Rezumatele articolelor publicate în Analele Universităţii de Vest din Timişoara, în anii 2008, 2009, 2010 şi 2011

I. 2008
Analele UVT- seria Drept, volumul 1-2/2008

1. George Antoniu, *The Romanian Penal Law within Post-Adhesion Conditions*, p. 21

Which are the new realities, the Romanian penal law is confronting with, within the post-adhesion conditions?

First, we should explain why are we referring, from all law's branches, only to penal law, and not preoccupying by all Romanian legislation, within the post adhesion period. The answer is easy to give. From all law branches, the only one which is closely bounded by the particularities, by the culture, customs and the way to be of the nation is the penal law. Identifying the fundamental social values which deserve a special protection, like evaluating the different human behavior in comparison with this values, was conditioned always and to all nations by the particularities of the social and political life, by the traditions and mentality of the nation. Only so it explains why, for example, a way of behavior could be considered as indifferent by a nation, and, on contrary, as affecting very serious the fundamental social values of another nation, or a violation not so serious in another penal law, while, in other cases, the violation gates an apart significance. There are countries, for example, that punish with many years of prison consuming drugs, while in other countries (Holland, Greece, Spain) those drugs are selling freely. As so, the lack of respect for some values could attract serious penal consequences, while in other countries such deeds are seen with more tolerance or punished as misdemeanors.

Such a closely bound of the penal law with the culture and the customs of the nation determined the European Community to consider that the issue of incrimination and criminal punishment of the breach of laws constitutes a matter of sovereignty of each nation, placing itself – of principle – beyond the communitarian exigencies.

2. Stanciu D. CĂRPENARU**,** *The Legal Requrements for the Modification of the Commercial Companies' Constitutive Document*, p. 29

The paper analyses the general conditions stipulated by the Law no. 31/1990 regarding the modification of a company constitutive document.

Usually the constitutive document modification is decided in a general meeting of the stakeholders.The law states that the modification of a constitutive document can be done by the administration board decision or by the board of directors, and by the court of law decision.

The modifying act of the constitutive document must be in a writen form as the law requeres, to be recorded in the Register of Commerce and published in the Official Gazette.

The modification of the company constitutive document may harm the interests of the company creditors, of the third parties and of the parteners. For the protection of those interests, the law stipulates the right of caveat and the right to withdrawal from the company.

3. Elena Simina TĂNĂSESCU**,** *Who Is Defending the Romanian Constitution?Between Presidential Obligation and Constitutional Adjudication*, p. 45

Defending the Constitution and guaranteeing its supremacy have become increasingly normal in modern states governed by the rule of law under the strong influence of constitutionalism. An

observer may even note that, at least in Europe after the Second World War, these functions are generally imparted upon heads of states and constitutional jurisdictions, as consequence and direct application of theories of both Hans Kelsen and Carl Schmitt. This paper will try to find out the peculiarities of the Romanian pattern and how they adjust to the "reality proof". Based on a specific case and a brief presentation of its political context we will try to observe the balance of powers established by the text of the Constitution and analyse how it functions in reality only to finish with the conclusion that this capacity of for overview poses potentially dangerous challenges to the traditional self restraint of the Romanian Constitutional Court.

4. Dan Claudiu DĂNIȘOR, *Relevanţa politică şi nerelevanţa juridică a grupurilor primare de identificare*, p. 59

The paper analyses different groups of people, starting with primary groups, racial, linguistic, religious groups, national minorities. Thus, society is not and has never been formed of isolated individuals, establishing a direct relation with the state, as the doctrine of citizenship alleges up to a certain point, though it might be a preferable solution; and therefore the legal system obstinately refuses to consider groups by reference to the persons belonging to them. On the contrary, the individuals are always placed in more or less clear, more or less permanent group structures, depending on which they build, in part, their social identity, which determines their political identity.

5. Manuel GUȚAN, *The Administrative (Authoritarian) Monarchy – a Paradigm for the Constitutional Realism in Modern Romania ?! -The Beginnings-*, p. 73

The establishment of modern constitutionalism, especially of the parliamentary regime in Romania, was achieved under the sign of a paradox. When the European Great Powers introduced in Romania (by means of the Paris Convention) a constitutional regime with an important authoritarian potential, by offering the prince extraordinary powers, the Romanian political class honestly fought for a parliamentary democracy. When there has been a chance to establish the most wanted parliamentary regime, an authoritarian regime was established by prince Cuza. The Romanian political life of the time clearly demonstrated that the principles of the parliamentary regime were difficult to apply and that the imported democratic forms were almost incompatible with the Romanian substance. The establishment and the perpetuation of the administrative/ authoritarian monarchy was an organic response of the Romanian society to the lack of interest and to the corruption of the politicians. It still remained open the problem and the challenge to find a solution within the limits of the Romanian politicianism. This is still valid today, when, in the context of a crisis created by the political corruption, the traditional solution of the authoritarian regime does not seem the appropriate one.

6. Romulus GIDRO, Aurelia GIDRO, *Considérations sur certaines clauses spécifiques du contrat individuel de travail*, p. 104

Le contenu du contrat individuel de travail est formé par les droits et les charges des parties consacrés, formellement, par des clauses contractuelles. Conformément au Code du travail de Roumanie les clauses contractuelles se divisent en : clauses essentielles et clauses spécifiques. Ces dernières sont la conséquence de la négociation effectuée par les parties et, si elles existent, elles doivent être précisées expressément dans le contrat. Le Code du travail, dans l'article 20, indique, à titre d'exemple, quatre clauses de ce type qui permettent aux parties de négocier, selon leurs intérêts, aussi bien d'autres types de clauses. Néanmoins, la pratique a permis de constater aussi bien l'existence de clauses spécifiques par l'intermédiaire desquelles sont violés des actes normatifs en

vigueur ou des contrats collectifs de travail en portant atteinte à des droits fondamentaux des salariés.

L'auteur, sans analyser de manière exhaustive les types de clauses spécifiques, souligne celles qui, par leur fréquence ou par des conséquences plus importantes, se distinguent, telles que : la clause de non-concurrence, la clause de conscience et la clause de mobilité.

7. Bianca SELEJAN-GUȚAN**,** *Romania and Article 3 of the ECHR in the Recent Case-Law of the European Court of Human Rights*, p. 121

The study presents the main requirements of Article 3 of the European Convention on Human Rights, with a special regard to the cases against Romania judged by the Strasbourg Court. A special focus is placed upon the police violence which amounted to „torture" in the case Bursuc v. Romania and to inhuman and degrading treatments in some other cases. The nine cases solved by the European Court on the merits and in which it stated upon the respect by Romania of the physical and moral integrity of the person are not, probably, sufficient from a quantitative point of view so to allow a pattern of police and/or penitentiary violence. But the seriousness of the facts that amounted to ill-treatments in these cases can raise some question marks.

8. Viorel PAȘCA, *Dreptul la libera exprimare şi infracţiunile de presă*, p. 141

The paper analyses the way in which the freedom of expression, as a fundamental human right set out in article 10 of the European Convention of Human Rights, is reflected in the case-law of the European Court of Human Rights. The exercise of entrenched freedoms involves certain duties and responsibilities, and may be subject to formalities, conditions, restrictions or penalties that are prescribed by law and that are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

9. Mircea CRISTE, *Puterea executivă în sisteme constituţionale contemporane*, p. 157

L'exécutif peut être soit moniste, unipersonnel comme aux États Unis ou collégiale comme en Suisse, soit dualiste, composé d'un chef d'État (monarque ou président) et d'un Gouvernement responsable devant le parlement et, parfois, devant le chef d'État également.

Dans ses rapports avec le législatif, l'exécutif dispose d'une arme redoutable pour équilibrer ces rapports, à savoir le droit de dissoudre le parlement. Il s'agit d'une procédure symétrique à la responsabilité politique du Gouvernement, qui consiste dans le pouvoir de mettre fin avant le terme au mandat des parlementaires. Le droit de dissoudre le parlement remplit trois fonctions: de rétablir l'équilibre parlement-Gouvernement, de rétablir une majorité parlementaire quand celle-ci n'existe ou elle n'existe plus et de recourir à la consultation populaire sur des questions importante, quand la voie du référendum n'est pas ouverte.

10. Ligia CĂTUNA**,** *Proceduri speciale de administrare a probelor. Administrarea probelor prin avocaţi*, p. 166

As a concrete manifestation of the principle according to which the lawyers hold a public interest office, the legislator has extended their participation in the civil action, by way of introducing in the Civil Procedure Code the section entitled "The Administration of evidence by lawyers in the civil action".

Thus, the lawyer's role in the civil action is extending with regard to the activities he may carry out during the litigation beyond the traditional framework of representation and assistance of the parties in the civil action, through a series of procedural activities generally gathered within Section III¹ of the Civil Procedure Code

11. Claudia ROȘU, Constantin ȚENȚ, *Ajutorul public judiciar*, p. 175

This paper aims at analyzing the public legal aid granted in accordance with the Government Emergency Ordinance no. 51/2008. The public legal aid represents the form of assistance granted by the state which aims at ensuring the right to an equitable trial and guaranteeing the equal access to justice, for the enforcement of certain rights or legitimate interests by the courts as well as for the forced execution of judgments and other titles of enforcement. The public legal aid is granted in civil, commercial, administrative, labor law cases, as well as in cases concerning other branches of law, except for criminal law cases.

12. Emilia MIHAI, *Din nou despre noţiunea de întreprindere în dreptul comunitar*, p. 183

Ever since the 1960s, the notion of enterprise has been "the star" of the Community authorities. Referring to the "enterprise", the drafters of the ECSC and ECC treaties assigned it the role of a common place in the relations among the member states. Which did not yet clarify whether it was a mere linguistic stratagem, a label covering all similar subjects of law from different national legal orders, or whether it was more than that, namely a notion having its own existence.

13. Florin Aurel MOȚIU, *Noi tendinţe în dreptul procesual civil european*, p. 192

Since the Amsterdam Treaty has been in force (1 May 1999) the EU very quickly created a civil procedure that meet the requirements of the single market and the European legal space. An accessible and efficient civil procedure is meant to support the freedom of movement of citizens and to equally ensure the effective access to justice in all Member states.

To this respect, an important step is the Regulation concerning the European order for payment procedure. This regulation introduces for the first time a unitary procedure of issuance of an order to pay at the European level. This procedure is applicable, according to the legislative attributions of the EC, only in litigations having a trans-border nature.

14. Adina Renate Motica, *Caracterizarea generală a regimului matrimonial al participării la achiziţii,* p. 197

The study analyse the general features of the matrimonial regime of the property acquired by the spouses, emphasizing the idea that the separation of property characterisey this matrimonial regime durind the marriage, and the community property reveals itself only during the dissolution or the mariage.

15. Nelu Viorel Cătuna, *Înşelăciunea săvârşită cu prilejul executării unui contract*, p. 201

La tromperie prevue par l'article 215 alin.3 du Code penal, commise a l'ocasion de l'exprimation de l'accord ou de l'execution d'un contrat , est traitee par la literature de specialite comme une modalite speciale de comission de cette infraction.

Mais les modalitees de comission de l'infraction a l'occasion de l'exprimation de l'accord et celles utilisee pendant l'execution du contrat, sont tout a fait differentes, les deuxiemes s'eloignant du texte legal, et devenant d'une certaine maniere , atipique.

16. Dana Daniela MOŢIU, *Particularităţi privind întocmirea listei bunurilor şi identificarea lor în procedura insolvenţei*, p. 204

The drawing up of the list of the debtor's assets and their identification, as specific operations of the process of determining the claims against the debtor subject to an insolvency procedure is very important within the procedure since the existence of assets in the debtor's estate may represent a sufficient reason for all the participants in the procedure to agree to contribute to the maintenance of the debtor's activity.

These two operations are the result of the activity carried out by the insolvency practitioner (even though the debtor himself may contribute to this, in some circumstances the insolvency law even sanctioning him severely for the non-performance of this duty), who is the only one responsible in this respect.

The operation aimed at the drawing of the list of the debtor's assets and their identification is to be carried out in the insolvency general procedure (in any of its versions) as well as in the simplified procedure.

17. Laura M. STĂNILĂ, Sergiu I. STĂNILĂ**,** *Efectele Deciziei nr. LXXXVI (86) din 10 decembrie 2007 a Înaltei Curţi de Casaţie şi Justiţie – Secţiile Unite***,** p. 213

The article analyses the implications brought along by decision no. LXXXVI (86)/2007, pronounced by the High Court of Cassation and Justice - United Sections, which admitted the referral in the interests of the law declared by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, by which it was decided that, in case of adverse possession begun under the Law Decree and completed after the enforcement of Law no.7/1996, the declaratory actions for the acquisition of the right of property by means of usucapion, under Land Register, are governed by the provisions of the former law, namely the Law Decree no. 115/1938.
The authors consider that the Supreme Court's decision – which appeared rather late – burdens the acquisition of the right of property by means of adverse possession, in the regions governed by the Land Register also before 1996, the sanctioning of the owner who, through non-use, should lose the interest in land, which, in many cases, lacks content.

18**.** Flaviu CIOPEC, Magdalena ROIBU, *Infracţiunile informatice - crime invizibile,* p. 218

Information and communication technologies have a fundamental impact on today's society. The success of the „information world" has been considered essential for Europe's development, competitiveness and employment opportunities.

But making that success truly effective requires to face the persistent threat of integrity-related computer-crime.

Our study addresses the cyber-crime issue from the point of view of three procedural challenges: detection, prosecution and sanctioning of the specific offenses.

19. Florin I. MANGU, *Fapta ilicită – condiţie a răspunderii civile pentru fapta proprie a furnizorului de servicii medicale,* p. 229

The article analyses the illicit act, as a condition which may lead to personal liability incurred by the provider of healthcare services. The provider of healthcare services is a legal entity, as results from Law no. 95/2006 on the healthcare reform, therefore likely to incur civil liability for the damage caused to patients, by its own act. Thus, the provider of healthcare services has an obligation of security towards its patients. This obligation is a strict duty, due to the objective conception on which civil healthcare liability is based, in case of health accidents.

20. Sergiu POPOVICI, *Leasingul imobiliar*, p. 248

The lease of real estate, as a variety of leasing, has several peculiarities which make it distinct from any other leasing transactions. Government Ordinance no. 51/1997 itself has a special section dedicated to the lease of real estate, despite the fact that its purpose is to set up the main legal framework of leasing in Romania.

Another reason which makes the lease of real estate special is the mention of such an operation as a means of privatization, through which former State-owned companies become regular commercial agents. The normative act which governs the lease of real estate represents the main criterium for the structure of its analysis.

21. Flaminia STÂRC-MECLEJAN, *Aspecte privind teoria mandatului aparent*, p. 256

Cet article vise la problématique de la validité des actes conclus par une personne, en vertu d'un mandat apparent, c'est à dire, lorsque les tiers ont légitimement pu croire que leur cocontractant agissait au nom et pour le compte de leur mandant ce qui suppose qu'existent des circonstances autorisant le tiers à ne pas vérifier les pouvoirs du mandataire.

Pour se prévaloir de sa croyance légitime, le tiers doit établir des circonstances l'autorisant à ne pas vérifier les pouvoirs du mandataire.

Les juges du fond ne peuvent pas admettre l'existence de cette croyance sans constater ces circonstances.

22. Violeta STRATAN, *Incursiuni în istoria teoriei separaţiei puterii în stat*, p. 267

The origins of the theory of the separation of powers are found in the work of Aristotle, Politics. *The historians Herodotus, Thucydides and Xenophon, and the Greek writers Aeschylus, Sophocles, Euripides also left proofs of their reflections on the organization of power and its separation in Sparta and Athens. But the paternity of this theory is commonly recognized to the philosophers John Locke and Charles Louis Montesquieu.*

This theory may be reduced to four fundamental concepts: functions, powers, organs, balance of powers. It has as a starting point the identifications of the three functions of a state: the function to establish general rules of conduct (the legislative function), the function to enforce these rules (the executive function) and the function to solve conflicts (the judicial function). Then, it states that the exercise of each of these functions corresponds to different powers: the legislative, the executive and the judicial power. Finally, it affirms that different state organs are entitled to exercise these powers: the legislative power must belong to a representative assembly, the executive power to the president of the state and to the ministers, and the judicial power to the courts of law. The essence of this theory resides in the independence of the state organs exercising the three powers. If this independence cannot be absolute, it must be as large as possible.

23. Laura GHEORGHIU**,** *Curtea Europeană de Justiţie*, p. 287

The European Court of Justice is, above all, the Trojan horse of the federal project into a conservative, precautious intergovernmental structure of this unclassifiable European Union. Should it follow precisely its birth certificate, it would be a difficult partner in the slalom among the member states' requirements and reluctances. However, it had to reduce its strictness in order to protect the integration process as well as the achievements existing so far. On the other hand, as any viable organisation, it undertakes changes in order to get closer to its defining aim: the protector of Union's law. This paper tries to be a comprehensive portrait of - perhaps – the most important tool of the European federalists on their way to unify the continent, namely, the Court of Justice, both in a

diachronic view and in an up-to-date perspective, drafting the preparations for the turn into the Union' Supreme and Constitutional Court.

II. 2009

Analele UVT- seria Drept, volumul 1/2009

1. Fenyevesi Csaba**,** *Place and Function of Confrontation in the European Union countries*, p. 3

This paper is aimed at presenting the different solutions provided by the national regulations of more EU countries with respect to confrontation, as well as their recommendation and practice on criminal tactics.

Based on the data he has gathered, the author makes a distinction between two groups: the legal systems based on the anglo-saxon model, that do not have this institution and apply other means to solve the case or to convince the judges/jury, and those based on the continental traditions, most of which know this institution and apply it both in the framework of criminal procedure law and as an investigatory (truth-seeking) tool.

The author concludes that, despite its modest efficiency, the present existence and practicality or future of the institution is not to be doubted. On the other hand, in the countries that do not have the institution, the question regarding the necessity of applying it has yet to arise, although there has been no will or urge to introduce it.

2. IANFRED SILBERSTEIN**,** *Special procedures, methods of bankruptcy prevention for credit insitutions and companies – a comparative analysis* - , p. 21

Along time, the treatment of merchants in a difficult position has witnessed interesting developments.

In many cases, the state of insolvency has become treatable, and that is why insolvency became different from bankruptcy. Next in time, a new development was the redress procedure or judicial reorganization, which aimed at ensuring the survival of merchants who deserve to be saved.

Warning on crisis situations for a trading company can come from external sources (banks, external auditors) or from internal sources (accounting information, internal auditors or audit). The insolvency prevention measures are the debtor's options, under the general law, while in the case of credit institutions, they are obligations imposed by the special law of the Prudential Supervisory Authority.

3. Mircea Criste, *Curtea Constituţională, gardian al libertăţii individuale*, p. 41

Le moment où la Roumanie s'est donné une nouvelle loi fondamentale, elle entra dans la famille des pays européens dotés d'une juridiction constitutionnelle. La Cour Constitutionnelle roumaine est compétente de contrôler les lois tant sur la voie d'un contrôle a priori, que sur la voie d'un contrôle a posteriori. Ce dernier est exercé par voie de question préjudicielle, soulevée devant le juge a quo, à l'occasion d'un litige de droit commun et à l'exclusion d'une action populaire.

La liberté individuelle, inscrite dans l'article 23 de la Constituion roumaine, représente l'un des plus anciens droits fondamentaux reconnus à l'homme. L'article 23 stipule toute une série des garanties qui ont pour but d'empêcher qu'une personne soit privée d'une façon abusive de sa liberté. Ainsi, des mésures extrêmes et exceptionnelles, tant que la perquisition ou l'arrestation, ne peuvent être prises que selon les motifs et la procédure prévus par la loi.

Par plusieurs décisions, la Cour Constitutionnelle a réaffirmé son rôle de garante de la loi fondamentale, intervenant et donnant l'interprétation adéquate des disposition de l'article 23.

La liberté individuelle et la sûreté personnelle sont garantis aussi par deux autres dispositions importantes de la Constitution. Selon l`article 126, la compétence et la procédure devant les instances sont du domaine de la loi, à l`exclusion de toute instance extraordinaire. Ainsi étant, n`importe quelle personne peut connaître les normes et les garanties de procédure, pour formuler la meilleure défense. De même, la Constitution prévoie que la loi ne dispose que pour l´avenir, à l´exception de la loi pénale plus favorable.

4. Constantin D. Popa, Cătălin Lungănaşu**,** Contestaţia îndreptată împotriva refuzului organului de executare de a îndeplini un act în condiţiile prevăzute de lege, p. 50

The objection to forced execution represents an important procedural means in the procedure of forced execution that safeguards the rights of any interested party. Among the three different types of such objection, we are going to present some aspects regarding the objection to the bailiff's refusal to carry out an execution or an act of execution.

5. Claudia ROȘU, Adrian FANU-MOCA, *Inadmisibilitatea admiterii unui recurs în condiţiile în care recurentul nu avea interes să promoveze calea de atac*, p. 59

The paper examines the case in which an appellant, whom has been granted what he requested at first instance, promotes the appeal, which is upheld. In our opinion, the appeal must be rejected as inadmissible, since this is an appeal promoted by a party for which the decision is not adverse. The appeal can be promoted only by the part whose rights have been affected by the sentence recourse. Obtaining what was requested, can also be put in question the lack of interest in promoting the appeal.

A court order, regardless at which procedural stage is given, and the more so by a court for judicial control, must be legal and must reflect the correct application of the existing rule of law in this case.

6. Tiberiu Constantin Medeanu**,** *Perturbaţii cauzate de expertize tehnice auto*, p. 65

Violation of the law committed by the drivers of a vehicle have alarmingly amplified, making it more and more difficult to identify the technical aspects that help establish criminal guilt. At the same time, the number of technical experts has decreased, and certain inquiries are to be viewed as privileging the party that has requested them, which becomes obvious especially when more inquires have been demanded for the same act. Though such inquiries set up identical objectives, they reach different results on the essential aspects that help establish criminal guilt. Most of such deviations are to be found in cases that involve technical experts pursuing this profession on an occasional basis. An answers to this situation would be that of increasing the number of experts of the National Institute for Criminal Expertise, which would allow the conduction of such inquiries in an institutional framework.

7. Lucian Bojin**,** *CAUZELE DE NULITATE RELATIVĂ ŞI CAUZELE DE NULITATE ABSOLUTĂ A HOTĂRÎRILOR ADUNĂRILOR GENERALE ALE ACŢIONARILOR*, p. 76

The paper's purposes are, first, to try to distinguish between the causes of relative nullity and, respectively, absolute nullity of the shareholders assembly decision and, second, to present two lists of causes that trigger the nullity remedy. The author criticizes the current Romanian legal discipline of the nullity of the shareholders assembly's decisions as being not enough

protective of the legal certainty principle. Finally, the paper discusses the particular details of the facts that can constitute causes of nullity of shareholders assembly decision.

8. Alina Trandafir, Tiberiu Medeanu**,** *Opinii privind stabilirea naturii litigiului referitor la despăgubirile determinate de un accident de muncă*, p. 83

Work accidents have been regulated and defined by the Law no. 90/1996 and the Law no. 319/2009, according to which claims related to work accidents are to be heard by the Territorial labour inspectorates that have jurisdiction for the investigation of such events.

Workplace disputes are defined by the Labour Code in a different manner, leaving to courts the jurisdiction to delimit such disputes from the other categories of disputes that belong to another subject matter jurisdiction.

These two concepts are not synonymous, as the fact that a certain event has been included into the category of work accidents is not conclusive in establishing subject matter jurisdiction.

Some courts misinterpreted these concepts, thus wrongfully determining the subject matter jurisdiction.

9. Diana Duma**,** *Aspecte teoretice privind recunoaşterea si executarea hotărârilor judecătoreşti in lumina prevederilor Regulamentului nr. 44/2001 privind competenţa, recunoaşterea şi executarea hotărârilor în materie civilă şi comercială,* p. 88

Un rôle important dans la simplification des formalités relatives à la reconnaissance et a l'exécution des décisions judiciaires a été joué par l'adoptation au niveau communautaire du Réglement CE nr.44/2001 relatif à la compétence, la reconnaissance et l'exécution des décisions en matiere civile et commerciale qui consacre le principe de la reconnaissance de plein droit des décisions judiciaires prononcées dans les Etats membres de l'Union Européenne.

Cette simplification, dans une première étape, servira à l'élimination de la procédure d'exequatur. Le but final est, en effet, la creation d'un espace juridique européen unitaire dans lequel est intégrée la libre circulation des décisions (voir infra) également. Cela se concrétisera le moment ou toutes les décisions circuleront sans le besoin de les reconnaitre au préalable dans l'Etat d'éxecution. La renonciation totale de la procédure d'exequatur constituera la réalisation du „principe du pays d'origine" dans la circulation des décisions. Par contre, on ne pourra pas renoncer concrètement à la vérification des standards minimes matériaux et processuels, ainsi qu'au contrôle de la compétence internationale qu'après ceux-ci seront effectués, respectivement uniformisés, dans tous les Etats membres, ce qui suppose une harmonisation du droit privé et procédural.

10. Alexandru Jădăneanţ**,** *Câteva consideraţii asupra dobândirii cetăţeniei din perspectiva dreptului internaţional*, p. 107

Der Autor versucht die Staatsangehörigkeitsproblematik aus dem Sichtwinkel des Völkerrechts zu gestalten. Sicherlich ist das Staatangehörigkeitsrecht ein Attribut des jeweiligen Staates, aber die permanente Entwicklung des Völkerrechts hatte auch als Schlussfolgerung die Enstehung von Regeln in diesem Bereich. Die internationale Judikatur spielte auch eine wichtige Rolle im Staatsangehörigkeitsrecht, als Beispiel denken wir nur am Nottebohm Entscheidung des IGH in Den Haag. Der Autor beschreibt die schwierigen Probleme dieses Gebietes, in dem dieser an Beispiele zugreift, wie Der Vatikan der eine Art der Staatsbürgerschaft vergibt, dass sehr umstritten in der Fachliteratur ist.

11. Mircea NOȘLĂCAN**,** *Obligaţia negocierii cu bună-credinţă a contractelor*, p. 18

The paper analyses good-faith as a pre-requisite in the negotiation of contracts. In this respect, already in the pre-contractual stage, good-faith must exist so that there be no parallel negotiations, negotiations conducted without consideration or under unreasonable conditions or the parties' unaccountable refusal to conclude the final document.

In order to negotiate a contract in good faith, it was stated that the following rules should be observed: the correct information of the potential partner as to the relevant evaluating elements of the envisaged contract, the lack of any propositions which be manifestly unacceptable and bring about the termination of the negotiations, the prompt communication of the decision to terminate negotiations, the observance of the deadlines established for the conclusion of the different stages of the negotiations, the parties' collaboration so that the negotiations do not exceed a reasonable duration, the non-conduction of parallel negotiation and the observance of the confidentiality of the communicated information.

Analele UVT- seria Drept, volumul 2/2009

1. Bárándy Gergely, *Is it an Obligation for Hungary to Penalize Hate Speech According to International Law?*, p.1

Hate speech, vilification – beacuse a general accepted concept does not exist on this subject – can be defined through its content as follows: it is such a verbal or non-verbal manifestation, which takes trough several communities and groups effect (categorized characteristically on race, national or ethnic origin, religious or sexual identity, physical or mental deficiency, or on other propriety) and violates the group members' human dignity and humiliates them. In the opinion of the author, hate speech – despite the fact, that according to the last decision of the Hungarian Constitutional Court (CC) it can mean other crimes too – is not a synthesis of concepts, for example the crime – also cited in the Constitutional Court's decision – Incitement Against a Community or the crime Blasphemy of a National Symbol has been already settled categories in criminal law. Hate speech does not cover the violent activities, or activities threathening with immediate violence motivated by hate, but it is further the form of expression, insistence, and discrimination of malicious, exhaustive, extreme views, which violates human dignity heavily.

2. Zoltan Andras Nagy, *Violenţa şcolară ca problemă comună în România şi Ungaria***,** p. 12

The author analyses the significance of school violence in the states of Central and Eastern Europe after the year 1990. The notion of "school violence" does not include only the criminal side of it. Aggravating circumstances of the said phenomenon are the following: the change of the social ruling; the end of state schools monopole; the family crisis; the fewer possibilities to spend after-school time in a learning-based manner, etc.

The suggestions aimed at limiting this phenomenon are: the involvement of other persons in the prevention activity, as teachers, psychologists, school assistants, while the criminal law measures should be used as an ultima ratio.

3**.** Anamaria Cercel, *REFLEXIONS UPON THE RESTAURATIVE JUSTICE*, p. 17

The penal system which relies only upon repression could not provide solutions to all the problems created by the phenomenon of criminality. So, during the recent decades, alternative procedures have been developed, namely conciliation procedures of the society type, in which the sides are paced on equal positions. The procedures, named restaurative, aim to restore the social

relationships that have been deteriorated through the anti-social deed, to cover the material and moral prejudices suffered by the victims, aim to make the delinquant side aware of the consequences of its doings and to increase its responsability towards them. Last but not the least, these procedures aim to help the community to involve itself actively, so establishing a kind of justice that is vowed to be as well official and public.

4**.** Viorel Paşca, *UNELE CONSIDERAŢII PRIVIND REGLEMENTAREA EFECTELOR PÂNGERII PREALABILE ŞI A ÎMPĂCĂRII PĂRŢILOR ÎN NOUL COD PENAL,* p. 23

The present study analyses the preliminary complaint procedure, according to the New Penal Code.

In the new code, the offences which are investigated only upon filling of a preliminary complaint are in general offences relating to property or non-property rights, such as offences against the person (art. 193, art. 206, art. 208, art. 218 paragraph 1 and 2, art. 219 paragraph 1 etc.), offences against property (art. 238, art. 239, art. 240, art. 241 etc.), offences against the family (art. 378, art. 379 etc.), but they do not represent all the procedural functions of the preliminary complaint, whose use is recommended by the Council of Europe as a means of achieving restorative justice.

5. PETRE DUNGAN, *INFRACŢIUNEA DE ULTRAJ ÎN CONCEPŢIA NOULUI COD PENAL,* p. 35

The offence of assault on public officer as set out in the New Penal Code still preserves certain elements of the previous legal content, but both the constituents of the offence and the penalties for the new criminal act have been consistently amended, and they are analyzed in what follows.

6. Radu I. Motica, Tiberiu Medeanu, *Conţinutul infracţiunii prevăzute de art. 279 alin 3^1 Cod penal*, p. 43

Article 279 paragraph 3^1 in the Penal Code sanctions unlawful carriage of offensive weapons in the state units or other units referred to by art. 145, at public meetings or inside polling stations.

In the case commented upon, it has not been taken into account the fact that the offence set out in this article represents an aggravated form of the basic offence, and it is considered to be committed only if the offensive weapons are carried in the places provided for in the legal text.

7. Florentina Olimpia Muţiu, *COOPERAREA JUDICIARĂ ÎN MATERIE PENALĂ ÎNTRE ROMÂNIA ŞI ALTE STATE MEMBRE ALE UNIUNII EUROPENE*, p. 48

In accordance with the requirements of the European area of freedom, security and justice, enhancing the judicial cooperation in criminal matters between Romania and other EU member states takes into account: implementation of programs and actions of the European Union concerning the prevention of and fight against organised crime; promoting the direct judicial cooperation in criminal matters between courts/ prossecutor's offices of EU member states, with responsibilities in the fight against organised crime (the European Arrest Warrant and the surrender procedures between Member States; the letters rogatory; hearings by videoconference; joint investigation teams; the cross-border surveillance; mutual legal assistance in criminal matters between EU member states); the respect of the provisions of European Convention on Human Rights regarding the right to defense and to fair trial within criminal proceedings; improving information on the judicial system, criminal law and criminal

procedure of the EU member states by the authorities with responsibilities in international cooperation in criminal matters.

8. Flaviu Ciopec, *Este posibil un drept penal european ?,* p. 68

The author analyses the possibility to create a European criminal law. The Europeanization of criminal law means a few very concrete things, both when it comes to its legitimacy and efficiency. Unlike framework decisions, which involve unanimity, directives and regulations are adopted upon qualified majority. The European Parliament is competent in co-deciding, hence an increased democratic legitimacy. Directives and regulations have a direct effect, unlike framework decisions. The Commission may initiate the "infringement" procedure against member states, in order to compel the former to respect their obligation to harmonize legislation. Member states may also incur financial responsibility for breach of European provisions.

9. MAGDALENA ROIBU, *PRIVILEGIUL CONFIDENŢIALITĂŢII – GARANŢIE SPECIALĂ ÎN MATERIE PROCESUAL–PENALĂ*, p. 77

An essential element of the due process of law is the right of defence, set out in article 6 paragraph 3 b and c of the European Convention on Human Rights. It reads as follows: „Everyone charged with a criminal offence has the following minimum rights: b. to have adequate time and facilities for the preparation of his defence; c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

Such procedural guarantee was initially meant to apply only to criminal and civil matters.

However, the varied case-law emanating from Strasbourg has been largely extended to other legal fields, which led to the formulation of detailed rules dictating the content of the guarantees afforded by article 6.

It now seems that a pan-European procedural standard for accused persons is starting to emerge.

Particularly in criminal matters, the right of defence could hardly be effective in the absence of legal assistance.

Although the Convention does not stipulate it expressly, access to counsel should be provided to the accused starting from the first stages of the criminal investigation.

As regards the lawyer- client relationship, the European Court has established that it is, in principle, privileged, and correspondence in that context, whatever its purpose, concerns matters of private and confidential nature.

The privilege of confidentiality has been severely infringed, especially where the accused was under arrest.

The most common forms of breaking confidentiality are the supervision of talks between the arrested and the lawyer or the opening of letters from and to the accused.

In this context, the European Court has also been confronted with violations of article 8 of the Convention, namely the ''Right to respect for private and family life''.

Another way of undermining the above-mentioned principle is the encroachment on professional secrecy of lawyers, and that, to put it in the Court's terms, ''may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 of the Convention''.

The paper explores the major infringements of the principle of confidentiality in the lawyer-client relationship, the decisions by the European Court of Human Rights being an extremely valuable source of legal interpretation and reasoning.
They should guide and inspire not only the academics who attend conferences and prepare PhD theses, but perhaps primarily, the criminal investigation departments and the national courts, in order to avoid illegal procedures and respect the imperative provisions on human rights.

10. Lucian Bojin, *NULITATEA HOTĂRÎRILOR CONSILIULUI DE ADMINISTRAŢIE ŞI ALE DIRECTORATULUI SOCIETĂŢII PE ACŢIUNI*, p. 87

Even though rarely used in practice, the action for the invalidation of the Administrative Board decisions of a corporation raises some interesting issues. Some of them relates to procedural aspects, such as who has locus standi *to formulate it. But the most important issue is to answer the question "Which decisions can form the object of such an action?". Two answers have been offered by commentators: all the decisions can be invalidated in court (1) and only the decisions adopted pursuing a delegation from the general assembly of shareholders can be reviewed in court. The author advocates for the second position, emphasizing the fact that the action for invalidation of corporate organs acts is an instrument meant to be used in the struggle between shareholders themselves (minority and majority) and not between shareholders and administrators.*

11. Flaminia Stârc-Meclejan, *NOŢIUNEA DE INTERES SOCIAL ÎN CONTEXTUL LEGII NR. 31/1990 PRIVIND SOCIETĂŢILE COMERCIALE*, p. 92

In the absence of a legal definition of corporate interest, this paper proposes a discussion on the different meanings assigned to it by the courts and by the jurists.

By revealing the different doctrines elaborated by civil-law and common-law countries to define corporate interest, it ends up by concluding that it is a flexible concept which escapes as such an all-embracing definition.

As a legal standard of conduct in the corporate environment, it is to be appreciated on a case-by-case basis.

12. Alin A. TRĂILESCU, *PRIMARUL ÎN IPOSTAZA DE REPREZENTANT AL STATULUI PE PLAN LOCAL*, p. 101

This paper focuses on the attempt to qualify the legal status of the control over the acts issued by the mayors in their capacity of representatives of the State. On the basis of an analytical approach, the author's conclusion is that this kind of control has the legal status of a specialized administrative control.

13. Laura Gheorghiu, *Idei federale în construcția europeană*, p. 106

This paper is part of my plea for a federal Europe, irrespective of how that federation might be drawn. My committment to a competitive multi-level governance found in Europe s cultural history a good deal of projects and analysis intended to ground such a construction. With such a remarcable background, I start by pointing main reasons for a federal Europe taken from its politics, ethnic diversity demands or governance already in line. Following, then, the pattern of a Swiss idea, I try to describe a European one, collecting the main issues in specific debates. The paper ends with a brief presentation of five outstanding projects that have shaped the discussion and preparation for such a dream coming into being.

14. Bogdan George Zdrenghea, *Problema calităţii procesuale pasive în procesele care au ca obiect uzucapiunea,* p. 131

The author analyses who has passive legal standing in the trials which have as an object usucapion. The trial through which gets ascertained the acquisition by means of usucapion of the property right must develop against the person who has the quality of owner of the real estate or, better said, of the person who would have had the quality of owner of the real estate provided the usucapion had not operated. Besides the former owner, defendant is also, together with the former, the person towards whom the plaintiff invokes the joining of possessions, because it is necessary that the judgement is opposable to the latter.

III. 2010

Analele UVT- seria Drept, volumul 1/2010

1**.** ŞERBAN BELIGRĂDEANU, *Considérations sur le rapport juridique de travail des fonctionnaires publics et l'estompage continu des différences entre le rapport juridique de travail des salariés et celui des fonctionnaires publics, ainsi qu'en relation avec la typologie des rapports juridiques de travail et avec référence à une vision moniste de l'objet du droit du travail,* p. 33

Autorul, pornind de la o opinie proprie, exprimată într-un studiu anterior (publicat în anul 2000), în sensul că raportul de serviciu al funcţionarului public constituie o formă tipică a unui raport juridic de muncă, raport care, deşi diferit de contractul individual de muncă (arhetip al raportului juridic de muncă), nu este totuşi esenţial diferit de acesta din urmă şi, ca atare, logic şi juridic, raportul de serviciu al funcţionarului public este o componentă de bază a dreptului (legislaţiei) muncii, subliniază apoi că, în ultimii ani, se observă, legal, o estompare continuă a diferenţelor dintre raportul juridic de muncă al salariaţilor şi cel al funcţionarilor publici.

În continuare, autorul prezintă tipologia raporturilor juridice de muncă actuale şi anume: raportul juridic al salariaţilor (generat prin încheierea contractului individual de muncă, reglementat de Codul muncii); raportul juridic de muncă al funcţionarilor publici civili (generat de Legea nr. 188/1999 privind Statutul funcţionarilor publici sau de unele statute privitoare la categorii speciale de funcţionari publici ca, de pildă, poliţişti, diplomaţi şi consuli, personal vamal ş.a.); raportul juridic de muncă al militarilor de carieră (subofiţeri şi ofiţeri – Legea nr. 80/1995); raportul juridic al persoanelor care deţin funcţii de demnitate publică; raportul juridic de muncă al magistraţilor (al căror statut face obiectul Legii nr. 303/2004); raportul juridic de muncă dintre societatea cooperatistă şi membri cooperatori (Legea nr. 1/2005).

Faţă de această tipologie a raporturilor juridice de muncă, autorul consideră fundamental greşită limitarea obiectului dreptului muncii exclusiv cu privire la raportul juridic de muncă al salariaţilor (reglementat de Codul muncii), ci apreciază ferm că toate raporturile juridice de muncă, enumerate mai sus, sunt, în viziunea sa monistă a dreptului muncii, componente ale dreptului muncii român, a cărei summa divisio este constituită de dreptul comun al muncii (privitor la raportul juridic de muncă al salariaţilor, fundamentat pe contractul individual de muncă reglementat, în principal, pe dispoziţiile Codului muncii) şi, pe de altă parte, de dreptul special al muncii (care include raporturile juridice de muncă ale funcţionarilor publici civili şi militari, ale persoanelor ce deţin funcţii de demnitate publică, ale magistraţilor şi ale membrilor cooperatori), drept special al muncii axat pe reglementări diferite de Codul muncii, dar pentru care Codul muncii constituie totuşi dreptul comun.

2. Viorel Paşca, *Răspunderea membrilor grupului infracţional organizat, în dreptul penal român, în cazul săvârşirii infracţiunilor program*, p. 52

La commission de l'infraction programme par l'un ou plusieurs membres du groupe criminel organisé ou par un tiers payé à cette fin, mais qui ne connait pas l'existence du groupe, met face à face les deux modèles de criminalisation: le groupe criminel organisé, infraction pour laquelle les cotisations des membres, qu'ils soient initiés, organisateurs ou simples assistants o seulement des adeptes s'éstompent, en répondant tous comme auteurs du crime, et d'autre part, l'infraction ou les infractions programme auxquelles la contribution de chaque participant au programme peut être individualisée selon le modèle classique de la criminalité.

Dans ce dernier cas, chacun répondra seulement pour les crimes auxquels il a participé ou il a été au courant et seulement par rapport à la cotisation qu'il a eu à leur commission.

3. Balázs Elek, *The role of stereotypes in the process of verification*, p. 57

What would we do without prejudices? What would happen if we put aside all stereotypes, schemas, prejudices, models connected to age, gender, hair colour and profession? What if the relationships between two people or two social groups would not be laden with, in the strict sense of the world, prejudice? Should we meet anyone, there were no pre-experience expectations, stances distorting experience, conclusions discriminative (direct or implicated), based solely on the affiliation, the categorisation of the related group.

Are judges free from stereotypical or prejudiced thinking which is a basic human characteristic? If not, how can it affect him or her during the process of verification? Or are judges infallible?

No one with a common sense would believe that judges are unerring, and although we presume the judgement to be always fair, this presumption can sometimes prove false.

In fact, the righteousness of the judgement is not an obvious requirement, in spite of the function of the court being to deliver justice.

No subjective rights are assured (can not be assured) neither for the assertion of substantive justice by the Constitution, nor for all the judicial verdicts to be legal. The constitutional requisite of substantive justice can be realised within the institutes and warranties serving legal certainty. Jurisprudence is concerned with the possible processes making penal procedure faster. But this can inevitably hurt some principles, as these processes can reduce the possibility to determine the state of affairs that is most approximate to reality, while securing timeliness.

But what does the truthfulness of judgement mean, what are the reasons for the finding of facts not being faithful enough to real events? Among many factors, stereotypes have a major role in this.

I must begin by saying that this study is not trying to present a detailed and well-documented empirical research. Rather, my paper is raising a problem; it is an experiment to share my impressions and worries concerning penal procedures that surfaced while getting familiar with the vast field of stereotype research.

4. László Kőhalmi, *Let's talk about the political Corruption in Hungary honestly*, p. 71

People talk a lot about ***political corruption*** *in different television shows, and there are many scientific and educational papers written on this subject. The public interest for this issue is reflected by the search engine of Google, which provides 801 000 results in Hungarian, and 11 million results in English for the term "political corruption." In spite of the large amount of papers and analyses, we cannot say that it is a waste of time to examine the problem of political*

corruption in our country, judging its actuality to be long lost in the past – on the contrary: there are few problems with a greater significance as far as today's politics are concerned.

I determine ***political corruption*** *– agreeing with András SAJÓ – as the corruption emerging in the functioning of the political system, namely, the betrayal of norms that serve public interest (public trust) for any kind of advantage.*

The definition covers the following of such norms (for a certain advantage), where the behavior that follows the norm also violates public interest. The advantage being directly personal for the "traitor" is not a condition for this.

5. Beatrix Pintér, *Hallmarking. Legal Study on Market Surveillance,* p. 86

The Convention was signed on 15 December 1972 and entered into force on 27 June 1975. Amendments of Articles 10 and 12 of the Convention of 18 May 1988 entered into force on 16 August 1993. All Contracting States have ratified these and are currently bound by them. Further amendments adopted in 2001 have not yet entered into force. They have been taken into account although their content seems of limited relevance for the question at issue apart from the revised text of the treaty preamble. The annexes to the Convention as amended several times are of a purely technical nature and have therefore not been included in the analysis of the actual text. The Explanatory Notes contain no substantive language that would contribute to answering the question at stake.

Market surveillance includes the following activities: inspections of retailers, wholesalers, importers, manufacturers, markets etc. (precious metals operators) with regard to whether articles were properly marked, existence of false marks, non-precious metal objects sold as precious metal, combination of metals and other materials, substandard articles. However, at the same meeting the Standing Committee added the term "Market Surveillance" to a newly created Glossary and introduced as a definition "Policing the whole market to ensure members of the public are not cheated". On the whole, however, there is no coherent subsequent practice of the Parties in respect to market surveillance measures.

6. Laura-Maria Stanilă, *Aspecte de drept comparat privind răspunderea penală obiectivă în dreptul penal francez,* p.111

The violation of the criminal legal precept rule will impose criminal liability. Criminal liability was defined as the obligation to support and enforce a penalty and the correlative right of the State to enforce such penalty as a result of committing a crime, and to compel the offender to perform such a sanction. In modern criminal law criminal liability is conditioned on one hand by comitting an offense, and on the other hand, by the ability to respond of the criminal offender. Classical school of criminal law raised the criminal liability foundation to the rank of the offender's guilt principle. Without guilt there is no crime and no criminal offense. How could reconcile these statements, which are taken, at least in Romanian doctrine as irrefutable truths, with the question of strict criminal responsibility ? French criminal law proposes a novel solution for both the foundation and the utility of the institution of strict criminal liability.

Analele UVT- seria Drept, volumul 2/2010

1. Viorel Paşca, *EXCESUL DE REGLEMENTARE PENALĂ ŞI CONSECINŢELE SALE,* p. 27

La restriction des droits et des libertés est régie par les principes de la légalité («seulement par la loi»), la subsidiarité («seulement si nécessaire»), la proportionnalité ("la

mesure doit être proportionnée à la situation qu'elle a causée») et la non-discrimination («appliquée sans discrimination ").

Etant donné leur caractère impératif, soit qu'elles arrêtent certaines actions (des règles prohibitives) et encore plus quand elles imposent d'autres (des règles oneratives), les règles du droit pénal peuvent constituer «la route de la servitude» si elles ne servent plus à la défense des droits et des libertés civiques et ne sont pas justifiées par l'intérêt général, mais par l'intérêt du pouvoir politique. L'excès de normativisme pénale ne peut être en aucun cas l'idéal de l'Etat de droit.

L'excès de réglementation pénale ne peut être que l'idéal trahi d'une révolution échouée.

2. Tamás Goricsán, *FROM THE COUNTERFEITING, WITH A EUROPEAN UNION LOOKING OUT*, p. 33

Doubtless, that the counterfeiting is historically coeval with the existence of the money, but increasingly more of the world's states join under the aegis of Nation's Alliance to the Geneva Convention which was signed by 31 states on 20 April in 1929. Its aim is the suppression of the counterfeiting and punishes the following:

- *every fraudulent act which intents to do or reverse money, independently from the tool, which is used for the achievement of the result;*
- *if somebody circulates counterfeit money in a fraudulent way;*
- *those acts, which want to intent, import, receive or acquire fraudulent money, knowing that it is false;*
- *these crimes' experiment and premeditated participation: those fraudulent acts which goals are aimed at having, doing, receiving or acquiring tools or other matters what are able to construct counterfeit money or change money.*

3. Zsolt Csontos, Szabolcs Kiss, *Thoughts about crimes committed in connection with overchargings in Budapest*, p. 48

September 22, 2010 the US Embassy in Budapest on its English language homepage has repeatedly published the list (name and address)[1] *of those mainly downtown bars and restaurants not recommended for US citizens as well as citizens of other countries visiting Budapest. The reason for this one can find in the publicity concerning reports and criminal proceedings connected to 'overcharging' which has been characteristic to the capital, nevertheless its qualification from the aspects of criminal law is not unequivocal. In order to unify the practice, Department of Criminal Coordination at Budapest Metropolitan Police Headquarters examined similar crimes committed in 2007-2009 at the territory of its competence (capital) and formed a common position with the Budapest Attorney General's Office.*

4. Kéryné Kaszás, Ágnes Roxán, The secret of the efficiency of the cartel chase as reflected by the comparison of Hungarian and German cartel law, p. 57

In Hungary, the framework of the fight against cartels is laid down in Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter referred to as: "UMPA") and Section 296/B of the Criminal Code, which regulates the prohibition of

[1] http://hungary.usembassy.gov/tourist_advisory.html

competition restraining agreements related to public procurement and concession procedures. German cartel law is comprised of the Act against Restraints of Competition ("Gesetz gegen Wettbewerbsbeschränkungen") and the relevant provisions of the German Criminal Code ("Strafgesetzbuch").

The regulations relating to cartels of both legal systems have been significantly affected by the example set by the Community, however, the pressure exerted by the EU could not guarantee the application of identical regulatory solutions. The question is how the differences between the regulations in Germany and those in Hungary influence the efficiency of persecuting such actions.

5. Stanilă Laura –Maria, *ASPECTE DE DREPT COMPARAT PRIVIND RĂSPUNDEREA PENALĂ OBIECTIVĂ DREPTUL PENAL GERMAN*, p. 68

Strict criminal liability is a controversial institution and after some, quite obsolete to modern criminal law. Strict criminal liability requires the criminal liability of a person without the element of guilt, which leads to a major contradiction between the maintainance of this institution and the subjective criminal liability affirmed by the classical school of criminal law.

An impartial analysis of how the Continental legal systems react to patterns of strict criminal liability reveals both similarities and discrepancies in the approach. While the fundamentals are different, practical consequences are less specific. In the following article we intend to explore the continental position in the sense of explaining the differences and similarities of the mechanism identified in strict criminal liability institution. German criminal law is characterized by rigor, rigor that reflects the goals of the institution of strict criminal liability, which neither does not recognize it, but nor do not explicitly denies it.

6. Alexandru TĂNASE, *STUDIU DE DREPT COMPARAT AL REGLEMENTĂRILOR PENALE PRIVIND TRAFICUL DE FIINŢE UMANE*, p. 83

In this article, it is recommended that, after the model offered by the Romanian legislature in par.(1) art.165 PC RM, at Chapter XIII of the General Part of the Penal Code of the Republic of Moldova should exist a norm in order to define the expression of "person exploitation". It is argued about the appropriateness of supplementing the national penal law with a rule that would have impleaded the act of using the services of an exploited person, operating the model at art.216 of the Penal Code of Romania, 17/07/2009. It is revealed that, after the model offered by the Bulgarian legislature, the circumstance of offense perpetration with the legal crossing of the state border is to be recommended as an aggravating circumstance of the offence provided by art.165 PC RM. It appears that sexual exploitation is not mentioned as a purpose of human trafficking in Turkey and Canada's penal laws. In these cases, somewhat improperly, are applied the provisions of incriminating dispositions in regard to the offense of pimping. As following, the Republic of Moldova has more effective settlements on human trafficking.

7. Sorin TIMOFEI, *ANALIZA COMPARATIVĂ A REGLEMENTĂRILOR PRIVITOARE LA CONCURENŢA NELOIALĂ DIN LEGEA PENALĂ A REPUBLICII MOLDOVA ŞI LEGILE PENALE ALE ALTOR STATE*, p. 95

In this study, it is concluded that in countries with market economy, there are penal provisions relating to unfair competition. As a rule, the penalties for these actions consist in prison and/or fine. In the foreign countries, vary the manner of technical-legal approach on regulation of penal responsibility for the crime of unfair competition: in some countries, the

norms are included in the Penal Code; in other countries, in the framework of some special laws containing penal dispositions is established the penal responsibility for technical-legal approach on regulation of penal responsibility for the crime of unfair competition. It is shown that, in the context of obtaining other's states positive experience on competition penal defense, the approach of the problem on polinormative ensuring of the penal policy should be more flexible, above al being the fundamental values, including traditions, customs and the way of thinking characteristic to our nation.

IV. 2011

Analele UVT- seria Drept, volumul 1/2011

1. András Kecskés, *Corporate Governance Provisions of the Hungarian Company Act of 2006,* p. 47

The past decade brought special focus to corporate governance. The process was largely effected by experiences deriving from frauds and corporate scandals. As a part of the 2006 Hungarian company law reform many of the Anglo-saxon corporate governance provisions where adopted in the new Hungarian Company Act. The flexible implementation of those rules neared the system of Hungarian corporate governance to the International and European standards offering the investors a broad scale of various practices.

2**.** Cristian Clipa**,** *Câteva consideraţii cu privire la caracterul facultativ al „jurisdicţiilor speciale administrative*", p. 54

Establishing the optional character of administrative jurisdictions by way of an express constitutional rule represents an unusual and inadequate legislative behavior. Unusual because an eminently technique matter – such as the optional character of specialized administrative jurisdictions – should not, normally, be the object of a constitutional rule. Inadequate, for it has forced the ordinary legislator to be extremely prudent while instituting other such jurisdictions and it has even determined him, on some occasions, to expressly qualify certain administrative appeals as being non jurisdictional (within the same statutes instituting them), which, in our opinion, verges on legal logics. Apart from these preliminary observations, however, it is obvious that, in certain situations, individuals cannot avoid specialized administrative jurisdictions; either because an active public administration procedure, initiated by way of a claim, acquires a jurisdictional character as a consequence of a third person's intervention in the said procedure in order to invalidate it; or because a jurisdictional body of public administration can only be informed by another administrative authority; or, at last, because an individual is interested in hindering an administrative procedure initiated by an administrative body and, in order to accomplish this result, the individual must appeal, according to the law, to the mediation services of such a body.

3**.** George Măgureanu, *Bugetul asigurărilor sociale de stat şi politicile sociale,* p. 79

The paper set itself as a main objective a current topic of a real interest for satisfying the needs of a decent living standard and social protection for those who are disadvantaged, as a result of old age, work incapacity, unemployment, accidents etc.

The research performed succeeds in identifying the size and the generic principles of an actual social protection, within the context of the national regulations and the regulations in the European Union.

This concept, which is not new, is implied today as an ever greater necessity of the state intervention in the process of ensuring the general welfare, promoting the social security, as a state duty towards its citizens.

In this respect, we will perform an analysis of the objectives which may lead to the identification and implementation of certain social policies and insurance systems, reply devices to the issues such as poverty, discrimination, unemployment, discrimination of certain social categories, assistance of the people in need, policies by which they may insure a decent living standard for the citizens.

We consider that by applying social protection measures, such as: employment, preventing diseases and accidents, unemployment security for the people who cannot find employment, health protection, pensions etc., the state will fulfill one of its most important duties, that of protecting the community members.

4. Laura- Maria Stanilă, *Răspunderea penală obiectivă şi formele sale în dreptul penal român*, p. 87

Romanian criminal law which can be caracterized primarily by traditionalism, is tributary to the principle of guilt. From this point of view the approach from such a perspective of the institution of strict criminal liability may seem, if not bizarre, at least doomed to fail ab initio. However, scholars have identified forms of strict criminal liability under penal institutions that, at the first sight, have nothing to do with this topic. In the following we intend to make a presentation of the development of the strict ciminal liability institution in the Romanian criminal law field, as well as a review of the forms of criminal liability qualified by the Romanian doctrine as forms of strict criminal liability.

5. Ioana – Celina Paşca*, Răspunderea membrilor grupului infracţional organizat pentru infracţiunile program*, p. 97

Cette étude analyse la situation des chefs d'un groupe criminel organisé qui, dans la plupart des cas, ne participent pas directement à la commission des infractions-programme, mais recourent à des exécutants pour la réalisation effective des actions criminelles. La question à laquelle nous essayerons de trouver une réponse est si tous les membres du groupe criminel répondent pour les infractions-programme de l'association ou ils ne seront responsables que ceux qui avaient pris part à leur commission ou bien ceux qui, bien que n'ayant pas participé, étaient au courant de leur existence.

6. Magdalena Roibu, *Publicarea informaţiilor confidenţiale vs. libertatea de exprimare*, p. 102

An emblematic US Supreme Court Justice (William O. Douglas) once stated that „There comes a time when even speech loses its constitutional immunity".

Although in all democratic societies freedom of expression is the rule and not the exception, there are some cases where its restraints are allowed by courts, such as the publication of information about criminal investigations in course, pending criminal trials, state secrets or the private life of individuals.

The present study illustrates the different approach to publication of such information by some notorious courts of law worldwide, i.e. the European Court of Human Rights, the US Supreme Court and the International Criminal Tribunal for the former Yugoslavia.

7. Radu Bufan, *Deductibilitatea fiscală a cheltuielilor cu serviciile prestate de către terţi*, p. 109

The fiscal deductibility of the management, advisory and other services raises a series of problems in order to fulfill the conditions prescribed, at art. 21 par. 4 lit. m) of the Fiscal Code and those mentioned in the Norms at point 48.

The paper defends the case of contracts concluded at a global level, by the mother companies, case in which the Romanian subsidiary will not be a contractor as such.

The paper is focused also on the evidence, the actual performance of the services, a matter in which the details of the Norms are not enough. The author's opinion is that the kind of evidence depends on the nature of the service. The fiscal law can not establish a rule of evidence which is not reasonable or to expensive to procure for the taxpayer.

8. Claudia Roşu, *Capacitatea unei persoane juridice de drept public de a încheia convenţii arbitrale,* p. 119

The present study aims to show that the moral persons of public law, respectively the administrativ territorial units may sign in an arbitraly convention in order to solve the conflicts arosen from commercial contracts as well as from those of public procurement.

The legal arguments are to be found, mostly in art 1 of OUG 119/2007 and in art 286 alin 1 of OUG no 34/ 2006 regarding the signing in of the commercial contracts by the moral persons of public law and the solving of cases and claims regarding the execution, the nullity, the annulment, the resolution, the cancellation or the unilateral denounciation of the procurement contracts, at first, by the comercial branch of the Court in whose district the contractual authority has its residence.

9. Florina Popa, Lucian Pop, Rezoluţiunea, rezilierea şi reducerea prestaţiilor în viziunea noilor prevederi ale Codului Civil, p. 127

If the annulment or termination have as main effect the cancellation of the contractual status quo by breaking the link of contractual solidarity, reducing the performance in terms of annulment is a survival mechanism of contractual balance for contractual essence recovery, namely in the purpose of the convention.

The study highlights the changes required by the entry into force of the new Romanian Civil Code, from the perspective of contractual solidarity, which entails the obligation of fidelity not so much towards the counterparty, but especially to the letter and spirit of the convention, in regard to the (economic) interest which dictated its conclusion.

10. Sergiu I. Stănilă, *Câteva comentarii pe marginea modificărilor survenite la regimul juridic al publicităţii imobiliare, ca urmare a intrării în vigoare a Noului Cod Civil*, p. 135

The entry into force of the new Civil Code led to significant changes to the Law no. 7/1996, legislation that was intended to be at its adoption a revolution in land recordation through the legal solutions they proposed, especially in those geographical areas in Romania where there weren't up to its entry into force land books. Judicial practice by the Law no. 7/1996 and so far, proved, however, that land recordation system can and should be improved, often courts being confronted with personal interpretations of legal rules that have led to similar or opposite solutions in identical or similar matters. Regarding the issue analised, the New Civil Code has the merit to implement in the legislative level, legal opinions expressed in the doctrine, in an attempt to find appropriate solutions to many practical problems that faced both the theorists, and practitioners.

11. Flaminia Stârc-Meclejan, *Cele două feţe ale dreptului la un mediu sănătos*, p. 145

The European Convention on Human Rights and its additional protocols do not contain any provision that expressly refer to the right to a healthy environment. The European Court of Human Rights has, however, expanded the protection of privacy regulated by Art. 8 of the Convention to the environment in which individuals have the right to live. Sometimes it is the environment that invades privacy, other times individuals interfere with it. The fate of an action before the European Court of Human Rights which concerns the right to a healthy environment can thus be changeable.

12. Codruţa E. Mangu, *Riscul solului în contractul de antrepriză în construcţii*, p. 150

The purpose of our paper is to present the soil risk as a specific risk that caracterises the general contractor agreement. În order to achieve our goal, first of all, we will detail this subject by reffering to the meaning of this kind of risk. Furtheron, we will present the way that this risk appears throuhout the building of the construction. We will begin from the moment of the construction project, when the soil risks have to be identified and evaluated, than we will proced by showing theese risks at the moment when the work for the construction allready started and we will end our presentation with the risks entailing after the moment when the bulding is handed to the client.

13. Oana-Andreea Motica, *Răspunderea persoanelor care deţin obligaţia de supraveghere a minorilor şi a persoanelor puse sub interdicţie judecătorească în temeiul unui contract în lumina prevederilor noului Cod civil*, p. 168

Après une analyse de la notion de responsabilité contractuelle, l'article débat la nature contractuelle ou délictuelle de la responsabilité des personnes obligées à surveiller des mineurs ou des incapables. Il continue avec une analyse, de ce point de vue, de la responsabilité des artisans, des hôpitaux, cliniques psychiatriques, clubs sportifs auxquels des incapables ont été confiés.

14. Florentina Folea, *Conflictul dintre principiul libertăţii contractuale şi principiul continuării forţate a contractelor în procedura insolvenţei*, p. 177

La loi sur la procédure collective met des limites ou arrive même à éliminer l'efficacité de la volonté individuelle en faveur de l'intérêt du débiteur, par la généralisation du principe de continuation des contrats en cours, conférant ainsi au praticien en procédure collective les moyens nécessaires au redressement de la société. Les manifestations habituelles en ce qui concerne la liberté contractuelle ne sont pas conciliables avec le droit de la procédure collective qui rend le contrat un outil de redressement qui doit dépasser les limites de la volonté des parties. Par la violation du principe de la liberté contractuelle, le droit sur la procédure collective sanctionne avec la nullité les clauses contractuelles qui ont pour but l'annulation des contrats en raison de l'initiation de la procédure collective et limite l'impacte du caractère intuitu personae. La protection des intérêts du contractant insolvable crée un déséquilibre dans les raports contractuels, au détriment du contractant in bonis.

Analele UVT- seria Drept, volumul 2/2011

1. Florentina Olimpia Muţiu, *Protecţia drepturilor fundamentale ale omului. Aspecte privind infractorul şi victima infracţiunii*, p. 5

The study aims to address some relevant issues concerning the rights of offenders and crime victims' rights in the context of theoretical and jurisprudential analysis of human rights

and fundamental freedoms. In accordance with the international and European regulations on human rights are outlined in the plan of legislative criminal policy and judicial criminal policy the approaches to: the humanism of punishment; the prohibition of torture, inhuman and degrading treatment for offenders; the application of alternative sanctions to the prison for the offenders who perpetrated acts with low social risk; the defense of crime victims' rights, especially the right to a fair trial, the assistance and psychological counseling, repairing of damage and financial compensation granted by the state as provided by law; the procedural guarantees for offenders and victims of crime.

2. George Măgureanu, *Domeniile medierii ca modalitate de soluţionare a conflictelor,* p. 16

The main objective of the paper is a current topic of real interest for solving with celeritate the conflicts in the civil, commercial matters and in other areas.

Using the text analysis which leads to a descriptive documentary research, this article manages to identify the measure and the generic principles of an alternative judgment to the state overcharged justice, within the context of the regulations in the European Union and, implicitly on the national level.

In this respect we will perform an investigation of the following objectives: the concept of solving the conflicts through alternative modalities to the state justice, solving the conflicts with celeritate, applying the privacy principle, solving the conflicts with the possibility of preserving the relations between the partners etc.

This new concept in case of the mediators' involvement in the process of solving the litigations between the subjects of the legal relations affected by the conflicts.

We consider that by applying the mediation procedure, this alternative of a simplicity, rapidity and efficiency which the courts, possessing the means and difficult levers, cannot provide, the mediation procedure offering numerous advantages as compared to the state justice, the essential changes would take place and lead to the substantial reduction of the period for solving the litigations in the areas: civil, commercial, labor and social security, insurances etc.

3. Flaviu Ciopec, *Individualizarea judiciară a pedepselor şi principiul proporţionalităţii*, p. 29

Essentially, respecting the principle of proportionality implies that the judge shall fulfill the requirements of repressive justice, i.e. shall find the balance between the severity of penalties and the actual seriousness of offences. Finding that balance is a highly complex issue. The present study attempts at identifying the manner in which the said principle operates in Romanian legal practice, based on a few coordinates to be found in the case-law of the ECHR in Strasbourg and the CJEC in Luxembourg.

4. Laura Maria Stănilă, *Răspunderea penală obiectivă în dreptul penal italian*, p. 39

This article is a continuation of a scientific research initiative begun in the previous issue of Annals of West University of Timisoara. In previous studies we have taken care of presenting the institution of strict criminal liability in German and French criminal law. In this study we propose to address the issue of strict criminal liability in Italian criminal law, presenting all the features and controversies raised by the italian doctrine.

Italian Penal Code explicitly recognizes the strict criminal liability institution and the Italian doctrine extends the scope of such a legal provision to other situations traditionally regarded as strict criminal liability assumptions.

5. Ioana Celina Paşca, *Infracţiunile de spălare a banilor în legea penală italiană*, p. 52

Vu que le phénomène du blanchiment d'argent transgresse toute limite et tout système économique et que le fonctionnement du marché financier est un outil nécessaire du recyclage de l'argent, des préoccupations dans le domaine de la répression pénale en subsistent même dans le droit italien.

Le législateur italien, sous l'influence de la réglementation internationale criminalise non seulement les activités de dissimulation de l'origine des marchandises, telles que la conversion, le transfert, ou l'empêchement de la découverte de la vérité, mais aussi les activités ultérieures du processus du blanchiment d'argent, comme l'introduction de l'argent sale dans les circuits économiques en investissant dans les structures de l'économie légale des capitaux déjà recyclés.

6. Laura Gheorghiu, *Separarea puterilor în stat? Tentativă de re-evaluare*, p. 62

The theory of a clear separation of powers in a state had been already proved to be simplistic and out-dated. Still, there are many to support it and claim this principle as the source of any democratic regime. Separation may trigger independence but also non-cooperation, while the main issue of reciprocal control remains still out of picture. Who is supposed to keep the balance and on what grounds? This study is meant to underline some seminal steps of the modern history of this debate, so often overrode or even denied. People's fear seeks power to protect against, instead of governing together with the others,

Sumar: *Teoria separaţiei nete a puterilor într-un stat a fost de multă vreme dovedită a fi simplistă şi uzată moral. Cu toate acestea, are încă numeroşi adepţi care o consideră temelia oricărui regim democratic. Este adevărat că separaţia puterilor poate genera independenţa acestora dar şi non-cooperarea, în timp ce problema principală a controlului reciproc rămâne pe mai departe, în afara discuţiei. Cine va menţine echilibrul şi pe ce temeiuri? Acest studiu are menirea de a puncta câteva momente cheie ale istoriei moderne ale dezbaterii, atât de des încălcate sau chiar negate în esenţa lor. Teama oamenilor caută mereu puterea spre a-i proteja împotriva altora, în loc de a guverna împreună cu ceilalţi.*

7. Emilia Mihai, *Pricipiile care guvernează obligaţia de informare în dreptul consumului*, p. 86

Le droit de la consommation est le domaine où c'est épanouie très naturellement l'obligation d'information, parce que le technicien doit éclairer le profane. Le consommateur et le professionnel, le couple qui est la base du droit de la consommation, sont en antinomie. Les consommateurs sont en position de faiblesse vis à vis des professionnels, à cause de leur vulnérabilité économique et cognitive. C'est pourquoi le droit de la consommation a multiplié les obligations légales d'information qui incombent au professionnel. Malheuresement, la matière ne présente aucune unité et cohérence. Pourtant, ont peut distinguer trois principes ordonnateurs, dont la mission est le rééquilibrage contractuel: le principe de la complétitude, qui impose une information exhaustive; le principe de l'intelligibilité, qui impose au professionnel fournir une information claire et compréhensible; le principe de la loyauté, qui impose au professionnel transmettre des informations correctes. Ces trois règles ont pour fin mettre le profane au niveau de connaissances du professionnel pour traiter à armes égales.

8. Florina Popa, *Executarea obligaţiilor prin echivalent. Daunele interese. Clauza penală. Arvuna în viziunea Noului Cod Civil*, p. 92

This study emphasizes that performing obligations by equivalent, according to the new Romanian Civil Code, imposed an own dynamics, ratified by the reconfiguration of legal mechanisms on damage assessment, damages invoking legitimacy, primacy of the dualistic theory

on penal clause (reparatory civil penalty and punitive reparation) and the dichotomous structure of the earnest payment, which acts similarly to the penal clause, being a conventional estimate of damage incurred in case of unilateral termination.

9. Florin I. Mangu, *Despre vinovăţie – condiţie esenţială a răspunderii civile delictuale pentru fapta proprie, potrivit Codului civil*, p. 102

Abstract: Guilt will further remain the idea which explains the engagement of the civil liability for one's own act, as it is clearly stipulated in the first paragraph of art. 16 of the Civil Code: "If the law does not provide otherwise, the person is only responsible for the actions committed intentionally or with negligence". Only by way of exception - "If the law does not provide otherwise…" - the idea on the basis of which a person can be held civilly liable for its own act can be different from guilt.

The provision of principle contained in art. 16 is restated in the content of art. 1357, para.1 of the new civil regulation, in a form adapted to the specificity of tort liability for one's own act: "He who causes damage to another by means of a wrongful act, committed intentionally or with negligence, shall be bound to repair it".

By entering a pattern which was already formed, at the level of principle, by the provision of art. 16, the text of art. 1357 para.1 makes guilt the foundation of tort liability for one's own act, by stating it amongst its conditions.

Thus, guilt remains the fourth *sine qua non* condition of tort liability for one's own act, condition which is independent, autonomous and delimited with clarity and univocity from the condition of the unlawful deed, as well as from that of the relation of causality between the latter and damage.

Key terms: tort liability for one's own act, guilt, intention, negligence

10. Daniela Moţiu, *Particularităţi privind concedierea pe motive care ţin de persoana salariatului în temeiul art. 61 lit. b)-d) Codul muncii*, p. 116

The necessity of implementing some appropriate solutions coming from real situations, requires to reconsider the legal options of the Labor Code, art. 62, 1st line, regarding the termination of an individual working agreement, whose claims do not match the legal requirements, as within this contract, the labor is to be delivered against the legal provisions. The situations in which an employer might be hired due to the reasons in his control cover disciplinary dismissal and professional non-compliance due to subjective reasons, other situations may be included into the natural resilience of the individual working agreement.

11. Flaminia Stârc-Meclejan, *Câteva probleme legate de cvorumul adunărilor generale ale societăţilor pe acţiuni*, p. 131

This paper proposes thoroughly grounded answers to some of the most persistent questions raised in practice by the quorum requirement. Based on what quorum is and on how it is put into practice, the author examines the controversial issue of the shareholders' meetings in joint-stock companies with one shareholder holding one share as well as the more complicated situation of the shares which confer the right to vote, but whose exercise is subject to legal restrictions, as for example the case where the shareholder finds himself in a conflict of interest.

12. Codruţa E. Mangu, *Asumarea de către client a riscurilor solului şi a celor determinate de executarea construcţiei – cauză exoneratoare de răspundere pentru antreprenor/arhitect*, p. 141

The subject of our paper reffers to the theory according to which the building contractor, the arhitect or other particpants in the making of a building are not held liable if the client decides to accept the risks that might appear during the edification of a construction and that, at some point, might cause dammages to the client or to other people. Throughout this study we will present the effects of this theory and the requirements that have to be fullfilled in order for this theory to find it's application.

13. Oana-Andreea Motica, *Condiţiile speciale ale răspunderii delictuale a comitentului pentru prejudiciul cauzat terţilor prin faptele ilicite delictuale ale prepusului minor în lumina prevederilor noului Cod civil*, p. 147

L'article constitue une analyse des conditions spéciales de responsabilité des commettants, dans le cas particulier ou le préposé, mineur, cause des préjudices à des tiers.

14. Florentina Folea, *Contractele privind cedarea folosinţei bunurilor în procedura insolvenţei*, p. 154

Le bail commercial est un contrat dont l'importance ne peut être contestée. L'ouverture de la procédure collective contre l'une des parties du contrat de bail entraîne des troubles dans le déroulement des relations commerciales entre les parties. L'application des dispositions en matière de procédure collective détermine l'écart de la loi du contrat, tous les contractants du débiteur étant en principe sujets qui ont l'obligation de respecter les règles fondamentales dans le cadre de la procédure, au nom du principe de l'égalité de traitement des créanciers. Sans tenir compte de la qualité du débiteur insolvable (bailleur ou locataire), ce qui prime c'est le principe général de la continuation des contrats et aussi l'option de garder ou de résilier les contrats