protection of companies is well developed and extensively analyzed, showing that the legitimacy of companies as potential victims of human rights violations was never seriously questioned. Thus far, ECtHR approached the notion of corporate accountability of companies for human rights violations by applying the doctrine of horizontal effect of Convention rights (Drittwirkung). The paper argues that the achieved level of protection of fundamental rights of companies should go hand in hand with a more focused conceptualization and application of the notion of corporate accountability in EctHR jurisprudence. The authors use doctrinal and comparative methods, focusing on ECtHR case law and the body of soft law related to corporate accountabilty for human rights violations developed within UN, ILO, EU and OECD frameworks. The authors rely on existing academic and expert literature to provide additional grounds for critical assessment. The authors show that, in its approach towards corporate accountability for human rights violations, ECtHR has missed to fully consider the relevant supranational policy framework, and recommend venues that ECtHR may use to advance it, by building on the existing influence of soft law on its jurisprudence.

IMPLEMENTATION OF THE AGREEMENT-BASED EU SINGLE MARKET SYSTEM AND ITS IMPLICATIONS IF APPLIED IN ASEAN

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Student Zippo Surya Anggara PUTRA
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Abstract
Asean Economic Community is a community built in 2008 by Asean States Members. One of the purpose is to accelerate the regional economy development. As implemented in European Union, System on Single Market was built by International Agreement signed by states in EU. Nevertheless, EU has European Court Justice to solve any dispute that could be arise from the agreement, but unfortunately Asean has no any court to solve any legal settlement dispute toward the agreement. Here, we

apply a library and normative research due to our paper. We acknowledge that Asean Economic Community is not a replica from European Economic Community. Moreover, we insist that it's crucial to carefully control the application of Single Market System of Asean Economic Community. Vacuity of legal dispute settlement in Asean could be a big question about how Asean would solve any dispute in the future from the application of the Single Market System.

THE PRIVATE INTERNATIONAL LAW COMMUNITARIZATION

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Auxiliar professor Maria do Rosário ANJOS
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Abstract
The Community impact on private international law (PIL) began to be felt in the late 90's. A phenomenon that would become a visible reality through an exponential increase in legal texts of community origin regarding issues related to PIL. This was anchored in the concern to ensure the proper functioning of the internal market and the need to regulate private relationships that went beyond the limits of each State, enhanced by the freedom of movement (people, goods, services and capital), one of the cornerstones of the European Union. This study aims to reflect on the creation of the European Private International Law and its impact on State's PIL. A literature review will be conducted in order to understand the evolution of this reality after the Treaties of Amsterdam and Lisbon. We will use a deductive and speculative reasoning, anchored on the views expressed by the doctrine, law and jurisprudence. We will try to demonstrate the disuse of the classic PIL (of State origin) regarding the communitarian PIL.

ARBITRATION IN PUBLIC PROCUREMENT, THE EUROPEAN UNION LAW AND THE PORTUGUESE SOLUTION

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PhD. Maria João MIMOSO
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Abstract
The public procurement law in EU complies the principles set out in European Directives nºs nºs 2014/23/EU, 2014/24/EU, 2014/25/EU e 2014/55/EU. The importance of this issue for the effective construction and guarantee of proper functioning of the EU internal market has determined the need to regulate these markets by European law, with notice influence on all internal legal regulations in public procurement. The recent revision of the legal regime for public procurement in Portugal, with the purpose of transposition the directives, introduced a new rule for disputes resolution, introduced in paragraph 2 of article 476 of the Public Procurement Code (CCP). In this study we focus our analysis on the rule established in the field of dispute resolution and on the possibility of recourse to arbitration, appreciating the recently introduced solution in Portuguese law. The reflection is based on the analysis of the provisions Paragraph 2 of Article 476 of the CCP, the resulting problems, challenges and repercussions. To achieve this study, we conducted a comprehensive literature review on the issue of dispute resolution, its constitutional framework and the underlying economic dimension. The analysis methodology is based on deductive and speculative reasoning anchored in the positions defended by the doctrine, law and case law (jurisprudence). We will try to demonstrate with some statistical data the reason of order that determined the solution adopted by Portuguese law. In the final conclusions we will seek to present a critical reflection and a contribution of improvement in the future.

IN INTERNATIONAL BUSINESS DISPUTES CONCEPT OF CLAIMING AND AWARDING DAMAGES FOR BREACH OF CONTRACT

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Abstract
The purpose of introducing this topic through this paper is to give an overview regarding the world's trade and the complexities involved in international trade dispute resolution. The paper elaborates upon the damages which a party shall seek from the other party due to breach of business contract. This paper is aimed to help academicians and professional in understanding the different types of damages pertain to international business disputes. How to effectively identity and calculatethe damages which can be applicable to a given dispute, so that the claim for damages can be duly substantiated to get them as award. The damages are claimed and awarded in several ways mainly such as "compensatory damages", "punitive damages", "liquidated damages", "exemplary damages" and "statutory damages" and several other methods. This paper also elaborates upon other methods of dispute redressal in the form of, "Specific Performance" (where the party causing injury or breach is asked to complete his promise) and "Rescission of contract" (where the parties to the contract can back-out from the contractual obligation with mutual consent and without causing injury to either party) and lastly in the form of "Quantum Meriut" (where the party to contract has done some work under an agreement and the other party disputed the agreement, or some event occurs which makes the further execution of the agreement impossible, then in such a case the party who has already performed the work, shall claim payment for the work already performed). Further, this writeup deals with the interest component that shall be levied upon such damages at the time of redressal of the damages claimed.

STARE DECISIS - AN EUROPEAN UNTOLD STORY

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Abstract
The decisions steaming from the ECJ are the instrument throughout which European Union law is to be interpreted. It arises from the need to harmonize originates the interpretation(s) and application of EU law in its own legal system which has come to be national law of all Members upon joining the Union as can be read in Article 267º Treaty of Functioning of the European Union. Given the specific characteristics of the ECJ's decisions, some questions remain unanswered, namely those conserning its interpretative rulings and its legal value. Although the ECJ has been claiming the existence of a precedent since 1962, with "DaCosta", it still is not well accepted that the precedent is to apply in all Member States. Less clear than the existence of the precedent itself are the grounds for challenging, and changing, a precedent. According to the State of the Art, only a minority of academics consider the precedent nature of the judgements. A thorough literature review, as well as an extensive analysis of the ECJ's case law regarding the precedent effect of its judgments will be undertaken in order to clarify the existence, or lack thereof, of a binding precedent as well as its nature.

THE ROLE OF THE INTERNATIONAL LABOUR ORGANIZATION (ILO) IN PROTECTING WORKERS' RIGHTS

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Abstract
In this research, we study about ILO, the organization worked on ensuring labor rights and freedom, which ensures them practicing their rights at work in favorable condition, and enables them to benefit from this rights. When other states joining the organization obligate it, according to the constitution, to accept all the commitments written in this constitution. The research

is based on analytical materialism and other research methods such as the dialectical, historical, descriptive ,predictive and jurisprudence. The international labor organization was able to overcome the conflict of jurisdiction, which often happens between the countries and international organization for protecting human rights, because they derive their legal title in practicing their activities primarily of its constitution, which is characterized by the integrity of its provisions on the eternal law of member states, and this supervisory role does not contradict with the principle of non-interference in the country's internal affairs or the sovereignty of the state, for the state members have willingly accepted joining the organization, and they have full knowledge of the commitments that follows after they join.

RECOGNITION AND EXECUTION OF FOREIGN ARBITRATION JUDGMENTS

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Abstract
The system of international commercial arbitration is enshrined in both national legislation and international conventions. The power of the arbitrators to resolve the dispute is conferred by the parties, who agree that their litigation be brought to the attention of private individuals. To that end, the parties to the dispute designate the arbitrators and undertake to accept the decision they will make. Such a procedure has three distinctive characters: arbitrary, commercial and international. The importance and effectiveness of arbitration in international relations has been recognized by the Final Act of the Conference on Security and Cooperation in Europe on 1 August 1975. To help develop and promote trade and cooperation, countries participating in the Helsinki Conference recommends organizations, businesses and firms in their countries include, where appropriate, arbitration clauses in commercial contracts and industrial cooperation agreements or special conventions. In the same spirit, the United Nations General Assembly recommends, in its preamble to Resolution no. 31/98 of 15 December 1976, which adopted the Arbitration Regulation drawn up by the United Nations Commission on International Trade Law, its dissemination and its widest possible application in the world, thus recognizing the usefulness of arbitration as a method of settling disputes arising from international trade relations. In conclusion, in international trade relations, most of the litigation between participants is settled by arbitration as a form of private jurisdiction. Arbitration is an appropriate means to quickly and fairly regulate disputes that may result from commercial transactions in the field of goods and services.

THE ARBITRAL TRIBUNAL'S AUTHORITY TO DETERMINE THE APPLICABLE LAW IN INTERNATIONAL COMMERCIAL ARBITRATION: PATTERNS AND TRENDS

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Abstract
Party autonomy prevails in determining the law applicable to the procedure and to the merits in international commercial arbitration. Nevertheless, when parties fail to make a choice or fail to reach an agreement, the arbitral tribunal has the authority to determine the applicable law. The paper's aim is to present the legal grounds for this authority, its extent and limits, and how it works in practice. In order to reach this aim the paper starts with a general analysis of the said legal grounds (the parties's will, international instruments, arbitration rules, national laws on arbitration), while distinguishing between ad hoc and institutional arbitration, then goes through an analysis of the limits imposed on the arbitral tribunal's authority, which is large but not unlimited, and in the end looks at how this authority is exercised in practice, by scrutinizing recent jurisprudence and boiling down patterns and trends. The study will contribute to a better understanding of the current practice and trends in international commercial arbitration as regards arbitral tribunal's authority to determine the law applicable to the procedure and the merits of a dispute.

COMPETITION VERSUS COOPERATION – NEW APPROACHES ON THE ENERGY MARKET CONSIDERING ASPECTS OF COMPETITION LAW

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Abstract
The common energy policy of the European Union is a current topic on the agenda of European institutions, reflected in package "Clean Energy for All Europeans", proposed by the European Commission. Despite several harmonization attempts, the consensus needed for a common policy and for an Energy Union has not been reached yet. One possible element why we still do not have a common energy market is the lack of competition in the energy sector. In this context, the present research paper analyzes to what extent competition can be a key-factor in ensuring the modernization of the energy sector. Aspects of competition law which are relevant for building a common energy market are highlighted in the present research paper. Furthermore, the present article raises the question how important cooperation is, searching the proper balance between competition and cooperation. The present article uses an interdisciplinary research method, combining the analysis of primary and secondary European law, of legal instruments and provisions, considering the teleological method, with the assessment from a business and economics point of view. Case law and case studies from Member States of the European Union provide best practice models for the energy sector and present an international comparative perspective.

MEMBER STATES' COMPLIANCE WITH EU LAW IN 2018 IN THE FIELD OF INTERNAL MARKET

Associate professor Remus Daniel BERLINGHER
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Abstract
The present text is dedicated to analyzing the situation of Member States' compliance with EU law in the field of Internal Market because it is one of the most important aspects of the process of European consolidation. In the introductory part we presented the central role of the European Commission because it is the institution that monitors the implementation of the EU law in the national legal order of each Member State. At the center of our analysis is the 2017 Annual Report of the European Commission. Here we presented in a schematic manner the European norms that the Member States had to implement in their legal order in 2017. In the final part of this article, I presented the evolution of this complex process with reference to the data provided by the Single Market Scoreboard. The situation did not know a significant improvement in the process of Member States' compliance with EU law. We can see that things evolved but we consider that this evolution could have been better if Member States would have dedicated more attention to this process.

COOPERATION BETWEEN MEMBER STATES AND EUROPOL

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Abstract
Within this study, we have examined the way in which the Europol national units were regulated in the European normative act and the regulation of the two forms of judicial assistance in criminal matters, namely joint investigation teams and liaison officers. The research also included the way in which the Romanian legislator transposed into its internal law the provisions of the European legislative act. Another subject of the research was the formulation of critical views and proposals of the ferenda law, both for the European and for the Romanian law. The novelty elements that are promoted through this study aim both at examining the European legal instrument, the way it is transposed into the Romanian law, as well as the critical opinions and de lege ferenda proposals, proposing to contribute to the improvement of the European and Romanian normative system in this domain. The present study should be viewed as a follow-up to the one previously published, completing the examination of this

European institution with a key role in preventing and combating transnational crime at European level. The work may be useful for students and master students of law faculties, practitioners in the field, as well as the European and Romanian legislators in terms of amending and completing the current legislative system.

SHORT CONSIDERATIONS REGARDING THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS FORESEEN IN THE REVISED EUROPEAN SOCIAL CHARTER

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Abstract
The present study started from our wish to present to the large audience the economic, social and cultural rights foreseen by an international legal instrument, adopted by the Council of Europe, instrument that is not very under scrutiny by the specialists. The revised European Social Charter completes the Convention for the Protection of Human Rights and Fundamental Freedoms, and should be interpreted as creating fundamental economic, social and cultural rights. Although contested sometimes, because of its construction, as having a limited purpose, different than the Convention for the Protection of Human Rights and Fundamental Freedoms, we consider that it was conceived like this in order to offer flexibility, giving the chance to the states to choose the rights to ensure. We consider that disseminating the Revised European Social Charter would increase the domestic reforms in the social area and would facilitate the insurance of the economic, social and cultural rights specified under this instrument, in order to improve the level of life and to promote the social welfare of the member states of the Council of Europe.

LIMITS OF THE DISCRETIONARY POWER ESTABLISHED THROUGH ENFORCING THE EUROPEAN PRINCIPLE OF PROPORTIONALITY

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Abstract
In the contemporary society, the constitutional and/or legal enshrinement of the discretionary power of the public authorities, including those from the public administration, is understandable, it is a true "given" that must have a legal recognition for them. This margin of appreciation, which gives these authorities the possibility to carry out, generically speaking, their activity in order to satisfy the public interest, must have some barriers imposed to limit their action solely to the boundaries imposed by the legislator. Always, as a true axiom, governors holding power will, at least, want to keep it within the limits held, if not even beyond the required legal "boundaries" imposed, in order to assign more prerogatives for themselves. However, in order to overcome this trend, it is also necessary to build a legal system of control, including judiciary, following which the actions of the authorities mentioned should be reframed into the legality matrix imposed by the legislator. The modalities, levers, limits set by the legislator in this respect consider various aspects, including principles, such as the principle of proportionality. This paper aims, by using the specific methods such as the comparative, grammatical, logical, systemic and teleological one, to capture not only the theoretical aspects regarding the discretionary power, the principle of proportionality, respectively the interconnections between them, but also the jurisprudential aspects regarding the limits set to the discretionary power by means of this principle, limits deriving from the judgments of the Court of Justice of the European Union.

ENTERPRISES (COMPANIES) AND THEIR ASSOCIATIONS - SUBJECTS OF ANTI-COMPETITIVE PRACTICES

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Abstract
The competition rules applicable to enterprises (companies) are the most important rules of European Union competition law. They have a direct effect and are primarily applicable to companies. Prohibition of agreements restricting competition, abusive exploitation of dominant positions, control of concentrations and state aid are the pillars of European Union competition law.

ABUSE OF A DOMINANT POSITION

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Abstract
Several elements can be considered that lead to configuring the specificity of abuse of a dominant position in a competitive context. The Court of Justice has defined the dominant position referred to in art. 82 (ex 86) EC as a "position of economic power in which there is an undertaking which enables it to hinder effective competition in order to be maintained in a relevant market in order to give it the power to behave independently of its competitors, its customers and, ultimately, consumers".

CONSIDERATIONS REGARDING DIRECTIVE 2011/24/EU ON THE APPLICATION OF PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE IN EU MEMBER STATES

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Abstract
The free movement of persons is one of the four fundamental freedoms recognized and regulated at the European Union level. The definition and implementation of all existing policies and actions at European level, regardless of the scope, have as their focal point a high level of health protection. Under the conditions of the extension of the right to healthcare of the persons, at the level of the European Union, it is intended to ensure the access of every person to healthcare based on the latest scientific discoveries. The adoption in 2011 of Directive No. 24 is an important step in respecting patients' rights in cross-border healthcare, with important consequences both for the health of patients and for the health systems in the Member States.

(R)EVOLUTION OF THE INSOLVENCY LAW IN A GLOBALIZED ECONOMY

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Abstract
This study aims at highlighting the image of insolvency law as it was outlined, ascendingly developed and reached the remodelling stage in an international economic context, in a globalization era where the approach of interdisciplinarity and transdisciplinarity is no longer only mere philosophical theory, but is manifested instead through the interference and inter-connexion between fields of law and dimensions of political, economic and social factors, the need to identify a coagulating factor through the so-called harmonization of the norms of law, of the jurisdiction and of the international, EU and regional practices, as well as a reporting of the best practices in the field becoming key factors in the qualitative management of insolvency

risks, an institution which is individualized, at the same time, in a new field of law, an autonomous law that has gone beyond the borders of commercial law and has also expanded over individuals and territorial and administrative units, law present in interference with the monist system implemented by the new Civil Code but also driven, in its evolution, by principles promoted at European Union level, and also at international level.

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF NATURAL PERSONS WITH REGARD TO THE PROCESSING OF PERSONAL DATA AND ON THE FREE MOVEMENT OF SUCH DATA

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Abstract
The entry into force of the Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data, the so-call GDPR represents an important moment for th protection of the EU citizens from the point of view of using the personal data. The present paper proposes to present the fundamentals principles which regulates the GDPR law, the subjects that the Regulation 2016/679 applies to, the obligations that the authorities and other entities have to fulfill and the European Union citizens rights in this matter. We shall analize, also, the sanctions stipulated in case of failure to comply these obligations and finally, we shall present the conclusions regarding the legal text.

JUDICIAL ERROR. COMPARATIVE LAW NOTIONS

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Abstract
Due to recent changes in the field of the judicial error regulations, that lead to a new definition of the concept and to the creation of a dual system of liability for the damage caused through a judicial error (on one hand, an objective liability of the State and, on the other hand, a personal liability of the magistrate), the paper aims to reflect the potential impact these new regulations can cause in the field of the judicial activity. The solutions for which the lawmaker opted will be analysed, by comparison with similar regulations that exist in various European law systems (which represents also a source of inspiration for the law making process) and proposal will be made, in order to ensure an effective and uniform law application. The research methods used in order to achieve this aim are the comparative method, the analytic and historical methods.

THE ADOPTION OF THE EURO BY ROMANIA - THEORETICAL CONSIDERATIONS

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Abstract
The paper contains, first of all, aspects of the convergence report drawn up by the European Commission and the European Central Bank on the level of readiness of a Member State to join the euro area when there is an express request for it. The second part refers to several proposals for actions that Romania thinks should follow in order to adopt the euro, starting with the Convergence Report of the European Commission and the European Central Bank of May 2018.

FREE MOVEMENT OF CAPITAL AND PAYMENTS IN THE EUROPEAN UNION, THE RESULT OF SUCCESSIVE REGULATIONS

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Abstract
The first part of the paper presents the distinction between the concepts of "capital movement" and the circulation of payments. The principle of free movement of capital and payments does not require the adoption of additional regulations at national level and is therefore directly applicable in the member countries. The second part of the paper deals with the legislative framework of the two freedoms in its evolution, according to the Treaties of the European Union and the directives in the field.

BRIEF ANALYSIS OF THE INTERNATIONAL LEGAL FRAMEWORK OF CORPORATE SOCIAL RESPONSIBILITY

Associate professor Charlotte ENE
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Abstract
This paper focuses on the main international legal documents providing guidance recommendations and principles on corporate social responsibility, considered it as a sustainability tool. A special attention is paid to the provisions of European Union regarding corporate disclosure of non-financial information and transparency. The non-financial information report has to include consultation rights, health and safety environment, social dialogue, fulfilment of the obligation of non-discrimination etc. Despite the fact that it is not necessary a comprehensive report on CSR matters, the outcome would consist in demonstration that the disclosure of information on policies, outcomes and risks will enable companies and their stakeholders to develop a very good strategy of corporate governance policy.

THEORETICAL AND PRACTICAL ASPECTS REGARDING THE MORAL DAMAGES AND THE MONITORING THE EMPLOYEES

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Abstract
In the light of those established by the European Court of Human Rights in the case Barbulescu c. Romania, The Bucharest Court of Appeal, Civil Section and for cases concerning labor conflicts and social insurances has proceeded to the settlement of a case having as its object, among other things, the granting of moral damages and the monitoring of employees. Starting with the judgments of the Court of First Instance the present paper aims to present the solutions embraced by The Bucharest Court of Appeal in relation with the juridical value of the decisions of the European Court of Human Rights in the internal regulation and also to give an answer to the question: it is sufficient for the employer to state in the internal regulation that the employees are monitored or must notify them concretely whenever proceeds to their monitoring?