International Legal Studies V

By European Scholars of the ELPIS Network

Nomos
We are very proud to introduce to you Volume V of our “International Legal Studies”, that is composed entirely by texts prepared for lectures, conferences and publications, by our professors, in the everyday activity of our ELPIS network. As you know, ELPIS is the abbreviated name of the English expression “European Legal Practise Integrated Studies”, but it also means “hope”, in ancient Greek, which is the quality that best characterises and is the most needed in the university, today and ever.

The ELPIS network was created in the eighties, in the University of Hanover, by Prof. Hilmar Fenge, to facilitate the exchange of students, professors and staff in Europe, as a way to create the “Europe of the Universities”. Together with the academic exchange, the network always took a great interest in studying and researching on law teaching methodology, as well as in organising academic events to allow the sharing of research and teaching experiences. That explains the rise of our “International Legal Studies” that are the published result of these academic events.

Today, the ELPIS network is the largest and most important academic group, under the auspices of the ERASMUS+ Programme, that brings together universities from all European countries - and some extra-European countries (from America, Africa, and Asia) too -, promoting academic exchanges in the field of law. Nowadays, the ELPIS network is a kind of “umbrella designation”, for all kind of autonomous and diversified academic activities, including a Master's and a Research Programme.

The ELPIS Master is a joint degree, founded in 2004 and taught by the Law Faculties of the Universities of Hanover, Lisbon, Rouen, Vilnius (Mykolas Romeris U.), and Fribourg. The ELPIS Master is an LLM Programme specialising in European, Comparative and Global Law, with the aim of creating an effective European Jurisprudence by training real European lawyers.

The newest branch, created in 2019, is the ELPIS Research branch, that launched a common website, organises joint webinars and v-conferences on current legal issues, and created the ELPIS v-Law Review, a legal magazine composed exclusively by v-articles or v-logs, placed on the ELPIS website (http://www.elpisnetwork.eu) and broadcasted by a YouTube Channel. The ELPIS v-Law Review published already two volumes – the number I, on «10 to 15 Minutes on: The effect of the “corona virus” in Global, European and National Law», and the number II, on «Through the Look-
Preface

ing Glass: Law in Europe and America» and we are now beginning the preparation of the number III.

All of this constitutes a broad and diversified activity, written and oral, using traditional means and the latest digital technologies, which reflects very well the level of innovation and the strength of the ELPIS group. But all of this, which points out to the future of ELPIS, in no way diminishes the importance of the “traditional tools”, as it is the case of the continued publication of the collection of books with our «International Legal Studies», as we are doing it right now.

Like Umberto Eco, we also believe in the book’s “eternal return”. As he used to say, “with the internet we returned to the alphabetical era. If we ever believed that we had penetrated the civilization of images, then the computer reintroduces us to the Gutenberg galaxy and everyone is now obliged to read”. And he continuous this way: “the book is like a spoon, hammer, wheel or chisel. Once invented, you cannot do anything better. You cannot make a spoon that is better than a spoon. (...) The book proved its merits, and I cannot see how, for the same use, it could be done better than the book. Perhaps it will evolve in its components, perhaps its pages will no longer be made of paper. But it will continue to be what it is”. That’s why we continue to write, edit and publish the “International Legal studies”…

It is therefore a pleasure for the editors to present yet again a volume with the scholarly works of authors from a variety of legal backgrounds and on different legal topics, which however all share the European perspective as a common denominator. The diversity of the legal backgrounds and topics shows the broad approach of international and European legal practice that is the common purpose of our scholars’ network and that is rooted in European and comparative law. The collective volume comes at a time when international relations and exchange in university studies are meeting challenges because of the global health crisis that has rendered researching, studying and teaching abroad practically impossible and that has made most exchange programmes come to a standstill. Nevertheless, this volume shows that the ELPIS network is striving to keep up an active scientific discussion of the current challenges in European and international law. It hence assembles different topics from the theoretical and philosophical foundations of European law to current challenges in the field of economic relations and environmental protection. A special chapter is ded-

icated to the cultural aspects of law and its relationship with culture. This is due to the fact that law and especially international and comparative law can best be understood against their cultural background. Culture therefore is an indispensable instrument and prerequisite in order to grasp legal problems and legal rules and it facilitates significantly the tasks of comparison and exchange.

Some of the articles of the collective volume are dealing with current developments in law; some of them are addressing questions that are more fundamental in terms of legal philosophy and legal theory. The series of the ELPIS collective volumes as well as the network itself has a marked tradition of multilingualism in the international legal dialogue. Therefore, the contributions differ in the languages in which they have been written.

In his contribution “Unterschiedliche Vorstellungen von Elpis in mythologischer, philosophischer und literarischer Hinsicht”, Hilmar Fenge, the founder and father of the ELPIS network, takes a closer look at the Greek personification of Hope that is the eponym and acronym of the network. He puts in contrast the widespread positive connotations with hope on the one hand, and the more negative view on hope and its potentially paralysing as well as delusive effects on the other hand. To this end, he presents and examines several classical as well as modern texts from philosophy to poetry and draws a line to the challenges, but also the achievements in European legal and university cooperation.

Caroula Argyriadis-Kervegan examines the work of two important conservative thinkers in the aftermath of the French revolution in her article “Between conservatism and counter-revolution: Friedrich-Julius Stahl and Joseph de Maistre”. The two legal philosophers and their positions on human rights and the concept of sovereignty may have been influenced by their experience in revolutionary and post-revolutionary Europe and also by their religious convictions. Examining their concepts of conservatism, however, still provides for both a most valuable insight into the European history of political thought and for an understanding of how political ideas may continue to have an effect even in subsequent times.

A topic of legal theory with a view to criminal law is the subject of the article “Der Metajoker – Die Bezugnahme auf das europäische Recht im strafrechtlichen Diskurs” by Christian Becker, Robert Brockhaus and Lena Gumnior. It is dealing with European law arguments as particularly powerful tools in a discourse that is riven between an intrinsic dogmatic approach and the requirements of the hierarchy of norms. European Union law and the law of the ECHR are often seen as a sort of trump card, and the article examines the limits of their scope of application in German criminal and criminal procedural law.
In his article “Market Law Aspects of Automatic and Autonomous Driving”, Bernd H. Oppermann addresses a particularly relevant issue in modern economic law. He is describing the technical background of artificial intelligence research as well as the civil law framework of the different levels of autonomous driving that are currently conceivable. Questions of contractual, extracontractual and product liability are at the core of the discussion. Another relevant issue is the complex field of data protection and data security that is closely connected with questions of consumer protection. Finally, the market implications and the market design in the area of autonomous driving will play a decisive role when talking about the legal context and the (European) legal challenges of this new technology as well.

The EU regulation on insolvency proceedings of 2015 is the topic of the contribution of Ludmilla Graz, which is entitled “Die Europäische Insolvenzverordnung (EU) 2015/848”. The article describes the historical development of the regulation as well as its factual background. It sets out the core principles of the regulation and some of the main controversies regarding cross-border insolvency proceedings. The article, which has been written by a young ELPIS scholar, comes at the right time when, owing to the health crisis, the risk of an increasing number of insolvencies in Europe has unfortunately become more realistic.

Armelle Renault-Couteau addresses a complex topic in the area of international economic and environmental law. In her contribution “From uncontrolled dismantling to responsible recycling of end-of-life ships”, she scrutinises the international legal rules in this field, which are only in some parts sufficient, and puts them in contrast to the stricter European Union requirements that intend to promote recycling and hence an effective environmental protection. The article highlights the interface of international and European legal practise and rulemaking in an area of law that has a high relevance for international trade and exchange.

The article “Five short notes and a poem on Portuguese environmental law in “state of emergency” by Vasco Pereira da Silva draws the attention to some core issues of environmental law, i.e. the public waste policy in general and the treatment of toxic or hazardous waste in particular. He addresses the specific problems that the health crisis has confronted the administration with and highlights the necessity of maintaining environmental standards even in times of emergency. The article advocates for a responsibility in administrative action that respects the requirements of environmental protection at all times. The essay closes with a poem by Fernando Pessoa, thus leading over to the field of law and culture.

In his contribution “Rechtliches” im musikalischen Œuvre der Strauß-Dynastie”, Dimitrios Parashu draws a connecting line between legal history
and musical history. He looks at the rich works of the famous Vienna dynasty of composers and highlights those pieces of music that have a relationship with legal topics in the large sense of the word. He thereby exemplifies how the “law” as a cultural technique appears by way of citation in other cultural forms of expression. It is noteworthy that, apparently, the subjects of lawsuits and legal rules are recurrent themes.

As the editors of this volume, we wish to express our gratitude to all the contributors as well as to the members of the ELPIS network who have stood together even in difficult times and who have constantly upheld the idea of a European and international exchange in research and teaching. We would furthermore like to thank our publisher NOMOS and in particular professor Johannes Rux and Dr Matthias Knopik for their constant support and assistance in the publishing process. We are finally very grateful to Dr Dimitrios Parashu for his invaluable assistance in preparing and looking after the publishing process of this volume. We hope that the fruitful European and international cooperation in the ELPIS network will continue to benefit our students and the international and European discourse in legal studies.

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