



INTERNATIONAL CONFERENCE:

**"PERSPECTIVES OF BUSINESS LAW
IN THE THIRD MILLENNIUM"**

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November 13, 2020



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SECTION III.

EUROPEAN UNION LAW. INTERNATIONAL LAW

Friday, November 13, 2020

ONLINE ON ZOOM

Keynote speakers:

Associate scientific researcher **Cristina Popa Tache**, Institute of Legal Research of the Romanian Academy

Assistant professor **Roxana Maria Chiriac**, „Titu Maiorescu” University of Bucharest

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

BLUE LAWS: A PERSPECTIVE ON INTERNATIONAL AND DOMESTIC LAWS RELATED TO BLUE ECONOMY AND NEED FOR HARMONISATION OF LAWS AS 'BLUE LAWS' TO FACILITATE PROTECTION AND PROMOTION OF MARINE ENVIRONMENT AND MARITIME TRADE TO SUSTAIN 'BLUE GROWTH' AND 'BLUE ECONOMY'

PhD. Harsh PATHAK
Advocate, Supreme Court of India
Guest Faculty of law, New Delhi, India

Abstract

As per the World Bank, blue economy is the "sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystem." European Commission defines it as, "All economic activities related to oceans, seas and coasts. The Blue economy is an emerging sector with opportunities and therefore, needs a harmonised public and private laws at national and international level. This paper is based on author's proposal for dedicated laws and harmonisation of laws at domestic and international level through a unified and codified common laws as "Blue Laws" and dedicated institutional framework for its regulation and development for sustainable development of marine, industrial and coastal ecosystem. As "Blue Laws" for 'Blue Economy' is an emerging concept which encourages better stewardship of our ocean or 'blue' resources through laws balancing economy and environment. The blue economy goes beyond viewing the ocean economy solely as a mechanism for environmental concern and economic growth. In the 'business-as-usual'



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model, large-scale industrial nations have seen the development of their ocean economies through the exploitation of maritime and marine resources – for example through shipping, commercial fishing, marine-agriculture, tourism, education, heritage and the oil, gas, minerals and mining industries – often without a view to the effects their activities have on the future health or productivity of those same resources. As same water resource has different regulatory framework due to different coastal states, requires unification with harmonisation with international laws. The establishment and development of effective legal, regulatory and institutional frameworks for the blue economy as ‘Blue Laws’ are crucial steps toward structuring and guiding its growth and opportunity. The existing Legal, regulatory, and institutional frameworks require thorough review in order to understand the blue economy’s institutional environment, identify existing gaps, and take advantage of collaborative synergies to establish a common code as ‘Blue Laws’. Similar to the ‘Green Laws’, the “Blue Laws” on welfare legislation model aims for improvement of human well-being, trade opportunities and socio-economic equity, while significantly reducing environmental risks and ecological scarcities for the global community. The United Nations’ Sustainable Development Goals (SDGs), especially SDG14 ‘life below water’, and recognises that this will require ambitious, co-ordinated actions to sustainably manage, protect and preserve our ocean now, for the sake of present and future generations, supports the concept of ‘Blue Laws’.

COMPETITION LAW AS THE HEART OF EUROPEAN INTEGRATION

PhD. Noémia Bessa VILELA

Researcher, IJP - Portucalense Institute for Legal Research, Portugal

PhD. José Caramelo GOMES

Researcher, IJP - Portucalense Institute for Legal Research, Portugal

Abstract

Competition Law has been at the heart of European integration ever since the first treaties came into force. It was shaped has a ordoliberal policy meant to forster competition among undertakings in compartmented market aimed to become an integrated market. Hence, its major goal had to be to promote market integration and, as a consequence, to promote market efficiency and ultimately, as a consequence of the former, better resources allocation. The task of integrating national markets proved to be a never ending one. Any time the Common market expands, there is some sort of reset to the achievements, and Competition policy has hardly evolved in its goals. Moreover, its quite clear that EU Competiton la has evolved to a cat and mouse game between undertakings and competition authorities, becoming more and more complex and, to some extent, inefficient and unable to promote an efficient resources allocation and an wellfaire economics.

**THE POLITICIZATION OF HUMAN RIGHTS IN THE UNIVERSAL PANDEMIC 2020: THE RELATIONSHIP
BETWEEN THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION AND THE
INTERNATIONAL TAX LAW**

Professor Ana CAMPINA

Instituto Jurídico Portucalense, Portugal

PhD. Carlos RODRIGUES

Instituto Jurídico Portucalense, Portugal

Abstract

The Pandemic 2020, unexpected, affected the Human Rights politicization in Europe within different dimensions. The undoubtable relevance to the minimum existential, more than the discourse, the main legal instruments, avoiding the negative politicization disruption. This research was based on the Education and the Protection of Property. So, the main question supported this study was in the global pandemic moment, considering its broad implications in the social, economic and political domain, came to call into question the right to universal education, and tend to be free, due to the lack of financial resources from the Social State? We propose to debate connects with the need for tax collection to meet the expenses of the Social State, namely for the Education expenses and whether the economic limitation caused by the current pandemic in the face of the GDP sharp decline, has been associated with a large decrease in the collection of tax revenues. In order to achieve the conclusions proposed, in addition to evidently study the various generations of Human Rights, the politicization, we have to study the different instruments of international tax law and the action of the European Court of Human Rights for its effectiveness.

**THE PRINCIPLE OF EFFECTIVENESS OF EU LAW:
A DIFFICULT CONCEPT IN LEGAL SCHOLARSHIP**

Professor M. Elvira MÉNDEZ-PINEDO

University of Iceland

Abstract

Effectiveness is a principle frequently used by the Court of Justice of the European Union to secure the authority of EU law over national law. This study analysis the scholarly treatment of the concept in most relevant selected academic literature and draws some conclusions, mostly that difficulties remain surrounding the conceptualization of the principle. The Court uses it in a variety of ways and judicial outcomes are linked to the context of every case at hand. On one hand, we find effectiveness as a stand-alone principle or expression of general “effet utile”; but, on the other hand, we see the use of the term strongly connected to the effective judicial protection of individual rights and/ or as limit to national procedural autonomy. The concept is furthermore embedded in a complex matrix of



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various other principles of EU law, namely primacy, direct effect, indirect effect or the obligation of consistent interpretation, and Member State liability for breaches of EU law. The results of the study lead to question whether there is really one single concept of effectiveness in EU law and lead to further research in order to explore whether a comprehensive and coherent theory is necessary, feasible and/or desirable.

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**BUILDING THE MODERN ALBANIAN STATE ON
ORIENTAL MENTALITY**

Lecturer Hazbi LIKA

"Aleksandër Moisiu" University of Durrës (UAMD), Albania

Abstract

This paper aims at proving that the discourse that promotes our national identity is grounded on the new political context which initiated after the Declaration of Independence and the formation of the first Albanian state. During such a discourse, in the given period, prevails the debate on: the west openly rejects the orient. The elite that was active in politics seems to be more restrained, while the intellectual one, especially those educated in the Austro-Germanic region, declare open war on the Orient. The Political Assembly of Prizren and Vlorë bring evidence of an ethnic identity which is changeable with respect to the new environment created. Albanian elites, especially the intellectual ones in the light of orientalist, rightly denounce the orient and oriental culture by not appreciating the historical environment in which our ethnic identity had to be maintained for a period of five centuries. The discourse of this period shows that our national identity began to become quite different adapting to the new reality that was.

**THE CONTENT OF THE OBLIGATION TO INFORMATION AND CONSULTATION OF THE EMPLOYEES IN
THE COLLECTIVE REDUNDANCIES PROCEDURE**

PhD. student Maria Violeta DUCA

Bucharest University of Economic Studies, Romania

Abstract

The paper aims to analyse the essential content elements of the right to information and consultation of the employees in the collective redundancies procedure. It follows from the case-law of the Court of Justice of the European Union that an essential aspect is the initiation of consultations at a time when negotiations may determine the employer to waive the decision envisaged. The intentional element is not defining for the birth of the obligation on the employer, who is under an obligation to foresee the collective redundancies, when it takes economic decisions which may indirectly affect the employment relationships of a large number of workers. In view of the decisions of the Court of Justice of the European Union, the case-law of the national courts and the Constitutional Court of Romania, it is also highlighted the limits of the right to information and consultation of employees determined by the employer's right to run the business. From the comparative law analysis of the procedural remedies made available to the employees' representatives, the paper also argues that, *de lege ferenda*, it should be regulated an appeal under the jurisdiction of the labour courts for annulment of the reorganisation decisions issued by the employer which are manifestly unreasonable, before they take effect.

EVOLUTION AND CHANGE IN THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN UNION

Assistant professor Andreea STOICAN

Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

Being launched in 1962, the common agricultural policy represents an enormous partnership between the society itself and its farmers. The importance of the existence of a set of legal documents that focus on these aspects is justified especially due to the fact that statistically, despite the importance of the food production, farmers' incomes are about 40% lower than the incomes obtained in other fields of activity, due to the dependency of agriculture on the weather and climate conditions. The current study, therefore, aims in presenting a summary of the main legislative measures taken in the agricultural field by the European Union, trying to emphasize aspects that still need to find a solution for, in order for the farmers to maintain the profitability of their activity.

THEORETICAL CONSIDERATIONS ON THE NOTION OF EUROPEAN CITIZENSHIP

Lecturer Gabriel MICU

National School of Political and Administrative Studies, Romania

Abstract

European Union regulations must comply with the fundamental principles of Public International Law, as set out in the operative part of the Treaty of Lisbon. Consequently, this legal-political architecture establishes the four freedoms. Among these, freedom of movement is one of the most important, not only in terms of the coherence needed in conducting business, but also in the importance that Member States attach to achieving an ever closer link between European nations, an objective already mentioned in the preamble of the Union Treaty. This objective is closely linked to the political concept of European citizenship, which will



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also have to be argued from a legal point of view. This article aims at highlighting some of the legal aspects of citizenship, which will have to be at the core of the concept of a united Europe, being able to be recognized as such by all Member States.

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EU REGULATIONS ON HERBAL MEDICINES AND THEIR IMPACT ON THE INDUSTRY'S BUSINESS

PhD. student Oana Iuliana RUJOIU

Doctoral School of Law, Bucharest University of Economics Studies, Romania

Abstract

The research focuses on the European Commission's regulations for herbal medicines marketing registration and its impact on its businesses. The following study uses empirical research, which includes the analysis of several articles and technical documents. The study will examine the European Commission's directives for standardizing herbal medicines' registration procedures on the European market. According to WHO, of the 500,000 species, only 22,000 plants are used in traditional medicine, while only 3,000 have been scientifically evaluated. These data highlight the need to simplify the registration procedure, allow the process to be streamlined, and launch on the European market as many herbal medicines as possible. The costs involved in herbal medicine manufacturing sum to between € 90,000 and € 140,000 for each medicine plant. A large part of the costs is generated by the clinical tests required for the product registration process. However, the simplified registration procedure exempts products that can prove a 15-30 year history of components usage in the European space.

LEGAL REGIME OF COMPETITION IN HUNGARY

Lecturer Ovidiu Horia MAICAN

Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

The harmonisation of national competition legislation with European Union law has largely been completed in Hungary, mainly by modifying the Competition Act of 1997. The main features of the Competition Act are unfair market practices, unfair influence on consumer decisions, agreements restricting competition (vertical and horizontal), abuse of a dominant position and merger control. In the area of state aid, there is a general prohibition on the provision of such aid, with the reservation that exceptions might be determined by government decrees. In view of Hungary's accession to the EU, from 1 April 2002, further laws have come into force that are to be enforced with the Hungarian Competition Act, creating a double set of regulations. The new rules incorporate certain European competition rules into Hungarian law.

LEGAL REGIME OF COMPETITION IN POLAND

Lecturer Ovidiu Horia MAICAN

Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

Like the antitrust law in the United States, antimonopoly law forms one of the main elements of competition policy in post-communist countries. According with the the Polish legislation, "the promotion and protection of competition in the process of transforming a centrally planned economy into a market economy requires going beyond the scheme of classical antitrust policy." These antimonopoly laws have as goal to create, develop, and protect competition during the transition from a socialist to a market-based economy. Each law sets up a competition authority entrusted with development and protection of competition and oversight and enforcement of competition law. Even some provisions reflect the influence of the laws of the United States and individual European Union member states, the dominant model upon which the competition laws of the post-communist countries are based is the European model.

**LIMITATION BY THE NATIONAL COURT OF THE TEMPORAL EFFECTS OF THE FINDING OF THE
NULLITY OF THE THRESHOLD CLAUSES OR OF THE TROJAN HORSE THAT DID NOT ENTER THE
FORTRESS: GUTIÉRREZ NARANJO**

Associate professor Gina ORGA-DUMITRIU

„Lucian Blaga” University of Sibiu, Romania

Abstract

Not even the most optimistic scenario could have anticipated the impact of Directive 93/13 / EEC on unfair terms on Member States' national law 25 years ago. The original formula arranged by the EU legislator (by resorting to the conditions constituting the triple test of establishing the abusive character - the lack of negotiation of the clause, the significant imbalance between the rights and obligations of the parties and the professional violation of the good faith requirement) was strengthened by the developments at the level of jurisprudence through the exercise by the Luxembourg Court of its interpretative function. The contribution of the Spanish courts to the detailing and refinement of the reading grid of the said Directive is significant. The judgment of the Grand Chamber of 21 December 2016 testifies to this "Spanish judicial activism" being pronounced following preliminary references made by the Juzgado de lo Mercantil nº1 of Granada and the Audiencia Provincial de Alicante by which the Court of Justice was called to clarify whether i) art. 6 para. (1) of Directive 93/13 must be interpreted as



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precluding national case-law which limits in time the restorative effects of the nullity of threshold thresholds as a result of their finding of abusive nature, ii) national courts may limit the retroactive effects of the nullity of thresholds by applying the criteria (in good faith and the risks of serious consequences) used by the Court of Justice to limit in time the effects of an interpretation of a rule of European Union law and whether iii) art. 6. para. (1) of the same directive and art. 47 of the Charter of Fundamental Rights of the European Union on the right to effective judicial protection are consistent with an automatic extension of the solution limiting the restitutive effects pronounced in a class action to an individual action finding a threshold clause declared abusive. The novelty of the case-law, however, lies in the unpredictable and misleading analogy used by the Spanish Supreme Court to limit the retroactivity of unfair terms by using the criteria applied by the Court itself to limit the effects of interpretation in its own judgments. No less, we will comment on the meanings related to the articulation between the collective action and the individual action, the Court having the possibility in the present case to refine the reasoning set out in *Sales Sinués* and *Drame Ba* regarding the legal nature and the relationship between the two actions. Finally, we will draw conclusions from the Court's silence this time regarding art. 47 of the Charter and the correct way in which it should be understood.

C.J.E.U. AND THE WTO'S DISPUTE SETTLEMENT BODY - CONVERGENCE AND DIVERGENCES

Associate professor Gina ORGA-DUMITRIU
„Lucian Blaga” University of Sibiu, Romania

Abstract

This analyse shows the question of the relationship between EU and WTO and the interactions between European judges and the decisions pronounced by the WTO's Dispute Settlement Body. CJEU refuses or uses the DSB's decisions.

LEGISLATIVE MEASURES ADOPTED BY THE EUROPEAN UNION TO SUPPORT THE BUSINESS ENVIRONMENT IN THE CONTEXT OF THE COVID-19 PANDEMIC

PhD. Dragoș Mihail MĂNESCU
Faculty of Law, Bucharest University of Economic Studies, Romania

Abstract

The European institutions have responded to the Covid-19 pandemic through a series of legislative initiatives aimed at supporting the business environment and reducing both the financial and social impact. We have analyzed several packages of legislative measures enacted at European level and how they have been transposed into national legislation.

INTERNATIONAL INVESTMENT PROTECTION IN FRONT OF THE STATES ROLE IN CRISIS TIMES TO MANAGING DISPUTES

PhD. Cristina Elena POPA (TACHE)
*Associate scientific researcher at the Institute of Legal Research
of the Romanian Academy*

Abstract

International investment law has regulatory features, especially in the area of international investment protection and dispute settlement, in the violation case of these rights. Any force majeure situation or fortuitous event (pandemic and the economic crisis generated by it) represents, in this field, an escalation of situations with conflict impact, for the solution of which the main actors must adapt their capacity and regulations. In this context, a higher risk of disputes must be taken into account. Although many governments are trying to find a balance between protecting public health and economic interests, the pandemic creates unprecedented risks for foreign investors around the world, the effects of which will be visible in the coming years. The competent courts are beginning to have an extremely difficult task of analysis and deliberation, which will oscillate between recognizing and respecting the exercise of significant discretionary state power in response to public health problems and between sovereign measures taken by states in response to pandemics or in other similar cases, measures which may violate the protection of foreign investment contained in international investment agreements, if they are discriminatory or disproportionate. To conduct this study we used recognized descriptive, explanatory and predictive research methods, specific to the criteria imposed by international investments, such as: (1) the temporal criterion, (2) the reactivity criterion and (3) the intrinsic characteristics of the method.

IMPACT OF COVID-19 ON THE MIGRATION IN THE EUROPEAN UNION

Associate professor Gabriel Liviu ISPAS
„Titu Maiorescu” University of Bucharest, Romania

Abstract

Migration within the European Union is one of the main mechanisms for promoting and supporting the citizens of the Member States, being a part of the European Union internal market. In the last 6 years, amid migration from outside Europe, the Union has been under strong pressure from solidarity, with border



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states, especially Greece and Italy, being severely affected. The emergence and development of COVID-19 has affected both the countries of the Union, the economies and the citizens, but also the migrants in the camps organized on the territory of the Union. The scientific paper addresses the legal aspects of the situation, the legal ways to ensure solidarity, but also respect for human rights for those in the camps. By using the logical method, the comparative method, but also the historical one, the presentation of the legislative norms, of the judicial practice for a good knowledge and understanding of the phenomenon is considered. Through this study we contribute to the standardization of scientific approaches to migration and to the determination of the obligations of the Member States of the European Union.

