

**ARKADIUSZ WUDARSKI (ED.), *DAS GRUNDBUCH
IM EUROPA DES 21. JAHRHUNDERTS*, DUNCKER &
HUMBLLOT, BERLIN, 2016, 783 pp.
347.23:340.5(048.1)**

Comparative research in land law is rare; comparative research in land registration even more so. Mostly due to land law having remained very much locked within the borders of national legal systems, comparative research in this field is often viewed as a purely academic exercise, often poised to conclude that the stark differences between legal systems, attributed to historical accident, do not leave much room for contemplating either commonalities or opposing policies. This large edited volume contemplates both of these issues. Arkadiusz Wudarski, a law professor at the Europa-Universität Viadrina in Frankfurt-Oder, brought together researchers from across Europe to reflect on the state of land registration in the region. The jurisdictions covered include Austria, Belgium, Bosnia and Hercegovina, Croatia, Cyprus, Czechia, England, France, Germany, Greece, Ireland, Italy, Poland, Romania, Scotland, Spain, and Switzerland – a truly remarkable set of jurisdictions.

The book contains twenty-seven academic pieces organized into five parts that thematically explore comparative land registration law. Part I deals with the role of land registries in a legal system, and contains contributions by Peter Makowski, Stefan Hügel, Simon A. A. Cooper, Peter Bydlinski, and Wudarski himself. Wudarski opens with a comparative review of land registration in Germany and Poland, discussing the basics of land registration, including the public character of land registers, and their functions. Particularly interesting are papers by Hügel and Cooper. Hügel discusses the German system, with particular reference to its peculiar *Abstraktionsprinzip*, a doctrine that divorces the conveyance via land registration from contract, thus making land registration a legally isolated – hence more expedient – process. He also goes on to discuss the importance of notaries who represent a crucial cog in the machinery of German land transactions. Simon Cooper discusses the peculiarity of the English registration system in terms of the initial sifting process and the doctrine of rectification as gaining a function of removing blemishes in title. He acknowledges the importance of this intervention in English law, but approaches it critically,

stressing the dangers that are necessarily built into a system which endorses both blemishes and their removal through registration. While both Cooper and Hügel endorse registries as safeguarding mechanisms, their approach is notably different, as are the policies they favor. Hügel sees the land register as a relatively simple post-contractual (and even more importantly, post-notarial) barrier to unwinding land transactions; Cooper sees it as a tool in its own right, participating in shaping property rights. While this is certainly a consequence of divergences in institutional design, it should not be dismissed on a European (or a national) reform level, because it demonstrates the very essence of different approaches to what a land register is expected to be.

Part II presents different systems of land registration emphasizing the rights and facts which may be recorded, featuring contributions by Artur Baranski and Wudarski co-authoring, Aleksandra Buslowicz and Philipp Buslowicz, Mark Jordan, Tatjana Josipović, and Riccardo Omodei Salč. Baranski and Wudarski compare and contrast the Polish and German systems in their treatment of conditional sales of real property, while Jordan compares the English and German systems. Both the Polish and the English systems, unlike the German system, do not make the transfer of ownership conditional upon registration, thus making these systems look to external facts when deciding title allocation, such as additional contractual clauses or possessory title. Jordan is particularly critical toward the notion of a register perfectly capturing actual use, consequently dismissing absolute registry indefeasibility, at least as far as English law is concerned. A similar topic on registration of preliminary contracts in Italian law is discussed by Omodei Salč. Tatjana Josipović discusses the Croatian system, familiar to our readers. Although praising the idea of bona fide protections offered by the land registration system at least since 1997, she proceeds with caution when discussing the peculiarities of Croatian law, both in terms of statutory exceptions (such as for previously socially owned land), and in terms of case law (i.e. in cases of marital property), concluding that Croatian law still has some work waiting ahead in order to achieve the desired level of protection.

Part III thoroughly discusses the reliance principle, i.e. the protection of good faith in land transactions supported by the land register. We are presented with an examination of Austrian (Romana Cierpial-Magor and Wudarski), Czech (Eva Dobrovolna and Baranski), Spanish (Javier Gómez Gállego), English (Emma Lees), Scottish (Kenneth Reid), and Belgian (Vincent Sagaert) law. The position of the authors, all from different jurisdictions, is starkly contrasted, depending on the particular mischief harbored in their home system. Thus, Reid finds fault with the complete protection of acquirers in Scotland under the former “King Midas” legislation, whereas Sagaert laments a nineteenth-century

Belgian approach that leaves all transactions open to challenges, while Cierpi-al-Magor and Wudarski still remain critical even toward the Austrian system labelling it as offering an attenuated protection of bona fide purchasers. Dobrovolna and Baranski give an interesting overview of the difficulties in Czechia, which may be representative of former socialist countries, while Lees confronts difficulties in the currently, in her view, under-regulated and thus flawed English system which lacks the necessary predictability and consistency even regardless of the chosen system of land registration (i.e. Torrens vs. deeds registration). Finally, a role additional to the protection of good faith purchasers is found in the Spanish system in the protection of consumers against potentially abusive transactions. As explained by Gómez Gállego, recent Supreme Court decisions in Spain have held that land registrars are authorized to scrutinize consumer mortgage financing contracts in search of abusive clauses, and reject their registration accordingly.

Part IV deals with the changing needs and consequent land registration policies, with contributions by Eugen Chelaru, Gerald Kohl, Werner Ogris, Wudarski and Baranski, Meliha Powlakić, Tatiana-Eleni Synodinou, and Wudarski. Both Kohl, who discusses the Austrian land register, as well as Ogris, Wudarski and Baranski in their historical analysis of both the Austrian and the German systems, show that even the prototypical Austrian land register is not immune to change due to technological advances that keep pushing it toward obsolescence. Wudarski gives an overview of the very interesting developments in the Polish system, particularly with respect to tackling the issue of mandatory registration in a system of registration of title (as opposed to title by registration), including the shifting of tort liability to unregistered owners. Eugen Chelaru demonstrates by the Romanian example the major difficulties in operating simultaneously in a single country, due to historical divergences, very different land registration systems, and the struggle for their unification. In a similar vein Meliha Powlakić analyses the particularities caused by divergent local land registration policies in post-Dayton Bosnia and Hercegovina, also cross-linking these examples with harmonization schemes, and their discontents, on the EU level.

The final Part V is devoted to exploring the current challenges of modern land registration, with contributions by Julien Dubarry, Ioannis Papadimopoulos, Luz M. Martínez Velencoso, Harald Wilsch, Stephan Wolf and Jonas Mangisch. This part of the book is particularly diverse, as it opens the mixed bag of problems faced by the various European jurisdictions, dependent not only on the different legal traditions and the technical structure of a registry, but also on its state of development.

Dubarry offers a useful insight into French law – it is also the only paper in the volume that focuses on French law – discussing the stark differences

between the French system of both land acquisition and land registration, and its consequences for potential, but highly questionable, European harmonization. In his discussion of the Spanish land registration system, Martínez sheds light on the contested question of the relationship between the land register and constitutional constraints on data sharing due to data protection in an electronic environment. Wilsch gives an interesting demonstration of the challenges faced by the electronic land register in Germany since its early development in 1982, underlining the fact that these challenges stem not only from localized practices within Germany – that do strive toward the “best practice” standard – but also from the idea of moving toward a system of e-conveyancing without, as of yet, full digital support. Contrast this with Papadimopoulos’ piece on the state of land registration in Greece – the only EU system that still lacks a working land registration model even though it was envisaged back in 1995. Such remarkable differences in the state of development, and consequently in the relevant issues, remind us how “modern” land registration actually is. Coupled with the demands of the electronic society we do business in, and its own pace of technological advances, it is little wonder that European land registration systems remain local and struggling.

But only a bird’s-eye view of these various systems, their origins, legacies, and flux reveals the full extent of commonality and diversity of the issues. Thus, kudos goes to Wudarski not only for contributing to the volume with no less than five papers, be it as the sole author or as a co-author, but also for bringing together a large number of experts in this unpretentious area of property law, allowing us to appreciate the field.

The book is a worthy addition to any property lawyer’s library, academic or otherwise. Academics will find useful debates and comparative legal vistas suitable for serious research in land registration topics. Practitioners who practice real estate law will most certainly appreciate a fresh serving of current awareness in their practice. Lawmakers can seek important lessons from the volume in land registration design.

The book is the product of a joint research project conducted by researchers from the European University Viadrina in Frankfurt, the Jan Długosz University in Czeszochowa and the University of Zielona Góra, and is published by Dunc-ker & Humblot as Volume 212 of the International law collection (*Schriften zum Internationalen Recht*).

*Doc. dr. sc. Hano Ernst**

* Dr. sc. Hano Ernst, docent Pravnog fakulteta Sveučilišta u Zagrebu, Zagreb, Hrvatska; hano.ernst@pravo.hr;
ORCID ID: orcid.org/0000-0001-8380-9945