**Assignment 1**

**Tut Nienkel**

1) The adversarial principle means that each of the parties to a proceeding must be able to discuss the facts and the legal means that his opponents opposed him. The forensic expert is obliged to respect this principle during the appraisal procedure, particularly in the organization of expert meetings, making sure that the expert reports are communicated to each of the parties and by establishing a pre-report (Nonet, Selznick and Kagan, 2017. In the adversarial approach, the inquiry procedure is managed by the parties. The arbitral tribunal has only the duty to preside over the proceedings and to rule on the dispute, therefore a more passive role. According to Ambos (2003), the more proper, common expression is "principle of adversarial proceedings" which means that it is up to the parties to gather their own evidence while the judge remains neutral. This is in contrast to the "principle of inquisitorial proceedings", where the judge participates in gathering evidence (Divakar and Venkatesh Babu 2017). The activity of the parties, as understood in the adversary proceedings, is impossible without oral proceedings. The task of the lawyer is to make the court believe in the truth of his version. To achieve this with only written evidence is difficult. According to Novgorod and Pskov (1467) Judicial certificates, judicial proceedings in the republics were also carried out on the basis of adversarial proceedings. Both sides were called plaintiffs (Articles 11 and 13 of the Novgorod Judicial Charter) [4], which emphasized their procedural equality.

The adversarial principle is a principle of law existing in all proceedings, whether civil, administrative, criminal or disciplinary, and which means that each party has been given the opportunity to discuss the statement facts and legal means that his opponents opposed him (Kelemen, 2006). This principle is also invoked by the Latin phrase Audiatur and altera pars which means "that is heard also the other party" 1. The adversarial principle is to be compared with the notions of rights of defense, loyalty, equity and equality of arms (Parisi, 2002). The principle of respect for the contradictory applies at any time of the procedure. He implies:

* That the plaintiff informs the defendant in good time of his claims as well as the factual, legal and evidentiary grounds which are invoked in support of the claims;
* That the parties exchange their conclusions and their documents in due time;
* That the evidence-seeking measures are conducted in the presence of the parties and their counsel (the expertise’s are thus contradictory in principle);
* That the judge, when he automatically raises a legal argument or when he legally reclassifies the facts, inform the parties in advance so that they can discuss them;
* That the debates are themselves adversely conducted in the context of a public hearing, or in the context of a cabinet hearing (e.g. the debate before the judge of freedoms and detention prior to possible detention) provisional).

Thus, the adversarial principle in both foreign and national legal practice has evolved ambiguously, but in a certain sequence, which is objectively related to the level of historical development of economic, political, social and other social relations.

2) Yes, I agreed the law is neither above nor outside society. It is the reflection of society at a specific moment of its evolution and the result of the balance of forces between social classes, between one or more instruments or means used to impose one's opinions and to defend one's interests. In some ways, the law may be discriminatory or repressive while others may be protected. The profound social changes have occurred since the beginning of the century and have accelerated since the Second World War. The law is and remains the primary means of adapting to these changes, and as a result, government legislation and regulations are expanding dramatically (Schwartz, R.D., 1978). It stays the same for everyone and protects everyone's interests. Legislators take the collective will into consideration when drafting the best possible laws.

According to Crawford (1994), the law is a concrete, official and repetitive expression of economic and social inequalities. For example, for many years, it specifically deprives women of their civil, political and economic rights. Law and order occupy an important place among other methods and means of government. Only law and order can ensure a decent life for society and its citizens. As is well known, in our society, the scornful attitude towards the law has evolved for many years. The formally proclaimed principle of the obligation of the law was corrected by a whole system of exceptions to the rules depending on the position held, various kinds of merit, etc. Such an approach gave rise to impunity and continues to open the way to abuse, even crimes. Some managers have become accustomed to consider the law as a hindrance in the way of the realization of their personal or peculiarly understood public interests (Watson, A., 2010). Neglect of the law adversely affects the moral atmosphere in society.

The problem of the relationship between the law and the so-called expediency deserves special attention. Some leaders have assumed the right, based on their own ideas about the interests of the country or the territories they lead, to decide whether they should execute a particular law or not. Of course, the law and expediency do not always coincide. But bypassing the law and neglect it is unacceptable (Edward, D. and Hoskins, M., 1995). Even in the case when the law is really bad, or for example outdated. It is important to understand that the law can only be repealed or changed by the authorized state body. Legislation and its application, even to protect the interests of the most disadvantaged groups, are always subject to fluctuations in the power relations prevailing in a society at a given time. Thus, the legislation can be rid of its content or rendered inoperative by new legislative changes. Sometimes political decisions (or their absence) paralyse law enforcement mechanisms, which would happen if the chair or members of a commission are not appointed, or if their budget is insufficient (Cotterrell, R. and Cotterrell, R., 1992).

**References**

Nonet, P., Selznick, P. and Kagan, R.A., 2017. *Law and society in transition: Toward responsive law*. Routledge. Tamanaha, B.Z., 2001. *A general jurisprudence of law and society*. Oxford University Press on Demand.

Ambos, K., 2003. International criminal procedure:" adversarial"," inquisitorial" or mixed?. *International Criminal Law Review*, *3*(1), pp.1-37.

Borodin, A., Kleinberg, J., Raghavan, P., Sudan, M. and Williamson, D.P., 2001. Adversarial queuing theory. *Journal of the ACM (JACM)*, *48*(1), pp.13-38.

Divakar, N. and Venkatesh Babu, R., 2017. Image denoising via CNNs: An adversarial approach. In *Proceedings of the IEEE Conference on Computer Vision and Pattern Recognition Workshops* (pp. 80-87).

Kelemen, R.D., 2006. Suing for Europe: Adversarial legalism and European governance. *Comparative Political Studies*, *39*(1), pp.101-127.

Parisi, F., 2002. Rent-seeking through litigation: adversarial and inquisitorial systems compared. *International Review of Law and Economics*, *22*(2), pp.193-216.

Schwartz, R.D., 1978. Moral order and sociology of law: Trends, problems, and prospects. *Annual Review of Sociology*, *4*(1), pp.577-601.

Crawford, J., 1994. Democracy and international law. *British Yearbook of International Law*, *64*(1), pp.113-133.

Watson, A., 2010. *Society And Legal Change 2Nd Ed*. Temple University Press.

Edward, D. and Hoskins, M., 1995. Article 90: deregulation and EC law. Reflections arising from the XVI FIDE conference. *Common Market Law Review*, *32*(1), pp.157-186.

Cotterrell, R. and Cotterrell, R., 1992. *Sociology of Law* (pp. 169-171). London: Butterworths.

Friedmann, W., 1959. *Law in a changing society*. Univ of California Press.