

ABSTRACTS

Monica Vlad

Die Entwicklung des Verfassungsrechts in Rumänien The Development of Constitutional Law in Romania

Almost three decades following the breakdown of the Communist rule in East Europe, the problem of legal reforms turns out to be apparent in all its complexity. What can be deemed genuine progress on the path towards democracy? For the purpose of analysing the given topic realistically, two aspects are taken into account in this article: firstly, the analysis of the contemporary context, and secondly, specific questions in the context of constitutional reform. The contemporary perspective of the political context is intended to describe the depth of the targeted transformations in the Romanian society. In the following, the article is dedicated to the analysis of specific questions pertaining to the reform of the constitution, as this topic represents an “interface” between the normative claims, on the one hand, and political reality, on the other hand.

In particular, the article discusses: the nature of the Romanian state, the constitution of 1991 and the substantial constitutional reform of 2003, the controversies revolving around the constitutional reforms, as well as the question of how democracy shall be consolidated in the Romanian society.

Monica Vlad

Die Entwicklung des Verwaltungsrechts in Rumänien The Development of Administrative Law in Romania

This article discusses some of the most vital aspects and institutions of administrative law in contemporary Romania, i. e. in particular, the highly deficient role of the ombudsman, several legal means enabling citizens to counteract misuse of power – in particular, the administrative jurisdiction act, the current state of the draft of a new administrative procedures act, and the local administration.

The article concludes that, despite ongoing reforms, Romania can be characterised by a high extent of instability, which is not only displayed in the fact that since 1990, the country has seen a total of 29 (!) governments, but also in the apparent inconsistency of legislation, initiatives, and administrative projects. Additionally, there are several factors intertwined with the country’s history, hierarchial mentality and socio-cultural setting that are constantly hampering the introduction of a reliable, consistent system of administrative law and jurisdiction.

Christian Alunaru

Die Entwicklung des Zivilrechts in Rumänien The Development of Civil Law in Romania

In contrast to the other Eastern European countries, during Communist rule, Romania did not introduce an entirely new civil code, adapted to the requirements of the new societal, political and economic order. Instead, the old civil code (*Codul civil român*), which was originally enacted in 1865, remained valid till 2011.

This article discusses the changes and amendments to Romania's civil code under Communist rule, including several special acts in the context of the Communist doctrine (relating to, in particular, nationalisation of private assets, and dispossessions), legislation pertaining to compensations and restitution after 1989, the right of foreigners to acquire land and real estate, and statutory rights of pre-emption. The article then continues with a discussion of the new Romanian civil code, in particular: individual persons and entities, family law, property law, hereditary law, obligations, statute of limitations, preclusion, the calculation of time limits, and regulations related to international private law.

Axel Bormann

Die Entwicklung des Wirtschaftsrechts in Rumänien The Development of Commercial Law in Romania

The article highlights some developments of the commercial law in Romania during the last 25 years, with a special focus on private law and the administrative framework of this area. Some aspects presented in more detail relate to corporate law, public procurement law, selected regulated industries as public utilities and financial services, as well as to intellectual property and copyright law.

At the same time, the author seeks to highlight certain specifics of the Romanian lawmaker's approach in commerce-related matters. The article finds a predominantly positive development of the legal framework towards a modern and internationally competitive commercial law system, with certain deficits remaining with regard to the administrative implementation and the judicial application of the respective laws.

Monica Vlad

Die Entwicklung des Strafrechts in Rumänien The Development of Criminal Law in Romania

Criminal law is a highly sensitive and complicated domain for legal reforms, because criminal law is in fact the most "fruitful ground" for the evolution of dictatorial regimes. Under the inhuman *Ceausescu* rule, criminal law was a highly efficient vehicle for those in power to establish and further "entrench" their power. Even following the breakdown of the Communist rule, the holders of power have been constantly compromising criminal law in order to further strengthen their power. Thus, the reform of criminal law in Romania has constantly been a history of slight progress, but also recurring setbacks – which is true for all fragile democracies in the light of a mindset shaped by the influence of dictatorship and Communism.

This article discusses progress in the reform of criminal law as well as several crises in the development of a more humanist criminal law, several institutional reforms (national anti-trust agency, the special role of the judge for fundamental rights and freedoms), other reforms in the context of measures against terrorism, freedom of faith, the influence of ECHR decisions, and the highly controversial attempted legalisation of corruption.

In conclusion, criminal law, by its nature, still remains the most repressive domain of law in contemporary Romania.

Stefania Schrag-Slavu

Die Entwicklung des Arbeits- und Sozialrechts in Rumänien

The Development of Labour/Employment and Social Legislation in Romania

Following the demise of the Communist rule in 1989, and in the context of Romania's accession to the European Union in 2007, which required the entire acquisition of the EU's *acquis communautaire*, the country has been witnessing legal reforms in virtually breathtaking pace. These reforms have led to substantial inconsistencies in the legal system, which are still visible – even ten years after Romania became a member of the EU.

This article analyses the development of Romania's labour/employment and social law since December 1989, and provides an overview of the current legal framework in this legal domain ten years following Romania's accession to the EU. It concludes that – despite a remarkably high extent of legal harmonisation – the Romanian legal system can still be characterised by substantial deficiencies, in particular resulting from regulatory gaps.

Milan Boroš

Der Irrtum im slowakischen Strafrecht

The „Mistake“ in the Criminal Law of Slovakia

The problem of “mistake” can be commonly encountered in the following two cases: a mistake on the part of the perpetrator, or a mistake on the part of a third party as a pre-requisite for the punishability/culpability of the perpetrator. This article deals with the former case, in its traditional dichotomy: (1) the error in fact, and (2) the mistake regarding prohibition.

In particular, this article intends to outline the problem of the mistake, considering the controversial scholarly viewpoints in the criminal law literature.

The article highlights, to what extent the two terms “mistake” and “culpability” are intertwined with each other, and further discusses the relationship between mistake and negligence, and attempted criminal offences.

The author concludes that, in the current Slovak criminal law, there are practically relevant controversies revolving around the problem of “mistake”, resulting from regulatory gaps – where questions rather pertaining to the category of “mistake”, *de lege lata*, can primarily be resolved only in the context of “culpability”.