Private Law in Eastern Europe

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Max-Planck-Institut für ausländisches und internationales Privatrecht

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Private Law in Eastern Europe

Autonomous Developments or Legal Transplants?
− Welcome Address −

When the socialist regimes in Central and Eastern Europe collapsed after 1990, a new era in the development of private law started. While it had previously been difficult in socialist countries, to identify any legal relationship as "private", *Mestmäcker* characterized the new situation as a renaissance of the civil society and its law.[1] Indeed, the new social order that was established everywhere built upon private initiative pursuing private interests, and policymakers throughout Central and Eastern Europe shared the expectation that the pursuance of private interests in a competitive environment would further the public good.

As a consequence, private law had to be re-construed or even re-written with the aim of creating a legal framework that would fit private plans and reduce the possibility of state intervention in the public interest to a minimum. In several countries the political and legal elite even considered a complete overhaul of their national private law legislation as necessary. A new wave of codification rolled ashore in countries such as Russia or the Baltic Republics; in Hungary, Poland, the Czech Republic and Slovakia codification projects have been put on track and may succeed in the years ahead.

Of course, these projects are not only driven by the turn of society towards private initiative and a market economy. It is safe to assume that regaining full independence after the breakdown of the Warsaw Pact has inspired national feelings in many countries and brought about the desire for national symbols. As we know from the enactment of the first generation of civil codes throughout the 19th century the civil code has often been considered as a symbol of national cohesion.

Other motivations that may appear more economic or technocratic have equally contributed to the continuous stream of private law legislation in

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[1] *Ernst-Joachim Mestmäcker*, Die Wiederkehr der bürgerlichen Gesellschaft und ihres Rechts, Lecture delivered at the Annual Meeting of the Max Planck Society (Hauptversammlung der Max-Planck-Gesellschaft) in Berlin, 7 June 1991, in: Rechtshistorisches Journal 10 (1991), 177 et seq.

Central and Eastern Europe. There were indeed large gaps in the existing legislation which had to be filled. For example laws on corporate entities were either absent or outdated after 50 years of an economy driven by state enterprises. In a similar vein, there had been no need for insolvency laws in socialist times; pertinent statutes were badly needed now. While state enterprises had received their operating funds through grants received from the central government in accordance with the central economic plans, they were now under a constraint to acquire fresh money from capital markets which would grant credit in accordance with the securities provided. However, security rights whether in movable or immovable assets were largely undeveloped or nonexistent, in particular where real property was owned by the State. Similar deficits could be observed in the field of banking contracts or insurance contracts.

These are but some examples of a huge task that was very aptly captured by the term "Systemtransformation" or "transformation of systems". In fact, legal systems had to be "reinvented" or conceived anew, and this was not limited to private law but included large parts of public law and criminal law as well. Scholars from both law and economics soon realized the fundamental and comprehensive character of this task which is evidenced, inter alia, by the foundation of a Max Planck Institute on the transformation of economic systems in Jena in the mid-1990s and the organization, by the predecessors of the present directors in 1996, of a symposium on the transformation of systems in our Institute.[2]

Almost 20 years have gone by since these first efforts. The European Union has proved a great attraction for most countries in Central and Eastern Europe. In 2004 and 2007 ten countries from this region joined the European Union as new Members. European integration has inevitably affected the legal systems of these countries, in particular through the implementation of the acquis communautaire. Given the increasingly intense impact of Union law on the whole legal system of the Member States, an autonomous development of their legal systems appears unlikely, even in areas which are not directly covered by Union law. The same can be said for those countries which, without being a Member of the European Union, aspire towards membership.

This explains the overarching topic of this conference: While the countries of Central and Eastern Europe have succeeded in regaining their national independence which should be a basis for an autonomous development of law including private law, the dynamics of European integration generate practical needs and, in fact, narrow the political latitude of

[2] *Ulrich Drobnig/Klaus J. Hopt/Hein Kötz/Ernst-Joachim Mestmäcker*, eds., Systemtransformation in Mittel- und Osteuropa und ihre Folgen für Banken, Börsen und Kreditsicherheiten, Tübingen 1998.

national legislators even in the areas still left under unrestricted national sovereignty. Moreover, several countries might prefer to follow model legislation that has proven satisfactory in Western European countries. The reception of such transplants may be a particularly promising way for small jurisdictions which have only had a few years to digest a huge mass of Union law, developed over 50 years and which Western countries have had sufficient time to adjust to.

These are the potential extremes of the development of private law in Central and Eastern Europe after 1990. The enquiry of this conference is directed to three specific areas which mirror these influences in rather different ways: While company law has been subject to EU influence to a large extent ever since the 1960s, the impact of Union law in the field of contracts has been more recent and much more limited, namely to consumer contracts; the restrictions imposed by Union law are probably least significant in the field of property, where consequently, we may expect a more distinct national character of the law to be generated by autonomous developments. Before we approach the more specific areas of the law, some more general and theoretical analysis will prepare the terrain for specific enquiries.

From the list of speakers at this conference, significant differences emerge concerning their nationality. While all of them represent countries which adhered to doctrines of socialist law before 1990, some of them originate in countries which are now Member States of the European Union, others are nationals of candidate countries, and a third group is from countries which for the foreseeable future will be good neighbours, but not Members. This composition of our guests promises some insights into the variety of legal solutions and their embeddedness in the respective legal systems as well. Let me conclude by wishing you a warm welcome to the Max Planck Institute and to wish all of us an interesting conference.

Jürgen Basedow