INTERNATIONAL CONFERENCE:

CONTEMPORARY CHALLENGES IN ADMINISTRATIVE LAW FROM AN INTERDISCIPLINARY PERSPECTIV

- 7th Edition. May 17, 2024 -

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Section I.

Recent Developments and Perspectives of Evolution of Administrative Law at National and International Levels

Friday, May 17, 2024

Online on Zoom

Moderators:

*Lecturer **Cristina COJOCARU,** Faculty of Law, Bucharest University of Economic Studies*

*Associate professor PhD. habil. **Cătălin-Silviu SĂRARU**, Faculty of Law, Bucharest University of Economic Studies*

! Each paper will be presented within 15 minutes
! Fiecare lucrare va fi prezentată în maxim 15 minute

SCIENTIFIC PAPERS

10.00 - 11.00

THE LEGAL STATUS OF THE REPUBLIC OF CHINA (TAIWAN) AND ITS REFLECTION IN INTERNATIONAL ADMINISTRATIVE LAW

Professor Jakub HANDRLICA
Faculty of Law, Charles University, Prague
Ph.D. Candidate Luisa BLAHOVÁ
Faculty of Law, Charles University

Abstract

The Republic of China (Taiwan) controls a compact territory, with inhabitants settled there possessing Taiwanese citizenship. At the same time, it established its own legal framework and enforces this framework by its own judicial and administrative structures. The fact is, however, that only eleven member states of the United Nations and the Holy See maintain full diplomatic relations with Taiwan as a sovereign state. The problem, as discussed very recently in international private law, arises in those states which maintain no diplomatic relations with it. This discussion also has relevance for the field of administrative law. Taiwan maintains its own administration, applying its own law vis-á-vis its own citizens. Consequently, the question arises whether the laws of this nation's administrative laws have any effect in those states which do not maintain diplomatic relations. In this respect, this article argues for a 'special status' for the law of Taiwan in their relations with international administrative law. In strict contrast to other non-recognised entities, Taiwan neither exists in a kind of "legal limbo", nor under an international boycott. Despite the absence of diplomatic recognition, the presence of cooperation and trust vis-á-vis the Taiwanese administration allows the application of its laws in certain specific cases. At the same time, however, the quasi-independent status of this entity also implies certain restrictions concerning the status of Taiwanese citizens.

DIGITALISATION OF PUBLIC SPATIAL PLANNING AND CONSTRUCTION PROCEEDINGS WITHIN THE SUSTAINABLE DEVELOPMENT GOALS

Associate professor Zdenek FIALA
Police Academy of the Czech Republic
Associate Professor Olga SOVOVA,
Police Academy of the Czech Republic
Assistant Professor Kristyna MLEZIVOVA,
Police Academy of the Czech Republic

Abstract

The issue of finding an optimal model for the operation of public administration, both in terms of its internal organisation and its relationship with stakeholders, remains current and complex. However, the Information Age brings with it the potential for significant improvements. Modern electronic tools offer

numerous methods and techniques for optimisation and enhancing the operation of public administration. As information technology becomes a part of daily life and impacts all activities and policies, the general public demand for digital services logically increases. Consequently, using new technologies in decision-making processes attracts research interest across several European countries. Similar development focuses on advanced information systems that enable the digitalisation of spatial planning and construction proceedings. The authors examine the digitalisation of public space, accentuating its interconnectedness with the Sustainable Development Goals. The paper also aims to share experiences from the ongoing digitalisation of construction proceedings and spatial planning in the Czech Republic. The authors describe potential benefits from the perspectives of public authorities and users of the public administration, providing practical insights into the advantages of digitalisation. The paper concludes by outlining prerequisites and challenges for successful implementation in the daily practice of public administration and its users. The authors highlight the legal framework of the future building administration system. The authors exploit the desk research methodology and their experience in academia and legal practice.

HOW ADMINISTRATION SHALL TREAT RULES OF ETHICS FOR INVESTMENT ADVISORS. POSSIBLE LEGAL CONSEQUENCES OF THEM VIOLATION IN POLISH LAW

LLM., M. Econ. Michał NAJMAN
University of Łódź, Poland

Abstract

The profession of investment advisor is relatively young and not very popular in Poland. It was introduced into the Polish legal system under the Act of March 22, 1991, Law on Public Trading in Securities and Trust Funds (Dziennik Ustaw of 1994, No. 58, position 239). Currently, there are 787 people on the list of investment advisors. It is a free profession within the meaning of Art. 88 of the Commercial Companies Code This profession is largely responsible for the proper functioning of economic transactions, including commercial transactions, which results from the specificity of the duties performed by its representatives. As in any profession of public trust, its representatives are required to be particularly diligent in performing it, and above all, they are subject to a more rigorous than common ethical regime, often resulting from codes of professional ethics. The article draws attention to the erroneous identification of the concept of an investment advisor with a financial advisor. The situation of a person violating the ethical norms of the investment advisor's profession was also presented, in particular what consequences its violation may have on the financial market and whether the state's response to them is adequate.

LEGAL PROTECTION OF THE WHISTLEBLOWER. THE POSSIBLE CONSEQUENCES OF SHIFTING PUBLIC ADMINISTRATIVE DUTIES TO THE INDIVIDUALS

LLM., M. Econ. Michał NAJMAN
University of Łódź, Poland

Abstract

The European Parliament and the Council (EU) on October23, 2019 adopted Directive 2019/1937 on the protection of persons reporting violations of EU law. It aims to improve the enforcement of EU laws and policies by increasing the ability to effectively detect violations of the regulations. The means to achieve

this goal is to guarantee the protection of individuals who, because of their work (sensu largo), have information that proves a violation of EU law and is thus harmful to the public interest, and report these violations or disclose them to the public (whistleblowers). What is more, the Directive shifts public administration duties to the individuals. The article is an attempt to answer the question of whether the regulation of the protection of whistleblowers finds legal and social justification as well as to indicate the benefits and risks of granting whistleblowers special legal protection. The article ends with an assessment of the importance and implementability of the discussed regulation at both the social and economic levels.

11.00 - 12.00

URBAN PLANNING, NATURE-BASED SOLUTIONS AND LOCAL SUSTAINABILITY

Associate professor Raquel CARVALHO
Faculty of Law, Portuguese Catholic University, Portugal

Abstract

The 11th SDG summons cities to strive for sustainable development. The cities' resilience to the damaging effects of climate change must be enhanced. Urban sustainability is primarily the responsibility of local government. Nevertheless, it requires the participation of citizens, be they economic agents, workers, urban planners or local leaders. Portuguese urban planning law already has legal instruments, namely the municipal ecological structure. As in other subjects, law cannot and should not rule society without involving other areas of knowledge. Nature-based solutions (NBS) are already incorporated into legal planning instruments. Through natural processes, they contribute to counteracting the rise of urban temperatures, preserving public spaces and biodiversity, energy sustainability and thus safeguarding public health, fighting harmful social effects such as energy and social poverty, unemployment and the breakdown of community ties. However, urban resilience requires networking with other urban centres. The paper will be a description of the state-of-the art involving three axes: urban planning, NBS and the contribution of legal instruments to urban sustainability. To achieve this goal, the article will essentially be based on a survey of the literature in the most robust databases, without detriment to the so-called grey literature.

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REFORMING THE MANAGEMENT OF INCOME IN THE ALBANIAN TAX LEGISLATION

Dr. Ina PETRAJ
Faculty of Political and Legal Sciences,
Aleksander Moisiu University, Durres, Albania
PhD. candidate Andela PETRAJ
Faculty of Political and Legal Sciences,
Aleksander Moisiu University, Durres, Albania

Abstract

The reform of the Albanian tax system is a process that began almost three decades ago and continues even today. During this period, this process has been complex and quite difficult since the issues related to taxes, especially those concerning income, have been very delicate and sensitive for Albanian citizens. This paper aims to identify some of the most important problems in the field of income taxation, mainly with the application of new legal changes related to the taxation of income from freelancers and small businesses. For the realization of this study, a combination of qualitative and quantitative methods was used simultaneously. Statistical analyses, surveys, interviews, and specific case studies have been taken as the basis for formulating the conclusions and specific recommendations of this issue. The results of this study are easily applicable in the procedures for administering the Albanian tax system, contributing to a system that is simple to administer and low-cost, which also reduces the possibility of tax evasion.

A LAW FOR ADMINISTRATIVE ARBITRATION?

Associate professor Bárbara MAGALHÃES
Portucalense University and invited professor at Minho University
Researcher at IJP- Institute for Legal Research, Portugal
Associate professor Maria João MIMOSO
Portucalense University and invited professor at Instituto Politécnico de Bragança
Researcher at IJP- Institute for Legal Research, Portugal

Abstract

We find that, increasingly, in matters of administrative justice, it is necessary to resort to extrajudicial means of resolving disputes. This happens not only due to procedural delays, but also due to the increasing technicality of the matters subject to these disputes. Arbitration constitutes one of the ways capable of responding to the demands of the specialization that arises. Arbitrators are appointed based on their expertise in the disputed issue, resulting in an exponential increase in administrative arbitration. In Portugal, the discipline of administrative arbitration is spread across several instruments, e.g. Code of Procedure for Administrative Courts, Code of Public Contracts and the Legal Regime of Tax Arbitration, which often enhances the use of the Voluntary Arbitration Law, applicable in civil and commercial jurisdictions. The supplementary application of this Law occurs, especially, in the organization and functioning of arbitration courts. We cannot fail to emphasize that the solutions typical of private arbitration are not in line with the needs of Administrative Law arbitration, especially with the guiding principles of this branch of Law. The present study aims at analyzing some situations that justify and call for a unitary regulatory system, in terms of administrative arbitration.

INTERNATIONAL ORGANIZED CRIME, DEMOCRACY AND SECURITY

Professor Ana CAMPINA
University Fernando Pessoa, CEPESE, Porto, Portugal
Research Center for Global Governance of the University of Salamanca, Spain
Professor Carlos RODRIGUES
University Fernando Pessoa, CEPESE, Porto, Portugal
Research Center for Global Governance of the University of Salamanca, Spain

Abstract

Organized International Crime seriously and irreversibly affects the international context, is a powerful and systematic threat to the security of states, governments, economies, and society, and is one of the greatest challenges to police authorities and criminal investigation, and to judicial action. Transnational organized crime is recognized in the international legal system, particularly by International Organizations such as the United Nations or the Council of Europe, providing for the emerging need and effective intervention to prevent its multidimensional action, under the auspices of effective victim protection, as preventive as possible. However, the "fight" against International Organized Crime is a very serious problem due to the difficulty of prevention or predictability or control and due to the most serious consequences and damage to the lives of States and individuals, due to the violation of Human and Fundamental Rights, as official statistics reveal. Given the multiple origins, ages, and professions of the criminals, acting individually or as part of organizations, organized groups, associations, or networks, on a global/regional/local scale, and which potential and capacity for constant evolution and innovation, with an extremely high degree of sophistication, they manage to outwit and outmaneuver international control and capture systems. There is an urgent need to deconstruct stereotypes that are dangerously proliferating, generating multiple negative reactions, and conditioning the actions of the various players involved in preventing and combating this international crime.

12.00 - 13.00

THE ECONOMIC/BUSINESS IMPORTANCE OF FRANCHISING IN PORTUGAL - (RE)ANALYSIS OF THE FRANCHISING CONTRACT

Professor Ana CAMPINA
University Fernando Pessoa, CEPESE, Porto, Portugal
Research Center for Global Governance of the University of Salamanca, Spain
Professor Carlos RODRIGUES
University Fernando Pessoa, CEPESE, Porto, Portugal
Research Center for Global Governance of the University of Salamanca, Spain

Abstract

If we analyze the "2018/2019 Franchising Census" carried out by the APF - Portuguese Franchising Association, we see that in Portugal, and for the year 2018, Franchising generated a turnover of more than

8 billion euros, which corresponded to 3.96% of the national GDP. This turnover is the result of the "Franchising Contracts" signed by the 528 active brands, distributed among Services, with 57.7% of the preference, followed by Commerce, with 29% and Restaurants, with 13.3%. When we look at the levels of initial investment by Franchisees, we see that this initial investment was up to €25,000.00 for 43.6% of Franchisees, €25,000.00 to €50,000.00 for 26.5%, €50,000.00 to €100,000.00 for 17.7%, €100,000.00 to €250,000.00 for 9.9% and, finally, with an investment of more than €250,000.00 for the remaining 2.2%. In other words, more than 70% of the initial investment by franchisees did not exceed €50,000.00. The relevance of these figures for the Portuguese economy is the basis for presenting a legal (re)analysis of the "Franchising Contract" in the Portuguese legal system, using a logical-deductive methodology of the legal regime of this type of contract.

THE STANDARD OF PROOF BEYOND REASONABLE DOUBT IN ADMINISTRATIVE PROCEEDINGS

Professor Oksana SHCHERBANYUK
Head of the Department of Procedural Law, Faculty of Law,
Yuriy Fedkovych Chernivtsi National University, Ukraine
Assistant professor Laura BZOVA
Department of Procedural Law, Faculty of Law,
Yuriy Fedkovych Chernivtsi National University, Ukraine

Abstract

The article is devoted to the study of the standard of proof in administrative proceedings. The author analysed the scientific literature and legislation of the UK, France, Romania, Ukraine and the USA, as well as the judgments of the European Court of Human Rights. The standard of proof means that the totality of the circumstances of the case established during the trial excludes any other reasonable explanation of the event that is the subject of the trial. When considering the issue of standards of administrative procedure, it is necessary, first of all, to define such key concepts as administrative justice, administrative process (and the relationship between these concepts), and the concept of the European standard of administrative procedure. Standards of administrative procedure can be defined as a system of legal norms, principles and legal customs which establish a mandatory (minimum) level of guarantee of individual rights in the administrative process and the ways of exercising such rights. In this context, the obligation of a comprehensive and impartial investigation by the court of all the circumstances of the case means that in order to be found guilty beyond reasonable doubt, the prosecution case must explain all the circumstances established by the court that are relevant to the event that is the subject of the trial. In accordance with the established practice of the ECHR, the court is limited in its right to collect evidence and thus take over the defence function, but must remain objective and impartial, create the necessary conditions for the parties to fulfil their procedural obligations and exercise their rights, consider the administrative case and render a decision.

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STRIVING FOR COHERENCE: EXPLORING THE COMPLEXITIES OF INTERNATIONAL ADMINISTRATIVE LAW

PhD. student, lecturer, Alexandru BOSTAN
Free International University of Moldova (ULIM), Republic of Moldova

Abstract

This study endeavors to clear up the terminological ambiguities prevalent within the realm of international administrative law (IAL). It traces the evolutionary trajectory of IAL, discerning its development under the influence of diverse doctrinal perspectives and highlights the challenges associated with use ambiguous terms within the jurisprudence of international administrative tribunals. The paper advocates for a departure from the dualistic terminology, exemplified by the juxtaposition of "international administrative law" and "administrative international law" (as observed in Romanian terminology such as "drept administrativ internațional" and "drept internațional administrativ", alongside consonant terms in Italian or French), in favor of a more precisely delineated lexicon. It emphasis the imperative need for clearer definitions and argues for the use of "international institutional law" to accurately reflect the scope of regulations governing international organizations or their administrative structures. Additionally, it advocates for the use of "law of the international civil service" as an apt descriptor for the relationships within international organizational personnel. Furthermore, the paper addresses the absence of a well-defined framework for the "principles of international administrative law", used in some international administrative tribunals case law, underscoring the importance of clarity and coherence in legal terminology and doctrine.

THE NATURE OF THE LEGAL ACTS ISSUED PURSUANT TO LAW NO. 206/2004 ON GOOD CONDUCT IN SCIENTIFIC RESEARCH, TECHNOLOGICAL DEVELOPMENT AND INNOVATION: FROM ADMINISTRATIVE LITIGATION TO LABOR LAW DISPUTES

Lecturer Anamaria GROZA
Faculty of Law, University of Craiova,
Judge, Court of Appeal Craiova, Romania

Abstract

Law no. 206/2004 regulates the principles and procedures in the field of ethics in scientific research, technological development and innovation activities, as well as the sanctions that can be applied to people in case of deviation from the norms of good conduct. The competence for administrative settlement of an alleged fact that falls under the scope of Law no. 206/2004 belongs to the institutions that are part of the national research-development system, the units and/or institutions that lead research-development programs, as well as the units that ensure the valorization of the results, as well as the National Council of Ethics. In judicial practice, the issue of the material competence of the courts in the case of contesting the documents issued by these institutions/authorities was pointed out. Through the jurisdiction regulations issued, the High Court of Cassation and Justice established the jurisdiction of administrative litigation courts when either only decisions issued by the Council of Ethics or decisions of this authority are challenged. Instead, the competence regarding legal documents issued only by the employer in application of Law no. 206/2004 has not yet been settled at the level of the supreme court, the solutions oscillating

between administrative disputes and labor law disputes. The purpose of the article is to analyze the lines of demarcation between the two types of actions in court, starting from a particular case.

13.00 - 14.00

ACCUMULATION OF ACTIONS IN COURT REGARDING THE SUSPENSION OF THE EXECUTION OF UNILATERAL ADMINISTRATIVE ACTS: IS IT POSSIBLE?

Lecturer Anamaria GROZA
Faculty of Law, University of Craiova,
Judge, Court of Appeal Craiova, Romania

Abstract

The suspension of administrative acts involves proving the existence of those circumstances that are likely to create serious doubt regarding the legality of the administrative act and the need to temporarily remove the enforceability of the act, in order to prevent imminent damage, which is analyzed concretely. The seat of the matter regarding the suspension of the execution of administrative acts through the courts is represented by articles 14 and 15 of Law no. 554/2004 of the administrative litigation. The practical activity in the field of law creates the perspective to analyze legal institutions in novel situations, as well as in the interaction between them. For example, it is possible to submit two subsequent requests regarding the suspension of the same administrative act, based on art. 14, respectively art. 15 of the Administrative Litigation Law no. 554/2004? In our opinion, the answer is positive, but also nuanced. Injured persons justify a procedural interest in filing both claims, primarily given their different effects over time. Moreover, articles 14 and 15 can be used more than once for different reasons, because art. 14 para. 6 is also applied accordingly in the case of art. 15 of the law. The research conducted is accompanied by relevant jurisprudence, analysis perspectives and several conclusions.

UNION AND ROMANIAN JURISPRUDENTIAL PERSPECTIVE ON THE PUBLIC PROCUREMENT CONTRACT – CATEGORY OF THE ADMINISTRATIVE CONTRACT

Judge Phd. Marlena BOANCĂ-IVAN
Târgu Mureș Court of Appeal, Romania

Abstract

A decision-making relevance for retaining the incidence of the special legislation applicable in the matter of public procurement presents the qualification of the contract as a public procurement contract, subsequent to the analysis of the legal features of the contract, but also of the qualities of the contracting parties. The legal features that particularize the public procurement contract represent autonomous notions, defined by EU law, with the exception of the element relating to the administrative character, not provided for by Directive 2014/24/EU, but mentioned by Romanian law. Also, the qualification of the public procurement contract is an autonomous qualification, in accordance with the provisions of EU law on

public procurement, and the qualification of the contract in national law is not relevant from this perspective. Equally, the concepts of contracting authority and economic operator, tenderer are defined not only at the legislative level, but have been the subject of a rich ECJ jurisprudence, which must be taken into account and applied as such by the national judge. In terms of guaranteeing the most efficient use of public money, avoiding the non-application of special provisions in the field of public procurement, as well as consolidating theoretical knowledge in the matter, it is useful to approach the previously mentioned autonomous notions in the light of European and Romanian jurisprudence and doctrine.

CONTEMPORARY ADMINISTRATIVE REGIMES. TYPES OF CONTEMPORARY EUROPEAN ADMINISTRATIVE SYSTEMS

Professor PhD. Habil. Iulian NEDELCU
Faculty of Legal, Economic and Administrative Sciences from Craiova, Spiru Haret University
Dolj Bar Association, Romania

Abstract

As a result of the diversity of contemporary administrative systems established at the constitutional and legal levels in countries worldwide, the applicable administrative-territorial regime varies accordingly. In the specialized literature, several legal frameworks are recognized that regulate the relationship between the center and the territory, namely: the regime of administrative centralization; the regime of administrative deconcentration; and the regime of administrative decentralization (of local autonomy). A different terminology is found in German doctrine, which classifies state administration into direct state administration and indirect state administration, under conditions where the state delegates its attributes to local territorial communities. Given that this concerns an administrative-territorial regime, its subject is public administration, without affecting the political unity of the state, thus allowing for the examination of these regimes in relation to unitary states, federal states, or within federal states themselves. The determination of the legal regime applicable to the administrative relationships between the center and the territory is not only a theoretical reality but also a practical necessity, as no state can be governed solely from the center by the central public administration organs. A formula endorsed by French doctrine states that "one can govern from afar, but can only administer from up close."

THE LAW APPLICABLE TO PUBLIC ADMINISTRATION

Lecturer Paul - Iulian NEDELCU
Faculty of Legal, Economic and Administrative Sciences from Craiova, Spiru Haret University

Abstract

Approaching public administration from a comparative perspective necessarily involves the correct definition of the concepts to be used in our analysis. This conceptual approach is also dictated by the multitude of definitions formulated in the theory and specialized literature of Romanian and comparative law. Without delving into the etymological examination of the term 'administration,' which has not been disputed as representing the fulfillment of a commanded action, the variety in the content of the notion of public administration has led to a diversity of definitions, depending on the historical evolution of the economic, social, and political environment in which it developed. Synthetically, the approach to the notion of public administration has been predominantly conducted in three broad senses: from the perspective of

its correlation with executive activity – "administration is a component of executive power, without being its only component"; from a functional and organic viewpoint - it is an ensemble of activities and means through which certain legal entities pursue the satisfaction of a general interest need; and through the lens of its purposes, means, and specific legal regime – which presupposes the realization of the public interest through or with the support of public power. The majority of theories and definitions of public administration are found in French doctrine, whose evolution largely influences the Romanian conception in this field. In Romanian law, the definitions of public administration, state and private administration, as well as executive power, have undergone numerous nuances, depending on the historical period of the administrative phenomenon's evolution.

14.00 - 15.00

COMPARATIVE ANALYSIS ON THE PUBLIC FUNCTION IN THE EUROPEAN UNION

Associate professor Florentina – Iuliana WEBER
National University of Political Studies and Public Administration, Romania

Abstract

The European civil service, a remarkably intricate institution in contemporary law, presents a fascinating subject for analysis and holds significant implications for our understanding of public administration. Its complexity, far from being a barrier, is a gateway to a deeper comprehension of its functioning. Analysing the principal regulations regarding public office and civil servants in different states of Europe reveals several similarities and relevant differences, further adding to the intrigue of this study. In Europe, there are two groups of countries where the public function differs. The first group comprises countries with traditional and stable professional civil servants, relatively independent from politics. These countries are some EU member states and others located in the so-called European Economic Area. The second group of countries, the ex-communist ones, face unique challenges. In these countries, there are no apparent distinctions between the apparatus of political parties, the public administration and the idea of the state as an independent reality. The countries in the second category are striving to develop new public service systems, a task that is not without its difficulties, to align themselves with the first group of countries. We aim to uncover an ideal model for regulating public function. This model would ideally ensure a balance between political influence and professional independence, promote meritocracy, and maintain a high level of public trust. We will achieve this by comparing how states establish norms applicable to it, a model that we hope to find in as many European administrative systems as possible through future reforms.

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THE ILLUSION OF THE RECOVERY OF DAMAGES FOUND BY THE COURT OF AUDITS, BETWEEN THE LIMIT OF THE LEGAL RULE AND THE GOOD FAITH OF THE AUDITED ENTITY

Professor Vasilica NEGRUȚ
"Dunărea de Jos" University from Galati, Romania
PhD. student Ionela Alina ZORZOANĂ
"Dunărea de Jos" University from Galati, Romania

Abstract

The idea of the present study started from a question that appeared in practice, frequently. Starting from the attributions of the Court of Accounts of Romania, which notes the occurrence of damages in the patrimony of the audited entities and orders recovery measures for them, in conjunction with the fact that the administrative documents issued by the audit institution are contested in administrative litigation and the audited authorities do not have any measures for the recovery of damages until the courts issue a definitive solution, we can say with certainty that in 99% of cases the prescription of the right of the audited entity to recover the respective amounts intervenes. In such a context, the problem of solving these situations arises, because, on the contrary, it can be concluded that the recovery of these damages depends exclusively on the good faith of the verified entities that can start damage recovery actions in parallel with the actions having as their object challenging the administrative documents issued by the Court of Accounts, so as to avoid the intervention of the sanction of the statute of limitations. We will also try to lean on the regulations related to the courts of accounts in other European states, hoping for a source of inspiration for a possible ferenda law proposal that we will allow ourselves to make. At the same time, we will exemplify the theoretical aspects with examples from national and European jurisprudence (if it exists), but also from other member states of the European Union, to give a note of comparative law to this study.

LOCAL AUTONOMY WITHOUT AN ELECTED BODY. OR, HOW TO LIVE (ADMINISTRATIVELY) WITHOUT BREATH (OF THE LOCAL COUNCIL)

Associate professor Lucia Flavia GHENCEA
Ovidius University of Constanța, Romania

Abstract

Local autonomy is a principle of organization and operation of the public administration, mainly regulated at the constitutional level. It represents a supreme recognition of its indispensable character in the state's legal, political, and administrative architecture. Thus, the development of the life of a community in the absence of bodies democratically elected directly by the citizens appears completely outside the possibility of a natural administrative life. From this perspective, our study presents a specific case in which a territorial administrative unit functioned for three years (and will continue, most likely until the end of the mandate) without a local Council - the body democratically elected by the citizens to regulate life at the level of the fortress. The presentation will go through all the legal stages of the situation, starting from the first meeting of the legally established Local Council, following the 2020 elections, and ending up to now. The analysis of the incident regulations and the monitoring of the actual situation will highlight the weakness of the law from the perspective of its concrete efficiency and the danger it can constitute for democracy. Moreover, we try to raise an alarm signal on some interpretations that can lead to the illusion of the lack of absolute necessity of such institutions, with the argument that it is possible to live without

them; often, the economic-financial factor (the costs of the elections) taking precedence over the democratic debate, especially for a young democracy that still has a long way to go before reaching democratic maturity