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SECTION I - PUBLIC LAW

Friday, November 25, 2022

ONLINE ON ZOOM

Keynote speakers:

Lecturer **Radu Ștefan Pătru**, Faculty of Law, Bucharest University of Economic Studies

Associate professor PhD. habil. **Cătălin Silviu Săraru**, Faculty of Law, Bucharest University of Economic Studies

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

**AN ANALYSIS OF THE LEGAL IMPLICATIONS OF THE AFRICAN CONTINENTAL FREE
TRADE AREA'S RULES OF ORIGIN ON ECONOMIC INTEGRATION AND
CONSTITUTIONALISM IN AFRICA**

Professor **Howard CHITIMIRA**
Faculty of Law, North West University, South Africa
Doctor **Friedrich HAMADZIRIPI**
North West University, South Africa

Abstract

There has been several efforts to liberalise economic integration in Africa by removing tariffs and non-tariff barriers to enhance the free movement of goods and services such as human capital and intellectual property in Africa. This is evidenced by a plethora of regional economic communities (RECs) that have been established in Africa. Some of the prominent RECs in Africa include the Economic Community for West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community for Central African States (ECCAS), the East African Community (EAC) and the Southern African Development Community (SADC). Almost every African state belongs to at least one REC. Unfortunately, most of these RECs have failed to promote economic integration among their member states. This could be attributed to several factors which include ambiguity on the status of REC decisions and resolutions in member states, complex rules of origin and dysfunctional decision-making, dispute resolution and enforcement mechanisms of the RECs. However, the promulgation of the



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African Continental Free Trade Area (AfCFTA) agreement has seen the dawn of a new era to liberalise economic integration at continental level in Africa. The technicalities surrounding the rules of origin could raise questions on the applicability of AfCFTA in Africa. It is imperative that drafters of the AfCFTA agreement learnt from the shortcomings of African RECs which are building blocks of the AfCFTA. In this article, the authors examine the legal implications of the AfCFTA's rules of origin on economic integration and constitutionalism in Africa.

The Rationale for Piercing the Corporate Veil to Enhance the Accountability of the Municipal Manager in Mahikeng Local Municipality

Professor **Howard CHITIMIRA**

Faculty of Law, North West University, South Africa

Candidate attorney **Tumelo SETHUNYANE**

ME Tlou Attorneys & Associates Inc, Mmabatho, South Africa

Lecturer **Phemelo MAGAU**

University of KwaZulu-Natal, South Africa

Abstract

This article analyses the possible application of the principle of piercing the corporate veil in a local municipality as a measure of fostering and enforcing accountability of the municipal manager and the municipal council in Mahikeng local municipality. The principle of piercing the corporate veil is provided under section 20(9) of the Companies Act 71 of 2008. The piercing of the corporate veil occurs when the courts disregard the division between a company and the person who controls it and then attribute liability to the person who misused the principle of a separate legal personality in that company. The article identifies, inter alia, maladministration, fraud and corruption as the basis on which the courts would pierce the corporate veil in Mahikeng local municipality to ensure accountability in the municipal manager. It is submitted that the principle of piercing the corporate veil should be carefully applied in Mahikeng local municipality to promote accountability and better service delivery to the community. The principle of piercing the corporate veil could help to ensure accountability of municipal funds and resources in Mahikeng local municipality by curbing the improper use of municipal funds and resources by the municipal council and the municipal manager. Lastly, the possible advantages of piercing the corporate in Mahikeng local municipality are discussed.

“BLACK MAGIC” PRACTICES IN AFRICAN ACADEMIES: A 21ST CENTURY SOCIO-LEGAL PERSPECTIVE

Senior lecturer **Tapiwa Victor WARIKANDWA**

School of Law, University of Namibia

Professor **Howard CHITIMIRA**

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Abstract

Chronic levels of narcissism, animosity, envy, and a fixation with toppling individuals who are thought to be making solid academic progress have grown common in African academies. Anti-progress proponents, whose egocentric behaviour and/or tendencies are linked to “black magic” tactics, no longer regard academic competence/excellence. These African academic “black magicians” place a greater emphasis on individuals than on academic matters, spend more time hopping from one office to the next for no apparent reason, and thrive on institutional politicking. They regard hardworking colleagues as threats or “academic fetishes” who must be “exorcised” from African academies to keep incompetent/sloppy individuals who represent no threat to their positions or minor interests and whom they can manipulate. Based on an examination of legislation limiting black magic in South Africa and Zimbabwe, the article contends that intellectual jealousy, narcissistic behaviour, and other associated evil conduct emanating out of envy in African academies should be categorised as black magic or witchcraft.



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POSSIBILITIES OF APPLYING FORENSIC METHODOLOGY IN LATVIA AND THE
EUROPEAN UNION

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Professor JĀNIS TEIVĀNS-TREINOVSKIS

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Ph.D. IGORS TROFIMOV

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Abstract

The aim of the work is to perform an analysis of certain crimes related to property threats. To analyse the methods and tactics of detection and investigation of the types of criminal offenses under research and on the basis of a detailed study of the peculiarities of the committing of the criminal offenses under research, to develop effective and up-to-date methods of their identification. The following scientific research methods have been used in the development of the work: the teleological method of interpretation; the comparative method; the method of analysis and synthesis; the methods of induction and deduction; the modelling method. Main conclusions: the main problems in the field of the detection and prevention of crime over the last 30 years are that most criminalistics concepts run far behind the requirements of the modern era; changes in tactics related to identification and detection of property crimes have been largely technical in nature, they are lacking a sufficiently high level of theoretical basis to take into account modern technologies used to commit crimes and significantly changed structure of criminalistics characterisation of criminal offenses.

CRIMINAL ACTS IN THE FIELD OF ECONOMIC CRIME IN BANKING OPERATIONS IN
SERBIA

Professor Milan POČUČA

Faculty of Law for Commerce and Judiciary in Novi Sad,
University Business Academy in Novi Sad, Serbia

Professor Jelena MATIJAŠEVIĆ

Faculty of Law for Commerce and Judiciary in Novi Sad,
University Business Academy in Novi Sad, Serbia

Abstract

As defined by the law, a bank is a stock company with the head office in the Republic of Serbia, which has a National Bank of Serbia licence for work and which performs deposit and credit activities, and which may also perform other activities according to the law. The number and variety of the forms which may be assumed by economic crime is extremely dynamic and, consequently, complex. This particularly pertains to the forms of economic crime in banking operations, considering the fact that such activities are very important for business and legal operations in national economies. A significant characteristic of current banking operations is the wide application of information and communication technologies, without which no modern business field may be conceived. Taking the primary topic into account, the paper initially treats the definition and the basic features of economic crime and the criminological characteristics of the forms assumed by economic crime in banking operations. This is followed by a focus on the normative aspect of the criminal and legal regulations of the Republic of Serbia in the sphere of norms concerning criminal acts of economic crime in banking operations, whereas the research part of the paper deals with the frequency of criminal acts of economic crime in banking operations when the work of judicial authorities in Serbia is concerned, bearing in mind the criminal proceedings conducted against adult perpetrators. Methodology-wise, the paper is founded on the theoretical analysis of relevant modern stands in theory, the normative, analytical and deductive methodological framework and the basic quantitative data analysis. The primary legislative source consulted in the research section of the paper is the Criminal Code. The reference period analyzed in this section is the 2018-2020 three-year period, and the data which are analyzed are the officially registered data of the Statistical Office of the Republic of Serbia.



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ELECTRONIC ADMINISTRATIVE JUDICIAL PROCEDURE OF UKRAINE AND THE
RIGHT TO JUDICIAL PROTECTION: PROBLEMS OF LEGAL REGULATION AND
PRACTICAL ISSUES

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Abstract

The article deals with certain problems of legal regulation of electronic administrative judicial procedure in the context of the realization of the right to judicial protection. The methodological basis of a scientific article is a set of philosophical, general and special scientific methods. It is indicated that electronic administrative judicial procedure should be attributed to the components of electronic governance. It has been established that the right to appeal to an administrative court and ways to protect violated rights cannot be limited when submitting and considering electronic documents, since the lack of such an opportunity leads to a violation of fundamental human rights, court practice in this matter is given. It has been established that it is the application of a specific method of protecting participants in public law relations of a violated or denied right that is the result of the activity and effectiveness of the legal mechanism for protecting rights when using information and communication technologies in administrative courts. Revealed that these rights protection mechanisms should be applied on the basis of the rule of law, accessibility and transparency, impartiality and independence, including the principles of oral hearing and equality of arms. The analysis of the concepts "electronic justice", "electronic justice", "electronic court" in the scientific literature, national and international legal documents is carried out. The essence of "electronic administrative judicial procedure", its elements, stages of implementation in practice are disclosed. Separate directions for improving the legal regulation of electronic administrative judicial procedure regarding the implementation of the right to judicial protection are proposed.

PROBLEMS OF LEGAL REGULATION OF ARTIFICIAL INTELLIGENCE IN
ADMINISTRATIVE JUDICIAL PROCEDURE

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Abstract

The use of digital technologies in administrative courts uses the legal systems of the European Union and the world to strengthen the ways of protecting human rights. This paper examines certain problems of legal regulation of the use of artificial intelligence technologies in administrative judicial procedure. The methodology of this work is based on an interdisciplinary approach using comparative legal, dialectical and systemic methods. The main objective of this article is to determine the forms and directions, risks and benefits, prospects for the use of artificial intelligence in administrative judicial procedure, taking into



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account foreign experience in legal regulation in this area. The concept of "artificial intelligence" is investigated. It is emphasized that the use of artificial intelligence technologies in administrative judicial procedure is an acceptable use only of specialized intelligent systems that can work under human control. It is stated that when considering administrative cases in an administrative court of minor complexity, it is possible to use artificial intelligence technologies, which will be able to independently generalize and analyze legislation, judicial practice and be a recommendation for a judge when making a fair and lawful decision on the principles of the rule of law. It has been established that the use of artificial intelligence technologies in administrative judicial procedure provides opportunities for the effective implementation of the right to judicial protection, but can be used to commit actions that are contrary to the rule of law, in particular regarding the violation of the right to a fair trial in administrative courts and the presumption of innocence. The latter requires the improvement of legal regulation of the use of artificial intelligence technologies in administrative judicial procedure using international principles and standards.

FORAY INTO THE JOURNEY OF ACQUIRING LAND OWNERSHIP FROM 1863 TO THE PRESENT. SPECIAL VIEW ON THE CONDITIONS FOR THE SALE OF AGRICULTURAL LAND LOCATED OUTSIDE THE VILLAGE ACCORDING TO LAW NO. 17/2014

PhD. student **Andreea BOAR**
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Abstract

In the proposed study, I want to highlight the legislative path followed by one of the fundamental pillars of any democratic and developed society: the land, in which sense I will present the succession of laws by which the right to property on the land was regulated, starting with the package of laws adopted during of ruler Alexandru Ioan Cuza (Law no. 1251/1863, Law no. 1,014/1864), continuing with the agrarian reform from 1918-1921, with Law no. 187/1945, with the laws from the communist period through which we witness a gradual removal of land from the civil circuit and reaching the laws currently in force. I will especially highlight the legal situation generated by the amendment to Law no. 17/2014 by Law no. 175/2020, but also through O.U.G. no. 104/2022. The research methods I will use are the following: the logical, comparative, historical and systemic method. Through the study that I will carry out, I propose to highlight the desire of the inhabitants of this country to acquire land (the period starting in 1863), in contrast to the current situation, when it seems that the citizens do not know how to "get rid" of the land as quickly as possible, which is why they express their dissatisfaction with the more "restrictive" conditions for the alienation of an agricultural land located outside the village.

THE CRIME OF MONEY LAUNDERING COMMITTED BY THE AUTHOR OF THE PRINCIPAL CRIME. THE CONSEQUENCES OF DECRIMINALIZATION

Lecturer **Cristinel GHIGHECI**
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Judge, Court of Appeal Braşov, Romania

Abstract

By Decision of the Constitutional Court of Romania no. 418 of 19.06.2018, it was ruled that the author or co-author of the main crime, the accomplice or instigator of the main crime (*delictum principale*), from which the dirty money comes, cannot be an active subject of the crime of money laundering (*delictum subsequens*), when the latter crime is committed in the normative version of acquiring, holding or using money or assets. After the pronouncement of this decision, some courts found that the committed act is decriminalized, without analyzing whether the concrete act for which the author was convicted falls under another normative variant of the crime of money laundering. The study analyzes if this is possible in the procedural framework of the appeal to execution in criminal matters. The issue is important because the rejection of the appeal to execution, on the grounds that the act falls under another variant of the crime of money laundering, has no consequence on the order to confiscate the proceeds of the crime.



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**PRACTICAL ISSUES REGARDING COMPLIANCE WITH DECISION-MAKING
TRANSPARENCY BY LOCAL PUBLIC AUTHORITIES**

Associate professor **Mădălina-Elena MIHĂILESCU**
"Dunărea de Jos" University of Galați, Romania

Abstract

The transparency of the activity in the public administration is a sine qua non condition for the respect of fundamental citizen rights, ensuring, at the same time, the involvement of the ordinary citizen in the decision-making process. This article will try to analyze some of the situations in which local administration authorities have clearly violated the provisions of laws no. 52/2003 or law no. 544/2001, restricting the right of citizens to take cognizance of certain draft normative acts regarding important issues related to the good running of the community, free access to various public information or aspects related to training, administration, and the use of local public funds. At the same time, using the comparative method, we will highlight the availability of local authorities from Galați, Buzău or Brăila to ensure through their websites access to the annual activity and the involvement of these authorities in economic, social or cultural activities.

**LEGAL ISSUES REGARDING THE COMPENSATIONS GRANTED BY THE ROMANIAN
STATE FOR THE CHILDREN OF FORMER POLITICAL PRISONERS**

Lecturer **Adriana MOȚATU**
Faculty of Law, Bucharest University of Economic Studies, Romania
Distinguished professor **Ileana CONSTANTINESCU**
Bucharest University of Economic Studies, Romania
Associate member at the Romanian Academy of Scientists

Abstract

The article refers to certain changes that need to be made to the paragraphs(5) - (9) of July 15, 2020, published in the Official Gazette no. 623 regarding Article 5 of the Decree - Law no. 118/1990 on granting rights to persons persecuted for political reasons by the dictatorship established starting with 6 March 1945, as well as to those deported abroad or constituted as prisoners, as republished in the Official Gazette of Romania, Part I, no. 631 of 23 September 2009, with subsequent amendments and completions as published, including in 2020.

**JURIDICAL RESEARCH ON THE OBJECT OF DAMAGES CAUSED TO THE ANIMAL
KINGDOM**

PhD. student **Evghenia GUGULAN**
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Abstract

The issue of compensation for damage caused to the animal kingdom is an important subject of research, given that its primary objective is to emphasise the preventive nature of the related provisions and to promote precaution as a basic principle of its rules. The animal kingdom, being a basic component of natural biokinesis, plays an important role in maintaining ecological balance. A peculiarity of the national legislation is that it only regulates relations in the field of protection and use of wild animals, which live naturally on land, water, atmosphere and soil. Moreover, through this study, we intend to carry out a study, through which we will identify effective legal instruments for the reparation of damages caused to objects of the animal kingdom. The system of environmental reparation implies the customisation of the mechanisms of the classical forms of liability, the focus on the reparation of damage caused to the animal kingdom and the development of special means, remedies and sanctions.



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**DRUGS AND PLANTS CONTAINING DRUGS - MATERIAL OBJECT OF DRUG-RELATED
CRIMES**

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PhD. student **Carmen-Elena ROȘU**
Chisinau State University, Republic of Moldova

**CONSIDERATIONS REGARDING THE LEGAL NATURE AND EFFECTS OF THE FINDING
DOCUMENT ISSUED BY THE CONTRACTING AUTHORITY UPON COMPLETION OF THE
PUBLIC PROCUREMENT CONTRACT**

Associate professor **Adrian ȚUȚUIANU**
Faculty of Legal, Social and Political Sciences of "Valahia" University in Târgoviște, Romania

Abstract

The importance of issuing the ascertaining documents and their publication in SEAP resides in the provisions of art 167 paragraph 1 letter g of Law no. 98/2016 which provides that the contracting authority excludes from the procedure for awarding the public procurement contract / framework agreement any economic operator if, and- has seriously or repeatedly violated the main obligations falling under a public procurement contract, a sectoral procurement contract or a previously concluded concession contract, and these violations led to the early termination of that contract, the payment of damages - interests or other comparable sanctions. The practice of the CJEU ruled that the notion of serious misconduct must be understood as normally referring to a behavior of the economic operator in question that denotes culpable conduct or negligence of a certain gravity on his part. Finding a "serious deviation", in principle, requires a concrete and individualized assessment of the attitude of the economic operator in question.

**CONSIDERATIONS REGARDING THE LEGAL REGIME OF INCOMPATIBILITIES OF
EMPLOYEES IN THE REGIONAL DEVELOPMENT AGENCIES**

Associate professor **Adrian ȚUȚUIANU**
Faculty of Legal, Social and Political Sciences of "Valahia" University in Târgoviște, Romania
Florina Ramona MUREȘAN
Subprefect, Dambovită County, Romania

Abstract

The persons who ensure the leadership of the South Muntenia Regional Development Agency and its employees do not exercise a public dignity or a public position. According to article 22 paragraph 1 of Law no. 315/2004 and article 10 of the Agency's Statute, in all situations the Agency's staff is obliged to comply with the normative acts in force regarding the conflict of interests. As a result, although they do not exercise a public dignity or a public function within the meaning of the provisions of common law, the persons who ensure the management of ADR or have the status of an employee apply to them: Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignities, a public functions and in the business environment, preventing and sanctioning corruption; Law no. 176/2010 on integrity in the exercise of public functions, for the amendment and completion of law no. 1442007 on the establishment, organization and operation of the National Integrity Agency, as well as for the amendment and completion of other normative acts, with subsequent amendments and additions; Regulation 2018/1046 of the European Parliament and the Council on the financial rules applicable to the general budget of the Union, respectively the Commission Communication - Guidelines on the avoidance and management of conflicts of interest under the Financial Regulation (2021/C 121/01).



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INTERFERENCES OF THE STATE ADMINISTRATION WITH THE LOCAL AUTONOMOUS
ADMINISTRATION IN THE PROMOTION OF LOCAL AFFAIRS IN THE LIGHT OF THE
ADMINISTRATIVE CODE

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Professor **Verginia VEDINAȘ**

Faculty of Law, University of Bucharest

Corresponding member of the Romanian Academy of Scientists

President of the "Paul Negulescu" Institute of Administrative Science, Romania

PhD. **Ioan Laurențiu Vedinaș**

Abstract

The study starts from the premise that the activity of promoting local businesses and their effective realization requires and implies a collaboration and even a cohabitation between the actions of the state administration and those carried out by the autonomous local public administration. From this perspective, the study aims to identify the principles that govern the relations between the two levels of administration, that of the central system and that of the territorial level, the principles that govern these relations, the institutional framework through which they take place. The approach is based on the constitutional provisions and those of the Administrative Code, and the conclusion to be reached is that it is necessary to understand the reality that the development of each administrative-territorial unit and area of the country, smaller or larger, is inextricably linked to good functioning of the collaboration between the central and the local/county level.

EXTRADITION. COMPARATIVE ANALYSIS

Lecturer **Aurel Octavian PASAT**

Cross-border Faculty, „Dunarea de Jos” University of Galati, Romania

Abstract

The relevance of the analysis of the issues of the institution of extradition is determined by the need to improve international cooperation in combating crime, expand its scope, apply an integrated approach to interstate cooperation in such a legal segment. As the analysis of the current trends in the development of extradition shows, its restructuring can modernize the legal institution in question, adapting it to the latest conditions in the fight against international crime. In order to achieve the proposed goal, the substantive conditions of extradition in the legislation of the Republic of Moldova were analyzed, in particular to subject to the analysis the conditions regarding the person, through the lens of the comparative analysis of the legislation of the Republic of Moldova and Romania in the context of the non-extradition of one's own citizens, as well as the conditions regarding the fact, in the context of the analysis of the general principles of extradition; to subject the extradition procedure from/to the Republic of Moldova to the comparative analysis with the active/passive extradition procedure in Romanian legislation.

GENERAL FEATURES SPECIFIC TO CRIMES AGAINST THE PERSON

Lecturer **Aurel Octavian PASAT**

Cross-border Faculty, „Dunarea de Jos” University of Galati, Romania

Abstract

The economic and political development of society is always associated with the worsening of relations between its members. An extreme manifestation of the antisocial orientation of the actions of individual members of society is criminal activity. Criminality not only undermines the authority of state power, but also represents a threat both to the economic stability of society and to every citizen, that is why crimes against the person open the Special Part of the Criminal Code of Romania. Unlike previous criminal laws, this arrangement of the chapter indicates the priority of protecting the person, the group of crimes against the person being united by a single direct object, human life. The relevance of the subject of this paper lies in the fact



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that it highlights the specific general features of crimes against the person, in order to qualify these prejudicial acts criminalized in the articles of Title I of the Special Part - Criminal Code of Romania.

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INDICATORS FOR MEASURING CONSTITUTIONAL EFFICIENCY. AN EVALUATION OF THE ROMANIA CONSTITUTION AFTER 30 YEARS

Lecturer **Lucian-Sorin STĂNESCU**

Faculty of Law and Administrative Sciences, "Ștefan cel Mare" University of Suceava, Romania

Abstract

Explaining the concept of the effectiveness of the constitution requires, first, as in a mathematical equation, the identification of the classic criteria of normative validity of a fundamental law, i.e. the supremacy of the law, the separation and balance of powers, the existence of the rule of law, the effectiveness of the guarantees of respect for human rights, the application of specific sanctions in case of constitutional slippages. The introduction into this equation of some variables such as the optimal lifespan of a constitution, the stability of the fundamental law or the phenomenon of citizen participation is necessary to draw conclusions on some effects such as its success, legitimacy and efficiency, as well as the happiness of its citizens. By applying this method of analysis to the Romanian Constitution of 1991, the study aims to verify whether it was able in its existence of three decades to ensure the achievement of its initial goals, as well as its normative and non-normative functions, which what should be reflected in its ability to regulate conflicts in the constitutional space, the force of imposing its specific norms and sanctions, to ensure the optimal and sustainable functioning of state institutions and to create and obtain the faithful employment of its beneficiaries in respecting its supremacy, as an expression of their ideal of a politically constituted society.

THE THIRD WAY: SOCIAL ECONOMY AND THE ROLE OF THE STATE IN THIS CONTEXT

Associate professor **Cristian DUMITRESCU**
Hyperion University of Bucharest, Romania

Abstract

From the perspective of economic development, states of crisis are absolutely necessary to temper consumption excesses and thus avoid the too rapid depletion of resources. In other words, economic crises reconcile people's needs and desires with the real possibilities of satisfying them in a certain historical period. Some analysts go even further by stating that periodic recessions avoid or postpone much more serious planetary crises: the depletion of basic natural resources, ecological catastrophes, large-scale climate imbalances. Recession periods force humanity to a critical attitude, self-assessment of lifestyles, restructuring of the economy, searches for new solutions in science and technology, sometimes even resettlement or modernization of social and institutional structures.

STRATEGIES FOR DEVELOPING MONETARY POLICY IN EMERGING COUNTRIES

Associate professor **Cristian DUMITRESCU**
Hyperion University of Bucharest, Romania

Abstract

Monetary policy is a primary element of economic policy, as with its help central banks can act and influence both the demand and supply of money in the economy. The main purpose of monetary policy measures is to ensure price stability, effective control over inflation, as well as the stability of the national currency. A very important aspect to highlight about the European Central Bank is that the objective of monetary policy aims at the strategy of maintaining price stability and the inflation rate at lower levels. Any decision is the product of a procedure that involves the assembly of a large number of primary information. The monetary policy decision is also subordinated to these procedures, but simple information, regardless of its degree of organization and hierarchical processing, does not seem to be sufficient to be able to make a decision.



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THE PARTICULARITIES OF THE EXCEPTION OF UNCONSTITUTIONALITY INVOKED
BY LEGAL PERSONS BEFORE COURTS OF JUDGES OR COMMERCIAL ARBITRATION
COURTS FROM ROMANIA

Lecturer **Ana-Daniela BOBARU**

„Constantin Brâncuși” University from Târgu Jiu, Romania

Abstract

The paper addresses the specific aspects of the exception of unconstitutionality promoted by legal persons before the courts of judges or commercial arbitration courts from Romania, with the objectives of highlighting and analyzing the particularities of this type of control exercised by the Constitutional Court, scientific research based on the principle of the relationship between different methods, procedures and investigative techniques. The methodological foundation of the study is the theory of knowledge, numerous sources being used (university courses, scientific articles, legislation and jurisprudence). In addition, the logical analysis is permanently used in the content of the study, concretized by applying the procedures of analysis and synthesis, deductive reasoning, the method of comparative analysis, used to highlight the particularities of the exception of unconstitutionality, the quantitative method, used to study and systematize the normative base and doctrinal, as well as the systemic method, indispensable in researching the constitutional and legal norms specific to the topic. The results of the study bring a real contribution to the deeper knowledge of one of the competences of the Constitutional Court in Romania, of the specific legislative and jurisprudential framework, as well as applicative value, constituting an informative support for bachelor's, dissertation and doctoral theses, material for the improvement of teaching staff university and researchers in the field, magistrates, arbitrators, but also other legal professions (lawyers, legal advisers, clerks).

JUDGING CONTRAVENTION COMPLAINTS IN AN "ADMINISTRATIVE" -
STANDARDIZED AND UNCONTROVERSIAL APPROACH, INVALIDATED BY RCC
DECISION NO. 404/2002

Lecturer **Anca-Jeanina NIȚĂ**

Faculty of Law and Administrative Sciences, "Ovidius" University of Constanța, Romania

Abstract

The aim of this study - occasioned by the RCC Decision. No. 404 of September 21, 2022, we bring back into discussion the obligation of the legislative forum not to ignore the principle of the security of legal relations in the component related to the clarity, accessibility, and predictability of the law. The legislative proposal for the amendment and completion of Government Ordinance no. 2/2001 on the legal regime of contraventions (PLx 598/2021) - based on the standardization of the contravention procedure and the introduction of the written procedure, in the council chamber, with the removal of the subpoena of the parties, in the case of specific complaints, in order to make justice more efficient. The opinions of the Legislative Council and the Superior Council of the Magistracy are observed and analyzed - through the lens of its considerations and effects, RCC Decision no. 404/2022 by which the notification of unconstitutionality formulated by the People's Advocate was admitted. It is argued that the fundamental mission of justice as an act of judicial justice and as a public service cannot be subordinated to a purely administrative approach, which abandons the requirements of the rule of law and mutilates the right to a fair trial. Considering the many changes and additions to GO no. 2/2002, respectively attempts to change invalidated by the administrative litigation court, we conclude with the observation that legislation for the sake of legislation is a practice that must be abandoned, the need to adopt a Contraventional Code being brought back into discussion.



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**THE LOCAL PUBLIC ADMINISTRATION ROLE AND PLACE IN PROMOTING THE
LOCAL BUSINESS CONSIDERING THE ADMINISTRATIVE CODE**

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Abstract

This study introspects the responsibilities of the local public administration in the field of promoting the business environment at the local level. Both the powers of the deliberative and the executive authorities are considered. Their analysis is carried out by referring to the activity of the prefect who, as the representative of the Government at the local level, has the mission of ensuring the implementation of the governance program at the level of local administration.

**THE CONSTITUTIONAL REGIME OF ECONOMIC FREEDOM.
ITS REFLECTION IN THE ADMINISTRATIVE CODE**

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Abstract

This study analyzes, as its title suggests, the constitutional regime of economic freedom, regulated by art. 45 of the Constitution, following the changes it underwent through the revision of Law no. 429/2003. It is qualified to represent freedom from the first generation and is considered, along with the private property, the market economy foundation. Therefore, the constituent legislator placed them one after the other, and by art. 135 para. (1) guarantees the market character of the economy. We perform the analysis by referring to the Administrative Code, which also contains implicit or express provisions regarding economic activity, this aspect representing, in many situations, a result of economic freedom.

**SOME THEORETICAL AND LEGAL REFLECTIONS ON THE ORDER OF CRIMINAL LAW,
THE CRIMINAL LEGAL RELATIONSHIP OF COMPLIANCE AND THE CRIMINAL LEGAL
RELATIONSHIP OF CONFLICT**

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Abstract

Our theoretical approaches combined with judicial practice are motivated by the multitude of divergent opinions that have appeared in the Romanian criminal doctrine regarding these concepts. Thus, most Romanian authors, starting from the premises according to which all legal norms are transposed by creating legal relations and otherwise ignoring the normative character and the regulatory function that criminal law has in disciplining social conduct, reach the thesis according to which there is also a criminal legal relationship of compliance, this being an expression, a form of dynamic manifestation of the social defense relations that emanated from the norm of criminal law since its entry into force. The defense of social values is achieved mainly through criminal legal means (criminal law), through extra-legal means of educational, social, cultural, economic, as well as through extra-criminal legal norms of commercial law, administrative law, labor law, of constitutional law etc. Criminal law is rightly considered the result of a dialectical process and not of an ideal creative process. The two sides of criminal policy, namely special preventive action and repressive reaction, are achieved through criminal law mainly, which by its rules provides both the conduct to be followed by the recipients of criminal law and the necessary reaction against crime to restore order right. As such, the criminal law order is achieved by observing the provisions of the criminal law, the criminal coercion intervening only in the case of committing certain crimes. It can be noted that the legal order has a complex and dynamic character, which



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is a succession of plans, the preventive preceding the repressive, and the latter aimed at the corrective - in the sense of criminal treatment. It can be noted that the legal order has a complex and dynamic character, which is a succession of plans, the preventive preceding the repressive, and the latter aimed at the corrective - in the sense of criminal treatment.

**CURRENTS OF THOUGHT REGARDING THE RULE OF LAW
THE "RATIONALIST" SCHOOL AND THE SOCIAL CONTRACT**

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Abstract

Among its most prominent representatives, René Descartes, a special personality, characterizing himself as „full of enthusiasm”, discovering the foundations of an admirable science”, it lays the foundations of modernity, a science that places man at the center of scientific and philosophical concerns. If antiquity pays special attention to collectivity, man being only a means to achieve its goals, for modernity, the goal is man. The true orientation towards self-knowledge begins with Descartes, through that famous maxim “cogito ergo sum” (I think therefore I exist) which highlights human reason and aims to place man at the center of the entire universe. It is established with Descartes, legal formalism, and this because its philosophy eliminates any possibility of a given reality imposing itself as such. Descartes' cogito is therefore the expression of the existence of a fortress that cannot be invaded by the collectivity and the human interiority that is revealed to be foreign to any social inclusion. In other words, “the irreducibility of the individual and the social is constituted in the reason for Descartes' silence on the political”. However, it can be seen in his work how “he fights tyranny and supports the legitimate monarchy in its absolutist sense”.

**THE KANTIAN, NEO-KANTIAN, HELEGIAN AND HISTORICAL SCHOOL REGARDING
THE RULE OF LAW**

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Abstract

Immanuel Kant, after formulating the inaugural dissertation - “De mundi sensibilis atque intelligibilis forma et principiis” - of the philosophy course from 1770, is no longer tributary to others, he is no longer either a rationalist or an empiricist, but surpasses both, reaching the pinnacle of a synthetic concepts that are only his. He promotes a dualistic conception and believes that there is a phenomenal world and a purely intelligible (noumenal) world. The latter is unknowable to the human intellect, which can only know the phenomenon. In this world, man can rise through morality, whose key concept is the concept of freedom. To define the concept of law, Kant first makes the distinction between what belongs to morality and what belongs to law; the distinction between what relates to exteriority and what is an internal principle that can also extend to exteriority, but never the other way around. In these conditions, law only acts on the external acts of people, those of human interiority are carried by moral acts, which are superior to the previous ones. Freedom, as seen by Kant, is based on moral acts, even if law is based on reason, it cannot extend its scope to purely internal acts, as they remain outside legal regulations. „For an action to be what is called legal, it is enough that it conforms to the law, whatever its motive; but in order for it to be moral, it must, apart from this, have as its motive the idea of duty that the law prescribes.



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CONSIDERATIONS RELATING TO THE TERMINATION OF CRIMINAL ACTION DURING CRIMINAL PROSECUTION THROUGH CLASSIFICATION

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Abstract

The criminal action manifests concretely only when the crime was committed, and the conflict of criminal law arising from the commission of the anti-social act, is brought for resolution in a criminal trial. The prosecution activity represents the legal means by which the perpetrator is criminally sanctioned. The criminal action is personal because the criminal responsibility is personal, which requires a causal link between the person who is to be held criminally responsible (participant) and the committed act. The criminal action can be extinguished both in the criminal prosecution phase and in the trial phase (art. 17 CPP, art. 314-319 CPP, art. 396 CPP).

FISCAL CONSOLIDATION IN THE SYSTEM OF DIRECT TAXATION OF LEGAL ENTITIES

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Abstract

The objectives of the study are to analyze the advantages and disadvantages of tax consolidation in the field of corporate income tax. It is also important to highlight the rationale for tax consolidation and the possible legislative improvements that are needed to achieve the aim pursued by the legislator. The main research tools were the legal provisions on tax consolidation, the literature analyzing and interpreting this field, and the identification of conclusions from the specific practice of taxpayers who have encountered problems, have asked the same questions or perhaps have found the answers necessary for this research. This mechanism provides both administrative and financial advantages for affiliated companies that must file a single group return, calculate taxable bases and taxable profits in a uniform way, avoiding both compliance costs and the risk of double taxation of the same taxable profit. However, the legislator has not succeeded by this regulation in removing the obligation for affiliated companies that are part of the consolidated tax group to draw up the transfer pricing file, which remains a financially burdensome obligation for affiliated companies. The implications of the study are both theoretical and practical. The topic aims to analyze a modern tax mechanism. On the other hand, group companies will be able to see the advantages of joining a consolidated tax group, which at first sight represents a tax "merger" of affiliated companies.

LEGAL ASPECTS REGARDING INTERGOVERNMENTAL COORDINATION FROM CENTRAL TO LOCAL LEVEL IN ROMANIA

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Abstract

Intergovernmental coordination of public authorities is the key to the functioning of the political-administrative system of a state, the simple legal architecture of the institutions remaining a simple non-functional creation, without "life", in the absence of the relationship between the component elements of the institutional system of a state. The present work aims to analyze the regulations of the Romanian legislation regarding the constitutional and legal framework that creates the interconnection of subsystems and structural elements of the Romanian state, at the central and local level. Following the identification of the regulation, examples of good functioning and, at the same time, of institutional blockage from administrative practice at the central and local level will be presented. Following, on the one hand, the triggering element and, on the other hand, the solutions identified (by the authorities, civil society, or other factors involved) but also the degree of their implementation, we conclude with some proposals that can be taken into account in completing the administrative legislation, at least within the discussions regarding the approval through the GEO 57/2019 law on the Administrative Code.



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**DUE PROCESS IN THE LIGHT OF THE DEFENDANTS' RIGHT TO REMAIN SILENT IN
CASES OF ECONOMIC CRIMES**

PhD. Delia MAGHERESCU
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Abstract

By definition, the criminal proceedings are a process of legality, where both the parties and the main processual subjects' procedural rights and legitimate interests are subordinated to the other judicial principles the legality of criminal proceedings is based on. The concept of due process, established by the European Council, is part of the legality of criminal proceedings, whose rules arise both from the provisions of the European Convention of Human Rights and from the jurisprudence of the European Court on Human Rights as well. Thus, it means the European institution's vocation, as a supranational forum. In the current paper, the essential issues regarding the concept of fair trial, as it is viewed from the perspective of the defendant's right to remain silent exercised in cases of economic crimes are approached. The aspects of both jurisprudence and doctrine regarding the defendant's right to remain silent in criminal proceedings, as well as the other connected procedural institutions of criminal cases have been analysed. The results obtained during the conceptual research activity are provided at the end of the paper, whose conclusions are pertinently argued, specific in the matter of respecting the defendant's right to remain silent.

**ASSESSING THE MEANS OF EVIDENCE BY FORENSIC REPORTS IN CRIMINAL CASES
OF BUSINESS**

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Abstract

The new era of forensic investigation of criminal cases means currently a challenge for the judicial bodies in their duties of finding truth during the criminal proceedings. In achieving this purpose, the role of forensic evidence is as bigger as the forensic reports provide the judges and prosecutors with pertinent, conclusive and genuine data the criminal decisions shall be based on. The current research focuses on assessing the means of evidence by forensic expertise reports in the criminal cases of business, which present a high interest both for the area of forensic science and the decision-making process in criminal cases. In this respect, it has been identified three particular criminal cases related to the field of business. They refer to the cases of economic offenses, business-related corruption, and organized crime. The work uses a qualitative research methodology with elements of case-law references in the field of business. The results obtained during the conceptual study have stated that the forensic reports submitted by the forensic experts contribute to solving the criminal cases related to the field of business and making solutions as long as they are corroborated with the other means of evidence administrated in the criminal proceedings. The research conducted has been directed to the idea that, as a general rule, the forensic reports do not have a pre-established judicial value, although they provide scientific evidence, which are also very difficult to be reversed. Considering all these aspects, the conclusions state that assessing forensic reports in criminal cases of business is a complex activity which the judges should pursue in order to pronounce legal and evidence-based decisions.



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**MOTION TO REVIEW DECLARED INADMISSIBLE BY PRINCIPLE, AFTER THE
CONSTITUTIONAL COURT OF ROMANIA RULED IN FAVOUR FOR THE
UNCONSTITUTIONALITY EXCEPTION IN THE SAME CASE FILE.
CONSEQUENCES WITH RESPECT TO THE RIGHT TO AN INSTANCE**

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Abstract

The present article takes into consideration the judgement limits with regards to the admissibility by principle of the extraordinary means of appeal of a review declared against a criminal sentence and the delimitation between the judging the whole merits of such a means of appeal. Even though it would have been desirable that this pursuit to be only theoretical, the analysis was determined by regrettable solutions ruled by Tribunal of Brăila and the Court of Appeal of Galați. Through the decisions of these instances found inadmissible the motion to review declares by the convicted reviewer, after the Constitutional Court of Romania ruled that the article 53 paragraph 3 from the Criminal procedural Code is not constitutional. In the context of the extensive discussion upon the amendments of the Justice Laws towards the elimination of the sanctions for disobeying the CCR rulings, the analysis of this case becomes mandatory and the conclusions can only be as follows: the existing sanctions do not necessarily lead to the abiding by the Court's rulings; it can be noticed with clarity that, even in their presence, if there had been a will/wish to elude (or just a simple negligence) the mandatory content of the CCR's rulings, it was sufficient the ignorance of one procedural rule.

**Administrative suspension of the execution of acts issued under the regime of public power
by public authorities. Jurisprudential landmarks**

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Abstract

Researching and observing the activity of the public administration essentially involves a lively interest, both theoretically and especially practically. Confronted with the most unusual factual and legal situations, both the administration and the jurisprudence are obliged to adapt at an increasingly alert pace. Through this study we observe such a case, revealed by administrative and then judicial practice at the level of the Municipality of Bucharest. We will identify those preconditions for the exercise of the right of the public authority to order the suspension of the execution of its own acts issued under the regime of public power, the boundaries of the institution of administrative suspension from other relevant legal institutions, the theoretical and practical implications and, above all, the aspects dealt with at the jurisprudential level, including the different perspectives expressed under this aspect.

**LAWFUL TERMINATION OF DISTRRAINT DUE TO EXCEEDED TERM AS STIPULATED BY
ART. 250² OF THE CRIMINAL PROCEDURE CODE OF ROMANIA**

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Abstract

The purpose of this paper is to present and analyze several relevant aspects related to a fairly recent legislative amendment to the Criminal Procedure Code in Romania (February 28, 2021), respectively the legal nature and effects of non-compliance with the deadlines established by the newly introduced art. 250² Criminal Procedure Code. According to art. 250² Criminal Procedure Code "Throughout the criminal process, the prosecutor, the judge of the preliminary chamber or, as the case may be, the court periodically checks, but not later than 6 months during the criminal investigation, respectively one year during the trial, if the grounds exist which determined the taking or maintenance of the precautionary measure, ordering, as the



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case may be, the maintenance, restriction or extension of the ordered measure, respectively the lifting of the ordered measure, the provisions of art. 250 and 2501 applying accordingly". Taking into account the legal texts applicable in the matter, but also following the model of procedural sanctions that can intervene in case of non-compliance with the deadlines regarding preventive measures, it is obvious that the competent legal bodies (prosecutor or court) have an obligation to carry out periodic verification, the obligation to non-compliance of which attracts the only possible sanction is the *de jure* termination of the measure.

THE MEANING OF THE NOTION OF "VIOLENCE", AS AN ACT OF PROVOCATION

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Abstract

In this paper, we emphasize that the term "violence" is undisputed, whatever the context in which it is placed, the meaning of a physical action of coercion of a person. At the same time, however, it presents the sense of threat, and this last meaning must be remembered whenever no reservation is made, through an express provision, regarding its use. Moreover, the same word would have two, distinct meanings, as it is placed in the general part of the criminal code or in the special part, does not seem justified to us. Therefore, the text in the general part and those in the special part are not inadvertent, nor do they contain inappropriate wording. In reality, the legislator only aimed to be very explicit and risked repeating a notion just to give more authority to the formulated idea. The drafting was adapted to the purpose pursued by each of the respective texts, taking into account the regulated matter and its application value.

CONSIDERATIONS ON THE MEANING OF THE NOTION OF "PUBLIC OFFICIAL" AS A FEATURE OF THE CONTENT OF THE OFFENCE OF OUTRAGE

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Abstract

The particular importance of the correct legal classification of the various criminal acts considered by law as incriminations often requires, in the interest of strict compliance with the legality of incrimination and criminal law sanctions, the determination of the exact meaning of certain notions expressing the various specific features of the content of offences. Such a clarification of the terms of the law is likely, on the one hand, to lead to a fair delimitation of the scope of criminal law, to a precise definition of the scope of criminal wrongdoing and, on the other hand, to ensure uniform application of criminal law by the competent judicial bodies in criminal proceedings. In our criminal law, the need for such a definition arose, *inter alia*, in connection with the meaning of the concept of "public official" - as a specific feature of the content of the offence of insult (Article 257 of the Criminal Code) - following the adoption of the new Criminal Code.

CONSIDERATIONS REGARDING THE OFFENCE OF DETERMINING OR FACILITATING SUICIDE

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Abstract

Opposable *erga omnes*, the right to life is an absolute right of a human being and is protected by criminal law in the interest of the whole society, including for the purpose of ensuring human coexistence. In other words, the interest of the criminal law is to impose on all citizens the obligation to respect the life of each individual, to respect the human desire to live. Viewed as an attempt on the person's life, the act of determining or facilitating the suicide could not remain outside the criminalization in the Criminal Code as an offence. The paper is a study of this crime from the perspective of defending the right to life.



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THE ECONOMIC - AS A FACTOR IN THE CONFIGURATION OF LAW

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Abstract

Where does the legislator receive the command to create legal norms? It is a question that finds its answer in the social, economic, cultural reality, etc. Law is a result of an evolution of filtering and valorization, over time, of the most important social relations. In this paper, we propose to shed light on the economic, as a factor in the configuration of law, in the context of the economic crisis determined by the Covid 19 pandemic. As a result of the restrictions imposed on the freedom of movement of people, the issue of the real danger that impacted public health was raised, which is why they were imposed, on a normative level, by the regulation of the green certificate.

