

## Editorial

### Fifty Years *Tijdschrift Voor Privaatrecht*

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EWOUT HONDIUS

#### 1. Introduction

In November 1963, Belgium's Jan Ronse and Marcel Storme – in the presence of their fellow academics Willy Delva and Jacques Matthijs and Dutch law professors Jaap Beekhuis, Jan Drion, and Adriaan Pitlo – founded the Dutch language law review *Tijdschrift voor Privaatrecht* (*TPR*). On 13 March 1964, the first issue of *TPR* was published. Thus, it was that, on 13 March 2014, *TPR* celebrated its first 50 years. Jan Ronse passed away in 1988, but Marcel Storme remains firmly entrenched as its Director, or rather *remained* entrenched, because shortly before this year's *ides* of March he stepped down as Director and handed over the leadership to two colleagues.

*TPR* has always had firm links with other Dutch-speaking jurisdictions, such as The Netherlands and South Africa. There also is a link with this review, which is why the celebration of this *cinquantenaire* should also be featured in *European Review of Private Law* (*ERPL*). The link is that Marcel Storme was one of the two Editors-in-Chief of *ERPL* during its first 15 years. Another link is that *TPR* sponsored *ERPL* financially during its formative years. In this Editorial, I will not go into these links in any detail but will, instead, comment on the success of *TPR* and briefly sketch some of the other activities undertaken under the umbrella of *TPR*. This overview may provide some inspiration for editors of and subscribers to law reviews in the present era of diminishing subscriptions and income from advertising.

Law review editors are quite used to meetings with their publishers where they are told that the readership has once again dwindled and that an effort must be made to keep the review going. No such problems have ever been encountered by *TPR*, which has developed a number of instruments to keep the family together. In Belgium, at least in its Dutch-speaking part, *TPR* is not just a law review. It has become an institution. It is only one of three Flemish/bilingual Belgian law reviews with an A-ranking, a quality assessment provided by the decree of 28 July 2006 by the *Vlaamse Interuniversitaire Raad* (Flemish Interuniversities Council). It publishes papers that often, if not usually, are of a comparative nature (No. 2) and current surveys that read like handbooks (No. 3). It hands out presents on the occasion of festive celebrations (No. 4), organizes family outings (No. 5), and sponsors faculty chairs (No. 6). The greatest credit for this should be given to Marcel Storme (No. 7). However, other Editors have also

contributed to its editorial success. Walter Van Gerven, a former Advocate-General with the European Court of Justice, provides the link with European law. Yves Le Leu is a French-speaking member of the Board of Editors. An Advisory Board, consisting entirely of Dutch and South African members, embodies the review's international character. None of the members of the two boards have to fear retirement. *TPR* had, long before Mangold, simply done away with a retirement age. The oldest member, former Leyden Dean Werner Haardt, recently passed away at the age of 100.

This Editorial, as usual, also contains a brief survey of the contents of this issue of *ERPL* (Nos 8-10).

## 2. Content

The main subject matter of *TPR* is its papers. This in itself is nothing very special. What sets these papers apart from publications in other law reviews, however, is their comparative nature. More often than not, authors provide a comparison between Belgian law and the laws of England, France, Germany, and the Netherlands. A recent example is Ariadne Van Den Broeck's paper on joint and several liability.<sup>1</sup> The paper deals extensively with Belgian, Dutch, French, and German law – although in the case of Germany the author would have done well to refer to Sonja Meier and, as regards the Netherlands, to the follow-up to the DES cases that culminated in the Collective Mass Settlement Act – as well as some European texts. It concludes with an intriguing proposal for Belgian law: the introduction of liability for the entire amount without any secondary effects.

But then, who reads Dutch language papers, apart from some 20 million Dutch, Flemish, South African, and Surinam lawyers? Well, the papers are accompanied by abstracts in English, French, German, and Spanish. This, together with the footnotes, enables non-Dutch language readers to get the gist of the argument. As a joint Editor-in-Chief of a law review that publishes abstracts in only three languages, I can only express my admiration for a law review that consistently manages to publish abstracts in five languages (including Dutch).

## 3. Chronicles

The real trademark<sup>2</sup> of *TPR* is its current surveys. These consist of lengthy surveys of Belgian – and sometimes Dutch or European – legislation, case law, and doctrinal developments in a specific domain, such as intellectual property. Areas covered by these surveys include arbitration, civil procedure, commercial,

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1 A. VAN DEN BROECK, 'De relevantie van het onderscheid tussen de hoofdelijkheid en de *in solidum* gehoudenheid in het domein van de medeaansprakelijkheid', *TPR (Trade Practices Reports)* 2013, pp. 953-1033.

2 This terminology was coined by a Member of our Advisory Board Hein Kötz, who once aptly remarked that case notes are the trademark of *ERPL*.

company, compensation of damages, competition, copyright, professional ethics, evidence, family, health, insolvency, insurance, judicial organization, labour, maritime, obligations, patents, personal securities, international private law, social security, specific contracts, succession, and torts. They are edited by the best experts in the field. They usually cover a period of four or more years and therefore constitute a treasure trove of data on new developments from a long-term perspective.

This is not a trademark without its pitfalls, one of these being that Belgian law faculties, in common with others, no longer consider current surveys as a Grade A form of research. This makes it more difficult to find authors for this part of *TPR*. So far, however, the Director has been able to attract suitable *chroniqueurs* for *TPR*.

#### 4. Fringe Benefits

One of the gifts of the Storme family to the periodical is its landmark celebrations. Whenever *TPR*, the *ERPL*, or any other venture in which they participate has reached its first five years, or any multiple thereof, the time is ripe for a celebration. This may be a ceremonial meeting in the *Aula* of the University of Gent or in the city's Bijloke Museum. However, it also often consists of a present that *TPR* offers its readers. The most recent such gift has been *Highest Courts in Europe/A Historical Portrait*, edited by Alain Wijffels and Remco van Rhee.<sup>3</sup> This book consists of two parts. Part I, introduced by Wijffels, contains introductions to the highest courts in Italy (Mario Ascheri, Siena, Paolo Alvazzi del Frate, Rome), France (Wijffels), Germany (Eva Ortlieb, Vienna, Anette Baumann, Gießen, Werner Ogris, Vienna), Scandinavia (Kjell Modéer, Lund), Switzerland (Michele Luminati, Luzern), Spain and Portugal (Ignacio Czeguhn, Berlin, Antonio Sánchez Aranda, Granada, Alvaro Pérez-Ragone, Valparaíso, Matthew Mirone), Poland and Lithuania (Wacław Uruszcak), Russia (Vladimir Yarkov), England (Anthony Musson, Chantal Stebbings), Scotland (Mark Godfrey, John Blackie), the Low Countries (Van Rhee, Georges Martyn, Gent), South East Europe (Marko Petrak, Zagreb), and Turkey (Ruth Miller, Boston). Part 2, following an introduction by Van Rhee, deals with international courts (Raymond Kubben, Tilburg), the European Court of Justice (Hildegard Schneider, Maastricht), and the European Court on Human Rights (Alan Uzelac, Zagreb).

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3 A.A. WIJFFELS & C.H. VAN RHEE (eds), *European Supreme Courts/A Portrait through History*, Third Millennium, London 2013, 288 p. The Dutch version offered to subscribers to *TPR* has the title *Hoogste gerechtshoven in Europa/Een historisch portret*, Maklu, Antwerpen 2013, 288 p.

## 5. The *TPR* Family

Once every year, the authors of papers that have been published in *TPR* are invited for a *dag in het groen* (day in green surroundings). Thus, in 2011, Jan Smits lectured on the future of legal education in the picturesque village of Ooidonk. The name alone conjures up one of these rustic Flemish landscapes where painters can be found at every corner of the meandering rivers. This day, usually in September, is used to invite all authors and their (grand)children for a day out. Needless to say that in Belgium this means first-class wining and dining. One might argue that this is the closest one can get to creating a *TPR* family.

## 6. *TPR* Chairs

One of the most innovative ideas produced by Marcel Storme has been the introduction of the so-called *TPR* chairs. These are endowed positions with law faculties in Belgium, the Netherlands, and South Africa, where the receiving faculty sponsors a visitor from another country for a limited period. The visiting *TPR* professor is expected to give an inaugural lecture, later to be published in *TPR*, but is otherwise free to spend this period doing research or teaching. Thus, for example, over the past decade the *TPR* chairs at the University of Ghent have been taken up in 2004–2005 by Konstantinos Kerameus (Athens), in 2005–2006 by Sir Francis Jacobs (at the time Advocate-General at the European Court of Justice), in 2006–2007 by Tim Koopmans (Leiden), in 2007–2008 by Manfred Weiss (Frankfurt), in 2008–2009 by Guido Ferrarini (Genova), in 2009–2010 by Masha Antokolskaia (Amsterdam), in 2010–2011 by Antonio Gidi (Houston), and in 2011–2012 by Laurens Winkel (Rotterdam).

## 7. Marcel Storme: In Search of Justice

This Editorial focuses on the *TPR* and not its inventor. However, it would be inappropriate to leave out the person of *Marcel Storme* altogether. Recently, Marcel Storme published an autobiography: *Een levenslange queeste naar gerechtigheid* (*A Lifelong Quest for Justice*). The book consists of three parts: judicial policy, a multi-faceted career (attorney, teacher, legislator, and Judge), and ‘Agents of peaceful change’.

In the first part of his book, Storme enters a plea against the Nuremberg trials: ‘Even the worst criminal is entitled to a *fair trial*. *That includes proceedings held in the defendant’s own language and not only in English* (‘*a language which on the European continent is wholly inadequate for procedural purposes*’). Storme not only debunks the myth of the supremacy of English but also rebukes legislatures, more especially that of Belgium, for legislative aberrations such as the 2007 Medical Damages Act, which had to be withdrawn because of its many mistakes. The second part is devoted to the Marcel Storme’s ‘three careers’: his life as an attorney, as a law teacher, and as a practitioner. The third part is

enlivened by a number of radical pronouncements as to the status of universities, the bachelor master model, and multiple choice examinations.<sup>4</sup>

## 8. Articles

Turning our attention now to the current issue of *ERPL*, what may the reader expect? First, Paul Verbruggen (Nijmegen) discusses the impact of primary EU law on private law relationships. He argues that the position whereby the European Court of Justice denies horizontal direct effect to the freedom of goods, while awarding it to the freedom of services, is conceptually unclear and impairs the uniform interpretation of EU law on freedom of movement. Next, Dorothy Gruyaert and Sander Van Loock (both Leuven) comment on the UK Supreme Court decision on Lehman Brothers client money. This decision came after, as the authors observe, ‘an intensely fought three-year legal battle’. Not only does the paper raise some interesting points as to the common law/civil law divide on property law, it also focuses on the Markets in Financial Instruments Directive (MIFID) and puts the UK decision in a continental perspective.

## 9. Case Note

The case notes featured in this issue concern two French *arrêts* handed down by the mixed chamber of the French *Cour de cassation*. It was Bénédicte Fauvarque-Cosson (Paris II), who initially drew our attention to the cases on linked contracts. Ilse Samoy (Leuven) co-ordinated the case notes, which originate from France, Belgium, the Netherlands, and Germany. Their origins are reflected in the fact that the notes have been written in all three *ERPL* languages.

## 10. Conference Report

Last year, Croatia joined the European Union as the 28th Member State. Viola Heutger (The Hague) reports on a conference on Croatia and European Private Law, held in The Hague in 2013.

## 11. Book Reviews

This issue carries two book reviews. Ingeborg Schwenzer (Basel) draws our attention to a comparative book by Thomas Lundmark (Münster) on *Charting the Divide between Common and Civil Law*. Finally, Allard Ringnalda (Utrecht), a regular contributor on copyright law, reviews *Digital Libraries: Reconciling Copyright Law and Cultural Heritage Policy*.

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4 MARCEL STORME, *Storme(n) over recht en gerecht/60 jaar leven met justitie*, Story-Scientia, Gent 2010, 344 p.