

International Legal Studies II  
by European Scholars of the ELPIS Network



*Bernd H. Oppermann (Ed.)*

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## Editor's Note

This second volume of International Legal Studies (ILeS) is a successor to the first edition of ILeS, which was first issued and published in 2009. It contains a collection of articles contributed by various European and International scholars, deriving from lectures which were given in three languages at academic events of the ELPIS Law faculty network between 2009 and 2012. Many of these contributions were delivered to an audience of European academics as part of the annual symposium, which precedes the graduation ceremony for the participants of the “European Legal Practice LL.M. joint degree” (ELPIS II) program. Some of the lectures were also presented separately as part of teaching exchanges within the ELPIS network.

The ELPIS network has existed for almost 30 years. It currently consists of 34 European and 3 third-country Law faculties and continues to expand, with its youngest members including the Symbiosis Law School of Pune (India), UNIPLAC University (Brazil), and Mykolas Romeris University of Vilnius. ELPIS, an acronym for “European Legal Practice Integrated Studies”, means “hope” in Greek and therefore symbolizes hope for Europe. As a result, each of the contributions given in this publication refers in some way to Europe.

Besides the academic exchange of students and scholars, the ELPIS network has further initiated several projects. These include the development of: European modules, intensive courses, summer schools, moot courts, and legal clinics in Russia (TEMPUS). These are in addition to the traditional undergraduate Law program ELPIS I (MLE/CLE) and the graduate program ELPIS II (LL.M. joint degree), the latter of which is an ERASMUS MUNDUS MASTERS COURSE (EMMC).

Originally designed as a joint degree of the Law faculties of the universities of Rouen, Lisbon, Le Havre, and Hanover, the ELPIS II EMMC still represents a relatively new product of European education. It aims to enable students to acquire and consolidate their comparative legal and cultural skills, as well as improve their proficiency in working with various European legal systems.

The “LL.M. joint degree European Legal Practice” program has a distinct focus upon the international aspect of legal studies, as it requires students to spend two years in two different Law faculties. The first two semesters of the masters program are conducted at one of the four European target universities of the ELPIS consortium, which comprise the universities of Lisbon, Rouen, Hanover, and Vilnius. The

third semester is spent at another university within the consortium, which further includes SYMBIOSIS (Pune, India), UNIPLAC (Brasilia, Brazil) and Jiao Tong (Shanghai, China). The fourth semester is then devoted towards the completion of the student's thesis at their primary target university.

The program therefore represents a comprehensive, international postgraduate course in Law, rather than a mere specialization within a single legal field. The curriculum of 120 credits for the two-years program is composed of some compulsory courses (specific graduate Law and language courses), compulsory courses chosen by the student from specific categories (national law, European law, comparative law), and courses which can be freely chosen according to the individual student's field of interest. In this respect, students are given the opportunity to determine their academic focus independently. The international element is furthermore achieved through teaching in the native languages of two different legal systems within the consortium. Whilst the program is primarily directed towards international applicants from universities outside of Europe, the EMMC also aims to attract European candidates who wish to specialize on cross-border and international matters.

The LL.M. Eur. program has been supported under the ERASMUS MUNDUS I scheme by generous grants for its international students and scholars. Moreover, cooperation with third country legal education institutions in Brazil, China, India and Thailand has been further deepened in recent years through the support of the European Union; particularly as the program is supported and evaluated by the European enforcement agency (EACEA). Furthermore, the components of the ELPIS II program are also accredited according to national standards. For example, the German part of the joint degree program has been accredited under the supervision of the German agency ZEvA.

After running the program for the last nine years, many EMMC alumni have moved on to pursue successful careers in academia, entered into positions in international organizations, and have worked for prestigious international law firms. This is a significant achievement which evidences the continuing success of this project, despite the challenges posed by opposition from more regionally-minded pressure groups.

As has already been noted in the first edition of *International Legal Studies of European scholars*, the articles collected in this publication are not devoted to the purpose of taking an opportunistic approach towards promoting the European Union. In fact, a variety of rather critical opinions are developed by some contributors in this edition. Nevertheless, the inevitable side-effect of this publication is

to illustrate the evident opportunity for cooperation and collaboration in higher education which goes beyond national borders.

Concerning the actual content of this publication, Dr Boris Balog (Bratislava) gives a deeper insight into the Slovakian version of a constitutionally-balanced budget provision; an area which has been significantly influenced by the respective German instrument. Historical insights into the ELPIS network itself are contributed by Prof. Sylvia Calmes-Brunet (Rouen). Meanwhile, the General Prosecutor and Professor at the faculty of Law of UNIPLAC (Brazil), Diaulas Costa Ribeiro, focuses on the Latin American view upon the subject of Urban and domestic violence, which has itself turned into a global problem within the current crisis. Professor Hilmar Fenge (Hanover), the honored founder of the ELPIS network, once more illustrates his extraordinary legal expertise, this time in the field of comparative law. In this edition he analyses how the divergences between European legal systems have caused undesired obstacles to the process of further European harmonization.

Prof. Carsten Momsen (Hanover) questions the lawfulness of a dismissal based on whistle-blowing and thereby also touches – *lato sensu* – on aspects of social law. A further approach to the latter subject is given by Prof. Carole Nivard (Rouen) about the European Social Charter *in toto*. Another self-evidently European topic regarding the inconspicuous European Union Civil Service Tribunal is presented by Dr. Dimitrios Parashu (Hanover). A further article by the latter contributor provides comparative insights into constitutional developments in Indonesia and the Federal Republic of Germany; a product of the recent attempt to strengthen ties between Leibniz University of Hanover and Javanese institutions of higher education.

Prof. Reinhard Pauling (Würzburg/Tiflis) analyses the status quo of parliamentary practice in Strasbourg, a field of his own practical expertise, while the recent chairman of the ELPIS consortium, Prof. Vasco Pereira da Silva (Lisbon), offers a grand view on administrative law in Europe with a specific focus on Portuguese developments. PD Dr. Klaus Zapka (Göttingen) analyses certain elements of the European Court of Justice's judicature and considers its economic function within the development of the Union. The renowned criminologist Prof. Bernd-Dieter Meier (Hanover) provides a deep reflection upon public reception of the death penalty. Meanwhile, Prof. Bernd Oppermann focuses on the issue of the borderline between consumer protection and European markets law.

Finally, a few further comments regarding the structure of this publication should be made. This is because, in contrast to its predecessor, this edition omits references to any differences in time, space and communication between each of

the articles. The diversity in communication is illustrated through being presented in three different languages. Although the working language of the ELPIS network is English and each of the authors could have written their articles in English, it is clear that there is an evident intrinsic value in using a specific language in order to discuss particular legal issues. Since we have limited the use of “foreign” languages to official languages of the European Union, this edition should remain consumable to all European academics. The geographical diversity of this publication is due to the fact that the lectures founding the articles in this book have been held at such different locations as Hanover, Le Havre, Pune and Rouen. The differences in time between the various lectures (November 2009 – November 2012), however, should be kept in mind for different reasons. Due to their high degree of variety and color, an alphanumeric order in sorting the articles has been applied.

During recent years, the ELPIS network has also produced several other publications. The present edition is intended to further deepen this informal tradition by continuing a series of International Legal Studies (ILeS) by European and International scholars of ELPIS.

Hanover, April 2013



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