

DNY PRÁVA  
– 2013 –  
DAYS OF LAW

Masarykova univerzita  
Brno, 2013



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## A FEW NOTES ON THE METHODOLOGICAL PROBLEMS OF LEGAL RESEARCH

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**Key words:** Jural methodology, law, reflection of legal being

The life of law is influenced by the work of legal scientists, in most part by their opinions being put into practice by employees and representatives of institutions applying law. Legal methodology utilizes and offers justified theoretical and empirical knowledge for adequate reflection of the legal being of man in given society. Jural methodology in particular searches for solutions to problems in the area of jural interpretation, the theory of application of law, the theory of jurist argumentation or the theory of legislation. How do globalization processes affect the methodology of legal research?

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## A CONCRETE PRACTICAL CONTRIBUTION OF LAW AND ECONOMICS – DETERMINING THE DAMAGES FOR PAIN AND SUFFERING UNDER THE NEW CIVIL CODE

LIBOR DUŠEK

Many provisions of the new Czech civil code provide a broad scope for judicial interpretation. Law and Economics offers guidance for the application of such open-ended provisions in practice. A specific example discussed in my paper is the damages for pain and suffering. The economics and health literature has developed concept that allow assigning a monetary value to the harm caused by the loss of life or a medical condition: the Value of Statistical Life and Quality-Adjusted Life Year. The estimates of the monetary values are based on the data on actual human choices, such as the willingness to accept a dangerous job or purchases of safety equipment in automobiles. I present an overview of the few existing estimates of the Value of Statistical Life in the Czech Republic, which are in the range of 30 to 50 million CZK, and the implied damages in specific examples of medical conditions. The amount of damages, implied by the economic analysis, is substantially greater than the damages awarded under the current practice.

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## THE BASIC LIMITS OF MAKING OVER THE LAW BY THE MEANS OF ANALOGY

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**Key words:** analogy, statutory/legal gaps, making over the law, filling in the statutory/legal gaps

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# CREATION AND INTERPRETATION OF LAW – DEFINITION OF CONCEPTS IN POSTMODERN SITUATION

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**Key words:** Creation of law; interpretation of law; postmodernity; separation of powers; sovereignty of the people.

In his contribution the author asks a question what is the difference between the creation and interpretation of law. He also examines conditions of meaningfulness of this differentiation. The author means that some postmodern attitudes make the borders of these concepts unclear. The changes of our view of the separation of powers and the sovereignty of the people also complicate the meaning of creation and interpretation of law. In the last part of his text the author tries to respond to some incurred problems and to formulate the conception which solves some of them.

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## NEW CIVIL CODE AND TELEOLOGICAL INTERPRETATION

LUKÁŠ HLOUCH

This contribution deals with an explicit provision (§ 2 sec. 2) of Czech "new" Civil Code dealing with purposive (teleological) approach while interpreting any provision implemented by Czech private law. This topic will be introduced as a matter of both subjective and objective theories of interpretation and analysed from the point of view of the concept of ratio legis. As a conclusion, the new legal framework will be discussed from the point of view of theoretical background of Czech legal order.

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# TRADITIONAL CLASSIFICATION OF SCIENCES OF THE STATE THROUGH THE PRISM OF CONTEMPORARY LEGAL METHODOLOGY

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IUDICIUM PRIVATUM, o.s.

**Key words:** State sciences, Legal Methodology, General theory of State and Law, Philosophy of Law.

The subject and nature of State sciences and their classification in traditional conception. Theoretical variation of the relationship between state and law in selected philosophical directions. Sciences of the State Through the Prism of contemporary legal methodology. The current problem of general theory of State and general theory of Law separation's.

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## VAGUENESS AND INTERPRETATION IN LAW

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**Key words:** Interpretácia, Právo, Právna norma, Pragmatika, Propozícia, Sémantika, Vágnosť, Význam

The relations between the problems of legal interpretation will be presented here together with a discussion of some semantic and pragmatic aspects of the legal language. A central point to our discussion is that the vagueness of law is considered a determining factor of the problems of legal interpretation. It is widely accepted that vagueness in law calls for a specific interpretation of the law—interpretation that changes the meaning of the law and makes it more precise. According to this view, vagueness causes gaps in the law, and the role of legal interpretation in the case of vagueness is to fill such gaps. I argue that this view is mistaken and defend the thesis that vagueness in law calls only for an application of the law to the case at hand, leaving the meaning of the law intact.

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## THE LEGAL METHODOLOGY IN THE ARCHITECTONICS OF LEGAL SCIENCES

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právních učen

**Key words:** Legal sciences, architectonics, legal methodics, legal methodology, legal logic, formal philosophy of law.

The conception and substance of legal methodics and methodology. The architectonics of legal sciences. Unique position of the legal methodology in the architectonics of the legal sciences. The legal methodology between the legal logic and the formal philosophy of law.

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## CATEGORY OF REASONABLENESS AS METHODOLOGICAL DILEMMA

MARIÁN ROZBORA

Contribution tries to express some critical questions of methodology, with which author met during writing the thesis called Category of reasonableness in private law. Author considers such interesting issues: a) philosophical-linguistic approach; b) inspiration by methodology of aesthetics science.

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# THE LEGISLATIVE INTENT OF THE NEW CIVIL CODE

JUDR. MARTIN SOBOTKA

To be added.

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## ON RULE "UNCLEAR IN LIGHT OF CLEAR"

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**Key words:** interpretation, hermeneutics, precepts of interpretation

Paper deals with hermeneutical rule of interpretation of unclear or uncertain factulaities in light of those which appear as clear or certain. Author touches some problems of this approach and tries to analyze them.

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## HERMENEUTICS IN LAW AND LEGAL HERMENEUTICS

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**Key words:** law, interpretation of law, hermeneutics, methodology,  
methods, conceptions of hermeneutics

Paper deals with concept and conceptions of hermeneutics in law and  
legal hermeneutics.

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## PURPOSE OF LAW AS A MEANS OF INTERPRETATION

MILOŠ VEČEŘA

Question of the purpose of law is relevant from the perspective of the legislature's intent as a reason for approval of the given legal regulation. Capture the actual purpose of legal norm is also important for the teleological interpretation. Economic and social functioning of law is the basis for interpreting based on economic and sociological analysis of law.

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## THE DECIDING ON COMPENSATION FOR DAMAGE IN AN ADHESION PROCEEDING

DOC. JUDR. JOZEF ČENTÉŠ, PHD. – JUDR. EDUARD BURDA,  
PHD.

The article „The deciding on compensation for damage in an adhesion proceeding” focuses on specifics of decisions on damages issued in criminal proceedings as well as on substantive definition of damage according to the Slovak Criminal Code its relationship to the term “compensation of damage under the Criminal procedural Code.

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## VICTIMS OF TERRORISM

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**Key words:** Victim, Terrorism, Human rights violations, Victimology, Criminal Code

The paper presents a short reflection on the necessity for a special legislative attention to the victims of terrorism in The Czech Republic as it is common in some other countries of Europe and America. By a simple analysis of the legislation of some other countries this paper discuss advantages and disadvantages of the special legislation, points to necessity of this legal act or its redundancy. Finally the paper deals with the characteristic of victim of terrorism, its specific element and also selection of the victim by terrorist (if they do so).

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## WILL BE SPECIFIED

IVANA JAROŠOVÁ

will be specified

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## PRINCIPLE OF TAKING INTO CONSIDERATION OF AN INJURED PERSON'S INTERESTS

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**Key words:** An injured person; criminal act; an injured person's interest; criminal sanctions, punishment.

This article deals with the principle of taking into consideration of an injured persons's interests from the view of particular provisions of Penal Code, Juvenile Justice Act and Criminal Liability of Legal Persons Act legal Entities and as to the execution of sanctions also with respect to Code of Criminal Procedure .

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## CIVIL ASPECTS OF ADHESIVE PROCEEDING

JAN KOCINA

The paper treats of the changes involving position of an aggrieved person in a criminal procedure which were accepted in a connection with the last novels of the Rules of Criminal Procedure and next changes, which are going to be expressed in the New Civil Code. A man could easily deduce, from the last changes of the Rules of Criminal Procedure, that the position of an aggrieved person is getting stronger, which is evident in the new possibilities of an aggrieved person to enforce not only financial damage, but also nonfinancial damage and unjustified enrichment. The goal of this paper is to give a notice of the extension of the rights of an aggrieved person in a connection with the civil law. The New Civil Code comes with lots of changes not only in the concept of the harm and unjustified enrichment, but also f.e. in the terms of expiration. It is also reflected in the adhesive proceeding.

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## INSTRUCTION FOR BOTH THE DAMAGED AND THE VICTIM?

ZDENĚK KREJČÍ

Reflections on the practice of instructing the damaged and the victim,  
particularly in terms of its scope.

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## COMPENSATION OF THE VICTIM IN THE NEW STATUTE 45/2013 SB.

JOSEF KUČHTA

Explanation of the principles of the new compensation act, reflection of the discuss points, summary of the previous practice.

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## DIVERSIONS FROM THE VIEW OF VICTIM AND INJURED PARTY

JANA KURSOVÁ  
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**Key words:** Diversions, injured party, damage compensation

This article is focused on the role of victim and injured party in the Czech criminal proceedings. The article describes position of injured party within particular kinds of diversions, mainly with regard to the opportunity of involvement in criminal proceeding and damage compensation. Possible problems in current form of diversions from the view of injured party will be outlined further as well as eventual solutions.

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## THE USE OF RESTORATIVE PROGRAMMES IN THE CZECH CRIMINAL PROCEEDINGS.

PETRA MASOPUST ŠACHOVÁ

The Law on the Victims of Criminal Acts introduces the term “restorative programmes” into the Czech legislation. At the moment, the only restorative programme used in practices is a mediation offered as a service by the Probation and Mediation Service of the Czech Republic. The legislation sets neither content requirements on the restorative programmes in general nor does it indicate any procedural interconnectedness of the schemes with the criminal proceedings. This paper gives a thought to the types of restorative programmes to be considered and how these programmes could be integrated into the current legislation regulating the criminal proceedings.

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## LEGISLATIVE ACTIVITIES OF THE COUNCIL OF EUROPE AND THE VICTIM IN CRIMINAL PROCEEDING

JUDR. MGR. JOZEF MEDELSKÝ

Position of victim in criminal proceeding is result of state and international legislative activities. The contribution deals about the importance of human rights and their protection on state level but also on international level mainly by Council of Europe and European court of human rights. The contribution also analyse concrete results of legislative activity of Council of Europe according to a position of victim in criminal proceeding.

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## PROCEDURES OF VICTIM'S EXAMINATION ASSURANCE IN THE CONTEXT OF INTERNATIONAL LEGAL ASSISTANCE

JANA PEŠOUTOVÁ

Obtaining evidence in criminal matters by a Member State of the European Union from another Member State subject to the rules laid down in international treaties on mutual assistance in criminal matters (the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union). In general, the Convention applies to the provision of mutual assistance in obtaining evidence in criminal proceedings, in particular hearing, service of documents, border surveillance and criminal records. The application practice, however, shows that the most common and most preferred procedural step that aid is just questioning the witness – the victim. To ensure this, typically the most important evidence of the criminal proceeding must comply exactly contractually specified process procedure that the following article will attempt to describe.

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## IMMATERIAL RIGHTS OF THE INJURED PARTY IN CRIMINAL PROCEEDINGS

JAN PROVAZNÍK

Material rights of the injured party (claim for damages, immaterial damages, unjust enrichment etc.) are quite well covered in czech Code of Criminal Procedure, as well as in specialized discussions. This contribution will therefore focus on immaterial rights of the injured party in order to point out, what else is he or she entitled to during a criminal proceedings except for the above mentioned, how can he or she affect its course, whether it is sufficient with regard to the role of the injured party in the criminal procedure, and alternatively how should his or hers rights be amended to be in accordance with it.

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# PRACTICAL CASE STUDY OF INFORMATION PROVIDED TO VICTIMS IN CRIMINAL PROCEEDINGS

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**Key words:** the law on crime victims, victim, law enforcement, information

The law on crime victims brings many changes in the work of law enforcement and other entities registered in the register of assistance to the victims of crime. This paper therefore aims to outline the audience some practical examples of a new way how to provide information to the victim with the reference to their individual statutory rights and obligations and at the same time to point out possible pitfalls and consequences of insufficient guidance both for individual subjects and the victims themselves.

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## VICTIMS OF THE VIOLENT CRIMES

LENKA STAŇKOVÁ

The contribution deals with the status and protection of victims of violent criminality, in connection with the recent extended definition and protection of the victims of crime.

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## POSITION OF THE VICTIM IN CRIMINAL PROCEEDING IN EUROPEAN CONTEXT

JOZEF STOPKA

The contribution defines the term victim and deals about position of victim in criminal proceeding. The contribution offers comparison of law regulations of position of victim in selected countries of European Union. The conclusion of the contribution deals about valuation of acquired knowledge and about possible proposals de lege ferenda for to improve the position of the victim in criminal proceeding.

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## POSSIBILITIES OF APPLICATION OF SUBSIDIARY PROSECUTION IN CRIMINAL PROCEDURE

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The author of this contribution pays attention to the institute of subsidiary prosecution which is not known to the present Slovak or Czech criminal law system. This is also the reason why specialist publications do not pay attention to the institute of public prosecution, respectively pay attention only to the limited extent. Nevertheless, this institute deserves much more attention, especially in the context of an expanding range of discretionary powers of public prosecutor in the criminal procedure and still relatively small possibilities of the victim / aggrieved person to defend their inadequate application. The institute of subsidiary prosecution allows controlling a proper exercise of prosecutorial discretionary powers outside of the hierarchical structure of the public prosecution service – with the help of the victim / aggrieved person. The contribution therefore analyses not only historical aspects of the subsidiary prosecution and its application in the foreign countries, but it outlines possibility and suitability of introducing the subsidiary prosecution into the Slovak, or Czech legal system.

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## COURT DECISIONS ON COMPENSATION FOR DAMAGE IN CRIMINAL PROCEEDINGS

ROMAN VICHEREK  
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In this article, the author reflects the manner and possibility of deciding matters of claims for damages in criminal proceedings, since it considers that requirements of the law and the established decision-making practice of the higher courts are with everyday application practice of law in criminal proceedings in the first instance trial proceedings or courts in many cases contradictory. It is therefore on the spot pointed out that the clarification of the claim for damages, the question is no less important, which is also very often directly linked to the assessment of the extent of the eventual guilt and the punishment of the accused.

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## THE RIGHTS OF VICTIM DE LEGE FERENDA IN SLOVAK REPUBLIC

LADISLAV VLACHOVIČ

The contribution shortly analyses actual law regulation of position of victim and his rights in Criminal Code of the Slovak republic. The contribution analyses the possible proposals de lege ferenda, which would help the victim in criminal proceeding.

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## VICTIM IMPACT STATEMENT

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**Key words:** victim statement, the impact of crime, victimization, common law

This contribution is focused on the new concept of Victim Impact Statement (statement of the victims about how a crime has affected them) in Act no. 45/2013 Coll. inspired by common law. Since this is a provision typical for common law, contribution reflects the use of Victim Impact Statement in the USA and the UK. Furthermore contribution discusses what should be a sense of the statement and what may be its importance for the victim, as well as the impact on the offender.

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## THE POSITION OF AGGRIEVED PARTY IN CRIMINAL PROCEDURE AGAINST JUVENILES

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**Key words:** Criminal procedure against Juveniles, Position of Aggrieved Party, Rights and Duties of Victims, Diversions

The paper deals with the selected aspects of aggrieved party in procedure against juveniles, which is in some aspects different than in procedure against adult offenders.

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## DIRECT ELECTION OF THE PRESIDENT AND THE INSTITUTE OF COUNTERSIGNATURE

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**Key words:** countersignature, direct election, legitimacy, President

The paper deals with the relationship between direct election of the President by citizens and the institute of countersignature of head of State's acts. Indispensable consequence of direct election is also acquisition of direct legitimacy for performance of presidential powers. As is known, the Government is legitimized only indirectly through parliamentary elections. Therefore, the paper asks a question whether a limitation of performing of presidential powers by the Government by means of the countersignature is systematically compatible with direct election of the head of State.

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# ELECTION OF THE PRESIDENT AND HIS ROLE IN LITHUANIAN CONSTITUTIONAL SYSTEM

IVO KEISLER

**Key words:** Election, direct election, president, constitution, Lithuania

The paper deals with institute of direct Presidential election in Republic of Lithuania and with the role of President in the Lithuanian constitutional system. The author of this paper in it provides both direct and indirect possibilities of comparison of the Lithuanian and Czech conception.

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## CONSTITUTIONALITY OF CAMPAIGN SPENDING LIMITS – UNRESOLVED QUESTION?

MARIAN KOKEŠ

Contribution deals with a question of constitutionality of campaign spending limits in terms of the proportionality of potential interference with freedom of expression of candidates. Regulation of campaign spending limits is recently enshrined in the Presidential Election Act and in the future is in the Electoral Code proposed for all sorts of elections.

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## PRESIDENTIAL ELECTION

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**Key words:** President of republic

In 2012, a constitutional amendment introducing direct presidential elections was adopted. By introducing direct presidential elections, our state joined the overwhelming majority of the republics where presidents are elected directly regardless the fact whether the republics are presidential, semi-presidential or parliamentary. The text reviews the current method of election and compares it with presidential elections in other countries as well as with elections of former Czechoslovak presidents. The text is also dedicated to the dispute with opinions rejecting direct presidential elections. The text deals with constitutional and political circumstances accompanying the present presidential elections.

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# ORGANISATION AND DEVELOPMENT OF THE ELECTIONS FOR THE EUROPEAN PARLIAMENT IN ROMANIA

TROCAN LAURA MAGDALENA

Abstract: With the acquisition of member state status in the European Union, Romania has gone from active observer status, after signing the Treaty of Accession in 2005, to the full member of European Union since 2007 and became the seventh country in the European Union by the number of inhabitants. First elections for a full term mandate in the European Parliament were held in Romania, in 2009. After these elections, Romania has sent in the European Parliament a number of 33 representatives. In Romania, the European Parliament elections take place largely under national law but with respect the common rules established at European Union level regarding: gender equality, secret vote, direct universal suffrage and proportional representation. The purpose of this article is to present and analyze the Romanian legal framework regarding the organization and conduct of elections for the European Parliament.

Key words: European Parliament, elections for the European Parliament, the right to elect and to be elected in the European Parliament, candidature for the European Parliament

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## SELECTED ASPECTS OF ELECTION LAW

DOC.JUDR. KLAUDIA MARCZYOVÁ, PHD.

The contribution deals about selected questions of election law. The author is based on the fundamental principles characterizing elections focusing on subjective election law and its limitations in the conditions of Slovak Republic (election to the National Council of the Slovak Republic, elections of the President of Slovak republic, or in elections to organs of region governments). Those realities are analyzed according to other interesting questions, even according to the context of judicial decisions.

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## CZECH-FRENCH COMPARISON OF FINANCING OF PRESIDENTIAL CAMPAING

VÍTĚZSLAV NĚMČÁK

Rules relating to financing of presidential campaign became a new part of czech law in 2012 when direct election of the president was adopted. In France, regulation of financing of presidential campaign is very sophisticated and could serve as a model for future improvements of czech law. This paper highlights the main weaknesses of czech law compared to french law.

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## ASPECTS OF LOBBYING AS PART OF THE POLITICAL SYSTEM OF THE SLOVAK REPUBLIC

DOC. JUDR. ANTONÍN NESVADBA, PHD.

The contribution deals about the different types of lobbyists groups actually operating in Slovak republic in various areas of social life. The contribution also deals about the forms and methods of their operation, as well as about the possibilities of legalizing their activities.

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# THE PRESIDENTIAL ELECTIONS AND LEGISLATION IN SR (CURRENT SITUATION AND PROSPECTS IN LEGISLATIVE FORM OF THE PROPOSED ELECTION CODE)

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**Key words:** president, elections, constitution, legislation

The aim of the paper is an analysis of the current and future rules of presidential elections in Slovakia, which begins with the definition of basic question 'why' it was introduced in 1999 and "in what" ways the legislation affect legal status of president in the constitutional system in Slovakia. These factors are reflected in the formal and material purpose of the election rules. The content of the presidential election is now formally defined in the Constitution and in the implementing regulation at law, the adoption of which the Constitution envisages. The development of the electoral legislation, however, did not stop in the Slovak Republic. The issue of the presidential election will be part of the announced election code, in accordance with which will take place in the ranking fourth direct elections for president in 2014.

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## A MORAL DUTY TO VOTE

TOMÁŠ SOBEK

The goal of my presentation is to find and critically analyze the classical arguments in favor of moral duty to voting.

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## ELECTION TRESHOLD IN THE ELECTIONS TO THE EUROPEAN PARLIAMENT: GERMAN WAY (NOT) TO BE FOLLOWED?

JAN ŠMAKAL

The article deals with constitutionality of the election threshold in the European Parliament elections. It describes relevant case law of the Czech Constitutional Court. Next, the decision of the German Federal Constitutional Court which declared the threshold void is analyzed. Based on the comparison of Czech and German understanding of the role of the European Parliament, the article asks whether the Czech threshold can pass a judicial review.

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## HUNGARIAN ELECTORAL LAW AS AN EXAMPLE OF ELECTORAL ENGINEERING

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**Key words:** Maďarsko, volební zákon, volební inženýrství

Hungarian electoral law established in elections overwhelming majority of one political subject. Consequences of the elections influenced many areas of political life in Hungary, including new electoral law. Article is focused on analysis of consequences of electoral reform and how to judge this act of political engineering.

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## ELECTION AND POWERS OF THE HUNGARIAN PRESIDENT OF REPUBLIC

ATTILA VINCZE

In 1989, the Hungarian President was planned to be elected directly. As a result of a referendum, this was amended without amending his powers. The practice however showed that the powers were understood rather restrictively. It was put forward that these limited powers reflect the limited legitimacy as being elected by the Parliament. The paper aims to analyze the connection between election and powers by portraying the situation in Hungary during the last 25 years.

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## FREEDOM OF EXPRESSION OF POLITICIANS IN CASE LAW OF THE ECTHR

DAVID ZAHUMENSKÝ

European Court of Human Rights stresses that political expression and discussion of public issues needs special protection in democratic society. At the same time there are limits of the freedom of expression. The presented paper provides analyses of the opposing principles concerning freedom of expression of politicians: have politicians special protection of what they say (*Castells v. Spain*) do they have increased responsibility for they words (*Féret v. Belgium*)?

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## BANKING UNION

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**Key words:** banking; supervision; banking regulation

This paper deals with a banking union. It discusses its four pillars, i.e. single rulebook, single supervision mechanism, single resolution mechanism and harmonised deposit guarantee schemes. The paper also points out at changes which its establishment brings.

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## THE CONCEPTS OF PRIVATE LAW IN TAX LAW

RADIM BOHÁČ

The article focuses on the use of concepts of private law in tax law, not only in connection with the recodification of private law. With regard to the principle of non-existence of the Chinese wall between public and private law is undesirable to apply the concepts of private law in the tax law in a different sense. However, the use of terms in tax law must be systematic and must take into account the specifics of tax law.

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## GENESIS OF DIRECT TAXES IN SLOVAKIA WITH EMPHASIS ON LEGISLATION

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**Key words:** history; taxation; direct taxation;

Genesis of direct taxes in Slovakia with emphasis on legislation

Karolína Červená, Anna Románová

Taxes in general constitute one of the oldest financial institutes of management of territorial units, or, rather, human society. From the Middle Ages, when taxes were characterized as mostly irregular, occasional, purposeful, and segregation payments up to the present form of taxes with features like complexity in processes and variety of approaches to taxes reflecting changes in different conditions (economic, political, power, cultural, social, etc.), the creation and formation of taxation is historically associated with the development, management, maintenance, and protection of economic life. In the Middle Ages, e.g. a periodic payment of taxes was considered the same as the loss of individual freedom of man and, in general, paying direct taxes in Europe was associated with periods of military conflicts (presented as protecting citizens against external danger). The introduction of direct taxation on income in the United States was historically also connected with funding of military conflicts. The History points to the fact that in the past, direct taxes deemed "illegal", except from taxation of subjugated nations. Establishment of regular, progressive taxation is related to the gradual expansion of state functions, with increasing expenses in connection with the funding of various activities (administration, public services). Legislative developments in the field of direct taxation in Slovakia, as part of the genesis of process of taxation, has taken place

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during different historical periods under the influence of economic and political situation, which can be considered, not only in the past but today as well, as the determining factor in shaping of taxation.

The contribution is part of the solution grant project VEGA 1/1170/12.

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## TAXES ON INTEREST IN HUNGARY

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**Key words:** personal income tax, interest, financial institutions, bank contracts, savings account

The taxes levied on interest are analyzed in detail by this paper. Accordingly, the practice and provisions of the Hungarian personal income tax system are in focus, pointing out the various methods, which were used by the tax regime in the last 25 years. The actuality of the topic is, among others, that the legislator introduced a flat personal income tax in 2011, which entered into force in two major phases in the last two tax years, however, recently (in August 2013) social security contribution has been levied additionally as well. Therefore the tax avoidance methods are pointed out by the paper, scrutinizing the different private law contracts offered by the financial institutions of the market. In order to provide a wider picture, the related problems of the effective loan agreements are also presented together with the new applicable regulation and financial law measures taken by the government, as well as the planned rules of the re-codification of private law in Hungary. Keywords: personal income tax, interest, financial institutions, bank contracts, savings account

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# TAXATION OF TRUST UNDER THE NEW CIVIL CODE. ABSENCE OF LEGAL PERSONALITY OF TRUST IN THE TAX LAW

LENKA GERŽOVÁ

Among the significant changes introduced by the new Civil Code, it is certainly possible to include concept of Trusts. The goal of this article is to describe how the Tax law copes with incorporation of Trust in private law, especially with the absence of legal personality of Trust.

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## EFFECT OF INVALIDITY OF PRIVATE LAW LEGAL ACT IN TAXATION

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**Key words:** Invalidity, legal act, income, income tax, Supreme administrative Court, New Civil Code

The aim of the article is to summarize the possible effects of the invalidity of legal acts in taxation. The attention will be paid on the Czech Supreme Administrative Court case law dealing with the conflict between the private law institute of invalidity and taxation. The article will analyze the circumstances under which the income gained through an invalid legal act is subject to the income tax. Furthermore, the changes in the conception of the invalidity of legal acts in the new Civil Code and its potential impact in taxation will be analyzed.

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## FINANCIAL AND LEGAL PERSPECTIVE ON THE NECESSITY TO IMPROVE THE PROTECTION OF CONSUMERS AND THEIR FINANCIAL LITERACY ON THE FINANCIAL MARKET

**Key words:** Protection of consumers on financial market, financial literacy, financial and legal education, financial services, authorities for protection of consumers

Due to the current situation with influence of economic and financial crisis, the protection of consumer on financial markets is getting under bigger attention of regulatory authorities. The authors of this paper analyse actual trends in legislation of the Slovak Republic in this area in the context of interaction of private and financial law, as well as role of the state and law in complex regulation of pertinent segment. The authors also emphasize the need to increase financial literacy and public awareness of consumer protection. This goal needs to be realized not only by the help of public and state authorities, but by appropriate using of financial law as well.

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TAXATION OF THE INVESTMENT  
COMPANIES AND INVESTMET FUNDS IN  
THE LIGHT OF NEW LEGISLAION

MGR. MARTIN HOBZA – JUD. PETR KOTÁB

This paper deals with certain legal issues of taxation of the investment companies and investment funds in the context of new legislation in this area.

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"RUNNING HARE IS A IMMOVABLE  
PROPERTY, SHOOT DEAD ONE IS A  
MOVABLE PROPERTY." PART AND  
ACCESSORIES OF THING AND TAX LAW.

ONDŘEJ HORÁK

The paper deals with the problems of part and accessories of immovable property in tax law and changes related to the new Civil Code.

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## EFFECTS OF NEW CIVIL CODE ON THE TAX SYSTEM IN THE CZECH REPUBLIC

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Katedra finančního práva a národního hospodářství

**Key words:** The tax system in the Czech Republic; law, tax, codification, the new Civil Code.

Act No. 89/2012 Coll., the Civil Code (NOZ) to enter into force on 1st January 2014. The new codification provides for a number of terms that are reflected not only in private but also public law. Does this codification effect on the tax system in the Czech Republic? If so, what?

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# PROFESSIONAL CARE AND HUMAN RESOURCES OF OF INSTITUTIONS OPERATING ON THE FINANCIAL MARKETS

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**Key words:** Public law, financial law, private law, freedom of enterprise, staffing, professional care

Public Law is represented here especially by societal requirement of professional care in the performance of activities of institutions operating on the financial markets and also the public requirements for the personnel composition of the leaders of these institutions. Private law is represented mainly by free enterprise due to public demands, as the personnel composition and the behavior of institutions operating on the financial markets.

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RELATIONSHIP BETWEEN TERMS  
"CONSUMER" IN PRIVATE LAW AND  
"CLIENT" IN FINANCIAL MARKET LAW

MICHAEL KOHAJDA

The paper deals with a definition of the term "consumer" in the legislation of private law, i.e. in the present Czech Civil Code and in the Civil Code that shall come into its force from 1st January 2014 too. Furthermore, the paper deals with a definition of the term "client" as the subject of services on the financial market in the financial market legislation. The possibility to use the term "consumer" in the financial market legislation is analysed in detail. The business conduct supervision point of view is applied in the analysis as well.

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## DOMESTIC TAX LAW AND FOREIGN INSTITUTE OF PRIVATE LAW

STANISLAV KOUBA

Tax law in Czech republic and also in the other countries, have to react on growing globalization and also on institutes of foreign law (especially the private law). For the area of the private law there are direct and collision norms which solve these situations. In the area of tax law the similar complex system does not exist and situation is solved often by the legislation of touched tax. These solutions are unfortunately mostly not complex and in particular situations is problem how to classified particular foreign institute. Target of the contribution is to discover basic principles which are used or should be used. This problem is also dealt by Amendment of Czech tax law which will come in force on 1st January 2014.

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INFLUENCE OF CIVIL LAW  
RECODIFICATION ON FINANCIAL  
RELATIONS OF MUNICIPALITIES AND  
REGIONS

JANA KRANECOVÁ

Recodification of civil law has an important impact on current financial relations of territorial autonome units (municipalities, regions). The contribution deals with the way and scope of financial relations.

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## TAX CHANGES IN REALTY ACQUISITION AS A RESULT OF A PRIVATE LAW RECODIFICATION

VÍT KROPJOK

In the current time the Senate have passed legal provision which contains new measures in a realty tax acquisition. In accordance with this provision the former statute of inheretance, gift and realty acquisition tax law will be abolished. Newly this content will be regulated in a separate law. The main reason is an entirely new conceive of a realty definition as the new Civil Code enters into force. The aim of this article is to describe and assess the proposed legislation, new institutes and also terminology.

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## INTERACTION OF PRIVATE AND CUSTOMS LAW

DANA ŠRAMKOVÁ – LUBOMÍR KUČERA

In their paper, the authors deal with the linkages and relationships of private law and its impact on financial law, especially the law of customs. Their focus mainly on changes connected with current re-codification of private law (so called New Civil Code).

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## THE EUROPEAN UNION FINANCIAL TRANSACTION TAX AND ITS POSSIBLE CONSEQUENCES

ADÉLA KUČEROVÁ

The article is concerned with the financial transaction tax. It is an issue that is being discussed very often these days as eleven member states of the European Union are supposed to introduce this tax in 2014 in the regime of enhanced cooperation. Despite the fact that the Czech Republic does not participate in this enhanced cooperation, the tax might have an influence on the Czech financial market as well. The article is therefore attempting to introduce the financial transaction tax, point out its advantages and disadvantages and consider its possible consequences.

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## ANTI-MONEY LAUNDERING AND ANONYMOUS SHAREHOLDERS

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**Key words:** Anti-Money Laundering; Anonymous Shareholders; Abolition; Anonymous Shares; Counter-Terrorism Financing.

The aim of the paper is to determine the fundamental changes in anti-money laundering measures brought by the anonymous shares abolition, introduced with effect from June 30th 2013 by the Act No. 134/2013 Coll., on some measures to increase the transparency of public limited companies and to amend other acts, as amended. It will also evaluate the new legislation on securities and book-entry securities in the new Civil Code, their effect on the area and potential risks of the new legislation.

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## UNJUST ENRICHMENT IN TAX LAW

KRZYSZTOF LASINSKI-SULECKI

Unjust enrichment is a civil law institution. It plays, however, an important role in tax law of certain countries (i.a. Poland). It is also often referred to in tax judgments of the Court of Justice. There are significant differences between the application of unjust enrichment in civil and tax cases.

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## ON THE DISTINCTION BETWEEN A MUTUUM AND A DEPOSITUM – LEGAL PRINCIPLES ON MONEY AND BANKING

TOMASZ MACHELSKI

The article discusses Roman depositum and mutuum, or the deposit and loan for use. It looks at the history of these institutions and explains their nature in the light of present bank account agreement. Contrary to supporters of bank fractional reserve demand deposits, the article explains that such an agreement (treating loans and deposits interchangeably) is impermissible due to a priori legal principles.

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## REGULATORY POSSIBILITIES OF BUDGET LAW AND TAX LAW IN RELATION TO PUBLIC LAW

Key words: Justice, fiscal justice, budget, taxes, state expenses.

Abstract: The Private Law elements appear more or less clearly in the particular sections of Financial Law. Private Law regulation may significantly affect also those parts of Financial Law, which are predominantly of Public Law nature. New definition of many legal concepts in the new Civil Code is necessarily reflected in the need for changes in legislation regulating Public Law relations. Taxes and public expenses are two areas that have a major impact on the behavior of individuals, business entities, municipalities, regions and the state as a whole. The understanding of the fiscal justice varies in case of different entities. Legal rules of Private and Public Law should contribute to convergence of these concepts.

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## FINANCIAL AND LEGAL PERSPECTIVE ON THE NECESSITY TO IMPROVE THE PROTECTION OF CONSUMERS AND THEIR FINANCIAL LITERACY ON THE FINANCIAL MARKET

**Key words:** Protection of consumers on financial market, financial literacy, financial and legal education, financial services, authorities for protection of consumers

Due to the current situation with influence of economic and financial crisis, the protection of consumer on financial markets is getting under bigger attention of regulatory authorities. The authors of this paper analyse actual trends in legislation of the Slovak Republic in this area in the context of interaction of private and financial law, as well as role of the state and law in complex regulation of pertinent segment. The authors also emphasize the need to increase financial literacy and public awareness of consumer protection. This goal needs to be realized not only by the help of public and state authorities, but by appropriate using of financial law as well.

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## THE TAX RULINGS AND THE CIVIL CONTRACTS – POLISH EXPERIENCE

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**Key words:** tax law, tax rulings, Poland

This paper refers to selected aspects of the functioning of tax rulings in Poland. The author presents the legal provisions concerning the issuance of tax rulings and the practical implications of adopted legal solutions. The author discusses the reasons of development of the tax rulings system, the procedure aimed at their issuance, their legal nature, the legal position of the holder and the reasons why there are so many tax rulings in Poland.

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## THE DOG AS AN ANIMAL AND THE SUBJECT OF LOCAL TAX

KRISTÝNA MÜLLEROVÁ

**Key words:** local tax, dog tax, charge, tax, animal, generally obligatory regulation

The article describes the dog as the object of the dog charge. The author analyzes the individual structural elements of the charge and tries to draw attention to the problematic legal regulations, also deals with mistakes that regulations of municipalities in relation to this charge include. The new civil code defines dog no more as a thing, but as live creature with senses. The author reflects on the impact of this change on the dog charge.

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## TAX AND SOCIAL ASPECTS OF FAMILY BUSINESS – COMPARATIVE VIEW

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**Key words:** family business, family work, family, the operation of family business, profit sharing, additions of family business

Family business is a transplant which has been adopted by the legislature from the Italian Codice Civile. Well known as "impresa familiare" in Italy. Italian civil code connects this institut with the regulation of "impresa individual", which is the simplest form of business that can be run on the basis of a trade or other authorization. "Impresa familiare" means extension of this basic form of business, this is a protection of family members who joint work on the family business. In accordance with this are the relationships between family members protected against exploitation or work based on involuntary subordination. Accepting this concept, however, is not only introducing new protections relatives before relatives, but of course means some influence on the property rights of individual actors. These impacts are related with tax and social consequences, which in this case, the legislature attempted to predict and which are the main topic this post.

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# KONFLIKT INSOLVENČNÍHO A DAŇOVÉHO PRÁVA

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**Key words:** Insolvency, daň z přidané hodnoty, konflikt.

Příspěvek se zabývá konfliktem principů insolvenčního a daňového práva při opravě výše daně z přidané hodnoty u pohledávek za dlužníky v insolvenčním řízení.

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## THE INTERACTION OF PRIVATE AND FINANCIAL LAW IN THE PROCESS OF CHANGING THE PROPERTY OWNER

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**Key words:** Transfer of property, private relationship, the property transfer tax, seller, buyer, purchase agreement, a proposal to deposit tax, income tax returns.

Moment changes the property owner is legally a situation where the intersection of the private and financial law. And especially for parties that are involved in this contract. These participants relation which is regulated private standards must also note the standard financial proceedings. The legal relationship is a seller's obligation to impose a tax to pay real estate transfer tax, which is regulated by Act No. 357/1992 Coll., On inheritance tax, gift tax and real estate transfer.

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## THE FINANCIAL-LEGAL ASPECTS OF THE INHERITANCE PROCEDURE AFTER 2013

MONIKA PACALOVÁ

This paper discusses fees and taxes paid by inheritors or the state to the civil law notaries after the inheritance procedure. It focuses on the years 2013 and 2014. Jan 1st 2014 will probably see the introduction of a new civil code which introduces six new inheritance groups instead of current four, which should in turn influence further statutes, in particular the tax law. This paper not only suggests possible ways of calculating the fees for this type of legal service in 2014 but it also proposes the best possible wording of the statute.

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## HOME LOAN AND ITS TAX CONTECTS

JANA PETRŽELOVÁ

Mortgage loan, or a loan from building savings and consumer credit lending products are typically negotiated by citizens to provide home ownership. Although banks have relatively broad statutory disclosure obligation in relation to the consumer in connection with the transaction generated a fiscal relationship with the state. Consumers often do not have taxes on accurate information, and they may significantly affect the total cost of the transaction. – Whether the property transfer tax or a possible tax savings from income tax.

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## INTERACTION OF PRIVATE AND TAX LAW

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**Key words:** tax law, private law

This paper will deal with relationship between private and tax law, their mutual relations and joint institutes to highlight the relatively high degree of interconnection between the private and tax law.

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## MISMATCHES IN TAX CLASSIFICATION, TAX AVOIDANCE AND TAX POLICY OF EUROPEAN UNION

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**Key words:** tax transparent entities, tax classification conflicts, tax avoidance, EU tax policy

Each tax system presents rules for classification of different entities for tax purposes. According to these rules an entity can be considered to be such as tax transparent or tax opaque. If particular legal form of entity is unknown to the legal order of host state, mismatches in tax classification may occur across tax jurisdictions. These mismatches may subsequently result in double taxation or tax avoidance. The article analyses interaction of private and tax law in such classification conflicts. The article also analyses this problem in relation to the abusive use of provisions of directives at European Union level.

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## TAX ASPECTS OF SELECTED FORMS OF SPOUSES' ENTERPRISE COOPERATION

TOMÁŠ SEJKORA

**Key words:** family business, cooperating persons institute, income tax

This paper deals with tax aspects of selected forms of spouses' enterprise cooperation. Author focuses mainly on forms of cooperation which are not usually the subject of a contract but these forms are based on factual participation of one spouse on the second spouse's enterprise. The reader is introduced into the cooperating persons institute and a calculation of incomes arisen from this cooperation pursuant the article 13 of the Income Taxes Act. Later, the reader is introduced into the family business as the new institute of the Czech civil law. In conclusion tax aspects of the family business are analysed.

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## STANDARDIZATION OF TERMINOLOGY USED IN THE EU FINANCIAL SERVICES LEGISLATION

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**Key words:** financial services, financial markets, terminology, implementation, White Paper on Financial Services 2005-2010, cross-sectoral study, professional client, qualified investor, financial holding company, shareholder.

The existing EU laws in the area of financial services make an important part of the EU regulation of financial markets. Thus it is important that the definitions and key concepts within such legislation are consistent and coherent, which is a presumption for both proper implementation of EU directives into the legal orders of the Member States and consistent interpretation of EU law by the national courts. The author has mainly focused on the development of the European Commission's approach to the requirement of consistent terminology and steps that have been taken in this respect. The author shows that certain concepts within the area of EU financial services legislation have been used inconsistently. Last but not least, the author points out the expected trends in further legislation.

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INSTITUTION OF DEDUCTION FROM  
REMUNERATION FOR WORK IN THE POLISH  
LABOR CODE AS AN EXAMPLE OF THE  
INTERACTION OF FINANCIAL LAW AND  
PRIVATE LAW

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**Key words:** Deduction from remuneration for work; social security contributions; advances of income tax on individuals

The subject of this article is an institution permitted deductions from remuneration for work, which includes aspects of both financial law and private law. The Polish legislator provides that in the first place from remuneration for work are deducted social security contributions and the advances of income tax on individuals. Only at a later stage it is acceptable to make other deductions from remuneration. The purpose of this article is, in particular, the analysis of the scope, sequence and restrictions on deduction from remuneration both public and private debts.

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## INTERACTION OF PRIVATE AND CUSTOMS LAW

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**Key words:** Financial law, customs law, private law, civil law, New Civil Code

In their paper, the authors deal with the linkages and relationships of private law and its impact on financial law, especially the law of customs. Their focus mainly on changes connected with current re-codification of private law (so called New Civil Code). The paper is granted and prepared within the project of specific research "Method and Economic Limits of Regulation in the Financial Law II" No. MUNI/A/0815/2012.

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## REGULATION OF CURRENT ACCOUNTS

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**Key words:** current account; banking services; payment services; consumer protection

This paper deals with a comprehensive view of regulation that relates to current accounts. In the Czech legal system, this regulation is relatively fragmented. In addition to private law of the Commercial Code, and the new Civil Code respectively, the regulation of current account would include a significant amount of public law norms, which affects significantly the final content of the contract between the bank and the account holder. Current law has been largely influenced by the European law. This law is the a key driver of legislative changes in banking regulation affecting the functioning of current accounts. These changes, as well as legislative changes in relation to the planned effectiveness of the new Civil Code, are described in this paper.

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## GUARANTIE UPON VAT- PROTECTION OF FISCAL INTERESTS (AT ALL COSTS)

IVANA VOJNÍKOVÁ

Guarantie upon value added tax for registration of value added tax payer should be a preventive tool against tax evasion. Herenamed legal institute strongly interferes into property sphere of the obliged entity. An author thinks about optimal borders between protection of property interests of obliged entity and public law interventions.

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## TO BE SPECIFIED

ROMAN VYBÍRAL

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## DISCIPLINARY PROCEDURE AGAINST LAWYERS AND LEGAL CANDIDATES IN BOHEMIA IN YEARS 1872-1914

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The contribution deals with the disciplinary procedure against lawyers and legal candidates in Bohemia in years 1872-1914. The pillar of the legal regulation of the disciplinary procedure of this time was Disciplinary Statute issued under no. 40/1872 of Imperial Laws which came into effect on 1 April 1872. Disciplinary proceedings under the Disciplinary Statute of 1872 were of two instances. In the first instance there was the relevant disciplinary board established under Part II of the Statute and in the second instance the Supreme Court (Part IV of the Statute). Proceedings were initiated without a proposal as soon the disciplinary board learned that the lawyer or the legal candidate had committed a disciplinary offence (Section 23 of the Statute). The paper describes details of the procedure and brings concrete examples of the disciplinary offences and of the disciplinary punishments.

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## REHABILITATION 1990 AS A LOOK INTO THE HISTORY OF LAW.

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This paper will deal with rehabilitation pursuant to Act No. 119/1990 Coll. the judicial rehabilitation. By comparing the interference of judicial decisions under this Act with similar procedures in the former Czechoslovakia in 1918, 1945 and 1968. Rehabilitation in 1990 will be displayed as a clash of old and modern law. Author describes the course and scope of rehabilitation in the Czech Republic between 1990 and 1996. Attempts to formulate conclusions valid for the contemporary application of the law.

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## REICHSKAMMERGERICHT AND ITS INFLUENCE UPON THE RECEPTION OF ROMAN LAW

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**Key words:** Gemeines Recht – Reception of Roman Law – Reichskammergericht (Imperial Chamber Court)

Reichskammergericht (Imperial Chamber Court) was founded in 1495 within the frame of so called Maximilian's reforms. That is one of the most important acts regarding the relationship of Roman and German law, although the main aim of the reforms, i. e. centralization of the Holy Roman Empire, was not reached. Unlike in Italy, where *ius commune* was applied only if the statutory laws were in conflict or inapplicable, due to the Reichskammergericht was Gemeines Recht in Germany applied primarily before law of particular lands. As a result, there is a mutual influence of Roman law and the laws of particular German lands.

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## PAPAL JUSTICE IN THE MIDDLE AGES

MIROSLAV ČERNÝ

The paper presents the main ideas and principles underlying the highest ecclesiastical tribunals in the Middle Ages and personalities that were shaping the papal justice greatest importance.

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## THE PROBLEM OF CUSTODIA IN THE MODERN LAW

PETR DOSTALIK

The article concerns with the responsibility of the debtor in the case of destruction, deterioration or theft of the loaned item.

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## DELAYS IN COURT PROCEEDINGS YESTERDAY AND TODAY

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**Key words:** Roman law, civil process, delays in court proceedings,  
public defender of rights

The present conference paper is divided into two parts. The first part analyses Roman law regulation of civil proceeding, mainly it describes the instruments that prevent delays in court proceedings in Ancient Rome. The article focuses on the specific aspects of delays in civil and criminal proceedings. The second part of article analyses the definition of delays in court proceedings and describes particular instruments that actual Czech legislation offer. The paper presents some of criteria that determine the appropriateness of court proceeding length. Finally there will be described the powers that dispose Public Defender of Rights toward state administration of justice in domain of complaints according to Law on Courts and Judges.

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## SEPARATION OF JUDICIARY AND ADMINISTRATION IN THE HUNGARIAN KINGDOM OF 19TH AND 20TH CENTURIES

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**Key words:** judiciary, administration, Hungary, delicts, land registry, mining law

Judiciary and administration were not properly separated in Hungary, which was reflected in: a) the same entities deciding in these different areas b) administrative tasks of courts (e.g. in the land registry issues) c) judicial tasks of administrative bodies (e.g. in the mining issues) d) in mixed competences related to administrative delicts as a part of so-called administrative criminal law.

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## CRIMES OF WOMEN IN THE PERIOD OF 1788-1850 WAS ADDRESSED BY THE CRIMINAL COURT IN JIHLAVA

PETRA HAVLÍČKOVÁ

**Key words:** child murders, Criminal Court in Jihlava, sudden death, accident, negligence, bad faith

Crimes of girl and women Jihlava was associated with their social background (not very well family situation), examined in 1788 to 1850. You can uncover problematic circumstances following the events that followed the criminal court in Jihlava, which were intentionally or unintentionally killed newborns. We want to focus on crime women in the turn of the 18th and 19th century. The aim of this paper is to present a wide range of crimes, but our key problematic part is the death of the newborn. During the initial collection of information sources could not overlook the high number of child murders. The subject of crime was the individual who caused the plight of his mother, who was a widow or unmarried woman. It was a crime that was difficult to prove, until investigators had collected enough evidence that a crime has been proved. In the writings it often appears the fact that the death of the newborn was with women who were most able to deal with the situation rationally. I'd like to ask the question: "Who was the culprit of the disaster?" Hard to find an easy answer to the question. According to the criminal law it is clear who is to blame. The answer can be found in the writings of the then Jihlava Criminal Court, which exposes the poor situation of single women in the midst of over two centuries (18th and 19th). It is necessary to find out what women could kill their children, from which the social environment led the crime? Let us look for differences in the variability of the Crime: sudden infant death, accident, negligence, bad faith? Can it be proved that the offense was actually committed or not? How to change the look of women at the beginning

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and of the 19th century?

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## BRIEF OVERVIEW AND COMPARISON OF THE CONSTITUTIONAL JUSTICE IN YUGOSLAVIA AND CZECHOSLOVAKIA

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**Key words:** Constitutional Court, Czechoslovakia, Yugoslavia

This contribution provides a brief overview and comparison of constitutional texts of the Socialist Federal Republic of Yugoslavia since 1963 with the Czechoslovak constitutional regulation of the constitutional justice. The further development in the Czech Republic and Serbia is also mentioned.

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## HISTORICAL ASPECTS OF CREATION OF SPECIALIZED CRIMINAL COURT

VERONIKA MARKOVÁ

Contribution concerning the Specialized Criminal Court deals with the historical context of its creation, focusing on its predecessor – the Special Court. In this paper, the author focuses on the creating, a vote about its unconstitutional and then the emergence of new institutions Specialized Criminal court.

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## JURY JUSTICE IN THE CZECH LANDS IN THE 2ND HALF OF THE 19TH CENTURY

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This post addresses the issue of jury justice in the Czech lands in the 2nd half of the 19th century. The Pillerdsdorf Constitution of 1848, and the Act 119 of 1873 describes the functioning of the jury, its jurisdiction and its composition. The paper contains a description of the jury, the process of creating the lists, the selection of the jurors, and the opportunity to comment, to deny or accept those jurors. And finally the subsequent provisions of the jurors and the process of deciding on guilt or innocence.

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## EVOLUTION OF DIFFERENT ALTERNATIVES OF LEGAL REMEDY IN HUNGARIAN ADMINISTRATIVE PROCEDURES

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**Key words:** legal remedy, Hungarian administrative procedures,

The objective of this paper includes a historical overview of the tools for legal remedy in the Hungarian administrative procedures. Therefore the paper aims to provide a whole spectrum of analysis of each legal remedy available in the administrative procedures from the 19th century until now. Furthermore, the international influences to the Hungarian administrative legal remedy system are also examined in the paper. As a conclusion, we can state that the present administrative redress procedures – the appeal procedure, the judicial review, the reopening procedure, and the proceedings opened based on a resolution of the Constitutional Court – are determined by the Act No. CXL of 2004 on the General Rules of Administrative Proceedings and Services in Hungary. Certainly these rules appeared quite early and developed progressively in legal history. Thereby the paper focuses mainly on these procedures.

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## CRIMINAL JUSTICE AND CRIMINAL PROCEDURE AFTER 1867 IN HUNGARY

MICHAL POVAŽAN

Criminal procedure in Hungary has undergone significant changes after the failed revolution of 1848. Twenty years of turbulent change brought about, *inter alia*, recognition of the need of fundamental reform of criminal justice and the criminal procedure. Hungary has undergone judicial reform, the establishment of the prosecutor's office and eventually was adopted criminal procedure act, which in its period was one of most modern procedural acts in Europe. Rules of criminal procedural law survived in Slovakia until 1950.

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## THE ROMAN SENATE AS A CRIMINAL COURT UNDER THE PRINCIPATE

PÁL SÁRY

**Key words:** Roman law, criminal procedure, senate.

The Roman senate became an independent criminal court under the principate of Augustus. In the beginning it tried only political charges (such as *crimen maiestatis* and *crimen repetundarum*). During the reign of Tiberius the jurisdiction of the senate was extended over a wide range of the non-political crimes (such as adultery, murder and forgery) committed by senators or members of the *ordo senatorius*. The senate was free from a lot of rules governing the public criminal jury-courts: it could try together charges under two or more statutes, and it could also disregard the statutory penalties. The senate was a court of voluntary jurisdiction: the consuls could freely accept or refuse a charge. A senatorial examination was subject to veto, and the emperors sometimes used their tribunician power to stop a trial. In course of the trials speeches had to be made within time limits, after the speeches evidence was heard. Finally there was a debate and vote on verdict and sentence. Subsequently there might be debate on the disposal of the convict's property and on the rewards to be given to accusers or, in case of an acquittal, the punishments to be imposed on them. The senate operated as a criminal court till the third century.

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## HISTORICAL ASPECT OF THE LOCAL AUTONOMY IN HUNGARY

JUDIT SIKET

The enforcement of particular interests of central state and local self-governments are influenced by the centralization and decentralization as the main state organization principles. The affects of these principles are varying by countries and by period of time. Decentralization is generally identified as an idea of self-governance. First of all the paper presents the evolution of the legal concept of self-governance, from the approach of political science. Then deals with the idea of self-government development in Hungary, examines in particular the issues of county's and municipal's autonomy. The study is focused on the period after the compromise in 1867, when the regulation regarding the status of municipalities and communities has been enacted. It demonstrates the changes of competences, especially the separation of judiciary competences, in 1869. The autonomy of counties and municipalities prevailed only within the limits, and therefore we should scrutinize the provisions relating to certain affirmation, exercised by the county authority or the Secretary. In line with the approval the petition right of self-government authorities is a fascinating aspect of the autonomy, which can be demonstrated.

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THE EVOLUTION OF THE JUSTICE AND ITS  
PLACE IN THE SYSTEM OF ORGANS OF THE  
STATE IN OUR TERRITORY IN THE YEARS  
1945-1989

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**Key words:** development of judiciary, judiciary in Czechoslovakia, retribution justice, socialist judiciary, judicial organization, jurisdiction of courts, judicial reform

The article deals with the issue of the Czechoslovak judiciary, its position and organization in the years 1945-1989. Author examines the issue in the context of the profound power-political changes in Czechoslovakia, with emphasis on the period between 1945, 1948 and 1989. The attention is drawn to the judiciary after the restoration of the Czechoslovak state in 1945, with an emphasis on retribution justice, the impact of the so called February coup d'état in 1948 and the organization of the judiciary, the impact of the Constitution of Czechoslovakia of 1960 on the system of courts and judicial reform in the 60's of the 20th century, as well as changes in the organization and operation of the judiciary until November 1989.

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## TRANSITIONAL OR PERMANENT? – THE TRANSITIONAL PROVISIONS OF THE FUNDAMENTAL LAW OF HUNGARY

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**Key words:** Transitional Provisions, Constitutional Court

Since the Fundamental Law of Hungary was adopted in 2011, it has always been the centre of attention not just in Hungary, but in the European Union as well. One of the many controversial questions was the Transitional Provisions. These provisions set forth several provisions that were temporary only in their denomination. For instance, the change of the retirement age of judges and prosecutors, amendments to the freedom of religion, faith and creed in relation to the registration of churches, and the date of the next local elections was based on these provisions. Not just the Venice Commission (The European Commission for Democracy through Law) disputed some of the questions, the Hungarian Constitutional Court also decided on the fate of the Transitional Provisions. With this case, the Constitutional Court also defines clear boundaries for the activity of the Court itself, deciding against the possibility of reviewing the Transitional Provisions as to content. In my presentation, I would like to illustrate the issue whether a constitution can be flexible, through the Decision 45/2012. (XII. 29.) of the Hungarian Constitutional Court.

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## RETRIBUTION JUDICIARY IN THE CONTEXT OF 1. SLOVAK REPUBLIC

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Main focus of this article will be the controversial period of our judiciary, that followed after the end of world war II. These days usually called "post-war reckoning", but officially Retribution Judiciary. The focus will be on this period with emphasis to legal proceedings, which took place on our territory, ergo territory of former 1. Slovak republic. Using comparative method I will point also on the retribution judiciary in other countries. Main goal of this article will be to create a complex image about the post-war reconing and its specific process.

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## THE DEVELOPMENT OF THE ADMINISTRATIVE JUDICIARY IN THE CZECH REPUBLIC

PAVEL VETEŠNÍK

The article deals with the development of the administrative judiciary in the Czech Republic. With regard to the continuity of the development of administrative justice is given to the introduction of legislation, administrative justice before the establishment of independent Czechoslovakia in 1918. The essential throughout the development of administrative justice is the existence of the First Republic's Supreme Administrative Court, which was established in 1918 and effectively ceased to exist in 1952, and was reestablished in 2003. For much of the communist period, the Supreme Administrative Court did not exist and also the administrative judiciary was performed, with the exception of the judiciary of insurance. For the development of administrative justice was therefore significant in 1992, when it managed to recover administrative justice, and in 2003, when was the Supreme Administrative Court, as it generally known. The article presents an overview of basic transformations administrative justice during the past century.

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## ORGANIZATION OF JUDICIARY IN MAGDEBURG MUNICIPAL LAW BASED ON LEGAL SOURCES OF TOWN ZILINA

ALICA VIRDZEKOVÁ

Report deals with problematics of medieval municipal law, based on preserved law sources of town of Zilina, specifically Town Book of Zilina and other lists, for example privileges of Charles Robert, Lists of Luis I, queen Maria and others. It describes main court agencies of the city, created on basis of Magdeburg Law, their function and evolution, also similarities and differences with other legal branches in Slovak Republic and Czech Republic. It also deals with procedures of the court, proceedings before court and carrying out of sentence, which are preceded by examples of preserved protocols of townfolks disputes and of decisions of the courts.

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# WORKING JUDICIARY IN INTERWAR CZECHOSLOVAKIA

LADISLAV VOJÁČEK

will be completed

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REVIEW OF ADMINISTRATIVE DECISIONS  
IN THE CASE OF DISCIPLINARY OFFENCES  
BY POLICE OFFICERS

The article refers to the main deficiencies and the specifics of disciplinary proceedings against member of the Police of the Czech republiky.

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# NON-PARTICIPANT'S DEFENSES AGAINST INEFFECTIVE DECISIONS OF ADMINISTRATIVE BODIES IN THE CONTEXT OF COMPETITION LAW

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Úřad pro ochranu hospodářské soutěže

**Key words:** appeal, non-participants in administrative proceedings, objections, competition

The article describes the defences that the undertakings without the position of the parties in administrative proceedings use against the ineffective decisions of The Office for Protection of Competition. It also includes examples from the Office's practice and the case of Czech administrative courts.

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## REVIEW OF THE ADMINISTRATIVE DECISION IN THE CASE ADMINISTRATIVE OFFENSE

The article deals with the practical issues related to the review of the administrative decision of the offense in appeal proceedings – such as premature appeal, limited right of appeal, applying the ban reformation in peuis, eliminating deficiencies of appeal, etc.

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LEGAL PROTECTION AGAINST  
ADMINISTRATIVE ACTS OF INDIVIDUAL  
AND „MIXED“ NATURE WITHIN THE  
CONTEXT OF THE DECISION-MAKING OF  
THE CONSTITUTIONAL COURT OF THE  
SLOVAK REPUBLIC

ĽUDMILA GAJDOŠÍKOVÁ

The Constitutional Court of the Slovak Republic (further only „Constitutional Court“) within the framework of its decision-making in the proceeding on the compliance of legal provisions according to Article 125 Section 1 of the Constitution of the Slovak Republic (further only „Constitution“) and in the proceeding on complaints according to Article 127 Section 1 of the Constitution has decided on administrative acts of a „mixed“ nature and has declared its legal opinion to them. Although this agenda does not concern the main field of the decision-making activity of the Constitutional Court, if, nevertheless, belongs to a specific area, which is interesting from the constitutional point of view. The aim of this paper is to come closer to this sphere of the decision-making of the Constitutional Court. At the same time will become a part of the paper the presented decision-making activity of the Constitutional Court in the field of challenging the „interesting“ decisions issued within the administrative judiciary, and by other state authorities.

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## EFFECTIVENESS OF OBJECTIONS AND COMMENTS AGAINST A MEASURE OF GENERAL NATURE.

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Katedra správní vědy a správního práva

**Key words:** Administrative act; measure of general nature, objections, comments, protection of individual rights, effectiveness

Administrative acts, which are the expression of suzerain public administration, oblige its addressees authoritatively due to their nature. Therefore it is essential to ensure the possibility of protection against their effects in cases, when those acts are defective. The contribution focuses on comments and objections as on instruments of protection of individual rights against a measures of general nature. The aim of this paper is to analyze the comments and objections with respect to their effectiveness.

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# BUDE UPŘESNĚNO POZDĚJI

PETR HLUŠTÍK

Bude upřesněno později

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## WILL BE SPECIFIED

The contribution deals with the possibilities of protection against decisions by the municipal council and mayor.

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## ON THE ISSUE OF INTERIM MEASURES

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PF MU, Brno – UOHS

**Key words:** administrative law, administrative process, an interim measure, suspensive effect

Conference text is expressed to the interpretative problems related to the topic of the preliminary measures of the Office for Protection of Competition arising mainly from §117, paragraph 4 of the Act No.137/2006 Coll., On Public Procurement.

The purpose of the preliminary injunction is an interim adjustment legal (not factual) the proportion of the time, before the matter determined by the Office.

If you go to Office interim measure does not acquire the one who testifies an interim measure, the rights of which to be decided in the matter, but to prevent any worsening of the position of the participant or his injury.

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## SPECIFICS OF LEGAL PROTECTION AGAINST IMMIGRATION LAW DECISIONS

ALŽBETA KONDELOVÁ

The contribution will focus on the question of legal protection against the decisions in immigration Law which are not in legal force with special regard to the differences between general arrangements in the Administrative Procedure Act and special arrangements in the Act regarding Residence of Foreign Nationals in the Czech Republic. The contribution deals with the question of absence of ordinary remedies against some type of decisions such as detention and others. It deals also with the disparities in cases where the ordinary remedy is preserved, with the reasons of the specifics in immigration law and their impact on the effectivity of any such remedy.

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## ADMINISTRATIVE LAW PERSPECTIVE OF EMPLOYING FOREIGNERS

MGR. HANA NOVÁKOVÁ

The article is dealing with the problems of foreigners employment in Czech Republic, mostly from the legal view of administrative authority in a contrast with statutes on foreigners employing and decisions of magistrate courts, where the larger attention is paid to a possibility of sending foreigners for business trips by their employer. In the area of foreigners employment were issued many statutes and internal normative acts by Ministry of Labour, that were closely connected with amendments about residency of foreigners and the Employment statute from 2011, also including different interpretation of this topic. The question is still, what is the current situation and which acts are allowed and which forbidden.

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## LEGAL PROTECTION IN CASE OF PRICE AND REIMBURSEMENT REGULATION ADMINISTRATIVE ACTS

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**Key words:** administrative act; legal protection; price; reimbursement; case law

Contribution deals with the legal protection of administrative acts recipients in the area of the price and reimbursement regulation. Attention is focused on the fact that legal regulation and also case law assume in this area application of assorted public administrative activity forms. Different types of administrative acts brings to the recipients diametrically dissimilar degree of legal protection consist in procedural rights and also in possibility of remedial measures application.

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## LEGAL PROTECTION AGAINST ADMINISTRATIVE ACTS OF HIGHER EDUCATION INSTITUTIONS

The contribution deals with the tools for defence against acts of higher education institutions. It mainly concerns the acts, which are not in legal force. In its beginning it categorizes acts of HEIs, then it concerns the relevant tools of review. Special attention pays to the administrative decisions of the rector. It also critically evaluates review within the qualification procedure (habilitation procedure and procedure for the appointment of a professor).

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## APPEAL OF THE "NON-PARTICIPANT" TO PROCEEDINGS IN MERGER REVIEW – SUPRISING DECISION OF THE REGIONAL COURT IN BRNO

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Úřad pro ochranu hospodářské soutěže

**Key words:** appeal, right of defence, merger, party to proceedings, administrative proceedings, Competition act, Administrative procedure Code, objections

This paper analyses the decision of District court in Brno regarding the right of third person who submitted objections within the proceedings in merger review that is not a participant to such proceedings. This decision rejected decision of the Czech Competition Authority based on the fact that according to the Administrative Code only participant to proceedings has the right to appeal in administrative proceeding. The main goal of this paper is an assessment of this Regional court's in Brno decision in the light of possibilities of defence against decision of the Competition Authority prior it comes to force in merger cases given to person that is not party to proceedings and also thinking about potential general implications for proceedings regarding merger review. In the end the most important implications stemming from the decision are summarised.

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# ADMINISTRATIVE EXPULSION AS A LEGAL INSTITUTE LIMITING FREEDOM OF MOVEMENT AND RESIDENCE OF FOREIGNERS

JUDR. MIRIAM ODLEROVA

The contribution deals about the reasons of administrative expulsion of foreigners from Slovak republic according to act no. 404/2011 Z.z. about residence of foreigners and related entry ban. An appeal against the decision on administrative expulsion in most cases does not have suspensive effect. In the case of excluding the suspensive effect the decision about the administrative decision is enforceable immediately. So in this case the police department may enforce the decision on administrative expulsion before it's effectual. A foreigner is obliged to leave the territory of the Slovak republic within the period specified in the decision.

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## ON SOME PROBLEMS OF FREE ACCESS TO INFORMATION

TOMÁŠ PERÁČEK

Paper analyzes chosen precepts of Slovak law on free access to information, such as precept of equality, precept of not documenting reason for request, precept of appropriate term, precept of giving reason for negative answer, precept of ability to review negative answer, precept of duty of legislative and judicial bodies to provide information and also precept of refuse to provide information. Author deals with some problems which are linked to these precepts

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## PROTECTION AGAINST FICTITIOUS ADMINISTRATIVE ACTS

SOŇA POSPÍŠILOVÁ

The paper deals with phenomenon of fictitious administrative acts (positive even negative), from the view of legal theory, constitutional law basis of instruments of rights protection and the examples from positive administrative law.

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## ORDINARY REMEDIES IN THE V4 COUNTRIES

LUKÁŠ POTĚŠIL

The paper deals with the ordinary remedies used in administrative proceedings, based on the description and the subsequent comparison of their general legislation (Code of Administrative Procedure) in the countries of the Visegrad 4 (V4), ie the Czech Republic, Slovak Republic, Poland and Hungary.

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BUDE DOPLNĚNO...

Bude doplněno...

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TO BE COMPLETED

JUDR. MARIÁN ŠEVČÍK, CSC.

to be completed

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THE APPEAL PROCEDURE IN TERMS OF  
EUROPEAN ADMINISTRATIVE PENALTY  
LAW

MARTIN ŠKUREK

This paper deals with the requirements of Article 6 of the European Convention on Human Rights and the related case law of the European Court of Human Rights to the appeal process within the prosecution of offenses.

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## ”PRECEDENTS” AND EFFICIENCY OF ADMINISTRATIVE PUNISHING

JIŘÍ VENCLÍČEK – SOŇA SKULOVÁ

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Ordinary remedies

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## TO BE COMPLETED

JUDR. PAVOL ZLOCH, CSc.

to be completed

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## NATURE AND PURPOSE OF THE MAINTENANCE

STANISLAV BRUNCKO  
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This post examines the nature of the maintenance and purpose of this institution. It analyzes the reasons that lead society to impose some of its members to maintain other members and trying to categorize these reasons. Based on this post then try to prognosis the future development of this institution.

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## MAINTENANCE FOR SHARED CUSTODY.

JOZEF CABAN

The paper elaborates the institute of shared custody in terms of determining maintenance as such followed by the amount of maintenance together with its determining factors.

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SVETLANA FICOVÁ

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## INTERNATIONAL RECOVERY OF MAINTENANCE

MICHAELA JANOČKOVÁ

The maintenance order is only the first step in the way of money to the beneficiary. If the obligor does not fulfil his maintenance duty voluntarily, the recovery process steps in. In the international cases, the recovery process is complicated by the necessity of an adequate legislation and (in practice) the proper and effective application of international instruments by courts. This paper maps the current state of legislation relating to the recovery of maintenance in international cases, including EU law and practical experience with their application. Also the statistical data will be mentioned.

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THE ABILITY OF THE CHILD TO MAKE A  
LIVING AS A CRITERION WHICH LEADS TO  
THE TERMINATION OF MAINTENANCE  
OBLIGATIONS

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**Key words:** Conditions of existence of maintenance obligations; the child's ability to make a living; reasonable needs of the child; change of conditions

The contribution deals with the criterion of the ability of the child to make a living, the fulfillment of which leads to the termination of maintenance obligations from parents. The emphasis will be placed on a comparison of existing legislation and regulation in the new Civil Code and the procedural aspects, in particular the acquisition of majority and the changes related to this legal fact.

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## MAINTENANCE OBLIGATION IN RELATION TO THE HOMEBAN IN CASES OF DOMESTIC VIOLENCE

VERONIKA KOZLOVÁ

Homeban of a violent person can cause situations where is economically dependent family member left at home without any funds. He or she has to pay rent or other costs associated with housing, costs associated with child care and of course theirs own needs. On the other hand violent person has to pay extra money for temporary accomodation and sometimes really doesnt have resources to provide both. This and other issues will be discussed in the contribution.

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## THE AMOUNT OF MAINTENANCE AND THE BEST INTERESTS OF THE CHILD

JANA MICHALIČKOVÁ

The article seeks the answer for question if high maintenance is reasonable by the best interests of the child and if respecting the best interests of the child as primary consideration can lead to the interference with other rights of maintenance debtor.

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## THE CONTINUATION OF MAINTENANCE DUTY IN THE POINT OF VIEW OF BONOS MORES

ROMANA ROGALEWICZOVÁ

This paper is focused on continuation of maintenance duty according to present legal regulations and also according to the new civil code. It deals with continuation of maintenance duty in different situations in the point of view of bonos mores. It tackles the problem of crucial elements for continuation of maintenance duty according to the law and to the practice of the courts. It mentions, marginally, also foreign legal regulations of conditions for continuation of maintenance duty.

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## PARENTAL RESPONSIBILITIES AND PARENTAL MAINTENANCE DUTY

MONIKA SCHÖN

Parental responsibilities and maintenance duty are two separate fields of relations between parents and children. The inherence of the first one does not imply the inherence of the latter and vice versa. Nevertheless, they can concur. This paper deals with the possibility of limitation of the maintenance duty for the educational purposes and with the possibility of limitation or deprivation of parental responsibilities as a result of failing the parental maintenance duty.

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## MAINTENANCE OBLIGATION FROM THE PERSPECTIVE OF THE INSOLVENCY PROCEEDING

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**Key words:** maintenance obligation, alimony, child, insolvency proceeding, insolvency court, bankruptcy, debt relief, insolvency administrator

This article surveys the most important aspects connected to maintenance obligation of parent in bankruptcy. Firstly, the article focuses on the way the insolvency court takes into account the maintenance obligation. Secondly, the article examines the way alimony is paid during the insolvency proceeding. Finally, the article mentions the issue when there is additionally discovered maintenance obligation in insolvency proceeding. In some cases, it may lead to disapproval of debt relief or to cancellation of approved debt relief.

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# MAINTENANCE VS. MAINTENANCE OBLIGATION

ONDŘEJ ŠMÍD

Maintenance vs. maintenance obligation – theoretical consideration

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## EXECUTION OF SUSPENSION OF DRIVING LICENCE

VERONIKA URBANOVÁ

Since 1st of January, 2013 is a part of the Enforcement order a completely new institute – execution of suspension of driving licence. This institute can be used to enforcement of arrears of alimony for minor. The aim of this article is inform a reader about this new legal institute and tell about some aspects that can be argueable.

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## SUSPENSION OF THE DRIVING LICENCE AS A WAY OF DISTRRAINT

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**Key words:** distraint, driving licence

This paper deals with questions of distraint, which is performed by suspension of a driving licence. It was enabled by the novel of executory order, which came in force since January of 2013. I would like to compare the Czech legal regulation with regulation in abroad.

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## SOME NOTES ON CURRENT LEGISLATION DETERMINING MAINTENANCE GRANT IN THE CZECH REPUBLIC.

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**Key words:** maintenance duty, poverty, insolvency

This paper deals with several current issues of maintenance duty in relation to new phenomena in society – insolvency on the one hand, extra income on the other. Special emphasis is placed on context of foreign, especially British practice.

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## APPLICATION OF THE NEW CIVIL CODE ON THE INTERNATIONAL SALE OF GOODS

KLÁRA DRLIČKOVÁ

International sale of goods is regulated by the UN Convention on Contracts for the International Sale of Goods. However, this Convention does not regulate all sale contracts and has gaps. Therefore, there is still space for regulation by national law. The aim of this contribution is to analyze the applicability of the Convention, the borders of this applicability and the gaps. At the same time it will be analyzed in what cases these questions will be regulated by New Civil Code.

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# BUDE DOPLNĚN

JAN HAVLÍČEK

Bude doplněna

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## STANDARD TERMS & CONDITIONS IN INTERNATIONAL TRADE

MGR. IVO HEGER

Standard Terms & Conditions are natural part of contracts and agreements not only in the area of international commerce. The New Czech Civil Code incorporates new rules that govern use of Standard Terms & Conditions in contracts.

The aim of this submission is evaluate these changes and their impact on international trade relations; and to compare the requirements for validity and effectuality of Standard Terms & Conditions in the context of New Czech Civil Code and the United Nations Convention on Contracts for the International Sale of Goods.

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## BUDE UPŘESNĚNO

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bude upřesněno

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## USAGES IN THE INTERNATIONAL TRADE

PAVLÍNA JANEČKOVÁ

Trade usages are relatively often used in international trade. The aim of this paper is to compare the regulation of usages in Commercial Code with the new Civil Code, both in relation to the United Nations Convention on Contracts for the International Sale of Goods.

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## FORMATION OF THE CONTRACT UNDER THE NEW CZECH CIVIL CODE AS AN ALTERNATIVE TO CISG

JAROSLAV KRÁLÍČEK – LUCIA KOVÁČOVÁ

International trade transactions constitute one of the fundamental levels of international trade relations, in which traders from different countries enter into legal relations. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is one of the most widespread sources of law in this area. Already 80 countries have joined it. However, when the parties exclude the Convention from its application the relevant source of law will be designated by standard conflict of law rules. Such a source of law in the Czech Republic are the rules of civil and commercial law. But most likely as from 1 January 2014 those rules will be replaced by a single piece of legislation – a new Czech Civil Code (known under the acronym NOZ). NOZ provides a comprehensive set of rules for obligations. Its regulation will thus inevitably affect also international trade transactions. In this paper, therefore, the rules contained in the NOZ will be analyzed and they will be subsequently compared with the rules contained in the CISG. Attention will be paid to the formation of the contract.

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## LIQUIDATED DAMAGES UNDER THE NEW CIVIL CODE WITH THE CONNECTION TO CISG

MÁRIA PASTORKOVÁ

Liquidated damages have, under the current status quo of positive law, two different approaches. The creation of the New Civil Code unifies them and creates some changes. Liquidated damages are part of several international law sources. The interesting one is (un)connection with a CISG.

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## FACTUAL DEFECT IN THE VIEW OF NEW CZECH CIVIL CODE AND CISG

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**Key words:** Factual defect, latent defect, apparent defect

The contribution deals with specification of factual defect in the view of New Civil Code and CISG. The aim of this contribution is to appraise of modification in Czech private law and analyse and compare of regulation in CISG and New Civil Code. In conclusion the author tries to evaluate application of CISG and Civil Code.

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## LAW-BRANCH-CREATING IMPACT OF THE CODES

JOSEF BEJČEK

An essay on how and in what extent the codification (or decodification) of a certain part of the legal order is decisive for its position in terms of a particular law branch. Consequences of the just recently decodified Czech commercial law. Theoretical, methodological, pedagogical and practical impact of splitting the law into law branches.

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## THE TENDENCIES AND THE PROPOSITIONS OF RE-CODIFICATION OF THE POLISH CIVIL CODE

MARTA BUDZINOWSKA

The tendencies and the propositions of re-codification of the Polish Civil Code.

The aim of this article is to describe, analyze and try to assess the tendencies and the propositions of the re-codification of the Polish Civil Code which were accepted by the Polish Civil Law Codification Commission. The most important source of the Polish Civil Law is the Civil Code, which was passed on 23rd April 1964. This act included not only classic institutions of the civil law, but also legal constructions stemming from the Soviet doctrine. After the collapse of communist regime in 1989, the regulations of the Soviet provenience were waived and some regulations from the former Obligation Code were reinstated. The idea of re-codification was abandoned since the codification process was thought to take too much time. However, over the past few years many amendments were carried out (e.g. 1990- the notion of uniform property was introduced, 2000- the liability for defective product was regulated, 2003- the definition of consumer, the notion of “firma” and “prokura” were introduced). These amendments turned out to be not sufficient. There is a “decomposition” of Polish Civil Law; there are many regulations which are not, but should be regulated in the Polish Civil Code. Therefore, the Civil Law Codification Commission was established. Yet in 2009 the “Green Paper – the bill of Civil Law” was published and in 2012 there were works concerning the Obligation law- general part and Property law. Still there are works carried out which concerns the Contract law. As long as this part is concerned, there were many ideas how to build the structure of it, including the use of the Common Frame of Reference. The Civil Law Codification Commission decided that: firstly, pandect division of the Civil Code

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would remain, secondly it was decided to regulate Family Law in the Civil Code- not in the separate Act, and thirdly they decided to regulate all kinds of relations in the Civil Code (consumer- entrepreneur; entrepreneur-entrepreneur). These works are to meet the demands of global market. Will they turn out to be competitive towards legal systems with a long tradition such as German or French or such modern one as the Dutch one?

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DOCTRINE OF ABUSE OF RIGHT – LEGAL  
INSTITUTE IN THE LIGHT OF  
RECODIFICATION OF PRIVATE LAW IN  
SLOVAK REPUBLIC

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Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta,  
Katedra obchodného a hospodárskeho práva

The autor in the present article deals with the doctrine of abuse of rights in the conditions of Slovak republic. He evaluates its standing and its potential in the new civil code, which should be the result of recodification of private law. Legal institut autor of the article evaluates in the backround of legal system of neighbouring states, particularly with regard to Czech republic.

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CONSENSUAL PRINCIPLE OF THE TRANSFER  
OF OWNERSHIP FROM THE EUROPEAN  
POINT OF VIEW

EVA DOBROVOLNÁ

will be specified

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## TO BE SPECIFIED

to be specified

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## MEDIATION AS A DEVELOPING DISPUTE RESOLUTION PROCEDURE IN RUSSIA: BASIC TENDENCIES AND GENERAL PROBLEMS

EGOR EVTUKHOVICH

Mediation, as one of the most quickly developing alternative dispute resolution (ADR) procedures, is becoming or has already become the subject of legislative regulation in majority of European countries, including the Russian Federation. The adoption of the special law regulating mediation in Russia in 2010 became a profound step towards further development of the procedure and extension of the sphere of its implementation in legal practice. At the same time the law has not resolved all the theoretical and practical problems connected with mediation in Russia, and in some aspects even deepened them. It is still unclear what mediation is in comparison with traditional dispute resolution procedures which include participation of a neutral party not empowered to put a binding decision on the disputants. There is still no conventional classification of mediation types. One of the most urgent problems is the interaction between litigation as a public process and mediation as a private procedure.

The paper is mostly devoted to some basic problems of mediation development in Russia. It contains a brief description of efficient legal acts regulating the procedure, reveals some results of author's research in this field. The paper touches upon the terminological problem on the examples of some legal collisions. The main part is devoted to the most problematic aspects of interaction between the official civil procedure and mediation. It is stated that mediation development must lead to the establishment of the system of appropriate dispute resolution procedures, collaborating with each other, but not contradicting.

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## SHORT-TERM APARTMENT LEASE AS A NEW INSTITUTE OF THE CZECH PRIVATE LAW

LUKÁŠ HADAMČÍK

The New Civil Code removes from the protection of rental housing the rent of flat for the recreation or an another obviously short-term purpose. In this article, the author focuses there on the subject definition which deals with this category of rental housing and on the potential problems associated with this.

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## CHANGES IN THE LAW OF CORPORATE GROUPS AFTER THE RECODIFICATION

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**Key words:** corporate groups, wrongful trading, minority shareholder, corporation

Legal regulation of the corporate groups is one of the areas of corporate governance, that goes through the overall systematic change within the recodification of the whole. Generally, there is a evident paradigm shift from the current doctrines inspired by German *Kozerrecht* to the model of the French *Rozenblum* concept. However, the basic regulatory issues of a corporate groups law remain the same, especially the definition of such a qualified groups of law, protection of minority shareholders and creditors.

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## THE LIABILITY OF FINANCIAL SERVICES PROVIDERS

ZDENĚK HUŠTÁK

The issue of liability of financial services providers is discussed under liability regime stipulated by New Civil Code. In particular the liability for a damage caused by an information or advice.

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## IUSNATURALISM AS A MEANS OF PROTECTING THE WEAKER PARTY IN THE NEW CIVIL CODE

MICHAL JANOUŠEK

Iusnaturalism access the new Civil Code, particularly evident in the defined fundamental principles that underpin the new Civil Code and the legal expression of the warp is systematically situated in § 3 and 10 the new civil code a privileged novelty under private law. It may be subject to a thorough criticism of relativism normative text, as well as a constructive solutions complement hard cases. What we can expect from each approach and how any application not specifically expressed principles may contribute to the protection of the weaker party?.

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# BENEFITS AND RISKS OF REDUCING OF EQUITY IN LIMITED LIABILITY COMPANIES TO 1 CZK

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**Key words:** Registered capital, equity, limited liability company, code on capital corporations.

This paper deals with the equity, its functions and foundation. The main goal of this paper is to review the benefits and risks resulting from reduction of obligatory amount of equity in limited liability companies to 1 CZK, which ensues from the new “Code on capital corporations” effective from 1. January 2014. Part of the paper will be for example views and considerations on the limited responsibility of partners, the possibility of obtaining loans from banks, increasing number of companies based in the Czech Republic, or whether it is possible to regard the equity in the amount of 200,000 CZK too high.

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## UTILITY NETWORKS IN NEW CZECH CIVIL CODE

PAVEL KOUKAL

The attention will be paid to the substance and civil law protection of the utility networks in the New Czech Civil Code as well as on relating property rights.

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## THE RENT OF FLAT

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**Key words:** The rent of flat, lessor, lessee, polish law regulation.

The Article deals with analysis of legal regulation for rent of flat relationship realised in Czech Republic by law No. 89/2012. Czech legal regulation is compared with Polish legal regulation contained in the Civil Code and the Bill for protection of leasees. The Article evaluates the way of realization, the time of realization and the most important effects for lessors and leasees.

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## WITHDRAWAL FROM A CONTRACT UNDER THE RECODIFICATION OF CZECH PRIVATE LAW

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This paper will focus on the withdrawal from a contract under the New Civil Code. The first part of the paper will summarize the effects of the unification of regulation of civil and commercial obligation relationships. Consequently, the paper will deal with the conditions and reasons under which the parties are entitled to withdraw from a contract. The essential part of the paper will analyze legal regulation of the effects of withdrawal and related rules modifying the effects of withdrawal. At the end, the paper will also outline the regulation of withdrawal regarding selected types of contracts.

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LIABILITY IN TORT DUE TO LOSSES  
CAUSED AS A RESULT OF ISSUING A  
RULING OR DECISION WHICH IS CONTRARY  
TO THE LAW IN THE POLISH CIVIL CODE

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**Key words:** tort liability, public authority responsibility, compensation, rulings and decisions contrary to the law, polish civil law

The article treats some of the issues associated with public authority liability in compensation and in particular liability on the account of torts constituting in causing loss to a defined entity as a result of issuing a ruling or decision. These issues are regulated by Art. 4171 § 2 of the Polish Civil Code (abbreviated to k.c.). On the grounds of this regulation a number of interpretational doubts arise. Firstly, it should be pointed out, that the legislator provided for liability in compensation only in the event of the cause of occurrence of loss being a legally binding ruling or final decision. This inadvertently implicates a question, whether a public authority entity will also be liable for losses caused as a result of issuing unsafe rulings or non-final decisions. This issue presents grounds for contentions amongst scholars. Within the scope of the present article its adjudication will be sought based on Art. 4171 § 2 k.c. to Art. 417 k.c., providing a general formula for public authority tort. Furthermore, the primary (that is introduced into the k.c. by virtue of the Act of 17 June 2004 and in force as of 1 September 2004) wording of Art. 4171 § 2 k.c. assumed that pursuing compensatory claims on the account of the indicated title would always have to be preceded by the aggrieved, in separate proceedings, obtaining an

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appropriate precedent, within which an ascertainment would be made as to the contrariety of a given legally binding ruling or final decision to the law. However, a significant change took place within this scope pursuant to the Act of 22 July 2010, constituting in admitting by the legislator a possibility of departure from the a priori requirement of the aggrieved obtaining the aforementioned precedent in the event of this being foreseen by particular provisions. This change was connected with an appropriate amendment to the civil code proceedings. This issue has been discussed in more detail, particularly in light of the fact that the introduced solution gives rise to a number of controversies. Apart from the above, cases were analysed where the cause of occurrence of loss are rulings or decisions issued on the basis of a regulatory act which is contrary to the Constitution, ratified international agreement or Act.

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# THE STORY ABOUT STRAY PARAGRAPHS OR AS THE PROCEDURAL RULE MEETS THE SUBSTANTIVE RULE

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**Key words:** Recodification Civil law

Article subscribes general trends as procedural rules move closer to the substantive law, particularly in the area of private law. It refers mainly to two key areas and to reverse the burden of proof and the burden of proof, as well as the issue of class actions. Article demonstrates these trends in legislation and new Czech Civil Code to an exemplary interpretation of certain provisions. Article finally gives consideration to whether and to what extent such a penetration into the procedural rules of substantive law appropriate and desirable.

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ENTREPRENEUR AND HIS POSITION IN  
CZECH AND EUROPE LEGAL REGULATION  
FOCUSED ON CONTRACTUAL OBLIGATION

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**Key words:** entrepreneur, contractual obligation, entrepreneurship  
under specific conditions, european enterprise law

Upřesněn později

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## LETTER OF INTENT FROM THE VIEW OF PRE-CONTRACTUAL LIABILITY

ZBYNĚK MATULA

The presented paper deals with the concept of letter of intent, or more precisely of the problem of possible relationship between this instrument and pre-contractual liability (*culpa in contrahendo*). On the one hand represents letter of intent undoubtedly important factor in the process of creation of „legitimate expectation“ (which is a basis of pre-contractual liability). On the other hand, letter of intent isn't sole reason for creation of this state of mind, i. e. it is necessary to take account of all relevant circumstances.

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## CONTROL OF STANDARD CONTRACTS IN B2B RELATIONSHIPS FROM THE PERSPECTIVE OF THE NEW CIVIL CODE, CESL AND THE DCFR

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**Key words:** standard terms in B2B, private autonomy, DCFR, CESL

Current private law trends bring a large number of new institutes in the field of intervention into the contractor's private autonomy. Neither the area of B2B relationships not remains outside of this general trend and interference in the private autonomy are also conducted in B2B relationships. An example of this is a new Czech Civil Code. This article focuses on one of the institutes interference in the private autonomy of – controlling standard contracts in B2B relationships from the perspective of the new Civil Code DCFR and CESL. The use of standard contracts is an integral part of trade in 21 century, as a means of reducing transaction costs for entrepreneurs. The object of this paper is to review the definition of a standard contract in selected legal systems, methods for their incorporation and mechanisms of their control.

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## CATEGORY OF REASONABLENESS IN THE CONTEXT OF THE REFORM OF PRIVATE LAW

The article continues the author's doctoral dissertation. It deals with general issues of category of reasonableness in private law (the concept, content, function). The author tries to discuss the category of reasonableness from the perspective of the reform of private law in the European countries.

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## INFLUENCE OF THE REFORM PRIVATE LAW ON THE LAW OF CIVIL PROCEDURE

ANTONÍN STANISLAV

The paper deals with the influence of complex re-codification of private law, the law of civil procedure. Emphasis is dedicated to the manner in which the re-codification of private law reflected in the law of civil procedure from the perspective of a member of the expert group on the harmonization of Civil Procedure, and one of the authors of a legislative solution, which was the harmonization of the Ministry of Justice selected.

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## ZÁKON O OBCHODNÍCH KORPORACÍCH – NOVÝ PŘÍSTUP K ÚPADKU OBCHODNÍCH KORPORACÍ

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**Key words:** Insolvenční zákon, obchodní korporace, statutární orgán, rekodifikace soukromého práva, úpadek, zákon o obchodních korporacích

Rekodifikace soukromého práva se nedotkne pouze předpisů soukromého práva, ale také právních předpisů souvisejících. Jedním z dotčených legislativních aktů je i právní předpis na pomezí veřejnoprávní regulace, insolvenční zákon. V souvislosti s rekodifikací byla proto přijata tzv. revizní novela insolvenčního zákona, která nabude účinnosti 1.1.2014. Institut úpadku se však projevuje i v samotném textu nového občanského zákoníku a zejména zákona o obchodních korporacích. Příspěvek analyzuje vzájemné propojení obou právních úprav, které je nyní mnohem těsnější, než bylo doposud. Předmětem zkoumání jsou především důsledky úpadku v rovině statutárních orgánů společnosti s přesahem do budoucnosti na jedné straně a s částečně retroaktivním působením na straně druhé. Druhou rovinou je potom omezení dispozic s majetkem pro samotnou obchodní korporaci. Vše je doplněno o srovnání se současnou účinnou právní úpravou.

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THE CHANGES OF THE CONTRACT FOR  
WORK UNDER THE INFLUENCE OF THE  
PRIVATE LAW REFORMS AND SOME OF THE  
CONTEMPORARY APPLICATION PROBLEMS

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**Key words:** contract for work, client, contractor, work, price for work

The Contribution deals with some of the differences between the legal provisions on the Contract for Work from the perspective of Czechoslovak Common Civil Code, existing legal provisions and actual reform of the private law in Slovakia and in Czech Republic. The aim of the contribution is, as well, to refer to some application problems connected with the application of the existing legislation.

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## LEGAL INSTRUMENTS FOR FUNDRAISING

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**Key words:** fundraising, non profit organization, czech civil code, charity

will be specified

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COMPENSATION RESPONSIBILITY OF  
LOCAL GOVERNMENT FOR NON-DELIVER  
SOCIAL PREMISES

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**Key words:** Compensation responsibility local government non-deliver social premises

it will be described later

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## PROTECTION OF FREEDOM OF DESCRIPTION OF GOODS AND GROUNDS FOR REFUSAL OF TRADE MARKS

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**Key words:** free movements of goods, freedom of description of goods, industrial property law, trade marks, absolute grounds for refusal

The free movement of goods is one of the most important freedoms of the internal market. The aim of this article is to examine one aspect of the subject freedom which is the freedom of description of goods. Freedom of description of goods means the possibility to provide information about the goods to customers. The freedom of communication is restricted by monopolies established by the industrial property laws. Among industrial property rights on the said freedom the strongest seems to affect trademark law. Trademarks are the transnational means of communication with the goods. However, the exclusive rights granted by the patent offices restrict freedom of communication. Therefore, the article will examine the rules governing the absolute grounds for refusal registration of trademarks. These provisions are in fact ensuring freedom of communication. They have been established in public interest. The correct interpretation of these rules is one of the proper exercise of the freedom to communicate. For this purpose, there will be presented the genesis of the provisions of Directive No 89/104 and other relevant legal acts. There will be presented also relevant judgements of Court of Justice and General Court.

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## CYBERSECURITY & DUAL-USE GOODS

JAKUB HARAŠTA

Cyber security is very extensively approached within the private companies, state administration and the international community. Technology used to ensure cyber security often originates abroad, which does not only bring to light the security issues. It also contains the legal issues, given the nature of the technology, which is often considered the dual-use goods.

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## STATE V. INTERNATIONAL TRADE REGULATION: ECONOMIC SANCTIONS OF THE USA

EVA HLADKÁ

The article deals with economic sanctions of the USA and statutes that authorize the executive branch to impose them. It describes some controversies, which the statutes induced especially due to their extraterritorial effects and possible violation of WTO law. The article mentions for example the Helms-Burton Act, Massachusetts Burma Law or Executive Order 13645 issued by President Obama in June 2013.

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CZECH REPUBLIC METHANOL POISONINGS  
2012 A FREE MOVEMENT OF GOODS IN THE  
EUROPEAN UNION

FILIP KŘEPELKA

Contribution will describe and analyse measures of the European Union and its Member States restricting trade in liquors manufactured in the Czech Republic during methanole poisonings in year 2012.

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# THE KIMBERLEY PROCESS CERTIFICATION SCHEME FOR PREVENTION OF TRADE IN CONFLICT DIAMONDS REVISITED

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**Key words:** Kimberley Process, trade in diamonds, certification scheme

Diamonds as a specific commodity possess several characteristics that make them eligible to become means to finance and sustain armed conflicts. In 2003, the Kimberley Process Certification Scheme, which sought to prevent the trade in conflict diamonds in order to eliminate their conflict potential, was adopted. After ten years of operation of regulatory rules on trade in diamonds, multiple questions on effectiveness of the regime adopted, its weaknesses and inspirational potential for introducing analogous legal regime for other natural resources with conflict potential (e.g. timber) has arisen. This contribution aims to critically analyze the results of Kimberley Process achieved during this period of time and to outline its potential and sustainability for the next decade.

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## THE “RECYCLING CONFLICT” OF THE EU AND THE RUSSIAN FEDERATION IN THE CONTEXT OF THE WTO

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**Key words:** The World Trade Organization; the European Union; the Russian Federation; the Dispute Settlement Body; the Dispute Settlement Understanding; the “recycling fee”; Karel De Gucht.

The paper reminds the date of 22th August 2012 when the Russian Federation accessed the World Trade Organization outlining the problems that have occurred since then. The brief description of the WTO’s functionality and its disputes settling mechanism is provided as well as the information about current conflict between two significant WTO’s members – the EU and the Russia. The author explains what is the crux of the conflict, what makes this case “special”, and what are possible solutions of it.

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## FREE MOVEMENT OF GOODS VS. FUNDAMENTAL RIGHTS

First fundamental freedom – free movement of goods – mentioned by founding treaties has been also first and probably most guarded golden egg within European Union Law. Since not only other fundamental freedoms has become important as well, and mutually contradictory situations has become possible, all fundamental freedoms later acquired their twin – fundamental rights. Relationship between freedom of movement of goods and fundamental rights is not synchronous and subsidiary, but rather choice of values, which should prevail in particular situation. This problem, even it is not new within EU Law, has its self evolution on the EU level as well as on the national level. This paper aims to provide analysis of judicial balancing between the EU economic values as fundamental freedom of goods and other values as fundamental rights.

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THE CORRELATION BETWEEN THE EU AND  
THE WTO LEGISLATIONS ON  
INTERNATIONAL TRADE OF GOODS:  
PROBLEM ASPECTS

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**Key words:** correlation, the EU and WTO legislation, trading of goods

The article deals with the problem of correlation between the EU and the WTO legislations on international trade of goods. It concerns the disputable question on the direct application of the WTO's laws in the EU. There is also viewed the problem of the state's right of the admission of safety measures, the limits of its application in aspect of trading goods.

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# JUDICIAL REVIEW IN EU LAW: CHALLENGING THE COMMON COMMERCIAL POLICY MEASURES (NOT ONLY) AFTER THE LISBON TREATY

DUŠAN SULITKA

**Key words:** annulment, anti-dumping, common commercial policy, direct concern, ECJ, external trade, individual concern, judicial review, Lisbon Treaty, non-contractual liability, preliminary ruling, regulatory act, standing, order for reference

Undoubtedly, the common commercial policy represents the most intricate realm of the EU external trade relations. Vast number of administrative and legislative measures in this particular area of legal interest led over the period of existence of the European Communities (EU respectively) to creation of a significant body of ECJ case-law. This paper aims mainly to analyse the general system of judicial review of the EU common commercial policy measures before the ECJ after the Lisbon Treaty and the reasoning of the ECJ in the annulment proceedings. Special focus is to be placed on the standing of private parties before the ECJ and the exceptions to the fourth paragraph of the Article 263 TFEU set up in the anti-dumping cases.

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## SHALE GAS AND ITS LEGAL DIMENSIONS

MARIUS VACARELU

Shale gas is presented in the last years as one the most important thing for the economy: commerce, trade and even state future plans being influenced by this. In this case, when a new institution (in a social way) is created or developed (like train in XIXth century, for example), legal framework cannot stay inactive. In these considerations, we must analyze what shale gas can bring to legal framework of national states and European union. Our text will try to underline few ideas on this big subject, because their consequences are important for future of the economy and legal framework.

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## HYDRAULIC STRUCTURE ACCORING TO THE NEW CIVIL CODE

HANA ADAMOVÁ

The new civil code (published under n. 89/2012 Sb.) is supposed to bring changes in a bright circle of legal relations. One of the distinctive differences is the return to the conception of a building as a part of a ground. The impacts of the change in approach to the buildings as a subject of civil law relations are possible to explore from the point of view the legal regulation of hydraulic structure. This contribution should deal with the analysis of the impacts of the new civil code on the civil law relations to the hydraulic structures.

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## HYGIENE ASPECTS OF WATER QUALITY

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**Key words:** water quality, the protection of human health

The contribution will focus on selected aspects of current legislation to ensure water quality for the protection of human health. The component of contribution in the certain context will be among other the interpretation of the assessment of health risks and responsibility relations.

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## BUILDING ACTIVITIES IN FLOOD PLAIN AREAS

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**Key words:** Flood Plain Areas, Floods, land, compensation, buildings

This paper analyses selected legal problems of Flood Plain Areas in the Czech Republic. The Public Defender of Rights was concerned with these problems in 2012 and 2013. The first part focuses on determining of Flood Plain Areas and locating buildings in these areas. Then the compensation for affected land owners is discussed.

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## ENVIRONMENTAL LIABILITY FOR WATER DAMAGE

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**Key words:** Odpovědnost, ztráty na životním prostředí, vodní právo

This paper will focus on legislation on liability for damage to water. In addition to the analysis of the relevant legislation, the attention will be paid to the practical application problems.

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## LEGAL ENTITIES DEALING WITH FLOOD PROTECTION

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**Key words:** Flood protection entities / Legal entities dealing with flood protection, territorial development, flood protection, flood areas

Flooding issue is a complex problem whose solution is negatively influenced by conflicts of interests within the area. The individual parties involved in these conflicts of interests are entities dealing with flood issues. This paper aims at flood protection entities which can influence construction restrictions in flood areas by means of certain instruments. It is the new construction in these areas which appears to be one of the crucial problems complicating protection of the areas against floods.

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## WATER EASEMENTS IN THE NEW CZECH CIVIL CODE

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**Key words:** water easements, Civil Code, Water Act, Czech Republic

The new Czech Civil Code brings a new private regulation of several easements that are connected with water, particularly an ‘easement of guttering’, ‘right of rainwater draining’, ‘right to water’ and ‘easement of overflowing’. The paper outlines the content of these easements and analyses their linkages to related public law provisions in the Czech Water Act.

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## BUILDING ACTIVITIES IN FLOOD PLAIN AREAS

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**Key words:** Flood Plain Areas, Floods, land, compensation, buildings

This paper analyses selected legal problems of Flood Plain Areas in the Czech Republic. The Public Defender of Rights was concerned with these problems in 2012 and 2013. The first part focuses on determining of Flood Plain Areas and locating buildings in these areas. Then the compensation for affected land owners is discussed.

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## WATER AREAS AS A SIGNIFICANT LANDSCAPE ELEMENT IN TERMS OF LAW

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**Key words:** water areas, significant landscape element, legal regulation

Water areas; both natural and artificial; performs many important functions. This paper is dedicated to one of them, namely the water areas as the significant landscape elements in terms of legal regulation. The aim of paper is an assessment of the merits or shortcomings of the legislation on the basis of the analysis of the legal means of protection of significant landscape elements in general and within the water areas. Finally, they are formulated any recommendations de lege ferenda based on this analysis.

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## WATER BOARDS AS A FORM OF ORGANIZATION AND MANAGEMENT OF PUBLIC WATERS AT THE LOCAL LEVEL

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**Key words:** water boards, public waters, environmental protection

Article presents the institution water companies as entities whose purpose is the administration and management of water resources which are in their possession. These companies represent a specific legal construction established to perform tasks related to the management public waters by private entities. The paper discusses the process of creating of companies, their organization, functioning and financing arrangements. It is also indicated the role of water companies plays in the system administration tasks of water resources and the construction and maintenances of land improvement infrastructure, especially in the tasks related to the water protection. A particular aspect of the water boards activity concerns the realization of the objectives of ecology and environmental protection.

The paper contains a overview of the planned changes in the organization and functioning of water boards, including changes that are the result of the implementation of the Water Framework Directive (Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy) and the national water plan. The proposed changes have been subjected to a thorough analysis, which allowed to present of *de lege lata* and *de lege ferenda* proposals in relation to the raised issues.

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## WATER PROTECTION IN THE INTEGRATED PERMIT

TEREZA ŠNOPKOVÁ

I will explain the approval process of the integrated permit. My attention will be focused on the expression of water authorities whose actions are being replaced by integrated permit.

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# WATER TREATMENT DISPUTE RESOLUTION

MICHAL SOBOTKA

Legal regulation of dispute resolution between private and public interests concerning water treatment and use.

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## LEGAL NATURE OF THE WATER IN TERMS OF MINING LAWS

ONDŘEJ VÍCHA

The paper describes the legal nature of two categories of waters which are regulated especially by the Mining Act. The author analyzes the legal regulation of waters that are reserved minerals, and legal regulation of mining waters. The paper outlines the basic principles of this legislation and relationship between the Water Act and the Mining Act.

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## WATER IN THE PROCESSES OF THE PUBLIC CONSTRUCTION LAW

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**Key words:** water processes, Public Construction Law, Water Management Authorities, civil society organizations

This paper deals with the relationship of Water Rights Laws and Public Construction Law with an emphasis on water processes linked to Building Code. At first, author qualifies Water Management Authorities as specialized Building Authorities. In the main part of the paper are described the selected institutes of the water processes (Waterworks building permit, consent and expression), and also are examining differences and similarities by the water processes and construction processes with a special focus on the status of civil society groups in these processes. The paper is concluded with recommendations *de lege ferenda*.

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## FORMATION OF THE CONTRACT UNDER THE NEW CZECH CIVIL CODE AS AN ALTERNATIVE TO CISG

LUCIA KOVÁČOVÁ – JAROSLAV KRÁLÍČEK

International trade transactions constitute one of the fundamental levels of international trade relations, in which traders from different countries enter into legal relations. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is one of the most widespread sources of law in this area. Already 80 countries have joined it. However, when the parties exclude the Convention from its application the relevant source of law will be designated by standard conflict of law rules. Such a source of law in the Czech Republic are the rules of civil and commercial law. But most likely as from 1 January 2014 those rules will be replaced by a single piece of legislation – a new Czech Civil Code (known under the acronym NOZ). NOZ provides a comprehensive set of rules for obligations. Its regulation will thus inevitably affect also international trade transactions. In this paper, therefore, the rules contained in the NOZ will be analyzed and they will be subsequently compared with the rules contained in the CISG. Attention will be paid to the formation of the contract.

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# THE REFORM OF THE STATE REGISTRATION OF RIGHTS TO REAL ESTATE AND OF TRANSACTIONS WITH IT

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**Key words:** State register, real estate, transactions with real estate, lease.

The Federal law of 30.12.2012 No 302-FL amended chapters 1, 2, 3 and 4 of Part one of the Civil Code of the Russian Federation. Particularly it changed the system of the state registration of rights to real estate and of transactions with it.

The state registration of rights to real estate. The Federal law No 302-FL added to the Civil Code of the Russian Federation Art. 8.1, which determined the main principles of the state registration of rights to property (first of all to real estate). There is a principle of validation of the legal grounds for registration, publicity's principle and a principle of credibility of the state registry. New Art. 8.1 also provides that the rights to property that subject to state registration arise, change and stop from the moment of making a corresponding record in the state register, unless otherwise established by law. Point 6 Art. 8.1 CCRF in edition of the Federal law No 302-FL provides that a person who knew or had to know about the unreliability of the data from the state registry, shall not refer to the appropriate registry data. This reformation point can be widely applied in the resolution of disputes concerning the reclaiming of property from illegal possession. Also the acquirer is not bona fide if at the moment of transaction in the state registry there was a mark on the court dispute concerning the property. There is an opinion that these amendments to the civil legislation can cause numerous abuses by unfair participants of civil turnover.

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The state registration of transactions with the real estate. Part 8 Art. 2 of the Federal law No 302-FL partially cancels the earlier system of "double" registration of rights and transactions for the properties. However, its original edition worked only two days, now the point is changed. So there were 2 days when the initial edition of Part 8 Art. 2 of the Federal law No 302-FL worked – on March 2 and 3, 2013. Thus, the state registration of contracts of lease of real estate wasn't applied only these two calendar days. Therefore, the lease contracts of real estate signed these days, are not subject to the state registration and the absence of such registration does not influence their validity. In case of absence of the state registration of the contract of long-term lease of real estate could take place the following intractable situation, in particular: 1. Leasing the property, which has already been leased to another person ("double rent"). 2. The buyer of property won't be notified and informed about renting of the sold property.

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