НОВ БЪЛГАРСКИ УНИВЕРСИТЕТ

ПРОГРАМА НА
МЕЖДУНАРОДНА НАУЧНА
КОНФЕРЕНЦИЯ
НА ТЕМА

ПРАВАТА НА ГРАЖДАНИТЕ И ТЯХНАТА ЗАЩИТА

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NEW BULGARIAN UNIVERSITY

PROGRAMME OF
INTERNATIONAL SCIENTIFIC
CONFERENCE
ON

RIGHTS OF CITIZENS AND THEIR PROTECTION

NEW BULGARIAN UNIVERSITY
6 NOVEMBER 2018
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AND PROF. VERA MUTAFCHIEVA
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REGISTRATION

9. 00 – 9. 30 часа/a. m.

OPENING

Ekaterina Mihaylova,
Chair of the Law Department of New Bulgarian University

I. ROMAN LAW

THE DEFENSE AND PROTECTION OF CITIZENS' RIGHTS FROM ROME TO TODAY

Antonio Fernández de Buján y Fernández, Autonomous University of Madrid, Spain

Abstract: At the jurisdictional level, the Roman political community is aware, from the early days of its existence, of the imperative need to assume the monopoly of the administration of justice, for the sake of maintaining public order and protecting the law social peace.
The popular action arises in ancient Athens 2,500 years ago, and the development of their legal regulation in the Roman Republic in a far historical and political context, but not very different from today.

Key words: Defense of Rights, Justice Administration, Public Order, Social Peace, Popular Action, Ancient Athens, Roman Republic, Popular Legitimation.

ABOUT FREEDOM (LIBERTAS) AND ROMAN CITIZENSHIP. SOME HISTORICAL EXAMPLES OF ITS MODERN INFLUENCE

Juan Manuel Blanch Nougués, University CEU San Pablo, Madrid, Spain

Abstract: The concept of freedom (libertas) has a rich variety of semantic meanings, the result of a long historical evolution. Classical antiquity and Christian thought have contributed to its formulation.
Very relevant is the legal treatment, in relation to the human being, that freedom receives in the Justinian compilation, specifically at the beginning of the Digest of Justinian and the Institutions. In addition, facing a possible conception of the three status as separate compartments, freedom and citizenship, however, are considered intimately linked in Rome. On the other hand, it is debatable that liberty was not ever conceived by the Romans in an individualized way, as a part of the doctrine thinks.
A special mention deserves the well-known definition of the classical jurist Florentino (9 inst. D. 1.4.5 pr. = I. 1.3.1), which seems to refer, in general, to human beings. It could be put in relation with the so-called negative freedom, coming from the famous politician and historian Isaiah Berlin. To the thought of this last author, the well-known historian Quentin Skinner has more recently alluded. Specifically, to the question of the historical origin of negative freedom, Skinner adduces the English example of the early seventeenth century.
Another example of modern use in this area is that of the Spanish theologian of the s. XVI Francisco de Vitoria about the condition of the Indians in America.

Key words: Libertas, Freedom, Citizenship, Justinian Compilation, Status, Modern Law.

THE TYPES OF DEMOCRACY AT THE LIGHT OF THE REPUBLICAN ROME

José María Llanos Pitarch, University of Valencia, Spain

Abstract: In a comparative analysis between the Roman world and today in Spain, this work aims to establish a possible harmony between the work of the Assemblies comitial with the "endorsement" of the Senate, and our two legislative chambers: the Congress and Senate. This is, firstly, to analyse the possible mapping mode proceed Rome and current, and to extract the natural differences, derived from two different companies openly. Not everything is extrapolated between two anachronistically distant worlds; but it seems possible the study of democracy at present, based on the principles, assumptions and foundations that date back to Roman times, mainly from the Republican era. The difference between participatory democracy and representative democracy also has a "raison d'etre" in both types of society, and open possibilities both. The obvious resemblance between the Roman Senate and the Council of State acting as "council of the kingdom" in our positive juridical-political order must be added.

Key words: Ancient Rome, Democracy, Res Publica, Assemblies Comitial, Senate.

ABOUT THE PROTECTION OF THE MOST DISADVANTAGED CITIZENS IN THE PROTO-BYZANTINE PERIOD

José María Blanch Nougués, Autonomous University of Madrid, Spain

Abstract: In proto-Byzantine period it developed, due to the determining influence of Christianity and, to a certain extent also, of various Greek philosophical currents, an imperial policy of care and protection of society: sick, elderly children, poor… We can speak of the first historical antecedent in Europe of the current social States that implement, today, a system of public health and social security for the population. Thus, the institution of the pia causa or Christian charitable establishment is born as a legal entity with a nature of foundation at the service of social purposes. This activity will also be developed by numerous monasteries both in the Byzantine Empire and in the medieval Kingdoms of Western Europe. Especially, Justinian's legislation established the legal regime of such establishments.

Key words: Christianity, Greek Philosophy, Proto-Byzantine Period, Imperial Policy, Care, Protection, Pia Causa.

THE BISHOP AS DEFENDER AND PROTECTOR OF CITIZENS IN LATE ROMAN EMPIRE. THE TESTIMONY OF THE LETTERS OF ST. AUGUSTIN

José Antonio Martínez Vela, University of Castilla–La Mancha, Albacete, Spain

Abstract: The Late Roman Empire is one of the most exciting periods in history, so it's important its study and knowledge as a way to understand better some of the problems that still arise nowadays, as well as to raise some solutions.

Logically when someone analyze a legal institution, he must do it on the legal sources that have survived. But, its fragmentary nature and the possible interpolations make necessary an analysis of the multiple references that have been conserved in other types of sources, such as literary sources.

In this respect, the works of one of the most important thinkers and philosophers of all time, as was Saint Augstin, constitute an immense source that can help us to know how it was the real development of numerous situations regulated by the later roman law. Precisely, his correspondence will help us to understand the various vicissitudes that arose along a procedure, and how the bishops

assumed an important role to protect and defend the interests of their "flock", not only through the "episcopalis audientia", but also mediating before the competent civil authorities, especially in fiscal processes.

Key words: Late Roman Empire, Bishops, Protection, Episcopalis Audientia, Saint Augstin.

THE RIGHT TO INTIMACY IN ANTIQUITY AND ITS PROJECTION IN THE CURRENT LAW: ANTIGONE

Juan Alfredo Obarrio Moreno, University of Valencia, Spain

Abstract: Before reading the work of Sophocles, it is worth asking: Who is the heroine of this work? A young girl without parents or siblings, who lives in the shelter of her uncle / King, with whose son she hopes to marry in a short space of time. A young woman who has been persecuted by a family curse since her father, Oedipus Rex, fell into disgrace.
Antigone does not seek flattery, she only seeks to live and die by safeguarding what for her is the only important thing: her rights, and her conscience; an awareness that forces him to sacrifice his marriage and his life, to safeguard the faith that he has in his gods and the love he feels for a brother, fallen into disgrace, but who can not leave without burial. Honor, blood and beliefs prevent it.
For this reason, Antigone represents the concept of heroism. The heroism of a young woman who knew how to oppose an unjust law, not by whim, but to defend some principles and rights that the Power-State denied her.

Key words: Right to Intimacy, Heroism, Law, Antiquity, Antigone.

REFLECTIONS ON THE MAXIM "CONCEPTUS PRO IAM NATO HABETUR"

María Etelvina de las Casas, University La Laguna of Tenerife, Spain

Abstract: Roman law is part of the European tradition and spirit. It constitutes the source and main origin of maxims, rules, principles and legal axioms that are applied as a consideration of current law. Since Roman law is a casuistic law, jurists did not elaborate abstract and much less general legal concepts. They looked for the solution to the concrete case following the criterion of the utilitas. Specifically, with regard to the person to be born, the conceived one, the roman maintained a constant preoccupation, worrying for his protection, as for his life, rights and goods. The protection of these interests gave rise to the maxim "Conceptus pro iam nato habetur". Maxim that seems to have this origin in classical jurisprudence was later formulated in Justinian's law and has come to our Civil Code. In this article we will try to see the evolution of this maxim that has been discussed throughout history.

Key words: Regulae Iuris, Conceptus Pro Iam Nato Habetur, Spes, Civil Code.

SOME CONSIDERATIONS ABOUT THE FIGURE OF THE "CURATOR VENTRIS" IN ROMAN LAW AND IN THE PRESENT LAW

Juan Antonio Bueno Delgado, Universidad de Alcala, Spain

Abstract: As noted in the sources, the Roman Law met with meticulousness the protection of the conceived and unborn baby (nasciturus), granting protection in the legal order through the figure of

the curator ventris. In this way, since the embryo is in the uterus, it has certain rights, as if it were considered as a person (and, therefore, a subject of rights).
The curator ventris – as representative of the Roman people – was in charge of looking after his interests, starting with the right to be born; for which it should, and could, adopt all kinds of procedures and measures designed to safeguard it. This figure was projected, with different approaches and denominations, in numerous Civil Codes, especially from romanistic roots, in which at present it maintains its validity.
In the present work, we will make an approach to the protection and defense mechanisms that the embryo had in the Roman legal order and to those it has in the current regulation, through what we could call a "curator ventris" adapted to the XXI Century; without taking into account the modern techniques of insemination that can give rise to such different states as for example the freezing of embryos and pronuclear oocytes (cells with both nuclei, the one of the ovum and the spermatozoon, but still without genetic conjunction), which will not be here object of study.

Key words: Nasciturus, Curator Ventris, Protection, Roman Law, Modern Law.

THE PROTECTION OF HONOR IN ROME AND ITS INFLUENCE ON ACTUAL LEGAL SYSTEMS

Raquel Escutia Romero, Autonomous University of Madrid, Spain

Abstract: Honour is one of the socially relevant, most essential and valuable legal assets of the person – now a fundamental right – and whose protection is vital for a peaceful and harmonious coexistence of citizens in society. Thus the behaviours that offend him (traditionally classified as insults, slander and, sometimes, defamations) are examples of those socially undesirable behaviours that channel the general reproach. Therefore, crimes against honour are part of the group of classic punishable behaviours of criminal law, although as Maurach says, "the legal right to honour is the most subtle, the most difficult to apprehend with the clumsy gloves of Criminal Law".
The protection of honour is relevant already in Rome and is developed in Roman law where the classic concepts of crimes against honour are conformed (iniuria, calumnia, infamatio…), are defined along a broad historical evolution. punishable conducts and causes of justification (exceptio veritatis, consent of the victim ...), the characteristic subjective element of the animus iniuriandi, the passive subjects that hold the active legitimation and the active subjects to whom the passive legitimation corresponds, the characters of the actions and the penalties.
Therefore, the communication will focus on the analysis of the protection created in Rome and its projection and adaptation in subsequent and current legal systems, both in the European continental model and in the Common Law model.

Key words: Protection, Honor, Iniuria, Calumnia, Infamatio, Roman Law, Modern Law.

"NE DAMNA PROVINCIALIBUS INFLIGANTUR": SOME OBSERVATIONS ON THE PROTECTION OF THE RURAL POPULATION IN THE POST-CLASSICAL AND JUSTINIAN LAW

Elena Quintana Orive, Autonomous University of Madrid, Spain

Abstract: In the communication reference is made to different laws included in the Theodosian Code and the Justinian Code that punished the abuses and extorsions to the peasants carried out by the provincial officials (CTh. 8,1,4; CTh. 8,15,3-5; CTh. 11,11,1; Cth. 11,55,2; C. 1,53,1-4, etc.).

Key words: Theodosian Code, Justinian Code, Provincial Officials, Protection, Rural Population, Post-Classical Roman Law.

THE DEFENSE AND PROTECTION OF PUBLIC WATER USES IN ROMAN LAW AND IN CURRENT SPANISH LAW. A COMPARATIVE STUDY OF PROHIBITED ACTIONS AND THEIRS PENALTIES IN FRONTINO AND IN THE SPANISH WATER LAW

Gabriel M. Gerez Kraemer, University CEU San Pablo, Madrid, Spain

Abstract: The protection of public waters under current Spanish law is regulated in titles V and VII of the Water Law. In the 1st the objectives of protection are regulated, the concept of pollution is defined, the Administration is established as the head of the water police and its powers, the protection zones are established, water spills are regulated, etc.
Title VII, for its part, orders infringements, sanctions and powers of the courts, in articles 116 to 121.
Almost 2000 years before, Frontino, recently appointed in 95 AD, curator aquarum – "head" of the water police – prepares a report on the state of the aqueducts entitled "Of the aqueducts of the city of Rome".
In it, he reports, among other things, the difference in flow between the head of the aqueducts and the one that actually flows into the water castles of the metropolis. This fact, which he attributes to the frauds of both the aquarii ("plumbers") and privates, leads him to enunciate the different infractions and penalties that pursued this type of behavior. The parallels between one order and another are very remarkable both in the type of conduct pursued and in the planned penalty, as we are going to show in this exposition".

Key words: Roman Water Law, Spanish Water Law, Water Uses and Abuses, Water Frauds, Infractions and Penalties.

THE SURFACE RIGHT FROM THE FUNCTIONAL POINT OF VIEW

María Victoria Sansón Rodríguez, University of La Laguna of Tenerife, Spain

Abstract: The surface right seems to contradict an ancient Roman principle 'superficie solo cedit', according to which everything that is firmly attached to the ground belongs to it, so that the building built on foreign soil accesses the owner of the land. This right can only be explained from the functional point of view. In its origins it fulfills an economic-social function in relation to the long housing crisis that Rome experienced after the war against Hannibal. Most of the land available around the city was ager publicus and, as res extra commercium, inalienable. The solution found was the possibility of leasing this public land for the construction of buildings and their use in exchange of a canon (solarium). Over time, this was extended to private lands. To the civil protection of the actio conducti soon was added a higher praetorian protection, the interdictal and, if the lease was for a long time, the magistrate could grant, causa cognita, an actio in rem. Despite these changes, the principle 'superficie solo cedit' was preserved throughout the classical period and was even recovered in the Justinian Law, but it already suffered many limitations and in post-classic times the nature of the surface right changes. The functional criterion also explains modern surface law.

Key words: Superficies, Roman Law, Ius Soli, Solarium, Praetorian Protection.

A REFLECTION ON THE CONDICTIO IN SABINO: D.12.5.6

José Miguel Piquer Marí, University of Valencia, Spain

Abstract: As says FERNANDEZ DE BUJÁN, the justice appears as derivative and as ideally to managing for the *ius*; idea of philosophical rooting that, according to the distinguished spanish professor, sinks his roots in Plato and Cicero. If as PRINGSHEIM says the *condicitio* is in use in classic law as "*eines Mittels zur Rechtsfortbildung*", at all so more relating to introduce the study of a fragment in which the iniusta causa, contained in D.12.5.6, appears as fundamental centre of Sabino's response in the context of the condictio with which *suum cuique tribuere*.

Key words: Ius, Iustitia, Condictio, Iniusta Causa, Digesta Iustiniani.

LEGAL LANGUAGE AS A MEANS OF CITIZEN PROTECTION IN SOME CONSTANTINIAN CONSTITUTIONS

Carmen Palomo Pinel, University CEU San Pablo, Madrid, Spain

Abstract: Some Constantinian constitutions have attracted the attention of Roman Law scholars because of their non-technical language. Thus, Edoardo Volterra, in 1958, after an analysis of C. Th. 3. 16. 1 (the famous constitution in which the three assumptions that allowed a woman to divorce her husband were settled), hypothesized that this lack of technicality could be due to having been written by people belonging to the Church instead of by legal professionals. After the analysis of other constitutions, such as the one in C. Th. 11. 27. 1, we believe that we can say that, in addition, these writers seem to have shown special care with legal language when the recipient of the message was a person in situation of vulnerability. This could complement the previous hypothesis. The recent concern for an understandable legal language as a means of citizen protection might not be something new at all.

Key words: Imperial Constitution, Emperor Constantin, Roman Law, Protection, Citizens, Legal Language.

PROCEDURAL ISSUES ARISING FROM THE ANALYSIS OF THE FORMULA CONTAINED IN THE LEX RIVI HIBERIENSIS

Maria Lourdes Martínez de Morentin, University of Zaragoza, Spain

Abstract: In our communication we want to examine some particularities related to the procedural formula found in the preserved text of the lex rivi Hiberiensis, an epigraphic document of the Tarraconensis province dating from the Adriaan period, which contains, according to the specialists, the regulation of a community of irrigators. It is a question of considering the legal basis of the action that appears in it, the problems arising in terms of its interpretation as well as the proposed solutions. The specialists in the matter strive to place the formula examined in a precise category – ius civile, ius honorarium – and to give sense of it from the principles of the Roman law. Undoubtedly, it provides relevant data on the study of the form procedure in the provinces of the Roman Empire

Key words: Lex Rivi Hiberiensis, Roman Procedural Law, Formula, Emperor Hadrian, Ius Civile, Ius Honorarium, Provinces of the Roman Empire.

THE SUBJECTIVE CONDITION AT THE ADMINISTRATIVE ACTS AND ITS CONTINUATION AT THE ADMNISTRATIVE APPEAL

Maria Asuncion Sonia Mollá Nebot, University of Valencia, Spain

Abstract: The Excellence Project of Research and Developpment DER-2016-78378-P has dealt with the real scope of women's intervention in the social, economical, and even political life at the literary ressources. Certain wellknown texts, like the speech of Hortensia, had already been studied in former papers. Anyway, we have reached an increasing certainty about the fact that there was a lack of formal requirements for the administrative acts comparable to our nowadays ruling. Hence some acts we can catalogue as "admnistrative acts" in Roman Law due to their consequences, bear ressemblance to appeals of acts or dispositions rosen in the frame of the adminsitrative proceedings of the owner (e.g., Celsilla's demands addressed to the Senate) or the taxpayer (Hortensia' s demand). We have already written and published commentaries about these disputes. The aim of the present work is to trace a comparison between the description of the classical administrative proceedings and nowadays regulation. We can define those proceedings as a kind of administrative supervision over the exercise of rights.

Key words: Roman Woman, Hortensia, Administrative Acts, Administrative Appeal.

PROBATIVE VALUE OF THE DOCUMENT: HISTORICAL BACKGROUND IN ROMAN LAW AND ITS PROJECTION IN EUROPEAN LAW

Carmen Gómez Buendia, Rovira i Virgili University, Tarragona, Spain

Abstract: The origin of the documentary phenomenon can be found in the East, especially in Athens in the 4th and 5th centuries BC, and later it is extended to the Greek-Macedonian monarchies from Alexander's empire, principally in Egypt and Syria. This eastern world attributed to the document a value not only probative but also constitutive of the legal transactions contained in it. Precisely one of the few institutions of Ancient Greek law that penetrated in Roman law and in turn in modern legal systems are some forms of notarial documentation. A study of the background to the probative value of the document reveals common elements that we find currently both in national legislations and in European Union law. An example is the Regulation (EU) 2016/1191 of the European Parliament and the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union. The Regulation contains a definition of public document which links up with its essential elements also present in Roman law. The notion of public document contemplates three fundamental elements that have been a constant in the history of this category: the subjective element: the document is issued by a public authority, the objective element: the compliance with certain formalities, and its probative value, which is still the purpose of the existence of the category.

Key words: Public Document, Probative Value, Roman Law, European Law.

II. MODERN LAW

THE STATUTE OF LIMITATIONS OF THE RIGHT OF THE ADMINISTRATION TO DETERMINE THE TAX DEBT AS AN INSTRUMENT TO DEFEND THE RIGHTS OF CITIZENS

Antonio Fernández de Buján y Arranz, Madrid Complutense University, Spain

Abstract: The statute of limitations as indicated, among many others, in the STS of June 7, 2011 "the prescription of the action constitutes an obstacle to the late exercise of the rights that is imposed for the benefit of certainty and legal certainty, and not for profit or based on intrinsic justice. For this reason, it should merit a restrictive treatment, which does not fail to address the question of whether those values of certainty and legal certainty are or may be really affected or endangered [...]".
It is clear that the application of the statute of limitations must be carried out in accordance with the constitutional principle of legal certainty – Article 9.3 of the Spanish Constitution – which is what inspires and constitutes the foundation of the institution reference.

Key words: Financial and Tax Law, Rights of Citizens, Right of the Administration, Tax Debt, Limitations.

DEFENCE OF THE ELECTIONS – DEFENCE OF DEMOCRACY IN ANCIENT ROME

Malina Novkirishka–Stoyanova

Abstract: Elections of state bodies on the basis of a common, equal and direct suffrage by secret voting are one of the foundations of modern democracy. Irrespective of the way elections are proclaimed, and the way the election process is set out in the constitution, the election laws and regulations, in every country during elections there are complaints and calls for fight against corruption. Political and social scientists state that this phenomenon is so ancient and ingrained in social practice that it is impossible to eliminate. Nevertheless, there are both penal and administrative measures against electoral corruption. For them to be enforced it is necessary to form a social conscience, imperviousness and intolerance towards any corruptive practices and ensure cooperation against unfair electoral competition.
Some examples from Ancient Rome, including legislative, from the period of the Republic have a surprisingly modern projection. The attempts of the Roman public power to deal with crime, called ambitus, can also be a source of ideas about present-day fight against electoral corruption. Of particular interest is also the brief treatise ascribed to Cicero's brother – Quintus Tullius Cicero, entitled Commentariolum petitionis (as well as De petitione consulatus). Being written probably around 65–64 BC in an epistolary form and rich in rhetoric, it contains instructions to the candidate for a consul, Mark Tullius Cicero, about the course of his election campaign in 64 BC when he is elected consul for the following 63 BC. There has been some doubt regarding the authenticity of this electoral handbook, written in a highly rhetorical style with advice which an experienced politician such as Cicero was hardly unaware of and did not apply in his practice. Therefore, there have been opinions that it was written for the purposes of propaganda and magnification of the good governor or maybe it was merely a rhetorical exercise characteristic of the beginning of the Principate mostly during the rule of Augustus or Trajan. It contains not only an explanation of the electoral and political processes marking the end of the Republic but also a delineation of the rightful from the wrongful electoral behavior and the intervention of the law in the relevant violations.

The electoral process in Ancient Rome is much closer to the electoral practices of today than that in Ancient Greece where democracy is exercised through participation in numerous bodies of power and governance determined by lot among voters. Albeit in Rome not everybody is entitled to vote in the elections (ius suffragii), and even fewer have the right to be elected (ius honorum), it is namely the electoral process which is a sign of democratic development of the state conceivable as a historical model of modern times. Forgetting the practices from the period of the Roman Republic, Roman public law is related solely with the monarchical institutes and has remained outside the focus of academic research for centuries. The new trend of research into the legal heritage of Ancient Rome from the second half of the XX century and particularly in the last decades requires us to turn a greater attention namely to republican law and to try to reconstruct its main institutes among which the formation of the bodies of public power and government take a forefront position.

Key words: Elections, Democracy, Ius Suffragii, Ius Honorum, Cicero, Commentariolum Petitionis.

CHANGES IN THE ADMINISTRATIVE PROCEDURE CODE AND THE GUARANTEES FOR THE FULL REALIZATION OF CITIZENS' RIGHTS OF DEFENCE IN THE ADMINISTRATIVE PROCESS

Raina Nikolova

Abstract: The report comments on the amendments to the Administrative Procedure Code concerning the limitation of public sessions, the limitation of the cassation proceeding and other issues that affect the rights of citizens to be protected in the administrative process.

Key words: Administrative Procedure, Rights of Citizens, Defence, Public Sessions, Cassation.

LEGAL REGULATION OF THE NON-REFOULEMENT PRINCIPLE

Blagoy Vidin
Katerina Yocheva

Abstract: The principle of non-refoulement prohibits the transfer of a person from one authority to another when there are substantial grounds for believing that the person would be in danger of being subjected to violations of certain fundamental rights.
The principle is found expressly in international humanitarian law, international refugee law and international human rights law, though with different scopes and conditions of application for each of these bodies of law. According to some views the core of the principle of non-refoulement has also become customary international law.
The paper looks at the modern meaning of the rule, its scope and content as well as to its origins.
The principal purpose of this paper is to establish as clearly as possible the present standing and scope of the principle of non-refoulement not only in international, but also in national (Bulgarian) and EU law.

Key words: Non-Refoulement, International Law, EU Law, National Law.

RIGHTS OF THE CITIZENS AND THEIR PROTECTION BY THE OMBUDSMAN'S BRINGING A CASE BEFORE THE CONSTITUTIONAL COURT OF REPUBLIC BULGARIA

Ekaterina Mihaylova

Abstract: The institution of the Ombudsman was created for the first time in Bulgaria with the adoption of the Ombudsman Act by the 39th National Assembly on 8th May 2003, which enters into force on 1st January 2004 (SG, issue 48, 23rd May 2003).
The amendment of the Constitution of Republic Bulgaria in 2006 further established the institution of the Ombudsman on constitutional level with the authority to bring cases before the Constitutional Court with an application for declaring the unconstitutionality of any law that violates the rights and freedoms of the citizens – Article 150, para 3 of the Constitution of Republic Bulgaria (SG, issue 27, 2006).
For a period a little longer than a decade the Constitutional Court has developed the case law on the Ombudsman's authority to protect the rights of the citizens and this article is focused on it.
Special attention has been drawn to the constitutional case No.19 of 2009 (Order No. 1 of 2010) and to the constitutional case No.14 of 2010 (Order No. 8 of 2010). The Constitutional court stated that the Ombudsman had no authority to initiate proceedings to verify the compliance of Bulgarian law with any commonly recognized norms of international law and with any international conventions ratified by Bulgaria. Besides the Ombudsman may bring cases for establishment of unconstitutionality of laws only, but not of any other acts of the National assembly or any acts of the President. Furthermore, the Ombudsman may contest only laws that violate the rights and freedoms of the citizens as determined by the Constitution of Republic Bulgaria.

Key words: Ombudsman, Rights of the Citizens, Authority to Bring Cases Before the Constitutional Court, Laws, Acts of the National Assembly, Acts of the President.

COMPENSATION FOR DAMAGES, CAUSED DURING THE SERVING OF SENTENCE OF IMPRISONMENT OR DETENTION ON REMAND

Polya Goleva

Abstract: The report deals with the specifics in the compensation for non-pecuniary damages caused to persons serving their sentence of imprisonment or detention on remand. The latest changes in the Act on enforcement of punishments and detention on remand introduced in 2017 a specific tort liability of the state for damages suffered by prisoners and detainees subjected to torture, cruel, inhuman and degrading treatment or placed in unfavourable conditions such as insufficient living space, food, clothing, heating, lighting, medical care, etc. which diminish human dignity or provoke a feeling of fear, vulnerability or inferiority. The novelty in this tort liability is the presumption of non-pecuniary damages which facilitates victims in court trial whereas it relieves them from the burden to prove damages and causation with the wrongful conduct of the defendant. Thus, prisoners are placed in a better position that victims of crimes, traffic road accidents, medical malpractice, etc. who have to prove damage and causation.

Key words: Compensation, Damages, Performance of the Punishment "Imprisonment", Detention on Remand, Protection of the Rights of Prisoners.

THE FREEDOM OF EXPRESSION AND THE MEDIA IN THE CONTEXT OF THE NEW EU GENERAL DATA PROTECTION REGULATION

Denitza Toptchiyska

Abstract: In the frames of the new EU General Data Protection Regulation the Member States shall introduce at national level specific legislation in order to reconcile the right to the protection of personal data with the right to freedom of expression and information. The article aims to analyse the proposed legislation in Bulgaria and other EU countries on the basis of the experience gained from the previous legislation and the established case law.

Key words: EU General Data Protection Regulation, Data Protection, Media Privilege, Data Processing for Journalistic Purposes.

LABOUR RIGHTS – BETWEEN NATURAL-LEGAL AND LEGAL-POSITIVIST VIEWS ABOUT HUMAN RIGHTS

Ivaylo Staykov

Abstract: Under consideration in the paper is the place of labour and other social human rights in the human rights' system that evolved historically upon the concepts of natural-law school and legal positivism. The author justifies the common civilised significance and the universal nature of labour and social human rights.

Key Words: Labour Law, Human Rights, Natural-Law School, Legal Positivism.

LIMITS ON LIMITING OF HUMAN RIGHTS ACCORDING TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Snezhana Botusharova

Abstract: The human rights and fundamental freedoms have always been the counterbalance of the state governance vis-à-vis the aim of the people to live in freedom or at least free from governmental despotism. Once constitutionally and legally recognized they became political and legislative authority, legally binding and barrier to government acts and state interference.
The European Convention on Human Rights was adopted in 1950 as a response and reaction to the serious human rights violations in Europe during the Second World War. It evolved into being a European bill of rights with the European Court of Human Rights as the enforcement mechanism.
The Convention imposes on the contracting parties both positive and negative obligations, as well gives them the possibility to make a reservation in respect of any particular provision of the Convention.
Further, a state is enables to derogate unilaterally from a substantive Convention obligation in exceptional circumstances under the monitoring of the ECtHR.
The limits on limiting of the rights under Articles 2, 3 and 4 of the Convention and Articles 8, 9, 10 and 11 being strictly exhaustive will be subject of detailed analysis.

Key words: Human Rights, European Convention on Human Rights, Limits**.**

THE PRINCIPLE OF EQUALITY OF RIGHTS AND DIRECT TAXES IN THE EU

Ginka Simeonova

Abstract: The report examines the link between the principle of equality and direct taxation within the European Union in the context of the state and tax sovereignty of the individual members of the Union on the one hand and the functioning internal market based on the four freedoms of movement in the EU – movement of goods, services, capital and people. The principle of equality ensures that tax legislation must be applied in full and impartially, irrespective of the status of the person, without exception for all those who fall under the same circumstances, with cross-border legal relationships being of interest. Equality does not mean identity but equality between persons who are in a similar situation. This principle legitimizes the taxation of the state and the citizen's obligation to finance government expenditures. However, it also limits the tax authorities of the administration, where there is no reality or efficiency of taxation based on proportionality or real economic capacity and ability to pay. While it is true that there is no system or policy that cannot be improved, it will be difficult to find such solutions that reconcile the interests of the state and the interests of taxpayers, the same system and measures will in most cases be interpreted differently from active and passive tax entities

Key words: Tax Law, Direct Taxes, Principle of Equality, EU.

THE RIGHT TO HAVE RIGHTS

Deyana Marcheva

Abstract: The famous phrase of Hannah Arendt "the right to have rights" sums up the scepticism about the concept of human rights in the Universal Declaration of Human Rights, adopted by the United Nations in 1948. How are those rights that, in theory, belong to every person by virtue of existence, guaranteed? Arendt was a stateless refugee for eighteen years, from the time she fled Nazi Germany, in 1933, until she was naturalized as a United States citizen, in 1951. She experienced at firsthand that in order to have rights, individuals must be more than mere human beings. It is by no means certain that the right of every individual to belong to humanity is guaranteed by humanity itself, but it must be a member of a political community. Only as a citizen of a nation-state can a person enjoy legally protected civil, political, social or cultural rights. It turns out that any international mechanism for human rights protection depends on the willingness of nation-states to enforce it. For that reason, it is essential to build and sustain such constitutional systems of human rights protection that guarantee the rule of law and effective remedies not only for the citizens of the nation-state but to any human beings.

Key words: Right to Have Rights, Hannah Arendt, Nation-State, Refugees, Constitutional Systems.

EQUALITY OF CITIZENS AND EQUAL PROCEDURAL RIGHTS OF THE PARTIES IN THE BULGARIAN CRIMINAL PROCEEDINGS

Elena Nedyalkova

Abstract: According to the Criminal Procedure Code, the equality of citizens is mainly expressed in the absence of any restrictions on their rights and privileges based on race, nationality, ethnicity, sex, origin, religion, education, beliefs, political affiliation, personal and social status or property status.
By participating as expert witnesses, witnesses, translators, interpreters, witnesses of investigation, etc., citizens have certain procedural rights in the Bulgarian criminal proceedings.

Key words: Procedural Rights, Citizens, Criminal Procedure.

THE RIGHT TO PROPERTY AS A GUARANTEE FOR THE REALISATION OF HUMAN RIGHTS AND FREEDOMS

Milena Karadjova

Abstract: The social idea accompanies the socio-political development of Europe and Antiquity. "The Society of Equals" in Sparta the legislation of Solon in Athens, Legs Liciniae Sextiae as well as Lex Sempronia in Ancient Rome. Christianity evolves in the East as a religious doctrine. And the East is rather collective as attitude and is not individualistic. Its dissemination in the West leads to the formation of differences, justified to some extent by the higher degree of individualism in that part of the continent. Those differences remain distinguishable also in the concepts that have been formed with regard to property and its governance in the Middle Ages and they continue to play their role in the period of Modernity. Based on those historic facts, the study is focused on the issues with regard to the development of the social idea in the XIX century concerning the distribution of ownership and of goods as a whole and to the implementation of those ideas in a concrete political doctrine and legislative framework in the context of the socialist states of XX century.

Key words: Property, Right to Property, Social Idea, Social State, Socialist State.

THE PRINCIPLE FOR PROPORTIONALITY IN THE ENFORCEMENT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE CODE

Pamela Boutchkova

Abstract: The Administrative Procedure Code introduces the principle of proportionality as guarantee for protection of the rights and lawful interests of the citizens in the proceedings of administrative character. The article reviews the specific expression of this principle in the enforcement proceeding sunder the Code as it also draws attention to the up-to date case law. The purpose of the analysis is to introduce possible solutions of the problems in the law enforcement.

Key words: Administrative Procedure, Principle of Proportionality, Law Enforcement, Lawful Interests.

WOMEN IN BULGARIAN EDUCATION

Petya Nedeleva

Abstract: The issue of the rights of Bulgarian women historically affects different points of view. This is largely instigated by customary law, Christian morality, popular beliefs and traditions. At the centre of the traditional Bulgarian family and society as a whole is the man, and the woman has the duty to be subordinate and dependent, without the right to stand alone, being often placed on the same level or even lower than the children. Traditional attitude towards women in society leads to a natural refusal to gain access to education. It is enough for the educated, enlightened women to be considered immoral, pretentious, inappropriate for wives. These trends are undoubtedly widespread during the period under review not only in Bulgaria. Initial information on access to education for Bulgarian women dates back to the late 18th and early 19th centuries.

Key words: Rights of Women, Education, Revival, Legal Regulation.

SUSPENDED SENTENCE AS A MANIFESTATION OF THE PRINCIPLE OF HUMANITY IN CRIMINAL LAW

Ralitsa Kostadinova

Abstract: This report explores the suspended sentence in Bulgarian Criminal law through the lens of the principle of humanity. This principle can be observed at the time suspended sentence was introduced and during the stages of its development in Bulgaria from the beginning of XX century till today. The concept of combating crime through minimal criminal coercion is brightly manifested in the institute of suspended sentence and confirms that humanity is a leading principle for the Bulgarian Criminal law.

Key words: Suspended Sentence, Humanity, Punishment, Criminal Law.

BOUNDARIES AND PROTECTION OF THE RIGHT TO PRIVATE LIFE

Silvia Tsoneva

Abstract: The report explores the right to private life in three specific aspects. First, the right to private life is analysed as it stands in the relationship citizen-state, on one hand, and in the relationship between private parties, on the other hand. This aspect examines the influence of the human rights on private law in the context of the right to private life. The second problem brought to discussion deals with the boundaries of the right to private life and its points of intersection with the freedom of speech, the right to be informed, the right to be forgotten and the truth who we are and what we are. The third group of issues takes into consideration the legal framework and the availability in fact of an efficient legal protection of the right to private life in Bulgarian law.

Keywords: Right to Private Life, Human Rights, Freedom of Speech, the Right to be Forgotten.

THE PERSONAL PENSION – A LEGAL POSSIBILITY OR A SUBJECTIVE RIGHT?

Maria Chochova

Abstract: The Social Security Code establishes the possibility for the Council of Ministers, under certain terms and conditions govern by it, to grant pensions in exceptional cases to persons for whom some of the requirements of the Code haven't been met. On the other hand, the Ordinance on pensions and insurance practice in the provision of Article 7, para. 2 stipulates that personal pensions may be granted to specifically listed categories of persons, who have not been granted a pension under the Bulgarian legislation or the provisions of the bilateral or multilateral international treaties to which the Republic of Bulgaria is a party. The report examines if the right for personal pension insurance is subjective right or it represents only a legal possibility in accordance to the current legal settlement. Issues, related to the possibility of judicial review of the acts of the competent authorities regarding the proposal and the granting of a personal pension itself, are also discussed.

Key words: Pension, Personal Pension, Subjective Right, Legal Possibility.