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RIGHTS *IN REM* BETWEEN TRADITION, REFORM AND TRANSFORMATION (BELÁ, 3 – 5 SEPTEMBER 2021) / Igor Hron

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Despite the still prevailing and uncertain pandemic restrictions on the verge of 2021, Comenius University in Bratislava, Faculty of Law, was able to host the second edition of the conference organised as part of the research project APVV-18-0199 "New Challenges in the field of Rights *in Rem* in Slovakia" ("*Nové výzvy v oblasti vecných práv na Slovensku*"). The conference was held on 3 to 5 September 2021 at Chateau Belá for the second time, as well.

The conference was opened with a speech by Mgr. Olexij M. Meteňkanyč, PhD., focusing on the institute of legal personality, which represents without any doubt a cornerstone of any legal order. The contribution was concerned with addressing the question whether it is possible to confer legal personality on the various non-human phenomena, as recent trends prove that at least some jurisdictions have granted legal personality, or at least particular rights, to rivers, lakes, national parks, ecosystems, or even artificial intelligence. These cases were analysed with regard to the reasons for granting such rights and the possible future development in the area of legal theory.

This presentation was followed up by Assoc. Prof. Mgr. Matej Mlkvý, PhD., LL.M., focusing on the issues connected with the acquisition of ownership to war booty and its historical development commencing in Roman law, up to the present day. In his presentation, he has shown that the acquisition of ownership through the law of prize has its stable presence and influence also nowadays. The specific impact of this mode of acquisition was illustrated with example of the 2021 events in Afghanistan concerning a war booty seized by the Taliban. A specific emphasis was given to the work of Hugo Grotius who managed to develop the pertinent issue in his work *De iure belli ac pacis.*

Apart from the *ius commune* aspects, the presentation also addressed the views formed in the Czech doctrine, primarily by authorities such as A. Randa or J. Sedláček.

Mgr. Marián Šuška pointed out several issues with respect to disputes over cultural objects and their nature in terms of classification as to the so-called concept of hard cases. The discussion was open by introducing the contributions to the legal philosophy of R. M. Dworkin and H. L. A. Hart with regard to hard cases and their defining elements. Afterwards, these elements were applied with the intention to analyse, whether and why the disputes over cultural objects constitute such a category of cases. To illustrate this connection, a case of restitutions in the decisions of the Constitutional Court of the Czech Republic was provided.

Mgr. Adam Köszeghy followed with the introduction into the topic of international trade. Namely, the contribution analysed the provisions regarding the acquisition of ownership established by the Code of International Trade (Act. No. 101/1963). The said domestic law exclusively regulated property relations in international trade and, as compared to the Civil Code and the Economic Code, differed in terms of substance as well as structure. The provisions at hand were then contrasted with the General Conditions for the Delivery of Goods adopted by the Council for Mutual Economic Assistance, together with the mutual relationship between both sources of law.

Prof. Mgr. Miroslav Lysý, PhD. devoted the presentation to the topic of *dominium duplex* in law valid on the territory of the Slovak Republic. The property relationships connected with land between tenants/peasants and their lords were dealt with to a varying extent by customary and statutory law. The essential elements of such a relationship were always the *dominium directum* assigned by the landlords, who were the owners of the substance of the land and the *dominium utile* enjoyed by the tenants/peasants. The regulation, changing over the centuries, has governed a diversity of rights and obligations to various types of land. As was shown, many feudal institutes with respect to land ownership survived the revolution of 1848/1849.

Mgr. Vladimír Sedliak shed a light onto the questions associated with material publicity of the Land Register, as it has an irreplaceable function in acquiring ownership in Slovak private law. More specifically, he introduced the audience to legal practice and jurisprudence both in the Slovak Republic and the Czech Republic. Special attention was given to numerous decisions of the Constitutional Court of the Czech Republic criticising the insufficient legal regulation of material publicity, which would benefit from its strengthening. The vital part of the presentation was a comparison between the conditions before and after the adoption of the new civil code in the Czech Republic.

Assoc. Prof. JUDr. Zuzana Mlkvá Illýová, PhD. introduced the audience into the matters of ownership acquisition from a non-owner. More specifically, a model situation where a natural person acquired a piece of land on the basis of inheritance proceedings, which a public notary mistakenly included, as it was never previously owned by the deceased. The presentation familiarised the attendees with legal aspects raised in the argumentation on behalf of the applicants and its potential pitfalls, among others, unjust enrichment, invalidity of contracts, and civil liability.

JUDr. Ing. Karin Raková, PhD. provided a presentation on the exclusion of minors from inheritance. While in most cases disinheriting affects an adult child, the practice allows for the exclusion of minors, if one of the grounds for exclusion has been met and whether an appropriate behaviour can be expected of him due to his mental maturity. However, the threshold for this behaviour is not always met in practice.

JUDr. Zuzana Klincová, PhD. dealt with the legal consequences connected with the acquisition of ownership to the jointly rented flat by spouses during the marriage. The key part of the presentation was devoted to an analysis of the decision of the Supreme

Court of the Slovak Republic of 29 October 2019, Case No. 1 Cdo 37/2019. After examining the facts of the case, various legal aspects were emphasised. Finally, a concern was raised as to the sufficiency of the reasoning not only of the Supreme Court decision at hand, but also of the arguments substantiated by the Supreme Court of the Czech Republic which were largely taken over into the domestic case law.

Mgr. Sára Kiššová pushed the debate forward to a broader European context by discussing the approach and actions of the European Union towards Poland. Special attention was given to the K 3/21 and P 7/20 rulings of the Constitutional Tribunal. Therefore, it is no surprise that the current developments in the Constitutional Tribunal and the Supreme Court of Poland in relation to the issue of rule of law were highlighted. In addition to these aspects, the potential range of options available to the Union was analysed – ranging from infringement procedures to sanctions regimes. Above all, the whole situation may seem like tilting at windmills.

Mgr. Igor Hron followed by analysing the protection of intellectual property in light of Article 1 of the Protocol No. 1 to the European Convention on Human Rights and the relevant case law established by the European Court of Human Rights. Although the intellectual property is not a novel issue in the jurisprudence of the Court, it has not developed a broad body of decisions yet. The questions that were raised during the presentation touched on the concept of possessions and its link to the objects of intellectual property and the possibility of protecting moral rights under Article 1 of the Protocol No. 1 to the Convention, together with a future outlook on the possible development.

Mgr. Martin Magdolen continued the discussion with a remark associated with the absence of a remedy in the payment order proceedings under Act No. 307/2016 Coll. The current regulation of this procedure is not without pitfalls or shortcomings. Following the issuance of a payment order on the basis of an application filed as part of a payment order procedure, the defendant is required to substantiate his defence. The defendant is also required to submit a number of facts, which are directly imposed on him by the said law. However, the problem arises in cases, where the court evaluates the defence as substantially reasoned or meeting all the requirements – even in cases where it does not meet these standards. Thus, the discussion was primarily devoted to analysing several decisions of the Supreme Court of the Slovak Republic, which approved the procedure of the court of first instance, if it found the incorrectness of the assessment of the defence in the payment order proceedings.

Assoc. Prof. JUDr. Ing. Ondrej Blažo, PhD. closed the conference with a presentation concerning the issue of expropriation in the context of the ongoing COVID-19 pandemic. Especially, whether the measures restricting business activity adopted across the globe could amount to the concept of regulatory expropriation. It was shown that the issue at hand possesses complex facets ranging from the stabilisation and umbrella clauses to ever-extending body of international investment arbitration decisions. As has been demonstrated, the protection offered under the European Convention on Human Rights also plays an important role with regard to the protection of investments, by delimiting that such measures must not impose individual and excessive burden.

As was highlighted several times during the conference, the area of rights *in rem* still generates a broad discussion, which is connected not only with historical foundations of private law, but also the currently applicable law and even more importantly the possible future development. All these aspects were covered during the conference, although, as the conclusions of the formal and informal discussions proved, the researched areas provide still a lot of room for further evolution.

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