

Bernd H. Oppermann (Ed.)

International Legal Studies

by European Scholars of the ELPIS Network

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Preface

The International Legal Studies (ILeS) of European scholars as being collected in the present edition have been developed versions of lectures in three languages given at academic occasions of the ELPIS university network between 2006 and 2009. Most of these valuable contributions were donated to an European academic audience in the frame of the annual ELPIS European Masters graduation ceremony.

Although without direct connection to the content of these articles, some remarks on the frame conditions might be of use in order to understand the genealogy. The ELPIS network of – meanwhile – 32 European and 5 third-country law faculties exists for about 25 years. ELPIS, an acronym due to some European fashion stands for „European Legal Practice Integrated Studies“ and, in the present Greek language means „hope“ – hope for Europe. Therefore, all very different contributions given in this publication refer in the one way or the other to Europe.

Besides academic exchange of students and scholars, ELPIS has initiated several projects for developing European modules, European intensive courses, pilot projects (TEMPUS), an undergraduate programme for law (MLE), and a graduate programme (LL.M. Eur). The latter has given the frame for the annual graduation ceremony partly conserved in this book.

Designed as joint degree of the Faculties of Law of the Universities Hanover, Le Havre, Lisbon and Rouen, the master degree „LL.M. Eur“ represents a new product of European education. The master programme requires two years at two different faculties of the consortium. The aim is the acquisition and consolidation of comparative legal and cultural skills and proficiency in working with various European legal systems. Therefore, the distinguishing attribute of the „LL.M. Eur – European Legal Practice“ programme focuses on the international element of the studies. The courses of the first two semesters are conducted at one of the four European target universities of the consortium. The third semester is spent at another university within the consortium and the fourth semester concentrates on the completion and submission of the Master’s thesis at the primary university. Therefore, the programme represents an international postgraduate course of studies in law, rather than a professional qualification in a specific field. For that reason, the curriculum of 120 credits for 2 years is composed of specific obligatory courses (some specific graduate courses and language courses, obligatory courses

chosen by specific categories (like comparative law, and courses of free choice). In this respect, over and above the adherence to the prescribed level of proficiency, students are given the opportunity to determine independently their academic focus. The international element is achieved through instruction in the native languages of two different legal systems (German, French or Portuguese). The programme is primarily directed towards international applicants from universities outside of Europe, who are interested in studying at two universities of the consortium. In addition, the programme aims to attract European candidates who wish to study at two of the universities of the consortium. The requirement of spending two years at different universities abroad is mandatory.

The LL.M. programme has been supported since its pioneer generation under ERASMUS MUNDUS I by generous grants for its international students and scholars. Even more, the cooperation with third country institutions for legal education in Brasilia, China, India, and Thailand has been developed during recent years in cooperation and with grants of the European Union. The programme is competently backed and evaluated by the European enforcement agency EACEA.

Untouched by the idiom „He who pays the piper, calls the tune“, the articles of European scholars collected in this booklet are obviously not devoted to the purpose of taking an opportunistic approach of EU Europe. Moreover, the critical view appears to be prevailing. And if there are political implications, they turn in quite different directions – almost as Europe itself trivially appears. However, its precious side-effect is the obvious presence of European space for higher education, academic exchange, and even more the creation of landmarks beyond national borders.

In substance, a famous entree on European harmonisation in the context of internationalisation is provided by the broad view of the legal historian at Le Havre, Prof. Caroula Argyriadis-Kervegan. Prof. Argyriadis is for herself a true European since she has taken her academic way from Greece via the German Max-Planck-Institute at Frankfurt/Main towards her chair at France. A more specialised and French constitutional approach is taken by Prof. Guillet, as well from Le Havre, who catches up on the fascinating debate of French Laicism controversially, which would still be unthinkable in a few other European countries.

The subject of globalisation and internationalisation of law serves the Rouenese scholar Prof. Charlotte Girard to develop some remarkable thoughts on the debate of scientific method(s) of legal comparison.

The publication of two articles of the agile Portuguese scholar Prof. Vasco Pereira da Silva on the subject of Europeanization of public and administrative law in one and the same edition might appear unusual at a first glance. The distance of

two years between both lectures, however, enables a multi-dimensional view on the subject matter and justifies the approach. Problems of procedural law and contract law in the frame of arbitration clauses are treated by the article of Prof. Andreas Schwartze, Innsbruck, and attractively resolved in close reference to European jurisdiction. The Spanish procedural law scholar Prof. Lorena Bachmaier-Winter, Madrid, devotes her concentrated attention to the European enforcement order for uncontested claims in relation to national modes of enforcement of judgments, court settlements, or respective instruments.

The article of Prof. Hilmar Fenge, Hanover, employs his rich and long experience in procedural law, European law and comparative law in order to open a fascinating academic view on the source quality of judge-made law which appears to be a specific problem in the Europe of different legal traditions. The need for legal certainty within the European Union transforms this very subject into a matter of consistent interpretation controversially debated by the editor.

Last but not least, it should be notified that the present edition of articles hides diversity in time, space, and communication. Most obvious is the use of three different languages. Although the working language of the ELPIS network is English, and everyone of the authors could have written his article in English language, we believe that it has some value in itself to use a specific language in order to say specific things. Since we have limited the use of „foreign“ languages down to official languages of the European Union, the edition should remain consumable to the European academic recipient. The geographic diversity is due to the fact that the lectures founding the articles in this book have been held at geographically different locations like Athens, Hanover, Lisbon, Le Havre and Rouen. The diversity is justified by the aspect that the locations are commonly European. The diversity in time of the lectures (November 2006 – April 2009) should be kept in mind for different reasons. Said diversity itself, though, has been identified and interpreted by the two articles of Prof. Pereira da Silva.

During recent years, the ELPIS network has already initiated a few other publications. The present edition is supposed to continue this informal tradition by opening a series of International Legal Studies (ILeS) by European scholars of ELPIS.

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