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SECTION I - PUBLIC LAW

Friday, November 19, 2021

ONLINE ON ZOOM

Keynote speakers:

Lecturer Radu Ștefan Pătru, Faculty of Law, Bucharest University of Economic Studies

Lecturer Ovidiu Maican, Faculty of Law, Bucharest University of Economic Studies

! Each paper will be presented within 15 minutes

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**TERM OF OFFICE AS AN INDICATOR OF INDEPENDENCE OF THE ANTITRUST
AUTHORITY IN THE IMPLEMENTATION OF THE ECN+ DIRECTIVE: EXPERIENCES OF
POLISH LAW AND OF THE POLISH ANTITRUST AUTHORITY**

Dr. Rafał R. WASILEWSKI

University of Szczecin, Faculty of Law and Administration, Poland

Abstract

Whether in the European Union or elsewhere in the world, there is no universal model an antitrust authority could be patterned against. Instead, administrative, judicial and mixed bodies are present. For the proper performance of the functions entrusted to them, it is necessary to ensure that these bodies remain free from political influence. The need for such independence of antitrust authorities is clear from the ECN+ Directive, which Member States are required to implement. In the article, an attempt was made to assess whether the provisions of the ECN+ Directive introduce specific requirements as to the term of office for



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officeholders in antitrust bodies and examine what solutions have been adopted to this end in Polish law. The Polish antitrust authority is the President of UOKiK, which is currently an office without term. However, in the course of implementing the ECN+ Directive, different solutions have been designed, establishing that this authority should indeed operate against a fixed-term model. On the basis of historical legal acts, current normative acts, draft bills and the findings derived from the literature and case-law, the question should be answered whether term of office is an indicator of the independence of an antitrust authority. The research methods adopted to this end are the dogmatic and historical-legal approach.

LAW IN TERMS OF MORALITY AND LEGAL POSITIVISM

Lecturer Jonida MEHMETAJ

University "Ismail Qemali" Vlora, Albania,

Abstract

The nature of law and its meaning puts us in the face of successive challenges, in front of theories that bring opposing arguments. In this context the nature of law is analyzed and interpreted through two main approaches of law: that which accepts morality within the law; and what excludes morality from law, studying it only as a science. Through the study of the natural theory of law and legal positivism we will try to identify the basic concepts of permanent philosophical discourse regarding the nature of law. The analysis of legal and philosophical arguments serves to interpret and answer the research question raised in the study, if the nature of law can be explained through morality or science? After all, the normative acts of a state are drafted through positive law, science and facts, but at the same time we find within them provisions which contain natural elements, whether of morality, but also other views of it as standards or principles.

RIGHT TO ADEQUATE STANDARD OF LIVING: A COMPARATIVE STUDY IN INDIA

Assistant professor Prabhpreet SINGH

School of Law, Manipal University Jaipur, India

Abstract

Adequate standard of living promises the meaningful existence to human life. The life has essence when there is adequate clothing, food and nutrition, housing and the necessary conditions of care when required. Right to live the life with dignity includes in its ambit right to adequate standard of living. People should have access to basic needs for their living. World bank defines adequate standard of living inclusive of two elements: 'The cost required to buy a minimum standard of nutrition and other basic necessities and a further amount that varies from country to country, reflecting the cost of participating in the everyday life of society.' During last decade various international instruments have been pressing hard to right to adequate standard of living (Article 25, UDHR and SDG 11). It becomes noteworthy to see the manner in which these rights are provided in constitutions of different countries. Even when these rights find the place in the constitution it is not mandatory on the states to provide them in their respective jurisdiction. This is one such case which can be seen reflected in the constitution of India. Article 43 imposes a duty on the state to provide adequate standard of living but such a duty is not enforceable in court of law. Such rights find place only in directive principle of state policy which are not enforceable in court of law. Hence the right depends on the wishes and economic capacities of the state. Also it becomes relevant to address the manner in which judiciary protects such constitutional guarantees. As, we can see that many of these rights become a far-fetched dream for the citizens, the author strongly believe that understanding such issues from the comparative perspective would provide several benefits, including sensitising the stakeholders. Therefore, the authors would elaborate a comparative study with the perspective of India.



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**LOCAL BARRIERS IN THE EFFICIENT USE OF GREEN PUBLIC
PROCUREMENT - CASE OF SLOVAKIA**

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Assistant professor **Tomáš MALATINEC**

Department of Regional Science and Management, Faculty of Economics
Technical University in Košice, Slovakia

Abstract

Green public procurement is a voluntary tool through which public procurers can contribute to the objectives of environmental policy. The legal framework and public policy of green procurement is covered by the European Union. The main goal is to contribute to the consideration of environmental characteristics in public purchases as well as environmental management and the life-cycle costs of the goods, services and work. However, the objectives of the legal framework and the policy to promote green public procurement are often not achieved due to the barriers posed by economic practice. The aim of the article is to analyze the local barriers in the effective use of green public procurement in Slovakia. The processing of results is based on the annual evaluation reports to the National Action Plan for Green Public Procurement in Slovakia for 2016-2020. Identified local barriers include financial constraints on contracting authorities and a preference for evaluating contracts based on the lowest price criterion, insufficiently built administrative (personal) capacity to implement green public procurement, fear of discrimination in incorporating environmental criteria into tender documents and subsequent sanctions from control bodies. Last but not least, the voluntary application of green public procurement at regional and local level is also included among the barriers in the efficient use of this tool in practice.

**THE PRESENCE OF OFFICIAL CORRUPTION AS THE OBSTACLE TOWARDS EU
INTEGRATION OF KOSOVO**

Lecturer **Emrush KASTRATI**

AAB College, Prishtina, Kosovo

PhD. student **Albrim KASTRATI**

European Center for Peace and Development (ECPD)

University for Peace established by the United Nations, Serbia

Abstract

Like every criminal act that is of social dangerousness, criminal offenses of official corruption have the features of social dangerousness. Criminal offenses of official corruption are of high dangerousness level, based on the fact that we have to deal with the unlawful acts whose perpetrators are parts of state organs, including, apart from administrative organs, judicial organs whereas these criminal offenses take part in the group of criminal offenses of corruption against the official duties. In Kosovo courts, a considerable number of cases is being judged against the official corruption or which are corruption motivated. Essential element of this crime is the violation of the official duties by the officials through the criminal deeds by misusing official position or official authorization regarding the official duties. All executive organs, as well the judicial ones are being engaged within their authorization to prevent or to judge corruption as big evil within a society, but the question if the state organs are being successful on combating corruption is appropriately raised in both: prevention and trials, which actually are the main duties of these organs.



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**LOCAL GOVERNANCE IN THE NORTHERN KOSOVO BASE ON THE KOSOVO
CONSTITUTION**

Lecturer Reshat NURBOJA
College Dardania, Pristina, Kosovo

Abstract

Kosovo Government, in almost all phases of the postwar Kosovo have faced difficulties, in establishing strong local structures, populated with the majority of Serb population. These are municipalities of Zvecan, Leposavic, Zubin Potok and Northern Mitrovica whereas other municipalities with the Serb population will not be in the focus of the paper analysis. Even though a process of decentralization was quite well developed, municipalities of the Northern Kosovo, quite often appear to be a big challenge for Kosovo authorities and for the International Community engaged with the development within Kosovo and related to Kosovo. Methods of legal analysis, of comparative analysis and of theological analysis are used for the needs of this paper whereas the outcomes and conclusions of the paper are expected to be a contribution to the current practical debated (academic and other) events happening in Kosovo regarding governance and administration in the North of Kosovo.

**HISTORICAL REFERENCES AND DOCTRINE PRECEDENTS
OF CRIMINOLOGY ON A WORLDWIDE LEVEL**

Assistant professor Nelu Dorinel POPA
„Dimitrie Cantemir” University of Târgu Mureș, Faculty of Law, Romania
Student Cezara POPA
Bucharest University of Economic Studies, Faculty of Law, Romania

Abstract

It is a known fact that the object of study of criminology is the "criminal phenomenon", which is considered both from an individual point of view, in relation to the concepts of "crime" and "criminal", and from a collective point of view, for which the concept of "criminality" is observed. A study of the origin and worldwide development of criminology has thus been carried out in relation to these basic concepts. Although a truly scientific approach to criminology has only been developed since the 18th century, there have previously been numerous historical sources and references throughout the entire temporal arc of human evolution that have highlighted the manifest interest in the discipline and the concepts mentioned. Three main schools of thought in modern criminological theory have later been established, covering the period from the mid-eighteenth century to the mid-twentieth century: the classical, the positivist and the Chicago School. The international bodies responsible for criminology have also played a major role, without which this science would not have evolved to the stage it is at today.

**VALENCES OF THE “POLLUTER PAYS” PRINCIPLE IN THE CONFLICT
BETWEEN ECONOMIC INTEREST AND ECOLOGICAL INTEREST**

Lecturer Angelica COBZARU
Ecological University of Bucharest, Romania

Abstract

The polluter pays principle is one of the fundamental principles of environmental law, the content of which can be summarized as follows: the one who produces the pollution bears its cost. The principle has a strong economic character. In this paper, I aimed to analyze the content of the “polluter pays” principle, as well as to establish its role in the dispute between economic and ecological interest. As research methods we used: the logical method, the comparative method and the historical method. The study highlights the conflict between economic interest and ecological interest, which has been balanced, to some extent, by



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the consecration of the "polluter pays" principle. The paper results in emphasizing the role of principles, in general, and in particular of the "polluter pays" principle, in terms of the evolution of the field, in accordance with the desideratum - the priority of the environment in relation to other types of activities.

PROVISION OF PUBLIC SERVICES - LAW ASPECTS OF LAW

Lecturer Valeriu KUCIUK

Cooperative-Commercial University of Moldova, Republic of Moldova

Abstract

The author investigates from a constitutional point of view, the subject of the fair placement of budgetary and fiscal tasks in the Republic of Moldova, of the financial contributions that are collected from citizens, of the provision of public services for a fee by public authorities and institutions. Following the scientific investigation, the author considers that the constitutional norms regarding the formation, distribution and use of the public budget are violated, there is an omission to regulate the financial-fiscal field which consists in the law regulating the provision of public services for a fee. In conclusion, the author comes with recommendations mentioning certain regulatory measures that could improve the field of public finances.

**ASPECTS REGARDING THE INDIVIDUALIZATION OF PUNISHMENTS FOLLOWING THE
AMENDMENT OF THE CRIMINAL CODE**

Legal adviser Cornelia VLADU

U.C.C.J.R Bucharest, Romania

Abstract

The term of "punishment individualization" is known since 1898, because of the publication of Raymond Saleilles's work entitled "L'individualisation de la peine". The definition of the concept of individualization was outlined by the legislator through juridical technique, as: when establishing and applying punishments as tools for adapting the convict to the penitentiary environment. The punishment individualization is a complex operation that is carried out both by the legislator (the legal individualization, realized at the moment of the elaboration of the law, by establishing the general framework of punishments, the special limits for each offense and the framework within which judicial individualization and administrative individualization may intervene), by the court (juridical individualization), as well as during the execution of the sentence (administrative individualization, for example: establishing the regime of execution of the prison sentence, granting conditional release, changing the content of the obligations imposed in the context of postponing the application of the sentence or suspending the execution of the sentence under supervision).

**BRIEF CONSIDERATIONS ON COMPLIANCE WITH THE PRINCIPLE OF FINDING THE
TRUTH IN CRIMINAL CASES**

Legal adviser Cornelia VLADU

U.C.C.J.R Bucharest, Romania

Abstract

Prior of being a legal category, truth is a philosophical one; throughout the time philosophers have emphasized the objective character of truth that does not depend on the will of man and humanity in general. The doctrine has appreciated that no matter how the objective truth was perceived, the notion must be understood and resolved only by finding that it represents a fair reflection of the objects and phenomena of nature and society. In the Romanian procedural system in order for the justice to be able to achieve its purpose directly or indirectly, it must know the real truth that emerges from the reality of the facts and not



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from the fictitious evaluation; in other words, it must know the material truth and not the fictive one at all. The courts have the obligation to ensure the truth is found, and for this purpose they must verify the evidence gathered by the criminal investigation authorities in order to establish the truth, even if the defendant admits the charges, and the prosecutor has stated that he has no evidence to solicit.

THE CRIME OF DOMESTIC VIOLENCE. ASPECTS OF COMPARATIVE LAW

Lecturer Aurel Octavian PASAT

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Abstract

Domestic violence is a set of actions that raise several questions about their legal nature, giving rise to theoretical disputes that have been quite insistent. Domestic violence being one of the most widespread crimes, imposes a certain degree of tolerance towards this anomaly, indicating it as a normal fact that throughout history has always been with cultural development. This crime is based on traditions, customs and mentalities where the superiority of the man over the woman is accentuated. It is any harmful, emotional, physical act that takes place between family members. It is an abusive behavior, intentionally determined to demonstrate power and supremacy, but also to affect the emotional, physical state of the victim through humiliation, total control or damage to integrity. The topic brought to attention proposes the analysis of domestic violence from the point of view of the criminal side, as an anomaly, a crime that tends to achieve perhaps the most important social value, the family, as a social cell, but also from a historical perspective in terms of historical culture and trends. human beings that have had a wide evolution during different historical periods, but also in general aspect as an element that is transmitted from generation to generation.

**SPECIFIC DEONTOLOGICAL RULES APPLICABLE FOR THE PUBLIC MANAGER IN THE
CONTEMPORARY ROMANIAN SOCIETY**

Associate professor Andreea Elena MATIC

„Dunarea de Jos” University of Galati, Romania

Lecturer Ștefania Cristina MIRICĂ

„Dunarea de Jos” University of Galati, Romania

Abstract

The public manager is a civil servant with special status and attributions, whose specific duties imply carrying out the reforms in public administration, adapting the activity of Romanian institutions to the specific and standards of European Union institutions and ensuring the smooth running and the efficiency of public authorities and/or institutions. In the present paper we aim to analyze the institution of public manager mostly from the perspective of the applicable deontological rules. We will also refer to the particularities of the current period due to the COVID-19 pandemic and the measures that need to be taken in each institution, both to ensure the efficient carrying out of the specific activities and also to ensure the health protection for the civil servants and the beneficiaries of the public services. In order to achieve our purpose we will analyze both the legal frame specific to public managers in several public institutions (such as hospitals, public libraries, universities) as well as the special legal norms established to prevent or restrict the spread of the pandemic, one of the most recent being the Decision no. 94 of 25th of October 2021.

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**THE JUDICIAL PROCEDURE FOR THE CANCELLATION OF THE ALERT STATUS
GOVERNMENT'S DECISIONS**

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Associate professor Andreea TABACU

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Abstract

After the Constitutional Court's control, by no.392/2021 decision, it was stated that Law no.554/2004, of administrative contentious, the basis of the judicial procedure for the cancellation of Government's Decisions, doesn't satisfy the idea of celerity which defines the principle of access to justice in the field of the cancellation of the alert status decision. The study aims to identify and analyze the most important problems revealed before the courts in this matter and to find solutions in order to elaborate procedural norms which are able to achieve the principle above mentioned.

**DIGITAL CONSTITUTIONALISM – A PERSPECTIVE OVER THE INCREASING ROLE OF
THE PRIVATE ACTORS IN SECURING THE EXERCISE OF HUMAN RIGHTS**

Ph.D. student Ruxandra Andreea LĂPĂDAT

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Abstract

Digital constitutionalism is a notion that struggled to contour over the last decade, keeping the pace with the digitalization wave that hit the law field. The efforts did not emerge until this very moment, leaving enough space for both doctrine creation and practical initiatives' development. However, when trying to settle this concept to a definition, we will always keep in mind that the constitutional values can be translated only through the energy and power of the business sector. Private actors are now vested with some forms of power, that are no longer merely economic nature. Thus being said, this new power brings along new responsibilities, including here the topic of human rights. This paper aims to show the unexpected, but much needed blend in the digital era between the business sector and the public sector. On a domestic level, we will analyze the increasing call and use of digital expertise in which private actors excel by the public sector, in order to respect the constitutional order. Secondly, by observing the shift that is being delivered between these areas on an international level, the transition from a liberal perspective to a constitutional strategy will be examined in detail.

LEGAL REGIME OF COMPETITION IN CROATIA

Lecturer Ovidiu Horia MAICAN

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Abstract

Croatia has implemented EU's competition rules. Competition Act lays down the competition rules and establishes the competition regime in Croatia. It also regulates work of the Croatian Competition Agency. The Competition Act defines the rules and methods for promoting and protecting competition. On paper, competitive equality is enforced with respect to market access, credit and other business operations. In practice, however, state-owned enterprises (SOEs) and government-designated "strategic" firms may still receive preferential treatment. The Croatian Competition Agency is the country's competition watchdog, determining



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whether anti-competitive practices exist and punishing infringements. It has determined in the past that some subsidies to SOEs constituted unlawful state aid.

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LEGAL REGIME OF COMPETITION IN INDIA

Lecturer Ovidiu Horia MAICAN

Bucharest University of Economic Studies, Faculty of Law, Romania

Abstract

The study of the competition legislation in India has as justification the fact that the Indian economy has one of the biggest growth rates in the world, India being the biggest democracy in the world. At the beginning, India had its own competition law, called the Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act). After the initiation of the economic liberalization in 1991, it became imperative to put in place a competition law regime that was more responsive to the economic realities of the nation and in accordance with international practices. In 2002, the Indian Parliament voted a new law, Competition Act, to regulate business practices in India. The Competition Act has as goal to regulate three types of conduct (anti-competitive agreements, abuse of a dominant position and combinations). The Competition Act was amended by the Competition (Amendment) Act in 2007 and 2009. The Competition Act has also created a new enforcement body, the Competition Commission of India (CCI), which is responsible for the enforcement of the Competition Act. According to the provisions of the Competition Act, is allowed to make an appeal to the Competition Appellate Tribunal (COMPAT) against the decisions of the CCI. A further appeal from the decision of the COMPAT may be submitted before the Supreme Court of India. In the same, the Competition Act is taking into consideration its enforcement with the aid of mutual international support and enforcement networks across the world.

**THEORIES, PRINCIPLES AND CRITERIA REGARDING THE EXISTENCE OF THE
SUCCESSION OF CRIMINAL LAWS IN TIME IN THE ITALIAN REPUBLIC**

PHD. student Alexandra Raisa ROȘCAN

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Abstract

This research aims to conduct a study on the succession of criminal laws over time in the Italian Republic. The research is carried out as a result of the legal, doctrinal and jurisprudential analysis of this European state. The theories, principles and criteria for establishing the most favorable criminal law in the case of a succession of normative acts will be identified. The concept of *lex tertia* will also enjoy attention, because we want to know if in Italy the more favorable criminal law is applied on autonomous institutions, i.e. if legal provisions from two or more consecutive criminal laws can be combined.

**LAW, ECONOMICS AND IDEOLOGY IN THE WESTERN DEMOCRACIES TODAY: A
TYPICAL CARROT AND STICK INTERACTION**

Assistant professor Monica Florentina POPA

University of Bucharest, Faculty of Law, Romania

Abstract

The official anti-Covid-19 policies and the backlash they sparked from a substantial portion of the population in both the EU and USA might be seen as part of a long series of events which highlight a growing polarization amongst the citizens of the Western democracies today, along ideological fault lines, about the extent of the executive powers, the individual freedoms versus the common good, the environmental protection versus the economic realities etc. In part, this polarization arises, in our



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opinion, from the unbalanced relationship between ideology, economy and law. The present paper endeavours to examine some facets of this relationship, presenting the current tensions between ideology, on one hand, and law and economics, on the other, as a typical example of carrot and stick approach, which relegates the law to an ancillary, strictly technical role. To this purpose, several cases will be considered, such as the European Green Deal, the immigration (common, intensively debated topic in EU and USA today) and the anti-covid vaccination policies. We will attempt to show that, far from being a mere avatar of a “stick” within the framework of the Western democracies, the law could and should offer solutions to the pervasive divisiveness in our society, by re-evaluating concepts such as sovereignty and democratic representation, thus acting as a social glue, where economic incentives or ideological tenets are bound to fail.

**THE COMPETENCES OF PUBLIC ENVIRONMENTAL PROTECTION AUTHORITIES IN
CASE OF NATURAL DISASTERS**

PhD. student Elena Mădălina PAȘCALĂU

University of Bucharest, Doctoral School of Law, Romania

Abstract

Given that in recent years extreme weather phenomena, increasingly frequent, increased seismic activity and the COVID-19 pandemic, have had disastrous effects on Europe, we considered it necessary to develop an analysis of how the national disaster management system and its components manage, in real time, a crisis situation. In the content of this article we highlighted the main normative acts that regulate the environmental protection activity at national level, we proceeded to a brief classification of the types of disasters specific to our country, we detailed the functioning of the National Emergency Management System and we presented the attributions of the central public institutions with a pivotal role in the field of environmental protection in case of natural disasters. In order to write this analysis, we used, cumulatively, the logical, comparative and historical method, to carry out a precise research of the legislation and jurisprudence with applicability in the field of environmental protection in case of natural disasters.

INTRODUCTION TO THE EPISTEMOLOGY OF LEGAL RESPONSIBILITY

Lecturer Lucian-Sorin STĂNESCU

„Stefan cel Mare” University of Suceava, Romania

Abstract

According to the renowned theorist I. Craiovan, the knowledge of law cannot be situated in the contemporaneity outside the tendencies manifested in science where there are connections, interferences, transfers of concepts, methods and techniques that receive an important role in approaching the legal phenomenon and, consequently, Theory of Law, as a synthetic legal science, appeals to epistemology because: “the idea of examining by itself the activity of knowledge of law can first give the means of progress of the science of law, to improve knowledge of this phenomenon.” The epistemological approach of the legal responsibility system in the methodological scheme we proposed involves, first, establishing the epistemological status of legal responsibility in the General Theory of Law and in the branch legal sciences in order to extract its epistemic features. Secondly, the study aims to reveal, for the first time, the systemic properties that legal responsibility develops as a subsystem of the great system of law, and thirdly, to discuss the conceptual changes it causes in the General Theory of the issue of legal responsibility of intelligent non-human entities, the ultimate goal being to support the epistemological status of structural concept of legal responsibility that we have promoted in the scientific field in our previous works by completing the definition we gave to this concept.



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**THE LEGAL NATURE OF THE CONTRAVENTION AND ITS INFLUENCE ON
THE NULLITY OF THE RECORD OF FINDING THE CONTRAVENTION**

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Lecturer Raluca Antoanetta TOMESCU
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Abstract

In the current system of Romanian law, as in other European countries, the contravention was removed from the scope of criminal law, which is subject to an administrative regime, the option of the Romanian legislator being, obviously, to give it an independent character. Although it enjoys its own regulation, the contravention is still marked by the influences of the old regulations, in which it was assimilated to criminal matters, and the current normative framework is supplemented with the imperatives of the Civil Code, the Criminal Code, but also those of the Code of Procedure. civil. Thus located at the border of several branches of law, a state of ambiguity was created, which was reflected in a non-unitary application of the law by the courts. In judicial practice, when the nullity of the record of finding and sanctioning the contravention was invoked, the solutions given were divergent, not only regarding the nature of the nullity that operates, but also regarding the imperative of showing an injury that can only be removed by annulment of the act. Consequently, the present study aims to analyze the conditions in which the record of finding the contravention is sanctioned with the nullity and influence of other branches of law on them, as well as the difference between the annulment of an administrative act that harms a right or a legitimate interest of the person and the nullity of the legal act concluded with the non-observance of the legal conditions provided for his validity.

