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70 years of the European Convention on Human Rights

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Session 1: COVID-19, State of Emergency and Human Rights

Sasho Georgievski[*]

THE ROLE OF THE STRASBOURG COURT IN THE DEVELOPMENT OF RULES AND PRINCIPLES ON REFUGEE PROTECTION APPLICABLE IN TIME OF PANDEMIC

The research will be focused on analyzing the specific law on international refugee protection applicable in times of a pandemic that has been gradually emerging throughout the current (COVID-19) and past pandemics from the perspective of the practice of ECtHR. It starts from the premise there's been a need to adapt the application of the rules and principles of IRL and IHRs law (and related practices) to the particular context of a pandemic, and their coordination with those of International Health and Pandemic Law. The recent case-law of ECtHR developed in cases dealing with aspects of international refugee protection when applying Articles 2, 3 and other relevant provisions of ECHR will be examined in an effort to discern the level of its contribution to the adaptation of refugee protection law to a pandemic situation. Comparisons with the practice of other courts' and relevant bodies will be made. The research will demonstrate that ECtHR has largely contributed to the adaptation and further development of International Law related to refugee protection in time of pandemics, in particular, regarding the application of the principle of non-refoulement, the right to seek asylum, the rules on the living conditions of asylum seekers (including their rights to health, housing, and labor rights) and on the refugees' right to liberty regarding detention and return, during a pandemic.

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Ivana Krstic[*]

THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE COVID 19 CRISIS

The coronavirus pandemic caused serious human rights limitations in Contracting States of the European Convention on Human Rights (ECHR). Article 15 of the ECHR affords States the possibility of derogating their obligations in order to secure certain rights and freedoms guaranteed by the ECHR. However, Governments imposed many restrictions on human rights and fundamental freedoms that opened the question of their legality from the perspective of standards enshrined in the jurisprudence of the European Court of Human Rights (ECtHR). The paper will explore the origin of Article 15, and the circumstances under which the States can derogate from their obligations. Special focus will be dedicated to the explanation of the notion - state of emergency - and discussion if the threat posed by COVID 19 were an actual or imminent, whether it affected the whole nation, continuance of organized life of the nation and whether it was exceptional as the normal measures or restrictions permitted by the Convention were plainly inadequate. Also, the author will analyze the material and procedural requirements and their interpretation given by the ECtHR in its jurisprudence, identifying grounded principles in this area. Some pitfalls in the jurisprudence of the ECtHR will be underlined, such as the lack of the requirement that the emergency be temporary, or a broad interpretation of the requirement of imminence. It will be particularly emphasized that until now, the risk to life and the heavy burden on health services caused by COVID 19 has not been a feature of applications submitted to the Court. After analyzing the obligation to act in response to the threat caused by pandemic, this paper will examine implications of undertaken measures in majority of States and their compliance with the Convention. In some of the States, measures were excessive, meaning that they were no strictly required. Majority of States did not notify the Court about the derogation, or did it with delay, and did not protect the values of a democratic society, such as pluralism, tolerance and broadmidness. It will be concluded that the derogation from some fundamental rights and freedoms, as a response to pandemic, carry a grave risk of being abused.

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Katerina Shapkova Kocevska[*]

COVID-19 PANDEMICS, HUMAN RIGHTS AND ECONOMIC DEVELOPMENT: EXPLORATORY ANALYSIS OF THE INTERCONNECTEDNESS BETWEEN GOVERNMENT RESPONSES TO COVID-19 CRISES REGARDING HUMAN RIGHTS AND ECONOMIC PERFORMANCES OF THE COUNTRIES

The outbreak of coronavirus has caused monumental changes in many aspects of societal life and organization in countries worldwide. Aiming to diminish the negative consequences resulting from the Covid-19 pandemics, many governments around the world have introduced different measures and interventions. Unfortunately, many of these *ad-hock* interventions harmed democracy standards and led to the deterioration of human rights and liberties. In this paper, we are analyzing the interconnectedness between the scope and depth of the measures and interventions taken by the different countries and the economic performances of the countries. The main hypothesis in the research is that the countries with better economic performances, on average, offered more liberal management of the negative consequences of the Covid-19 crises and deteriorate human rights less compared to economically weaker countries. We use Pandemic Democratic Violations Index and the Pandemic Backsliding Index as proxies for measuring the countries' responses regarding corona crises. Both indexes are developed by the Pandemic Backslidnig Project, based at the Varieties of Democracy Institute (V-Dem) at the University of Gothenburg in Sweden. The first index captures the extent to which state responses to Covid-19 violate democratic standards for emergency responses. The second one reflects the extent to which such responses pose a risk to the overall quality of democracy within the country. Several indicators are employed to depict the economic performances of a country, including GDP level in constant prices, GDP per capita in constant prices, GDP annual growth, and GDP per capita annual growth.

Key words: Covid-19 pandemics; human rights; democracy; democratic violations; democratic backsliding; economic development.

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PROTECTION OF HUMAN RIGHTS UNDER STATE OF EMERGENCY TIMES – A GUARANTEE FOR OR A THREAT TO THE RULE OF LAW?

State of emergency decisions of governments, in general, tend to pose and end up with a threat on human rights. Even there are particular rules under international law on derogation from human rights commitments for states, yet there is surely a bottom line and a core area of rights and freedoms as a minimum guarantee. In our presentation the fragment of the regime of human rights under state of emergency times will be elaborated followed by a discussion whether such a fragment provides a guarantee or a threat for rule of law.

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COVID-19 AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Our life has changed. The main if not the only topic that everyone is interested in is the ongoing pandemic. The World Health Organisation is one of the most popular international organisations at the moment. This crisis will undoubtedly have a significant impact on how we live, travel and perceive our governments. These long-term effects will clearly be a subject of numerous dissertations, articles and monographs. This paper will make a very brief overview of the role of the European Convention on Human Rights in assessment of this crisis. In recent days a number of states (for example, Georgia, Estonia, Armenia, Romania, and Latvia) submitted their derogations from the ECHR under Article 15. When the situation calms down it would be very interesting to analyse the exact wording and utility of these declarations. Here, I will start by considering implications of Article 15 to the situation at hand. I will briefly analyse how Article 15 of the Convention can be engaged in the COVID-19 crises.

Key words: COVID-19, European Convention on Human Rights, Article 15

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Velimir Delovski[*]

CONVENTION RIGHTS AND FREEDOMS UNDER QUARANTINE: CHALLENGES FOR THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE ERA OF PANDEMIC

The unprecedented COVID-19 pandemic resulted into limitations of the movement and rights under Article 5 and Article 2 of Protocol No.4 and interferences with other rights guaranteed by the Convention, which will inevitably lead to new applications brought before the ECtHR. This paper will focus on the implications of the crisis and its potential transformative impact on the Court's jurisprudence related to emergency situations by exploring whether the well-established principles and doctrines of the Court's adjudication need to be revisited to tackle the challenges posed by the pandemic. This will involve examination of the extent of judicial scrutiny to be applied - whether the Court should demonstrate judicial activism regarding the measures taken at national level, or it should be deferential to the national policy choices. In this respect, special attention will be paid to the degree of margin of appreciation which has to be granted to the States, as a reflection of the principle of subsidiarity, formally introduced with Protocol 15 to the Convention. Such discretion should leave room for a proper substantive and procedural review by the Court, but it should not be regarded as carte blanche for the national authorities in the exercise of their powers. Moreover, the paper will deal with legality, necessity and proportionality of the restrictions that have been adopted and with the relevance of the balancing exercise which should properly weigh collective (public) interests with the individual rights, as well as reconcile conflicts between certain Convention rights. Finally, this paper seeks to provide a clear methodological framework which will accommodate the particularities of the situation, in order to keep the States accountable and ensure that the effectiveness of the human rights protection is not jeopardized, regardless whether the State concerned has derogated of its Convention obligations under Article 15 of the Convention.

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Ana Zdravkovic[*]

THE AFFAIR OF "STATE OF EMERGENCY "- WAS 70 YEARS OF EUROPEAN CONVENTION ON HUMAN RIGHTS ENOUGH TO PREPARE MEMBER STATES FOR COVID-19 CRISIS?

Seventy years after the adoption of the European Convention on Human Rights (hereinafter: ECHR), its one of a kind, carefully built and long nurtured system of protection of human rights was unexpectedly and ultimately challenged by the outbreak of COVID-19 pandemic. In response to this still ongoing crisis, various Member States have acted in different ways. At least nine of them have formally notified derogations to the ECHR, which naturally inspired academics to open the debate whether that kind of reaction is justifiable. According to Article 15 of the ECHR, a famous 'derogation clause', Member States are allowed, in exceptional circumstances of war or other public emergency threatening the life of the nation, to derogate from their obligations under the ECHR to the extent strictly required by the exigencies of the situation. While it can be argued that the risks posed to public health by the new virus can amount to an exceptional situation which threatens the life of the nation and requires special measures that may run afoul of the ECHR, it is still questionable whether usual restrictions permitted by the ECHR in regard to e.g. right to liberty and security, right to respect for private and family life, freedom of assembly and association or freedom of movement, are really shown to be inadequate and insufficient. Even more so, considering the fact that states of emergency carry a grave risk of being abused, often for political purposes. The aim of this paper is to analyse the legal nature, necessary conditions and the scope of Article 15 of the ECHR, from general as well as COVID-19 pandemic point of view. Special attention will be paid to the manner in which Serbia is managing the crisis, especially since the state of emergency was declared even though there was another instrument at hand – statutory law adopted specifically for the purposes of natural disasters such as epidemic diseases.

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Antigona Jovanovska[*]

IMPLEMENTED RESTRICTIONS AS A PROTECTIVE MEASURES IN FIGHTING COVID-19 AND VIOLATIONS IN SOME OF THE WESTERN BALKAN COUNTRIES FROM MARCH TO MAY 2020

The beginning of the year 2020 was marked by the event that affected every single country in the world – COVID 19 pandemic. Most strict measure restricting the movement on people was curfew. This research contains information and data about implemented curfew in some Western Balkan countries, duration of that measure, sanctioning, recorded violations and comparison of the violations numbers per country. There is also information and data about other measures taken in fighting COVID-19 in above mentioned countries that their governments decided to implement, sanctioning the violations of those measures and violations. Information and data from this research can be of great use to extend further researches in this field, especially for other comparison researches with other countries.

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Session 2: Business Law, Tax Law and Human Rights under the ECHR

Goran Koevski [*]
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APPLICATION OF THE CONCEPT OF RESPECT OF HUMAN RIGHST AS A PART OF CORPORATE SOCIAL RESPONSIBILITY IN NORTH MACEDONIA

The core interest of the authors of this paper is analyses of the application of The United Nations Guiding Principles on Business and Human Rights in North Macedonia. In 2011, The United Nations presented to the public the Guiding Principles on Business and Human Rights. Although non-binding normative text, its intention is to serve as a" global standard of practices". The document itself is based on three pillars: (i) the State duty to protect human rights, (ii) the corporate responsibility to respect human rights and (iii) the need for greater access to effective remedy for business-related abuse victims. Relevant national legislation and practices related to the current situation of the promotion and application of the principles promoted in The UN Guiding Principles on Business and Human Rights shall be examined. Finally, the authors will give their reflections and recommendations how to accelerate the application of The UN Guiding Principles on Business and Human Rights in the national legislation and practice.

Key words: corporate social responsibility, human rights, companies

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Gordana Ilic Popov[*]

DIGNITY AS A TAXPAYER RIGHT

The paper shall deal with a dignity, as one of the basic human rights provided in the European Convention on Human Rights and incorporated in the majority of the modern constitutions, from the aspect of the tax law. Dignity (in Latin: dignitas) implies the right to respect and ethical relationship from a birth. It is not only a civil right, but also economic and social right. Therefore, we shall analyze the taxation of the economic power indicated as a "poverty threshold". We will point out the dilemmas regarding the non-taxation of the subsistence minimum in the Serbian tax law which is one attempt to protect the taxpayer's dignity. To our opinion, dignity in the field of taxation can be examined from two different sides. State must not have considered a taxpayer as a pure "instrument" for providing the public revenues to the budget. Taxation should not be justified either by force or by the taxpayer's "victim" in favor of the state. State must recognize the human dignity as a core value of each individual and ensure the freedom to each to develop own personality. Therefore, democratic state has to create the social conditions which make this possible. On the other hand, the taxpayers should contribute to efficiently functioning of the State by paying taxes regularly. They have to obey the tax regulations and not avoid to pay taxes, by undertaking an illegally or illegitimate actions, and thus protect themselves their own dignity. From the side of the taxpayers, tax conscience and tax morality are an effective "guardians" of dignitas which give them right not only to expect but also to seek from the state to respect and protect by different measures their dignity within the tax procedure.

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PROCEDURAL RIGHTS IN ARBITRATION AND ECHR

Arbitration at the present stage is the most popular dispute resolution method in the international business community. One of the advantages of arbitration is a high level of party autonomy. Party autonomy gives the right to the party to tailor their arbitral proceedings according to their needs to tailor the proceedings to their needs. However, there are some restrictions that needs to be post form the state in order for parties to be in equal position. In this sense, the first restriction are the mandatory rules of the place of the arbitration. For example, the right to be heard is a typical mandatory rule contained in all jurisdictions. On international level, the right of fair trial and access to justice is embodied in Article 6 (1) of the European Convention on Human Rights. It is questionable whether the parties can waive some of their procedural rights during the arbitral procedure. For example, is it in line with Article 6 (1) ECHR for the parties to waived their right of recourse against arbitral award? Or, how should the due process be observing in international commercial arbitration? In this sense, the main question during this pandemic of Covid 19 is whether the virtual hearings are in line with the right to be heard and the right to present the case. In this paper, the authors will analyze the question whether human rights guarantees should be applied to voluntary arbitration, with focus on due process, optional arbitration clauses, waiver and virtual hearings. Special attention will be given to the pivot of the arbitration - arbitration agreement and his role as a potential waiver from the procedural guarantees enshrined in Article 6(1) of ECHR.

Key words: human rights, arbitration, ECHR, Article 6 (1), waiver, due process.

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Biljana Petrevska[*]

THE IMPACT OF THE COVID-19 ECONOMIC MEASURES ON EMPLOYEES AND ON SMALL AND MEDIUM ENTERPRISES IN MACEDONIAN ECONOMY

The subject of research of this paper presents the impact of the relevant economic measures in the legal framework in Macedonian economy for providing everyday work of the small and medium enterprises and of the employees in time of Covid-19 crises and in the period after this crisis. The purpose of the research of this paper is to analyze whether those economic measures that were prescribed by the Ordonnances with the force of law have had the criteria of proportionality for all employees and for all small and medium enterprises in Macedonian economy, also to analyze were those economic measures necessary in our economy, and what were the results of this economic measures for the small and medium enterprises and employees. The first part of the paper is an introduction, which explains the topic of the research, while the second part of this paper explains the economic measures that were prescribed in Ordonnances with the force of law in our country. The third part of the paper analysis what were the results of those economic measures that were taken for small and medium enterprises and for employees in Macedonian economy. Finally, the fourth part of the paper is the conclusion.

Keywords: ordonnance, economy, measures, small and medium enterprises

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Lazar Jovevski[*]

THE FUTURE OF LABOR RIGHT IN CONTEST OF COVID 19

This paper addresses the current issue of employment rights in the context of the new global of the world related to the state of Sars CoV.2 (Covid 19) virus and the consequences we should expect in the future. The author of the paper analyzes the policies undertaken at the national level in the Macedonian legal and economic system that aim to address the problems and consequences of the virus. The paper analyzes the measures and how they reflect the basic labor rights and the already adopted labor standards. The author of the paper answers the essential question, and that is whether in conditions of spread of the virus the state bodies that create policies are ready and to what extent to limit the basic labor rights and international standards. The paper also provides guidelines and scientifically predicts future steps to be taken in order to transform and play a new role in labor law in the coming years and decades.

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STATE`S RIGHT TO TAX IN THE LIGHT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Case of EUROMAK METAL DOO v. Republic of Macedonia and Its Impact on the Macedonian Tax Law

Tax policy is one of the most important instruments of governments, but it is rarely assessed from a human rights perspective. Traditionally, taxation has been understood as a fundamentally "economic" or "development-related" undertaking by which policy makers generate revenue for socio-economic development. Primarily therefore, fiscal policy makers are concerned with the "economic" aspects of taxation, particularly maximization of tax revenue, rather than non-economic aspects like human rights that, surprisingly, have remained secondary preoccupations. However, this perception has been rapidly changing in the last decade. In circumstances with an increased economic inequality across the world, there is growing recognition that tax policy matters for human rights, and has implications for the citizens' enjoyments of these rights, worldwide.
Realizing rights requires resources. In this sense, tax revenue is the most important, the most reliable and the most sustainable instrument to resource human rights in sufficient, equitable and accountable ways. The realization of all human rights, likewise, is a core *raison d'être* of government. It is through respecting, protecting and fulfilling civil, political, economic, social, cultural and environmental rights that the state earns its legitimacy to tax. Moreover, taxes remain the preeminent means through which governments collect revenues necessary to deliver essential public goods and services and to protect rights.
A substantial number of tax cases have gone from national courts to the European Court of Human Rights in Strasbourg. These applications are mostly based on Article 1 (protection of property) of Protocol No. 1 to the Convention, which recognizes that a State is entitled "to enforce such laws as it deems necessary ... to secure the payment of taxes or other contributions", and Article 6 (right to a fair trial) of the Convention. One of the tax cases that have been ruled by the European Court of Human Rights is the case of "EUROMAK METAL DOO v. REPUBLIC OF MACEDONIA". In this case, the Court unanimously held that there had been a violation of Article 1 of Protocol No.1 to the European Convention on Human Rights (Protection of property). This paper will focus on legal analysis on this judgment and its impact on the Macedonian tax law.

Key words: tax sovereign, taxation, taxpayers` rights, value added tax, protection of property.

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EUROPEAN COMPANY (SOCIETAS EUROPAEA) FOR ENTIRE INTEGRATION IN THE COMMUNITY MARKET

By adopting the Regulative 2157/2001 for establishing the Statute of the European Company (Societas Europaea) and relating Council Directive 2001/86/ES of 8. October 2001 for supplementing this Regulative with regard to the involvement of employees in the European company, legal frame for establishing stock companies on the territory of EU has been made, i.e. it has been made possible for the companies to found a company on the basis of European law, with a unique set of rules and unified management, and information systems as well. Practically, the European company or "Societas Europaea" ("SE") , is a "big step forward" for the companies that have operations in several EU member countries. In this way , the differences existing among national legislations have been overcome, the problems with organizing at least one legal person for each operating country have been eliminated, and the costs and time needed for inter-boundaries business working, have been decreased. The most important advantages of SE are the following ones: simplifying business running within EU, taxes complexity relief, providing of effective management structures and easier inter-boundaries integrations. Additionally, the Directive 2001/86/EC settles the involvement of the employees in the company management, and their informing and consulting concerning the essential issues associated with working. Within the process of harmonizing the European legislative, R. N. Macedonia passed a Law for European company, and in this way it has joined the other European countries supporting this legislative. The European Commission presents the concept of Societas Europaea as an important mechanism towards achieving entire integration in the Community market.

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Zlatko Jakomovski[*]

THE LEGAL REGULATION OF THE BANK GUARANTEE AS A MEAN OF SECURITY IN THE MACEDONIAN AND COMPARATIVE LAW

The dynamic development that the modern corporate relations are facing with a constant trend of internationalization of the investment undertakings followed up by a time extension of completion of the obligations have led to a rapid growth of the popularity and the meaning of the bank guarantee as a mean of security. The mass usage of the bank guarantees in the domestic and international legal transactions opens the question whether the domestic laws can adequately answer to the needs of the business sector or the development and usage of the bank guarantee will be determined by the autonomic business practice. The author of this paper through a normative analysis of the legal regulation of the bank guarantee in the domestic legal system will give an adequate critics regarding the applicability of the domestic laws vis a vis the real needs of the business practice. The growing diversification of the types of the bank guarantee with the related institutes for providing a bank guarantee as well as the fact that this institute is a regular accessory to every serious financial undertaking demand the author to analyze the comparative and international sources of the law that are related to the bank guarantee as a method of securing the claims. Therefore, the author of this paper will make a short analysis of the comparative solutions in the legal systems close to the Macedonian legal system as well as on the Model rules of the International Chamber of Commerce in Paris.

Key words: Bank, Guarantee, securing claims, creditor, debtor, warrant.

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PASSING OF RISK UNDER THE DOMESTIC LAW AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

This paper elaborates the meaning that the regulation of passing of risk has in case of loss or damage of goods in the contracts of sale of goods. The legal regulation of this matter allows for more fluid and unambiguous resolution of disputes between the contracting parties in case of loss or damage of the goods. The main area of research in this paper is the legal regulation of the passing of risk, i.e. the legal settings of the passing of risk when this matter is not regulated between the contracting parties. Therefore, the purpose of this research is to analyze the actual legal norms that regulate this matter under the domestic law and the United Nations Convention on contracts for the international sale of goods. This research is important because it allows for direct comparison of the legal provisions regulating this matter between a domestic source of law and an international source of law that has a mandatory application in our country when the criteria's are met. The main hypothesis during this research is that the regulation of the passing of risk in the domestic law and the Convention is based on the same principles and there is no need for radical changes of the legal regulation of this matter in the domestic legislation. Aiming to achieve a structural research of the subject of interest in this paper, firstly we analyze the regulation of the matter in the domestic law and afterwards we elaborate the regulation of the matter under the Convention. The concluding chapter is dedicated to sublimation and generating conclusions of the analyzed matters in this research paper.

Keywords: contract, sale, risk, loss, damage.

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Session 3: Constitutional Law, Democratic Transition and the Jurisprudence of the European Court of Human Rights

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EUROPEAN COMMON AREA OF HUMAN RIGHTS AND FREEDOMS

Although there are numerous dilemmas, analyses and considerations concerning the EU's accession to the ECHR, the most general position is that it represents a huge step ahead in the development of the human rights within the EU, and issue to which the EU has been paying significant importance since the early seventies of the last century. Namely, the first general reference to the ECtHR can be found in the Nold case of 1973, as well as in the Rutili decision , further confirmed in Johnston and Heylens. The EU Court of justice has decided that the EU accession to the ECHR is not in accordance with the EU law. The decision was published on 18 December 2014 in Luxemburg. In this decision, the Court, despite the conclusion that the problem with the lack of legal grounds for the EU accession to the ECHR has been overcome with the Lisbon Treaty, says that the EU cannot be considered as a state, which means that this accession should take into consideration the specifics of the Union, which is strictly demanded from the conditions under which the accession is subject of negotiations. By explaining this situation, the Court in fact says that as a result of the accession, the ECHR, as any other international agreement signed by the EU, will become compulsory for the EU institutions, as well as for its member states, and therefore it will be one integral part of the EU law. The paper will analyse the current issues related with the negative opinion issued by the ECJ concerning the EU accession to the ECHR and the recent debates between the EU Commission and the Council of Europe. The debate on the role of the ECHR in EU law, and on the possible accession of the EU to the Convention, has actually intensified throughout the EU integration process. The EU and its institutions will be subject of the control mechanisms foreseen in the ECHR, and particularly of the decisions of the ECtHR. The Court further on underlines that it is necessary for the concept of external control to define that, on one hand, the decisions of the ECtHR based on the ECHR will be compulsory for the EU, and its institutions, and, on the other hand, to determine that the decisions of the EU Court of Justice related with the rights recognized with the ECHR will not be compulsory for the ECtHR.

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Maja Lukic Radovic[*]

FUNDAMENTAL RIGHTS AND FREEDOMS AS BACKDROP FOR CONCEPTUALIZING CONSTITUTIONALITY OF THE EU

Constitutionality of the EU has been conceptualized over the course of the past several decades on the heels of the case law of the Court of Justice of the European Union. In the course of the past decade and a half, that intellectual undertaking has relied mostly on the subject matter of fundamental rights and freedoms. That area has thus started serving as the irreplaceable backdrop against which the doctrine on autonomy of EU has been developed, which has become the cornerstone of the concept of constitutionality of the EU. Most prominent milestones of the described development were the CJEU judgments in the seminal Kadi case of 2008, in cases Melloni and Fransson of 2013, and in Tarrico I and Tarrico II in 2015 and 2017. Fundamental rights and freedoms under EU law have served in said cases as grounds for most varying purposes – from invalidating Member States' obligations under EU law, to affording primacy to secondary EU law over Member States' constitutional provisions on basic rights and freedoms of their citizens. In addition, a stream of CJEU case law on EU citizenship, which have been of great importance for the concept of the constitutionality of the EU, also belongs to the realm of fundamental rights and freedoms. Prioritization of the aim of affirming EU constitutionality by virtue of CJEU case law in the area of fundamental rights and freedoms has been made possible by relatively constructive participation of the Member States' national courts in the judicial dialogue with the CJEU. That aim may be fulfilled only if it remains clear to all stakeholders that the constitutionalization of the EU will ultimately lead to an even stronger protection of fundamental freedoms within the EU.

Key words: Constitutionality of the EU, autonomy of EU law, Kadi, Melloni and Fransson, Tarrico.

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*Grega Strban**

PROPERTY PROTECTION OF SOCIAL RIGHTS: PERSPECTIVES OF THE ECTHR AND THE SLOVENIAN CONSTITUTIONAL COURT

Property protection is one of the oldest in law. Two fundamental rights, i.e. to property and to social security are analysed. Most interesting is the interrelation between them. Question is, whether property protection can be awarded to the right to social security and concrete rights for its implementation. Quite some decisions of the European Court of Human Rights as well as the Slovenian Constitutional Court deal with the property protection of the right to an (old-age) pension. It can be awarded to a broader scope of beneficiaries, exported to other countries, protect the funds from which it is financed, or prevents radical reduction of benefits in the times of recession. However, the leading principle of the right to social security is solidarity, which distances it from pure property perception and stresses solidaristic interconnection between insured persons and in the society as such. Hence, property protection of social rights might present progress in protecting the fundamental human right to social security, but it does not modify its legal nature of a social right.

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LOST IN TIME - THE ZORICA JOVANOVIĆ V. SERBIA CASE AND THE IMPACT OF THE ECHR ON DEMOCRATIC CHANGES IN POST-COMMUNIST COUNTRIES IN EUROPE

If it was not for one of the missing babies' mothers, Zorica Jovanović, and the judgment of the European Court of Human Rights (ECHR), it is certain that the Republic of Serbia would never decide to open the question of missing babies. According to the Association of Parents of Missing Babies, in the past 40 years between 6,000 and 10,000 newborns have falsely been declared dead in Serbia in the past 40 years. Parents claim to possess evidence that their children had been declared dead while still in maternity hospital, and then sold in the black market. In 2013, when the judgment was passed in the Zorica Jovanović v. Serbia case, Serbia had no other choice than to pay damages to Zorica Jovanović, and to take measures within one year of the final judgment to establish mechanisms that would enable all parents in similar situations (around 2,000 of them) to receive appropriate answers and compensation. However, the Republic of Serbia failed to do this.
By analyzing the Zorica Jovanović v. Serbia judgment, the author shall look into two important questions that are equally present in terms of the ECHR judgment in post-communist countries: the problem of executing the ECHR judgments, and the problem of so-called syndrome of perception of powerlessness and usurpation of institutions among citizens, which is embodied in delegitimation of institutional order in citizens' eyes. The author concludes that this is precisely where the European system of human rights protection is powerless, because in cases when it is established that the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms have been breached, and when the ECHR passes a final judgment, it is up to countries to execute the obligations from the judgment, which they – especially post-communist countries - sometimes will not, and sometimes cannot do. The consequence of this is citizens' increased perception that institutions have been completely "taken away" from the citizens, that they are powerless and unprepared to operate in the public interest, as for example in Zorica Jovanović's case, where despite the final judgment and warning of the Council of Europe Committee of Ministers for not executing the judgment, the countries are not capable of investigating and finding out what happened to such a big number of missing children.

Key words: right to privacy and family life, missing babies, European Court of Human Rights, Zorica Jovanović, human rights.

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Domenico Bilotti[*]

ECHR: THE PITY OF A SECULAR GOD AND THE STRENGHT OF A RELIGIOUS CONSTITUTIONALISM

After seventy years from the final textual approval of the ECHR we are experiencing a not so short period of continuous decreasing appeal for International (multilateral) conventional law and for the European Union one, particularly. It followed to a different phase of optimism about the European integration: in the same time, the federalist part of the European parliament battled hard to include the ECHR in the framework of the institutive treaties. The attempt to conceive a European space of fundamental human rights, even wider than the proper European Union's membership, has partially failed, but the special need of it still stands tall in the material governance of Europe, in her internal legal orders and in the spiritual developing of a European popular collective common sense. Regarded both as a programmatic conventional act owning a specific formal jurisdiction and as the result of a theoretical legal process, the ECHR perfectly shows a dual positive medal: the Christian religious thought about mankind and the person herself, her rights combined into a sympathetic net of human relationships, and the democratic implementation of a still ongoing rationalist fulfillment for a progressive social development. This double coin is probably based on the Western conception of individuals but it can survive to its ideological limits by an intercultural effective interpretation, well oriented to rethink the traditional contribution of many legal cultures (particularly included the Eastern European communitarian and radical geographical identity). Seventy years ahead, we are still looking for what we thought we had found and we had not: the untouchable but indispensable horizon of a synthesis between freedom and responsibility.

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Aleksandar Lj. Spasov[*]

ECHR IN TIME OF GLOBAL STATE OF EMERGENCY-THE EXPERIENCE OF POST-TRANSITIONAL DEMOCRACIES

The pandemic of the virus COVID-19 not only changed the lives of millions of people round the world and put under enormous pressure our health systems, but also tested the resilience of the democratic legal and political orders based on division of powers and protection of human rights and liberties, both in the "old" functioning democracies as well as in the relatively young post-transitional democracies. Showcase for the newly created situation is Europe having in mind its cold war history, the well-developed regional system for protection and promotion of human rights and liberties and the successful democratization and integration into the EU and other regional structures of the former authoritarian communist states.
Most of the post-transitional democracies reacted to the crisis by formally invoking a state of emergency and/or undertaking restrictive measures that significantly limited the exercise of certain rights and liberties, mostly freedom of movement, freedom of assembly including the right to protest and, in some cases, touched the freedom of expression by introducing a state control of spreading (dis-) information about the crisis. The undertaken measures also temporarily abolished the division of powers, concentrating both the executive and legislative authority in the executive branch (governments) and marginalized the role of parliaments.
ECHR in the Art.15 regulates the right of the contracting parties in time of emergency "to take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law".
The purpose of this article is to analyze the conformity of the measures taken by some of the post-transitional democracies in Europe, including the author's own country, North Macedonia with the requirement in Art. 15 of the ECHR, including with the practice of the European Court of Human Rights and the leading expertise related to this issue.

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Marko Krtolica[*]

THE IMPACT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN DEALING WITH COMMUNIST PAST IN EUROPE

From the ashes of the Second World War, the concept of transitional justice was born. Without any doubt, the development of the concept of transitional justice represents one of the most dramatic events in legal and political science theory. Defined as a determination to face problematic (repressive or conflict) past filled with serious and systematic violations of human rights, the concept of transitional justice among the majority of scholars represents a key step in establishing democracy and rule of law in post-conflict and post-repressive societies. However, among transitional justice scholars we can also find arguments that the concept of transitional justice in its essence is retroactive justice and a tool that may be misused for political party purposes and further violations of human rights. Under the button of this theoretical debates about the effects of transitional justice, very often transitional societies are faced with one essential question – what to do with the problematic past: to forgive or to punish. Such question inevitably was raised in post-communist countries in Europe after the fall of communism. In order to help and give direction to this sensitive topic, the Council of Europe adopted a Resolution dedicated on Measures to dismantle the heritage of former communist totalitarian systems. Exactly, in this Resolution, the Council of Europe gave clear recommendations that member states have to confront their totalitarian communist past. Beside recommendations, the Council of Europe also gave clear guidelines on how to implement the process of confronting communist past. Such guidelines have had the aim to secure a framework for confronting communist past in order to promote democracy and not revenge. However, despite such clear guidelines the post-communist countries in Europe very often misused the process of confronting communist past for political-party goals. In that direction, the European Court of Human Rights had a pivotal role in protection of human rights during the processes of confronting communist past in Europe. The European Court of Human Rights was very active as a result of the processes for confronting communist past in post-communist countries in Europe. Most frequently, the cases before the European Court of Human Rights were connected to violation of human rights due to criminal trials, lustration processes and property restitution. With its decisions, the European Court of Human Rights has protected human rights, reduced the space for misuse of the process of confronting communist past in Europe, but also gave clear directions on how these processes should be conducted. That is the main reason why during the analyzes of the processes of confronting communist past in Europe it is impossible not to analyze the role and impact of the European Court of Human Rights on these delicate processes.

Key words: Democracy, Human Rights, Transitional Justice, Council of Europe, ECHR, Criminal Trials, Lustration, Restitution.

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Dorjana Bojanovska Popovska[*]

THE BATTLE FOR THE ESSENCE OF ARTICLE 9: A STUDY OF THIRD PARTY INTERVENTIONS IN SELECTED CASES

Vast body of literature on the jurisprudence of the European Court of Human Rights (form hereinafter the Court) and its transformations focuses on the role of member-states and the Court itself (Merrills, 1993; Moravcsic, 2000; Keller, 2008). This paper will contribute to a less explored area focusing on the role of third party interventions (Bürli, 2017) within a narrow scope of Article 9 Grand Chamber judgements. I argue that third parties communicating their interest through amicus curiae shape the reasoning of the Court and influence the outcome of its decisions. However, like other recent authors (Van den Eynde, 2013) in this paper I aim to challenge the assumption that amicus curiae participation leads to the Court finding a violation (Sheldon, 1994). The paper will more specifically analyse: 1) the actors (who intervenes); 2) their arguments (towards what); 3) what arguments the Court appropriates (what works); 4) and finally what is the outcome (the ratio between judgements finding violation and non-violation). The analysis will not be conducted in isolation rather than through the prism of the specificities of the Courts' Article 9 jurisprudence; especially the use of the substantive margin of appreciation and the principle of subsidiarity, leading to the preliminary assumption that the Court has a more difficult task finding a violation due to self-imposed restraints. Consequently, an additional emphasis will be placed on locating the inter-play between the Courts' own principles and doctrines and the operationalization of third-party arguments towards the outcome of the judgements.

Keywords: European Court of Human Rights, Grand Chamber, third-party interventions, Article 9.

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Session 4: Salient Issues in Criminal Law and ECHR (Part 1)

Vladimir Vekovic[*]

PROHIBITION OF TORTURE AND JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Signed in Rome in 1950 under the auspices of the Council of Europe (CoE), the European Convention on Human Rights and Fundamental Freedoms (the Convention) is the first international instrument by which sovereign states have agreed to be legally obliged to provide a relatively broad corpus to everyone within their jurisdiction of human rights and fundamental freedoms. The Convention established a system of human rights protection with the effectiveness of which no other universal or regional system can be compared. The effectiveness of this system is based on the fact that the judgments of the European Court of Human Rights (European Court of Justice) as supranational instances have the force of an enforceable title, which is why they are fully implemented by states. The co-operation of states is the result of the realization that resistance to the Court's decisions would challenge human dignity, personal freedoms and the rule of law as fundamental values of European civilization. Judgments of the European Court often go beyond the cases in which they were rendered, having an impact in the field of creation and application of law in the contracting states. Many CoE member states, respecting the Court's interpretations, have reformed their legislation and made it compatible with the Convention. At the same time, the process of harmonizing the practice of state bodies with the requirements of the Court is taking place, which it is constantly improving and perfecting. Accordingly, the paper analyzes in detail the Court's jurisprudence on violations of Article 3 of the Convention, which guarantees the prohibition of torture, inhuman and degrading treatment or punishment. This makes it possible to see the practical reach of the Convention and the Court in preventing and combating this global problem, which poses a serious danger to the achievements of civilized humanity.

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THE PROHIBITION OF TORTURE - CASES VERSUS MACEDONIA IN FRONT OF THE EUROPEAN COURT OF HUMAN RIGHTS

"The Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) contains the so-called "Prohibition of torture" stipulated as "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Despite the fact that it is one of the shortest provisions in the entire text of the Convention (consisting of exactly 15 words), it does not mean that the provided prohibition should not be taken seriously. On the contrary - the States are obliged to respect the both obligations set by the Article 3, i.e. negative obligation (to refrain from taking the said acts) and positive obligation (to take an appropriate actions aimed to secure and protect the persons from the said acts, as well as to investigate allegations for performing such acts and to sanction their perpetrators).
Having in mind that in 1997 the Macedonian Assembly adopted the Law on Ratification of the Convention, the Paper shall focus on the several cases that target the Article 3. Namely, if the Article 3 is chosen as a search criteria through HUDOC database, which provides access to the case-law, 14 Macedonian cases until 30 June 2020 are found as a result of the search. Therefore, the Paper shall provide a theoretical and critical overview of the Article 3, to the 14 judgements that address Republic of Macedonia, as well as to the other relevant judgements, documents and literature."

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Kristina Petrova[*]

RIGHT TO INFORMATION ON THE NATURE AND CAUSE OF THE ACCUSATION AND DEFENDANT'S RIGHT TO PREPARE ITS DEFENSE UNDER ARTICLE 6 OF THE ECHR

The article analyses the minimum procedural guarantees for the defense in criminal proceedings under Article 6 of the European Convention of the Human Rights (ECHR). The rights are called "minimal" because they represent a lower limit, minimum guarantees for the protection of the defendant in the dispute with the state, which rights must not be reduced, because otherwise there would be no approximate balance between the defendant and the state repressive apparatus in criminal proceedings. The authors review the right to information on the nature and cause of the accusation and its correlation with the defendant's right to have adequate time and facilities for the preparation of its defense as an integral rights of the right to a fair trial. More specifically, the article makes a critical analysis about the reclassification of the charges - the amendment and adjunction of the indictment in the phase of the main hearing vis-à-vis the defendant's rights through an overview of domestic case-law and the judicial practice of the European Court of the Human Rights (ECtHR).

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Ilija Jovanov[*]

HUMAN RIGHTS VERSUS THE PUBLIC INTEREST IN CRIMINAL PROCEDURES

The rule of law appears as a form of human freedom, not as a form of restriction. With the expansion of the concept of the rule of law with the increasingly current concept of good governance, a certain strong pressure is created on the governing structures to include the concept of accountability, transparency, efficiency, effectiveness and more. This suggests that law as a form of human freedom should be constantly upgraded and properly protected. At the same time, the rule of law is the only way to ensure the public interest of all citizens in a society. In today's modern society, where public policy is responsible for the interests of the total population or at least for its majority, it is important to recognize the concept of the public interest. The modern concept of public interest means the recognition of individual human rights and freedoms, accepts the mutual interest of the majority of the population, and of course respects the adaptation to common values of society, regardless of individual interests. In general, the public interest in law signifies the general public's interest in certain issues in legal practice that are important to the majority of the population. In other words, the public interest is what is best for society. However, it must be noted that the public interest is also a variable category. This is because it is closely related to social norms and values, which as we know evolve over time. In a modern society that strives and advocates for the rule of law, the public interest in criminal proceedings must be directed towards the discovery of the truth, which means establishing the facts that are essential to the procedure itself, to establishing the guilt or innocence of the accused, while respecting the presumption of innocence of each accused person.

Keywords: human rights, rule of law, state of law, public interest, criminal proceedings.

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THE UNDERMINED JUDICIAL POSITION IN THE PROTECTION OF THE CONSTITUTIONAL CATEGORIES OF HUMAN RIGHTS

Besides the primary ruling for determining measures for ensuring the presence of suspects and defendants for the duration of the procedure, the preliminary procedure judge is responsible for issuing search warrants of people and home's and special investigative measures. Unlike the previous legal solution, it is now the preliminary's judge responsibility to do a judicial control over the legality of the conduct of the behavior from the law enforcement agencies, if it is considered that any undertaken action has violated anyone's right's. Sadly, legal practice show's that this role of the preliminary procedure judge, which should be the one institute that shall guarantee the protection of our Constitutionals rights, as right to be free, secrecy of correspondence, but also those rights prescribed by the Constitution and the Convention on basic rights and liberties, such as inviolability of one's home, and the right to be free in the context of this paper, is in a significant amount, reduced to a ceremonial role. Without any intention to devalue anyone's work, but it's a fact that, the still dominant position of the Ministry of the interior and the Public Prosecutor's office have had their impact. The statistics are clear on the matter- the percent of accepted proposal for detention never feel under 90%. The percent of the accepted warrant proposal's and special investigation measures proposal's is even higher, close to 100%. In my ten years of law practice I have never met a judge who has refused a warrant or special measures proposal, a judge's a legal right to do, which is a clear indicator of the above. From these reasons, in the correlation with my practice and experience, I believe that the situation needs to be addressed, inter alia, in this way with a professional paper, therefor contributing to changing this unlawful practice.

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Session 5: Salient Issues in Criminal Law and ECHR (Part 2)

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CONDITIONS OF DETENTION AND TREATAMENT OF PRISONERS IN THE PRISONS IN THE REPUBLIC OF NORTH MACEDONIA: ARE THEY IN CONFORMITY WITH THE ARTICLE 3 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS?

"*The degree of civilization in a society can be judged by entering its prisons*."
Fyodor Dostoevsky ("The House of the Dead", 1862)

In the paper, the author analyses the conditions of detention and the treatment of prisoners in the prisons in the Republic of North Macedonia through the prism of the last highly critical report of the Committee for Prevention of Torture and points to the need for urgent reforms of the penitentiary system in the Republic of North Macedonia. The author concludes that the penitentiary system in the Republic of North Macedonia has the features of a modern system. It is one of the penitentiary systems that fully incorporates the Nelson Mandela Rules, the Revised Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on Execution of Sanctions. But the system de facto faces serious weaknesses. The author refers to the judicial practice of the European Court of Human Rights regarding detention conditions and treatment of prisoners in regards to violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. Furthermore, the author disputes the question why prisoners serving their prison sentence in the prisons in the Republic of North Macedonia in such conditions of detention and treatment do not require judicial protection of their rights. Also, the author emphasizes the need for systematic research on the protection of prisoners' rights using legal means, such as, legal advice and legal means of convicted persons and the right to appeal to international bodies.

Keywords: European Convention on Human Rights, torture, European Court of Human Rights, penitentiary system, protection of the human rights of prisoners, prisoners, treatment of prisoners, prison.

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Ivana Markovic[*]

CRIMINAL SANCTIONS FROM SERBIAN LAW IN THE LIGHT OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 3 of the European Convention on Human Rights (ECHR) stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Naturally, prohibition of torture is predominantly a concern of criminal law and the penitentiary system of a state. This contribution is envisaged to concentrate on questions regarding the provisions of the Serbian Criminal Code in the context of Article 3 of the Convention. The first question is embedded in a general evaluation of the existing sanctions in the Serbian penal system regarding compliance with Article 3. The system has been modified several times since the enactment of the Criminal Code in 2005. Also, the Law on Execution of Criminal Sanctions from 2014 has undergone legislative amendments, which also have to be observed under Article 3 of the ECHR. To be aware of the practical outcomes, noteworthy cases from the European Court of Human Rights (ECtHR) against Serbia will be discussed: Gjini v. Serbia and Milanović v. Serbia. What is now expected to become the next case for the Strasbourg Court is the latest amendment to the Criminal Code from 2019: the introduction of lifelong imprisonment into the Serbian legal system. The regulation is namely formulated in a manner that violates Article 3 of the ECHR and goes against established case law of the Court. It may be foreseen that with this recent development and an anticipated decision of the ECtHR, the somewhat from time to time forgotten importance of the European Convention on Human Rights will re-emerge in the consciousness of the Serbian legislature and judiciary.

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Boban Misoski*
Divna Ilic Dimoski**

ANALYSIS OF THE FACTUAL SUPPORT OF THE GUILTY PLEA AND SENTENCE BARGAINING IN THE MACEDONIAN CASES AGAINST ILLICIT MANUFACTURE AND TRADE IN FIRERARMS

With the enactment of the new New Law on Criminal Procedure in 2010, Macedonian legislator has introduced many modern adversarial trial instruments that were supposed to improve the efficiency of the Macedonian criminal trials. After a ten year period from the enactment of this new law that has provided new concept of the criminal trials, we deem that it is necessary to reevaluate the effects of these reforms and their practical implementation. In this occasion, the author evaluates the Macedonian court's practice of implementation of the defendant's guilty plea during the main hearing of the criminal trials trough the verdicts delivered for the crimes of illicit manufacture and trade of firearms as regulated in the article 396 of the Criminal Code. The author specifically focuses upon the factual support of the guilty plea and analyses the amount of evidence that is needed in order the court to accept the guilty plea for such cases. Author concludes that in several of the analyzed cases, the court does not provide sufficient factual support to the defendants' guilty plea and this guilty plea is considered as "regina probationem".

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Marija Pleic[*]

IMPACT OF ECTHR CASE LAW ON PENITENTIARY LAW IN REPUBLIC OF CROATIA

Penitentiary law has been continuously developing through international and European, mostly soft law, documents (European Prison Rules, UN Standard Minimum Rules). Significant and decisive impact on protection of fundamental rights of prisoners has European Court for Human Rights with its wealthy case law on detention conditions. Twenty years has passed since the adoption of first reform Act on the execution of prison sentence in Republic of Croatia, which introduced a new institute of executing judge and strengthened judicial protection of prisoners' rights. Recently proposal of a new Act on the execution of prison sentence has been submitted to Croatian Parliament. Whilst, fourteen years has passed since the first judgement against Republic of Croatia before ECtHR (Cenbauer v Croatia) for inadequate detention conditions and since then ECtHR has found violation of the prisoners' rights under Article 3 in its substantive and/or procedural aspect in number of other judgements. These violations mainly relate to problems of overcrowding, inadequate health care in prison but also effective remedy for complaints concerning the prison conditions under Article 13 ECHR. Recently, in 2016, in judgement Muršić v Croatia Grand Chamber harmonized and recapitulated its practice related to the personal space of persons deprived of their liberty in cells with several prisoners. ECtHR case law over the last ten years has significantly influenced the case law of Constitutional Court of Republic of Croatia whose activity in protecting prisoners' rights increased considerably during this period. Taking into account all of the above author will present in the paper development of Croatian penitentiary law and assess the influence of ECtHR case law on national achievements in this field.

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REFLECTION ON THE EU DIRECTIVE ON THE STRENGTHENING OF CERTAIN ASPECTS OF THE PRESUMPTION OF INNOCENCE AND OF THE RIGHT TO BE PRESENT AT THE TRIAL IN CRIMINAL PROCEEDINGS

The authors of this paper reflect on the EU Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings and its impact on the Macedonian criminal procedure system. The presumption of innocence is settled by the ECtHR jurisprudence as one of the basic standards that lies in the heart of the fair trial concept. The article discusses the issue of public references to quilt and the obligation of the Member States to take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. Also, there is the question of the burden of proof for establishing the guilt of suspects and accused persons, and the requirement that it lies on the prosecution. At the same time, the right to remain silent and not to incriminate oneself, specifically closely related to the presumption of innocence, opens the question about the drawing of adverse inferences when the defendant remains silent or fails to answer certain question. Notwithstanding the fact that the Court asserts these rights as fundamental, in a number of rulings it becomes clear that they can be restricted and that they are not treated as an absolute.

Key words: EU directive, suspect, presumption of innocence, right to silence, right to be present at trial, criminal procedure, Law on Criminal Procedure, Republic of North Macedonia.

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PROCEDURAL SAFEGUARDS IN THE FIRST HOURS OF POLICE DETENTION IN REPUBLIC OF CROATIA IN CONTEXT OF THE ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Access to procedural safeguards in the first hours of the police detention is the most effective way of preventing torture and other forms of violence in line with Article 3 of the European Convention on Human Rights. The procedural safeguards includes the right to a lawyer, the right to a doctor and the right to notify a family member or a third party. For foreign nationals it is important to respect the right to an interpreter and to notify the consular body of the domestic country. The Republic of Croatia, through incorporation of the EU Directives, has strengthened the right of access to a lawyer and established free legal aid for detained persons while detained in a police station. The Law on Criminal Procedure of the Republic of Croatia provides for the right to emergency medical care and to inform family member. For all these rights to be effective, they should be implemented in the first hours of deprivation of liberty, in line with the CPT's recommendations. In order to evaluate the actual implementation of the legal provisions and the international standards related to the procedural safeguards in the first hours of police detention, of significant importance are the international and domestic bodies that are conducting visits and are monitoring the places of detention. The analyses presented is based on the analysis of the Laws on Criminal Procedure and Police Laws in the Republic of Croatia. In addition, the analysis reflects upon the recommendations of the Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT). Particular attention was given to the documents and reports produced by the National Preventive Mechanism within the Ombudsman/Ombudswoman's office.

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Session 6: European Court of Human Rights – Jurisdiction and Case Law Analysis

Aleksandra Deanoska Trendafilova[*]

THE BIOETHICAL AND MEDICAL ISSUES IN THE EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW

The European Court of Human Rights has proved to have an enormous influence in the protection of important rights and freedoms at all levels often setting valuable standards relevant for the national legislations. Its role therefore is not just protective but also indirectly legislative policy directed. This especially applies to issues that haven't been globally legally and ethically established, especially the bioethics and medicine related ones. The surrogacy issues, for example, are very differently assessed in different states, varying from comprehensive and detailed regulation to total prohibition. However, from the perspective of the protection of the rights of the children born via surrogacy arrangements, the ECrHR has reached important decisions that will most probably lead to acceptance of the surrogacy in the European countries. The judgements of Mennesson v. France (2014) and Labassee v. France (2014) but also Foulon and Bouvet v. France (2016), Paradiso and Campanelli v. Italy (2017) etc.will inevitably shape the future surrogacy legislations. Other important bioethical issue that the ECrHR dealt with is the dignified end of life/assisted suicide. Petty v. the United Kingdom (2002), Haas v. Switzerland (2011) and Koch v. Germany (2012) will be elaborated in other to determine the standpoints of the Court on the respective issues. Taking into consideration that the consent has been labelled as a core principle and requirement of the biomedical procedures, the Court addressed it in many cases from several specific aspects. Therefore, the religion, mental disabilities, emergency situations, parental consent, experimental treatment etc. will be evaluated regarding their relevance vis a vis the consent issues and articles 2, 3, 8 and other provisions of the Convention in several cases. At the end, the author will present conclusions about which issues there is a potential a consensus to be reached and which remain open due to the ECrHR case law.

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A NEW APPROACH TO ENVIRONMENTAL PROTECTION TO LINK ECTHR JURISPRUDENCE TO CLIMATE CHANGE

Starting from the Stockholm Declaration, adopted at the United Nations Conference on the Human Environment, the principle that ‘a person has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that provides a life of dignity and well-being and has a unique responsibility to protect and improve the environment for present and future generations’ has become a part of the public right. In practice of ECHR, we encounter Hatton and Others v the United Kingdom case, which argues that ‘the right to a clean and quiet environment’ in the European Convention for the Protection of Human Rights and Freedoms, is not listed as a basic human right, but that exposure of individuals to direct and serious pollution in the environment can raise the issue of human rights abuse, and thus indirect protection of the right to a healthy environment. The aim of the article is to analyze the jurisprudence of ECHR that may point to additional elements of associating basic human rights with new environmental issues such as the consequences of climate change.

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Ivana Tucak[*]

THE RIGHT TO INFORMED CONSENT ACCORDING TO THE RELEVANT CONVENTIONS OF THE COUNCIL OF EUROPE

This paper elaborates a patient's right to free and informed consent to a medical treatment or to refusal thereof pursuant to the European Convention on Human Rights (ECHR) and the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (CHRB). As an international instrument emerged soon after World War II, the ECHR does not shed light on issues pertaining to the relation between human rights and biomedicine. Therefore, it is no surprise that the ECHR does not explicitly contain provisions on the right to informed consent. In its case-law, the European Court of Human Rights (ECtHR) has many times referred to different articles of the ECHR when handling the issue of the protection of this right, particularly to Article 3 thereof relating to prohibition of torture or "inhuman or degrading treatment" and Article 8 thereof stipulating a person's right to respect for his/her private and family life, and correlative positive and negative liabilities of the signatory states. The ECtHR has thus established that Article 8 of the ECHR provides for a broad definition of the notion of private life, which, among other things, includes the right to personal autonomy and protection of physical integrity. The adoption of the CHRB has brought to extension of the protection of human rights in this area. In its case-law, the ECtHR has also touched up the CHRB and its provisions that include explicit formulations on informed consent, most of which are incorporated into Chapter II thereof (Articles 5 -9). The issue of providing or refusing informed consent to a medical intervention, including those with a life sustaining character, is certainly not static, which is reflected in the relevant case-law of the ECtHR. Since the ECHR is "a living instrument", its interpretations change with changing conditions ("an evaluative interpretation"). This paper is aimed at exploring the current approach of the ECtHR to this issue and relevant critical observations thereto. It also examines how to set a balance between the rights-duties of doctors to act in accordance with the rules of their profession, their patients' right to autonomy and self-determination and the interests of the state in the protection of their citizens' life.

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PROTECTION OF ACCESS TO REPRODUCTIVE HEALTH CARE IN LIGHT OF ECTHR DECISION IN CASE STEEN V. SWEDEN (APPLICATION NO. 62309/17)

In February 2020, the European Court of Human Rights brought a landmark decision in case of Linda Steen, midwife from Sweden who was denied employment because of the refusal to assist in carrying out abortions due to her religious beliefs. Court was deciding whether Article 9 of the European Convention for Human Rights protecting the right to freedom of thought, conscience and religion, Article 10 protecting the freedom of expression for having a different opinion from that of the hospital, clinic and County concerned and Article 4 on protection from discrimination have been violated. In Croatia, Ombudswoman for Gender Equality since 2014 conducts regular surveys on the availability of legal procedures for termination of pregnancy. In five hospitals in Croatia, abortion is unavailable due to "objection of consciousness" of all medical personnel. In total, 58, 8% of Croatian reproductive health care professionals refuse to perform legally guaranteed abortions - 75, 1% of surveyed medical staff did not specify reason for refusal to perform abortions, 12, 4% specified religious reasons and 12,4% ethical reasons. The paper provides in-depth analysis of ECtHR decision, focusing primarily on protection of religious freedom in light of ability to perform a job of midwife and right to access to reproductive health care. The purpose of the paper is to contribute to the discussion on right to reproductive health care as guaranteed under the European Convention on Human Rights. Case study of Croatia was used to illustrate possible impact of ECtHR decision to national legislations.

Keywords: reproductive health care, European Convention on Human Rights.

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A GENERAL ASSESSMENT ON THE ADVISORY OPINION PROCEDURE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Highest courts and tribunals of a state party to the European Convention on Human Rights (ECHR), may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols as mentioned by the Article 1 of the Protocol No. 16. The main objective of the Protocol No. 16 is to strengthen the interaction between national courts and the ECtHR and also to relieve the Court's caseload. The ECtHR gave its first advisory opinion under the Protocol No. 16 on April 10, 2019. This study will firstly set forth a general information on the advisory opinion procedure, such as who can request advisory opinions, how is the procedure progress in the Court etc. Then, it should be evaluated if the procedure allows to establish an effective judicial dialogue between national jurisdictions and ECtHR and how the advisory opinion procedure should be improving as an interpretation method of the ECtHR.

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DEVELOPMENTS REGARDING DOMESTIC VIOLENCE IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS: KURT V. AUSTRIA

The focus of the paper is placed on the recent developments in the case-law of the European Court of Human Rights regarding cases that involve domestic violence. The European Court of Human Rights has already delivered a number of important judgments in cases concerning domestic violence. One of the most recent judgments in this regard is delivered in the case Kurt v. Austria on 4 July 2019. No violation of the European Convention of Human Rights was found in Kurt. However, it seems that the reasoning of the European Court of Human Rights by which it reached its judgment in this case does not take into account certain standards regarding domestic violence cases, established in its previous case-law. In this sense, the paper analyses this case in terms of the previously established case-law as regards domestic violence. Namely, as it seems that the case-law of the European Court of Human Rights on domestic violence is somewhat inconsistent, it is crucial for the European Court of Human Rights to fully clarify its approach on domestic violence, especially having in mind that its rulings are vital guidelines for the national authorities in fulfilling their obligations to secure to everyone the rights and freedoms guaranteed in the European Convention on Human Rights.

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RETROSPECTIVE OF THE DYNAMIC AND EVOLUTIVE INTERPRETATION OF ECHR: FRAMING THE STRASBOURG'S INTERPRETATIVE ETHIC

Through the years of jurisprudence, the European Court of Human Rights has developed quite unique and interesting dynamic and evolutive interpretation of ECHR. Starting from the Tyrer case, the Court has shaped the Convention using the doctrine of 'living instrument' and till today it has shown capacity to evolve in the light of social and technological developments, and more important, to adapt its opinion on important Convention's rights. This paper will try first of all, to explain the distinction between dynamic and evolutive interpretation of ECHR by giving answer to new facts and giving new answers to old facts. Further, it will make a retrospective of the cases in which the Court gave dynamic or evolutive interpretation explaining that the 'ECHR is a living instrument which should be interpreted in present day conditions'. Finally, the paper will discuss the latest developments concerning the ECHR's interpretation, the criticism of being too narrow and morally ethic and the justification, for example in the case of Selmouni v. France, where the Court reiterates from its judgment delivered in the case of Ireland v. the United Kingdom explaining that 'certain acts which were classified in the past as inhuman and degrading treatment as opposed to torture could be classified differently in future'. Perhaps this could mean that in future the Court should look beyond present conditions and condemn such acts more gravely thus becoming a true modern developer of Convention's rights.

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Darko Pavlovski[*]

THE LEGAL METHOD AND STRUCTURE OF THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights is a cornerstone and a symbol of the human rights protection machinery centered around the European Convention on Human Rights, which 70 years after its foundation remains innovative, progressive and inspirational world-wide. Undoubtedly, the institutional set-up has enabled the Court to profile itself as a standard-setter with a remarkable history in judicial protection of human rights. But, does the Court's success rely solely on its institutional positioning and the place that it was given in the European system of human rights protection? The paper will argue that through its jurisprudence, the Court has developed its own 'legal method', which has played an important role in the institution's success. The paper will try to analyze the specificities of the Court's legal method, understood as an entirety of legal reasoning, presentation of legal argumentation and structuring of decisions. The legal method will be analyzed through the Court's approach in the establishment of the facts of the case, determination of the applicable law, characterization of the complaints, as well as some standard principles and factors usually taken into account in the Court's legal reasoning. These elements of the Court's legal method will be linked to the standard structure of the Court's decisions and drafting techniques. While the elaboration of the structure of the Court's decisions might seem descriptive and without much substance, the paper will demonstrate that the understanding of the structure is important in order to grasp the Court's reasoning and facilitate the 'reading', subsequent execution and further use of the Court's jurisprudence.
The paper would show that the Court's legal method is authentic integration of various European legal traditions resulting with a single, pan-European space of legal culture.

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Stefan Radojcic [*]

THE ISSUE OF TERRITORIAL JURISDICTION OF THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human of Rights (ECtHR) has been recognized as the most important judicial body in the Europe. Its influence on the national legal systems is significant and many standards of the ECHR have been defined in the ECtHR's practice. Its creative role could be seen as precedential, in a specific – European manner. The same principle has been applied in respect to the jurisdictional issues. The territorial jurisdiction of the ECtHR has significantly evaluated in its jurisprudence. Namely, it is stipulated in the ECHR that the states parties are responsible for the application of the Convention 'within their jurisdiction'. Therefore, the question arises: whether the mentioned definition limits the Court's jurisdiction to the territory of the states parties of the ECHR? The answer is negative and this principle has been a long-standing standard in the protection of human rights before the ECtHR. However, the evolution of this issue has triggered many questions and it could be said that different control tests have been considered when deciding upon the extraterritorial jurisdiction. A common characteristic of those tests is the level of the effective control exercised over a certain territory by the respondent state. The aim of applying such tests is to establish a jurisdictional link, which the ECtHR has set as a required threshold in those specific case. It is particularly interesting to analyze the cases which have arisen from the military missions in Afghanistan and Iraq. On the basis of such observations, it is necessary to make conclusions on the (in)consistency of the ECtHR in this respect and to point out future potentially disputable situations before the EcthHR.

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Majljinda Ajdari[*]

PRINCIPLES AND METHODS OF INTERPRETATION OF THE ECHR

The European Convention on Human Rights is a relatively short document. To be effective, it requires interpretation. According to the Article 32(1) of the European Convention on Human Rights, the role of the Strasbourg Court is to interpret and apply the Convention. An understanding of the development of the Convention case-law requires an understanding of the Court's approach to its interpretation. The starting point are the rules of international law on the interpretation of treaties since the Convention is an international treaty. The acceptance and application of general interpretative principles such as evolutive, practical and effective interpretation, and autonomous interpretation have led the Court to give a rather generous reading of many Convention rights. At the same time, the Court can also use these methods to emphasis the importance of shared responsibility. In a formulation that appears in many judgement, the Court insists 'The Convention must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory'. In practice, the Court's methods and principles of interpretation can play an important role in shaping the interrelationship between the Court and the national courts, in particular in determining the leeway left to the national courts to give their own interpretation to the Convention. This paper aims to highlight the principles and the methods of interpretation of the European Convention on Human Rights as a single complex operation to enhance collaboration between national courts and the Court. It is mainly concerned with the special way the Court gives shape to the Convention and the way it interacts with national authorities in this respect.

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Session 7: Conceptualizing Human Rights under the ECHR

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SAFEGUARDS FROM UNLAWFUL DEPRIVATION OF PROPERTY IN THE MACEDONIAN LEGISLATION AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Even thought the right to property is not a personal right by its nature, still it enjoys the same level of protection as personal right do in national and international laws. This is due to the fact that the person's right to hold property is of crucial importance in economical, social and legal sense of the word. Provisions guaranteeing the protection of property are found now-days in the highest forms of legislation such as constitutions and other founding documents on national level and also in internationally binding document like the European Convention on Human Rights. The main objective of this paper is to analyze the effectiveness of the legislation set forth to ensure protection of property in the Macedonian legal system. The analysis includes the constitutional provisions guaranteeing the protection of property as one of the fundamental principles of the Constitution (art. 8), the guarantee of the right to hold property (art. 30, par. 1), the safeguard from deprivation of property unless it is in public interest determined by law (art. 30, par. 3) and the right of just indemnification in case of deprivation of property (art. 30, par. 4). The provision of the Law of Ownership and Other Real Rights, the Law on Expropriation, and other special laws and by-laws are also analyzed try the scope of how effective is the protection of property that they provide. As the paper will show, the challenge is finding the balance between protecting the personal interest of the property holder on one hand, and on the other, making use of the social functions attributed to property such as satisfying the public interest when necessary. Finding the right balance between personal and public interest in use of property is crucial for effective safeguards from unlawful deprivation of property. The pursuit of such balance is certainly in the spirit of the European Convention of Human Rights which guarantees the right of peaceful enjoyment of one's possessions, but does not impair the right of countries to impose limitations on the use of property, or to deprive a person from his or her property provided that it is in public interest determined by law, and in accordance to the general principles of international law (art. 1, First Protocol).

Key words: property, ownership, protection of property, property rights.

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QUARTER OF A CENTURY LONG BALANCING BETWEEN THE INTEREST OF AN INDIVIDUAL NOT TO BE SUBJECTED TO SEVERE INDUSTRIAL POLLUTION AND THE INTERESTS OF A SOCIETY AS A WHOLE – EVOLUTION OF STATES' POSITIVE ENVIRONMENTAL OBLIGATIONS ARISING FROM THE ECHR

If compared to the 70 years long application of the ECHR, the environmental jurisprudence of the ECtHR might appear to have started to develop rather late. However, taking into consideration that neither the Convention nor its protocols guarantee the right to a healthy environment, the Court needed a proper moment to start including environmental elements into other human rights. The paper will focus on the oldest and most successful line of environmental applications – those that related to alleged violations of Convention rights as a consequence of industrial activities. By analyzing the relevant judgments of the Court, the author would trace the evolution of Convention standards from the first industrial pollution case Lopez Ostra v. Spain decided by the Court in 1994 to the latest judgment Cordella v. Italy delivered in 2019. The research would be based on two main hypotheses. Firstly, it will be argued that outstanding developments occurred with regard to the extent of states' positive environmental obligations that the Court identified as constitutive elements of other conventional rights. Secondly, as opposed to such significant developments, the author would argue that remedial potential of ECtHR's environmental judgments seems questionable due to a number of reasons. The aim of the paper would therefore be to explore the reasons for such an obvious discrepancy between the high standards identified by the Court as regards both the substantive and procedural environmental duties on the one hand, and the limited remedial effects of the Court's judgments on the other, as well as to propose potential solutions. The latest case of Cordella v. Italy seems to offer certain guidance and a fairly positive development in that regard since it focuses, through the suggested general measures, not only on the respondent State's obligation to address the consequences of industrial activities but also to prevent future damages.

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FREEDOM OF EXPRESSION VS. RESPECT FOR PRIVATE LIFE: THE ROLE OF ECHR IN MODELLING CIVIL LIABILITY FOR DAMAGE

The European Convention on Human Rights in Article 8 provides that everyone has the right to respect for their private and family life. This is generally known as the right to privacy, in which, as per Article 8(2), a public authority may not interfere. Article 10 of the ECHR provides that everyone has the right to freedom of expression. The exercise of the freedom, since it carries with duties and responsibilities, may be subject to restrictions, necessary in a democratic society, in the interest of intel alia protection of the reputation. How this tow rights interrelate and what is to be done in case of 'conflict' are one of the key questions when it comes to liability for damage that arises from the breach of the right to reputation. This is of particular interest when it comes to the work of the media. The European Court of Human Rights in its jurisprudence established that Article 10 and Article 8 deserve "equal respect", thus ECtHR may be required to verify whether the domestic authorities struck a "fair balance" when these two values come into conflict. Where the right to freedom of expression is being balanced against the right to respect for private life, the Court set the six criteria that arise from its jurisprudence: 1. Contribution to a debate of general interest 2. How well known is the person concerned and what is the subject of the report? 3. Prior conduct of the person concerned 4. Method of obtaining the information and its veracity 5. Content, form and consequences of the publication 6. Severity of the sanction imposed Having in mind that on national level, as per Article 2, par 2 of the Law on Civil Liability for Insult and Defamation, the restrictions on the freedom of expression and information shall be legally regulated by setting out strict conditions concerning the civil liability for insult and defamation, pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10) and the case-law of the European Court of Human Rights, it is of outmost importance the issues to be further examined and discussed in details.

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THE FAMILY LAW OF THE REPUBLIC OF NORTH MACEDONIA THROUGH THE PRISM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Family law and human rights intersect in the field of rights related to couples, relationships between children and their parents and other relatives and children's rights. Family law matters historically have been treated as out of subjective nature allowing national states based on their own morals and traditions to rule what family life encompasses. Nevertheless, over the years, the European Court of Human Rights (ECtHR) has changed the level of flexibility, interpreting the European Convention on Human Rights (ECHR) on grounds of rational and strict scrutiny in the European context, claiming that its decisions set a European hierarchy of values, which cannot vary drastically from State to State. The text will analyze the provisions of the national family law as well as their application in relation to the ECHR and the case-law of the ECtHR to demonstrate how necessary is to reform them better sooner than later. After several lost cases in front of the ECtHR (for instance, Oluri v. North Macedonia and Mitovi v. FYRM), as well as the possibility of others to be lost in the future, the national state authorities should manifest real attentions and plan to avoid further infringements of the Convention. Namely, the Family Act dates from 1992, was amended and changed many times but never harmonized as a whole and therefore represents a clash between old and new principles. The State should pay more attention to diagnosing national legal inconsistencies with internationally ratified documents and the ECtHR's case-law in order to be able to avoid further infringements. Even though there are official demands for changes regarding some aspects of the Family Act from legal professionals, non-governmental organizations and citizens initiatives (for instance – regarding the right to know child's origin, shared parental responsibilities, registered partnerships in the light of the right to private and family life), it remains unclear (or clear to certain extent, yet not justified) why the national authorities remain continually unresponsive and place the family law reforms in the waiting room.

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LEGAL FRAMEWORKS AND MECHANISMS FOR THE PROTECTION OF PRIVATE PROPERTY IN THE TERRITORY OF THE AUTONOMOUS PROVINCE OF KOSOVO AND METOHIJA IN THE PERIOD FROM 1999 TO THE PRESENT, IN THE CONTEXT OF ARTICLE 1 OF THE FIRST PROTOCOL TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Relying on the Universal Declaration of Human Rights, in the period after the Second World War, the Convention on Human Rights was adopted on the territory of modern Europe, which for the first time, regardless of religion, gender and nation, envisages universal mechanisms for the protection of guaranteed human rights. Despite the proclaimed universal values, certain legal systems only declaratively refer to the European Convention on Human Rights in their legal acts. One such legal system that declaratively refers to the Convention was established by the United Nations and the United Nations Interim Administration (UNMIK). By adopting Resolution 1244, and in accordance with the generally accepted principles of international law and the Convention on Human Rights, UNMIK appears as a guarantor that in the territory of the Autonomous Province of Kosovo and Metohija, there will be no violation of basic human rights and thus the right to private property. However, by enacting Regulations with the force of law, the Special Representative of the Secretary-General (SRSG) unilaterally and independently creates a legal system, while Regulation no. 1999/24 represents a turning point in the further creation of the legal system in the territory of the Autonomous Province of Kosovo and Metohija. By adopting Regulation no. 1999/23 and 2000/60, the House of Property Directorate (HPD) is established as an international administrative body with executive powers whose sole and exclusive competence is to make decisions on claims regarding the usurped property. Due to the apparent failure of the House of Property Directorate (HPD) to return the usurped property and take possession of it, UNMIK established the Kosovo Property Agency (KPA) in 2006. According to official data, 42,696 requests for the return of usurped property were submitted to the Kosovo Property Agency. The author pays special attention to Law no. 05 / L-010 on the Kosovo Property Comparison and Verification Agency. The Agency, as an administrative body, has executive powers to compare excerpts from the cadastral books of the Republic of Serbia and Kosovo * and verify entries in the cadastral records. We believe that it is necessary, especially in the aspect of mechanisms for protection and exercise of rights to private property, to pay attention to the mentioned legal act. The Agency, as an administrative body, has executive powers to compare excerpts from the cadastral books of the Republic of Serbia and Kosovo * and verify entries in the cadastral records. We believe that it is necessary, especially in the aspect of mechanisms for protection and exercise of rights to private property, to pay attention to the mentioned legal act. The Agency, as an administrative body, has executive powers to compare excerpts from the cadastral books of the Republic of Serbia and Kosovo * and verify entries in the cadastral records. We believe that it is necessary, especially in the aspect of mechanisms for protection and exercise of rights to private property, to pay attention to the mentioned legal act.

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ARTICLE 10 ECHR: FREEDOM OF EXPRESSION IN THE CONTEXT OF TRADEMARKS

The paper analyses the significant proactive role of the European Court of Human Rights (ECtHR) in the resolution of intellectual property disputes in the past decade. In the examination of the relationship between fundamental rights and intellectual property, the authors focus on the specific issue of potential conflict between the right of freedom of expression and the right to the protection of trademarks. The expansion of the trademark rights might lead to restriction of their protection because it conflicts with the right of freedom of expression and information (Article10 ECHR). The paper explores the freedom of expression jurisprudence of the ECtHR in the context of trademarks and the level of protection to third parties and potential trademark holders.

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CONTESTING THE LIBERAL HUMAN RIGHTS NARRATIVE THROUGH THE USE OF ARTIFICIAL INTELLIGENCE

The (established) liberal human rights narrative is founded on several key elements. Firstly, the idea of human rights rests on the assumption that every human being enjoys these rights not because of some accomplishment or social standing but simply as a result of being human. Therefore, the idea of human rights implies that there must be a human, a "self", who would possess these rights. Secondly, the most common philosophical ground for the existence of human rights is the "inherent human dignity", meaning that all human beings share some intrinsic, inherent value that makes them all equal and above all other species and worthy of enjoying these rights. Finally, individual autonomy is also emphasized, as, outside from the possibility to renounce her rights or to infringe on the rights of others, every individual is free to self-determine and self-govern its own life. However, the liberal narrative surrounding human rights is increasingly being contested in the 21th century through the use of artificial intelligence (AI) systems by states and private companies. The manner in which AI is used completely challenges individual autonomy, constantly endangers or violates human dignity and additionally blurs the philosophical idea of a "self" in human rights. Private companies seriously attack individuals' autonomy and the concept of the "self", while at the same time jeopardizing human dignity. The use of AI by social media giants, for example, is a perfect example. Some of the algorithms they employ are based on the preferences the user has expressed – the content she opens, searches or engages with (through likes or comments) – in its daily use of the respected platform (in a certain period of time). The algorithm then collects the data, and classifies the individual, delineating the boundaries of the individual's virtual identity and of the content that is (mostly) available to her. Therefore, it can hardly be said that the individual is self-determining and self-governing herself online. Rather it is the AI systems employed by the social media companies that "choose" what the individual is and what it would like to be or to do. In addition, these exogenous categorizations of the individual and the data gather from her online behavior are then sold to other companies which target the individual with specific advertising, further fortifying the individual's alleged (virtual) identity. The mass amount of data that the private companies and governments amass and the manner in which they use it is also problematic and hardly compatible with the liberal narrative of human rights. Private companies, through the algorithms they use specifically for this purpose, are increasingly making the availability of their services depended on virtual social ranking systems and certain "appropriate" behaviors, discriminating and excluding persons that the AI system deems unfit. Furthermore, through the use of AI, some governments also conduct massive, non-targeted and non-discriminate surveillance of vast amounts of places in the name of security. Thus, these practices are essentially shattering the understanding of human dignity.

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HUMAN RIGHTS AND INTELLECTUAL PROPERTY

Intellectual property rights have in recent years become increasingly relevant in diverse policy areas, including trade, culture and heritage, investment, environment, and scientific and technological development. In this context it is undisputed that the appropriate intellectual property protection can contribute to the economic, social and cultural progress. However, the role of intellectual property raises questions that are complex, rapidly evolving, and often very controversial. This especially if we take into account the fact that the protection of the intellectual property should in fact be balanced between two conflicting freedoms (the rights holders' and the society). It therefore is interesting to note, that the protection of the intellectual property rights is embraced even in the Universal Declaration of Human Rights (UDHR). The Article 27. 2 of UDHR explicitly recognizes that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". However, according to the author of this paper, this is only a starting point of assessment if the intellectual property rights are per se fundamental human rights. Particularly if we take into consideration the "paradox of property" which is rarely considered to be forming part of the order public and thus being considered as right of fundamental interest for the society. The aim of this paper, will be to tackle the main concerns of considering the intellectual property rights as human rights, providing some theoretical debate on this point and also practical case law analysis of the problem.

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WHY WATER AND SANITATION IS FUNDAMENTAL HUMAN RIGHT?

For the past decade, from the Millennium goals, until SDGs international organizations, UN and other entities acknowledge the importance of water and sanitation for exercising fundamental human rights. Covid-19 questioned all this efforts, and makes us started thinking that water and sanitation needs adequate protection, both legal and institutional. In this paper it will be discussed the connection between the right to water and sanitation with the other fundamental rights, and why this right should be treated as a separate right. How water should be treated in the legislation? It's a thick line between treating water as a public or private good, and that directly affects the human right to water and sanitation. Also, a necessity for implementing water and sanitation as a fundamental human right in the Constitutions of the countries will be mentioned. Analysis of the right to adequate living standards and healthy environment will be made, as a direct connection to the human response to climate change and saving the environment and water protection. Positive examples will be analyzed as a step forward on human rights protections.

Keywords: water and sanitation, human rights, future of rights, protection, climate response.

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Session 8: Protection of Human Rights, Political Perspectives and Public Order

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FORCED MIGRATION AND CONFLICTS – CHALLENGES AND RESPONSES

Conflict is key to understanding migration especially in modern times. It is something that got pronounced after the 2015 refugee crisis which was born out of war, and will be with us for decades to come. According to them and this is something I strongly agree with, understanding this reality is essential if we were to mount an effective response. Because studies show that deadly conflict, above all, is driving the massive exodus of refugees. As you will see later on, the wars in Afghanistan, Somalia, and Syria alone are responsible for more than half of the world's refugee population. Forty million people—two-thirds of the world's forcibly displaced—are displaced within their own countries by conflict and violence. The Middle East, with its political upheaval and conflict in recent years, has seen the fastest increase in forced displacement. Since March 2011, the Syrian war alone has accounted for almost 12 million displaced people, one-fifth of the world's total and over half of the country's population. Forced migration is the center of conflict and crisis induced displacement study. As of 2020, 1 person is relocated every 2 seconds (often with nothing but the clothes on their backs). Currently, the global total of forcibly-displaced people is about 80 million. During periods of conflict, hunger may be both a cause and a consequence of forced migration. People affected by conflict experience it, not only as a threat to their lives but as an assault on their livelihoods that can undermine their ability to provide for their most basic needs, including food. Conflict can restrict people's movement and their access to markets, farmland, and jobs. If they cannot produce the food they need to survive or earn an income to purchase that food, their nutritional well-being is compromised. Some people are displaced multiple times, with each move further eroding their resilience, income, and food security. And the 80 million people being forcibly displaced that we mentioned before - is the most, since World War II, according to the U.N. Refugee Agency (UNHCR). And about 85% of refugees are hosted by developing countries. The presentation aims to pin point the biggest challenges related to forced migration and countering global responses.

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THE LEAGUE OF NATIONS AND THE PROTECTION OF MINORITY RIGHTS

The minority issues in the era of creation of nations and nationalism in Europe during the XIX century, directly affected the existence of the Ottoman Empire. In fact, the minority problems in Southeastern Europe were an indirect generator of the crucial issues on the international stage. If observed from the aspect of a religious protectorate, these issues actually instigated the Russian-Turkish military clashes and started the wave of national uprisings among the Balkan peoples, which culminated with the Balkan wars. The struggle for supremacy over the Christian population within the Ottoman Empire also affected the Austro-Hungarian Monarchy and the Russian Empire. In a certain moment, even France demonstrated its interest, becoming not only a strategic partner of the Ottomans, but also a protector of the Orthodox Christian population on the Balkans during the period from the end of the Crimean War in 1856 until the outbreak of the Great Eastern crisis. Basically, the minorities always existed, although their treatment as a political issue started at the end of the XVIII century. The Versailles system created new states with significant minority groups within their borders. Following the necessity for resolving of their status and in accordance with the postulate upon which the new European order was built i.e. the "self determination of the peoples", international obligations which guaranteeing the protection of minorities were set. The fulfillment of these obligations was generally guaranteed by the League of Nations, establishing a practice which enabled minorities to submit petitions to the Council of the League of Nations. Step by step, this practice opened the possibility for taking into consideration the minority rights within the frames of the internal law of the states which were part of the sphere of the newly established order. Ever since the creation of the Covenant of the League of Nations, there were several attempts, mainly by the American president Woodrow Wilson, to apply the principles for the religious, language, racial and national minorities.

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THE RELATIONSHIP BETWEEN INTERNATIONAL AND INTERNAL LEGAL ORDER IN NORTH MACEDONIA AND CONSTITUTIONAL RELEVANCE IN LIGHT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Contemporary constitutions regulate the relationship between the international and internal legal order and the procedures that makes it possible and secure the compatibility between the legal norms of the two respective legal orders. This relationship is evidenced by the manner constitutions achieve the process of incorporation of norms of international law in the domestic legal order. In order to accomplish this, it is necessary, that the norms of international law become part of the domestic law of the state. This paper will also discuss the constitutional relevance i.e. the manner how constitutional court implement provisions from the European Convention on Human Rights with special emphasis to the Constitutional Court of North Macedonia. It is important to stress that European Convention on Human Rights does not lay down manner for ensuring the implementation of the guaranteed human rights and freedoms, thus it is left to each country to create its own path which on the other side point to the fact that the European Court of Human Rights cannot act as a court of fourth instance. This means that the constitutional relevance and the margin of appreciation are related and dependent on each other. Moreover, this paper will analyze the implementation of the European Convention on Human Rights provisions by the Constitutional Court of North Macedonia as well as the objective and pragmatic need of introducing the judicial remedy of a constitutional complaint for the legal protection of constitutional rights of the individual.

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POLITICAL RHETORIC

Aristotle described three major rhetorical means of persuasion; ethos, pathos and logos. Ethos uses trust to persuade the audience. A politician uses his or her respective reputation and what is perceived and said about them; however there is a close connection between reputation and reality. Credibility depends both on expertise and how this is portrayed. In order to persuade the audience, you must first believe in yourself. Pathos does not directly involve the argument itself; instead pathos relies on the emotions of the audience. An efficient way to move the audience is to appeal to their values. Logos is Greek for "logic" and is used to persuade the audience by demonstrating the truth and is based on scientific facts. Logos is also used to appeal to the intellect of the audience, and is considered an argument of logic.

Keywords: Politic, rhetoric, logos, values.

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HORIZONTAL INEQUALITIES AND CONFLICT

Does horizontal inequality feed violation and causes conflict? The Balkan societies are diverse in terms of ethnicity which represents an opportunity but also a great challenge when it comes to building sustainable peace and tolerance as well as democratic institutions. Observing that ethnic relations exemplify a serious issue with focus at various levels of the modern societies impacting the attitude between people and different communities by escalating into the armed conflicts too, it is of high importance to analyze the disparities effecting this violation. In this context, in most of the scholarly articles, in the theories describing ethnic group relations (ethnic group inequalities and categorical inequalities), but also in the fragile relations revealed between different communities of post conflict and ex-Yugoslav countries, the misbalance between the groups can be attributed mostly to horizontal inter-community inequalities. In contrast to the studies that alleviate the relation between vertical inequalities, this paper focuses on the relevant form of inequality— that between the groups, or so-called horizontal inequalities, which enlightens the disparities between the groups causing potential violation and escalation of conflict. Measuring the impact of horizontal inequalities between communities is a challenge, since it entails analysis on the groups' situation for a longer period, subsequently, the inter-community horizontal inequalities, will be analysed through some conflict analysis tools and few avenues will be ggested for a future analysis and conflict prevention as a result of horizontal inequalities.

Keywords: Horizontal inequalities, inter-community relations, violation, conflict.

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THE PROTECTION OF HUMAN RIGHTS ACCORDING TO DOMESTIC AND INTERNATIONAL LAWS

The protection of human rights and freedoms are of particular importance within the states, of which are provided different rules starting from the highest act which is the constitution. In this regard, it is important to mention also the role and the importance of the international acts in the international arena. Therefore, the efforts always have been made by the states and international organizations with the aim to protect these rights - human rights, as fundamental rights. In today's legal and international theories, there are almost same opinions, which consists in the protection of human rights and freedoms, and for the same are provided different legal mechanisms for their protection.
Through this paper, we will elaborate the historical overview as well as the legal protection of these rights within state institutions, and their international protection, for which are foreseen various international acts. Thus, the states are those who must always ensure the legal protection of human rights, but this is not always applicable and depends on its ability and internal organization of the states. Therefore, as a result of such weakness, the citizens have the opportunity to address for the violation of their rights to various institutions of international organizations, in order to realize their subjective rights.

Keywords: constitution, convention, human rights, international protection, state

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