Author: Andrzej W. Wiśniewski
Title: W sprawie statutu personalnego osób prawnych. Uwagi na tle tomu 20A Systemu prawa prywatnego/ The Law Applicable to Legal Persons. Remarks on the Margin of the System of Private Law, Vol. 20a
Source: Kwartalnik Prawa Prywatnego („Quarterly of Private Law")
year: 2015, vol: XXIV, number 1, pages: 215-225
Keywords: International Private Law, System of Private Law, the Law Applicable to Legal Persons
Discipline: Law (Private Law)
Language: Polish
Document type: article
Publication order reference: University of Warsaw, Faculty of Law and Administration

Abstract:

This paper is a necessary reaction to the treatment of the problem of proper law of corporate relationships in the, recently published, Volume 20a of the System of Private Law, edited by M. Pazdan. The Volume deals with Private International Law.

The proper law of corporate relationships which is an essential part of the international corporate law (usually discussed, as pars pro toto, in place of the conflict law applicable to legal persons), is currently the subject of vivid discussions in the European Union, including Poland. Here, the main source of dissention is the choice between the s.c. "real seat" and "statutory seat" as connecting factors. The new Polish Private International Law Act of 2011 failed to expressly solve this dispute, remaining with the enigmatic "seat of the legal person" criterion.

The author of § 19 of the discussed Volume, A. Wowerka, takes a very firm opinion in the matter of the applicable corporate law, clearly favouring the "real seat" doctrine. In his discussion, historical and partly outdated arguments for this doctrine are extensively repeated, while counterarguments are at the best mentioned, never fully presented and never discussed as to their substance. This might create the impression that the "real seat" doctrine is the only serious concept in the field of proper law of corporate relationships.

The picture of the state of the Polish doctrine which the Reader shall obtain through A. Wowerka's treatment of the subject is completely incompatible with facts. The Author is probably the last Mohican in Poland to follow the "real seat" doctrine without reservations, while more than a dozen authorities can be listed among the adversaries of this opinion and important arguments – totally omitted by the Author – are raised against it. The purpose of this paper is to warn the Reader that the partisan treatment of the subject by A. Wowerka cannot be relied upon as a genuine systematic presentation thereof.