Faculty of Law and Administration
University of Warsaw

Bulletin no. 2 · Research Projects

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Centre for Promotion of Polish Legal Research
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About the Faculty

The Faculty of Law and Administration at the University of Warsaw was founded in 1808 as the School of Law of the Duchy of Warsaw, primarily for the purpose educating members of the judiciary and civil service. In 1816 the School was incorporated into the newly established University of Warsaw. Following the restoration of independence by Poland in 1918, the University, together with the Faculty of Law, was promoted to the status of state university. Both during the interwar period and after World War II professors associated with the Faculty made a considerable contribution to the process of unification and codification of Polish law. Among the most notable alumni of the Faculty are Menachem Begin and Leonid Hurwicz.

Contemporarily, the Faculty of Law and Administration is the largest academic institution in Poland offering legal studies at graduate level that conducts research into a wide variety of legal topics. It employs in excess of 200 faculty members, boasts a resourceful library and operates in four building located on the main university campus. Many faculty members perform important public functions and practice law, thereby exerting sizable influence upon the processes of creating and enforcing law in Poland and the European Union alike. Research activities undertaken at the Faculty are centred around the study of Polish and European law, however they frequently involve broad comparative exercises. The Faculty maintains extensive international cooperation with academic centres around Europe as well as in the United States, China and South America. Recent years have shown a surge in interest in the legal systems of countries in Eastern Europe and Asia and their legal and economic relations with Poland and the EU. A variety of publications in reputable in international journals, a selection of which is featured in this bulletin, bears testimony to the quality of the Faculty's scholarly output.

Organizational units of the Faculty of Law and Administration

The basic organizational units of the Faculty of Law and Administration consist of traditional departments and chair groups whose interests revolve around traditionally distinguished branches of law. In addition, faculty members conduct research dedicated to narrow fields within chairs. The Faculty also hosts several centres which concentrate on interdisciplinary legal research and derivative fields.

Institute of Legal History

- Department of Roman and Ancient Law
- Department of History of the Polish Law and Constitution
- Department of World History of the State and Law
- Chair Group of Religious Law
- Chair Group of European Legal Tradition
- Chair of History of Legal Culture
- Chair of Legal and Historical Bibliography
- Chair of 20th Century Polish Law

Institute of Legal-Administrative Sciences

- Department of Insurance Law
- Department of Financial Law
- Department of Labour Law and Social Policy
- Department of Agricultural Law and the System of Protection of Food
- Department of Administrative Law and Procedure
- Chair Group of Human Rights

- Chair Group of Administrative Theory
- Chair Group of Administrative Economic and Banking Law
- Chair of Food Law
- Chair of Non-Employee Labour Relations
- Chair of the Centre of New Technologies

Institute for the Study of the State and Law

- Department of Legal Sociology
- Department of Legal Philosophy and the Study of the State
- Department of History of Political and Legal Doctrines
- Department of Constitutional Law
- Department of Logic and Legal Informatics

Institute of Civil Law

- Department of Commercial Law
- Department of Civil Procedure
- Department of the Law of Intellectual Property and Intangible Goods
- Department of Comparative Civil Law
- Department of Civil Law
- Chair of Medical Law and Biotechnology
- Chair of Capital Market Law

Institute of International Law

- Department of International Private and Commercial Law
- Department of European Law
- Chair Group of International Aviation and Space Law
- Chair Group of International Public Law

Institute of Criminal Law

- Department of Forensics
- Department of Comparative Criminal Law
- Department of Criminal Law
- Chair Group of Criminal Procedure
- Chair Group of International Criminal Procedure
- Chair Group of Criminology
- Chair of Criminological Technique

Chair of History of the Faculty of Law and Administration

Law Clinic

Centre for Extra-Judicial Dispute Resolution

Polish Research Centre for Law and Economy of China

Centre for American Law

Centre for the Study of the Law of Eastern Europe and Central Asia

Centre for Promotion of Polish Legal Research

About the Polish Centre for Promotion of Polish Legal Research

The Centre for Promotion of Polish Legal Research was founded in early 2017. Its functioning is funded by the Ministry of Science and Higher Education under the DIALOG scheme. The Centre is tasked with popularizing the achievements and enhancing the reputation of Polish legal research at an international level. To those ends, the Faculty of Law and Administration makes an effort to support its faculty members and PhD candidates in internationalizing the results of their research, in particular by publishing in prestigious journals and partaking in international conferences. The Centre also acts as an intermediary in the process of developing international ties of the Faculty as well as organizing mutual academic events and initiating research projects. Above and beyond, it is a special task and ambition of the Centre to promote Polish legal research and energize scholarly exchange on the Eastern front. To further this ambition, a permanent office of the Centre, whose functioning is based upon the international gateway model, was opened in Kiev in April 2017. Its responsibilities include advancing and coordinating cooperation with premier Ukrainian scholarly centres, non-governmental organizations and business leaders.

Research projects

Institute of Legal History

Project title: ***Napoleonic divorce settlements in the case law of Polish courts***

Project manager: dr Piotr Zbigniew Pomianowski
(p.pomianowski@wpia.uw.edu.pl)

Realisation period: 2015–2018

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 7th edition

Abstract: The main aim of this project is to investigate the implementation of Napoleonic Code divorce settlements on Polish territory, namely the Duchy of Warsaw (1808–1815), Congress Poland (the Kingdom of Poland, 1815–1825) and the Free City of Krakow (1815–1852) and to answer the questions posed in the detailed description of the project. No publication whatsoever has appeared yet on this topic, save for the works of the present author as listed. The practice of Krakow's courts during the period 1816–1833 was, in fact, described by Rev. Bronisław Fidelus in his doctoral thesis, however, this dissertation has yet to be published, thirty years later. What is more, it covers a much narrower scope, in terms of both territory and time, than the research planned for the present project. Nor does it contain any comparative considerations, i.e. it lacks any reference to judicial practice in France or other states of the Empire, and has certain lapses in its methodology. It additionally repeats the view that divorce was practically non-existent in the judicial practice of the Duchy and Kingdom. I approach the project with the following research hypotheses:
1. The scale of the phenomenon which is of interest to me was many times greater than indicated by the estimates appearing in previous literature. During the years 1808–1812, a civil tribunal of first instance in Kalisz department issued 44 divorce decrees, and in the same period four of Warsaw's eight registrars an-

nounced 33 divorces, and the tribunal in Bydgoszcz issued 5 divorce decrees. Between 1816–1833, 143 divorce cases were filed before the tribunal in Krakow.
2. Members of the wealthier social classes divorced more often than those of the poorer classes, most likely due to the wealthy having greater awareness of legal matters and better access to judicial recourse (trial costs).
3. Women sued for divorce far more often than men, which may have been a result of their ambition to free themselves from their husbands' domination or a desire to retrieve their dowry. This phenomenon could also signalise a stage in female emancipation.
4. Most of the divorce cases involved Catholics who had not adhered too closely to canonical law. A large number of them were probably also simultaneously subject to marital annulment proceedings in clerical courts.
5. The great transformations of the Napoleonic era exacerbated the crisis of traditional bonds and the failure of marriages.
6. Polish society in the first half of the 19th century was less traditionalist than has previously been assumed.
7. It was not unheard of for Polish courts to give new meaning to provisions of the Napoleonic Code.
The project is interdisciplinary in nature, and various methods will be applied to realise it. The archival research will be carried out using historical methods. The legal text itself will be investigated with the aid of the formal-dogmatic method. Some of the questions concerned with judicial practice and the specific nature of the parties to cases will be investigated using quantitative methods (the scale of a phenomenon, frequency with which with particular premises for divorce occur, the social background, education and religion of the divorcees). Some of this quantitative data will be highly significant for social history, and sociological methods will be used to analyse it.
I am convinced that finding an answer to the research questions formulated in this project is of importance not only for legal history, but also for social and economic history, historical demographics and the history of the family. The comparative aspect will also be important. At the same time, my research will enable the phenomenon of divorce to be understood in a longer term perspective. Today it is commonplace, but this was not true in the past, in spite of the fact that over a thousand couples divorced in the Duchy of Warsaw among its population of four million. I believe that understanding why divorce is so common today also requires consideration of why it was so rare in the past. A society's attitude towards civil divorce may also be an indicator of that society's attitude towards traditional values such as the family or the sanctity of marital vows, so the way divorce and secular marital laws are viewed is a major problem in social history. Meanwhile the way French law was received is a key problem in legal history. It seems odd that there have not yet been any comparative works on the implementation of

the Napoleonic Code in France and on Polish territory, not just with regard to divorce. Research into the reception of French law has generally been limited to formal-dogmatic analysis of individual items of legislation and projects to amend them, and scholars have very rarely touched on the enactments of the civil tribunals themselves. Without comparing how provisions of the Napoleonic Code were interpreted by Polish and French judges, it is impossible to comprehensively assess their reception.

Project title: ***Reforms and concepts of law and the state in the revolutionary process. A historical-legal study based on the example of the 1917 Dual Power period in revolutionary Russia***

Project manager: Michał Patryk Sadłowski (sadlowskimich@gmail.com)

Realisation period: 2014–2018

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 43

Abstract: The main research aim of this scientific project is to analyse the influence of the events of the revolution on reforms and concepts of law and the state implemented in the state of dual power which existed. 1917 was a groundbreaking year in Russian history in every aspect of the state's functioning – in a single year the concepts of state and law which formed the basis of the Tsars' state were destroyed, and at the same time steps were taken to create a democratic state of law for the first time. The failure of these goals led, however, to westernisation of the political system and of Russian legal culture coming to a crashing halt, giving way to a new totalitarian system. The historical and legal research will thus aim to establish why, at the moment of the revolutionary breakthrough, transformation of the domestic legal culture towards a more continental model turned out to be impossible, and whether the events of the 1917 revolution played a deciding role in this state of affairs. Assessing the causes of this failure will also involve an attempt to define the conflict between Russia's legal culture and the solutions adopted in the rest of Europe. These considerations will form the basis of an attempt to construct the main features of the pre-1917 Russian legal order and legal culture. This was different from the European system, a fact which is particularly noticeable in our times. The scientific goals of this research can be implemented not only in the history of the state and law as a general discipline, but an investigation of the aforementioned phenomena will also provide results which can be used in assessing and diagnosing the political transformations and processes of democratisation in the former Soviet Union after 1991. This is important for Polish science and Polish readers. In recent years, we have observed a

rather limited degree of scientific reflection on the Russian legal and political systems, or of those in the Russian-speaking world (unlike in western institutions), which is surprising and potentially worrying due to the country's direct proximity and the many geopolitical questions resulting from this, as well as factors of a purely economic nature. The methodology of the research will be based on normative acts, divided into public and private law. The source and library consultation of works devoted to the matter in question will take place in the State Archive of the Russian Federation, the Russian State Library, the State Public Historical Library of the Russian Federation in Moscow, the State Historical Archive, the Library of the Russian Academy of Sciences, the Scientific Library of St. Petersburg State University, the University of Warsaw Library and Library of the Faculty of Law and Administration at the University of Warsaw, the Central Archive of Historical Records in Warsaw and the Slavic Library in Prague.

Project title: ***Disputes over tithes between secular figures and Catholic clergy in the Bielsko region of Podlaskie Voivodeship in the 16th–18th centuries. Law – practice – causes and effects of tension***

Project manager: Łukasz Gołaszewski (lukaszgolaszewski@student.uw.edu.pl)

Realisation period: 2014–2017

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 6th edition

Abstract: Disputes over tithes between secular figures and Catholic clergy in the Podlaskie Voivodeship of the Polish-Lithuanian Commonwealth between the 16th and late 17th centuries. The tithe (decimaecclesiastica) constituted a compulsory contribution in kind or in money due to a parish church from property owners, mainly the king and nobles. Payment in kind took the form of either a sheaf tithe (decimamanipularis), which involved providing a stipulated number, most commonly one tenth, of sheaves of cropped cereal as indicated by a representative of the parish priest, or a tithe by measure, which meant donating a determined volume of ready-threshed cereal. The duty to pay a tithe arose in the Middle Ages, and in the Polish territories its legal framework was established in church and state legislation in the 13th and 14th centuries. Although the owners of goods were bound by this, in reality they only paid tithe on that part of their assets which were directly managed by them – directly from the manor grounds but indirectly from the countryside, where it was actually the peasants who paid it. Similarly, it was the peasants and burghers who indirectly met this obligation on the crown lands. The Bielsko region was selected because of the project manager's interest in the history of law and society in that territory, which is not to say

that the choice was entirely accidental. This land was settled mainly be the petty nobility, with larger properties being relatively rare here. In addition, Protestant faiths, particularly reformed versions, never took hold here either among the nobles or the peasants, so the vast majorities of parties to disputes were Catholics. There were also Orthodox and Uniate inhabitants on the territory which, it should be noted, belonged to two Catholic dioceses – Vilnius and Lutsk. Since 2012, the project manager has been conducting research, as part of the Ministry of Science and Higher Education's Diamond Grant, into disputes regarding tithes in one of the parishes in this area – Kobylin, in the diocese of Lutsk – in order to establish the causes of this kind of conflict in the Republic. Specifically, the aim was to determine whether social, economic or religious factors played the decisive role. The project presented here is intended to further develop the research into this phenomenon, which is of such importance for Polish society – tithes were paid from the Middle Ages right up until the 19th century and were subject to disagreements throughout this entire period. It envisages an analysis of the provisions of the law in force and of the legal practice of state and church courts (the competency of both structures was unclear, contradictory rulings have been found; in addition, the legal practice of the crown lands and church courts in the Republic is a matter which has not been thoroughly researched), and also research into the material, social and personal relations of parties to the disputes. The permanent nature of tithe disputes seems to have had several causes – besides the general unpopularity of this contribution due to its form (particularly when paid in kind), other important factors were the relatively weak legal position of the church party (on the territory of both jurisdictions), which encouraged secular parties with financial problems or in need of extra money to stop paying the tithe; antipathy towards the parish priest if he was not the preferred choice of some of those entitled by patronage law to appoint him; other property disputes between a church bailiff/his family and those obliged to pay tithes. There were also situations, which cannot of course be overlooked, when a non-Catholic had to pay a tithe. 2. Research method/methodology applied The project manager plans to conduct wide-ranging searches of sources in archives and libraries in Poland (Warsaw, Krakow, Białystok, Siedlce, Łomża and others) and abroad (Vilnius, Minsk). Selected sources of a judicial, administrative and financial nature serve to characterise legal practice, social and property relations, and the opinions concerning tithes which were prevalent in the Bielsko region of Podlaskie Voivodeship. 3. The influence of the expected results on the development of science, civilisation and society. Realisation of the project will undoubtedly contribute to extending our knowledge of old Polish law and society, additionally on territory long neglected by researchers. Due to the timeless and universal nature of the problem (how to ensure the existence and functioning of a religious institution), the results of the research at the comparative level may also prove useful

to scholars of the relations between secular citizens and churches/religious associations not only in Poland, but also in the rest of Europe.

Project title: ***Disputes regarding tithes between the petty nobility of Kobylin parish in Podlaskie Voivodeship and the parish priest at the turn of the 16th–17th centuries. Causes of modern inter status conflicts in the Polish Republic – economic, social or religious?***

Project manager: Łukasz Gołaszewski (lukaszgolaszewski@student.uw.edu.pl)

Realisation period: 2012–2014

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 41

Abstract: Disputes between the nobility and the clergy over tithes have not yet been the subject of much work in Polish historiography, and most of the extant studies date from before World War 2. Nevertheless, it seems that an analysis of the long-lasting and bothersome trials heard in noble and church courts, taking into account the entirety of their legal, social, material, economic and religious context and thus not merely pointing to the reformation as the source of tension, would enable not only a closer examination of the actual interstate relations, but also an observation of how society functioned in the Republic in the late 16th and early 17th centuries with regard to personal relations, dependency, circles of friends, economic contacts and opportunities for making a living. The research outlined will cover the legal dispute over tithes from the time of Sigismund III between the petty nobility of Kobylin parish in Podlasie and its parish priest. The core of the archival documents is contained in the National Archive in Krakow (the Gloger set of the Kapicjana Collection) and was already partly studied in June 2011, but it will be necessary to continue the search both in Krakow and in Warsaw and Białystok (where the borough annals are kept in Brańsk – both the originals and digital copies from the NHAB collection in Mińsk, and the rest of the Kapicjana), in order to gather information about the economic and social position of the parties to the dispute who are of vital importance to the scientific aims of the project. The research will culminate in a typewritten book consisting of a monographic study of the history of the Kobylin case and editions of the sources, i.e. the court documents, prepared according to the accepted principles for publishing old Polish texts in Polish and Latin.

Project title: ***The judiciary and military discipline in the late 17th century Republic***

Project manager: Jan Jerzy Sowa (jan.j.sowa@gmail.com)

Realisation period: 2015–2017

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 7th edition

Abstract: The project presented is intended to analyse the major aspects of judiciary and military discipline in the army of the crown in the late 17th and early 18th centuries, in particular on the basis of sources from the Ruthenian and Volhynian Voivodeships. The following questions will be investigated: – the army's relations with the civilian population; – military criminality; – the military justice system; – the influence of the army's salary and supply system on the level of discipline; – the influence of the soldiers' mentality on the army's behaviour. The project will also verify the hypothesis that problems with military discipline were one of the main causes of the crisis in the Polish-Lithuanian military, and hence the disarmament of the Republic in 1717. The choice of timespan (1683–1702, the time when Stanisław Jabłonowski held the office of Hetman) is due to this period being of groundbreaking importance for the army of the crown, characterised by a drastic decrease in its combat readiness (from the victory at Vienna to the unsuccessful campaigns during the final years of the war against the Ottoman Empire). This raises the question of to what extent this was caused by a relaxation of discipline. What is more, we posses unique military documentation for that era. It was decided not to extend the timespan to cover later years, due to the changing nature of the Great Northern War (military operations covering practically the entire country, its partial occupation by foreign forces, the civil war of 1704–1709). The focus on the Ruthenian Voivodeship is due to this being where the most units of the army of the crown were stationed. For the sake of comparison, it was decided to investigate one district (powiat) in Volhynia Voivodeship – Krzemieniec, where there were also large numbers of soldiers stationed. Archive searches will be conducted in the following sets of sources: – borough annals of the Chełm region – the State Archive in Lublin; – borough annals from other areas of the Ruthenian Voivodeship – Central State Historical Archive of Ukraine in Lviv; – Krzemieniec borough annals – Central State Historical Archive of Ukraine in Kyiv; – Stanisław Jabłonowski's hetman records – Czartoryski Library in Krakow and the Library of the Ossoliński National Institute in Wrocław (microfilms at the National Library in Warsaw). The main object of the search will be protests against abuses by soldiers, and rulings of military courts. The material gathered will be analysed and used to prepare a monograph. The question of the so-called military revolution is of vital importance for an understanding of the military, social and political transformations taking place in early modern Europe. Of exceptional importance in the military revolution were

changes in the area of military discipline. The aim of the present project is to attempt to answer the question of to what extent the introduction of modern standards of military discipline contributed to the crisis in the crown's military affairs, and ultimately to the Polish-Lithuanian state disarming itself at the so-called Silent Sejm in 1717. The result of the work will be a monograph which will serve as a foundation for debating the typicality and atypicality of state-forming processes in the early modern Republic against the background of Europe at that time.

Project title: ***The legal and social status of extramarital children in the Roman Empire up until the times of Constantine the Great***

Project manager: dr Maria Biruta Nowak (m.nowak@wpia.uw.edu.pl)

Realisation period: 2016–2019

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 9th edition

Abstract: The project aims to research the legal and social position of extramarital children in Roman and local law. The primary purpose is to define the terms 'illegitimacy' and 'illegitimate child' in the Roman Empire before the constitutio Antoniniana. It aims to define these within the scope of the different legal systems/traditions existing in the Roman Empire before Caracalla issued his edict granting Roman citizenship to almost all free inhabitants.

Project title: ***Neighbour law as seen in Greco-Roman papyrus from Egypt***

Project manager: Aneta Skalec (anetaskalec@gmail.com)

Realisation period: 2012–2014

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 2nd edition

Abstract: The research project concerns the formation of neighbourly relations in the papyrus law of Greco-Roman Egypt, which are investigated from various points of view. These include limitations on property on behalf of a neighbour, and disputes arising between neighbours, e.g. due to a boundary being crossed or territory flooded. The aim of the project is firstly to research and describe the system of the institution of neighbourly law as it appears in the Greek papyrus which form the majority of the published papyrus material. Secondly, I would like to establish whether these institutions have equivalents in papyrus

documents in other documents (demotic, Coptic, Arabic), to investigate whether neighbourly law was the same for the whole of society regardless of ethnic and religious differences, as an expression of the same needs, or whether there were differences between them. The third aim is to analyse whether and to what extent the individual institutions attested in papyrus differed from those known from Roman law, which provides us with the richest supply of material for comparison, and also whether they changed over time, and what the changes were dictated by. Fourthly, to establish the scope within which legal settlements with regard to neighbourly relations were affected by Egypt's prevailing climatic, hydrological and geographical conditions, and whether legal provisions are reflected in other sources (particularly archaeological ones) which can serve to recreate the relationships between neighbours. Achieving these aims requires an analysis of a large amount of widely dispersed material, as only a small proportion of the papyrus documents are directly concerned with questions of neighbourly relations. The remainder consists of various types of contracts, in which only small fragments or individual provisions make reference to relations between neighbours. Because the project involves legal systems which are no longer in force, the basic research method applied will be a historical method aimed at investigating historical transformations in the law over the course of history. I will also apply a comparative method involving compiling information from various sources to determine what similarities and differences occur between the phenomena analysed. A wealth of papyrus material subjected to an incisive analysis as part of the project presented will contribute significantly both to a greater familiarity with law in Egypt and to recreating its social relations. This will lead to information contained in numerous papyrus documents finally being properly and comprehensively studied from a legal point of view. It should be stressed that the project also assumes wide ranging references to sources which are rarely, if ever, featured in legal publications. The analysis will not be limited to the documentation written in Greek, which constitutes the core of the whole project, but will be extended to cover papyrus in other languages, thus enabling the social context of legal institutions to be more fully defined, their sources established and their evolution traced. As well as this, the conclusions from the legal analysis will be contrasted with the archaeological remnants and knowledge of the natural conditions prevailing in Egypt, in order to answer the question of how far the law can be shaped by the conditions in which it develops, and to what extent it can be reflected in material remains. Such a novel and interdisciplinary approach will significantly increase the scope of knowledge regarding the legal formation of neighbourly relations in antiquity, knowledge which can be applied not only by lawyers, but also by historians and archaeologists. It will also enable a better understanding of the functioning of ancient societies, as well as indicating new opportunities for papyrological research by referring its results to other material remains.

Project title: ***Alternative methods for resolving disputes in the legal practice of Egypt in late antiquity.***

Project manager: dr Marzena Ewa Wojtczak (m.e.wojtczak@wpia.uw.edu.pl)

Realisation period: 2015–2017

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 9th edition

Abstract: Research goal/Hypothesis: The project submitted is aimed at identifying and analysing the basic problems connected with amicable methods of resolving disputes as an alternative to civil procedures in Egyptian legal practice during the 4th–7th centuries AD. This will enable the interaction between legal practice and theory to be investigated, both in the context of the history of legal doctrine, and in the utilitarian aspect. As part of the present research, I will present the hypothetical model of proceedings for alternative methods of resolving disputes, as suggested by the papyrological documentation. I will investigate the degree to which late-antiquity era legal documents justify the use of the terminology proposed by legal anthropology when describing private methods for settling disputes. Research of this type is closely connected with questions concerning how attractive amicable methods were in Byzantine Egypt. These issues will be discussed with the use of anthropological sociological and also, to a limited degree, statistical research methods. I will attempt to present the reasons why the popularity of court proceedings waned significantly in late antiquity in favour of amicable methods for settling disputes. Comparing the information contained in legal sources with that revealed by legal procedural documents will enable the similarities and differences to be grasped, showing the form of particular legal institutions and the means used in arbitration proceedings. This approach is intended to establish how arbitration and other ways of settling disputes functioned in Egyptian legal practice in late antiquity. Also covered will be the question of the potential occurrence and application in amicable proceedings of regulations originating in local legal regimes and of their influence on Roman law legislation. There are several questions regarding this aspect of the research which seem particularly interesting – to what degree can arbitration be seen as a legal measure, and to what extent was it considered an alternative solution? What legal awareness did inhabitants of the eastern part of the Empire have, particularly in Egypt? To what extent could they make use of the law, or rather, what did they understand by „the law"? In other words, how strong was the presence of a statutory norm in the actions taken by ordinary people? The institutions under analysis will be treated systematically, also taking the matter into account in terms of historical evolution, legal doctrine, awareness of the law, as well as the anthropology and sociology of law, which consider law as a means of regulating social and economic relationships. Research method: Realising the project and the aims set

requires a wide range of source materials to be gathered and reviewed, including papyrological, legal and, in certain cases, literary sources. The following methods will be applied during the project: (a) the legal-dogmatic method, which investigates the formation and evolution of legal doctrines; (b) the historical method, which analyses the dynamics of historical processes, and (c) the legal-comparative method, which contrasts information contained in various types of sources, enabling the similarities and differences of problems to be established. The papyrological and occasionally literary sources will be scrutinised on the basis of the last of these three methods, which will allow them to be assessed in terms of the compatibility of the institutions mentioned in them with the regulations of Roman law. In addition, the problem of the adequacy of the methods offered by legal anthropology will be tackled. The typology of private mechanisms for settling disputes will be checked based on the papyrus materials, resulting in a new approach to source analysis being proposed, as well as a variant typology. Framing the collected sources statistically will also enable certain conclusions to be drawn regarding the desirability of amicable settlements. Influence of the results: The results of the research carried out will contribute to a better understanding of the functioning and evolution of alternative ways of settling disputes. They will also show the available papyrological material created during arbitration proceedings in a broader perspective, encompassing the structure of this type of document and the provisions they contain. What is more, comparing the normative and papyrological sources will reveal the actual extent of the application of Roman law in late antiquity Egypt. The results of the research will undoubtedly constitute valuable comparative material for other studies concerning legal practice in the Imperium Romanum. Studies of the problem of arbitration in late antiquity, a period when procedures of this type were particularly popular, provide an exceptionally valuable reference point for research into alternative methods of settling disputes in other periods of history, and offer a major contribution to research in the fields of sociology and legal anthropology, and contemporary legal doctrine.

Project title: ***Dereliction of duties as a basis of tort responsibility for one's own actions***

Project manager: dr Witold Borysiak (w.borysiak@wpia.uw.edu.pl)

Realisation period: 2016–2019

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 9th edition

Abstract: The research project concerns the principles for creating, and the sources of so-called duties of care, which are the basis of responsibility for one's own actions in tort law. The aim of the study is to present this problem

in Polish law as fully as possible, in other words taking into account the historical legal and comparative legal context. The question which constitutes the basis of the project may be considered one of the most important, as well as most controversial, in the field of tort law. According to the traditional approach in Polish scholarship, the illegality of the behaviour of the perpetrator of damage means his dereliction of duties which arise from legal norms and principles of social conduct. However, it is not uncommon that the actions of a perpetrator which a judicial decision has declared ex post to be illegal are not in any clear breach of moral standards. For this reason, in most cases considered in judicial practice, the source of the duty of care is not the principles of social conduct, but „technical standards of conduct" drawn directly from legislation (in particular that which constitute absolute laws). The aim of the project is describe the nature and sources of those duties.

Project title: ***Transplanting Swiss civil law to Turkey – the theory and practice of its functioning in an Islamic society.***

Project manager: Michał Jan Tutaj (m.tutaj@wpia.uw.edu.pl)

Realisation period: 2016–2020

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 45

Abstract: 2016 sees the 90th anniversary of the Grand National Assembly of Turkey passing two acts which are of key importance for that country's civil law – the Civil Code (Türk Kanunu Medenisi) and the Code of Obligations (Borçlar Kanunu). This event may seem banal to the casual observer, since the inter-war years were a period when newly formed states all over Europe were creating their legal orders. However, from the point of view of European legal tradition this is of tremendous importance in the field of civil law.

This is for two particular reasons. Firstly, the law passed was essentially a translation (with just a few corrections) of the French version of the Swiss civil code, along with the code of obligations included in its main body. It was thus a very rare case of a country's top-down adoption of foreign law as its own. This type of reception is an exception to the rule that domestic legislators draw inspiration from solutions used in other legal systems, but this results in legislation which is not merely copied mechanically from foreign law.

Secondly, the top-down introduction of a Western European codification happened in an Islamic society where the sphere of private, and particularly family, law was to a great extent dominated by the sharia religious code. Law was thus imposed on Turkey whose axioms and letter conflicted to a wide degree with the values professed by its society.

In light of this, tracing how the imported civil law functioned, and functions, in those conditions is an interesting problem worthy of research. Did the old judicature adapt the characteristic institutions of Swiss law to Turkish social conditions, or did they uphold the uniformity of legal institutions between Turkish and Swiss law? Has the legislator – in the form of the Justice and Development Party, in power since 2002 and harking back to Islamic and Ottoman roots – change the legal institutions embedded in the European legal tradition?
By answering this, it will be possible to take a position regarding a fundamental question occupying lawyers for centuries, which can be summarised as „Should the law result from the conditions of the society where it functions, or should it be a tool for shaping those conditions?" The Turkish legislator in 1926 assumed that the law could constitute an element of social engineering. Studying the condition of Turkey's civil law 90 years on will reveal whether, and if so to what extent, this assumption was correct.

Institute of Civil Law

Project title: ***Ownership changes in the occupancy rights in housing cooperatives***

Project manager: prof. dr hab. Krzysztof Pietrzykowski (k.pietrzykowski@wpia.uw.edu.pl)

Realisation period: 2011–2013

Funding body: other (National Science Centre)

Programme name: Promoter's research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 40

Abstract: The research project entitled „Ownership changes in the occupancy rights in housing cooperatives" involved an analysis of the legal institutions of civil law applied by the legislature to the regulation of legal relations linking a housing cooperative with its members, and with persons occupying cooperative housing stock who are not members of the cooperative. The aim of the research conducted under the project was to establish the legal character of the institution of ownership changes in occupancy rights (to property) within which applications for property rights to be granted, i.e. transferred, are sent to and dealt with by a housing cooperative. The project involved establishing the intended character of the legal transaction at which the process of ownership change in housing cooperatives is aimed, in other words the agreement to transfer property ownership

or the agreement to establish and transfer separate ownership of the property, and also the possibility to conclude an agreement transferring ownership after the cooperative has undertaken a unilateral legal transaction establishing separate ownership of the property for himself. Then an analysis was made of the legal character of the resolution of the housing cooperative management board stipulating the object of the separate ownership of the property for the requirements of the process of ownership transformation and the possibility of challenging it in court. The next stage involved indicating the moment (contentious in judicial practice) when claims by persons entitled to demand affranchisement arise and their maturity. A profound analysis of the nature of legal property relations (property rights and obligations) connecting the cooperative with its members, and of the different position of persons who are not members of the cooperative, will enable innovative theses to be formulated regarding the content and nature of the legal relations connecting the entities mentioned. Firstly, an indication was given of the corporate character of the obligations of cooperative members to bear the costs of constructing and delivering the flat, and to cover the costs of using it, in the form of service charges. Secondly, the relationship of the cooperative tenancy right to a residence and cooperative ownership right to the residence constitute a unilateral, free of charge relationship, as does the connected relationship of transforming those rights into ownership. For economic reasons, these are closely connected (compounded) with corporate relations, including the corporate property membership obligations. Thirdly, traditional legal relations occur in the relationships between the cooperative and persons who are not members (e.g. with tenants of former workplace-owned homes taken over by the cooperative). The homes are mainly occupied on the basis of a tenancy agreement, while the relation transforming the tenancy into ownership has been shaped both as an unpaid relation (similar to a donation), and as a paid relation (with the content of a sales relation). Finally, an assessment was made of the legal character of the request to transfer ownership of the property. This constitutes an independent subjective right, i.e. a modification clause which was assessed on the basis of research and analyses carried out as a statutory option to acquire ownership of property. Since the legal construction of that option has not been ultimately explained in Polish law, six possible qualifications of the option right have been differentiated, which appear in the teaching of civil law. The right to request has been defined as a statutory modification entitlement, execution of which results in a claim for the transfer of property ownership, although there is still no answer to the question of the type (character) of this entitlement. It has thus been proposed that execution of the statutory modification entitlement to the option to acquire the property (by submitting an affranchisement request to the housing cooperative) should be explained as a factual action constituting the fulfilment of the discretionary condition precedent si volet, admissible because it is reserved by the legislation itself.

Project title: ***Protection of the interests of minority shareholders in the event of resignation from the status of a listed company. Analysis of Polish regulations in the context of European rules***

Project manager: Magdalena Zmysłowska (magda.zmyslowska@gmail.com)

Realisation period: 2016–2017

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 10th edition

Abstract: 1. Research project objectives The research project objectives include identification and analysis of basic legal problems connected with resignation from the status of a listed company. Listed company status is given up voluntarily if a "public to private" transaction is performed. Such transactions can be performed using various legal mechanisms. If the listed company status is given up, the company's shares are delisted and the company's character changes from a listed (public) company to a private company. The issue of withdrawing a company's shares from the stock exchange is on the borderline between companies law (*lex societatis*) and capital market law (*lex mercatorum*). Obtaining or losing the status of a listed company has a direct influence on the principles of corporate governance applicable in the company. The principles for obtaining listed company status have been harmonized in the European Union. On the other hand, the criteria which enable delisting at the issuer's request are established separately by individual member states. This research project will present a hypothetical model of values which are protected as a result of introducing delisting into the legal system. While developing a model of this regulation, I put forward the following research hypothesis – legislators, while creating the delisting regulation at the issuer's request, must choose between protecting the economic interest of the listed company and protecting the minority shareholders. On the one hand, legislators imposing more complex obligations on entities interested in withdrawing the company's shares from the stock exchange increases the level of protection of minority shareholders. Shaping the delisting regulation in a manner ensuring a high degree of protection for minority shareholders increases the costs of delisting and may keep the company's shares listed against the company's economic interest. As a result, a high level of minority shareholder protection may lead to protection of the local capital market. On the other hand, reducing legal requirements related to delisting, and thus lowering the level of shareholder protection, will result in companies prioritising their own economic interest when deciding to delist, which may lead to abuse of minority shareholders. This research project will present delisting regulation models used in the European Union. In accordance with the next research hypothesis, the delisting model used in individual jurisdictions is related to the stage of development of a given market.

Next, the study will present the Polish regulations with regard to delisting shares at the issuer's initiative. Regulations concerning cancellation of share dematerialisation at the issuer's request will be analysed in order to: (i) determine which factors influenced the shape of the Polish regulation; (ii) discuss elements of the legal construction of cancellation of share dematerialisation; (iii) identify protected values; (iv) assess the possibility of using applicable regulations for foreign companies listed on the Warsaw Stock Exchange. Analysis of the existing regulations suggests that the Polish legislator, while developing the principles of legal regulation of delisting, decided that the protection of minority shareholders should take priority over the protection of the company's economic interest. Despite the assumed premises, Polish regulations do not protect shareholders if shares of foreign companies are delisted. 2. The research to be carried out The research will be carried out in the following phases: (i) gathering source materials and source literature; (ii) analysis and evaluation of selected sources; (iii) confrontation of sources and preparation of a delisting regulation model protecting selected values; (iv) analysis and evaluation of applicable Polish regulations in light of the delisting regulation model prepared; (v) scientific verification and editing of the results. 3. The reasons for choosing the research project The subject of delisting is *terra incognita* in Polish private law doctrine. The results of the research will contribute to a better understanding of reasons for introducing delisting regulations and the resulting consequences for the company, its shareholders and the capital market itself. Another objective of the research project is to indicate the flaws in the Polish delisting regulation and related interpretative difficulties

Project title: ***Arbitration courts in the light of constitutional standards***

Project manager: Aleksandra Orzeł (a.orzel@wpia.uw.edu.pl)

Realisation period: 2016–2017

Funding body: budget – National Science Centre (NCN)

Programme name: ETIUDA; 4th edition

Abstract: The subject of the research conducted as part of the doctoral dissertation being prepared is arbitration courts considered in the light of constitutional standards. The research paper will involve a comprehensive analysis of two thematic blocks, covering (1) the constitutional basis of arbitration, and (2) the influence of constitutional standards on proceedings before arbitration courts and on the judgements issued by them

The project will also involve establishing the constitutional basis for arbitration courts and its relation to the right to a court (Article 45 para. 1 of the Polish Constitution), the principle of a judicial administration of justice (Article 175 para. 1

of the Polish Constitution), and the presumption of competencies of common courts (Article 177 para. 1 of the Polish Constitution). Conclusions will be formulated in connection with this, concerning the legal character of arbitration courts and their functions, in the context of both domestic and international arbitration.

In addition to this, there will be a detailed analysis of whether arbitration courts are bound by constitutional standards, and, if so, by which and to what extent. This problem will also be considered in the context of an arbitration court adhering to constitutional procedural guarantees, and in the light of the effects of any adjudication which may be made by arbitrators contrary to the essence of constitutional rights and freedoms. A model catalogue of constitutional norms affecting arbitration courts will be developed and presented, covering both the rights and freedoms of individuals concerning their legal-material situation, as well as constitutional guarantees for trials and factors dictated by the political system. The project will also include a comparison, elaborated on the basis of an analysis of legal acts and the available literature, of the conclusions with the judicial practice of common courts and the Supreme Court adjudicating in matters concerning arbitration judgements.

Also investigated will be the problem of possible influence of the Constitutional Tribunal's actions on arbitration courts. The considerations in question will concern the possibility to lodge a constitutional complaint in a case in which a judgement was made by an arbitration court, and the effects of the Constitutional Tribunal settling the non-compliance of a normative act, based on which an arbitration court issued a judgement, with the Constitution, a ratified international agreement or legislative act, on that judgement.

The aforementioned findings will be also verified in the light of the results of comparative legal research covering four legal systems – the English, American, German and Austrian. Such an ambitious research goal will be attainable during a research internship at the Department of Law of the LSE in London, during which the research supervisor will be Prof. Jan Kleinheisterkamp, a lawyer educated in the German and English systems, with excellent experience in comparative legal research into international commercial arbitration.

The results of these analyses will enable the key aim of the project to materialise, namely a monographic, holistic conceptualisation of the theoretical bases of arbitration courts, and a description of how this relates to the constitutional legal system. This will be the first paper of its kind in the Polish literature on the subject. It is worth reminding that the present project does not cover the relations between international investment arbitration and the Polish Constitution, as this matter belongs to the sphere of international public law.

Project title: ***Protection of identification designators in unfair competition law***

Project manager: dr Łukasz Jerzy Żelechowski (l.zelechowski@wpia.uw.edu.pl)

Realisation period: 2015–2018

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 7th edition

Abstract: The aim of the project is to conduct a comprehensive analysis of the regime of civil law protection of identification designators in unfair competition law. According to the traditional academic approach, unfair competition law does not create unconditional and exclusive rights, and does not serve to protect such rights, but is simply a regime based on a tort construction, serving to protect the economic interests of businesses and customers. It is, however, becoming increasingly common for court settlements and pronouncements in the doctrine to accept that norms regarding Polish unfair competition law consist exclusively of subjective rights to the particular goods protected by them. That alternative approach is highly noticeable in the case of identification designators, and in particular business designators and trade marks which are unregistered but still used, as well as in reference to company secrets. The inconsistency of opinions in the legal study and in judicial pronouncements justifies scientific research which would lead to conclusions on the civil law nature of the protection of identification designators in unfair competition law. Limiting the scope of the project to an analysis of the civil law nature of protection against unfair competition with regard to the identification designators themselves is justified by the specific characteristics of those intangible goods. This results from the fact that they are not intangible goods in a strictly intellectual sense, just goods functioning as instruments of communication between businesses and customers.

Project title: ***Functions and roles of trusts in Common Law. Using trusts in fiscal planning, executive procedures and inheritance procedures. Offshore trusts. Trusts and Polish law.***

Project manager: Artur Jan Bilski (art.bilski@gmail.com)

Realisation period: 2013–2018

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 42

Abstract: The project covers a comprehensive overview of the functioning of trusts – legal entities (based on the trust system) existing in the legal

systems of English-speaking countries such as Canada and Great Britain. The author starts with the genesis of the institution of the trust in Medieval England, and presents a wide-ranging analysis of trust law, complemented by his comparative study – examples of similarities and differences between individual countries, as well as the dynamics of legal changes over the years. The aims of the research project also include a detailed description of practical questions connected with the functioning of trusts, not only in countries with a Common Law system, but also those with a continental legal tradition. We include Poland here. Among other things, this concerns the utilisation of trusts as an instrument for tax evasion or avoidance of Polish inheritance or executive regulations. An integral part of the project will be a proposal to create regulations enabling this phenomenon to be eliminated and the trust concept to be incorporated into Polish law, as has been done by many countries outside the Anglo-Saxon legal system.

Project title: ***Elements of contractual relations in medical law***

Project manager: prof. dr hab. Marek Safjan (m.safjan@wpia.uw.edu.pl)

Realisation period: 2011–2014

Funding body: budget – Ministry of Science and Higher Education

Programme name: Own research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 40

Abstract: Questions of biomedical law are subject to increasingly wide interest in many scientific disciplines – medicine, philosophy, psychology and law. This is justified by factors including the perspectives and dangers connected with the rapid development of medical technologies and the use of biology, including genetics, in medical practice. The aim of this project is a comprehensive analysis of the contractual legal relations between and doctor or health care facility and a patient. Its comprehensive nature will be seen not only in a dogmatic analysis of the regulations in force in medical law – taking into consideration the horizontal effect of constitutional norms and the regulations of international law – and in the use of comparative legal methods, but also in its presentation of the medical (biological facts) and deontological context. This analysis will cover the sources, subjects, object and content of the legal relation. The project aim thus defined will help to avoid the trite and frequently one-sided analysis of just the patient's or doctor's rights. This fits in with the widely accepted methodology of analysing private law, and also takes into account the relational nature of these links which are regulated by public norm laws, and the aspect of constitutional regulations which forms a reference point for settling dilemmas caused by the conflicting interests of patients and doctors. The project does not cover highly specific matters connected with the criminal, disciplinary or liability of a health

care facility or patient, as this is a very broad area requiring consideration of the dogmatic assumptions relevant to particular legal fields. It can form the subject of a separate, and important, research project. Questions of civil and criminal liability will only be analyses insofar as they impact the structure or content of the legal relation. The subject matter of the project has been divided into three parts – sources of the legal relation, object of the legal relation and subjects of the legal relation. The following detailed research topics can be indicated as examples: sources of medical law, the problem of deontological norms, consent and objections to health care provision, status of the patient, status of the doctor, the concept of health care provision, medically assisted procreation. The significance of the project is difficult to overstate, as it is intended to represent an original Polish contribution to the European scientific research carried out into the issues mentioned. It is not exclusively a matter of untangling a problem which is particularly difficult in legal terms and enormously weighty in practice, as it also involves creatively entering the mainstream of research into European civil law. The legal relation between doctor and patient will be analysed through the prism of its structure (elements), a methodology which was used most fully and strictly in Polish law by Prof. Alfred Klein to analyse contractual relations and legal and material relations The „classic" civil law concept of legal relation is based on differentiating three elements – the subjects, object and content of that relation. In recent literature, alongside the three „classic" elements there appears a fourth – sources (bases) of the relation (this method is used by, among others, Prof. Zbigniew Radwański). The four-element structure of the contractual legal relation seems to allow an analysis of the doctor-patient relation which is clearer for the reader and more precise.

Project title: ***Countering the use of abusive clauses in European and Polish law***

Project manager: prof. dr hab. Marek Safjan (m.safjan@wpia.uw.edu.pl)

Realisation period: 2010–2013

Funding body: budget – Ministry of Science and Higher Education

Programme name: Own research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 38

Abstract: University of Warsaw; Faculty of Law and Administration. Countering the use of abusive clauses in European and Polish law; The scientific purpose of the project is to analyse the reasons for the insufficient effectiveness of the legal instruments currently in use to prevent and eliminate abusive clauses, and to propose changes which would allow that effectiveness to be improved. The project is intended to represent an original Polish contribution to the European

scientific research carried out into the issues mentioned. It is not only aimed at untangling a problem which is particularly difficult in legal terms and weighty in practice, as it also involves creatively entering the mainstream of research into European civil law. The final effect will be to formulate observations *de lege ferenda* regarding domestic and European law. The project will also include an analysis of questions which are of fundamental significance for problems connected with abusive clauses with reference to European, domestic and foreign solutions. This analysis will cover in detail the conditions for recognising contractual provisions as inadmissible, the effects of adhering to inadmissible contractual provisions (including the sense of a stipulation that those provisions are not binding for the consumer), the significance and justification of applying so-called black and grey lists of abusive clauses, conditions and results of recognising a provision of a model agreement as inadmissible, constitutional conditions for the effectiveness of rulings recognising a provision of a model agreement as inadmissible, keeping a register of abusive clauses and the effects of inclusion on that register, variations in the intensity of protection in consumer and professional transactions, the dependence between civil law and administrative law protective instruments and the role of consumer organisations. The second element of the analytical study will be a consideration of the relation between national law and European law, in particular a statement of how possible and effective is it to solve problems occurring at a national level using the instruments of European law, bearing in mind the axiological differences existing between the two systems.

Project title: ***Power of attorney in non-proprietary relations. Power of attorney to consent to medical treatment***

Project manager: Albert Pielak (a.pielak@wpia.uw.edu.pl)

Realisation period: 2016–2020

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 45

Abstract: Non-proprietary rights are currently playing an ever greater role in transactions, so there is a need to study the possibilities of empowering an attorney to carry out acts which are not directly conditioned by economic interest. The provisions concerning the institution of attorney, found in the general part of the civil code, are synthetic. Article 95 § 1 does not dispel all the doubts. The appropriate form or application of power of attorney for non-proprietary matters has a huge generic importance from the point of view of protecting those values most vital for the legal system. The evolution of foreign legal systems shows that there has arisen a tendency to bring in an attorney to decide about treatment on behalf of the principal in the event that the ability to express consent is lost. For this reason,

a legal-comparative analysis of the institution of power of attorney for health matters will constitute a specific, vital element of the resent research. The author will attempt to answer the question of whether power of attorney for health matters in non-proprietary relationships requires separate regulations, or whether the regulations contained in the general part of the civil code are sufficient, and what is the possible scope of permissible actions by an attorney in non-proprietary matters. So far, analyses of Polish doctrine have concentrated on the power of attorney to perform legal actions of a material or proprietary nature. A young researcher will conduct a legal-comparative study, the subject of which will be an analysis of the power of attorney in non-proprietary matters in foreign legal orders, and relationships between this type of power of attorney and the general regulations. An important part of the project will be a thorough examination of the power of attorney to decide on medical treatment on behalf of the principal in the event that the ability to express consent is lost, which has taken on various forms in different countries (health care proxy, lasting power of attorney, Vorsorgevollmacht, personne de confiance).

Project title: ***A summary of the information duties of professional bodies under Polish civil law in the light of EU law***

Project manager: dr Ewa Barbara Wojtaszek-Mik (e.wojtaszek_mik@wpia.uw.edu.pl)

Realisation period: 2011–2014

Funding body: budget – Ministry of Science and Higher Education

Programme name: Own research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 40

Abstract: The aim of the project is to analyse and assess current trends and needs for the regulation of the pre-contractual duties of professional bodies in the light of EU law and Polish civil law, both in consumer transactions (e.g. consumer sales, consumer credit, timesharing, tourist service agreements, agreements signed outside company premises, remote agreements, remote agreements concerning financial services) and in professional transactions (e.g. distribution, provision of services). The project takes into account the latest proposed changes in EU law contained in the so-called ‚Horizontal Directive' of 2008 and the Draft Common Frame of Reference (DCFR), which envisages a wide range of regulations of pre-contractual information duties. The trends mentioned make it necessary to establish what changes are required by Polish civil law in this area. Some of the specific problems covered by the project are the legal character of this type of regulation, the place of provisions regarding pre-contractual informa-

tion duties in the structure of a given document, their detailed scope, limitations to pre-contractual information arising from protection of trade secrets, the form and time in which information is provided, the nature and scope of responsibility arising from *culpa in contrahendo*. The results of the analysis will be published in the form of a monograph and articles dedicated generally to the pre-contractual information duties of professional bodies as well as to the standards of information expected for particular types of agreement.

Project title: ***Withdrawal from an agreement as a means of protection against breach of obligation – a functional analysis of Polish regulations in light of the Europeanisation of private law***

Project manager: Karolina Wiktoria Pasko (karolinapasko@gmail.com)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: Scientific project financed by the National Science Centre

Abstract: 1. Aim of the research conducted / research hypothesis Withdrawal from an agreement, understood as the unilateral ending of an agreement pursuant to a declaration of will submitted to a counterparty. In spite of its long history in Polish legislation and contractual practice, withdrawing from an agreement still raises many doubts, most of which are connected with the dualism (drawn from German theory) of the contractual and statutory rights of withdrawal. This dualism is problematic as it suggests that withdrawal from an agreement can take two forms depending on whether it results from the provision of an agreement or from a statute. Initial research justifies abandoning this division based on the source of the entitlement to withdraw (contractual or statutory), and differentiating the two forms by means of a functional criterion. The project is intended to prove the existence of a dualism differentiating punitive withdrawal (protective with regard to the creditor) from that which has no such character. The project will include a functional analysis of withdrawal from an agreement as a measure protecting a creditor against breach of obligation. It envisages a presentation of the theoretical bases and punitive form of withdrawal from an agreement, and proof of the necessity to differentiate this institution pursuant to Polish law. Punitive withdrawal from an agreement possesses characteristic features (arising from the punitive-protective function of this institution), and a certain regime which should be applied regardless of whether the right to punitive withdrawal results from the agreement or a statute. The essential nature of punitive withdrawal includes: the preconditions for the right to withdraw from a defined breach of obligation, the function of protecting the creditor and punishing the

debtor, the function of restoring balance to the parties to a mutual agreement, a lack of retroactive effects (*ex tunc*) from withdrawal from the agreement, co-existence with other means of protecting the creditor (such as claims for damages or for contractual penalties), a lack of effects on related institutions which lack a protective-punitive character (such as termination with a notice period or compensation). 2. Research method / methodology applied The project will be carried out by the linguistic-dogmatic method with wide use of systemic and teleological interpretation. A doctrinal analysis of Polish law will be conducted in the light of models of punitive withdrawal from an agreement which exist in foreign legal systems. The project takes into consideration modern concepts expressed in supranational studies of private law. A legal-comparative analysis will be conducted with the aid of the functional method (seeking functional equivalents). This approach is vital, due to the divergence of terminology and structures with regard to withdrawal in individual codifications. This comparative study is intended to provide a better understanding of the Polish legal system (epistemological legal-comparative functionalism). 3. Influence of the expected results on the development of science, civilisation and society The protective-punitive potential of withdrawal from an agreement is clearly visible in foreign legal systems and constitutes a separate field of research into foreign doctrine. Punitive withdrawal from an agreement has not yet, though, formed the subject of any in-depth analysis in Polish civil law studies. Completion of the project will contribute to a better understanding of Polish regulation of the right to withdraw (differentiating the category of punitive withdrawal from an agreement provides a solution for many problems arising pursuant to the provisions of the Civil Code). The research will also explain the legal constructs present in foreign systems, which will contribute to the development of Polish civil law studies in the field of withdrawal from agreements, and enable a critical view of the directions of development of this institutions as seen in the process of Europeanising civil law. The results of the project also have the chance to prove useful in connection with the planned new codification of civil law in Poland.

Project title: ***Compensation for immaterial damage in a contractual regime of damage liability***

Project manager: Katarzyna Maria Kryla-Cudna (k.kryla@wpia.uw.edu.pl)

Realisation period: 2013–2015

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 3rd edition

Abstract: 1. Aim of the research conducted / research hypothesis The aim of the project entitled „Compensation for immaterial damage in a contrac-

tual regime of damage liability" is to study the possibilities available in the current legal order to receive compensation for immaterial damage from ex contractu damage liability, and to formulate conclusions *de lege ferenda* as regards the optimal solution to this problem in the future. There is a long-standing view in Polish doctrine and judicature that reparation of immaterial damage through financial compensation is only possible as part of tort damage liability. The aim of the research is to demonstrate that the instruments envisaged by Polish law do not provide sufficient protection of immaterial interests from *ex contractu* damage liability.

2. Research method applied/methodology The basic research methods employed are the dogmatic and comparative methods. I also plan to use the historical method within a limited scope, and to take into account factors connected with an economic and cultural analysis of the law.

3. Influence of the expected results on the development of science, civilisation and society Taking up the problem of compensation for immaterial damages in a contractual damage liability is exceptionally important from the civil law point of view. The question of the extent of damage to be repaired is currently one of the fundamental problems appearing in the field of damage liability. Although monetary compensation for immaterial damage suffered is, in itself, an institution established in the Polish legal order, until recently it was connected exclusively with tort damage liability. The Polish literature lacks a comprehensive study of the problem of compensating immaterial damage arising from non-execution or improper execution of a duty. The basic aim of the doctoral dissertation which will contain the results of the research will be to carry out a detailed analysis of this matter. The results of the research may provide a valuable indication for the legislator identifying directions for future regulations. One practical effect of the research conducted could be an increase in the awareness of application of the law by judicial bodies, and thus greater consistency in rulings and legal practice.

Project title: ***Conversion of invalid legal transactions – a functional and legal-comparative analysis***

Project manager: Magdalena Bławat (magdalena_blawat@wp.pl)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 10th edition

Abstract:

1. Aim of the research conducted/research hypothesis

The conversion of invalid legal transaction was regulated by § 140 of the German Civil Code, according to which if an invalid legal transaction satisfies the require-

ments of another legal transaction, then the validity of the latter should be accepted, if it can be accepted that the parties would have concluded that transaction had they known of the invalidity of the legal transaction undertaken. Although Poland's Civil Code (CC) does not contain an analogous provision, conversion has applications in judicial practice. This raises the question of the legal nature of conversion, in particular whether conversion constitutes a method of interpreting a declaration of will pursuant to Article 65 § 1–2 CC. The project is intended to explain the legal character of conversion pursuant to Polish law, via a holistic analysis of the matter as a functional concept against the background of foreign legal orders (Germany, Austria, Switzerland, Great Britain and the United States), taking into account the postulates *de lege ferenda* of the Civil Law Codification Commission. Initial research justifies the necessity to reject the assumption a priori of the admissibility of conversion pursuant to Polish law, and also a critical view of examples and the way this institution is used from the perspective of the principle of autonomy of will, and of differentiating the process of interpreting declarations of will (Article 65 § 1–2 CC) from constructions of legal transactions (Article 56 CC). These assumptions will enable us to prove the research hypothesis of the autonomous nature of conversion as a specific institution of private law which should be differentiated from a declaration of will. According to Polish law, a so-called objective hypothetical interpretation may only take the form of a supplement to lacunae in the text of a legal transaction on the basis of actually existent facts and evidence, and not the form of a conversion. At the same time, in spite of there being no norm analogous to the German regulation, the use of conversion should be admissible within a limited scope which does not threaten the principle of autonomy of will. The project also envisages a review of the traditional prerequisites for conversion, i.e. replacing the concept of the so-called hypothetical will of the parties with an objective measure of the parties' interests; defining the so-called substitute legal transaction on the basis of the theory of functional understanding of the form of the legal transaction (in German 'Zweckforme'); establishing the limits of the admissibility of conversion. The project also intends to show that accepting the postulates *de lege ferenda* of the Civil Law Codification Commission will result in a change to the legal character of conversion and enable its use as a sanction for invalid legal transactions.

2. Research method applied/methodology

The basic research method is the dogmatic-linguistic method, although there will also be wide use of the functional and systemic methods. Polish law will be analysed taking into consideration the concepts of conversion developed in foreign legal systems. The project anticipates a wide-ranging comparative study with the aid of the functional method (oriented towards seeking actual equivalents of the institutions described, not just linguistic equivalents) in order to better understand Polish law (epistemological legal-comparative functionalism). This study

will enable the nature and function of conversion to be established, and the matter in question to be viewed from a wider teleological perspective, i.e. in terms of the limits to a court's competency to interfere in the civil law relation between the parties from the perspective of the principle of autonomy of will.

3. Influence of the expected results on the development of science, civilisation and society

Polish doctrine lacks a comprehensive monographic study of the topic of conversion. The literature offers divergent concepts, while the jurisprudence should be regarded as inconsistent. As far as foreign doctrine is concerned, including in those legal orders which lack statutory regulation of conversion, this issue has been the subject of extensive studies, emphasising the importance of comparative research. The research proposed will not only contribute to filling those lacunae, but also enable the existing controversies to be settle, the inconsistent jurisprudence unified, and the transparency and certainty of the law to be ensured. Separating the interpretation from the construction will enable a better understanding of the relation between Article 65 § 1–2 CC and Article 56 and a delineation of the limits of the court's competency to intervene in the legal relation between parties, thus ensuring that the principle of autonomy of will is respected. Analysis of the postulates *de lege ferenda* will allow for a better awareness of the nature of the proposed change.

Project title: ***Freedom of research and patent exclusivity (research exemption)***

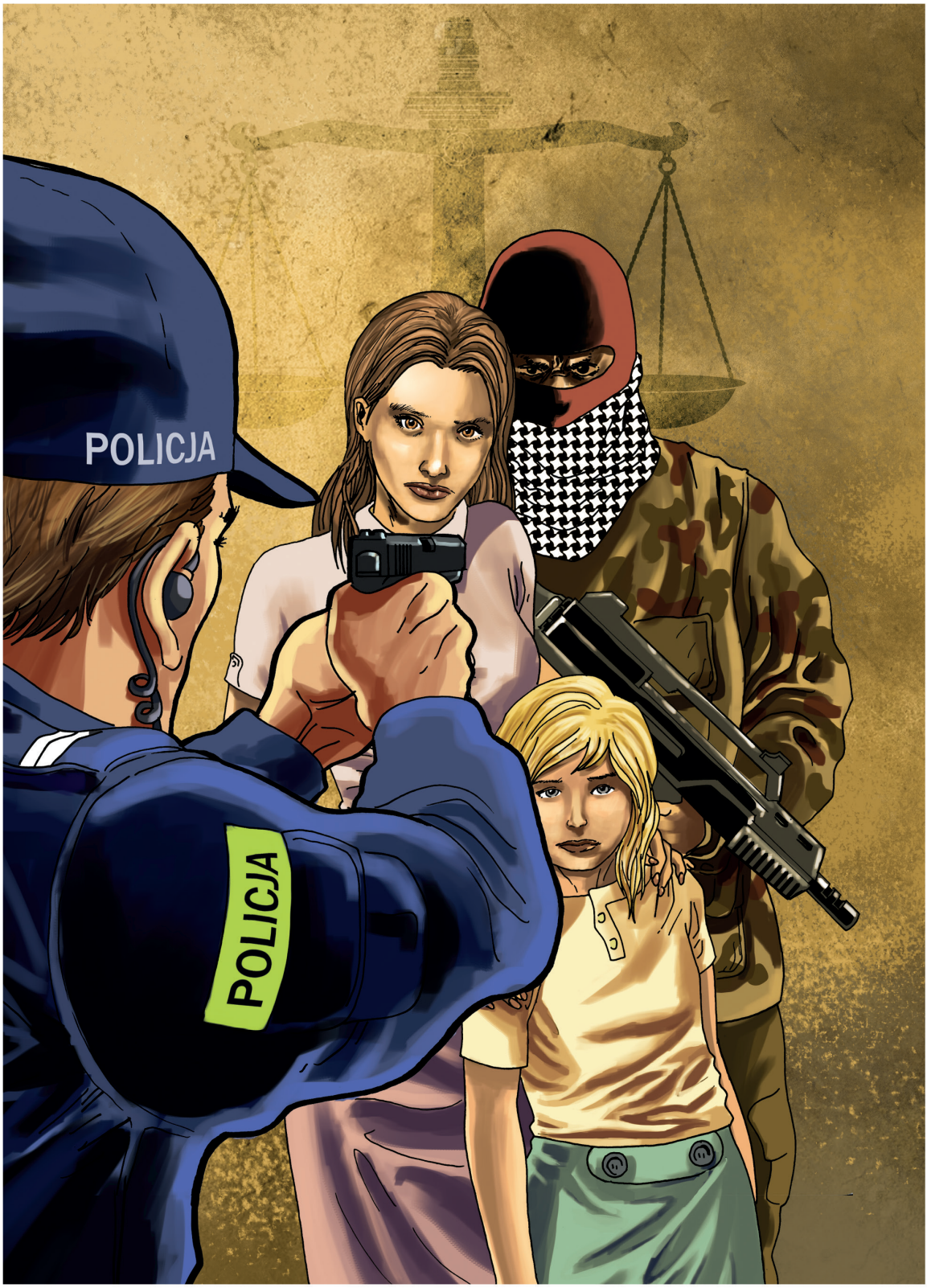
Project manager: Agnieszka Anna Sztoldman (a.sztoldman@wpia.uw.edu.pl)

Realisation period: 2014–2016

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 6th edition

Abstract: The aim of the project is to comprehensively investigate the institution of the research exemption in patent law – its nature, conditions for use. The project is also intended to analyse the influence of the patent exemption limitations in question on the scope of protection for the authorised party arising from the patent, and of protection of research interests. Conclusions *de lege lata* and *de lege ferenda* will be formulated on this basis, and these in turn will form the basis for reconstructing a theoretical model of the research exemption in patent law – taking into consideration the interests of third parties in access to protected goods (freedom of scientific research), and ensuring the optimal degree of protection for the party authorised by the patent against direct or indirect violation of his subjective right.


POLICJA
POLICJA

Institute of Criminal Law

Project title: ***The influence of the concept of human dignity on the structure of liability in criminal law***

Project manager: dr Krzysztof Łukasz Szczucki (k.szczucki@wpia.uw.edu.pl)

Realisation period: 2016–2019

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 10th edition

Abstract: 1. Scientific aim of the project The main hypothesis of this research project is that the principle of human dignity is not only the source of human rights and freedoms, but also constitutes a legal concept highly relevant in the process of legislating and enforcing criminal law. In this way the principle of human dignity influences, if not outright determines, the content of normative resolutions concerning, inter alia: 1) the making of a criminalizing decision 2) the shaping of elements of a criminal offence 3) formulation of the fundamental elements comprising the definition of a crime: 4) determination of conditions with respect to the subject of a crime, 5) the shaping of conditions for liability for an omission, 6) the framing of the concept of objective assignment of consequence, 7) construction of the subjective side of a criminal offence (intent, inadvertence), 8) creation of conditions for defences and exculpatory circumstances.
2. Research methodology The aims of this research project and its thesis have an interdisciplinary character, which requires us to draw from legal studies, particularly criminal law, constitutional law and jurisprudence. The methodology of the studies will be based on search query, an analysis of legal provisions and judicial opinions. An important part of the studies will involve comparative examination of certain sources. As regards its assumptions, the project is theoretical in nature, in the sense that there are no empirical (sociological) instruments envisaged to verify the thesis presented. The outcome of the research, as regards constitutional reasoning and its impact on the elements of criminal liability, will be based on normative sources and the history of the legislative process. In this context, Polish and other European constitutions are both of fundamental significance. Within the project, detailed analyses of sources in the field of legal studies and philosophy, especially in ethics and criminal law, will be conducted. The project envisions immersion in a broad range of comparative studies using both domestic and foreign sources. In order to verify and discuss the outcome of these studies among a wider group of experts, a series of seminars open for lawyers and philosophers will be organized, with a view to rendering the result of the project as objective as possible. To attain a high standard of study, search queries in foreign

libraries and consultations with academics from foreign universities and research centres, particularly German, British and American, will all be planned.
3. Expected impact of the research project on the development of science, civilization and society Conclusions made as a result of undertaking the research project proposed will be of significance not only for legal doctrine in Poland and abroad. They are also of considerable practical importance, and as such will be liable to be used by constitutional and common courts. Scientifically testing the hypothesis about the impact of the principle of human dignity on the concepts of criminal liability in criminal law will allow us to choose a method for incorporating this principle into the process of creating and enforcing criminal law. Up to now the human dignity principle has often had a purely ornamental character, which would cause confusion in the event of its content being invoked. It must also be added that the conclusions of the research included within this project are likely to contribute to the design of potential changes in the criminal law so that criminal legal regulations are more adequate and that they realise the principle of human dignity to the greatest possible extent.

Project title: ***Fighting cartels by means of administrative and criminal law. A study in the field of anti-monopoly and criminal law***

Project manager: prof. dr hab. Małgorzata Antonina Król-Bogomilska (m.krol_bogomilska@wpia.uw.edu.pl)

Realisation period: 2011–2013

Funding body: budget – National Science Centre (NCN)

Programme name: Other programme (Other programme (general research project))

Abstract: The project envisages a presentation of the problems of fighting cartels, in both anti-monopoly and criminal law. It concerns cartel agreements, considered the most serious breaches of competition. Cartels are agreements or coordinated practices by two or more competitors which limit competition by coordinating their activities on the market or influences on the state of competition on the market using such practices as setting sales prices or other trading conditions, levels of production or sales, dividing up the market along with setting tendering conditions, and limiting imports or exports. The project concerns the extent to which introducing regulations ensuring effective application of the law is of particular importance for protecting competition.
The research envisages far-reaching diversification of the legal solutions affecting the legal bases for combating cartels in the countries whose legislation has been subject to analysis. This diversification concerns both the way of defining cartel

violations, and of classing them as administrative transgressions or as crimes. The subject of the research was to identify the nature of the violations which constitute cartel practices (whether they are crimes of administrative transgressions), and to identify the nature and types of legal means to combat them.
Another result of the research was to define the nature of sanctions applied in order to combat them in various countries, and to confirm, within the same scope, to what extent they are diversified. I established that diversity of sanctions is not only the result of differences between those legal systems in which cartel agreements are considered a crime and those which treat them as administrative transgressions. The lack of any threat of criminal liability for physical persons weakens the effectiveness of fights against cartels and results in inconsistencies in criminal law which often also impose criminal liability on physical persons for far more minor breaches of interests. Meanwhile, far-reaching diversification of the principles for mitigation of punishment in cartel cases and the lack of a one stop shop concept make it difficult to take effective advantage of these possibilities. The research also allowed inadequacies to be found in the actions taken so far in the European Union towards harmonising the legal bases of leniency policy. These findings also concerned the latest concepts connected with applying the principles of leniency in cartel cases, including the concept of amnesty plus, and various solutions of a procedural nature developed as part of the Model Leniency Programme (Model Leniency Programme. Report on Assessment of the State of Convergence).
Another result of the research was to define the desired directions of changes to Polish anti-monopoly laws in this field, achieved by an amendment to the act. The research led to an assessment of the effectiveness of various functioning solutions, and the formulation of postulates *de lege ferenda* with regard to the Polish legislator, which could be of significance in the effectiveness of the battle against cartels, particularly concerning the desired criminalisation of cartels.

Project title: ***Measuring tools supporting analysis of handwriting and signatures***

Project manager: prof. dr hab. Tadeusz Jerzy Tomaszewski (tadeusz.tomaszewski@adm.uw.edu.pl)

Realisation period: 2013–2016

Funding body: budget – National Centre for Research and Development (NCBR)

Programme name: Project in the field of scientific research or development work aimed at state security and defence

Abstract: The project is a continuation of development project no. O R00 0038 07 entitled „Developing methodology and programmes, and build-

ing a testing station for identifying handwriting and signatures using computer graphometry", completed in 2011 and financed by the Minister of Science and Higher Education pursuant to decision no. 0038/R/T00/2009/07 of the Ministry of Science and Higher Education on 12.05.2009, realised by a scientific consortium of the University of Warsaw and the Research and Training Centre of the Forensic Association of Poland. Theoretical assumptions have been prepared and research work is under way as part of the project currently being realised, with the aim of creating new computer programmes. These programmes are as follows: 1.A programme called BARWOSKAN – for colorimetric analysis of writing agents. The programme can be applied in the visualisation of writing and systems for shading samples of handwriting and signatures. 2. A profilometric programme called PROFILOSKAN – which serves to measure the amount of pressure from a writing implement along one or more horizontal measuring lines indicated by an expert. The programme enables the colour saturation (according to the RGB model) of inks or other writing agents to be tested at the points where that line intersects with the graphic line of a given sample. 3. The LINIOGRAF programme – for checking the consistency of samples by measuring the graphic lines which form the writing being analysed, using the writing thickness coefficient, which reflects the relation between the actual length of the lines forming a given piece of writing and to the width of that piece of writing and the individual and total impulses of the samples being tested, as the quotient of the distances between the graphic elements or their total and the total width of the sample. 4. The CENTROGRAF programme – for checking the consistency of samples by using „centre lines". The centre line is a new analytical parameter for handwriting, formed by the curve created by connecting the intersections of the diagonal quadrilaterals described on elements of the writing being tested (letters, digits, syllables, digraphs, etc.). The programme enables the length of the entire centre line to be identified, and also identifies the lengths of its segments, measures the angles of inclination away from the horizontal of the segments forming the centre line, compares their shapes and checks statistical dependencies (Spearman's rank correlation). Realisation of the project will contribute to an expansion of the scope of possible methods for identifying handwriting, and of tests for the genuineness and integrity of documents, by adding new analytical parameters.

Project title: ***PRIME. Preventing, fighting and minimising the effects of extremist incidents – a system of protection against the extremism of lone wolf terrorists***

Project manager: dr Kacper Tomasz Gradoń (k.gradon@wpia.uw.edu.pl)

Realisation period: 2014–2017

Funding body: European Commission resources

Programme name: Projects of the 7th Framework Programme

Abstract: The PRIME project concerns the radicalisation, extremism and terrorism of perpetrators described as „lone wolves". The task of the Project is to analyse the phenomenon of attacks and other terrorist acts by „lone wolves", in order to understand their motivation, causes and course, and to provide practical tools to aid the creation of operational, physical and social anti-radicalisation methods, disrupting and fighting terrorist attacks and minimising the effects of terrorist outrages committed by extremist acting independently of terrorist groups and organisations. The project covers three stages of the phenomenaradicalisation, preparation for the attack, and the attack itself. The PRIME makes use of a multidisciplinary research approach combining modelling of security engineering, a theoretical framework (engineering, exact, social, legal, environmental and behavioural sciences), and close cooperation with practices in the judiciary and law enforcement agencies. The effect of the PRIME project will be to create a strategic tool to assist in decisions for end users whose mission and task is to fight extremism and acts of terror committed by „lone actors" or „lone wolves at a local, national or international level.

Project title: ***Researching the effectiveness of actions by the prosecution service during the first hours of investigations in cases of crimes against life and health (crimes against the person). Forensic, criminological and judicial aspects***

Project manager: dr hab. Paweł Waszkiewicz (p.waszkiewicz@uw.edu.pl)

Realisation period: 2013–2016

Funding body: budget – Ministry of Science and Higher Education

Programme name: Mobilność Plus; 2nd edition

Abstract: The aim of the research is to identify the most effective investigative actions, as well as the errors most commonly made during investigations, which will form a basis to develop a proposed methodology which is ef-

fective, but does not contravene human rights, for the (Polish) law enforcement agencies to proceed in cases where a crime against life or health is suspected, including in particular murder. The methods used for the research are: – file research – expert interviews – observing the activities of prosecution service employees

Project title: ***Safe space – using forensic, criminological and psychological methods to produce an interdisciplinary crime prevention model for Polish cities***

Project manager: dr hab. Paweł Waszkiewicz (p.waszkiewicz@uw.edu.pl)

Realisation period: 2010–2013

Funding body: budget – Ministry of Science and Higher Education

Programme name: Own research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 39

Abstract: The aim of the research conducted as part of the project entitled „Safe space – using forensic, criminological and psychological methods to produce an interdisciplinary crime prevention model for Polish cities" was to create an interdisciplinary model for preventing crimes against life, health and property, thanks to appropriate environmental design – spatial planning which takes into consideration the specific nature of Polish urban areas, particularly cities. Such a model was prepared and presented in the study „Treatise on good crime prevention", published by Towarzystwo Inicjatyw Prawnych i Kryminalistycznych Paragraf 22, Warszawa–Newark 2015. This is not based on environmental design, though, as in the course of the aforementioned project it was found that the techniques originating in defensible space and various schools of CPTED cannot be considered effective crime prevention methods. The study was met with great interest in both academic and professional circles, which means the results achieved can be used in practice. Its open access edition also contributes greatly to popularising the effects, it is available for free online: https://www.academia.edu/16744003/Traktat_o_dobrej_prewencji_kryminalnej Within three months of its publication, it was downloaded by over seven hundred unique users from Poland and abroad.

Project title: ***Reconstruction of the course of events based on the appearance of bloodstains.***

Project manager: dr hab. Robert Sitnik

Realisation period: 2012–2017

Funding body: budget – National Centre for Research and Development (NCBR)

Project name: Project in the field of scientific research or development work aimed at national security and defence

Abstract: Developing a system and method for reconstructing a course of events based on documentation and analysis of bloodstains in the context of 3D documentation, in order to standardise work and improve the actions of evidential and investigative bodies conducting preparatory proceedings. The system is intended to support law enforcement agencies in the scope of judicial and investigative actions, and to facilitate and accelerate the work of courts at the next stage, e.g. during the trial. It will be used by experts at an incident scene to carry out inspections and later produce opinions based on them, and ultimately to introduce it into the standard work of forensic technicians. The final effect of the project will a technology demonstrator in the form of a prototype, functioning in real conditions, consisting of: – three devices in the form of 3D scanners (general, situational and detailed) including software, to record bloodstains at the incident scene, – a data base of bloodstains serving to analyse them in 2D and 3D, – software to reconstruct the incident scene with a reporting module. Applying the system which has been developed, a forensics expert will be able to draw highly objective conclusions about the mechanisms leading to the traces of blood, based on the traces recorded by the 3D scanner. The device can be used to record and reproduce the incident scene in 3D in the form of digital data, which can then be analysed using specially dedicated equipment. The specialised bloodstain analysis module will enable a quick, precise and objective assessment by the expert. In addition, the bloodstain data base implemented will assist the expert in defining the mechanism by which these were formed at the incident scene. Properly formulated conclusions regarding the mechanisms of how the traces were left will contribute significantly to determining the entire sequence of events, the circumstances, number of people present, etc. This information will undoubtedly result in the circumstances of an incident being revealed more quickly. The system is intended to support law enforcement agencies in the scope of judicial and investigative actions, and to facilitate and accelerate the work of courts at the next stage, e.g. during the trial. It can be used by experts at an incident scene to carry out inspections and later produce opinions based on them, and ultimately to introduce it into the standard work of forensic technicians. Developing a method for reconstructing a sequence of events based on the appearance of bloodstains, as

part of the project being realised, will contribute to standardisation of work and of the terminology employed in this field, and thus to the development of Polish forensics on the international stage.

Project title: ***A tool aiding preparatory proceedings and actions in detective work by recreating the appearance of an incident scene and the circumstances of an incident***

Project manager: dr Kamil Januszkiewicz

Realisation period: 2013–2015

Funding body: budget – National Centre for Research and Development (NCBR)

Project name: Project in the field of scientific research or development work aimed at national security and defence

Abstract: The main aim of the project is to develop technology to safeguard and digitally reproduce the three-dimensional topography of an incident scene and the circumstances of an incident, as a tool assisting preparatory proceedings and actions in detective work. 1. A theoretical description of the possibilities for using a visualisation tool aiding inspections and other procedures at the scene of an incident; defining the concept of the technology and its practical applications, and its compliance with the basic principles of evidence-based law. 2. Experimental confirmation of the functions of the technology. 3. Verification of the technology's operation in near-real conditions. 4. A demonstration of the functioning of the prototype in conditions as close to reality as is legally possible. 5. Development of the logistical conditions for implementing the system. 6. Preparing a training concept for the intended end users.

Institute of International Law

Project title: ***Renationalisation of integration processes in the sphere of European Union internal market freedoms***

Project manager: dr hab. Robert Grzeszczak (r.grzeszczak@wpia.uw.edu.pl)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: OPUS; 9th edition

Abstract: 1. Research aim The scientific aim of the project is to investigate the importance of the phenomenon of renationalisation (disintegration and fragmentation) of integration processes. This phenomenon is manifested in the attempts by certain member states to verify their links with the European Union. Faced with the EU's financial crisis and enormous migration, the international forum has seen strong social and political criticism of integration, and even consideration of leaving the EU. Demands are being made within member states for parliaments to have stronger control over EU legislation, and for in increase in the competencies of states with regard to certain EU policies, particularly of redistribution. The aim of the project is to identify the legal effects of the above processes in the field of internal market freedoms, above all with regard to the freedom of movement of people. In order to investigate the consequences of the renationalisation processes within that freedom, the problem of increased social dumping will be raised (this is also reflected in the freedom to provide services and the freedom to do business), the need to retain the achievements of European labour law, the problem of „benefits tourism" and the question of the erosion of the importance of EU citizenship and the principle of equal treatment of citizens. With reference to the freedom to provide services and the freedom to do business which are the subject of research within a limited scope, the aim of the project is to investigate the possibility for foreign persons to conduct business on the territory of a country excluded from the internal market, to increase the costs of the business carried out and to protect the consumers using their services. In order to identify the effects of renationalising actions on the free flow of goods to a certain degree, the erection of trade barriers will also be investigated, along with their influence on competition between entities from individual member states. 2. Research method applied The problem of renationalisation will be investigated above all with the use of the dogmatic research method, involving the analysis of legal texts. A comparative analysis of the law will also be conducted, which will help to draw up a comparison of the legal regulations in force both at EU level and in individual member states. Other research methods will be applied to make

a detailed analysis, including the theoretical-conceptual analysis method. Also of vital importance for the research being carried out will be consultations with experts, studies of the relevant literature, legal documents and previous decisions of the Court of Justice. As well as the above, supplementary research will be carried out into internal market legislation, by quantitative analysis involving the use of such IT data bases as IPEX, Internal Market Scoreboard and the websites of individual national parliaments. Such extensive research methods are the only way to comprehensively analyse the subject of the investigation. 3. Influence of the expected results on the development of science, civilisation and society The present research project is of great significance for the progress of science, closing a loophole in the doctrine and practice of European law. The internal market has so far been analysed from the point of view of the scope of its application and justification, and the need to establish it, or in general research into its various aspects. This research has been limited to the process of Europeanising and integrating the internal market, while there has been no research covering the noticeable and current processes of the renationalisation of this market, the effects of disintegration and fragmentation of law on the legal situation of employees and consumers, entrepreneurs, and the member states themselves. This analysis of the problem will be the first such comprehensive source of knowledge in Poland, and one of only a few in Europe, concerning the risk connected with the reversal of the integrating trends or any subjective changes to the European Union. This makes the proposed research necessary, and it should be carried out as soon as possible in order to avoid any surprise at the reactions taken by the governments of member states under the influence of decentralised interest groups.

Project title: ***Challenges for good governments in the European Union – from government to governing – how to effectively realise public service in a modern system of multi-level governing***

Project manager: dr hab. Robert Grzeszczak (r.grzeszczak@wpia.uw.edu.pl)

Realisation period: 2014–2016

Funding body: budget – National Science Centre (NCN)

Programme name: OPUS; 6th edition

Abstract:

1) Research goal/Hypothesis:

The most general aim of the project is to verify the hypothesis that the concept of good government in the EU and its member states is an expression of a wider tendency in recent years to move from governments to governing. The thesis proposed in the project is that the essence of modern governments is to exercise

authority supplemented by participatory and network solutions of a horizontal nature. Governing should be efficient, which means a correlation of actions to costs and expenses incurred, and a reference to the effects achieved at the EU and member state level. For this reason, the project aims to investigate the idea of the system of good governments from the EU and national perspectives. Detailed research aims arise from this, which have the shared goal of specifying, systematising and analysing the aspects which comprise good governments and the realisation of public service. In other words, the project is intended to test the next hypothesis put forward – that efficiency in meeting the needs of citizens is an elements of good governance. This hypothesis will be investigated by a specifying the application value of a range of EU initiatives (including improvement of the legislative environment, easing the functioning of the judiciary, judicial control of EU administration, analysis of the influence of the principle of good governments on European investment law, legal effectiveness of EU investor protection, initiatives bringing Europe closer to its citizens or supporting the guarantee of the internal and external security of the EU and its members).

2) Research method

Due to the variety of targets set, the project will apply several methods, in particular the dogmatic-legal and the legal-comparative methods. The European context is of particular importance for the research being conducted, it is in fact a prerequisite for discussion of good governance at a national level. Since so many studies on the development of good governance are closely connected with European politics, the solutions adopted should be complementary to the actions of the EU in order to be effective.

The research methods used will serve to analyse the provisions of primary and secondary EU law, including documents constituting soft law. The research planned will be based on library searches at leading scientific establishments, consultations with experts and an analysis of the available legal texts and legislative initiatives.

3) Influence of the results (Influence of the expected results on the development of science, civilisation and society)

The project is innovative in terms of the subject being researched and its multifaceted approach. It will contribute to the development of science and society due to its combination of legal dogmatism and empirical research, and to the recommendations which it will produce. In Poland, the concept of good governance has not yet become the subject of wide discussion, and has not taken the place it deserves either in public debate or in the specialist literature. This is reflected in the lack of both a long-term strategy for implementing the principle of good governance, and of specified long-term targets for its implementation in the exercise of governance. The project will result in a comprehensive analysis of good governance in general, as a method of effective public service in the multi-rung system of government

which is the EU. The results of the project will be valuable as research material, of both a practical (expert) and theoretical (scientific) nature. It will be possible for the published effects of the research to be used practically by national institutions, and they will contribute to the development of intelligent management of European matters based on the principles of effective (good) government. The project will thus stimulate the systematisation of research into the potential of the concept of good government.

Project title: ***Anatomy of regional trade agreements. What is actually important?***

Project manager: dr Magdalena Urszula Słok-Wódkowska (m.slok@wpia.uw.edu.pl)

Realisation period: 2014–2015

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 5th edition

Abstract: 1. Aim of the research conducted / research hypothesis The European Union concludes regional trade agreements (RTA), which cover not only the trade in goods and matters directly connected with this, such as technical standards, sanitary and phytosanitary requirements, but also a range of other areas. Among these are areas covered by World Trade Organisation regulations, such as services and intellectual property, and some not subject to WTO rules, such as matters outside the commercial aspects of investments, or capital flow, environmental protection and human rights. It is not only the subject area of cooperation that reflects the degree of economic integration between trading partners. It should not be forgotten that agreements confer standards of treatment, such as national treatment, or most privileged status. In addition, there are various degrees of regulation of cooperation – sometimes it is limited to very general provisions, while in other fields it constitutes a real legal obligation which could form a basis for claims. Both the subject area of regional trade agreements and the character of the obligations affect the form of economic cooperation between the EU's states and its partners. The aim of the analysis is to verify the legal scope (entered in regional trading agreements signed) of liberalisation and regulation, but also the legal significance of the obligations contained in the agreements – are the obligations legally due and payable, what is the scope of anti-discrimination clauses (most favoured and national treatment) and how are they formulated? Another aim is to establish how the scope of regional trading agreements translates into intensity of economic cooperation. As the analysis will cover all the agreements concluded so far, this will enable conclusions to be drawn regarding the evolution of how clauses are formulated in agreements concluded by the EU. The hypoth-

esis we put forward in the research is that the scope of regional trade agreements concluded by the EU extends significantly beyond matters connected with goods and services. Most of the agreements additionally regulate matters not directly connected with the economy. The European Union applies several patterns of clauses concerning standards of treatment, depending on which group a partner/ partners belong to, and these clauses have evolved over time. Despite the scope of agreements being so wide-ranging and extending beyond matters connected with trade in goods, it is the trade in goods and services which is directly affected by the regulations introduced. 2. Research method / methodology applied The research is divided into legal and economic parts. The legal part will involve analysing the contents of agreements signed by the European Union which constitute RTAs. There will firstly be an indication of which areas are regulated by an agreement with a given partner, divided into areas already covered by WTO regulations and those which are not covered by them. We will complement the agreements by considering cases where a given sphere of regulations is not covered by an agreement which constitutes an RTA, but the regulations affecting it are contained in another agreement between the EU and that partner. The analysis will cover all the agreements which form a free trade area (FTA), customs union or economic integration agreement (EIA), and which are currently in force, signed and initialled. In the second part we will analyse the manner in which a given sphere is regulated. With regard to matters where this may be significant – mainly those covered by WTO law (trade in goods and services, public procurement, company formation law, investments) – the analysis will mainly cover the use of standards of treatment in agreements, such as national treatment or most favoured status. This part of the research will mainly apply a legal-comparative analysis, and this will be supplemented with the dogmatic-legal method. There will additionally be an analysis of the literature o the subject. The research in the economic part will be conducted on the basis of the regulatory spheres or areas, differentiated in the first part, for RTAs signed by the EU. There will be a verification of how trade between states is shaped depending on the scope of RTAs. The effect on trade caused by applying various solutions with regard to the scope of regulation will be measured by a statistical analysis as well as an econometric investigation of the trade determinants for the years 2000–2013. 3. Influence of the expected results on the development of science, civilisation and society In terms of legal research, the fundamental challenge is to grasp the various scopes of agreements and create the appropriate instrument which will enable the results of the research to be used in an empirical analysis of how the diverse scopes of agreements affects economic cooperation. The research will enable the assessment of a scale of benefits arising from regional trade agreements with reference to their scope (fields of liberalisation). This focus on analysing the strength of the cause and effect relation, and the proposed econometric approach, are an innovation in investigating the

effects of regional trade agreements in economic cooperation. The results of the research will be published in international and domestic economic and legal publications, and presented at international scientific conferences.

Project title: ***Implementation mechanisms and the question of direct application of European Union law in member states***

Project manager: Jędrzej Maśnicki (jedrzejmasnicki@gmail.com)

Realisation period: 2013–2017

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 42

Abstract: Transposition of EU law is a basic task facing legislation in member states, and the directivisation of EU law increases the importance of this matter. Poland is one of the states which has significant ground to make up in terms of implementing directives. In the context of this practice, the question arises of the state's responsibility for improper implementation of EU law, and the matter of direct application of a directive faced with a deficiency or impropriety in the transposition, which creates substantively difficult tasks for courts and administrative bodies. The matter under discussion raises major problems of both a theoretical and practical nature. As European constitutionalism attaches such importance to the principles of precedence of the binding force and directness of application of constitutions, there would seem to be problems with the possibility to apply a secondary law directly in a situation where by nature it is non-self-executing. Having appropriately constructed legislative procedures within the implementation process is conducive to avoiding any divergence between the EU and national regulations. Variety in the solutions adopted in this matter could be interesting not only from a research point of view, but could lead to definitive conclusions concerning the Polish model of transposition, based on domination of the statute. The research project will be divided into two parts. The first will contain a discussion of procedural models for implementing EU law, which will be presented in a legal-comparative perspective based on an analysis of the constitutional and statutory material of member states. The practices of national courts and administrative bodies affecting the implementation of EU law will be considered to the widest possible extent by a relevant and favourable interpretation of national normative regulations. Also covered will be the practice of enforcing damage claims for any inconsistency of national norms which may arise from improper implementation of EU legal norms. Gathering and interpreting the normative material will enable a wider theoretical reflection to be developed with regard to the direct applicability of EU law, whose laws are increasingly addressed

not only to states, but also touch upon matters of individual rights and freedoms. The effect of the report will be to assess the institutional solutions influencing the deficit in the transposition of EU law, and to formulate propositions as to how the implementation process could be more efficient.

Project title: ***Alternative methods for settling consumer disputes in the European Union***

Project manager: dr Jagna Mucha (jagna.mucha@uw.edu.pl)

Realisation period: 2015–2016

Funding body: budget – National Science Centre (NCN)

Programme name: ETIUDA; 3rd edition

Abstract: Research carried out as part of a project concerning the problem of enforcing consumer claims in the European Union The subject area of the study was selected due to the great socio-economic significance of consumer protection, the dramatic expansion of cross-border transactions and the resultant intensification of consumer-to business (C2B) relations inside the European Union. The aim of the research is to test the hypothesis that alternative dispute resolutions ADR) are an adequate way of dealing with conflicts arising from C2B agreements. This view has been promoted heavily in recent years by the European Commission, which sees ADR as an opportunity to solve the problem of overburdened common courts in member states, and as an antidote to consumers' aversion to the judiciary. Chronic delays in judicial proceedings, which prevent EU citizens from making use of their right to a fair trial in a reasonable time, have turned out to be particularly challenging in the context of cross-border transactions. Seeking a solution to the problem identified above, the European Commission adopted the conclusions which formed the basis to issue Directive 2013/11/EU regarding ADR and Regulation 524/2013 regarding ODR (online dispute resolution) in consumer disputes. These regulations are intended to ensure consumers access to cheap, fast, simple and effective ways of settling cross-border disputes, thus increasing their confidence in the single market. According to the provisions of Directive 2013/11/EU, its decisions are to be transposed to national legal orders by July 2015, while Regulation 524/2013 is to be applied in member states starting from 9 January 2016. Taking into consideration the general hypothesis above regarding the adequacy of ADR for settling consumer disputes in the EU, the research work gathers and analyses data based on which the following questions can be answered: (i) in what way and how successfully are consumer disputes currently resolved in the EU, (ii) what should a model system for resolving these disputes be like, (iii) what will the system for settling consumer disputes be like after implementation of Directive 2013/11/EU and during the period of application of Regulation 524/2013

and (iv) what is the role of ADR in shaping an efficient system enabling effective settlement of consumer claims? Detailed research tasks will be carried out as part of the project, serving to: (i) establish the current actual and legal state with regard to resolving consumer disputes in the EU, (ii) carry out an analysis of the principles and basic functions of the judiciary, based on which an abstract model of consumer dispute settlement will be created, (iii)carry out an analysis of the provisions of Directive 2013/11/EU and Regulation no. 524/2013 in the light of the proposed consumer dispute settlement model, and (iv) compare the judicial and alternative models for settling consumer disputes. In line with the research concept adopted, the studies carried out in this sequence will constitute consecutive chapters in the doctoral dissertation being prepared. The order in which the questions are raised and tasks completed is not accidental, and considerations on answers to them are only possible based on detailed analyses being conducted in the order proposed. The complex research tasks completed in this way will form a coherent whole, based on which a final analysis of the topic can be done with the broadest possible approach. The fifth phase of the research will consist of a summary of the first four stages, allowing conclusions to be drawn about the entirety of the subject area investigated. The entirety of the research will form a comprehensive study on the subject of the settling of consumer disputes in the EU, which will take the form of a doctoral dissertation. The initial research carried out so far has enabled the identification of problematic areas connected with the differences between legal systems in individual member states. These questions concern regulation at the EU level: (i) the possibilities for ADR entities to exercise the law, (ii) the requirement for ADR entities to know European consumer law, (iii) the voluntary and confidential nature of proceedings, (iv) the legal character of settlements issued by ADR entities, (v) the question of their impartiality and independence, and (vi) the duty to pay fees connected with participation in ADR proceedings. Particular attention will be paid to these issues during the subsequent research.

Project title: ***Combating cybercrime in EU law using the hybrid system concept, with the Cyber PDCA model playing a leading role***

Project manager: Anna Kańciak (annakanciak@wp.pl)

Realisation period: 2014–2016

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 6th edition

Abstract: 1. Aim of the research conducted / research hypothesis Cybercrime is a phenomenon which remains imprecisely defined and unresearched. Increasingly common is the view, expressed in the literature, that cybercrime is a

previously known form of criminality, just committed in a new environment, i.e. the new fifth dimension. Defining this concept will allow an answer to the question of whether there are limits to cybercrime, and if there are, what tools should law enforcement agencies and the judiciary use to define their competences *ratione materiae*. This in turn will allow us to turn to the main aim, which is a attempt to formulate a response to the question often asked about an efficient and effective model of cybercrime prevention. To do so, the legal and institutional systems of selected member states, i.e. Estonia, Germany, the Netherlands and Poland, will be analysed and compared with the solutions being implemented in the European Union. This will result in an attempt being made to prepare a project for a cybercrime fighting strategy. An innovative element of this strategy will be its basis in the hybrid system concept. This envisages the introduction of the Cyber PLAN-DO-CHECK-ACT (PDCA) model, minimum norms in the field of computer crime (Article 83 TFEU) and a decentralised institutional system. The goal of the research will thus be not only a scientific and empirical analysis of the phenomenon of cybercrime, but also the creation of a strategy project as an element of EU and national policy for fighting this form of crime. The theoretical and practical aims will thus include an analysis and definition of the subjective scope of the concept of cybercrime, identification of the scope of action and commitment of the European Union in fighting cybercrime, and of the factors shaping the institutional system, defining the degree of influence which particular forms of cybercrime have on changes to the legal systems of member states, and the shape of the European Union's policy. 2. Method: research method applied Cybercrime, as a multifaceted phenomenon, requires a variety of research methods to be used. As a result of the analyses (micro and macro) carried out, with their level determined by the number of variables, an attempt will be made to create an integrated strategy by combining new and existing theories and concepts of cybercrime prevention. The project in question will mainly involve an evaluation as a set of methods and actions aimed at critical reflection on the quality of existing solutions, in the context of both the processes of implementing them, and their effects. The data produced will then be subjected to an analysis, as the most effective technique in this case. The research will be conducted as part of a conventional top-down analysis. In addition, when applying research methods to the subject, the optimal strategy will be methodological variation, i.e. a mixed research plan making use of the dogmatic-legal and legal-comparative methods. An additional element will be the use of a questionnaire during interviews with experts. 3. Influence of the results The research carried out will be significant in many ways. The results of the project will become a valuable source of expert knowledge of a practical (expert) and theoretical (scientific) nature, providing a novel contribution to studies on cybercrime and to its definition and subjective scope. The published effects of the research will reinforce national actions and also provide an impulse to continue work in the fields of countering

and fighting cybercrime. The results of the project, in written and electronic form, can have a major influence in the context of creating a comprehensive analysis of the questions of cybercrime and legal administration of cyberspace.

Project title: ***Personal data protection of legal persons in Polish international private law in a legal-comparative context***

Project manager: Nikodem Rycko (n.rycko@uw.edu.pl)

Realisation period: 2012–2015

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 2nd edition

Abstract: The project is intended to analyse Polish conflict of law rules, forming a basis to establish an appropriate law to protect the personal data of legal persons. The thesis has been postulated that legislation in this field responds properly to the requirements of legal transactions. Completion of the project led to the conclusion that even though the provisions above are well-founded in theory, in practice their application may involve a variety of difficulties.

Project title: ***The state, its agencies and other state entities as special parties in international trade arbitration and post-arbitration proceedings***

Project manager: Anita Garnuszek (a.garnuszek@wpia.uw.edu.pl)

Realisation period: 2015–2017

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 8th edition

Abstract: The basic aim of the research is to answer the question of whether the state, its agencies and other entities („State Entities") are equal to partners as parties to international trade arbitration, or whether their specific nature gives them a specific position in arbitration. Another aim is to establish what the special status of State Entities in arbitration is, and how it affects the course, result and effectiveness of arbitration and post-arbitration proceedings. The main hypothesis of the study is the idea that State Entities are special parties in international trade arbitration, which affects the course of the proceedings and the execution of the arbitration decisions. The special status of State Entities in arbitration consists of their subjective separateness resulting from the norms of public law. The dogmatic method will be applied to the research material collected. This method

involves analysing research material using scientifically recognised methods of interpretation and logical linguistic principles. Also used in the research will be the comparative method, enabling conclusions to be drawn which can be applied to trading arbitration of an international nature. The literature still lacks a comprehensive discussion of the matter in question as well as an answers to the detailed questions covered by the research. The results of the research will affect the development of studies in the field of international trading arbitration. Because turnover in the international economy is dominated by State Entities, it will be of great benefit in terms of the world economy's development and trading stability, and thus for civilisation and society in general, to establishing what their position is in arbitration.

Project title: ***Legal and political aspects of European use of the Galileo and EGNOS satellite navigation systems***

Project manager: dr hab. Katarzyna Myszona-Kostrzewa (k.myszona_kostrzewa@wpia.uw.edu.pl)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: OPUS; 9th edition

Abstract: The most general aim of the project is a deep and comprehensive analysis of the political goals and legal foundations of the functioning of the flagship space programmes implemented by the EU and ESA in the framework of the European space policy. A prominent place in this field is held by the European satellite navigation systems Galileo and EGNOS. The project proposes that an essence of the modern state and society is the access to satellite and space technologies and the possibility to use them in practice. An increasing number of states and international organisations appreciate the strategic value of space activities. Satellite navigation is being used in numerous aspects of everyday life: transport, surveying, agriculture, scientific research and tourism. Satellite transmissions not only enable telephone connections, financial transactions and electrical power networks to function, but also facilitate locating and tracking of people and goods. In light of the above, one can determine the specific aims of the research, whose common objective is to particularise, order and analyse the various aspects which comprise the effective operation of European satellite navigation systems and their optimal use in the EU and in Poland. These include the security of navigational systems, environmental protection (the influence of man-made space objects and/or their debris), human rights (with particular regard given to the right to privacy), the policies of EU Member States toward European satellite navigation systems, the cooperation between the EU and the ESA and with states engaging in space activities (the USA, China, Japan). Due to the variety of aims adopt-

ed, the project will make use of several methods, in particular the legal-dogmatic method and the legal-comparative method. The European context is of particular importance to the research in question. The European satellite navigation systems are a result of the European space policy carried out in accordance with the subsidiarity principle. The EU cooperates in this field with the ESA, the Member States and international legal bodies.

The research methods will be employed to analyse existing and available international agreements, EU legislation and proposed (draft) laws, ESA documents, non-binding acts of law adopted at the international and European level and the relevant case-law of international courts, including the Court of Justice of the EU. Comparisons will be made with solutions adopted in the USA and selected EU Member States. The planned research will be based on library queries in leading scientific centres and consultations with experts.

This project is original and innovative with regard to both the research topic and its comprehensive examination, and due to combining theory with empirical research and political recommendations. By joining the EU and ESA, Poland has accepted co-responsibility for the implementation of the European space policy, including European satellite navigation systems. This topic is not very well known to Polish end users, and is very rarely referred to in Polish scientific papers. In contrast, the Ministry of Economy's priorities in 2012 included support for the development of the space sector in Poland (both the industry itself and research and scientific facilities) until 2020. The results of this project will constitute valuable research material both of a theoretical (scientific) and practical (expert) character. The uniqueness of the research topic, the expected interest of other scientific centres and, in particular, of the state administration bodies responsible for space policy fully justify the present undertaking.

Project title: ***The status of victims of international crime in proceedings before the International Criminal Court. Characteristics of procedural law and forms of redressing harm caused to injured parties – historical and contemporary perspectives***

Project manager: Patryk Gacka (p.gacka@wpia.uw.edu.pl)

Realisation period: 2016–2020

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 45

Abstract: Every crime bears features attesting to a violation of society's prevailing principles. In the case of conventional conflicts deprived of a wider

situational context in which the victim of, for example, a theft is a specific individual, the situation is clear. The state takes on the responsibility, charging the suspect and aiming to punish him. Independent courts issue a verdict and, in theory at least, a social conflict is resolved. A basically identical approach was applied immediately after the Second World War in relation to German and Japanese dignitaries and military leaders. These were called before ad hoc international criminal courts and sentenced to punishments which were in proportion to the deeds committed. In these cases, however, one state took the place of the whole international community, and the victims of the crimes were not counted individually, but in millions of human beings. The litigation was of a bilateral nature – prosecution and defence. The victim was thus not considered a party to the litigation, but was at most a moral justification for the very idea of the trials. In the 1990s, when new ad hoc international criminal courts were being created to prosecute war criminals in the former Yugoslavia and Rwanda, the victim began to be seen as a passive participant in the proceedings taking place. Another revaluation happened when the Statute of the International Criminal Court was adopted in 1998 and the victim became a rightful participant in the trials. The basic aim of the project is to define the contemporary status of a victim of international crime in international criminal law, based on an analysis of procedural law and forms of redressing harm caused to injured parties. The aim of the research will be achieved using various research perspectives and methods. The status of the victim will be defined by reviewing the normative and political development processes occurring since the end of the Second World War. Individual provisions of international criminal law will be examined, as will the judicial practice of international courts. The author will also consult travaux préparatoires, as well as press statements by politicians, and justify the changes taking place in the field under investigation based on specific events of 20th century history. Another vital element of the project will be to specify the definition of a victim of international crime in related fields of science, such as philosophy and victimology. There will be a critical analysis of the functioning of the Trust Fund and the practice of states which have been subject to the interest of the International Criminal Court, such as Uganda and the Democratic Republic of Congo. The subject area will also include reparation mechanisms, thus there will be an analysis of a private law component in the functioning of international criminal law.

Institute of Legal-Administrative Sciences

Project title: ***Cognition of administrative courts in light of the constitutional standard***

Project manager: Aleksander Jakubowski (a.jakubowski@wpia.uw.edu.pl)

Realisation period: 2015–2016

Funding body: budget – National Science Centre (NCN)

Programme name: ETIUDA; 3rd edition

Abstract: The research conducted as part of the doctoral dissertation concerns the scope of cognition of administrative courts, analysed in particular in light of the constitutional standards. It involves first of all a comprehensive identification and comparison of the cognition of the courts indicated, at three levels – constitutional, normative (legal-dogmatic) and judicial (practical). Initial research indicates that the scope of jurisdiction of administrative courts existing at these levels is not identical. It can be observed that the scope of material cognition assumed in judicial practice is narrower than that which could be interpreted from the Act – Law on Proceedings before Administrative Courts, while even the act itself does not define the material jurisdiction of administrative courts in a manner sufficiently broad as the Constitution would seem to require in its provisions determining the structure of the judicature of administrative courts. These observations require full and comprehensive verification based on the entirety of past jurisprudence and the history of legal doctrine, as the situation described raises questions about its source (causes) and the possibilities and methods of change. It should be emphasised that the material jurisdiction of administrative courts, as a determinant of their competences and their ability to consider cases, is a matter of the utmost procedural importance in the execution of the rights to a court and to a fair trial, and for the principle of judicial control of administration. From the point of view of the certainty and precision of law, it is highly desirable for procedural norms vital for the legal situation of individuals (concerning the scope of admissible appeal) to be specified *a casu ad casum* by the jurisprudence itself. Constant inconsistency or instability of the positions taken by administrative courts with regard to their own cognition results in a situation which is difficult to reconcile with the idea of the rule of law and the principles of equality and justice. The exclusion of certain categories of cases from the cognition of administrative courts leads to a lack of an independent and autonomous external entity which can authoritatively enforce the legitimate actions of bodies of public administration. Due to the diverse ranges of legal instruments, among

other reasons, the role of administrative courts cannot currently be fundamentally replaced by common courts in Poland. In the research carried out, the assumption was made that the cognition of administrative courts cannot be structured in such a way that it leads to paralysis of that section of the judiciary, as that would clash with the constitutional right of individuals to have cases heard by a court without any unjustified delay. The considerations therefore also cover development of a model (taking into account an economic analysis of the law, for example), in which a reorganisation of judicial-administrative proceedings would result in their efficiency being retained even after the scope of administrative courts' cognition was extended (reinterpreted) to the constitutionally required standard. This would involve an increase in the influence of cases. The research will also seek a desirable model of administrative court cognition among the Austrian and German experiences. The Polish judicial system was based on the Austrian model, so it seems useful to check whether the Austrian system also features similar dilemmas related to cognition as ours does, including after the reform introduced there on 1 January 2014. It is worth pointing out that the material jurisdiction of administrative courts is defined in detail by the Austrian constitution. The German system also requires consideration. It has adopted the broadest general clause defining the material jurisdiction of administrative courts, which also covers all public matters which are not within the cognition of the Constitutional Tribunal (§ 40 of the German Act on Proceedings before Administrative Courts). How this clause functions in practice, as well as the views of doctrine in German regarding it, thus seem to be of particular interest when seeking a way to adapt the form of Polish administrative court cognition to the standard established by the Polish Constitution. Hence it is justified, and even necessary, to include a legal-comparative perspective in the research, including the many years of experience of the functioning of the administrative judiciary in Germany and Austria, and the significant legacy of their legal doctrine.

Project title: ***Argument from jurisprudence in the decisions of administrative courts***

Project manager: Aleksander Jakubowski (a.jakubowski@wpia.uw.edu.pl)

Realisation period: 2013–2014

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 4th edition

Abstract: The motive behind these considerations on argument from jurisprudence in the decisions of administrative courts is the noticeable increase in importance in extralinguistic rules for courts interpreting legislation. It is increasingly common for judges to refer to previous rulings in order to establish a

legal norm. Four goals have been set for the project – to specify the status of the argument being investigated, to identify the model for evoking it, to verify empirically the practice of applying the argumentation in question, and the effect that the availability of rulings has on it. The project consisted of two stages of research. The first involved a full archive search of the history of Polish doctrine of administrative court proceedings and legal theory within the scope connected with argument based on judicial rulings. At the same time, a wide-ranging survey was made of 514 selected legally binding decisions of the Supreme Administrative Court and regional (voivodeship) administrative courts issued after 1980 (between 1994–2013) and available in the Central Database of Administrative Court Rulings, all those whose grounds contain direct, clear references to previous rulings as a form of argumentation. The empirical research enabled identification of the actual usage by administrative courts of the element in question, and of the trends connected with it. During the second stage, which was preceded by a preparatory period of reading Polish legal-comparative studies, the project team analysed the literature available in German, French and English. Representative research samples of rulings by German administrative courts, the French Conseil d'État and US courts were also subjected to verification. This stage involved the necessity of visits to leading centres of learning in Germany (the Ludwig-Maximilian University of Munich) and France (Université Paris 1 Panthéon-Sorbonne). The research abroad helped to establish the current form of the model and cultural of judicial control over the administration in the countries investigated, as well as whether argument from jurisprudence (or argumentation of a similar character) exists in those legal systems, particularly in the grounds for rulings. The result of the research conducted will be included in two published scientific articles and in the monograph which will be produced. The studies prepared based on the projects covered by the grant are to a great extent pioneering and interdisciplinary, as on the one hand they deepen and verify the theoretical-legal findings connected with uniformity of jurisprudence and the argumentation of courts (interpretation of the law), while on the other they may also influence the interpretation and shape of the regulations which form those legal institutions serving to maintain that uniformity of jurisprudence, as well as those which define what can form the grounds for administrative court decisions. It is also worth adding that the grant project enabled confirmation of the ongoing paradigm of administrative court jurisprudence from a syllogistic model to the argumentational model of which the element being researched forms part. It is worth noting the vital social value of the research undertaken. Firstly, it allowed us to determine how administrative courts should, when providing the grounds for a decision, invoke rulings which are characterised by a certain degree of continuity in their position. Introducing the proposed model will enable a strengthening of such values as certainty of the law, equality before the law and predictability of jurisprudence.

This acquires particular importance in the case of administrative judiciary, as its body of work constitutes an important indicator for administrative bodies dealing with the cases of individuals. Secondly, the research helped to uncover a fundamentally Polish aspect of the argument in question, and revealed the existence of a correlation between its use and the administrative court system in place, as well as the methodology of labour law (IT technique). The results obtained can thus lead to a more prudent use of the legal means for ensuring uniformity of jurisprudence. It can also be considered that they will reinforce the desired social values connected with judicial proceedings, like independence of judges or the ability to adapt jurisprudence to changing socio-economic conditions.

Project title: ***The concept of a network of administrative bodies as an instrument to ensure EU law is applied by national administrative bodies***

Project manager: Sebastian Franciszek Wijas (wijassebastian@gmail.com)

Realisation period: 2014–2018

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 43

Abstract: The project covers a comprehensive approach to the complex and multifaceted topic of the functioning of national public administration bodies within a so-called administrative network. Their emergence is an expression of the new system of administrative management within the institutional system of the European Union. Poland's membership of the European Union has had an undeniable influence on the institutional system of Polish public administration, but especially on the functioning of administrative bodies, including on their collaboration with the equivalent bodies of other member states and with the European Commission – the EU's most important administrative body. This collaboration takes place within a network of administrative bodies, and is regulated by the provisions of primary and secondary EU law. It is worth emphasising that cooperation between administrative bodies within the network is of a direct character. In other words, it is not the member states which collaborate in the network, but the individual national administrative bodies responsible for implementing EU law in a particular field, and the European Commission, possibly also other EU agencies. The formalised administrative network structures function alongside the committee procedures and agencies, and in certain circumstances can become an integral part. They thus complement the executive position of the European Commission at the level of implementing EU law. The network structures are also of vital importance in the implementation of EU policies. This happens, for instance, at the moment when an administrative decision

is issued by a national administrative body, such as the Office of Competition and Consumer Protection. The main research aim of the project is to demonstrate the development of the network of administration (mainly consisting of regulatory bodies) as an instrument ensuring that the decentralising principle is followed in the application of EU law. The project's author considers that administration networks are also an effective tool in realising the postulate of effectiveness and uniformity of application of EU law by the administrative apparatus of a member state. This happens due to the phenomenon of administrative convergence which conversely results in the creation of a European legal space. It should be assumed that a cognitively interesting approach to administrative networks as an effective plane for implementing EU law will be to analyse the functioning of one of them. The above considerations will be carried out using the example of an analysis of a clearly forming administrative network where the dominant position is held by the European Commission, as the decision-making body, and the European Medicines Agency as the expert body enjoying wide-ranging autonomy. Such an approach seems to have a double virtue. Firstly, there is the opportunity to describe exactly a European administrative network in the field of pharmaceutical market regulation, of the entire range of instruments of mutual influence between the Commission and the Agency, and the national registration body. No considerations of this kind have yet been carried out in Polish doctrine. Secondly, slightly reflexively, it opens the way for an analysis of the complicated registration procedures for medicines, both those of a centralised (European) and decentralised (mixed) nature. The second cognitive focus of the project is to show the position of the national administrative body within the administrative network. Also considered by the research will be the matters of whether and how limits apply to the dominant role of the major state bodies with regard to the entities of the central administration which form part of a given network (e.g. the head of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products).

Project title: ***Tax policy of international sporting organisations***

Project manager: Karolina Maria Tetłak (karolina@tetlak.pl)

Realisation period: 2013–2017

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 4th edition

Abstract: The scientific aim of this research is to analyse, assess and present actions carried out by international sporting organisations in order to obtain favourable tax conditions for large sporting events. Domestic law of candidate countries aiming to host world championships basically envisage the taxing of income connected with the sporting activity and business taking place in

the given state. This possibility also generally results from agreements to prevent double taxation, signed between countries and the headquarters of sporting organisations, athletes and other entities receiving income in connection with major sporting events. However, with the aim of creating the most favourable (for the interests of the sporting organisations) fiscal-legal framework for the events, international sporting organisations are setting legal and organisational conditions for acquiring the opportunity to host tournaments. The chance to organise a sporting event on the territory of a given country depends on these conditions being fulfilled. The conditions take various legal forms. The research hypothesis which will be subjected to verification as part of this project assumes that actions taken by sporting organisations in order to impose particular requirements on the host countries in fiscal matters serve to achieve the complex long-term aims of those organisations, and contribute to a deliberate tax policy implemented by the bodies which manage sport, often contrary to the tax policies of the countries. The research aim of the project is thus to identify the causes and effects of this phenomenon.

Project title: ***Taxing EU subsidies – an assessment of the legal regulations, identification of the main problems occurring in practice, and analysis of the possibilities to solve them***

Project manager: dr Maria Alicja Supera-Markowska (maria.supera@brf-espol.pl)

Realisation period: 2012–2015

Funding body: budget – National Science Centre (NCN)

Programme name: SONATA; 2nd edition

Abstract: The aim of the research carried out for the project will be to assess the legislation concerning taxation of EU subsidies, identify the main problems occurring in practice in this area, and analyse the possibilities to solve them. The following questions will be considered under the project: 1. An analysis of the legislation concerning taxation of EU subsidies. This will realise the research aim of the project insofar as it consists of „assessing the legislation concerning taxation of EU subsidies". The analysis will be carried out based on the collected source materials, literature and interpretations of tax law and administrative court rulings. 2. Identifying and analysing the main problems occurring in practice in connection with taxation of EU subsidies. This will realise the research aim of the project insofar as it consists of „identifying the main problems occurring in practice in this area". The analysis will be conducted on the basis of interpretations of tax law and administrative court rulings, supported by a survey of a selected group of beneficiaries (by interviews or questionnaires) as part of the

research project. 3. An analysis of the possibilities to solve the problems identified. Based on the research conducted, and taking into account the conclusions reached concerning the main problems occurring in practice, an attempt will be made to solve them, both pursuant to the regulations currently in force, and by introducing certain changes to them (conclusions *de lege ferenda*). It is from this perspective that they will be analysed with regard to taxation of European Union subsidies in selected member states other than Poland. This will realise the research aim of the project insofar as it consists of „analysing the possibilities to solve the main problems occurring in practice".

Project title: ***Communication technology and employer–employee relationship***

Project manager: dr hab. Krzysztof Wojciech Rączka (k.raczka@wpia.uw.edu.pl)

Realisation period: 2011–2014

Funding body: budget – Ministry of Science and Higher Education

Programme name: Promoter's research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 40

Abstract: The doctoral dissertation prepared as part of the research project is intended to present the influence asserted by communications technology on employment conditions and elements of the legal structure of employment relations. The starting point for the deliberations is an analysis of how communications techniques have influenced the evolution of working methods, including the way an employer communicates with employees, and also on the development of labour law as a separate branch of law. The basic part of the study will consist of an analysis of the legal problems connected with implementing rules regulating employee subordination, the workplace and working time, and the employer's rights to carry out controls. Technological progress is contributing to fundamental changes in the way parties exercise their duties within employment relations, which raises the question of how adequate the fixed legal solutions in this field are to the requirements of contemporary employment markets. The inductive-dogmatic method was applied in order to analyse the legislation in force. At the same time, the questions connected with protection of the stability of employment relations, prevention of unemployment, promotion of flexible forms of employment and the employment of disabled people were described using facts ascertained by other fields of social science – psychology, sociology and social policy, as well as from technical sciences, particularly in the field of telecommunications and teleinformatics. The aim of the proposals set out within the project is to develop trends enabling the central tenets of labour law to be imple-

mented in the new socio-technological environment, and to retain the primary role of the formal employment relation as a basic element of employment.

Project title: ***Promises of decentralisation in health protection. Legal framework – benefits – challenges***

Project manager: dr hab. Dawid Łukasz Sześciło (dawid.szescilo@uw.edu.pl)

Realisation period: 2014–2017

Funding body: budget – National Science Centre (NCN)

Programme name: OPUS; 6th edition

Abstract: (1) Research goal. The aim of the project is to investigate the hypothesis that decentralisation has a positive impact on providing citizens with equal access to publicly funded health services. This hypothesis will be tested with regard to the Polish health care system, but also taking into account conclusions from the intensive international debate, which has been going on for some time now, about the actual effects of decentralisation in health care. The result of the project will be a model for the division of tasks and responsibilities between central and local authority administrations, which will contribute to the maximum degree to effectively exercising the constitutional right to health care. The project will also help to clearly define the constitutional standard of equal access to health services, taking into account international regulations in this field and also jurisprudence. There will also be a comprehensive discussion of the forms of decentralisation in health care, as well as of the current international trends in this area. This will involve case studies of countries characterised by highly decentralised health care systems (Sweden), or which have recently turned away from decentralisation and strengthened the role of central government in health care (Norway). A separate research aim is to predict trends in connected to the reform of the institutional framework of the Polish health care system. The increasing criticism of health service decentralisation, and the current tendency in Europe towards recentralising the system, will be confronted with the strong opinions expressed in Poland about the need to reinforce the role of local and regional authorities in this key area of public services. Prognostic research using the Delphi method will ask a wide range of experts in the field of health policy and local government about predicted directions of change in the division of competencies between government and local authorities in the field of health care.
(2) Methods. The project is based on typical methods for studying jurisprudence – a doctrinal analysis of the legislation in force and of decisions issued – as well as on an investigation of other legal systems (a comparative analysis). Based on this analysis, it will first of all be established whether the existing legal-institutional framework of the health care system is conducive to equal access to health ser-

vices. Research into public management must, however, take account nowadays of the interdisciplinary nature of the phenomenon of public administration. This is why the project makes broad use of social science research methods, including a qualitative analysis of secondary data, case studies, in-depth individual interviews and forecasts using the Delphi method.
(3) Influence of the project's results. The project will be the first comprehensive study in Poland into the phenomenon of decentralisation in health care, taking into account the current state of international debate on its actual effects, and on the benefits and dangers arising from it. It will also be a voice in the discussion about the content of the constitutional standard of equal access to health services. The model of the division of competencies in the field of health care between central and local administration will also form part of the project's major theoretical legacy. The project may also affect the public debate on the desired directions of reform in the Polish health care system. The general criticism of the present, highly centralised, model hints at a search for newer institutional solutions. As in other European states, stronger decentralisation is, along with privatisation, one of the main directions of the reforms being considered. The project may provide an important contribution to the debate in this question, leading to a guarantee that any legislative or political changes will consist of evidence-based public policy.

Project title: ***Marketisation of public administration: legal possibilities – barriers – limitations***

Project manager: dr hab. Dawid Łukasz Sześciło (dawid.szescilo@uw.edu.pl)

Realisation period: 2011–2014

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 1st edition

Abstract: The project was the first attempt in Polish administrative studies at a comprehensive appraisal of the effects of the proliferation of market mechanisms for providing public services. Globally, their introduction was one of the most important elements of reforms based on the concept of new public management, a concept combining the postulates of neo-liberal economics with a managerial approach to administration. In Poland and other post-socialist states, the new public management became, along with the marketisation of public services, a central pillar of the economic and political transformations. So far, however, market reforms in this field have been considered a priori effective and efficient. In the course of the project, I used the experiences of many countries to try to find empirical confirmation of these assumptions and verify their correctness. This research resulted in the book „Market – Competition – Public Interest. The legal challenges of marketisation of public services", which presents

the methods formulated in the new public management for providing citizens with the most important public services. This has popularised the view that simple public services, and also education and heath care, are tasks which are best realised by private entities (business and NGOs) selected by the administration via competitive procedures. As Tony Judt described it, this approach liberated us from the conviction that the state guarantees the best solution to all problems. However, we are increasingly starting to notice gaps and defects in the pro-market attitude to public management. We are becoming convinced that the dilemma of how much state vs how much market in public services demands a pragmatic view backed by experience.

Project title: ***Extreme poverty of the individual as a constitutional category***

Project manager: Adam Ploszka (adamploszka@wp.pl)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 10th edition

Abstract: The project serves to investigate the relationship between poverty and human rights, as well as defining the duties of public authorities towards the rights of people living in extreme poverty, which in the long term could result in an improvement in their living conditions.

The research has been divided into four stages. The first serves to define the essence of the phenomenon being studied, based on the output of the social sciences, in particular of social policy, economics, history and sociology. The second stage will include an analysis of the steps aimed at eliminating poverty, as reflected in international public human rights law, and also in the law of other countries. The third stage focuses on the Polish constitutional order. The research carried out during this stage serve to define the constitutional standard of protection of the rights of people living in poverty. Finally, in the fourth stage the previously established standard of human rights protection will be confronted with the Polish legislation in order to identify potential deficits and propose necessary normative solutions.

There has so far been no research in Poland into the relationship between poverty and human rights, in spite of the growing interest in the subject among the world's scientists and the actions undertaken on the international stage to fight poverty. The research carried out under the project could fill this gap, and also have vital influence on the development of studies of human rights and constitutional law.

Institute for the Study of the State and Law

Project title: ***The concept of the dilemma in legal ethics and the ethics education of lawyers***

Project manager: dr Paweł Teodor Skuczyński (p.skuczynski@wpia.uw.edu.pl)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: OPUS; 9th edition

Abstract: The aim of the project is to reconstruct the concept of the dilemma, as used in legal ethics and the ethical education of lawyers, and to suggest a normative model that would respond to the methodological and educational needs of narrow legal science and the meta-ethical category of the moral dilemma. The reconstructional part of the project is aimed above all at reporting and identifying how lawyers make use of the concept of the dilemma, and also to systematise the basic dilemmas arising in practice and in study depending on the branch of law. There will also be a study of the basic models offered to lawyers to resolve them. It will be possible to present an approach to the ethical dilemma of lawyers practising their profession in countries with a culture of civil law, to systematise them depending on the branch of law, and t compare them with the approach in countries belonging to the common law culture. The normative part of the project aims in particular to demonstrate the inadequacy of the reconstructed concept of the dilemma, cases of dilemmatic situations based on different branches of law, and models for resolving them. A model will be proposed which used the meta-ethically correct concept of the dilemma in a way which is useful for legal science. The project is interdisciplinary in nature, and uses research methods typical of several scientific disciplines. It is based above all on the analytical methods applied in the theory and philosophy of law, within the scope of reconstructing the concept of the dilemma, and cases of this in individual branches of law. At the same time, it makes wide use of methods characteristic of meta-ethics, particularly critical analysis. Realisation of the project has fundamental significance for legal ethics understood as a field of jurisprudence. Many theoretical approaches and the selection of ongoing research questions are designated as dilemmatic by the conceptualisation of particular situations. Demonstrating that this is incorrect will be of significance for setting out directions of research in legal ethics as a whole, and for verifying certain theoretical approaches. It will also form a basis for use in teaching. Realisation of the project will also be important for professional ethics, or applied ethics in general, as it will propose a

model which can be tested in other research fields. The result of the project can be treated as a universal method for applying meta-ethical categories in specialised scientific disciplines.

Project title: ***Legal policy towards professional self-governing associations. Towards a reflexive model of lawmaking***

Project manager: dr Paweł Teodor Skuczyński (p.skuczynski@wpia.uw.edu.pl)

Realisation period: 2016–2019

Funding body: budget – National Science Centre (NCN)

Programme name: OPUS; 10th edition

Abstract: The aim of the project is conduct an empirical investigation of legal policy towards professional associations during the years 1997–2015, to provide a theoretical explanation of the structural causes of its development in light of the results obtained, and to use these to construct a reflexive model of lawmaking. This definition of the project aim is justified first and foremost by the fact that this topic has not yet been comprehensively dealt with in the related literature. There has been no adequate use of the research potential arising from the possibility to combine legal theory and the sociology of law to reflect on its creation. Legal theory contains well-known models of lawmaking based on the normative assumption of the legislator's rationality. A rational legislator is one who „chooses the appropriate means to the assumed aim, due to the knowledge he possesses and the preferences he adopts." In these models, lawmaking consists of: 1) the assumption of an aim by the legislator, 2) establishing the propriety between various states which are possible to attain and the aim of such a character that those states will lead to the aim being achieved, 3) establishing the possible legal means to achieve the aim, 4) choosing a specific legal means, 5) establishing the regulations. These models refer to the will of the legislator, his use of knowledge and instrumental rationalism. Their contemporary development is connected with the introduction of elements which make use of knowledge to create law (assessment of the effects of regulations, legislative programming, centralisation of the process of preparing draft normative acts), with the strengthening of the role of government (which could play the role of a centre using those resources of knowledge and experts), and with the requirement to introduce a cohesive legal policy. Studies exist in sociology of law, however, which show that lawmaking in Poland can be defined in theoretical categories as a „closed" system which does not receive information from outside. The superficial nature of social consultations in lawmaking is emphasised, as is its instrumentalism. The problem of how far-reaching these statements are remains unsolved. The weakness of democratic

institutions and of the authorities' supporting expertise is not a sufficient explanation. This is a tautology explaining the problem by referring to the specific local conditions, i.e. the condition of the Polish political culture and constitutional solutions. The research problem which will be solved by the project involves establishing, if there really is a lack of coherent government legislative policy despite the introduction of institutional solutions aimed at ensuring one, in accordance with the instrumental models of lawmaking, then what are the structural causes of this phenomenon. This problem will be framed in categories which are only used within a very limited scope in lawmaking research, i.e. firstly of the reflexiveness of the legislative process of the law and the actors participating in it, and secondly, of the functional differentiation of modern societies. An answer will thus be given to the question of whether a lack of cohesive government legislative policy is the effect of a lack of the government's reflexiveness with regard to the autonomisation and institutionalisation of social subsystems. Sociology points to the diversification of societies into autonomous subsystems or expert systems, basing themselves on the difference of their internal communications processes from their surroundings, or on the application of specialised knowledge systems. Reflexiveness can also be understood as self-reference, as subsystems communicating with themselves. This means that the use of expert knowledge does not consist of its simple, instrumental application, but reflexively accounting for the effects of that application and modifying it itself. Hence the basic for of social change is becoming reflexive modernisation, replacing more violent and saltatory forms. Reflexiveness understood in this way will become a key category for the research problem, and at the same time the missing link between the normative perspective of legal theory and the explanatory perspective of the sociology of law. Use of the above categories has affected the paradigm of modern government, which is straying from the strictly hierarchical vision of public authority towards governance by pluralist, self-organising social spheres. The lack of similar attempts based on lawmaking theory make the project's research problem even more pressing. At the institutional level, the key role played by reflexiveness and the necessity to resist central authority on autonomously produced solutions is expressed both by the principle of subsidiarity, and the neo-corporatist postulate that public authority should be decentralised, which lies at the heart of the social market economy. In light of the growing role of social consultations, it seems disputable that strengthening government and marginalising parliament in the lawmaking process would necessarily alienate the authorities from society, as the government does approach the latter, albeit through communication with its autonomous social subsystems. The solutions applied in the Polish political system seem to notice this problem. Within the three-way separation of powers, the authorities make the Council of Ministers (i.e. the Cabinet) the body which conducts the state's internal and external policy.

The project anticipates a combination of theoretical models of lawmaking with the sociology of law (analysis of legal policy). The element connecting the two approaches are references to social and legal theories and models of society (systems theory, theory of communicative action, neo-corporatism). A formal-dogmatic analysis and the systemic method will be applied with regard to the solutions adopted and the theoretical possibilities in this field. A working model will be created of the relations between the legislative system and professional associations as a special form of institutionalisation of autonomous social spheres.

Project title: ***Andrey Yanuaryevich Vyshinsky: political and legal doctrines***

Project manager: prof. dr hab. Adam Cezary Bosiacki (abosiacki@wpia.uw.edu.pl)

Realisation period: 2009–2014

Funding body: budget – Ministry of Science and Higher Education

Programme name: Own research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 37

Abstract: The aim of the project would be to analyse and present the views and multifaceted influence on the law and concept of the political system of the Soviet Union and the so-called people's democracies of Andrey Vyshinsky (1883–1954), the most important lawyer of the Stalinist period in the USSR, and founder of the dominant legal doctrine during a period of almost thirty years. Vyshinsky's influence on the creation of the USSR's legal doctrine, legislation and political system has always been considered highly significant and varied. During different periods of his activity, Andrey Vyshinsky was a professor and rector of the country's largest university, a full member of the Soviet Academy of Sciences, Procurator General of the USSR, foreign minister of the USSR, leader of the country's permanent delegation to the United Nations, and also the most important law theorist of the Stalinist period in the USSR and the „people's democracies". He participated in all these fields developing the direction which Soviet law was to take, particularly criminal law, the Nuremberg principles and questions of international law, the creation of the UN, and also civil law and labour law legislation. Another aim of the project would be to analyse in a wider context certain aspects of the legal theory presented by Vyshinsky, i.e. compared with other theoretical directions discussed in his era and with his participation in the USSR: the directions of American functionalism, normativism, legal nihilism, etc. The research would also include an analysis of his activities in legal theory, also highly influential on legislation and legal theory in Poland in 1944–1956. Vyshinsky's activities would be presented in relation to Polish affairs during the Second World War period, as he was responsible for contacts with the Polish government in exile and, and in

the post-war period. The research would be carried out based on an analysis of the literature dedicated to the subject in Russian, English, to a lesser extent in German and French, and also in Polish (by far the least extensive), by searching the bibliography and wherever possible obtaining source materials. Presenting a study on such a topic, and demonstrating some important problem areas of a totalitarian state, its directions and aspects of its conquest (including in contemporary Poland) would be a genuine first in the literature.

Project title: ***Schools of Sovietology in the West after the Second World War***

Project manager: prof. dr hab. Adam Cezary Bosiacki (abosiacki@wpia.uw.edu.pl)

Realisation period: 2010–2015

Funding body: budget – Ministry of Science and Higher Education

Programme name: Own research project (funded pursuant to the Act of 8th October 2004 on the Principles of Financing Science); competition 39

Abstract: The aim of the project is to present and analyse schools of Sovietology formed after the Second World War in academic and political institutions in the United States, Western Europe and Polish emigré circles. Schools such as these are a highly original expression of legal-political and historical thought in both theory and practice. Each of these intellectual formations made its own vital contribution to our understanding of international relations and our knowledge of the general history of the 20th century. Three of them should be considered the most important: the „continuation school", still represented by Richard Pipes, Leonard Schapiro and Adam Ulam; the „modernisation school", which was represented mainly by Martin Malia, and the „totalitarianism school" whose roots were set in American soil by Carl Friedrich, Zbigniew Brzeziński and Merle Fainsod. For decades, the concepts and schools of Sovietology produced studies of the theory of the functioning and evolution of the Soviet system and individual aspects of it, and carried out analyses and examinations – often very important ones – of the history of the USSR. The Sovietologists considerations and investigations often, but not always, covered the entirety of various aspects of political life in the Soviet Union, sometimes also predicting the evolution of the system (e.g. convergence theory). These often took the form of speculation, so-called Kremlinology, but were also often based on firm sources. Sovietologists often formulated the modus vivendi and modus operandi of the US and Western Europe's international relations with regard to the USSR. These concepts formed the basis for widely discussed doctrines of US foreign policy. Containment, liberation, roll-back and détente are just a few examples of such approaches. The applicants consider that carrying out the project presented would result in an analysis not only of an im-

pressive range of material in the fields of political science, law and international relations, but also provide exposure for the achievements of some Polish scientists often unknown outside Poland, even thought they were highly successful and enjoy a great deal of authority in scientific circles in Western Europe and the US. Polish scholarship currently lacks such a study. The intended research creates an opportunity to expand the state of knowledge, showing a whole important page of the intellectual life of the West in the second half of the 20th century, at the same time aiming to serve as a reminder of a poorly studied tradition of Polish thought whose contribution to western Sovietology was substantial.

Project title: ***A social solidarity-based vision of the state and law – currentness of Léon Duguit's concept in Polish and French legal culture***

Project manager: Michał Krzysztof Sopiński (m.sopinski@student.uw.edu.pl)

Realisation period: 2016–2020

Funding body: budget – Ministry of Science and Higher Education

Programme name: Diamond Grant programme; competition 45

Abstract: The project involves a comprehensive investigation of Léon Duguit's social solidarity concept, and a demonstration of its currentness in Polish and French legal culture. Taking the historical and philosophical pedigree of Léon Duguit's concept as a starting point, particularly its intellectual roots in the socio-legal ideas of August Comte and Emil Durkheim, in the first part of the project the author proposes an investigation of the relation between Léon Duguit's social solidarity concept and the social teachings of the Catholic Church, contained in the papal encyclicals and other church documents. The author will then conduct a comparative study on the reception of Léon Duguit's concept in Poland and in France in the years 1911–1949, and investigate the extent of the effects of his doctrine on Polish political-legal thought during the 2nd Republic. The author's aim in the next part of the project will be to show the continued relevance of Léon Duguit's considerations concerning subjective law and its abuse in the context of contemporary political-legal challenges, including the 3rd and 4th generation of human rights, and to resent an appraisal of the legacy of the French lawyer from the perspective of contemporary legal philosophy. At the same time, the author's fundamental aim is to conduct research into the direct effects of Léon Duguit's concept on the transformations in Polish property law (particularly on the content of ownership law) during the process of unifying civil law during 1918–1946, which ended with the adoption of the property law decree which was contained almost in its entirety in the Civil Code in 1964 and is still in force (with some amendments) today. In the final part of the project, the author will trace the rel-

evance of the social solidarity tradition, including Léon Duguit's concept, in Polish and French legal culture. The results of this research will enable the author to present the potential directions of Léon Duguit's concept in basic legal problems, among others the question of implementing the postulates of social solidarity in legislation and in the operation of the state apparatus.

Project title: ***Labour law policy after the beginning of the economic crisis in Poland. Segmentation of the labour market and violations***

Project manager: Karol Adam Muszyński (muszynskikarol@gmail.com)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: PRELUDIUM; 10th edition

Abstract: 1. Aim of the research conducted / research hypothesis The project put forward is intended to make use of the theoretical tools of the sociology of law and of political and economic sociology in order to analyse labour law policy in Poland after the start of the economic crisis. The author wants to prove that the development of labour market segmentation and the growing number of violations of certain labour law legislation is connected with the labour law policy adopted after the crisis, and with the comparative advantages of the Polish economy identified through the „varieties of capitalism" (VC) paradigm. According to the VC paradigm, Poland is one of the dependent market economies, specialising in the global division of labour in industrial production and outsourcing with low added value, and with the advantage of a relatively cheap, well-trained workforce which adapts easily to changing demand and new forms of production. After the crisis began, the Polish government began to make statutory employment contracts more flexible. This did not prevent increasing segmentation of the labour market, which was caused to a great extent by the policy introduced at the same time of raising the minimum wage. In order to cope with the segmentation, a new strategy was adopted of stiffening atypical forms of employment. The general plan consists of bringing the structures of various possible types of employment contract closer together, while retaining the flexible labour law which is vital for Poland's competitiveness. At the same time, there was an increase in the number of certain breaches of labour law. The project puts forth the hypothesis that among small businesses and those operating in sectors with low added value, the frequency of labour law violations and use of non-standard forms of employment (particularly civil law contracts) is increasing in general, thus compensating for the rise in labour costs caused by the minimum salary being raised. Among larger businesses and those operating in sectors with higher added value,

however, there has been a growth in the number of labour law violations and use of non-standard forms of employment connected with the employers' desire to adapt to changing demand, which in turn is meant to compensate for the economic risk caused by the changeable post-crisis situation, and to retain the comparative advantage of the Polish economy.

2. Research method applied/methodology I will use the methodology of political/economic sociology in the spirit of the VC paradigm to investigate labour law policy in Poland as a dependent market economy. This will enable me to conceptualise the position of labour law in a broader sociological perspective, and to model the development trajectory of post-crisis labour law policy. For the empirical part of the research, I will use primary and secondary data from the Labour Inspectorate and the Central Statistical Office of Poland in order to conduct a statistical time series analysis in MS Excel and SPSS, and to verify whether there is any correlation between the dynamics of labour law violations, the size and sector of a business, and the added value created per employee. This will allow me to track the segmentation of the labour market and distribution of labour law violations and arrange them according to the type, size and sector of businesses. Then I will be able to verify whether the distribution and dynamics of labour law violations bear any relation to the segmentation and law policy adopted, and also whether they serve to retain the comparative advantage of the Polish economy in line with the VC paradigm.

3. Influence of the expected results on the development of science, civilisation and society The effect of the project will be a better understanding of the problem of labour market segmentation and its relationship to labour law policy. The investigation will enable a verification of whether labour law violations are a fundamental part of segmentation, or whether they constitute a structural problem of the Polish labour market. It will also allow a verification of whether or not labour law violations are aimed at maintaining the international competitiveness which involves keeping labour costs low in a situation where a policy exists to increase labour costs in the weakest part of the labour market. That would mean that the planned policy of keeping the structures of statutory contracts and non-statutory contracts similar (by making statutory contracts more flexible and formalising non-statutory ones) will in reality only lead to higher flexibility of labour law due to it not being adhered to. For this policy to succeed, there must be more effective adherence to labour law.

Project title: ***The influence of the jurisprudence of European constitutional courts and the Court of Justice of the European Union on the shaping of a universal content of the freedom of communication in Europe in the time of technological progress***

Project manager: prof. dr hab. Marek Tadeusz Zubik (m.zubik@wpia.uw.edu.pl)

Realisation period: 2016–2018

Funding body: budget – National Science Centre (NCN)

Programme name: OPUS; 9th edition

Abstract: The basic aim of the project is to investigate the influence of the jurisprudence of European constitutional courts and the Court of Justice of the European Union (henceforth also CJEU) on the understanding of freedom of communication in this time of new teleinformatic technology, in connection with the rulings by those courts between 2008–2014 concerning legislation regulating the retention of telecommunications data. The research will cover rulings by constitutional courts in Austria, Bulgaria, Cyprus, the Czech Republic, Germany, Ireland, Poland, Romania, Slovakia and Slovenia, in other words those which have so far ruled in the matter of national regulations governing the retention of telecommunications data, and in addition the rulings of the CJEU regarding the validity of directive 2006/24/EC regulating this mechanism at the EU level. The research problem is to answer the question of whether the current understanding of protecting the freedom to communicate, as guaranteed in some EU member states' constitutions and the EU Charter of Fundamental Rights, shaped in the days of analogue communication, remains valid in the era of electronic communication and of mass surveillance by state agencies. The research will be carried out with the aid of the methods used in legal science – theoretical-legal, historical-legal, dogmatic, legal-comparative and sociological. As well as the analysis of legislation and statements of doctrine, the basic and most important study material will be court rulings and case files. A questionnaire will be sent to courts and parliamentary bodies of the countries covered by the research, containing questions about the scope and effects of rulings, and their implementation. The responses obtained will be a helpful source for discovering the factual and legal circumstances of the cases. The legal-comparative method will enable an assessment of the effects of the jurisprudence of constitutional courts and of the creation of a universal understanding of the form and scope of the freedom to communicate, and also of the formal and material standards of state interference in that freedom in connection with the retention of telecommunications data. The problem of designating a limit between human rights and freedoms on the one hand, and on the other hand protecting national security using new technologies is one

which will take on more significance in the near future. This is connected with the increasingly common use of modern means of communication and of collecting and processing data, as well as with the use of electronic means of obtaining information, including on a mass scale. The planned research will give an idea of how prepared constitutional courts are for the challenges connected with technological progress and whether they can observe its influence on the interpretation of legislation guaranteeing human rights and freedoms. It will additionally serve to establish the extent to which these bodies conduct creative dialogue among themselves, and the degree to which the rulings of one constitutional court determine the manner and direction of the reasoning of others.