ABSTRACTS

András Zs. Varga
The Basic Law of Hungary and the Rule of Law – Cooperation between Hungary and the Venice Commission

The new constitution, the Basic Law of Hungary lead to tensions among Hungary and the Venice Commission or the institutions European Union (EU). The trivial explication of these tensions is that circumstances of adoption and some regulations of the Basic Law seemed to challenge the rule of law as fundamental value of the European Union. If the events are projected on the background of nearest history of Hungary, of the EU and of the Venice Commission (with retrospection not longer than about 30 years) it can be concluded, that preparation and adoption of the Basic Law met important moments of development of the concept of the rule of law. This special circumstance had sharpened the position of the interested institutions. It is beyond any doubt that in the next years there will be long debates regarding the co-interpretation of the universal principle of rule of law and national constitutional identities. Among the EU institutions and member states there is a common ground of interpretation, the TEU. Among member states and the Venice Commission the common ground is less clear.

Ágoston Mohay/Ádám Lukonits
Protecting the Rule of Law as a Fundamental Value of the EU – The Article 7 Procedure and Beyond

The rule of law is considered one of the founding principles and fundamental values of the European Union (EU). Regardless that even the concept of rule of law itself brings up questions of interpretation, it is a legal prerequisite of accession to the EU, and the supranational community has also established a procedure to safeguard the rule of law and its other fundamental values vis-à-vis its Member States. Article 7 of the EU Treaty comprises two procedures: a preventive and a reactive version which may be applied independently from each other (a possibility often overlooked in political discourse). The Article 7 procedure however could be formulated more clearly than it is now and is regarded as a political decision with no formalised role for the Court of Justice or the EU Fundamental Rights Agency. A so-called Rule of Law Framework was adopted by the European Commission in 2014 mostly as a reaction to recent national challenges to the rule of law perceived by the Commission, in order to function as a "pre-Article 7" process. This instrument is however non-binding and also uses some undefined concepts (such as that of a "systemic threat"). Making the Article 7 procedure more effective and less political in character would require treaty amendment, whereas the inherent problems of the Framework make it difficult to reach meaningful results beyond political debates.

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Boldizsár Nagy
Renegade in the Club – Hungary's Resistance to EU Efforts in the Asylum Field

The essence of the club is not the existence of bylaws, but the faith of the members that they form an alliance for pursuing a common endeavour. Discipline and loyalty derive from inner conviction and the desire to co-operate for the benefit of all. These virtues are no longer characterising Hungary's attitude towards the EU, which not only aims at the ever closer union of its peoples, but is also attached "to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law" and acknowledges the historic importance of ending the division of the European continent. Hungary is increasingly undermining all these goals and principles, starting with the treatment of irregular migrants and continuing with attacks against pillars of the rule of law, including watchdog NGO-s. This short contribution is limited to a review of how Hungary, once an eminent member of the club in field of asylum, made a U-turn and became the renegade, who destroys its own asylum system and threatens the EU-wide mechanism with blocking measures of solidarity.

Agnieszka Bień-Kacała
Poland within the EU – Dealing with the Populist Agenda

In this paper, the author describes the recent events in Poland in relation to the international and supranational environment. Firstly, the concepts of populism (as described by *J.-W. Müller*) and populist morality are presented. Next to it, the transformative face of populism – the illiberal constitutionalism with a formal understanding of the rule of law is elaborated. Subsequently, it is referred to the international (the Venice Commission and the United Nations) and supranational (the European Union) understanding of the rule of law. Following these parts, the author describes the current actions dismembering the rule of law in Poland as well as analyses and assesses the EU procedures and measures concerning the rule of law. It is also explained that the actions and narration of the Polish ruling majority justified launching the Art. 7 TEU procedure. The populist morality in combination with a formal democracy and the rule of law understanding is clearly reviled in the dialogue between Poland and both the European Commission and the Council of Europe. Although the determination of the EU institutions to improve of the situation is visible, the EU mechanisms used to safeguard the rule of law seem to be ineffective. For that reason, in the author's opinion, the implementation of the procedures of Art. 7 TEU and Arts. 258–260 TFEU will not be conclusive. Furthermore, it is argued that in a situation of invoking one of these mechanisms, the hypothetical sanctions might be disregarded and discredited by the Polish government. Taking the foregoing into consideration, the author asks whether the relativization of the rule of law does not thereby shift to the supranational level.

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Aneta Wiewiórowska-Domagalska
Escape into Private Law as a Means to Avoid Applying EU Law – How Luxembourg is Trying to Save Puszcza Białowieska against Warsaw

The article discusses the judicial conflict over the 25 March 2016 decision of the Polish authorities to allow for a three-fold increase in logging operations in the Białowieża Forest. This decision was challenged by the Polish Ombudsman but also – on the European level – by a complaint of the European Commission leading to a case against Poland in the Court of Justice of the European Union (CJEU). While the CJEU has not yet adopted its final decision (though the imposition of interim measures and a periodic penalty on Poland is highly suggestive), the Polish courts have decided to avoid the application of EU law in a clear violation of the rules. The article sets out the arguments of the Polish government and Polish Courts, and presents the story of a failed dialogue between the EU institutions and the Polish courts.

Maren Krimmer
Certain Challenges for Property Rights in Russia

Russia's membership in the Council of Europe (CoE) meant new engagement towards human rights and international standards. Not only is the implementation into the national law essential, but the putting into practice has been important as well since this has been a flaw in the Russian legal system for quite some time. One of the current interesting legal challenges is the protection of property rights in Russia, especially because the notion of property protection developed during the transition process in the '90s, and has now been manifested in the 1993 Russian Constitution and in Article 1 Protocol 1 ECHR. When looking at the protection of property in Russia, the privatization process in the '90s plays an important role. In order to illustrate this aspect, this article closely examines the "kiosk-case", in which the protection of property is not guaranteed. Not only the destruction of the "kiosks" but as well the invalidation of the privatizations and the critical approach towards the CoE show that the protection of property in Russia is a current topic and still developing. When looking at the property rights protection in Russia, it becomes visible that there are many problems in the implementation of this human right.

Bernhard Schloer
Die Menschenwürde im ukrainischen Recht

Human dignity is mentioned in in the majority of modern constitutions in EU-member states, as – as a "value" in the TEU – as well as in the Constitution of Ukraine. In the light of the increasingly close relations between Ukraine and the EU, where "values" play an important role, this article aims to examine how this value is understood in Ukrainian law and legal science. Therefore, the analysis focuses on these the following aspects: the discussion revolving around the draft Constitution of 1996, the legislation, the decisions of the Constitutional Court and other courts, and the various viewpoints of legal scholars. Furthermore, the influence of examples from other countries as well as international co-operation has been considered. The result of the analysis shows a differ-

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ent approach to the human dignity. In summary, it can be stated that there are different approaches to human dignity: the Constitutional Court had no claim targeted to this value and had no possibility to decide, how this value has to be understood. Hitherto, to the Constitutional Court no legal action has been taken as to the value of human dignity; hence, the Constitutional Court hasn't yet been put into the position of construing this value from a constitutional viewpoint.

In contrast, Ukrainian legislation covers nearly all aspects of human dignity, whereas the literature is mostly vague on this matter. Human dignity is mainly seen in conjunction with an individual person's honor; questions such as the right to human dignity of the fetus are therefore not in the focus of scholarly attention. Foreign examples played a minor role; traces of G. Dürig's theory become visible only from time to time. All in all, the overall picture shows that there is only little awareness of human dignity. Even the so-called "Revolution of Dignity" in 2014 didn't provoke a "wave" of decisions and publications on this topic either. However, the amended Constitution now offers a wider access to the Ukrainian Constitutional Court. Therefore changes can be expected.

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