ABSTRACTS

Konstantin Branovitskii, Burkhard Breig
Kontrollmechanismen der Gerichtsorganisation in der Russischen Föderation
Mechanisms for the Control of the Judiciary in the Russian Federation

The article seeks to look into current topics of independence of the judiciary in Russia, in particular in relation to the executive power. It gives an overview of the relevant sources of law and of programmatic documents adopted during the last 30 years. It shows that the initiative in the field of judicial reforms tends to migrate from the legislative and judicial to the executive power. The largest part of the article is devoted to the procedures of nomination and appointment of judges and allocation of cases to specific judges/ panels of judges as examples for possible influence putting at risk the external and internal independence of the judiciary, respectively. A separate chapter presents some recent developments in the legal regulation of the status of the court president as a key figure for both external and internal independence of the judiciary. The reviewed examples demonstrate, on the one hand, a growing influence of the executive power and, on the other hand, a low level of willingness or ability of the judiciary itself to make use of the safeguards provided by the Russian constitution in order to protect separation of powers and independence of the judiciary. However, in a mid-term perspective, changes of the last years on an international level may have some positive influence on the Russian discussion and potentially also inspire further development of the regulatory framework in Russia.

Roman Kuybida
Die Gerichtsreform in der Ukraine – Erfolge und Misserfolge im Kampf für einen Systemwechsel
Judicial Reform in Ukraine: Successes and Failures in the Struggle for Changing the System

After the “Revolution of Dignity” (2014) Ukraine got a unique chance to carry out radical reforms to change the system of state power. Judicial reform was one of the most demanded reforms. The article analyzes the key steps of the new Ukrainian authorities towards protection of right to a fair trial; it also elaborates on causes of failures and measures that can be successful. The author based his observation on the results of monitoring and sociological research, including research organized by the think tank where he works. It is concluded that the recent constitutional amendments provide a powerful impetus for extraordinary measures to renew the judicial corps and strengthen the independence of judges. However, political influence and judges’ corporatism can be a barrier for achieving real progress in reforming the judiciary.

Zhenis Kembayev
Probleme der richterlichen Unabhängigkeit in Kasachstan
Problems of Judicial Independence in Kazakhstan

Despite the commitment of the Republic of Kazakhstan to the principles of rule of law and separation of power, judicial independence remains largely on paper. This article differentiates and examines the most important reasons undermining judicial independence such as: (a) systemic deficiencies in the rule of law in Kazakhstan; (b) lack of factual independence of judges; (c) lack of personal independence of judges; and (d) corruption within the judiciary. In conclusion, the article argues that judicial independence is not adequately guaranteed in Kazakhstan, as the judicial system is de facto based on rather administrative-like principles and aims primarily to ensure "uniform" and "correct" justice in full compliance with state policies.

Ulrich Ernst
Eingriffe in die Verfassungsgerichtsbarkeit in EU-Mitgliedsstaaten – Ungarn, Rumänien und Polen im Vergleich
Interventions into Constitutional Justice in EU Member States – Comparing Hungary, Romania and Poland

Turbulences around the Constitutional Court in Poland from late 2015 until late 2016 provide an occasion for a systematic comparison with governmental interventions in Hungary starting from 2010 and Romania during 2012. The study stresses main conducts in the conflicts, accesses their extent and impact, discusses the presumptive intentions of the political powers and takes a view on the reactions of European partners. The paper concludes with observations on the effectiveness of constitutional justice in protecting separation of powers against illiberal political measures and a typology of assaults against the European rule of law standards deducted from those recent Central-East European developments.

Eszter Bodnár
Gedanken über die Einführung der öffentlichen Verhandlung am ungarischen Verfassungsgericht
Reflections on the Introduction of Public Hearings into the Practice of the Hungarian Constitutional Court

In 2013, the Hungarian Parliament prescribed that, in certain cases, the Constitutional Court shall hold public hearings but since then no one has taken place. Public hearings are not an unusual element of the constitutional review procedure. The US Supreme Court, the German Constitutional Court or the Constitutional Council in France can hold oral hearings which are usually open to the public.

This article analyses from a comparative point of view the functions, advantages, disadvantages and risks of holding a public hearing. In conclusion, the article argues that the introduction of oral hearings at the Hungarian Constitutional Court is necessary, possible and inevitable.

Mikhail Krasnov, Alexander Gorskiy
Die Selbstauflösung des Parlaments: Möglichkeit und Wirklichkeit – Ein Fall aus der Praxis des Verfassungsgerichts Russlands
Self-Dissolution of Parliament: Opportunity and Reality – The Case of the Constitutional Court of Russia

This article analyzes a quite recent example of "self-dissolution" of parliament, i. e. of the lower chamber of parliament (the State Duma of Russia). Although this mechanism of prematurely discontinuing the State Duma's competencies was originally not created in order to overcome a political crisis, but rather as a bureaucratic "move" as part of election tactics, this instrument plays an important role in the context of the constitution and politics when it is viewed in the light of parliamentarianism. In this article, the authors discuss a decision of the Russian Constitutional Court on the interpretation of the constitution; the given judgment had been issued in the context of the disputed legitimacy of parliamentary "self-dissolution". In this article, it is concluded that – despite the fact that the judgement deemed early elections legitimate – this decision was in fact made against such possibility, i. e. against the possibility of "self-dissolution" as a constitutional means. The authors present several reasons supporting the usefulness of parliamentary "self-dissolution"; however, they do not deem the latter an absolute right.

Nora Jauer
Der kroatisch-slowenische Rechtsstreit um die Bucht von Piran
The Legal Conflict between Croatia and Slovenia on the Bay of Piran

Since the dissolution of the former Federal Republic of Yugoslavia in the early 1990ies the new independent States Croatia and Slovenia have disputed the exact delimitation of their State territories in the beautiful bay of Piran, situated in the north-eastern part of the Adriatic Sea. This ongoing conflict mainly contains questions of International Law of the Sea, but it also implied serious problems concerning the finally successful EU accession of Croatia in 2013. The establishing of borders in the bay is still an open contentious issue that will soon be decided by the Permanent Court of Arbitration in The Hague. This article describes the political origins of the debate, declares legal opinions of the opponent States, and discusses a number of solutions for this remarkable, but only little known dispute in the heart of Europe.

Nazi Tsirekidze
Der Premierminister in der georgischen Verfassung
The Prime Minister in the Georgian Constitution

Since the independence of Georgia in 1991 the constitution has changed several times. One of the most important aspects of this development was the relation of the constitutional competences between the President and the Prime Minister. While at first the President had the major legal competences for leading the State, the last change of constitution, entered into force in 2013, has further-developed this relation of constitutional competences in favour of the Prime Minister. The following article discusses the new constitutional role of the Prime Minister on the basis of four questions: the election procedure, his competences within the government, the vote of no confidence, and the presence of an oath on the constitution. The described aspects show clearly that Georgia is on the way from a presidential democracy to a democracy with a strong chancellor. This constitutional development deserves in general high recognition, even if in particular there are some reasons for constructive critique.