Athens Institute for Education and Research
2020

An Anthology
Of
Law

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First Published in Athens, Greece, by the
Athens Institute for Education and Research
ISBN: 978-960-598-384-0

Printed and bound in Athens, Greece by ATINER
8 Valaoritou Street
Kolonaki, 10671 Athens, Greece
www.atiner.gr

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Introduction

David A. Frenkel

This book offers a selection of essays which shed light on various issues in the field of Law.

The essays are revised versions based on presentations at the 2019 and 2020 International Conferences on Law organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. The essays in this volume were selected after a process of blind-review on the basis of the reviewers' comments and the essays contribution to the ongoing discussion of the respective issues.

Traditional boundaries have become permeable. We live in a transparent, influencable and pervious world. The response of the law and the legal systems to current developments is one of the great and serious challenges of our time. The authors of the essays collected for this anthology seek to analyse some of these challenges.

The book commences with **Michael P. Malloy**'s essay *Distance Banking: Pandemic Responses of a Regulated Industry*. Over the past 20 years, the scholarly literature has emphasised that banking was becoming a more "virtual" activity, no longer tied to brick-and-mortar operations. The advantages of digital banking may seem obvious. However, there is a downside to virtual banking. As banks de-emphasise the physical locations, local branches in underserved areas begin to disappear or to limit services. This results in a crisis for the low-to middle-income retail customers. For many access to an actual, physical bank remains important. The Covid-19 pandemic raises other concerns, since many of the regulatory and supervisory controls exercised over banks do not necessarily adapt well to a worldwide pandemic. The author argues that banking as intermediation has always been in some sense "virtual," substituting credits and debits for physical exchange of currency or gold. As in past crises, in this pandemic regulators have tried to ensure that indirect regulatory costs do not overburden banks, and they have tried to exercise regulatory authority to ease the negative impact of the pandemic.

The second contribution is **H. Bashar Malkawi**'s essay *Economic Boycotts and WTO Law*. Free trade is a core component of the global governance architecture and recent decades have witnessed the legalisation of international economic law. Institutions, such as the World Trade Organisation (WTO), that govern international economic relations today grew out of an understanding that peace cannot flourish in a world with trade barriers. Many bilateral investment agreements and free trade agreements have been executed all intending to depoliticise economic relations and preclude discriminatory trade conduct. The author's view, however, is that international economic law recognises the right of States to invoke policies and trade barriers such as boycotts on the basis of national security. The author argues that this inter-connection between trade and national security is not new.

Alessandro Liotta is the author of the third essay *The DRM Directive: An ADR Mechanism to Obtain Tax Cohesion within the Internal Market?*

The author examines the EU Dispute Resolution Mechanism Directive in the light of the current EU Law framework and of the competencies of the EU in the field of direct taxation. As explained by the author, the Directive represents an interesting measure enacted at EU level to create a common system of dispute resolution in case double taxation treaties among Member States apply, though it is not the very first attempt of the EU in this field. The author gives a general overview of the historical background of the DRM Directive, its goals and the procedure it introduces and highlights its most innovative aspects. Since this new ADR (Alternative Dispute Resolution) mechanism has been introduced by a Directive, the European Court of Justice will have the power to guarantee a homogeneous interpretation of the provisions included therein. However, though the power of the European Court of Justice is expected to be limited to the application of the provisions that regulate the dispute resolution, and should not affect in any way the object of the dispute, the author is not sure that at the European Court of Justice would limit itself accordingly and would not start ruling upon the overall application and interpretation of those Treaties?

The fourth essay *Theoretical and Practical Aspects Regarding the Investigation of the Criminal Offence of False Testimony* has been written by **Elena-Ana Iancu.** The process of building social capital is closely correlated to the manner in which personal safety and human security are ensured. It is also influenced by the correctness, clarity and accuracy of the statements a person makes before the judicial bodies as well as by their omissions, with the form of guilt required by the law. Untrue testimonies may lead to situations that constitute offences falling within the realm of obstruction of justice. The essay is aimed at highlighting the legal content and the constituent elements of the criminal offence of false testimony. The discussion in the essay is interdisciplinary, as during the process of investigation of a false testimony offence, the evidence-gathering procedures that may be ordered in the case vary, depending on the concrete circumstances in which the act was committed, the material element of the objective side and the circumstances surrounding the active or passive subject. The identification, reporting and decoding of simulated or dissimulated behaviours which may have negative consequences on actions aimed at ensuring public order and safety, national security and security in the context of global communities, are of particular importance.

Clément Labi and Willy Tadjudje authored the fifth essay *The Facelessness of Evil: Towards a Rationale for Corporate Criminal Liability*.

Why do we assign ethical intentions or mechanisms to certain businesses, which by design do not possess intentionality in the same way as actual business people do? Are these merely opportunistic shortcuts from the judges or the law, in search of sizeable assets to implement reparation or levy a fine? The authors describe how the unethical aspect of some decisions could not be satisfactorily explained in terms of the intentions of individuals, but rather as being the products of the value system, or corporate culture, proper to the legal entity itself notably because the sense of individual responsibility is diluted and scruples assuaged. The

authors' conclusion is that not only can businesses in themselves can be assessed in terms of ethics, but the reality of a literally faceless business is congruent to institutionalised wrongdoing.

The sixth contribution is **Vladimir Orlov**'s essay *Liability Issues Related to Corporate Activities in Russian Law***.** The author explains the general liability rules which consist of tort and contract liability provisions of the Russian Civil Code. Special corporate norms are included in the Code's provisions on juristic persons as well as legislation regulating corporate forms, concerning liability of founders, shareholders and corporation as well as executives of corporation. Traditionally, Russian civil liability rules have relied on the concept of illegality of an action (or breach of an obligation) that is to cause liability, which reflects the dominant role of legal supervision in the Russian legal system. However, in the event of liability of corporate executives, a breach of fiduciary duties could be regarded sufficient as a ground to qualify their actions as illegal without particular reference to concrete legal norms.

The seventh essay *The Exit of NGOs from Market in Romania* has been written by **Lavinia-Olivia Iancu**. Non-Governmental Organisations are based on a healthy morality, regardless of the state or religion we refer to, to help those in distress. Precisely because of this purpose with the deep moral values, on one hand the states have granted a number of fiscal facilities to non-governmental organisations and on the other hand they can receive donations and access non-reimbursable funds. However, as the authoress states, the situation is not satisfactory and calls the Romanian legislator to recognise the importance of these organisations, as well as their role in the society, and offer them a modern legal regulation that will allow them to easily enter and exit the market as well as the rigorous control of their activities.

Maria Luisa Chiarella is the authoress of the eighth essay *Numerus Clausus of Real Rights: Current Value and Practical Issues.* This essay deals with the *numerus clausus* of the limited property rights of enjoyment of someone else's property. The authoress examines the historical and ideological development of the *numerus clausus* principle by identifying the legal and regulatory framework. The essay explores how Courts apply civil law rules and how the concept of *numerus clausus* differs from that of typicality. The survey also explores how a-typicality can find room in this field. The authoress also considers the *semi-clausus* principle and how it has been elaborated by current doctrine. *Numerus clausus* is of remarkable relevance in the Italian context because in December 2019 the Second Section of the Court of Cassation remitted to the United Sections the issue of the qualification of the right of exclusive use in condominium. The right of "exclusive use" on res of common property is often negotiated, but its legal qualification is not clear.

Comparative Perspectives on whether Short-Term Rental should be allowed in Condominium Schemes authored by **Cornelius G. van der Merwe** is the ninth essay. Increasing numbers of condominium owners (strata title proprietors) are departing from the traditional practice of granting long-term leases in favour of short-term letting. The recent surge in popularity of websites such as Airbnb and HomeAway enables owners to market their apartments to holidaymakers all over

the world. In order to deal with the unplanned impact of short-term rentals municipalities all over the world have published regulatory frameworks to neutralise the negative effects of short-term rentals. The author elaborates on the positives and negatives of short-term rentals. This elaboration is followed by an analysis of the provisions of some of the most important condominium statutes as well as the various municipal regulations that have an impact on the phenomenon of short-term rentals. The essay is concluded by an explanation of the strict conditions under which short-term rentals should in the author's opinion be permitted in condominiums and strata title schemes.

The tenth essay is *The Current Trends in the Right of Assembly under the European Convention on Human Rights* written by **Petr Černý**. The right of assembly is one of the most important political rights. The European Court of Human Rights (ECHR) protects compliance for the European Convention on Human Rights and assesses, inter alia, whether the member states violated the right of free assembly. The application of article 11 of the Convention raises a number of questions about the scope of the possibility to restrict the right of assembly. This essay deals with the approach of the ECHR to these issues as well as the concept of right of assembly according to the Convention.

Athanasios P. Mihalakas and Emilee Hyde are the authors of the eleventh essay *Implementation of Nationally Determined Contributions under the Paris Agreement - Comparing the Approach of China and the EU.*

Climate change is a pressing global issue that is rapidly requiring a global response under international law. The UN Framework Convention on Climate Change was created by the UN to unite states in coordinating efforts to lower greenhouse gas emissions while continuing to develop in a more sustainable way. The Kyoto Protocol and the Paris Agreement were two succeeding efforts under the UNFCCC to decrease emissions and prepare adaptations for the effects of climate change. The Kyoto Protocol required mandatory reduction in carbon emissions by industrialised developed states, and it inevitably collapsed. The Paris Agreement required voluntary reduction of carbon emissions by all member states. In this essay, we look at the evolution of the international climate change legal regime, from the UNFCCC adaptation at Rio de Janeiro, to the failed Kyoto Protocol and the innovation of the Paris Agreement. The authors argue that the greatest innovation of the Paris Agreement is in climate change related information gathering, sharing, and reporting. Therefore, in the fight against global warming, timely and reliable information on carbon emissions and how national governments are dealing with that have become more valuable than just complying with global targets.

Līga Stikāne, the authoress of the twelfth essay *What Effect Does European Private International Law on Cross-border Divorce Have on National Family Laws and International Obligations of EU Member States?* With the number of cross-border divorces in the EU soaring, the adoption of the 'Brussels II bis Regulation' and of the 'Rome III Regulation' seems like a logical step. Yet, discussion-provoking is the fact that the interaction between Brussels II bis and Rome III has resulted in Malta being forced to introduce the institution of divorce into its substantive family law. This shows that EU law may have some impact on the national family laws of the Member States in the future as well. The authoress argues that the application of European private international law may create an

awkward situation, in which a Member State may be forced to breach its international obligations in order to fulfil its obligations under EU law. Therefore, the authoress suggests an amendment to Article 22 of Brussels II bis.

The Notion of Home in Middle Eastern Cinema: The Presence of the Absence is the title of the next essay authored by **Anna Chronopoulou**. The highly regular use of the notion of home in the everyday has remained tactfully unexplored within the wider context of law and popular culture. It is hardly ever the case that issues of property law are explored within that context. More specifically, they remain strictly embedded in the law's domain. The examination of the notion of home and its relation to popular culture within the Middle Eastern cinematic tradition is even rarer. The authoress seeks to address this absence. In doing so, this essay re-establishes the relationship of property law to popular culture through an examination of a small sample of Middle Eastern movies.

Jonatan Vieira Feitosa and José Geraldo Romanello Bueno are the authors of the fourteenth essay *Notary and Registrar's Civil Liability for Data Leaking at the Brazilian Electronic Central (E-Notariado).* The authors analyse the acts performed by the Brazilian notaries and registrars at electronic databases and the new electronic internet device created by the Brazilian College of Notaries, called E-Notariado, which acts as a digital certificate network with the purpose of establishing an Authority Certification. The authors stress the need for a data protection law, concluding that the civil liability of notaries and registrars related to acts in electronic exchanges is subjective, as long as they respect the requirements established by the Brazilian data protection law. Suggestions to implement data protection are offered in the essay, using programs and platforms that benefit the development and the fulfilment of public interests, without harming or weakening the legal security and reliability of notarial acts and public records.

Defenceless? An Analytical Inquiry into the Right to Contest Fully Automated Decisions in the GDPR authored by **Claudio Sarra** is the fifteenth essay. In this essay the author presents an analytical discussion on the right to contest automated decisions in the European General Data Protection Regulation (GDPR). The author argues that a relational approach is needed to deeply understand how those safeguard measures may work together and to show where they interfere with one another creating the risk of a mutual exhaustion that may leave the data subject defenceless. The essay focuses on the conceptual consistency and practicability of the rights provided for in the GDPR, and then it discusses the relationships between the right to human intervention and the right to contest focusing on issues such as mutual exclusiveness and potential recursive automation, determining the proper content of the right to contest, and solving the issues raised.

The sixteents essay *Do Robots go to Heaven? Selected Civil Law Implications of Human Death Connected with Development of Mind Uploading and Strong Artificial Intelligence?* has been authored by **Kamil Szpyt**. One of the most commonly disputed topics in the new technologies sector in 2018 was Artificial Intelligence and a probability of granting it a legal personhood. A situation, in which an algorithm, i.e. a digital set of zeros and ones, in legal transactions is, to a large degree, made equal with a human being, has stirred and continues to stir

numerous doubts also in the legal doctrine, in particular in the context of cause of death regulations. What will happen, however, when we try to reverse the mentioned relationship? Instead of transforming "a machine into the human", let us transform "the human into a machine". This essay at tackling the set of legal issues connected with transferring the mind and strong Artificial Intelligence, additionally narrowed down to an analysis of civil law regulations with a particular emphasis on mortis causa norms. It also attempts to answer a question as to whether the notion of death will have to be redefined in the context of the aforementioned process, and also if the inheritance law, in the face of alleged future immortality of humans, will preserve its *raison d"être* in future. Considerations on the legal personhood of the "digitised person" provided an introduction into the set of issues discussed in this essay.

The seventeenth essay *Relevant Legal Issues for Hybrid Human-Robotic Assistive Technologies: A First Assessment* was authored, too, by ***Claudio Sarra.*** In this essay, the author presents a first assessment of the ethical and legal issues raised by a new kind of technology based on human-robot integration aimed at the assistance of disable people in delivering ordinary tasks. In particular, the author is concerned with active exoskeletons, with integrated biometric data analysis capacities as well as ambient intelligence, for supporting upper limbs movements in achieving practical goals. In his essay the author deals in particular with three main issues: a) the protection of rights and freedom of the subjects whose movements are supported; b) the legitimacy of different kinds of data processing; c) the evaluation of the responsibility for damages related to the interaction between human and robotic agency.

The final essay in this volume is *The Capacity of People with Mental Deficiency in Brazilian Legal Ordinance by* ***Rafaella Santana Carnavalli, Michely Vargas Del Puppo Romanello, and Jose Geraldo Romanello Bueno.*** This essay seeks to address the aspects that guide the legal capacity of disabled persons in Brazil. The essay discussed the previous codes and the reason of enacting a new Federal Law in 2015 of the status of persons with disabilities. This law brought with it the consolidation of the preservation of the human being dignity, affecting the non-social regression, inclusion, and respect for others and equity.

Many of the debates analysed are ongoing and the policy, ideas and interpretation brought up in the essays will undoubtedly contribute to future debates. I hope the reader will find the collection of essays stimulating and insightful reading not only for those who are interested in a particular issue discussed but also to acquaint themselves with current issues.

The views expressed in the essays in this volume are those of the authors and do not represent nor are they intended to represent the views of any other individual or body.