

Editorial/Éditorial/Redaktionell

WILKOMMEN IN WIEN!

1. Vienna, Here We Come!

Bristol 1998, Brisbane 2002, Utrecht 2006, Washington 2010,...Vienna 2014, here we come! The Austrian capital will, of course, be the venue for the forthcoming 19th International Congress of Comparative Law, to be held from 20 to 26 July 2014. Between 500 and 1,000 comparative lawyers from all over the world are expected to meet in Austria in order to discuss comparative law issues. The steering committee, consisting of Professors Bea Verschraegen and Martin Schauer, and the Board of the International Academy are prepared to welcome us all. In this Editorial, I propose a preview of what we may expect on the banks of the Danube – in addition, of course, to renewing the various friendships forged among our comparative law community.

2. What the Congress Is About

The first congress of the International Academy of Comparative Law in which I participated was in Pescara (Italy) in 1970. To this day I have kept the congress programme (including details of a performance by the then famous *I musici* ensemble), and as I compared this with the current Vienna Congress, it struck me that the blueprint has remained virtually unchanged these past forty-four years. Participants continue to be welcomed on Sunday. The subsequent Monday, Tuesday, Thursday, and Friday, as well as Saturday morning, are devoted to working sessions and plenary meetings. Wednesday is, traditionally, excursion day. In between, there are many fringe meetings.

3. The Scramble to Have One's Subject Included in the Agenda

What is the congress about? Let me start by giving you an overview of those topics that have been classified as civil law, commercial law, private international law, air and maritime law, intellectual property, and civil procedure. They are (with the names of the general reporters mentioned in brackets) 'Disgorgement of profits' (André Janssen and your joint Editor-in-Chief), 'Review and recognition of foreign arbitral awards – the application of the New York Convention by the national courts' (George Bermann), 'The law of close corporations' (Holger Fleischer), 'The civil law effects of corruption in international commercial contracts' (Michael Joachim Bonell and Olaf Meyer), 'Whistleblowing' (Gregor Thüsing), 'Security interests burdening transport vehicles' (Souchirou Kozuka),

‘Mediation, more particularly, cross-border and judicial mediation’(Carlos Esplugues and Louis Marquis), ‘License contracts, free software and creative commons’ (Axel Metzger), ‘Personal guarantees between commercial law and consumer’ (Andreas Schwartze), ‘The effects of financial crises on the binding force of contracts: renegotiation, rescission or revision’ (Rona Serozan), ‘Contractualisation of family law’ (Frederick Swennen), ‘Proof of and information about foreign law’ (Yuko Nishitani), ‘The protection of minority investors and the compensation of their losses’ (Martin Gelter), ‘Secondary liability of service providers’ (Graeme Dinwoodie), ‘The influence of human rights and basic rights in private law’ (Verica Trstenjak), and ‘Company law and the law of succession’ (Susanne Kalss).

This is not all the congress has to offer. There also are the general topics, as well as some public international and constitutional law which hides private law subjects such as ‘Foreign precedents in constitutional litigation’ (Marie-Claire Ponthoreau), ‘Judicial rulings with prospective effect’ (Eva Steiner), ‘The UN Convention on the rights of the child and its implementation in national law’ (Olga Cvejić Jančić), ‘The government of judges and democracy’ (Sophie Turenne), ‘The organisation of legal professions’ (Martin Henssler), ‘Damages for the infringement of human rights’ (Ewa Baginska), ‘The internationalisation of legal education’ (William Van Caenegem and Christophe Jamin), and ‘The European Law Institute – vision and activities’ (Christiane Wendehorst).

How is this selection made? In order to find out, we should go two or three years back in time, when, at the usual Paris meeting, the Academy selected some forty topics from more than 200 proposals. Carefully prepared by the Secretary General – at the time Jürgen Basedow – the meeting proceeds as quickly as possible, which does not prevent a mere quarter of all topics being dealt with by lunch time. And as to the proposed general reporters, are all continents represented here? Are the main linguistic blocs not underrepresented? Is there a careful mix of old and young? On each occasion, I am struck with admiration for the Congress Secretariat for the even-handed way in which they handle these issues.

4. Young Academics

When one goes to church in my country, the Netherlands, a source of constant surprise – at least for foreign visitors – is the large number of elderly worshippers. Likewise in our concert halls, classical concerts are attended mainly by pensioners. Whether this is a problem and, if it is, how to solve it, we shall leave to the churches and concert hall managers. However, when a similar phenomenon occurs in the field of comparative law, the alarm bells should start to ring. This may indeed represent a real threat for our *Nachwuchs*. At previous congresses of the Academy, it has been precisely this problem of absent youth that has manifested itself. Individual countries such as Italy appear to have been among the few that took notice and provided their junior colleagues with financial

incentives. Perhaps this response should be made at a wider level. Many professional organizations have obtained excellent results from the establishment of such 'Young Academies'. Could this be an issue for the Board to tackle at some stage?

5. English versus French

Another issue that is certain to be discussed over the next few congresses is the languages question. Although the Academy was established in The Hague under Dutch law, its two official languages are English and French. This means that any submitted work expressed in French will not be translated into English or vice versa. This has increasingly become a problem for those participants who never learned any French. The French, however, are adamant that French should remain an official language, and their representatives frequently check that at least all French reporters express themselves in French. They have the advantage that the Academy has its seat in France and is partially financed by the French.

6. The Old Continent and New Jurisdictions

With the exception of Japan and South Africa, few participants come from Africa, Asia, and Australasia. This means that the Academy congresses are less representative of the world's legal systems than a true comparatist would wish. This once again is an issue which this Editorial can merely raise without offering a solution.

7. Publication of Reports

One issue which has been resolved is that of the publication of the Congress reports. Until recently, only horizontal volumes, such as the 'Finnish national reports to the XIXth Congress', were published. However gratifying this may be to Finland-watchers, your rank and file comparatist will probably prefer a vertical volume. This consists of the general report as well as all national reports on the subject under review. Naturally, this does not imply that horizontal volumes have been banned. What it does mean, however, is that, fortunately, the Academy now officially seeks to have vertical volumes published under its auspices.

8. AIDC and ERPL

There has been a long-standing relationship between the International Academy of Comparative Law and ERPL. Attending the Vienna event, you may occasionally see members of the ERPL Board eagerly listening in on the debates to find out whether or not the subject matter in question would be of sufficient interest to our readers. Indeed, if you read the ERPL issues that followed the Washington

conference, you will find Macarena Saez's general report on same-sex marriage¹ and, a few issues later, the general report and eight national reports on the complexity of transnational sources.²

9. Articles

Turning now to the contents of this issue, we start with a paper by Thibault Gisclard on 'Consent in licences of personality rights'. This is followed by the paper authored by Philip Ridder and Marc-Philippe Weller entitled 'Unforeseen Circumstances, Hardship, Impossibility and Force Majeure under German Contract Law'. We then turn to the article by Alexander Morell and Frederic Helsen, which compares the German and Belgian law on security interests in corporeal movables and includes an economic analysis of the relevant differences to reach a law-based conclusion. Belgium is currently implementing a major reform in this field, which, combined with the different position adopted by both systems on the transparency of security interests, raises the question whether the Belgian reform could serve as an example to Germany. One of the more esoteric themes in this issue is third-party litigation funding. In his paper on the subject, Oliver Cojo describes the current state of play in this field and discusses what future it may have in Spain.

10. Miscellaneous

This issue unfortunately contains no case notes or book reviews. As for the case notes, we do have some in the pipeline, but that nowadays is never a guarantee for timely delivery. As to the book reviews, we are considering speeding up our chasing. Fortunately, however, a conference report is on hand. As a testimony to the prominence enjoyed by the citizen in today's legal world, the conference in question was entitled 'The Citizen in European Private Law: Norm-setting, Enforcement and Choice'. It was held in Maastricht on 18 October 2013 and is reported on in this issue by Damla Cavusoglu and Lotte Meurkens.

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1 MACARENA SAEZ, 'Same-Sex Marriage, Same-Sex Cohabitation, and Same-Sex Families Around the World Today: Why "Same" Is So Different', *ERPL* 2011, pp. 631-668.

2 SILVIA FERRERI *et al.*, 'Complexity of Transnational Sources', *ERPL* 2012, pp. 3-194.