CORPORATE SOCIAL RESPONSIBILITY AND HUMAN RIGHTS IN ALBANIA; ANALYSIS AND COMPARISON BETWEEN EUROPEAN UNION AND UNITED STATES JURISDICTION

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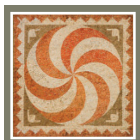
Abstract

Twenty years ago, business and human rights did not make sense in the same sentence. As of today, this is one of the most contemporary and problematic issues around the world. Legal mechanisms for extraterritorial, civil and criminal liability of corporations for human rights violations are growing steadily.

In Albania there is a high number of human rights abuses by business, so the research hypothesis is related to voluntary engagements and the use of Corporate Social Responsibility tools to increase accountability of these businesses in Albania under national and international trade law. The methodology of the study is based on literature review, legal analyses and the jurisdiction of European and American courts and on the applicable legislation regarding the accountability of parent companies for violations committed within the so-called "company veil".

Laws and policies that govern the establishment and continuous operation of business enterprises, such as corporate laws and securities, directly create the behavior of a business. Their implications for human rights remain weak. So, economic agreements concluded by Albania with other states such as bilateral investment treaties, free trade agreements or investment project contracts create high economic opportunities and abusive opportunities. But as states need to work towards policy coherence, business enterprises should strive for coherence in their responsibility for respecting human rights, policies and procedures governing their business, activities and relationships.



DSSH/ASD
DITËT E STUDIMEVE SHQIPTARE
ALBANIAN STUDIES DAYS
JOURNÉES D'ÉTUDES ALBANAIS

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ALBANIA'S ROAD TOWARD THE EUROPEAN UNION THROUGH SECURITY DIMENSION

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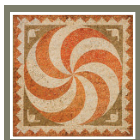
Abstract

The current defense doctrine of European Union uses two main concepts regarding the Western Balkans: security and preservation of the status quo. In the absence of a relatively stable security in its periphery, specifically Western Balkan countries, Europe seeks to maintain a special status quo, because it can't allow this space to fall into the other powers influence. In this respect, EU seems to be acting based on specific limited interest. Observing recent moves, the European Union is reluctant to engage in a "geopolitical war" with other powers, which can be avoided by including Western Balkans into EU. The drafting of the strategy for such area (first signs given in the Berlin process) and possible opening the negotiations with Albania and Macedonia will make the EU a stronger geopolitical player, as it is competing with Russia, China and Turkey, but it is also suffering from internal problems – from enlargement fatigue to populist movements, endangering its own existence.

Key words: doctrine, security, euro-skepticism, status quo, geopolitical war



FAKULTETI SHKENCAVE
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PERMANENT COURT OF ARBITRATION

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Abstract
Gjykata e Përhershme e Arbitrazhit PCA - një organizatë ndërqeveritare qe ofron një shumëllojshmëri shërbimesh komunitetit ndërkombëtar për të zgjidhur mosmarrëveshjet, e krijuar ne perputhje me nenin 41 te Konventes se Paqes te Hages te vitit 1899.
Ky artikull ka per qellim te identifikoj evoluimin e kesaj gjykate nderkombetare nder dekada, rolin e vendimeve te arbitrazhit ne zbutjen/zgjidhjen e konflikteve si dhe ndikimin e ketyre vendimeve ne zhvillimin e te drejtes nderkombetare.
PCA sot siguron mbështetje administrative në arbitrazhin ndërkombëtar duke përfshirë kombinime të ndryshme të subjekteve qe kane te drejten ti drejtohen kesaj gjykate perveç shteteve (te cilat kane qene subjeketet e para qe mund ti drejtoheshin PCA qe ne themelimin e saj) perfshihen dhe ente shtetërore, organizata ndërkombëtare dhe se fundi persona privat.
Kete e shikojme tek aktiviteti i PCA shumevjeçar në administrimin e arbitrazhit ndërkombëtar në lidhje me mosmarrëveshjet që dalin nga traktatet, duke përfshirë traktatet dypalëshe të investimeve por dhe traktatet shumepaleshe, si dhe instrumenta të tjerë ligjor. PCA gjithashtu luan një rol të rëndësishëm duke u bazuar ne rregullat UNCITRAL.

Keywords: Arbitration, court, international, dispute, states

THE WIND OF "ILLIBERALISM" IS BLOWING AROUND POST-COMMUNIST COUNTRIES: SOLUTIONS MUST COME FROM WITHIN

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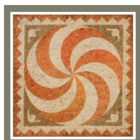
Abstract
Twenty years ago, Fareed Zakaria wrote an essay in the Foreign Affairs magazine entitled The Rise of Illiberal Democracy. According to Zakaria democracy was progressing, but not in its virtuous way. His idea was to take the defense of the individual not only against the abuses of a tyranny, but also against the abuses of the democratic majority. Zakaria has made a tremendous assessment regarding this growing phenomenon – the alienation of the nature of democracy from within. According to him, 'democracy is flourishing; constitutional liberalism is not'. At that moment, he wrote; 'from Peru to the Palestinian Authority, from Sierra Leone to Slovakia, from Pakistan to the Philippines, we see the rise of a disturbing phenomenon in international life - the illiberal democracy'.
While, in the present days, in Central Europe and in the Balkans states, principally Hungary, Poland, Czech Republic and Slovakia; Croatia, Albania and Serbia, have during the last several years clearly raised doubts about the liberal model adopted after 1989.
In the aforesaid post-communist countries, electoral democracy as a means of choosing the government is not necessarily to coexist peacefully with liberalism, as long as the latter poses constitutional and institutional limits on democracy.
The problem that appears today is that illiberal governments have come to power legitimately in some countries, particularly in post-communist countries in which the constitutionality and functional institutions stabilized and have been certified by the European Union. But of course, this seems to be just a momentum of democracy, and not in Alessandro Ferrara's idea an ethos rooted in these societies. Therefore, in this paper we will try to answer the question: is the democratic backsliding and the antiliberal turn in post-communist countries a consequence of the revival of the same values that previously to 90s served as a repellent to communist values? The answer to this question will be in the core of this paper.

Keywords: Illiberalism, post-communism, liberal values, communist legacies, democratization



FAKULTETI SHKENCAVE JURIDIKE,POLITIKE DHE MARRËDHËNIEVE NDËRKOMBËTARE

THE IMPORTANCE OF INTERNATIONAL COOPERATION IN REDUCING ENVIRONMENTAL FOOTPRINT OF EDUCATIONAL PROCESS. THE CASE OF EDUFOOTPRINT PROJECT.

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Abstract
The aim of this paper is to identify and analyse the importance of international cooperation in reducing environmental footprint of educational process. The paper will be focused on the EduFootprint project aim, objectives, methodologies and outputs. This project was supported by Interreg MED Programme, that intends to raise capacity of owner and managers of public buildings for better management of energy, focusing not only on direct energy impacts of buildings but also indirect ones, such as general awareness and behaviour. This paper will analyse the importance of international cooperation not only in terms of sustainability but also in terms of the importance of joint efforts in dealing with common challenges. The study includes different actors within the Mediterranean area, such as Spain, Portugal, Greece, Italy, Slovenia and Albania.

Key Words: international cooperation, environment, life cycle approach

"DARK SOCIAL CAPITAL" IN ALBANIA: THE BEST WAY TO GET THINGS DONE

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Abstract
One of the most prominent and enduring features that has characterized the Albanian political system over the years of transition, has been the basis and the support on clientelist practices as the main strategy that the political parties of the country have used to mobilize the electorate and win votes. In objection to this, reliance on certain political ideologies or appeals to mobilize the electorate on a program basis has been small to the Albanian political parties and has not served them much as an effective instrument to attract political support (votes). The aim of this paper is to explore and explain in an analytical way the reasons why clientelism remains a widespread and enduring factor in politics in Albania. To be more concrete, we will understand clientelism here as a long-term and widespread form of social relationships that is embodied and reflects the social structure of the Albanian society. In this sense, in this paper it is argued that the system of social relationships and social structures of the Albanian society, does not contradict clientelist or particularistic relationships among its members, that is why political parties have also been supported and have developed increasingly effective forms that reflect such relationships to gain political support in the electorate.
Key Words: clientelism, political ideology, particularistic relations, informal power, social structure.

FAKULTETI SHKENCAVE JURIDIKE,POLITIKE DHE MARRËDHËNIEVE NDËRKOMBËTARE

PRENUPTIAL AGREEMENT AND COHABITATION AGREEMENT, THE NECESSARY CHANGES TO ALBANIAN LEGISLATION

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Abstract
This paper carried out the framework reform of the Institute of marital property regime and Cohabitation Agreement in Albania. The marriage contract is one of the most important innovations that the new Family Code of 2003 has introduced, anticipating the possibility that spouses are regulating marital property regime. Provisions regulating marriage in the Family Code provide undeniable autonomy of spouses especially in regulating property relations between the spouses. This is seen as an innovation since in the past this autonomy was categorically excluded. Unmarried couples who are living together have the option of creating a number of legal documents, often called "cohabitation agreements", that can help protect their rights as a couple. If a cohabiting relationship breaks down there is very little protection for the weaker partner, typically the woman, who often has children. As a result, some cohabiting families can find themselves facing real difficulties should they split up, particularly when children are involved.
Due to the social importance of the family and to balance the private interests of spouses in the public interest, the autonomy of spouses in regulating the marital property regime is limited compared to the other contractual relations. The paper analyzes problems such as: the implementation of the principle of autonomy of will in regulating interpersonal relations; implementation of the Civil Code and Family Code norms on the marriage contract; essential conditions for the validity of the marriage contract; contractual property regimes; prenuptial agreement; community property regime and the separation property regime, with the focus on the legal advantages and disadvantages of each regime. At the end of the study, you can find a presentation of all the findings and conclusions reached during the analysis of the above issues, as well as some recommendations for improving the articles of the Family Code, which we hope may be useful for scholars, students and for anyone who wants to get some information about this field of study, and finally especially for those who have decided to marry. The latter is more interested in being informed about a prenuptial agreement.
Keywords: party autonomy, marriage, matrimonial property regime, marriage contract, prenuptial agreement, Cohabitation Agreement, community regime, separation property regime, pacta sund servanda.

IMPAKTI JURIDIK I BREXIT DHE NENI 50 I TRAKTATIT TË BASHKIMIT EVROPIAN

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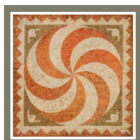
Abstract
Neni 50 i Traktatit të Bashkimit Evropian, parashikon mundësinë për tërheqjen e një shteti anëtar nga Bashkimi Evropian. Ky studim synon të trajtojë një nga çështjet më të debatuara kohët e fundit në BE, tërheqjen e një shteti, dhe analizimin e dispozitës së vetme që rregullon këtë proces. Dispozita mbart një interes të veçantë për studim, për shkak të formulimit të saj dhe impaktit që ka kjo dispozitë në aplikimin e saj. Punimi trajton nenin 50 TBE dhe mundësinë e revokimit të kësaj dispozite. Shqyrton gjithashtu marrëdhënien ndërmjet BE-së dhe Britanisë së Madhe, si dhe kuadrin ligjor mbi të cilën do të zhvillohet marrëveshja për tërheqjen e palës dhe pozicionin e të drejtës ndërkombëtare publike, së bashku me trajtimin e parimeve të ndryshme siç është parimi lex specialis.
Skenarë të ndryshëm hipotetik hidhen në diskutim nga aktorët akademik dhe institucional lidhur me situatat e ndryshme që mund të krijohen nga ky rast i parë në historinë e Bashkimit Evropian. Një çështje për t'u diskutuar është dhe mundësia për revokim, pra nëse revokimi është një e drejtë e parashikuar në dispozitë apo nëse është një e drejtë e shtetit që kërkon tërheqjen. Përgjigjjen për mundësinë e revokimit pavarësisht argumentave të ndryshme dhe trajtimit nga profesorë të së drejtës e gjejmë në vendimin e Gjykatës Evropiane të Drejtësisë. Vëmendje merr shqyrtimi i revokimit si një e drejtë, si dhe argumentet kundër dhe pro revokimit. Punimi përpiqet të demostrojë analizimin e nenit 50 TBE nisur nga një perspektivë e Bashkimit Evropian pa anashkaluar dhe argumentet ndryshe çështjes.

Fjalët kyçe: Brexit, Bashkim Evropian, neni 50 TBE, revokim.



"EUROPEAN VALUES" IN DIFFERENT INTERPRETATIVE CONTEXTS

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Abstract
In this paper a close relationship between culture and politics is going to be presented. Values belong to the catalogue of notions of culture, pertaining to one of the most important categories constituting ways of living and orientations to specific aims characteristic to a given community, society, or wider cultural unit. And as such, values are treated as an effect of history of a respective cultural group and as an outcome of long duration processes. On the other hand, the word 'values' are used quite often by European politicians. Within UE in many cases one can assume, that they invoke to the Lisbon Treaty, article 2. However, in each particular political disputation on the European arena in which the specificity of these values is called forth, each party of a dispute disposes their own interpretation of what "European values" are. In this paper the author tries to set down the main variants of interpretations and their cultural and political contexts, as well as the interests which may stand behind these different ways of defining.

POST-COMMUNIST TIRANA: LOST IN TRANSPORTATION

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Abstract
In this paper I will present the current situation in Tirana related to international buses and the lack of the bus station. The city has experienced changes and development after the fall of communism, trying to catch up with Western neo-liberal cities. One of the main features of globalization and contemporary cities is mobility of people, goods and information. In Tirana the mobility of people as such exists, but unlike other cities even in the region there is not a central bus station that regulates the information about travelling. I will try to analyse this phenomenon by focusing on the transition period and urban planning and to see what actually this tells about the capital city and its citizens. The methodology used is desk research and observation, by using the city as a case study. The paper mainly uses concepts of Auge, Lefebvre and Amin and their theoretical approaches to analyse cities.

Key words: Tirana bus station, space, non-space, post-communist transition, South Eastern Europe, transport, urban planning.

OVERVIEW ON VIRTUAL PROPERTY AND PROTECTION OF PERSONAL DATA - THE NEW EU GENERAL DATA PROTECTION REGULATION AND ITS IMPLICATION IN ALBANIA AS A NON-EU MEMBER STATE

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Abstract
The EU General Data Protection Regulation (GDPR) has brought a new perspective of business liability in complying with this Regulation. The scope of GDPR regarding businesses which operate among EU countries, as well as those operating in non-EU countries such as in Albania, raises a fortiori many questions on their responsibilities while collecting and processing personal data. Since the entry into force on May 25th 2018, the first case brought on a national court in Germany has applied GDPR while interpreting its articles regarding the questions raised by the parties on personal data, setting this way just the first of the many cases that the courts will face.
The impact of GDPR lies in many other fields of private law. The protection of personal data is considered to be an important human right interpreted so far under the scope of Article 8 of the European Convention of Human Rights. Inter alia, GDPR sets specific rules on the protection of personal data.
Nowadays, virtual property issues have raised new legal interpretations among lawyers. Such interpretations are analyzed per se along with the data protection rules. Notwithstanding the aim of GDPR on harmonizing data privacy laws across Europe, the main innovation is the broaden jurisdiction of its application, with regard to the non-EU member states, such as Albania.
In this respect, this paper consists in a brief analyze of the current legislation and case law in Albania regarding data protection and the challenges in harmonizing our legal frame with the GDPR provisions.

Key words: data protection, harmonization, personal data, virtual property.

JUSTICE REFORMS. PUBLIC INSTITUTIONS IN TRANSFORMATION

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ABSTRACT

The changes of the justice reform affect, without exception, any category and level of justice system institutions in Albania- the prosecution system; the judiciary system; and other institutions that ensure the running of the system, including the President and the Assembly.

Three institutions defined in the Constitution are merged and new institutions are created.

In addition to the radical change in the way in which the justice system is organized and is functioning, the reform envisions a series of transitional measures aimed at clearing the current system from corrupt and incapable individuals. These measures are included in a separate annex to the reform draft, under the heading Transitional Qualifications Assessment of Judges and Prosecutors.

In this work, we are briefly explaining the main institutional changes that the reform proposes such as the creation of new institutions like the The Council of Appointments in Justice (KED), The High Council of the Judiciary (KLGJ), The High Prosecution Council (KLP), Special Courts of Corruption and Organized Crime, Special Prosecution Office, High Inspector of Justice (ILD), The Disciplinary Tribunal of Justice (TDD), and the changes at The Constitutional Court (GJK), the Supreme Court, General Prosecutor (PP).

The research questions of this work are: Will the implementation of the reform, the constitutional changes and the creation of new institutions solve the problems in the field of justice in Albania? Are these substantive constitutional changes in accordance with the EU directives and the principles of democracy?

Keywords: justice reforms, justice system institutions, Constitution, democracy.

THE RIGHT OF "HOT PURSUIT" OF AIRCRAFT-VIOLATORS

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Abstract
Annotation: This article deals with problems associated with the possibility of "hot pursuit" of aircraft over the exclusive economic zone and on the high seas. The right of hot pursuit has long been established in international maritime law as a custom, according to which a coastal state may pursue an alien privately owned maritime vessel that has committed an offense in its internal waters or territorial sea. In the doctrine of international law, the right to "hot pursuit" of aircraft-violators still remains a controversial question. Article 111 of the UN Convention on the Law of the Sea of 1982 does not provide for hot pursuit of a foreign aircraft. The recognition of the right of hot pursuit of an intruder-aircraft by an aircraft of a coastal state under customary law is a controversial issue among international lawyers. This article examines the opinions of some international lawyers who insist that the right of hot pursuit - as well as in the law of the sea - also applies to foreign aircraft that violate the laws and regulations of the coastal state. This article sums up the view, which boils down to the following: although Article 111 of the UN Convention on the Law of the Sea of 1982 does not provide for a procedure of pursuit of intruder-aircraft, it can be used in the preparation of universal norms of international law that disseminate such actions against aircraft-violators.

Keywords: aircraft-violators, "hot pursuit", international airspace, coastal states.

REFORM OF THE CONSTITUTIONAL COURT AS A CHALLENGING PROCESS FOR THE JUSTICE SYSTEM

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Abstract
During its activity since the establishment in 1992 and up to date, the Constitutional Court has had the opportunity to consider issues of varying nature and dimensions by creating step by step a wealthy practice, evidenced by the ongoing effort to give protection to proper constitutional principles.

Naturally, there is space for criticism, but given the fact that in a short time decision were to be made on important issues, this organ has endeavored to show its tendency for impartiality in the trials given. The Constitutional Court has often become subject to criticism by the policy because of the nature of the cases judged by it. Such clashes are inevitable, given that the Constitutional Court must exercise control over legislative or executive acts, which ultimately has been formed by the majority voted in the political elections.

From this point of view, the Constitutional Court should not be understood as an organ that stands over or shakes them. It plays a balancing role in protecting the system of separation and mutual control of powers as a fundamental principle of the rule of law. This constitutional control exercised by the Constitutional Court is the best form found to date to ensure functioning based on the legitimacy of state organs, which is also the main element of the rule of law.
The constitutional doctrine embraced the idea of Hans Kelsen (Austrian constitutionalist - the founder of the Constitutional Court) to have an organ in charge of controlling the activity of state organs with the sole purpose of not leaving space for arbitrariness and anarchy, which gives its consequences, often severe, directly to the citizens.

The Given the analysis of constitutional justice issues and, more so, to analyze the role played by the Constitutional Court in shaping and strengthening the rule of law nowadays, this article seeks to highlight the evolution of the developments it has marked the constitutional right, the challenges that the Constitutional Court is constantly facing as an organ in search of legitimacy and guaranteeing respect for the Constitution as a "pactum societatis" as an incarnation of values and principles and moreover to answer the question: "Does constitution The Constitutional Court the most effective mechanism for forming and strengthening the constitutional order ?. The paper, aiming at concretizing the above-mentioned question, at the same time evidences the contribution that the Constitutional Court has given, or otherwise, the effectiveness of the constitutional jurisprudence in the identification and clarification of the various elements of the rule of law.

Key words: Constitutional Court, rule of law, effective remedy, fundamental freedoms and fundamental rights, constitutional control.

INSTITUTI I SERVITUTEVE NË LEGJISLACIONIN CIVIL SHQIPTAR

Dokt. Tanusha Selimi

Abstrakt
Në shkencën e të drejtës së pronësisë, iura in re aliena është një kategori të drejtash që datojnë që në të drejtën e lashtë romake. Instituti juridik i servituteve përbën një nga dy format e kalimit të drejtave reale mbi sendet e të tjerëve. Me kalimin e kohës, parashikimet ligjore të servituteve i janë nënshtruar ndryshimeve specifike, në varësi të nevojave të reja që kanë lindur si pasojë e evolimit të rendit shoqëror në tërësi dhe marrëdhënieve juridike specifike në veçanti.
Në këtë punim do të trajtohen kategoria e të drejtave të transferueshme nga një subjekt i së drejtës tek tjetri, vetëm duke pasur si qëllim kalimin e tagreve të pronësisë për qëllime të caktuara. Problematikat që kanë lindur si pasojë e ushtrimit të së drejtës së pronësisë kanë pas-sjellë kufizime në ushtrimin e të drejtës mbi një send, si rezultat i karakteristikave që kanë lidhje direkte me gjendjen juridike dhe fizike të sendit. Për këtë arsye, legjislatori ka parashikuar një sere dispozitash që vendosin fokusin në shërbimin e pronave reciprokisht kundrejt njëra – tjetrës. Servitutet përbëjnë një kufizim të pronësisë nga njëra anë, dhe fitim të drejtash nga ana tjetër, duke ju referuar dy ose më shumë subjekteve të së drejtës.Në paper do të vendosen në focus problematikat që sjell ky institut, pavarësisht ekskluzivitetit që gëzon çdo subjekt i të dretës për të disponuar, gëzuar, poseduar në mënyrë të qetë një send.

Fjalë kyçe: të drejta reale, servitute, legjislacion civil, send, vullnet i lirë kontraktor.