

ABSTRACTS

Piotr Czarny

Der Streit um den Verfassungsgerichtshof in Polen 2015-2016

Conflict around the Constitutional Court in Poland in 2015-2016 (main phases and outline of constitutional issues)

The article discusses constitutional aspects of the conflict between the Polish Constitutional Court and other supreme state authorities (2015-2016). In conclusion the author states that the development of the situation showed, that this legal conflict between the Constitutional has been solved only through political decisions, what does not correspond to the rule of law. The article suggests that the development has also led to a reduction in the role of the Constitutional Court, the probable changes in its case law and difficulties in the effective functioning of the constitutional judiciary in Poland.

Andrzej Dziadzio

Quis custodiet ipsos custodes? Die Auseinandersetzung um den Verfassungsgerichtshof in Polen (2015-2016)

Quis custodiet ipsos custodes? The Polish Dispute over the Constitutional Tribunal (2015-2016)

The aim of the article is to present a historical, political, and legal perspective on the constitutional dispute between the parliamentary majority formed after the 2015 election and the Constitutional Tribunal. The article discusses the origin and course of the conflict over the appointment of new judges to the Tribunal, with an emphasis on the legal aspect. In the public discourse, the legal side of the Constitutional crisis of 2015-2016 has been pushed to the background as a part of the opposition's effort to delegitimize the new government. The article presents a view that the position of the Constitutional Tribunal in the political conflict was not neutral. The legal analysis presents the controversial decisions of the Tribunal and actions of its president that supported the political narration imposed by the opposition.

Szymon Pawłowski

Die Verfassung als Maßstab, die Nichtbeachtung des VerfGHG – das Urteil des polnischen Verfassungsgerichtshofs vom 9. März 2016

The Constitution as Standard, and the Non-compliance of the “Act governing the proceedings before the Constitutional Court” – The Ruling of the Constitutional Court of Poland of March 9, 2016

The article analyzes the ruling of the Constitutional Court of Poland, in which the court decided directly based upon the constitution instead of the provisions of the act governing the proceedings before the Constitutional Court. This problem was first subject of a broader consideration of the Constitutional Court, in its judgment of March 9, 2016 (K 47/15). The Constitutional Court indicated that there may be decision-making powers on the basis of the rules to be examined (judicial decisions paradox). It has determined that there are compelling reasons in this case for disregarding the provisions of the act in question. Thus, the Constitutional Court withdrew from the so far leading opinion, that its proceedings are governed necessarily by the procedural Constitutional Court act in force. The issue of disregarding the application of the procedural Constitutional Court act must be subject to further discussion, as neither former court practice nor academic discourse exist to support this approach of the Constitutional Court.

Tina de Vries

Medienfreiheit in Polen

Media Freedom in Poland

The laws changing the system of public media in Poland in 2016 were the so-called small media act followed by the law on the National Media Council. Originally they were intended as an interim solution, towards a new system of “national media” in which public television and radio should no longer be organized as stock companies but as public law institutions; however, they have been persisting until now. These so-called minor changes, however, have led to interference of the government in public broadcasting. The private sector has so far remained unaffected by the changes, thus providing an independent source of information, which is increasingly used. In line with the classification into authoritarian, liberal, socially responsible and communist media systems, Poland still has a system of socially responsible media, although the increasing influence on the public media by the ruling party runs counter to the pluralism of opinions also inside public media which this system should protect.

Julian-Ivan Beriger

Leistungsverwaltung in Russland – das System der staatlichen und kommunalen Dienstleistungserbringung

Administration of Services in Russia – The system of Provision of Governmental and Communal Services

The administrative reform in Russia led to the emergence of state and municipal services, which nowadays play an important role in Russian daily administration and judicial practice.

This article illuminates the system of provision of governmental and communal services, based on the Federal law of 27 July 2010 No. 210-FZ. The study focuses on the various forms of provision of governmental and communal services in Russia.

In conclusion, the article suggests that the system of provision of governmental and communal services, despite its inherent weaknesses, leads to an improvement of normative regulation of administrative activity in Russia.

Michal Malacka

Mediation als Appropriate Dispute Resolution im tschechischen und slowakischen Rechtssystem

Mediation as Appropriate Dispute Resolution in the Czech and Slovak Legal System

The article deals with the systematical problem of an acceptance and implementation of foreign law instruments from Anglo-American law in the Czech and Slovak legal system. The practitioners in the Czech and Slovak Republic have accepted the idea of mediation as a part of civil law procedure without analyzing or studying the real nature of this method or instrument. The study is looking into the problematic aspects of the mediation model and law in the Czech and Slovak legal system, comparing the situation in these EU member states. It is also trying to outline the ideal way for the further development of mediation.