

Reviewers
Professor Marian Grzybowski

Proofreading
Jennifer Zielińska

Cover and title pages design
Andrzej Taranek

Ex libris
Andrzej Taranek

Typesetting and page layout
Michał Janczewski

This publication is financed from the resources
of the Faculty of Law and Administration of the University of Gdańsk

© Copyright by University of Gdańsk
Gdańsk University Press

ISBN 978-83-7865-429-2

Wydawnictwo Uniwersytetu Gdańskiego
ul. Armii Krajowej 119/121, 81-824 Sopot
tel./fax 58 523 11 37, tel. 725 991 206
e-mail: wydawnictwo@ug.edu.pl
www.wyd.ug.edu.pl

Księgarnia internetowa: www.kiw.ug.edu.pl

Table of contents

Laudatio (<i>Bogusław Banaszak</i>)	9
Academic career of Professor Rainer Arnold (<i>Bogusław Banaszak, Andrzej Szmyt</i>)	13
Selected publications of Rainer Arnold with reference to Central, Eastern, and Southeastern Europe	19
Chapter I POLAND	
Bogusław Banaszak The main principles of the reform of the Polish Constitutional Tribunal in December 2015: A comparative approach	35
Andrzej Bisztyga The Senate of the Republic of Poland: Origins, position in the legal system and current challenges	45
Lech Garlicki Die Ausschaltung des Verfassungsgerichtshofes in Polen? (Disabling the Constitutional Court in Poland?)	63
Miroslaw Granat The Constitution of Poland and civil law	79
Jakub Stelina The institution of tripartite dialog in Poland	91
Bogumil Szmulik The Supreme Court in the Constitution of the Republic of Poland of 2 nd April 1997	101
Andrzej Szmyt The dispute on the mode of appointment and the term of office of the president of the Constitutional Tribunal	121
Zbigniew Witkowski, Maciej Serowanec The powers of the Sejm and the Senate of the Republic of Poland in the EU decision-making process	145
Miroslaw Wyrzykowski Bypassing the Constitution or changing the constitutional order outside the constitution	159

Chapter II
CZECH REPUBLIC–SLOVAKIA–HUNGARY

Naděžda Šišková New challenges for the EU in the field of human rights (focusing on the mechanism of the Charter)	179
Jiří Zemánek The scope of the application of the Charter of Fundamental Rights of the European Union in Member States	189
Alexander Brösl, Ludmila Gajdošíková Verfassungskonformität und Verfassungsauslegung (Allgemein verbindliche Entscheidungen des Verfassungsgerichts der Slowakischen Republik)	203
Tímea Drinóczi, József Petrétai Human rights standards and changes in Hungarian constitutional law	219

Chapter III
UKRAINE–LITHUANIA

Yuriy Boshytskyi Interrelationships in the creation, protection, and defense of intellectual property within the context of the sustainable development of Ukraine	251
Volodymyr Kampo The legal system of Ukraine in the context of the constitutional history of 1989–2015: Criticism of a post-Soviet re-evolution	261
Victor Muraviov The law of the European Union and the legal order of Ukraine: Mechanism of interaction	279
Nataliia Mushak The interaction of Schengen law with the national law of EU Member States	293
Stanislav Shevchuk International precedents in constitutional adjudication: Ukraine's perspective	301
Toma Birmontienė Interpretation v. amendment of the Constitution: The role of the Constitutional Court	309

Chapter IV
ROMANIA–MOLDOVA–BULGARIA

Anton-Florin Boța-Moisin, Monica Florina Boța-Moisin The European Union – Civilization and the cultural dimension in the era of social media technologies	335
Eugen Chelaru Foreign citizens' rights over land in Romania	343
Mircea Criste La justice constitutionnelle en Roumanie, comme un phénix	359
Miruna Tudorascu, Ioan Ganfalean The public functionary between power and morality	377
Elena Simina Tanasescu Constitutional semantics and legal culture	385
Genoveva Vrabie Quelques problèmes concernant les rapports entre le Président de la Roumanie et le Gouvernement et la représentation de l'État	399
Alexandru Tanase Profound changes in the legal system: The Constitutional Court of the Republic of Moldova made it possible for every litigant to raise the exception of unconstitutionality	411
Enita Enikova The Constitutional Court of the Republic of Bulgaria: establishment and development during its first quarter century	423
Evgeni Tanchev Inaccuracies in voter lists and citizens voting abroad: Legal and practical solutions	435

Chapter V
CROATIA–SERBIA–KOSOVO–ALBANIA

Biljana Kostadinov Constitutional review of constitutional amendments	459
Siniša Rodin Elegant jurisprudence	471
Ivan Čukalović, Srdjan Djordjević The possibility of a parallel coexistence of the Serbian and Kosovo constitutional orders	481
Enver Hasani The case of the Serb Association before the Constitutional Court of Kosovo	493

present in the daily work of the CJEU. They appeal to the eye of an observer depending on context and the observer's tradition and knowledge. But is there an inherent added value in legal aesthetics? I would think that there is. Human laws are not so different from the laws of nature. While both exhibit a certain degree of predictability, both are ultimately open-ended. In the similar way in which physics cannot falsify natural phenomena that are beyond possibilities of experiment, judges cannot decide beyond a case at hand. Here is where aesthetics comes into play. Before he was able to deliver an experimental proof, Einstein was of the opinion that his theory of relativity was too elegant to be wrong. In a similar way, an elegant judgment, which respects aesthetic requirements, above all internal and external coherence, symmetry, and proportionality, may provide guidance for the future. The aesthetic sensation that a beautiful judgment creates can be compared to the sensation felt when all squares of the Rubik's cube slide in uniform colors. Aesthetics signals a job well done, or the absence of it.

Finally, the legitimacy of judicial work ultimately depends on its wide acceptance. It may be difficult to expect general acceptance of the normative claim attached to any particular kind of beauty. However, what seems obvious to me is that an absence of aesthetic criteria inevitably brings the legitimacy of adjudication into question.



Ivan Čukalović
Srdjan Djordjević

The possibility of a parallel coexistence of the Serbian and Kosovo constitutional orders

Introduction

Leaving aside the unresolved questions of the past and axiological tensions in the interrelations between Serbs and Albanians, we would like to turn our attention to the relationship between the two constitutional acts, as it is rather specific and atypical. It concerns the twofold overlapping of constitutional norms of two different constitutional orders. Just as a geometric surface is "a conceptual border between the geometric body and the space that the body belongs to," one can set up a hypothetical construction relating to territorial, personal, and temporal application of law in Kosovo. In such a conceptual framework, the Kosovo constitutional area may be labeled as an atypical "constitutional surface."

The Constitution of the Republic of Serbia prescribes that an integral part of the territory of the Republic of Serbia is also the territory of the autonomous province of Kosovo and Metohija. We come across such a prescription in several parts of the structural composition of the Serbian Constitution: Article 114 paragraph 4 (the text of the oath of the President of the Republic); Article 182 (the constitutional stipulation of the existence of the autonomous province of Kosovo and Metohija, and the rule on the adoption of a special constitutional law which will regulate its substantial autonomy). Despite the efforts of the Serbian constitution-makers to regulate the question of this autonomous province, it is nevertheless obvious that its constitutional-legal position is not completely realized but it has been left as an open constitutional question.¹

¹ S. Djordjević, *O mitrovdanskom ustavu*, 2. dopunjeno i izmenjeno izdanje, Kragujevac 2010, p. 173.

