European Review of Private Law 2-2013 [419–422] © Kluwer Law International BV. Printed in the Great Britain.

Editorial

Latin America Goes PECL*

1. For an administrative or criminal lawyer, one of the most interesting elements of European harmonization of *private* law is the predominance of private groups of academics in the process. Paradigmatic is the work of Ole Lando's *Commission on European Contract Law*. It is now inconceivable that at a European law faculty a doctorate in Contract Law is awarded, without the candidate's discussing the *Principles of European Contract Law* (PECL). Despite its success, there are some flaws in *PECL's* history. The minutes of the Commission's meetings are not publicly available. The materials that were the basis of *PECL* have not been published separately.[1] Alternative solutions have not always been spelled out in detail.[2] A public debate has not preceded the publication of texts.[3] A suggestion of Martijn Hesselink to promote such debates has consisted in publishing a questionnaire preceding the final meeting.[4] He drew inspiration for this suggestion from the experience in his native country, the Netherlands, where Eduard Maurits Meijers devised precisely such a questionnaire method to prepare the new Dutch Civil Code. Although the questions were formally addressed to the Parliament, they in fact also served to find out what academics, business interests, and the public at large thought of the proposed changes.

2. Now the *Principles of European Contract Law* are being emulated in Latin America. On that continent, academics from seven countries have joined forces to prepare *Principios Latinoamericanos de derecho de los contratos*. The first activity has been the publication of a questionnaire, accompanied by a lengthy commentary.[5] This deals with the law of seven nations: Argentina, Brazil, Chile, Colombia, Paraguay, Uruguay, and Venezuela. The inspiration for the project comes from France. There the *Fondation pour le droit continental* is

---

* The author is indebted to Dr Rodrigo Momberg Uribe (Valdivia, Chile) for his precious information.

1 An example of a private group that has been very active in publishing its preparatory materials has been the Koziol/Spier group on European tort law. This group has published some 50 books containing its research papers.

2 This is the nice thing about Gandolfi's *Avant-Projet*, in which he also discusses options that he did not choose.

3 Even public debates *after* publication have been rare.

4 RAAD VAN STATE (COUNCIL OF STATE), *Verslag symposium nationale wetsfamilies en EU-wetgeving*, 19 Jun. 2008.

5 C. PIZARRO WILSON (coordinator), *El derecho de los contratos en Latinoamérica (bases para unos principios de derecho delos contratos)*, Fundación Fernando Fueyo Laneri, Santiago de Chile 2012, 639 p. The reports are available at http://www.fundacionfueyo.udp.cl/catedra_derecho_continental.php.

promoting a bigger role for European continental law.[6] In Rennes, the *Fondation* organized a conference on changes in contract law in France and Latin America.[7] The Latin Americans attending the conference became so enthusiastic that they decided to elaborate the idea of Latin American *Principles* at a meeting in Bogota. One of their first findings was that Latin American lawyers mutually knew little about other Latin American systems. In order to remedy this, the present questionnaire was prepared. The language is Spanish and (for Brazil) Portuguese.

The present volume is not only useful for Latin American jurists. The European reader will also profit from it. Of course many Europeans are familiar with developments in Latin American legislation. The recent codifications of private law in Brazil and Paraguay, the class actions in Brazil: they have not remained unnoticed on the old continent. However, much does remain unknown, especially in the areas of case law and doctrinal works. I must confess that I was myself not familiar with the legislation on *iustum pretium (laesio enormis)* in countries such as Argentina (since 1968), Brazil, Colombia, Paraguay, and Venezuela – unlike Chile and Uruguay. Nor did I know that good faith and equity only entered Argentinean legislation in 1968.

3. What a European reader might conceivably have wished would have been more explicit attention for the methodology. Why have these seven Latin American nations been selected – and not Bolivia, Ecuador, Peru, and the three Guyana's with their mixed (Dutch, English, and French) backgrounds or even the Middle American nations? How was the questionnaire devised? Thus, from a European point of view, it would have been interesting to include third parties and contracts, agency, etc. Also the style of the various chapters is different on the point of mentioning case law by lower courts, the use of comparative law, etc.

4. Notheless, the basis now is there. European Review of Private Law (ERPL) welcomes Latin America on the Principles train. We are looking forward to receiving the first fruits of academic work from that continent, which may also serve to make Europeans more aware of what is happening in Latin American legislation, case law, and doctrinal works. We, on the other hand, are eagerly awaiting an opportunity to inform Latin Americans about the progressive importance of principles in Europe. Different languages should not impede these contacts.

5. What else does this issue of ERPL include? First, there is a paper by Francesco Parisi (Minnesota/Bologna), Marta Cenini (Milano), and Barbara Luppi (Modena) on enforcing bilateral promises. This is one of the first papers in ERPL

---

6 See, for a critical account of the *Fondation's* activities, C. VON BAR, in *Liber amicorum Ole Lando*, DJØF, Copenhagen 2012, pp. 13-25, and S. VOGENAUER, 'Regulatory Competition through Choice of Contract Law and Choice of Forum in Europe, Theory and Evidence', *ERPL* 2013, pp. 13-78.

7 See *Revue de droit des contrats* 2010, pp. 1035 *et seq*.

written from a law and economics perspective. Two practical issues are approached by the authors: should a breaching promisor be allowed to force the performance of his non-breaching promisee? Moreover, should a breaching party be able to collect damages in a contract if his counterpart was also in breach?

6. Two papers address the issue of collective action. Advocate-General at the European Court of Justice Verica Trstenjak has been very active in cases concerning consumer protection. Now that legislative action by the EU as was envisaged until recently does not appear forthcoming, it is of special interest how the European Court of Justice (ECJ) handles this matter. Kai Purnhagen (München) addresses the issue from the perspective of insurance law.

7. The question whether legal systems have a separate national identity is approached by Leo Jaervinen from Finland. Janne Kaisto and Tapani Lohi (Helsinki) address the issue of transfer of ownership by unilateral juridical act, as regulated in Book VIII of the Draft Common Frame of Reference.

8. This issue contains two case notes, one as to a case decided by the French *Cour de cassation* on the pharmaceutical product diethylstilbestrol (DES), edited by Florence G'sell, the other on the ECJ case of *Content Services Ltd* v. *Bundesarbeitkammer*, annotated by Catalina Goanta from Maastricht University.

9. The 2013-2 issue also carries two book reviews.

10. Finally, thanks to our Polish member in the Advisory Board, Eva Baginska, we have an *Erfahrungsbericht* by Philippe Avramov fom the University of Geneva on a conference on controversial notions of damage held in Lausanne under the promising title *Quel dommage?*.

Ewoud Hondius