40 Handbook on European Private Law

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(Mauro Bussani & Franz Werro (Eds.), European Private Law, A Handbook. Stämpfli Publishers, Berne, 2009, p. 586; ISBN 978 3 7272 8870 8)

Scholars, who seek to write about comparative private law are in a quite challenging situation nowadays. Numerous scientific groups have emerged[1] in Europe which deal with the comparative analysis of the law, especially in the field of contract and consumer law. In the recent years new works started to establish the European Law Institute in order to give advice for EU institutions on the field.[2] The Study Group on a European Civil Code published numerous deep and informative books on certain parts of private law, and its academic Draft Common Frame of Reference[3] is also an excellent work. The Acquis Group published numerous books, and its consumer law compendium is one of the best in its field in analyzing the domestic environment of consumer law and consumer contract law.[4] Moreover, we find general introductory books of private law and business law state-by-state – most of these were created by practical lawyers. Furthermore, some materials connected to EU law can also be of use.[5] Thus, in this regard we disagree with the authors of the reviewed book, who state that 'with few exceptions […] there is little literature available for any lawyer, scholar of student interested in understanding a law in Europe different from her/his own.'[6] However, we absolutely agree that the emphasis nowadays was put on the analysis of the domestic provisions and not on the analysis of the background, the broader perspective and the thinking of legal systems. The book tries to cure these problems by with analysing certain questions in their complex relationship with other areas of law

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1 For a comprehensive summary *see* W. Wurmnest, 'Common Core, Grundregeln, Kodifikationsentwürfe, Acquis-Grundsätze – Ansätze internationaler Wissenschaftlergruppen zur Privatrechtsvereinheitlichung in Europa', 11 *Zeitschrift für Europäisches Privatrecht* (2003), pp. 714-744.

2 R. Zimmermann, 'Challenges for the European Law Institute', 16 *Edinburgh Law Review* (2012), pp. 5-23. *Cf.* www.europeanlawinstitute.eu/about-eli/ (1 October 2012).

3 Study Group on a European Civil Code & Research Group on EC Private Law (Acquis Group) (Eds.), *Draft Common Frame of Reference* (DCFR), Full Edition Principles, Definitions and Model Rules of European Private Law, Sellier 2009.

4 H. Schulte-Nölke et al. (Eds.), *EC Consumer Law Compendium: The Consumer Acquis and Its Transposition in the Member States*, 2008.

5 A.S. Hartkamp (Ed.), *Towards a European Civil Code,* 4th revised and expanded edn, 2010.

6 *See* p. 3 of the reviewed book.

and other countries similar rules. Its editors, Professors Mauro Bussani from the University of Trieste and Franz Werro from the Universities of Fribourg and Georgetown Law are great experts in their fields. The contributors of the book are professors from different countries including Germany, Finland, Hungary, Italy, the Netherlands, Switzerland and the UK.

Talking about its structural design, the approach taken by the volume is somewhat surprising. Most of the topics, like property law, obligations, contracts, etc. are divided into 'Eastern' and 'Western' law sections. As a Hungarian scholar, I found this method surprising, knowing that there may be huge differences among the legal systems between different countries in Eastern Europe. For instance Hungary has taken over several methods and institutions from the German BGB, while other countries like Romania historically were more influenced by the French Code Civil. On the other hand, as the editors of the book expresses, it was intended to be a work which opened up new areas and raised more questions than it provided answers. In this light, the method is interesting, and even if it is uncommon, we enjoyed reading about the different legal systems a lot.

Talking about the content: after the foreword, the second, introductory chapter of the book written by Samantha Besson called 'Fundamental Rights and European Private Law' explains the connection between legal sources on fundamental rights and private law rules including the direct effect of fundamental rights, the practice of the European Court of Human Rights,[7] and certain domestic approaches.

The third, 'Western Property Law' chapter by Antonio Gambaro serves as an excellent starting point to understand the different legal traditions: it explains the background of the relevant (hardly existing) EU rules, the common law traditions, the civil law method, and the French property law.

The fourth chapter by Rodolfo Sacco named 'A Comparative Analysis: The Contractual Transfer of Ownership of Movable Property' deals with one of the core problems of property law. It discusses the transfer of ownership in depth – the major historical models, the intent to transfer and deliver, abstraction and casuality, the transfer and attributions of the ownership, the ownership of an object sold but not delivered.

The fifth chapter on 'Western Law of Obligations' by Geoffrey Samuel could serve for everyone as an introduction into the Western-European law of obligations included sub-divisions of civil law as torts, contracts, quasi-delicts and quasi-contracts. Moreover, it contains an overview of common law tradition as well.

Carla Sieburgh from the Radboud University Nijmegen wrote in our opinion one of the most important chapters – the chapter 'Western Law of Contract'. Since the topic would be extremely broad to discuss, she analysed the public order of the EU and contract

7 For an interesting book about the same topic in the Hungarian literature *see* F. Gárdos-Orosz, 'Alkotmányos polgári jog?' Constitutional Civil Law?, *Dialóg Campus* (2011).

law, freedom of contract, the reliance principle, the *pacta sunt servanda* rule, and very shortly some other issues like good faith, social conformity, etc.[8]

The Eastern contract law chapter ('Eastern Contract Law' or Transformation of Contract Law and Civil Justice in New EU Member Countries: The Example of the Baltic States, Hungary, Poland') discusses the issue of transition of contract law to market economy in the Eastern region. In this chapter, we strongly disagree with the author, Norbert Reich, who states that because in Eastern-European countries there was no freedom of establishment of companies, 'contract law system existed,… but played a limited role in legal practice'. Moreover, it is claimed that contract law was a 'rather elaborate, but to some extent irrelevant' field.[9] After making these statements, the author writes about an article of the Russian Civil Code – a clear mistake to cite connection with Hungary as well as other neighboring countries. It is a common mistake of Western-European scholars that they think of the earlier socialist economics as systems in which the state controlled everything and there was no market at all. It is like declaring contract law has a limited role in China – an obviously false statement. In Hungary for example, during the so called 'Goulash communism' a mixture of communism and market economy existed from the seventies. Thus, technically speaking, people were allowed to create their own businesses like 'Business Partnerships' ('Gazdasági Munkaközösség') and were allowed to sell the goods they produced. Later several other forms of co-operations and companies appeared. Moreover, beside business activities, contract law had an importance in sales of private properties like houses, flats and other real estates like land as well. Furthermore, state organizations were present on the market as well. After a while, Hungary adopted its own rules on competition law and had a competition law policy, even in communistic times, as it was necessary to create one. After several other relevant rules, in 1984 a modern competition law was adopted, which prohibited unfair commercial practices, cartels and abuse of dominance. Consequently, to think of these countries as 'completely state owned markets' or like countries where a 'black hole' or a kind of 'vacuum of the market' existed is a huge mistake, which is commonly made by western European scholars who want to see communistic markets in black and white. You cannot compare a Russian system to an East-European system either – the thinking and mentality behind the systems – apart of some countries – were completely different. Contract law played a central role in communistic times in countries such as Hungary. The Civil Code was adopted in 1959, and even though it was amended several times, its basic system and ways of thinking was the same before and after the change of the system.

8 *Cf.* R. Zimmermann and S. Whittaker (Eds.), *Good Faith in European Contract Law*, 2000; C.D. Miller, 'Good Faith in Scots Property Law', in A.D.M. Forte (Ed.), *Good Faith in Contract and Property in Scots Law,* 1999, pp. 103-127.

9 *See* p. 210 of the reviewed book.

After discussing Eastern contract law, the next, eighth chapter on 'European Consumer Law' explains the rules of EU consumer law – one of the most popular fields of EU law.

The next two chapters – 'Western Tort Law – A Jurisprudence of Injury' by Gert Brüggermeier and 'Eastern Tort Law' by Attila Menyhárt serve as excellent complementaries of each other. The former chapter focuses on stock taking problems, negligence liability, the liability of principals and agents and damages (incl. personal interests) and non economic loss. The latter discusses the basis of liability, the special forms of liability, and the problems of certain sort of damages. As an additional chapter, 'The Law of Restitution: a Perspective from Western Europe' chapter summarizes the differences in Eastern and Western European interpretations of liability.

The last four chapters all discuss different, special areas of law. The twelfth chapter is about the Proprietary Security Rights in the Western European Countries, the thirteenth on was written on 'security Rights in Central and Eastern Europe'. The fourteenth chapter on 'Family Law' by Esin Örücü discusses analyses questions like the meaning of marriage, the legal requirements of a valid marriage, legal consequences of a marriage, and some questions of marital property. As the EU did not adopt rules on substantive family law yet, but has some private international law regulations, comparative law has an increasing role in these fields.[10] The Law of Succession part by Antoni Vaquer summarises some general problems of successions like freedom to testation, the strengthening of the spouse's position and the effect of divorce.

In conclusion, we can recommend the book for those scholars who want to deal with a part of private law and beside other works analysing the legal systems from provisions to provisions want to gain a broader scope to these areas. Moreover, the book contains lists on literature after every chapter, which may be of use.

10 M. Harding, 'The Harmonisation of Private International Law in Europe: Taking the Character Out of Family Law?', 7 *Journal of Private International Law* (2011), pp. 203-229. *Cf.* with the activity of the Commission on European Family Law, http://ceflonline.net/.

41 The Legal Status of the Arctic in International Law

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(Erzsébet Csatlós, Az Arktisz nemzetközi jogi helyzete. Akadémiai Kiadó 2013, Budapest, p. 237; ISBN 978 963 05 9354 0)

The Arctic has always been a region of peculiar characteristics. In the past it aroused major interest because of the challenges it posed to navigation and due to the resources it may conceal. Whilst states' interest in natural resources does not slack due to the advancement in technology and the ever-increasing effects of global warming, new environmental challenges have arisen which require increasing attention. The unique natural features of this region have always provided legal challenges in international law. Today, the drastic changes in the Arctic give rise to questions and uncertainties surrounding the existing rules and norms which govern the law of the sea, state-sovereignty and environmental protection.

Csatlós' monograph is a significant contribution to Hungarian legal literature. It provides an analytical and comprehensive overview of the different legal challenges which currently concern the Arctic. Probable future challenges are also touched upon as nowadays the concept of sustainable development and environmental protection are becoming ever so relevant. This approach is further supported by the fact that the environmental challenges of the Arctic are simultaneously of an intra-regional and inter-regional nature, hence they not only affect the region concerned, but also have negative impacts on the Earth's climate, on sea currents as well as on wind and precipitation systems all around the world. The existing literature focuses primarily on specific issue-areas regarding the Arctic, while the monograph at hand aims at incorporating the relevant primary and secondary international and national sources in order to create a truly thorough analysis of the legal questions concerning the region.

The monograph is mainly devoted to clarifying the legal status of the Arctic by examining whether the same legal rules apply to the domain of the Arctic as to any other territory of the Earth, or, whether due to its particular and unique features it requires special rules or even the application of new legal categories. After introducing the unique features of the region Csatlós clarifies the classic legal titles of coastal states to the mainland. Then

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she proceeds by examining whether the ice (*terra glacia*) present in the region – to which states attempted to apply titles analogous to *terra firma* – can be considered a special legal category under international law, or if the condition of its fully or partially frozen surface does not influence the legal status of the Arctic Ocean at all. Based on the outcome of the analysis and on the characteristics of ice the author determines the applicable law. Sector theory is also closely scrutinized with the conclusion that neither the theory of Poirier nor its soviet mutation may be regarded as a legal title for territorial acquisition under contemporary international law. The analysis then turns towards the most disputed issue in the Arctic, namely the legal status of the Northwest and Northeast Passages which are becoming ever so important – and not only to the states represented in the region. The analysis is based on the legal titles of the affected coastal states over water covered areas and it leads to the conclusion that currently neither Passage qualifies as straits used for international navigation. Therefore their respective legal status depends on which legally different maritime areas the sections of the routes touch during their course: internal waters or territorial sea. This is an especially problematic issue with respect to Canada since several states contest its historical title over the territory of the Northwest Passage and are also divided regarding the legality of the title based on the delimitation by straight baselines. In consequence the unstable basis of the titles yields heated debates concerning navigation through the Northwest Passage. Notwithstanding these debates, Csatlós points out that Canada lawfully applies the delimitation by straight baselines. In the next chapter the focus of the analysis shifts towards the issues concerning sovereignty over the continental shelf, and discusses the difficulties arising from the conflicting claims of the Arctic states in light of the recommendations and procedure of the CLCS.[1] Subsequently, the existing forms of bilateral, regional and international cooperation are examined including the AEPS,[2] the Arctic Council, as well as initiatives inspired by the United Nations and the European Union. In the penultimate chapter the author addresses the key role of environmental protection in the Arctic and provides an overview of its environmental regime which – due to the lack of an international treaty devoted to the Arctic and to the inefficiency of general international law regulations – consists of unilateral actions and international treaties that are applicable either because Arctic states are parties to it, or because they possess territorial jurisdiction in the Arctic. In light of these circumstances the author examines whether the regulatory principles regarding the Antarctic – demilitarization, regulating exploitation of resources – could be applied to the Arctic, including the possibility of classifying the region as part of the Common Heritage of Mankind. In the final chapter Csatlós discusses regulatory options and the possibilities inherent in an Arctic-specific treaty capable of facing challenges arising in the region. Based on the

1 Commission on the Limits of the Continental Shelf.
2 Arctic Environmental Protection Strategy.

undertaking described above, Csatlós defines the possible future legal status of the region, albeit from a pragmatic point of view.

Referring to the monographs' main proposition the author concludes that the Arctic possesses a special legal status under international law due to its unique and fragile ecosystem, and in no way due to the legal title for acquiring territory under sector theory as it had been held in the past. These ecological characteristics justify supplementing the deficiencies of international rules currently in force through the adoption of an Arctic-specific international treaty, which, based on the region special needs and its binding character, would place the regions' aquatic domain under a self-contained regime. The author arrives at the conclusion that apart from the disputes concerning the two Passages and the continental shelves, the legal status of the Arctic is elucidated in compliance with the rules of international law currently in force.

Csatlós' work is not only recommended for legal scholars but also for scholars of any other discipline interested in the subject matter, due to its comprehensibility and logical structure. The easy grasping of the concepts and theories is further facilitated through images, maps and charts. Furthermore, the monograph could also serve as a useful supplement for students of international law who wish to acquire a deeper understanding of the law of the sea and environmental law as it provides real life examples for the application – and challenges – of the United Nations Convention on the Law of the Sea and other relevant international documents. Csatlós provides an informative and useful contribution to the scholarly literature on the Arctic and given the scarcity of publications in this field, an English translation of her work would be highly welcome.