# ABSTRACTS

## Katažyna Mikša
## Consequences of Non-Recognition of State in Private International Law from the Polish Perspective

The recognition of states is usually being analyzed from the point of view of public international law and political perspectives. Nonetheless, non-recognition of a state or a change of territory has its effects in private law. Special attention shall be paid to the protection of rights of people living in those territories. In this case, it is important to outline the possibility of application of the law of the unrecognized state and the recognition of documents issued there, particularly those regarding civil status.

## Milena Ingelevič-Citak
## International Status and Legal Capacity of Unrecognized "States" from the Standpoint of International Public Law

The international system is made up of sovereign states. Although they are not the only subjects of international law, they remain the most significant. The modern challenge to the established community of sovereign states is a problem of unrecognized entities. The main dilemma arising from the existence of unrecognized geopolitical entities is the issue of their legal status and legal capacity in international relations. This paper seeks to explore some complexities of the dealing with unrecognized entities on the international arena. The main goal is to show that the recognition has a crucial effect on the international position and the functionality of the newly created entity and thus also influences its internal situation. This paper starts with general remarks on the relevance of the international recognition and briefly presents consequences of the non-recognition policy. Following chapters examine the international status of unrecognized entities, their ability to maintain interstate relations and to acquire a membership in international organizations. The analysis is based on three case studies: Kosovo, Transdniestria and Crimea. Results of the analysis are presented in a conclusion.

## Attila Badó, Ulrich Ernst
## Einflussmöglichkeiten auf die Richterschaft in Ungarn im Lichte der Lage in Deutschland
## Politicized Influence on the Judiciary in Hungary in light of the Situation in Germany

In the wake of the measures taken based on the justice reform of 2011 in Hungary, experts in the field contemplated them to be set forth to politicize the judiciary all the way from the creation of the new Constitution to governing legislation on the judicial system. As far as the elements of the judicial reform are concerned, a number of them were roundly criticized, such as legislative changes pertaining to selection, appointment and career prospects. In order for an interpretation to be put on the current situation, an analysis on the Hungarian processes taking place in light of their German counterparts is

worth pursuing. As regards judicial selection, the paper points out to what extent objective as well as other elements play an important role in both countries.
In Germany, justice administration is quite firmly subordinated to the government even though some of the decisions rendered by it might be subject to court review. However, the resulting situation is further nuanced by a balance reached by dividing the country's judicial apparatus into the federal level and 16 separate state structures. Additional circumstances strengthening objectivity are the cardinally important and anonymously written parts of the two state examinations to be excelled at in order to pursue a career in the court system and the fixed rules for assigning cases to specific courts and judges.
In Hungary, since the 1990 regime change, judicial selection has been characterized with meritocratic and nepotic elements which, to a relatively lesser extent, are indirectly distorted by political considerations. Regarding the initial phase of judicial selection, a gradual intensification of meritocratic elements may be observed which sustained momentum even after 2010. This intensification may initially be traced in a more objective assessment system of judicial applications. The opportunities for discretion by heads of administration have considerably been restrained during the judicial selection process. Concurrently, however, upon filling court management positions, heads of administration entitled to appointment saw their competences being broadened. In the course of the appointment of administrative management members (court presidents and vice presidents) able to influence sentencing indirectly, the role of single-handed decisions has become more preponderant while that of the judicial self-governing bodies has lost momentum.

## Ilona Schütz, Leonard Krippner, Monika Schmatloch
## Stellung der Ausländer vor Gericht – Eine rechtsvergleichende Betrachtung der Umsetzung des Haager Übereinkommens über die zivilrechtlichen Aspekte internationaler Kindesentführung (HKÜ) vor deutschen und polnischen Gerichten
## The Legal Status of Foreigners at Court – A Comparative Legal Analysis of the Implementation of the Hague Convention on the Civil Aspects of International Child Abduction before German and Polish Courts, respectively

The following article deals with the Hague Convention on the Civil Aspects of International Child Abduction (HCCA). The Hague Convention on the Civil Aspects of International Child Abduction is a multilateral arrangement developed by the Hague Conference on Private International Law that provides a fast method to return a child internationally kidnapped by a parent from one country to another. It is a comparison between the legal systems of Germany and Poland. The focus and the main question in this article are as follows: Is there any kind of discrimination at the courts? Does a German citizen have better chances at a German court to get his or her child back? Are the chances better when you are Polish and you sue the other parent at a Polish court? The article compares several decisions of German and Polish courts, and shows, on the one hand, how different the interpretation of law is, even though there should be the same application of rules of the HCCA. On the other hand, it shows how similar the highest courts decide. Furthermore, the article compares official statistics quantitatively. Here, the focus is on art. 13 of the HCCA, because it gives the court a certain freedom to decide whether the child should stay in the country which it was kidnapped to, or whether it should return to

the country in which it was raised. Article 13 HCCA gives the court a chance to overview what is the best for the child, but it also enables the court to benefit the residents. Therefore, it might constitute a gateway for discrimination, what shall be analyzed in this article.

## Lars Leuschner
## Die Zulässigkeit vertraglicher Haftungsbeschränkungen in Deutschland und Polen
## The Admissibility of Contractual Limitations of Liability in Germany and Poland

Business relationships between German and Polish companies are diverse and often raise the question of whether the parties should subject their contractual relationship to German or Polish law. Here, a significant question is: which of the two legal systems respects the freedom of the parties the most? This article goes into the limits of freedom of contract using the example of contractual liability limitations and compares the extent to which they are possible in German and Polish law. It concludes that the Polish law is significantly more liberal, and that hardly any statutory regulations or case law exist which restrict the admissibility of such agreements. In contrast to this, it is hardly possible to agree effective limitations of liability in a legally-binding manner in German law due to the excessive application of §§ 305 et seq. German Civil Code on business-to-business-transactions.

## Anna Paluch
## Gewährleistung oder Beschränkung der Testierfreiheit – Über die Unzulässigkeit der gemeinschaftlichen Testamente im polnischen Erbrecht
## Provision or Restriction of the Freedom to Testate – On the Inadmissibility of Joint Wills under Polish Hereditary Law

The article concerns the development of opinions of Polish legal scholars regarding the inadmissibility of joint wills in the Polish law. This issue and the possible changes in its area are the subject of intensive discussions among Polish lawyers.
Art. 942 of the Polish Civil Code provides an absolute inadmissibility of drawing up a joint will. There were many reasons for such regulation, from among which the most important was the alleged contradiction between joint wills and the principle of free and unlimited revocability of a will – which is one of the essential elements of the freedom to testate. Joint wills were perceived as a restriction of that fundamental principle of law of succession, and the inadmissibility of them as its significant guarantee.
After several decades since the Polish Civil Code came into force, it has become noticeable that the arguments for the inadmissibility of joint testing in the Polish law do not actually justify it. Moreover, by forbidding the testators to draw up a joint will the legislator very often protects them against their own will – which is rather a restriction, not a guarantee of freedom to testate. Joint will could serve, above all, to the spouses to realize such purposes regarding their assets which de lege lata cannot be fully realized (inter alia, owing to the inadmissibility of appointment of heir on condition or with the reserva-

tion of time limit). Taking into consideration the above, the introduction of joint wills into the Polish legal system is often proposed.
The aforementioned postulate shall be judged as correct. However, the change cannot be limited to a repeal of Art. 942 of the Polish Civil Code. It is necessary to introduce a legal definition of joint will in order to avoid any doubts regarding the meaning of that term. Also a comprehensive regulation regarding effects of joint wills within the whole law of succession (particularly in the area of revocability of a will and appointment of heir on condition and with the reservation of the time limit) has to be provided. Furthermore, taking into consideration that it would be an institution of high degree of complication, difficult to understand by the society and completely new for the Polish legal tradition, it is justified to limit the possibility of drawing up a joint will only to the form of notarial deed.

## Elwira Macierzyńska-Franaszczyk
## Architect Design Contract under Polish Law

The paper presents the legal status of an architect design contract and some other architect services under Polish law. The author undertook an in-depth analysis of the typological qualification of the design contract and its relation to the contract on architect's supervision, as well as to the construction contract. The paper presents normative and non-normative sources of the scope and substance of the design contract, including provisions of private and public law, standard contract terms (provided by the Chamber of Architects of Poland, as well as FIDIC patterns), as well as professional standards of architects. Finally, the paper portrays the issue of architect's liability for defective performance or non-performance of the design, inappropriate instructions given in the course of supervision, as well as problems relating to overlapping liability of an architect and constructor.

## Maike Tallen, Pawel Kuglarz
## (Vor-)insolvenzliche Sanierungsverfahren – Ein Vergleich zwischen dem polnischen und dem deutschen Recht
## Pre-insolvency Restructuring Procedures – A Comparison of Polish and German Law

As a result of the entry into force of its new Act on Restructuring on January 1, 2016, Poland concluded a long process of reforms in the domain of its law on insolvencies and restructuring. This new act also considers the relevant guidelines provided by the EU Commission. By enabling debtors to choose between several options of carrying out the pre-insolvency restructuring procedure, the act meets contemporary requirements, as well as making it possible for debtors to reorganize their enterprise efficiently. Thus, the act can also serve as a proper template for the respective legislation process in Germany, where the reform of the insolvency law has been going on for many years already, and is not yet accomplished.