

## ABSTRACTS

*Wojciech Bańczyk*

### **Der Auftrag und die damit verbundene Vollmacht nach dem Tod der Parteien – Weiterbestehen im Todesfall im polnischen und deutschen Rechtssystem**

### **The Mandate and the Plenipotentiary Connected therewith after Death of the Parties Involved – Continuation at the Event of Death in Polish and German Legal Systems**

The article describes the consequences of death of the parties involved within civil law relations of mandate and of plenipotentiary which is connected therewith – either dissolution, or entry of successors into it. It is an issue of raising significance, as especially service rendering contracts start replacing sales contract as primary contracts of the legal turnover and they are regulated by rules regarding mandate contract.

Generally the death of the client/principal allows for continuation of the legal relation, unlike the death of the executor/plenipotentiary. However the nature of the particular relation and in particular interests (personal rather than proprietary, which is doubtless with regard to sales contract) which it aims to fulfill may lead to another solution at the event of death. Of significant meaning is primarily the possibility to establish plenipotentiary effective after death of the principal, which to a certain extent allows continuing the functioning of the deceased in the legal turnover, but at the same time is a natural consequence of performance of mandate effective after death.

The article aims at establishing clearer rules that allow deciding more unequivocally on the consequences at the event of death regarding the relations within mandate (and service rendering contract) and the plenipotentiary connected therewith. The solution of Polish law, in particular limited continuation of the plenipotentiary relation is contrasted with the German law one and their possible interference.

*Valentina Sloma*

### **Besonderheiten bei der Umsetzung der zivilrechtlichen Verpflichtung von Bürgen und Garanten im ukrainischen Recht**

### **The Characteristics of Fulfilling an Obligation According to Civil Law by a Bailsman or a Guarantor, respectively, Under Ukrainian Law**

Fulfilling obligations constitutes a key element in the law of liability and obligations. This article firstly analyses the fulfillment of obligation by a bailsman, in particular in accordance with art. 553 Civil Code of Ukraine (CCU) with special focus on the per-

taining obligations to which the bailman is subject to. The article also outlines the distinction of several types of liability in the context of bails, i. e. joint and several against subsidiary liability.

The article continues to outline the fulfillment of obligation by a guarantor, in contrast – in particular in accordance with art. 560 CCU. In this chapter, emphasis is also placed on questions arising from the potential refusal on the part of the guarantor to fulfil the obligation in question, and also the characteristics in the context of guarantor liability.

*Tetiana Drakokhrust*

### **Legal Aspects of Online Shops in Ukraine**

For the citizens of Ukraine, online stores have appeared not so long ago, but they became quite popular within a relatively short period of time. According to statistics, every third inhabitant of Europe makes purchases of goods using the Internet. The trade in goods through the Internet is increasing and, most likely, will continue to grow.

This article intends to shed light on the rules and procedures of trading through the Internet in Ukraine, in particular on the Act of Ukraine “On e-commerce”, which was adopted in September 2015 by the Ukrainian Parliament, following a request from a wide range of entrepreneurs as well as consumers for the settlement of relations for the purchase of goods, works or services on the Internet. The article continues to outline features of the conclusion of an electronic contract, the various methods of payment and delivery of goods and aspects revolving around the responsibility of owners of online shops.

*Tatyana Sergeevna Krasnova*

### **Negative Servitude in Russian Law**

The article is dedicated to negative servitude. The analysis of crucial arguments in favour of the introduction of negative servitude in Russian legislation is undertaken; among other things the framework of voluntary servitude, which exists in several foreign law systems, is examined in the article. As a result of the analysis the author concludes that there is no urgent need to introduce negative servitude in current Russian legislation, although the author does not reject its importance and the possibility of introduction in the future.

*Miriam Julia Michalski, LL.M. (Jagiellonen Universität Krakau)*

### **Przygotowana Likwidacja (pre-pack): Endlich eine schnelle Rettung für polnische Unternehmen (?)**

### **Przygotowana Likwidacja (pre-pack): Eventually a Fast Mode of Rescuing Polish Enterprises (?)**

The social market economy is characterized by a multitude of enterprises in the most different forms. However, companies are often face financial difficulties that can be so severe that bankruptcy may be the consequence, or that the same cannot be prevented anymore. In such a case, creditor claims, i. e. debts, cannot be served at all, or they can be served in part only. In the light of these considerations, the Polish bankruptcy law was subject to reforms in the domain of rescuing enterprises. These reforms have, in particular, led to the introduction of a prepared liquidation (the so-called *przygotowana likwidacja*, in English: “pre-pack”).

This article provides an overview of the reasons for this reform, and it describes the statutorily prescribed procedure. A discussion of the pros and possible cons of the Polish pre-pack procedure reveals that the latter significantly supports the crucial objectives of bankruptcy proceedings, i. e. satisfying creditors (claims) to the utmost extent, as well as facilitating the rescuing of cash-strapped enterprises.

*Felix Jacobs, Mareike Wiemker*

### **Instruktive Analyse der Verfassungskrise Polens und Ungarns**

### **An Instructive Analysis of the Constitutional Crises in Poland and Hungary**

This article is based on the conference "The Crises of the Rule of Law" which was held at the European Legal Studies Institute of Osnabrück University on the 5th and 6th of February 2018. The conference was organized by *Aneta Wiewiórowska-Domagalska*, President of the Internationale Juristenvereinigung Osnabrück.

According to Article 2 of the Treaty on European Union the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. Due to political and constitutional developments in different member states of the European Union one of these fundamental values – the rule of law – has become the centre of a huge discussion all over Europe. A risk of serious violation of the rule of law is feared especially in Poland and Hungary. After almost two years of trying to start a constructive dialogue with Poland in the context of the Rule of Law Framework, the European Commission has concluded that there is a clear risk of a serious breach of the rule of law in Poland. The Commission therefore proposed on the 20th December of 2017 for the very first time in the history of the European Union to the Council to adopt a decision under Article 7(1) of the Treaty on European Union.

These events have been the occasion for holding the conference about "The Crises of the Rule of Law" with the aim of examining the reasons of these crises and considering possibilities of solving it and saving the rule of Law in the European Union.

In this article the meaning and functioning of the rule of law will be explained before giving an introduction to both the situation in Poland and Hungary. After that the symptoms and reasons of the crises of the rule of law as well as possibilities of solving the crises and saving the rule of law will be discussed. The results of the conference will be included within this discussion.

*Patrick R. Hoffmann, Friederike Kurre, Ilona Schütz*

### **Bauernland in Bauernhand? – Eine unionsrechtliche Untersuchung des polnischen Gesetzes über die Gestaltung der landwirtschaftlichen Flächenstruktur**

### **Farmland in Farmers Hand? – An EU Law Study on the Design of Agricultural Land Structure**

The following EU law study of the Polish Law on the Design of Agricultural Land Structure gives an overview about the recent changes published by the Polish government.

Poland holds 8.8 percent of the EU's agricultural land and is therefore a major player in the European agricultural market. From this economic perspective emerges the significance of the twelve-year moratorium on the protection of Polish agricultural land, which expired on May 1st, 2016. The law that applied until then excluded the acquisition of Polish agricultural land by nationals of other Member States as far as possible. Due to the expiry of the transitional period, the National Conservative Party *PiS* modified the Ustawa z dnia 2003 r. o kształtowaniu ustroju rolnego (Law on the Design of Agricultural Land Structure, following named UKUR) of April 11th, 2003.

The newly enacted regulations severely restrict the acquisition of agricultural land by setting up numerous requirements. Therefore, in terms of the fully applicable law of the European Union the issue of compliance with EU law is subject to the restrictive Polish rules and to this study.

*Wolfgang Stoppel*

### **Albanien – Das neue Minderheitenschutzgesetz**

### **Albania's New Law for the Protection of Minorities**

Almost 20 years after having signed and ratified the Framework Convention for the Protection of National Minorities, Albania recently passed its own national law for the protection of minorities. In the past, the absence of such an act had been subject to criticism again and again.

This article examines the problems and controversies revolving around the difficulties of carrying out a census with reliable rights. It also highlights several minority rights that have been introduced by the new law.

The article concludes with a brief overview of the current criticism in the context of the new law, which is partly regarded as a setback, and sheds light on the fact that Albania has not yet signed the European Charter for Regional or Minority Languages.

*Téglási András*

### **Social Security in Hungary Before and After the Fundamental Law of 2012 in Light of the Jurisprudence of the Constitutional Court**

This paper explores and compares the jurisprudence of the Hungarian Constitutional Court (Alkotmánybíróság, henceforth abbreviated: CC) regarding social security before and after the new Constitution entered into force in 2012. The wording of the new Fundamental Law of Hungary – signed on April 25, 2011 and effective as of January 1, 2012 – was said to be more restrained and modest regarding social rights, as it does not explicitly stipulate such rights. In this paper I try to come up with a conclusion as to whether the level of protection of social security in the case law of the Hungarian Constitutional Court also became lower after 2012. With this comparison I focus on the following three topics: a) the general CC interpretation of social security in the Constitution and in the Fundamental Law; b) the constitutional protection of certain elements of social insurance as property; c) constitutional protection of homeless people.

This paper does not intend to cover the whole field of the constitutional protection of social rights. I selected only these three topics because I considered them to have been the most disputable questions in the last few years among scholars, politicians and in the media as well.

*Przemysław Wołowski*

### **Das polnische Insolvenzregister**

#### **The Polish Register of Debtors**

In Poland, currently legislative work is being carried out in order to establish a national register of debtors. The main objective of such a register comprises publishing information on entities who are encumbered with debts. This register will be handled by the tele-information system, of which the country's justice secretary is in charge (art. 1 KZR). In accordance with art. 4 KZR every individual is entitled to familiarize himself/herself with the information that is published in the register, as well as with the information that is published online.

The register will contain information on individuals, corporate bodies as well as organizational units that do not constitute corporate bodies, but that are vested with legal capacity, where such information is related to previous or current legal proceedings listed in the following: a) reorganization proceedings under the Act on Reorganization of May 15, 2015; b) bankruptcy proceedings, including, but not limited to, secondary proceedings, c) proceedings involving the imposition of a ban within the meaning of art. 373 (1) of the Polish Act on Bankruptcy of February 28, 2003, d) pro-

ceedings regarding the acknowledgement of a court ruling on the initiation of foreign bankruptcy proceedings (art. 2 (1) pt. 1 KRZ).

According to the proposed wording of art. 53 (1) of the Act of July 27, 2001, on the Organization of Ordinary Courts of Law, the justice secretary established and is maintaining the tele-information system – and within the same – the respective court proceedings along with proceedings regarding filing and their processing. The main objective of this tele-information system lies in the improvement of the work of the courts regarding bankruptcy and reorganization cases.