MAX-PLANCK-GESELLSCHAFT

Report 2004-2005

Max Planck Institute for Foreign and International Social Law

Preface

The present report ties in with the 2001-2003 report and, as announced there, reverts to the two-year reporting interval.

The report furnishes information on the activities of the Max Planck Institute for Foreign and International Social Law in the years 2004 and 2005. Thus it outlines the research projects that were completed and initiated during this period and simultaneously documents the Institute's progress. This task is reflected in the largest section devoted to the depiction of our research (II.). Here, we have striven to heighten readability by presenting individual projects as self-contained entities and to address a wider group of prospective readers. Yet this was not done at the expense of completeness – notably as regards the recording of our own events, publications, and papers and lectures (IV. – VI.), as well as the names of our grantees and guests (VII.), and the detailed description of the Institute and its members, bodies and functions (VIII.). A new, separate section deals with the promotion of junior researchers (III.). Its introduction and placement within the report mirrors the value attached to this objective. To be noted in this connection is the establishment of small, inhouse doctoral groups, which are detailed below.

The Introduction (I.) begins with a description of the Institute's tasks and the conception of its research activities. In this sense, it serves as a guideline for all following sections by providing a short overview of their contents. At the same time, this preliminary presentation of our research programme elucidates the connections between the wide-ranging and variably designed individual projects.

Munich, January 2006

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I. Introduction

1. Task, History und Structure of the Institute

(1) According to its statute, the Institute is devoted to research in the field of foreign and international social law.

Following a suggestion made in 1972 by the former president of the German Federal Social Court, Prof. Dr. *Georg Wannagat*, to establish a Max Planck Institute for international social law, the Max Planck Society decided two years later to launch a project group for international and comparative social law in Munich. This project group commenced its activities in 1976 under the leadership of Prof. Dr. Dr. h.c. mult. *Hans F. Zacher*. To begin with, it employed a staff of five, later six researchers. Ahead of schedule, that is, prior to the end of the originally planned term, the group's conversion into the Max Planck Institute for Foreign and International Social Law was resolved and subsequently carried through in 1980.

From 1 January 1980, the Institute was under the direction of its founder, *Hans F. Zacher*, who in 1990 assumed the office of President of the Max Planck Society while continuing his directorship on a temporary basis. He was succeeded as Institute director on 1 February 1992 by Prof. Dr. Bernd Baron von Maydell. After Prof. von Maydell acquired emeritus status on 31 July 2002, the direction passed on to Prof. Dr. Ulrich Becker, LL.M., who took full-time office as Scientific Member and Managing Director as from 1 September 2002.

(2) The Institute is still under the leadership of only one director; organisational sub-divisions do not exist. The Institute's research staff engage in the observation and analysis of social law and social policy developments in various European and non-European countries. The country-specific structuring of this work is supplemented by subject-related competences and responsibilities for the observation of international organisations. This structure is basically to be upheld in the coming years, given that law continues to bear nation-state features. Country-specific societal, economic and cultural settings therefore play an essential role in legal understanding, and it is in this sense that the expertise acquired by members of the Institute in the course of their longstanding activities can be put to productive use. Nevertheless, in filling new positions – given that only fixed-term posts are available – importance is above all attached to the fact that the social law of researched countries should, if possible, be of significance to ongoing reform processes. Beyond this, the country-specific structuring of research has forfeited some of its relevance owing to the process of Europeanisation and internationalisation – albeit on a much smaller scale than in legal fields that are more strongly impacted by unitarisation tendencies than social law. Finally, knowledge about foreign law is naturally augmented when researchers from abroad participate in individual projects or when projects are conducted exclusively with foreign collaborators.

2. Research Programme of the Institute

Social Law as a Law in Flux and Processes of Change

Social law is characterised to a special degree by its vicissitude. That results from the high level of functionality demonstrated by this body of law, which by nature must constantly be adapted to societal and economic changes. Now more than ever, systemic changes, whose development has been especially pronounced over the past few years, can be destinguished from system-inherent adjustments based on internal and external reform requirements.

Proceeding on the groundwork established in the first phase of the Institute and the wider perspectives gained in the second phase – with a view both to the role of the European Community and to insights from new country comparisons – the third phase involves the systematic classification of projects into three analytically differing processes of change, without affecting their diversity and structural differences. These processes comprise:

- the Europeanisation and internationalisation of social law as characterised by the shift in regulatory levels, especially also by the influence of transnational interrelations, as well as by supranational and international provisions governing national law;

- the adjustment (or change) of social security systems in developed states;
- the transformation of social benefit schemes in developing and threshold countries.

A separation of these processes can be undertaken only for analytical purposes and to highlight specific features. Accordingly, the first process chiefly involves the intricacies of creating "supranational" law (law "above" the national level) along with all the difficulties of its integration and enforcement; the second process consists in the need to compare, and also assess, solutions for identical or similarly structured problems; and the third process seeks to find out how traditional and modern forms of social security interact in countries with immense disparities in their internal development.

Of course, that does not alter the fact that the three change processes are strongly interwoven with each other. Thus globalisation and international law play an important role in the transformation of social benefit systems in threshold countries; it is no coincidence that China's accession to the WTO is emphasised time and again as an important step in its development. Europeanisation goes hand in hand with adjustments to social security systems in the EU member states. In part, it reinforces national trends (in particular through the institutionalisation of comparison in the form of the so-called Open Method of Coordination); in part, it adopts some of these trends on its own behalf (because European social policy always remains based on the substance existing in the member states). The list of interconnections could be extended. But the point here is just to show that we are indeed aware of these links and include them in our studies, without necessarily having to query the meaningfulness of any distinction. An example of an overlapping subject is the project "Equality Through Law" (II. 4.1.) because the targeted implementation of anti-discrimination regulations – based on specific historical experiences – plays a role in both developed nations (USA) and threshold countries (South Africa, Brazil), thereby assuming differing functions. This development has been reinforced within the European Union, but now the main emphasis is placed on particular social policy concerns (in contrast to the former nationality-based principle of non-discrimination dating from its origins and widely extended in terms of substantive scope).

Individual Projects and Basic Issues

In researching all of these three change processes, basic issues figure prominently in a number of different ways. For one thing, that applies to the examination of national legal systems. Here, social law can serve as a reference area for the study of overlapping issues of legal policy and legal doctrine, say, as regards the effects of privatisation or the role of competition within social benefit schemes. But that likewise holds true for comparative law. In times of intensified informational exchange, an increasingly asked question is: what national regulatory patterns governing social benefit schemes can be transferred to other countries? Such an enquiry may prove expedient either because the reform needs of different countries are similarly bedded, for instance where demographic trends pose a threat to existing pay-as-you-go risk coverage schemes; because increasing economic interpenetration and migration prompt the convergence of social benefit schemes, as is now endorsed by the European Union through an institutionalised process of comparison; or because conventional social security options need to be replaced by new forms of security in the wake of societal development and change. At any rate, knowledge of national legal systems is required in each case. Yet, in order to shed light on the aforementioned processes, these systems must not only be compared along mere functional lines, but must (also) be examined with a view to their own mechanisms of action, as well as their societal and cultural preconditions.

In this way, general structures and principles, such as level of democracy and rule of law or protection of personal freedoms, acquire greater significance, as do the institutional arrangements underlying the actions of both the persons involved and the administration. The growing importance attributed to the development of social benefit schemes, not only in financial terms but especially as regards people's actual living circumstances and the stability of society, is easily inferred from the current reform debates.

Europeanisation and Internationalisation

Debates over the European Constitution (i.e. the draft Treaty establishing a Constitution for Europe) were by nature also of significance to European social law, given that a central issue was the extent to which European integration has, or should have, a social dimension. It is thereby acknowledged that this integration process – unlike most other forms of regional amalgamation – displays a certain measure of ambivalence. For at its core, the European Union constitutes a legal community which, though entrusted with the power to impose restrictions on its member states, has at the same time been founded by them to safeguard common goals. Thus, on the one hand, the commitment to an internal market endowed with economic freedoms increases pressure on member states to open up their markets and permit the exchange of factors of production. On the other hand, this form of regionalisation in principle also makes it possible to accompany the opening of markets at a supranational level by political measures for the protection of other common welfare interests. At least at the current level of development, economic parameters still carry more weight. In this sense, the higher-ranking legal and political requirements lead to institutional competition (i.e. between national systems). Although the member states are not prevented from pursuing national policies in certain fields, they must acknowledge that in doing so they determine location factors which – in a realm allowing for the free movement of persons, goods, services and capital – become essential influencing variables in competing for factors of production. These principles do not only apply to social law and so, as it were, to the expenditure side; meanwhile, they likewise have a bearing on tax law, which is why it seems expedient to scrutinise the influences in both of these interrelated and structurally similar legal fields (cf. II. 1.1.).

In the long run, the substance of social law in the member states will remain crucial to European development; features shared EU-wide will continue to be determined by national law. For this reason, and above all because social law so far lacks attempts at portraying Community law not only as supranational law but as a synopsis of national legal systems, the elaboration of common principles of social law in Europe is of great interest (cf. II. 1.2.). That will require greater efforts over a period of several years, not least because of the large number of member countries and the extensive reach of the subject matter. A comparative examination of national bodies of law in Europe is also of relevance to the coordination of social benefit schemes. Such coordination must reflect member state developments as well as EU enlargements in order to do justice to its fundamental objective, namely to protect persons who make use of their right to freedom of movement against the loss of their social rights. In recent years, and also in the period under review, the reform of EC coordination rules, which has come to a provisional conclusion through the entry into force of a new and simplified coordination regulation, has been the subject of a series of research projects (cf. II. 1.3.).

Apart from that, the influence of Community law on member state systems of social law remains an important theme (II. 1.4. and 1.5.). Thus the existing distribution of competences in the social policy sphere seems to indicate that internal market law and social law will increasingly "meet", i.e. display points of contact. That applies to the effects of both the fundamental freedoms and Community competition law, although a certain degree of dissymmetry results from economic law being at the higher regulatory level and social law at the lower. A balance can scarcely be achieved through harmonisation (that is, by assigning social law to the higher level). A remaining possibility, however, is to leave sufficient scopes of action to the member states through appropriate constructs of legal doctrine, notably through the recognition of justification grounds and prerogatives of assessment. Indeed – despite the considerable, often bemoaned (by social law scholars in particular) influence of the European Court of Justice (ECJ) – it has been shown that many issues involve a social policy dimension of integration. Yet one cannot, and should not, speak offhand of a "European social model" in view of the disparities existing in the member states. It suffices here to point out a number of important developments, which nevertheless remain controversial, not least of all because they

impact core issues of market orientation. Meant here are: the exclusion of the applicability of competition law to social insurance institutions and collective agreements; the recognition of social return services under state aid law and social criteria under public procurement law; and minimum wage requirements governing the posting of workers.

On an international level, the above-outlined processes of mutual interpenetration of multi-level legal systems continue to be less pronounced. For public international law largely lacks directly applicable rules of social law that decisively affect state powers of governance and tends to exercise restraint in respect of state responsibility for social policy. Even so, international law does have a perceptible bearing on social security. In asking how social protection can be aligned at an international level with the exchange of goods, services and capital, as well as with migratory movement, special thought must be given to the future role of international agreements on the protection of social rights. These are addressed, for instance, in the Conventions of the International Labour Organization (ILO), but also in the United Nations International Covenant on Economic, Social and Cultural Rights, and in the European Social Charter. The implementation of these international treaties appears difficult not only on account of the specific nature of social rights, but also because of the diversity of existing provisions and their disparate enforcement mechanisms. Where precisely the difficulties lie and what improvement options make sense requires an in-depth investigation, including an assessment of the practical experience gained by all relevant supervisory bodies (II. 1.6. below).

Adjustments in Developed States

Irrespective of the above discussions and the significance of globalisation, it is essentially internal factors that trigger reform processes within states. Practically all developed countries are faced with two decisive demographic trends, namely the prolongation of life expectancy and negative population growth – as it were, a double aging process (cf. II. 2.4.). Even granting that intensified international exchange relations are also responsible for changes in labour markets and employment structures, decisions concerning the organisation of social benefit systems must nonetheless be taken primarily at national level. In view of similarly bedded problems, the need for knowledgeable solutions and, hence, for comparative analysis is great indeed – always presupposing that such a comparison embraces fundamental issues and deals with the pertinent details, as otherwise nothing can be said about the transferability of prospective individual solutions.

Major subjects addressed by the Institute in the period under review include: social benefits and parental benefits granted on behalf of children in various European states (II. 2.1.); activating labour market policy in the United States and Europe from a dual comparative perspective (II. 2.2.); the role of competition in the delivery of in-patient hospital care benefits in Germany, the Netherlands, Switzerland and the United States (II. 2.3.); occupational retirement schemes as an element of supplementary old-age provision (II. 2.5.); the role of constitutional jurisdiction in the reform of social benefit schemes (II. 2.6.); and the judicial protection of social rights in Europe (II. 2.7.). These projects, some of which are founded on earlier studies (for instance on supplementary insurance), were complemented by smaller projects and numerous lectures and publications (cf. V. and VI. below) that often also served to enhance the exchange of knowledge of differing legal systems, but also accompanied legal developments in Germany.

Precisely because the gaining of insights through comparative law demands detailed scrutiny, including extra-legal conditions, a time-tested approach for investigating diverse national developments continues to rest on the creation of an institutional framework based on longer-term collaboration. In the period under report, this was again a prime objective of the research ties to Japan, given that in the light of comparable societal change processes, both Japan and Germany are intensely engaged in reforms to their social security systems. Here, the aim was to strengthen mutual understanding in the field of social law through long-term cooperation and to study current reform trends (cf. II.

2.10., 2.11 and 4.3.). Especially with a view to similarly bedded demographic problems, findings promise to reveal what can be learned from the other side in dealing with the challenges of an aging society and, simultaneously, to show what particularities persist despite comparable economic development.

Transformation in Threshold Countries

The two new research posts for China and South Africa, already addressed in the preceding report, have put the Institute in a position to deal much more extensively than in the past with the social legislation of selected threshold countries. In the process, it was possible to fall back on the results achieved in a number of projects from the early years of the Institute's work on social security in developing countries.

The initial aims are to enhance our knowledge of foreign social law by way of bilateral comparisons and events organised in collaboration with research partners in these countries (at present, with Renmin University in Beijing and the University of Johannesburg), to pass on German experience with developed social security systems, and to discuss in greater depth such current issues as the build-up of administrations and the coordination of different systems within a country and within regions (more detailed II. 3.2. and 3.3.). Based on these experiences, intersecting subjects are then to be compared. The intent is to focus on subjects considered important in all countries sharing a specific level of development and whose treatment is expected to shed light on the relationship between societal and cultural particularities, on the one hand, and modernisation tendencies, on the other. Here, a good example – yet one which is not easily grasped as a distinct phenomenon – is so-called informal social security (cf. II. 3.1.). An aspect of legal relevance to transformation processes is the influence of constitutional law, notably social rights and equality precepts, as well as the role of constitutional courts in the extension of social benefits (cf. also II. 4.1., II. 2.6. and III. 2.).

3. Staff Changes

The previous reporting period (2001 to 2003) was characterised by numerous staff changes. These were not so much the result of the new directorship as the successful promotion of junior scholars. The downside of such changes, from the point of view of the Institute, is the inevitable loss of qualified research personnel, which is nevertheless more than offset by extended contacts and the ensuing greater attraction for junior researchers. As a number of new positions could be filled between 2002 and 2003, staff fluctuation remained at a comparatively low level in 2004 and 2005 (cf. more detailed VIII. 1.).

New to the circle of research fellows was Dr. *Markus Sichert* (since 1/12/2004). Upon expiry of her parental leave (on 30/06/2005), Dr. *Christina Walser* reduced her scope of activity to 75%. Dr. *Alexander Graser*, LL.M., who was awarded the Bavarian Habilitation Promotion Prize in 2003, remains on leave for purposes of completing his postdoctoral lecture qualification (habilitation).

Of the non-research staff, *Ingrid Werner-Böll* and *Melanie Winkler* left the Institute upon expiry of the active phase of partial retirement. *Eliane Rammler* accepted the post as head librarian of the Institute for Civil Law and Law of Civil Procedure of the Ludwig-Maximilians-Universität in Munich. She was replaced by *Melanie Jackenkroll*.

The first three of the doctoral candidates employed during the previous reporting period (*Ariane Wiedmann*, *Monika Goller, Claudia Matthäus*) successfully ended their engagement with the Institute, although the doctoral examination procedures were not quite completed by the end of 2005. Ms. *Wiedmann* and Ms. *Matthäus* have each started their legal traineeship; Ms. *Goller*, who was temporarily engaged with the German Federal Ministry for Health and Social Security under an interdisciplinary programme funded by the Volkswagen Foundation, accepted a post as legal advisor in the social affairs department of the municipality of Augsburg. New doctoral posts were filled by *Maria Grienberger-Zingerle, Benno Quade* and *Janire Mimentza*, LL.M., who have thus

reinforced the doctoral group on state responsibility for social security in flux (cf. more detailed III. 1.). With the appointment of *Quirin Vergho*, an additional doctoral group was initiated. It will deal with the influence of constitutional law and international law on the law of social security (cf. also 4. and more detailed III. 2. below).

4. The Institute as a Research and Meeting Place

Work Facilities

The Institute disposes of a specialised library, meanwhile comprising over 84,000 volumes (cf. more detailed VIII. 3. below). The books and journals primarily cover the social legislation of international organisations, the European Union, Germany, and selected European and non-European states, encompassing social policy, social science and economic works as well as the basics of legal history and legal philosophy, and general depictions of constitutional, administrative, civil and labour law. Additional information can be accessed via databases and Internet publications.

The Institute thus furnishes work opportunities for conducting social law and social policy research in a manner that is unique both inside and outside of Germany. And so the Institute has remained an attractive venue for German and foreign guest scholars – supported in part by the Institute, but largely through other institutions – who stayed here for differing lengths of time to carry out their investigations (cf. VII. below).

Sponsoring guest stays, similar to the organisation of guest lectures, workshops and conferences (cf. IV. below), contributes to both international and interdisciplinary exchange. It is also in this sense that the Institute constitutes a meeting place – which is important because, being a small institute, it cannot on its own survey all social law regimes on an equal scale. The Institute therefore relies on its collaboration with foreign research partners, which is to be expanded in future through a more closely knit correspondence network that will permit the more precise assessment of reform processes in different regions.

Publications

As a publicly funded establishment, the Institute considers it an additional task to place its basic research findings at the disposal of other institutions and to report on its work to the general public. Based on the Institute's web presentation, which was reconfigured in the previous reporting period, there are future plans to collect further information on social law reforms in selected countries and to make this accessible to interested persons for their own research (cf. II. 3.4. below).

The research findings of the Institute's scholars are not only published in German and foreign journals (cf. more detailed V. 2. below); the Institute itself also offers venues for the publication of social law contributions (cf. V. 1. below). In cooperation with the Institute for Labour Law and Labour Relations in the European Community (Trier), it issues the "Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht" (ZIAS). Moreover, it has two publication series called "Studien aus dem Max-Planck-Institut für ausländisches und internationales Sozialrecht" and "Schriftenreihe für internationales und vergleichendes Sozialrecht". A new working paper series has been launched (MPISoc Working Papers) with the aim of publishing smaller or specially targeted works on a timely and low-cost basis – primarily but not exclusively on the Internet. In addition, the director edits a series entitled "Schriften zum deutschen und europäischen Sozialrecht" (Nomos Verlag, Baden-Baden), under which eight new volumes were released in 2004 and 2005.

Applied Research

The Institute is particularly committed to the communication of knowledge on German, European and international social law to interested persons at home and abroad. To this end, its members participate in a wide variety of conferences and workshops (cf. VI. 1. below). They also exchange information with practitioners from ministries, associations and social benefit institutions, as well as with politicians. In this way, the Institute not only acts in an advisory capacity, but enables its staff to take practical problems as an opportunity for more extensive

investigation and for the verification of theoretical assumptions.

Like most of the juridical Max Planck Institutes, the Institute also prepares expert opinions for courts dealing with foreign social law issues (cf. VIII. 7. below). This function nevertheless remains of secondary importance. Owing to the obviously small number of cases, the demand for such services is limited, although it does arise from time to time. While the Institute is not in a position, or even anxious, to provide worldwide coverage of all individual social law problems, most demands in this connection could be satisfied nonetheless.

Promotion of Junior Scholars

Last but not least, the legal education and promotion of junior scholars rank highly in the work of the Institute.

(1) Worthy of note is the increase in doctoral posts at the Institute and the establishment of smaller, in-house doctoral research groups. These are to enable the participants to elaborate the foundations for their dissertation projects and to exchange information on the progress and individual problems of their work within the frame of regular meetings chaired by the director and attended by other research staff. Moreover, doctoral students are given the opportunity to participate in seminars abroad (notably those organised by the European Institute for Social Security) and in seminars with external doctoral students as a means of widening their perspectives and reviewing their own work through the academic discourse with other scholars and tutors (cf. more detailed III. below).

(2) Like his predecessors, the director of the Institute is active as a university lecturer, thus maintaining contacts to the Faculty of Law of the Ludwig-Maximilians-Universität (LMU) in Munich. These ties are facilitated by the Institute's close proximity to the university. The director, in seeking to intensify these contacts with both colleagues and students, has therefore agreed to hold compulsory lectures in addition to his other tasks. Moreover, the teaching of social law as a university course in Munich has been sustained exclusively by the Institute for some time now. The director of the Institute and affiliated lecturers (Kruse, Adolf) conduct all social law courses as well as the elective oral exams under the First State Law Examination. In addition, two written exams on elective courses were prepared by the Institute for the First State Examination in the period under review. Future cooperation with the Faculty of Law is to gain significance through the establishment of a major subject area (*Schwerpunktbereich:* Law in the Company: Labour and Social Law). Additional collaborations are likely to arise from the envisaged formation of excellence clusters. As there are no plans also in the foreseeable future to establish a position with a social law focus at the Munich University, the Institute will continue to bear a special responsibility for the maintenance of teaching in this field of law.

Additional teaching activities are conducted abroad (cf. VI. 2.) in the form of: regular courses at the universities of Strasbourg and Rennes (*Kaufmann*), guest lectures at various universities (*v. Maydell, Becker*), lectures under the "European Master in Social Security" programme of the Katholieke Universiteit Leuven (*Becker*), programmes under DAAD-sponsored student exchanges between the University of Frankfurt/Main and the University of Johannesburg, as well as under the SOCRATES exchange between the LMU Munich and the University of Athens.

Ulrich Becker

II. Research

1. Europeanisation and Internationalisation

1.1. The Tax and Social State in European Institutional Competition

Tax law and social law are in many ways related to each other and display numerous parallels. Even so, exchanges between the two disciplines rarely take place, although this would be a good opportunity to improve system compatibility and to learn from the solutions proposed by the respective other branch. In the light of this finding, the Institute, in collaboration with the department for tax law of the neighbouring Max Planck Institute for Intellectual Property, Competition and Tax Law, has embarked on a discourse between eminent members of both sub-disciplines, along with several specialists from economics and political science. To reinforce these efforts, a two-day expert seminar entitled "Steuer- und Sozialstaat im europäischen Systemwettbewerb" (The Tax and Social State in European Institutional Competition) was held in December 2004.

The choice of this theme was prompted by the mounting competition currently facing the nation states of Europe in the wake of the progressive opening of their borders. This process is generally associated with globalisation and, at least as far as European integration is concerned, constitutes an obvious and ubiquitous fact. The resulting pressure on national scopes of action above all impacts those policy fields in which the state operates with factors of production that are burdened by cross-border competition. This applies in particular to tax law and social law, which moreover resemble each other in that they have so far largely remained a national policy domain. Hence, the competitive pressure they face cannot be met at a supranational – notably European – level, say, by way of harmonisation.

Bearing all that in mind, the challenge posed by European institutional competition seemed an especially appropriate subject for testing the exchange between the two disciplines via similar problem constellations and propositional solutions. And indeed, a series of common issues did come to the fore with a view to both the elemental challenge facing the tax and social state through institutional competition (examined by the first block of lecturers) and the state's concrete involvement within the European market and competition system (dealt with by the second block). An additional emphasis was placed on the specific regulatory approaches towards a large number of cross-border problem constellations confronting both domains (third block). Beyond the specific subject matter, additional points of reference emerged for examining the interaction between the tax and social state in all its complexity and diversity (this task was outlined in the final contribution by *Hans F. Zacher*).

Ulrich Becker / Alexander Graser

1.2. Principles of Social Security Law in Europe

The social systems of European states are experiencing a situation of profound change. Terms such as modernisation, competitiveness or simply cost containment are used to describe social policy guidelines. At the same time, there are numerous demands to abandon regulatory action by the nation state and, in principle, to shift it to the supranational level. As a matter of course, "globalisation" and "Europeanisation" are the slogans invoked to support these demands. And while national discussions meanwhile centre almost exclusively on the economic perspective, the European vantage point is often lost in metaphysics, thus overlooking the dominance of national benefit systems.

This legal policy jumble brings to light what is obviously missing in such discussions: a fundamental analysis of the base lines and principles underlying social benefit systems. Granted, future reflections on a European social model have their own special merit, just as thoughts impelled by the economic efficiency of the nation state have an extensive impact on social benefit structures. Nevertheless, it should not be overlooked that both propositions fail to do ample justice to the actual condition of social benefits – be it that the modes of perception are too heavily accentuated by daily politics, be it that they are too visionary.

Alternatively, the elaboration of base principles has the advantage of revealing, in an

intermediate first step, legal criteria that characterise social benefit systems. Proceeding from there, an overall European perspective can then be developed. In doing so, one can hardly hope to find *one* underlying principle applicable to all European states. Yet determining the relative base principles could serve as a starting point for tracking down *convergence criteria* among the diverse systems. All the more so as it is to be presumed that apparent antagonisms often serve the same idea and that national systems are likely to be assimilated more and more.

Starting Point

Base lines and principles underlying social security law seem easy to detect at first glance. They can be characterised by such concepts as mutually supportive society (keywords: solidarity, welfare state and just redistribution). Only at second glance do we notice that these attributes are not solely confined to what is understood by social law or, more precisely, social security law. Rather they denote multifarious legal sub-areas that serve to guarantee the societal protection of individuals. Examples are landlord and tenant law, protection against unfair dismissal, law of succession, family law, the principles of liability law, as well as insolvency regulations. Common to all these legal fields is that they create mechanisms to protect or support the means of existence in specific life circumstances. Yet what distinguishes these legal fields from that of social security law is their strong focus on individual life circumstances.

Social security law is quite different in that respect. Its initial concepts define mass phenomena that create specific risks for collective life circumstances. Strictly speaking, at European level this means that specific, *separate* phenomena are regulated under social security law for specific, *separate* collectives, for instance sickness costs for employees, accidents and their consequences for workers, or financial compensation for persons no longer in dependent employment, and so forth. These examples differ distinctly from national regulations adopted to combat the general problem of poverty by providing social benefits to secure subsistence (social assistance). Apart from their individual alignment with phenomena that affect everybody, these national regulations are, also historically speaking, nothing but an extrapolation of the charitable state. In contrast to social assistance (former poor relief), social benefits covering specific risks of specific collectives evolved only little by little.

In collaboration with the Research Unit European Social Security (RUESS) of the Catholic University of Leuven, the Institute has set itself the goal of identifying common features of national social law systems, despite all dissimilarity in their respective layouts. One outstanding common objective is to afford protection to persons in specific situations of need and to protect against risks. This protective function of *social protection law* could thus be taken as the smallest common denominator for establishing the legal frame of a prospective General Section. Simultaneously, the protection function can be used to ascertain the legal frame for classifying principles and, hence, for guiding the actual project work. In the process, the deliberate focus is on *social security law*. Its protective elements are not a priori as heavily accentuated as those of the more general social protection law, because the very conceptualisation of social security law already presupposes that the individual is in some way capable of making his or her own provisions. Despite this system-based particularity, we are assuming that our prospective findings on social security law as a whole can be adopted for the entirety of social protection law as well.

Mode of Procedure

In its preliminary papers, the project group, consisting of members of the Institute (*Becker, Quade, Ross, Sichert*) and of RUESS (*Peeters, Pieters, Schoukens, Zaglmayer*), laid down the mode of procedure in workshops held in November 2004 and December 2005:

On the basis of reflections on the protection function of social security law, the research project will focus on baselines that are geared to the protection of individuals but involve collective risks. Notwithstanding all common elements, each of these baselines will take a different approach: The collective element of social security law addresses reciprocity and the mutual need to stand by

each other (Solidarity). The individual element is aimed at personal responsibility and participation (Self-responsibility). The paternalistic element is reflected in non-optional regulations governing the protection of individuals (Protection). And finally, the time-related element spans the entire system of social security law, given that protection functions and guarantees are provided for specific periods of time (Security).

The research project will investigate these elements (Solidarity, Self-responsibility, Protection, Security). In a preliminary step, it will therefore attempt to track them down for the respective national legal systems. These national systems include those of the EU's member and accession states, as well as those of states which have already established close legal ties with the EU (e.g. Norway or Switzerland). In order to identify these elements in the given states, a questionnaire is to be drafted for each of them and forwarded to the cooperation partners. The second step will consist in evaluating the national results obtained for each of the four elements. Alongside the comparative legal analysis, the idea of the project is to elaborate lines of convergence, thus making it possible to extract principles of social security law in Europe.

Friso Ross

1.3. EC Coordination Law

EC coordination law – today regulated as secondary Community legislation under Regulations (EEC) Nos. 1408/71 and 574/72, which are due to be consolidated in Regulation (EC) No. 883/2004 and its prospective implementing regulation – has always been a main feature of the Institute's work on Europe. This work has been conducted through regular reporting on the case-law of the European Court of Justice in the "Jahrbuch des Sozialrechts" (Yearbook of Social Law), in treatises on the social security of migrant workers, and in collaboration with the relevant European institutions in the form of expertises and events concerning the implementation and enforcement of the Regulations at national level.

Regulation (EC) 883/2004 has been adopted by the Council and is in fact already valid. However, it is not yet applicable because it still lacks the pertinent implementing regulation. The Regulation will place EC coordination rules on a new legal footing. Thus a theoretical and practical task will be to deliver commentaries on the amended rules vis-à-vis the former Regulation (EEC) No. 1408/71, e.g. on behalf of the new member states as well as the future accession countries.

On the one hand, the new Regulation has simplified and considerably abridged the entire volume of the coordination rules. On the other hand, it contributes to a modernisation of these rules, in that the new legal instrument introduces amendments both at national level, in the form of state social legislation, and at European level, through the Council and Parliament acting as legislators and through the European Court of Justice. Moreover, arrangements have been made to ensure the Regulation's implementation in the ten new member states.

In previous years, the Institute, in its endeavour to link theory and practice, has been mandated by the Commission to contribute to making EC coordination law known to the new accession states, as this law forms part of the *acquis communautaire*, i.e. the applicable body of Community law which these countries must adopt. A simultaneous task has been to identify any need for legal amendments, both within national legislations and at European level.

Similarly, the Institute was involved in the reform discussions that preceded the enactment of Regulation 883/2004 through its participation in the preparatory conferences of the Commission and on the occasion of a hearing held by the competent committee of the European Parliament.

Content of the New Regulation

The simplifications achieved by the new Regulation apply in particular to the provisions governing its personal scope and its subject matter. Thus it seeks to place other EU nationals on an equal footing with a member state's own nationals in terms of these provisions, and it regulates individual aspects of the rules governing the respective branches of social security benefits.

At the same time, some aspects of the Regulation fall short not only of the Commission's proposals, but also of expectations. Thus, for instance, the Regulation continues to lack separate provisions on benefits awarded in the event of long-term care needs. According to the case-law of the European Court of Justice, these benefits are to be placed on an equal footing with sickness benefits within the meaning of the Regulation. However, an often held view, one that is taken also by German scholars, is that the special nature of long-term care benefits requires specific regulation.

Also missing is a delineation of the approval procedure under both the former Regulation (EEC) No. 1408/71 and the new Regulation (EC) 883/2004 in respect of claims to sickness benefits. Here again, the case-law of the Court of Justice endorses a different view, declaring that every insured person is allowed to claim *cross-border healthcare benefits* in other EU member states – with respect to the benefit level in the country of origin – by invoking the economic fundamental freedoms of the Common Market. Conversely, the coordination rules provide for recourse to the instrument of administrative assistance by the competent institution of the host state, meaning that benefits can be claimed there without restriction under the conditions of that state.

Definitional problems between coordination law and internal market law also arise in connection with the current controversy over the general services directive, for which the Commission submitted a draft proposal in February 2004. The proposal met with heavy criticism (detailed below) not only in Germany and in respect of its application to the healthcare and social sector, but also as regards its reference to the provisions governing sickness benefits under Regulation (EEC) No. 1408/71 and Regulation (EC) 883/2004, respectively. This raises questions about the concurrence of coordination legislation and internal market law.

Research Issues Regarding the New Regulation

Specific issues regarding this reform and its implementation in Germany were debated in two expert seminars held under the auspices of the European Commission at the Federal Ministry for Health and Social Security in Berlin. The experts agreed that the former coordination instrument, Regulation 1408/71, had in essence proven itself and that the same was to be expected of the new Regulation 883/2004. In particular, practitioners dealing with EC coordination rules favourably assessed the Regulation's more concise wording and thus improved "readability", its considerable reduction in volume, and its resultant "manageability". Moreover, it was found that the Regulation took account – albeit within limits – of developments in the member states' social security systems, for instance through the inclusion of early retirement provisions.

Still lacking, however, is a coordination of occupational and private old-age pension schemes, which are gaining importance in all EU member states – also in Germany since the 2001 reform of supplementary pensions ("Riester Reform") – as most retirement schemes are "converging" towards a public-private mix, thus giving more scope to non-state pension options.

A further missing element is the adequate consideration of *tax components of social security* which increasingly have a bearing both at the financing level and on the benefit side, for instance under the law governing the equalisation of family burdens.

Bernd Schulte

1.4. Internal Market and Social Services

The European internal market has not been fully accomplished in the *services sector*. This shortcoming is felt all the more as the services sector is not only the fastest growing branch of economic activity, but also the only domain with rising rates of employment. In Germany, for example, the services sector meanwhile accounts for 70 percent of all jobs.

This development acquires its momentum in the wake of deregulation, liberalisation, outsourcing and privatisation tendencies. As a result, service administration, previously the classic modus for the fulfilment of state responsibility for public services, is being replaced by a new model of state-guaranteed

provision of services of general (economic) interest by third parties acting on behalf of the state.

This change reflects the transition from the intervening social state of the 1970s to the cooperative and activating, yet more distant social state of today. The move from the benefit-providing to the guaranteeing state entails an increase in economic procedures as instruments of modern public administration. And these in turn generate the heightened use of competitive elements also in the field of social service provision. Consequently, this function is progressively performed on a social market embedded in the structures of a market economy and thus subject to competition law. It follows that the role of competition law and, in this context, also that of state aid law is constantly enhanced in connection with the delivery of social services. In this way, European Community law, notably its internal market legislation, is gaining more and more importance also in the field of social services of public interest. Social services in tandem with the competent social security institutions form a central pillar of social protection in Germany and Europe. They thus constitute indispensable policy instruments on behalf of families, youths and senior citizens and towards the creation of equal opportunities – a major task field of the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Together with leading local and voluntary welfare associations and in cooperation with the Institute, this ministry has published an edited volume (*Linzbach/Lübking/Scholz/Schulte [eds.]*, Die Zukunft der sozialen Dienste vor der Europäischen Herausforderung [The Future of Social Services in the Face of the European Challenge], 2005) that seeks to analyse – along interdisciplinary lines and from differing perspectives – current challenges facing institutions and providers of social services, with a special focus on European challenges.

Bernd Schulte

1.5. Cross-Border Medical Care in the Hospital Sector

With European integration on the increase, the rendering of medical care benefits across national borders is gaining ever more importance. The European Court of Justice has paved the way for this development through its case-law, thereby making a distinction between ambulant and in-patient treatment. While statutorily insured persons are free to seek ambulant medical treatment in other EU member states and to obtain a refund of their expenses from statutory sickness insurance, in-patient treatment in other member states is subject to the prior consent of the competent sickness fund. Owing to this requirement of consent, but no doubt also to the lacking mobility of insured persons for the purpose of hospital stays, the use of hospital services in other member states still tends to be rare, whereas cross-border ambulant care is becoming more and more frequent, especially in frontier regions. Such "de-territorialisation" offers new perspectives as regards the density of medical care rendered to the population, given that it raises the number of available suppliers. The resultant increase in choice is also likely to enhance the quality of treatment owing to more competition between benefit providers. Nevertheless, such an extension of treatment options also bears a number of risks. For instance, quality controls of non-national hospitals can then only be effected on a contractual basis, but not through mandatory regulations. In addition, the consequences for the financial stability of statutory health insurance are not yet assessable. The requirement of consent for in-patient benefits, on the other hand, creates a new kind of non-territorial border that adversely affects the freedom to provide services. On the whole, a host of questions remain open in this context, thus prompting the Institute to deal with these matters in more detail.

The Institute initially addressed this subject matter in the conference entitled "Grenzüberschreitende Inanspruchnahme von Krankenhausleistungen" (Cross-Border Medical Care in the Hospital Sector), which it organised in June 2004 (*Becker, Walser*). The conference was attended by experts on European and German hospital insurance law. The objective was not solely to engage in an

academic discussion of the problematic subject areas, but also to convey the Institute's knowledge to practitioners. The agenda centred on two broad themes, namely political and economic parameters, on the one hand, and legal problems of cross-border hospital benefits, on the other. The first set of subjects highlighted the economic consequences of the current case-law of the European Court of Justice and outlined the possibilities of putting the Court's rulings into practice, considering a Nuremberg clinic as example. The second subject group dealt with the differentiation between in-patient and ambulant medical care services, and subsequently addressed the qualitative prerequisites for cross-border access to these services.

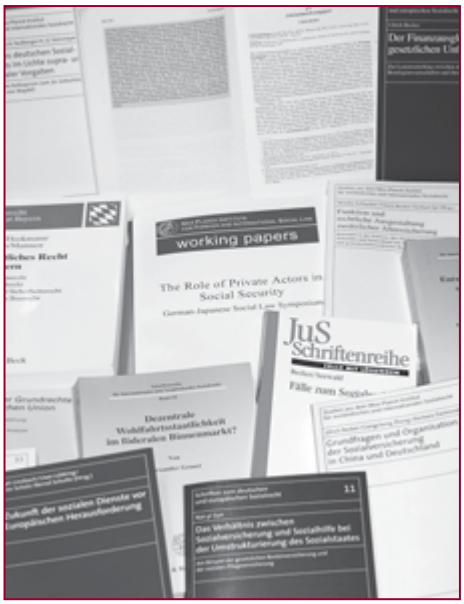
Christina Walser

1.6. Implementation of International Social Standards

The spreading industrialisation of Europe and attendant impoverishment of large sections of the workforce in the 19th century raised ethical demands to create and enforce minimum social standards. The main issues were child labour, forced labour, the unrestricted defence of worker interests through trade unions, and the status of women in the working world, notably in conjunction with maternity protection. Non-compliance with minimum social standards was nevertheless regarded as problematic, not only for humanitarian reasons; it was soon to be augmented by an economic dimension. In the international realm, the introduction of social rights was often feared to impair the competitiveness of economies. A failure by some states to introduce social improvements was perceived as an obstacle to the development of those states wishing to upgrade the situation of workers, as the latter suffered a competitive disadvantage. With the founding of the International Labour Organization (ILO), all states were to be obliged to comply with minimum social standards set forth in conventions. A committee established in 1926, and still active today, was assigned the task of monitoring the effective implementation of social standards and social rights on the basis of state reports. After the Second World War, other international organisations (e.g. UNO, Council of Europe) likewise framed minimum social standards and social rights in covenants and treaties. These, however, were not confined to workers, but devolved from human rights accorded to all citizens. Compliance was monitored by introducing reporting procedures similar to those already adopted by the ILO. In the absence of their ratification or for other internal policy reasons, minimum social standards often could not be effectively enforced in practice. In 1998, the ILO adopted a Declaration on Fundamental Principles and Rights at Work. These so-called core labour standards are deemed so fundamental that the ILO demands their observance on the sole ground of membership, thus no longer requiring ratification by a national parliament. In the wake of the globalisation of world trade, this problem has acquired a new dimension. Fierce protests on the occasion of WTO negotiation rounds reveal the close nexus between world trade and compliance with social standards deriving from universal human rights. Here, highly disparate interests collide with each other. Developing and threshold countries fear the loss of their competitive edge through the introduction of "social clauses". The industrialised nations, supported above all by the trade unions, are pushing for unconditional compliance with minimum social standards. The stance taken by the countries addressed nevertheless tends to be ambivalent. Of course, they are willing to improve the social situation of their inhabitants, yet the observance of these standards does not only bring them advantages. The abolition of child labour, for example, leads to a loss of urgently needed family income. Discussions about the unequal remuneration of men and women is relativised for those concerned if even the smallest of incomes earned by women must contribute to a family's subsistence.

Current Research Issues

Since its foundation, the Institute has dealt with minimum social standards in a range of studies. The initial focus was on the investigation of state activities of social security, notably in developing countries. Later on, the so-called informal sector of social protection (families, clans) was included. In the



sphere of international organisations, the main focus was initially on the supervisory procedures based on state reports.

To date, not enough is known about the implementation of social standards and the effects of "soft law". Owing to the increasing exodus of companies in the face of global institutional competition, the question reemerges – as it already did in the 1920s – whether non-compliance with social standards is not also an obstacle to the development of countries that wish to sustain better social conditions for their inhabitants. The more the economies of developing and threshold countries grow, the greater the competitive pressure on other states. This trend is reflected in the incipient dismantling of social rights in industrialised countries – in Germany, for example, through the most recent labour market reform laws. Hence, German social law is indirectly affected by the implementation of social standards in developing and threshold countries. In the light of this close correlation, the Institute considers it a task to continue the work on this subject. A future aim could be to classify the various co-existing minimum social standards and then to develop better strategies for their more efficient implementation. If that could be accomplished, it would not only benefit those primarily affected in developing and threshold countries, but would likewise have a bearing on the social situation of our own population.

At the end of October 2005, the Institute hosted a workshop entitled "Implementierung internationaler Sozialstandards und -rechte (IISR). Bestandsaufnahme und Weiterentwicklung" (Implementation of International Social Standards and Rights. Survey and Further Development). This workshop sought to consolidate the experience gained by various international organisations in the implementation of social standards. Its aim was to analyse enforcement problems arising from both the nature of legal provisions and the respective institutional setting. Included in the reflections were treaties with a genuine social and labour law orientation, such as the social standards and rights implemented under the European Social Charter ("Implementation internationaler Sozialstandards und -rechte nach der Europäischen Sozialcharta"; *Birk, Öhlinger*) and the conventions of the International Labour Organization ("Implementierung der Konventionen der Internationalen Arbeitsorganisation"; *Nußberger, Heller*). Functional aspects were addressed by looking at the significance of unspecific international and supranational instruments, such as the European Human Rights Convention ("Bedeutung unspezifischer inter- und supranationaler Instrumente: Die Europäische Menschenrechtskonvention"; *Grabenwaerter, de Wet, Keller*). The legal requirements governing the EU were the subject of the paper and the commentary on the protection of social rights and standards in the European Union ("Der Schutz sozialer Rechte und Standards in der Europäischen Union"; *Becker, Iliopoulos-Strangas*). Furthermore, the papers addressing the social standards of international finance institutions ("Sozialstandards der internationalen Finanzinstitutionen"; *Bluethner*) and the influence of the IMF and the World Bank ("Einfluss von IWF und Weltbank"; *Sailer*) sought to take account of the binding effects of international standards on organisations located at a supranational level. Last but not least, two reporters analysed the International Covenant on Economic, Social and Cultural Rights ("Internationale Pakt für wirtschaftliche, soziale und kulturelle Rechte"; *Riedel, Schneider*).

The opening reports brought to light the weaknesses of enforcement instruments, owing above all to the lack of sanction mech-

anisms on the part of the responsible bodies and committees. Even so, it is precisely the committee reports which are in fact often consulted by the courts for legal interpretation, although they lack binding effect. This poses the problem of the legitimation of such judicial decisions. In any case, it was found that the composition and election of bodies responsible for monitoring the implementation of social standards lacked transparency. Mostly, the members of these bodies are appointed by the respective governments without any clear reference to the interests and qualifications involved in these procedures. Especially in the past, it was not always apparent to what extent individual body members were (not) bound by instructions. Fluctuation likewise impairs the reliability and continuity of committee work. It was moreover agreed that the criteria of interpretation were not always comprehensible. At times, single rights laid down in treaties were construed very broadly by the relevant bodies. But owing to the specific reference to individual cases, it is difficult to derive generally valid regulations therefrom. Sporadically, it was even queried whether certain bodies might not be dissolved or amalgamated to avoid a co-existence of similar standards and thus to heighten the effectiveness of actually enforceable standards. Another result of the discussions was to question the relationship between European Community law and the law of international conventions. In purely formal terms, the law of conventions takes precedence over Community law, yet in practice Community law often has the greater enforcement potential, given that possible sanctions are quick to take effect. The European Fundamental Rights Charter is likewise expected to affect the further development of social standards, even if the Treaty establishing a Constitution for Europe has not yet entered into force. The co-existence of individual convention rights, their differing interpretation and their relationship to other international legal instruments was a topic that workshop participants felt had not been investigated to a sufficient degree. Another subject area found worthy of consideration was the impact of privatisation of parts of social security, given that the relevant conventions are based on an extensive guarantee of social rights under public law.

Hans-Joachim Reinhard

2. *Adjustments in Developed States*

2.1. State Tasks on Behalf of the Third Generation: Maintenance, Education and Care of Children Between Public and Private Responsibility – A Legal Comparison

Germany is today one of the most rapidly aging societies. Its birth rate is stagnating at a low level and ever fewer members of our society – especially in larger cities – live together with children in a parenting household. The few families with growing-up children in turn feel neglected by politicians, and children are increasingly considered a poverty risk. Although the spectrum of state benefits on behalf of families has been extended several times since the 1980s, the proportion of children and youths in receipt of social assistance and other minimum security benefits is rising disproportionately. Especially hard hit by poverty are children in single-parent families, in multiple-child families with only one source of income, and in families with long-term unemployed parents. Families with children, however, are burdened not only by maintenance costs, but also by the shortage of adequate day-care facilities for children. This situation of shortage is aggravated by a school system that fails to tap full educational potential, that to an excessive degree links success in school to parentage, and that demands considerable efforts on the part of parents in assisting the educational development of their children. Gainfully employed parents find it increasingly difficult to find the time needed for these efforts, especially in the face of heightened demands of mobility, flexibility and pressure to perform in the working world.

Against this background, a multi-annual Institute project involving four selected European countries with very different family policy traditions, namely Germany, France, Italy and Sweden, seeks to investigate how the respective benefits for the maintenance, education, and care of children and youths are awarded and accounted for.

Conception and Legal Dimensions of the Subject Matter

While previous investigations on family policy were based on a social, political-science or economic premise and tended to be geared to the family as an institution, this Institute project deals explicitly with the legal foundations underlying the definition of state responsibility for the upcoming generation – from the normative embodiment of legal rules to the allocation of child-related costs of maintenance, care, education and furtherance. Thus the project is not confined to the analysis of social policy concepts, but in fact embraces the dimension of juridical structures and principles essential to understanding the legal integration and legally binding quality of differing welfare state arrangements.

This legal dimension governs the central aspects of the Institute project. Accordingly, the project seeks to clarify to what extent and on what grounds the state – either alone or in interplay with other public and private actors – supports the education of children in the broadest sense, especially in the light of children's right to furtherance and development. Government actions are thereby scrutinised at various regulatory levels: international, national, regional or local. On the one hand, the aim is to examine the legal frameworks that nurture the development of children and adolescents within and outside the family, particularly emphasising the recognition of children's independent rights and the primacy of child interests or child welfare as a guiding principle of family and child law. On the other hand, in order to help understand the differing framework conditions, the individual country reports also address socio-structural circumstances, cultural traditions of particular family models and educational concepts, and not least ingrained social/welfare state principles.

The main part of the country reports deals with benefits for child maintenance and benefits for the care, education and furtherance of children, with layout and content of the reports likewise committed to a juridical approach. In structural terms, this is shown by the stratification of individual benefits according to the legal basis of the commitment (private law / social law). Also, the details of benefit claims themselves, which often differ in terms of age and family constellation, are analysed from a legal perspective, which in turn – beyond social law – hinges on provisions of family and maintenance law.

Social Law Concepts in Support of Parenting Households and the Furtherance of Children and Youths

Nevertheless, the main focus is on social law concepts for the support of families with children, as well as for the independent furtherance of children and youths within the scope of child/youth welfare services and the school system. In the process, not only the legal basis and legal quality (notably as regards the award of legal claims) of specific benefits and measures need to be identified. Rather, it is also necessary to look at the legal status of the persons involved, along with their rights of participation; at the nature of the parent-child relationship, as a central prerequisite for numerous child-related benefits; and at the organisational integration of private benefit providers, especially with a view to day-care facilities.

Benefits and measures geared to the existence of children (in need of educational assistance and/or care) are found not only in the branch of general and specific family benefits, but in all branches of social protection. Youth welfare services and the education system play a decisive – yet differently weighted – role in the direct furtherance of children and adolescents (above all, through the organisation of the school system, and holiday and recreational programmes).

A supplementary, but nonetheless vital task for the promotion of families and children is performed by labour and tax law. In most countries, tax law is traditionally regarded as part of the scheme for the equalisation of family/child burdens. But as indirect taxes can considerably encumber families with dependent children, it is increasingly questioned whether child maintenance needs and work-related expenses for child care are adequately allowed for under tax law. Labour law in turn offers a series of legal instruments that are indispensable to the simultaneous compatibility of occupational activity and child-raising. Prominent among these

are claims to parental leave as well as flexitime and organisational schemes. Here, the use of modern communications technologies often aids the development of family-friendly forms of work time autonomy.

Development and Renewal of Social Policy Principles in Support of Families and Children

The aim of the research project is to provide a comprehensive and reliable outline of the relevant legal foundations in their respective cultural settings, along with their regulatory objectives and their actual relatedness to practice. Particular attention is thereby paid to normative developments that introduce new social policy principles towards a "modernisation" of family policy. These principles include personal responsibility, equality of men and women in their function as parents, but also the rights of children. The underlying modernisation approaches are partially rooted in fundamental and human rights; partially, they stem from concepts for a reorientation of the social state in other branches of protection.

On the whole, increasingly complex approaches within the frame of family policy benefits and measures are coming to the fore, also as a result of the altered parental roles of mothers and fathers. In many countries, "parenting work" is progressively being incorporated into social and labour law. The compatibility of children and work is an issue which – if overall conditions allow this – is coming to be seen also under the aspect of the father's parenting work: on the one hand, more and more fathers seek to effectively participate in custody and to assume genuine parenting responsibilities following a divorce; on the other, more involvement on the part of fathers can be derived from the conception of child rights themselves.

Family policy, more than most other policy fields, is shaped by cultural traditions and attendant family role models. Despite the common legal conviction in the four countries under comparison – Germany, France, Sweden and Italy – whereby the decision to accept parental responsibility is foremost seen as a highly personal one, each of these countries has nonetheless adopted differing concepts as regards the extent to which the state ought to, or must, intervene in this private sphere and under what conditions it does so. On what grounds and in what form the state shares in the cost associated with parental responsibilities is likewise viewed differently.

Progress in the Period Under Review

In the course of the reference period, the country reports on Germany (*Hohnerlein*), France (*Kaufmann*) and Sweden (*Köhler*) were supplemented and brought up to date – above all with a view to the comparative legal evaluation. The introductory part was edited (*Becker*) and the country report for Italy completed (*Hohnerlein*). The above-outlined legal dimensions have been elaborated for the comparative analysis (*Hohnerlein*). They are to show where the respective borderlines are drawn between primary parental responsibility in terms of family and maintenance law, on the one hand, and public responsibility for the maintenance, education and care of children, on the other. Hence, the question is: to what extent have "child costs" been "socialised" in the compared countries and what "institutions" are financially and organisationally involved in the education and furtherance of the upcoming generation, thus relieving the parental burden.

Eva Maria Hohnerlein

2.2. Activating Labour Market Policy

This Institute, the IAB (Institute for Employment Research), and the IZA (Institute for the Study of Labor), have come together to conduct a cooperative project on the activation of labour market policy in an international comparison. Economists and sociologists have been dealing with this subject for some years; for legal scholars, however, it constitutes a new field of research. Hence, this specific aspect of labour market policy is to be examined for the first time in an interdisciplinary study based also on a legal perspective.

Problem

Since the mid-1990s, labour market policies in numerous countries have been subject to sometimes fundamental transformation. In

some countries, notably in Scandinavia, such changes were wrought under the central theme of "activation". The concept itself was unknown to many other states, but the procedures they adopted were quite similar. Thus unemployment insurance, existing minimum security schemes for unemployed persons, and certain labour law provisions were amended or initiated with the aim of specifically promoting jobless persons or those threatened by unemployment. The underlying objective was often to establish a closer and more effective connection between the rights and duties of unemployed persons in receipt of transfer income. In this way, promotion has been linked to the demand to make a personal effort – at least in countries solely guided by the insurance principle. And that above all means that the receipt of income replacement benefits in the event of unemployment is to be flanked to a greater extent than in the past by intensive personal search efforts subject to strict supervision.

Generally, "activation" means to abandon the passive policy of granting unemployment support; it is expressed by the attempt to reduce overt unemployment through long-term "action careers". Hence, activation may be viewed in many countries as a response to the rising proportion of transfer recipients within the working population and to an increasingly sceptical appraisal of the effectiveness of "classic" labour market policies. Activation aims, on the one hand, to enhance jobseeking and, on the other, to improve the labour market situation through intensified placement efforts. Yet it is often not the result that counts when classifying a certain country as "activation country", or not, the decisive issue rather being the *method* of implementing (re)integration or "employment promotion".

With the exception of some countries, "activation" is not the decided name of a programme. From a legal point of view, activation could embrace all measures that successfully lead away from unemployment. Yet if activation simply reflects the intention to generate employment, then it is not per se a legal instrument, notably because the securing of jobs is no longer the prime motive.

Objective and Procedure of the Interdisciplinary Project

The project, to be concluded by a publication, seeks to investigate labour market changes brought about by specific measures and policies. This will involve an analysis of countries that have implemented the activation principle in their labour market policies at quite an early stage, or have attempted to do so. A systematic international comparison is to focus on the design, functionality and effect of activating labour market policies in selected countries. If possible, findings on the prerequisites for an effective activation strategy are to be provided.

The thematically ordered country analyses and cross-national comparative subjects themselves will display a dual structure. The depiction of each country's unemployment insurance scheme in general and its activation measures in particular – from both an economic/sociological and a legal perspective – are to complement each other. The countries and the respective legal and sociological or economic reporters are: Germany (*Grienberger-Zingerle, Eichhorst, Konle-Seidl*), France (*Kaufmann, Barbier*), USA (*Dupper, Quade, O'Leary*), Denmark (*Köhler, Pedersen*), United Kingdom (*Schulte, Finn*), the Netherlands (*Sichert, Sol, van Lieshout, Koning*), Sweden (*Köhler, Hemstroem*), Switzerland (*Ross*) and Spain (*Reinhard*).

Content and Regulatory Interdependence

Apart from presenting changes in the law governing unemployment insurance and means-tested aid to jobseekers, as well as in neighbouring legal fields, a main objective is to assess the effects of amended laws across several countries. In particular, this concerns the legal regulations that define reasonability criteria and conditions for access to benefits, but also the changes in the duration of benefit receipt and, ultimately, the possibility of imposing sanctions for non-compliance with the rules. Besides the analysis and comparison of these legal foundations, an additional task is to examine their actual implementation and administration by the institutions entrusted with their practical application. It is precisely here that considerable research is still needed; significant findings, however, are only to be expect-

ed through the interdisciplinary approach as it is planned here.

The effects of activation strategies based on legally implemented rules are to be highlighted by reverting to the economic and sociological state of knowledge held forth in the respective countries. The one intent is to identify the effects of activation on individual employment processes (e.g. transitions to regular employment, salary trends); the other is to monitor its effects on macroeconomic indicators reflecting labour market and budgetary developments. In assessing the outcome of activation strategies, economic and institutional contexts must be taken into account, the job supply also playing an important role here.

The overall legal framework has a particular bearing on the formulation of general legal foundations (organisation and competences; rules in the form of either statutory law or autonomous lawmaking within the scope of statutory requirements) as well as on the institutional parameters governing the labour market (minimum wage system, protection against dismissal und regulation of flexitime employment options). Fundamental economic data supplement this overview.

Activation within the system of unemployment support, in the sense of specific legal rules elaborated to that effect, is a prime task of the legal investigation. The aim is to analyse benefit access requirements, level and duration of benefits, and prerequisites governing benefit receipt. Activation in real terms can, where appropriate, be determined by examining formal links between benefit receipt and job search or, alternatively, by the active participation in measures based on agreements between the labour administration and jobseekers, but also by depicting the instruments used by the labour administration to promote jobseeking and job acceptance. Provisions governing penalties are important in the event of infringements. And finally, another aim is to portray non-contributory assistances schemes.

The investigations relating to the implementation of activation strategies are to be conducted by the sociological-economic side. The chief objectives here are: to highlight the factual links between benefits and active measures, and between job offers and public work opportunities as well as individual search activities; to outline the practical application and enforcement of reasonability and availability criteria; and to depict frequency and rigour in the supervision of search activities. Finally, the aim is also to describe penalty procedures in practice and to assess the execution of activation strategies with a view to competences and applied instruments.

Otto Kaufmann

2.3. Choice and Competition in Hospital Health Care

In many countries, competition in the healthcare sector serves as a steering instrument to achieve welfare state allocation effects and to meet the sustained cost rises accompanying medical progress. The nature and scope of competitive elements thereby tend to vary substantially, as do the steering mechanisms they are thought to create. Moreover, competition itself as a structural feature is subject to normative steering. It stands in a tense relationship to state intervention and regulation, which are committed to the provision of benefits tailored to need- and solidarity-based requirements, and which characterise traditional statutory social security schemes. In the healthcare sector, competition is therefore often restricted and thus confined within a system of imperfect and heavily regulated markets.

Yet innovative controlling and regulating potential is also inherent within competition, especially in contractual competition that is thus capable of creating new structures. Competition does not only serve as an instrument, but also as an objective of legislation in conformity with the value concepts of a liberal society. It is in the nature of competition to open new options and scopes of action to providers and cost units, and to give patients more freedom of choice. Moreover, permitting cooperation among individual providers makes it possible to establish specific supply structures and to offer choices between differing organisational forms and contractual terms.

The project "Choice and Competition in Hospital Health Care" is devoted to the

hospital sector – an especially cost-intensive area of medical treatment in which competitive elements are assigned a central steering function. The cross-national study is conceived as a German-American collaboration between this Institute (*Becker, Ross, Sichert, Walser*) and the Institute of Government and Public Affairs of the University of Illinois (*Rich*). Taking the Netherlands (*Walser*), Germany (*Sichert*), Switzerland (*Ross*) and the United States (*Rich*) as examples, the investigation seeks to highlight the prerequisites and the interrelated conditions and effects of normative steering in the hospital sector, for example as regards financing and reimbursement structures, benefit supply and the linking of previously separate healthcare areas. The comparative legal analysis makes it possible to identify the significant dimension of the steering issue by way of plural approaches with partially varying objectives, embedded in differing insurance systems. The selection of the aforementioned countries aims to take account of private and mandatory systems, private supplementary schemes, federal structural conditions, differing patterns and systems of competition, as well as differing market structures.

Following the preliminary conceptual work and a joint work session with the American partner at this Institute in the summer of 2005, the project is now in the active phase of realisation. The central groundwork (*Becker*) for the individual country reports outlines the function and significance of competition in the healthcare sector, formulates basic questions on normative steering, and defines the hospital sector in functional terms, including ambulant care options. With a view to the country reports, the following aspects have already been identified: "Critical Issues for Competition and Regulation"; structural conditions governing the hospital sector (e.g. planning and investment); and the legal framework regulating competition as the basis for the subsequent analysis of key steering mechanisms through (regulated) competition in light of the manifold (competitive) ties among and between the relevant actors. The latter include both private operators and the institutions of statutory health insurance, as well as privately and publicly run hospitals. Managed care concepts are considered just as important as the relationship between competition and anti-trust law, on the one hand, and (social) insurance and medical law, on the other, in measuring actors' scope of conduct under such aspects as market access and selection, market power and cooperation, and creative freedom and heightened responsibility.

The country-specific findings are to be consolidated in a comparative analysis and further developed into central statements on the steering function of law in the hospital sector. The general acknowledgement of a trend towards mixed regulative-competitive systems is to be evaluated and verified in view of the given challenges and the actual measures adopted by the legislator committed to the social state.

Markus Sichert

2.4. MaxnetAging

Everyone is talking about the problem of "society aging". The concomitant regulatory challenges have been dominating social law discussions for some time now, and thus also form a central subject of the Institute's work. In the long range, the sole objective will not be to make adjustments to existing pension, long-term care and health insurance systems. Rather, a reorientation of the social state is also debated in other fields such as family policy or the organisation of social services, to pinpoint only a few.

In the autumn of 2004, the Max Planck Society established an international research network for the interdisciplinary study of individual and societal aging: MaxnetAging. The network is under the leadership of Paul Baltes and its administration is based at the Max Planck Institute for Human Development in Berlin. From the outset, our Institute has participated in the network as a permanent cooperation partner, along with eight other Max Planck Institutes from the humanities section, the Karolinska Institute in Stockholm, and the University of Virginia/Charlottesville. Also affiliated are a number of individual researchers from other institutions. The members of MaxNetAging meet twice a year for multi-day conferences to present their own research findings on network subjects and to develop new pro-

jects. Our Institute has attended the three conferences held so far (*Becker, Graser*).

Represented within the network is a broad spectrum of disciplines, ranging from neurobiology and demography to art history. Accordingly, the initial phase was devoted to establishing a dialogue between the various fields and identifying common subject areas for future emphasis within the network. In the process, a host of connecting issues have emerged for our Institute. In one respect, that applies to the numerous interdisciplinary references social law shares with demography, economics, sociology, social psychology and medicine, and which the Institute hopes to study in greater depth thanks to the network. Beyond that, the network promises to open new perspectives on intradisciplinary cooperation with participating legal scholars from the fields of private and criminal law. Specifically, collaboration in terms of comparative law is envisaged with the network partner from Virginia, who will be hosting the next conference with a juridical focus on legal arrangements for the special protection of older persons, comprising measures to enhance their autonomy and social participation. This discourse, which is above all central to social law, will seek to identify ways of providing regulative protection against "ageism" and to highlight the legal and institutional organisation of elder care and support, as well as precautions against elder abuse.

Alexander Graser

2.5. Occupational and Other Forms of Supplementary Retirement Provision

Old-age security has always been a central research theme of the Institute. Following an extensive comparative law analysis (Alterssicherung im Rechtsvergleich, *Zacher* [ed.]), this subject matter was perpetuated along diverse lines of emphasis (Demografie, *Reinhard* [ed.]; country reports and lectures: *Kaufmann, Köhler*).

National supplementary retirement schemes are characterised by their great diversity of form; they can be conceived on a mandatory or a voluntary basis. Nearly all European states have subjected their pension systems, as well as supplementary schemes, to more or less far-reaching reforms. The proportion of occupational pensions and other forms of supplementary insurance, or at least the possibilities of establishing them, have increased in many countries and thus serve to complement obligatory "basic" old-age provision. Generally, the reason for introducing additional retirement options is seen in the need to ensure a level of social protection that is regarded as "right". On a number of grounds, the basic protection afforded to retired persons can be inadequate – either because it no longer meets general requirements or its shortcomings have been taken into account belatedly, or because the level of protection has been lowered.

The differences between occupational and "general" supplementary retirement provision are significant in manifold respects. Thus, for example, the personal scope of application of occupational schemes is restricted to employees, and the funding of such company pension plans – despite similarities to other kinds of supplementary provision and independent of the financing source – is always based on the formation of coverage capital. These differences alone justify a differential approach in researching this social security domain. But also pertinent rules under Community law that are applicable to various forms of supplementary provision and notably concern occupational pensions make a specific analysis seem advisable.

Supplementary Retirement Provision

Supplementary retirement provision was a comparative law subject prior to and during the reporting period. Initially, the main focus was on the comparison of supplementary schemes (*Kaufmann*); subsequently, it turned to country-specific reforms of old-age pension systems (*Kaufmann, Köhler*). These investigations have shown that miscellaneous forms of voluntary supplementary provision exist in almost all countries, yet with varying scopes of application. Collective schemes tend to depend above all on company size. In some countries, most recent reforms have led to an increase in voluntary and obligatory supplementary plans. The newly launched comparative legal analysis of occupational pension schemes shows that certain forms of supplementary provision are regaining importance. This results from the

mere fact that in some countries, specific supplementary retirement schemes can be utilised for both occupational pensions and other supplementary options. In Germany, the personal asset formation scheme constitutes such an example. Competitive problems may emerge in countries where obligatory supplementary old-age insurance trad-itionally does not take the form of occupational pensions and, in particular, is not implemented through the formation of coverage capital, yet where new provisioning modalities are being offered on the market alongside long-established models. In France, for instance, the classic insurance industry could prove a potential competitive factor also in the area of supplementary retirement provision, which is organised collectively and on the basis of solidarity. The question is whether generally competing models could not also include occupational schemes. Interdependencies between differing supplementary options could thus be of heightened interest to comparative law studies on occupational retirement provision.

Occupational retirement provision

Occupational pension schemes reflect a high degree of legal complexity, which needs to be analysed further on a comparative international, European and cross-national level. The diversity of legal forms can impair the acquired and accruing rights of employees who exercise their right of free movement within both the national and the European sphere. In the case of cross-border activities – that is, internationalisation – difficulties in the recognition as well as maintenance of claims acquired within the national realm are shifted to another level and demand adequate solutions there. Directive 2003/41/EC of the European Parliament and the Council of 3 June 2003 "on the activities and supervision of institutions for occupational retirement provision" is aimed at safeguarding the stable value and sustainability of newly established company pension schemes. Its transposition into national law was scheduled for 23 September 2005; however, this target was not met by all EU member states.

The multi-layered problem of acquiring claims, safeguarding rights and dealing with the interdependence between Community legislation and national law has been recognised as a highly fruitful subject of comparative law and was therefore selected for a cross-national investigation. It resulted in an international conference project on occupational retirement provision. The colloquium was held on 18 and 19 November 2005 in Rennes (Bretagne) by the Institut de l'Ouest: Droit et Europe (IODE) of the University of Rennes 1 in collaboration with this Institute, and funded above all by the Hans Böckler Foundation. In order to depict as comprehensively as possible the problems of safeguarding rights to occupational retirement provision and to permit their subsequent comparison, a general analysis of the respective national schemes was also required. The prime objective of the colloquium was to compare various national occupational retirement schemes, with a certain bilateral focus on those of Germany and France, and to interchange ideas with a number of national research institutions.

Following a general introduction (*Hennion-Moreau, Kaufmann*), the individual thematic blocks, within which the comparative law papers were held and discussed, were devoted to occupational retirement provision from the perspective of EU law (*Dupuis, El Moudden*), equality of treatment for men and women in respect of occupational retirement provision (*Hohnerlein, Le Barbier-Le Bris*), as well as a comparative investigation into the establishment and forms of occupational schemes in European states (*Muller, Körner, Del Sol, Ferrion, Carby Hall, Köhler, Ross*). Additional papers addressed control, portability and taxation issues surrounding occupational retirement provision (*Martin, Wismer, Reinhard*). A round table (chaired by *Boucher*) with representatives of the social partners provided an opportunity for a summary discussion; in conclusion, a recapitulatory analysis was drafted (*Chauchard*).

It was shown that, aside from such basic principles as capital cover, national provisioning schemes exhibit special features whose comparison is indispensable to the academic elaboration of future points of emphasis. In this area, Community legislation is faced with a prominent and, in a certain sense, harmonising task; it is the starting point for successful internationalisation – in terms of both the financial concerns of sup-

pliers of occupational pensions and the rights of insured persons. Although social security in the form of company pension plans is certainly a prevalent aspect of contemporary law, transnational research in this field is nonetheless still lacking.

An initial yield of these investigations will consist in a comparative analysis of existing legal systems and is to be presented in a conference volume. A second international colloquium is planned and will focus on the continued and in-depth review of national and Community law problems relating to occupational retirement provision. As the second colloquium will be able to build on the findings of the first, the identified subject areas can be addressed more specifically. Thus, for instance, a main point of emphasis will be to illuminate the role of the actors involved – that is, the social partners and their organisational forms, but also the persons entitled to occupational pensions. This especially will raise questions both with a view to these actors' role in deciding on new occupational pension schemes and as regards the competences involved in implementing such schemes. The findings on this problem complex will in turn generate queries about control options and control rights. Hence, the cross-country investigation is also to address the extent to which the social partners should be entrusted with a control function in applying national and/or Community rules and regulations, and how that function can be put into practice.

Otto Kaufmann

2.6. Constitutional Review of Welfare Reform

In the wake of changing societal structures and budgetary constraints, national social security systems have repeatedly been an object of reform. Whereas the further development and mostly system-inherent extension of social security used to be in the foreground, ever more dramatic changes to systemic conditions have prompted a growing number of approaches aimed at its fundamental revision, attended by deep incisions into benefit law and additional obstacles to benefit receipt. In some cases, a partial "dismantling" of risk-specific insurance systems has been undertaken in favour of (activating) schemes that provide basic coverage and demand more personal responsibility.

The dimension of such "reform-oriented interventions" calls attention to the standards governing the control of constitutionality as well as these standards' procedural enforceability. An international comparison shows that differing constitutional requirements, their protection function and justiciability mirror the inconsistent appraisal of tensions between the reform legislator's sovereignty and the judicial control of constitutionality in this problem area. The German-Israeli project entitled "Constitutional Review of Welfare Reform" takes a closer look at these correlations.

Initial approaches and associative points of departure outlining the research project were introduced on the occasion of a workshop conducted at the Institute in April 2005 under the title "Constitutional Litigation of Welfare Reform – Concepts and Outcomes in Israel and Germany". There it was found that incisions in the social benefit sphere posed a specific challenge to both (constitutional) legal systems. Yet according to the insights of the Israeli guest scholar (*Mundlak*), these cuts have only recently initiated a conceptualisation of the role of (constitutional) law in the transformation process occurring in Israel. The reform legislation adopted there from 2002 to 2005 has led to a breach with previous development and to a curtailment of essential achievements of the social state. This process is characterised by crucial substantive amendments as well as by the dominance of ministerial authority in the legislative process, thus entailing a shift away from traditional corporate and consensus-oriented structures. Consequently, the Supreme Court of Israel has been called upon to deal with an unprecedented wave of constitutional petitions that plead an infringement of fundamental human rights and the democracy principle. These petitions have generated court rulings based primarily on the principle of protection of human dignity, which was enshrined in the Constitution in 1992 and is regarded as the source of social rights and the attendant guarantee of minimum protection. Israel is witnessing a juridification of social policy that raises largely unresolved questions as regards the legitimation both of

the control of constitutionality and of decision-making within democratic procedures committed to deeply rooted social state guarantees and to the protection of needy persons, mostly minorities.

In the case of Germany, the longstanding and, by international standards, prominent role of federal constitutional jurisdiction (*Sichert*) is emphasised, particularly as regards judicial review of the constitutionality of laws and the constitutional complaint procedure. The significance of the complaint acceptance procedure has recently been demonstrated by the Constitutional Court's handling of complaints against the Fourth Amendment Law on Modern Services in the Labour Market. A specific yardstick of control is the equality principle, whose relational structure in conjunction with the social legislator's broad scope of assessment is alleged to require a readjustment of social law provisions that fail to do adequate justice to this constitutional principle. The tense relationship between lawmaking and control of constitutionality becomes manifest when a legal norm is not repealed but instead declared incompatible with the constitution, whereupon the legislator is requested to remedy the situation. Conversely, a legal norm's assessment as "still" constitutional may be coupled with an appeal to the legislator to take some form of action.

From a German and European Community law perspective (*Schulte*), the embodiment of the subsistence minimum in the principle of human dignity constitutes a prime focus. This reference to the highest constitutional value is reaffirmed at statutory level and given concrete substance in Germany's social assistance legislation (§ 1 SGB XII). The Federal Constitutional Court bears the ultimate responsibility for controlling compliance with constitutional standards, thereby taking account of economic feasibility. The Court is simultaneously aware of the difficulties inherent in the scientific deduction of numerical standards. At European level, the guarantee of human dignity likewise unfolds a standard-setting effect, especially under the banner of its entrenchment in the EU Fundamental Rights Charter, which is already being invoked as *soft law* and, moreover, comprises a catalogue of fundamental social rights that transcend member state guarantees. The so-called Open Method of Coordination seeks to flesh out the legal guarantee of a subsistence minimum and ultimately to incorporate it in terms of positive law, also as a means of achieving "social congruence" between member state and supranational law.

The main stress of the further project work is to be placed on the relationship between the judicial control of constitutionality, along with its need of systematic processing, on the one hand, and democratic lawmaking, on the other. In this context, it is to be enquired whether and under what conditions judicial intervention is feasible and admissible when it comes to calculating the amount of the constitutionally guaranteed subsistence minimum. Against the backdrop of the legal and constitutional traditions prevailing in Israel and Germany, the "constitutionalisation of social policy" is to be investigated as a process, and the constitutional control of social law reforms is to be critically illuminated within the limits of both epistemology and democratic theory. The preliminary conceptual work is currently being conducted under the leadership of the Israeli side (*Mundlak*) and supported by the Institute (*Dupper, Sichert*).

Markus Sichert

2.7. Legal Protection of Social Benefits in Europe

Since 2003, a discussion has been going on in Germany about the organisation of the jurisdiction of the social courts. As with general reflections on the reform of state organisation, this discussion, too, focuses on how the administration of justice can be structured more efficiently. Even if the debate on specialised jurisdiction is not new, but was already led upon founding the Federal Republic and has since recurred periodically (under the heading of "joint public-law rules of court"), it has now attained a new quality. For what was previously entertained as a thought in academic circles or certain ministerial bureaucracies now commands public opinion on grounds of "cost reduction" and "budgetary efficiency" and, for that reason alone, is infused with a new power of legitimation. Yet a discourse on specialised jurisdiction is initially nothing but a critical illu-

mination of the actual state of affairs. Efficiency and cost-saving on the part of the judiciary could well be taken as criteria for reviewing the due process of law. In fact, however, the crucial point tends to be the organisation of the judiciary as the third power alongside the executive and the legislature. Those advocating the idea of a unified jurisdiction ostensibly do not address the problems associated with *how* due process should be guaranteed through an adequate statutory judiciary. Yet, strictly speaking, their reform proposals will affect this domain to a considerable extent if, for example, "efficiency" is taken to mean that judges not working to full capacity in one jurisdiction should be assigned to another and must therefore transfer their judicial traditions to annex fields. And that essentially calls into question whether any differences should exist in the first place as regards the procedures, organisation and staffing of courts entrusted with specific fact-finding.

Accordingly, this subject matter centres on the functionality of specialised jurisdictions and on the closely related possibilities and limitations of differentiated jurisprudence. The Institute project is thus devoted to the pros and cons of a unified jurisdiction, proceeding from functional grounds and, hence, the due process of law. In order to broaden its perspective, the project takes a comparative law approach. For the judiciary in all European states has become differentiated and, notably as regards the legal protection of social benefits, very often specialised. How and under what premises this has occurred, and is still occurring, forms the starting point of the investigation. The project is not, however, geared to the ultimate decision-makers – that is, panels of judges, courts or tribunals and their legal organisation. Rather it already addresses the underlying country-specific particularities in respect of social benefit administration and its concomitant procedures. This is to ensure that the legal protection aspect is not neglected and that precisely the organisational features can be illuminated. The entire procedure in terms of legal form and due process can thus be outlined from the first to the last instance. And consequently, the specific features of each country can be elaborated with a view to the functionality of legal protection. The final aim is then to utilise, by means of a juridical comparison, the characteristics of other national solutions for the benefit of the German discussion.

The country reports concentrate on states with long traditions of a specialised judiciary or due process of law, respectively. Correspondingly, the following countries were considered: France (*Kaufmann*), Great Britain (*Schulte*), Italy (*Hohnerlein*), the Netherlands (*Walser*), Austria (*Ross*), Sweden (*Köhler*) and Spain (*Reinhard*). In terms of content, only certain social benefits are highlighted because nationally designed systems define social benefits and their prospective legal protection differently in terms of organisation, and substantive and formal law. Consequently, the project members selected approximately uniform definitions of social benefits characterised by international or supranational bodies as "social security schemes". Included are the benefits awarded for: sickness, retirement, occupational accident, nursing care, unemployment and minimum assistance.

Friso Ross

2.8. The Swedish Welfare State: Example of a Successful Modernisation Process

The Institute's country-specific research on the Nordic States has for years taken a comparative law approach to various aspects of their welfare state systems, notably that of Sweden. The general investigations describe the origins of the Nordic welfare states, their national healthcare systems and attendant models of patient insurance. The particular Swedish studies focus on old-age pensions and their current reform as well as on the role of supplementary occupational pensions, on the special protection of persons with disabilities under social and labour law, and on the legal organisation of part-time work. Moreover, projects on the legal status of children and on the specifics of legal protection under social law are due to deliver further insights into the Swedish system.

This preliminary work already makes it seem expedient, for practical reasons, to embark on a compendious legal analysis of the Swedish welfare state. Beyond that, such an endeavour merits particular interest because

Sweden can serve as a model on two grounds. The first is that precisely highly traditional social welfare institutions are in need of wide-ranging reforms in the face of current challenges. The second is that such reforms, even if they involve fundamental modernisation, have to be politically feasible in the way of democratic processes. That cannot be taken for granted, considering that persistent economic stagnation and societal aging have led the social security systems of most European countries into some degree or other of deep crisis since the early 1990s. And this in turn has generated more or less varied reform legislation in response to massive savings constraints. Yet most of these efforts have only gone as far as rendering mere corrections in detail. Only in Sweden was a *fundamental reform of the entire system* enforced politically.

Also Sweden's current social security system is the product of a more than century-long history of development. In the 1930s, the "Swedish model" was initially considered to exemplify the "Scandinavian welfare state" and was regarded a "middle course" between communism and capitalism. Later it was scorned as a deterring example of "welfare totalitarianism". Both appraisals have no doubt always been somewhat problematical owing to their one-sidedness. But also Esping-Andersen's classification – which was widely accepted after 1990 and qualified the Scandinavian "social democratic" welfare states by the concepts of universalism and uniformity of social benefits – has now doubtless become obsolete. That at least holds true for Sweden since the introduction of its most recent large-scale reforms, notably in the field of old-age pensions and through the Social Insurance Act of 1997. After the recession-induced cuts from the early to mid-1990s and the pension reform, one would hesitate to go on speaking of an unbroken "Swedish model" of the welfare state.

Yet one must bear in mind that by the mid-1990s Sweden's government deficit had run to more than 12 percent of its economic performance, and was thus the highest of all industrialised countries! Along with numerous savings measures, the Government curtailed unemployment benefit and social assistance, introduced a day of unpaid sick leave under health insurance, and began not just to reform the old-age pension system but to replace it by new institutions. Unemployment was scaled back from 15 to 4 percent through measures of "active labour market policy", and the deficit has meanwhile been transformed into a slight surplus.

It is this success story that lends an analysis of the Swedish reform process its particular relevance against the background of the German situation, because it shows that the problem of "aging" welfare states is not unsolvable and need not be accepted as inevitable. Rudolf Meidner, one of the fathers of the Swedish model, gave the following comment on the future of the Swedish social state in 1997, that is, in the middle of the reform process: "What must be done in such moments of history is to step back and realise what is happening – realise that the dismantling of the social state has not been forced by economic necessities, but is the result of political decisions. As long as we believe in democracy, we therefore still have good prospects for directing this development in other channels."

The research project is planned as a monograph summarising the numerous preliminary works. The transformation of the Swedish welfare state as an institution is thus to be analysed by depicting the reforms to diverse system components governed by social law, including the organisation of social security. All of these components are interrelated along legal and purely factual lines. Hence, any reform to part of the system will have direct or indirect consequences for its other parts and ultimately for the system as a whole. In order to successfully "modernise" a highly developed welfare state, the legislator must take account of these complex interrelations. The project aims to verify this necessity, taking Sweden as an example, and to demonstrate how a European state that is in many ways comparable to Germany has dealt with this necessity.

Peter A. Köhler

2.9. Reform of the Netherlands Health Insurance System

Health insurance currently ranks highly as a topic of discussion both in social law circles and in the public. The steadily rising cost of medical care and the simultaneous decline in contribution income on account of demographic change confronts statutory health insurance with persistent problems that require fundamental reform. In Germany, a number of reform models are being discussed with this goal in mind; in the Netherlands, an extensive structural reform of the health insurance system has just recently entered into force, at the beginning of 2006. A closer examination of this reform therefore appears compelling in the light of the current discussion in Germany.

The Dutch reform plan is geared to the comprehensive coverage of the sickness risk through a uniform, socially compatible insurance scheme. The first step has been to adopt measures for the flexibilisation of benefits and contributions in order to facilitate the transition to a system that assigns more personal responsibility to its members, while government controls recede into the background. The second step involves the abolition of duality between statutory and private health insurance in favour of a system of uniform basic coverage that is mandatory for all inhabitants. Private insurance companies have been entrusted with the provision of this basic coverage. At the same time, the institutional conditions of supervision and control have been placed on a new footing through the establishment of a new authority with extended powers (*Nederlandse Zorgautoriteit*). As for financing, flat-rate premiums have gained importance alongside income-related contributions. The third step plans to integrate the scheme for the coverage of especially severe illnesses, similar to German long-term care insurance, into the new basic protection system.

The Institute first explored this subject matter by way of research stays at Dutch universities, which were soon followed by talks with experts from the health ministry in The Hague. These endeavours were accompanied by publications, with the main focus on structural changes planned in the Netherlands and the reasons for undertaking them.

Manifold issues have been raised in the course of this work, prominent among these being the Dutch concept of a uniform health insurance system for all inhabitants. This system was opted for on the grounds of efficiency and equal access for all. But also the privatisation of health insurance institutions and the increased potential for competition have contributed to the fundamental renewal of the former system. The institutional reorganisation of control in the health insurance sector is directly aligned with these measures, decisive being the balance struck between freedom of competition within a system governed by private law, on the one hand, and the sovereign foundations that need to be controlled to safeguard its social character, on the other. In this respect, the current reform bears both opportunities and risks. The interplay between these parameters has already been explained in the Institute's publications. Nevertheless, the outcomes of the Dutch reform and the extent to which it will be able to achieve the aforesaid balance cannot be assessed until the reform laws have taken effect. In so far, there is still need for further research by the Institute as regards these issues.

To round off the previous activities, but also to lay the cornerstone for further cooperation, a workshop is to be held at the Institute in February 2006 and attended by Dutch experts from scholarship and practice. Its objective is to proceed with an in-depth examination of individual aspects of the reform, such as control of competition, contractual flexibilisation and financing issues, as well as to offer a forum for the discussion of the overall reform concept (*Becker, Walser*).

Christina Walser

2.10. Adjustment of Social Insurance Systems to Societal and Economic Developments – Japan and Germany in a Legal Comparison

Bridging the Gap Between Scholarship and Practice in a Joint Programme on the Transformation of the Social State

In both Japan and Germany, social security is faced with similar societal and economic developments that urgently necessitate an extensive reform of their existing systems. The Japanese-German comparison sought to extend prospective approaches towards solving these problems by highlighting the main structural elements of, and reform propositions for, the Japanese social security system, notably health, long-term care and pension insurance, and relating these to Germany. Not only the societal and economic developments, but also the social security systems of the two countries exhibit many common features. Of course, there are also significant differences that require a differentiated investigation.

Organisation and Execution

This research project set out to examine the problems arising for social security systems in the wake of demographic, societal and economic developments. Beyond that, it illuminated private health and long-term care insurance as well as occupational and private retirement provision in conjunction with statutory health, long-term care and pension insurance.

The exchange of views with scholars from the field of economics delivered new insights on the problems facing the existing systems, the need for reform proposals and their effects. Discussions with practitioners were especially conducive to contemplating the political objectives behind the reform proposals and their operability. This interdisciplinary and international collaboration produced fruitful results.

The end of the project was marked by a German-Japanese workshop entitled "Sozialrecht in der alternden Gesellschaft – Reformpolitik in Japan und Deutschland" (Social Law in an Aging Society – Reform Policies in Japan and Germany). It was jointly organised by the Max Planck Institute for Foreign and International Social Law and the German Federal Ministry for Health and Social Security in Berlin. There are plans to publish the findings of this project and the workshop in Japan and Germany.

Results

An important difference between the health insurance systems of the two countries is that in Japan a high value is set on the equal treatment of patients. Whereas reimbursement scales and total reimbursements are agreed between the sickness funds and providers in Germany, uniform reimbursement scales are set by the health minister in Japan. In fixing these reimbursement scales, the Japanese ministry seeks a compromise solution that takes account of the differing opinions of insurance institutions and benefit providers. This reimbursement system guarantees that every physician and every hospital receives the same reimbursement for the same services, irrespective of the patient's insurance institution. As a result, discrimination against patients owing to their affiliation with different insurers is ruled out. This fundamental distinction is the reason behind divergent reform measures in the two countries. Whereas great importance is attached in Germany to enhancing the scope of action for sickness funds, government intervention plays a dominant role in the Japanese healthcare reform, which includes such issues as the raising of co-payments, changes in reimbursement scales and realignment of the financial equalisation scheme. To date, these changes have helped keep health costs at a comparatively low level and to achieve a just distribution of costs in Japan.

The newly enacted long-term care insurance law in Japan shares many common features with the relevant German law. Yet the two laws simultaneously display a few important differences, which are attributable to the circumstances of persons requiring nursing care and their family members, and to the previous legal situation prevailing in each of the countries. In Germany, great store is set by the principle of subsidiarity, which subordinates solidarity-based assistance to personal responsibility. Conversely, one of the most important aims of long-term care insurance

in Japan is to reduce, as far as possible, the burden on care recipients and their family members. Owing to the high level of its benefits, the Japanese long-term care insurance scheme faces the greater risk of running into financial difficulties in the future. Hence, the most recent Japanese reform (2005) paid greater attention to the financial sustainability of long-term care insurance.

In both Japan and Germany, pension insurance must come to terms with substantial financial problems, brought on above all by demographic change. To resolve them, a series of reforms have been carried out. The prime objective is to avoid a sharp rise in contribution rates and to achieve intergenerational justice. At the same time, an appropriate pension level is to be ensured for the future. These reform targets are very much the same in both countries. In Japan, however, statutory pension insurance consists of a basic protection pillar (National Pension insurance) and an income-related pillar (Employee Pension insurance), so that in this respect the Japanese statutory system clearly differs from the German. On the other hand, the structure of Japan's Employee Pension scheme is similar to that of German statutory pension insurance. Another important distinction between Japan and Germany is that in Japan social equalisation is regarded as one of the essential functions of statutory pension insurance.

Over and above this, a main focus was on the role of private health and long-term care insurance as well as on occupational and private retirement provision in conjunction with statutory health, long-term care and pension insurance. In Japan, the chief function of private health and long-term care insurance is to supplement the corresponding statutory schemes. Conversely, in Germany, private and public schemes are basically structured as alternatives, with the supplementary significance of private insurance now growing in terms of health insurance law. In both countries, statutory pension insurance plays the leading role in retirement provision. In Germany, however, private options are increasingly replacing statutory provision, whereas in Japan they are to maintain their supplementary function. Supplementary pension insurance is subject to favourable tax treatment in Japan with the aim of improving life in old age, whereas the idea behind promoting private retirement provision in Germany is to partially replace statutory pension insurance.

Katsuaki Matsumoto

2.11. German-Japanese Joint Research on Social Security (GJJRSS)

Organisation

German-Japanese cooperation has a long and successful tradition at the Institute. An agreement reached in February 2005 has turned over a new leaf in the joint work conducted under the comparative project "German-Japanese Joint Research on Social Security". The project management has been assumed by the Max Planck Institute for Foreign and International Social Law (*Becker*) and Chuo University (*Kaizuka*). Among the participating universities is the renowned Waseda University (*Tsuchida*). The endeavour will deal with the current problems and issues facing the project countries in the areas of health, pension and long-term care insurance. Aside from the portrayal of existing regulations and problem areas, the aim is also to work out solutions that could improve and modernise the social insurance systems of both countries.

The joint research will not only be of a comparative nature, but have an interdisciplinary focus through the participation of both legal scholars and economists. The project's starting points, its fundamental subjects and the division of its members into groups were sketched out in a German-Japanese exchange of ideas lasting from February to August 2005. At a preliminary workshop from 4 to 6 September 2005 in the Abbey of Frauenwörth (Lake Chiemsee, Bavaria), the project members consolidated the foundations established in the prior months. The participants agreed on a division into three working groups on health insurance, pension insurance and long-term care insurance. As the workshop progressed, the group members in turn agreed on the details of the substantive work and discussed new problem items. The results of the sub-groups were presented to the large plenum and evaluated there. Subsequently, the plenum adopted the following procedure:

Basis

The working group on pension insurance centred on the problem of poverty in old age (*von Maydell, Tanaka*), the income mix (*Schmähl, Komamura, Fukawa*), changes in work biographies (*Schmähl, Komamura, Fukawa*), and families and pensions (*von Maydell, Tanaka*). All of these sub-areas are to take account of the trans-sectoral question of sustainability, which is not confined to pension insurance but also affects both health and long-term care insurance. It was for this reason that the formation of a fourth, new working group on sustainability was contemplated.

The working group on health insurance identified the subjects of solidarity and group formation (*Becker, Busse, Fukawa*), regulation and benefit provision (*Knieps, Busse, Matsuda, Tsuchida*), and specific questions concerning health care in an aging society (*Becker, Busse, Matsuda, Tsuchida*). Central research issues thus emerge with regard to healthcare costs for older persons, contribution financing, taxes and subsidies, regional differences, intergenerational solidarity, and differentiation between statutory and private health insurance. Further questions revolve around the scope and instruments of benefit provision, main points here being state regulation, cooperation and competition, on the one hand, and the definition of the benefit catalogue, quality controls and reimbursement, on the other. The effects of society aging on health insurance require thoughts about optimum out- or in-patient care, interfaces between health insurance and long-term care, and about prevention.

The working group on long-term care insurance was entrusted with issues relating to quality assurance (*Igl, Hashimoto*), feasible long-term care models (*Igl, Hashimoto*), the job market for care staff (*Komamura, Rothgang*), and the financing of long-term care (*Rothgang, Tanaka*). With regard to the various long-term care models, the research will deal with assisted living, joint residence, as well as domestic care and the traditional care in nursing homes, taking account of age-specific illnesses. In examining the job market for care staff, external care is to be compared with domestic care. A further item will be the financing of long-term care.

Further Procedure

After the workshop at Frauenwörth, the project entered into the actual research phase, during which both sides are to draft their reports, exchange questionnaires and, in the course of 2006, prepare the country reports.

In October 2006, a final symposium is planned in Kyoto or Tokyo. It is to be preceded by a second workshop in which the country reports will be submitted, discussed and adopted as final versions. In the process, the joint research findings will be evaluated and prepared for their presentation at the symposium. After the symposium, the project results are to be compiled in a Japanese and English publication.

Ulrich Becker / Matthias Knecht / Bernd Baron von Maydell

3. *Transformation in Threshold Countries*

3.1. Formal and Informal Social Security

As a contrast to the comparative law analyses of developed states, the Institute is now also intensely devoted to juridical comparisons of social security in threshold countries, but also to the comparison of developed countries and threshold countries. It has become apparent in the process that the legal systems of threshold countries are in a state of flux that not only affects economic law but, as a consequence of economic changes, also impacts social law. Developing countries strive to meet the resultant reform pressure through the selective reception and adaptation of the social law regulations of more developed countries.

Research on social security in threshold countries first of all enquires how processes of social security building, but also those of its further development and transformation are to be examined. In order to access this problem area, an initial comparison was launched between China and South Africa, and is still in progress. Later, there are plans to analyse the determinants of social security through the inclusion of additional countries (notably a South American state and India).

The previous work has been geared to issues of formal and informal social security in threshold countries. From the perspective of developed countries, informal social security systems and their notions of reciprocity were hollowed out by formal systems of state-provided social security. Under the formal systems, monetary transfers by the state have brought about the dissolution of social relations and, hence, anonymity – thus a widespread conviction. This development is now leading the social security systems of developed countries into crisis, since mere financial distribution in the light of low levels of economic growth and declining birth rates will cease to suffice in future. Even so, it is often assumed that informal social security systems will disappear in future and be replaced by formal systems. With that in mind, many international organisations sought to transfer concepts of Western social security systems to developing countries in the 1990s. Recently, however, the implementation of these systems has shown flaws.

Going in quite another direction is the supposition that there will always be informal social security systems, but that these will eventually adapt to the given circumstances and possibly merge with the formal system. Whether that can lead to more comprehensive social protection remains an open question for the time being. At any rate, such a process would entail "social security pluralism", which could prove an alternative to previous approaches. To illuminate these questions and assumptions in more detail, workshops and a lecture series are planned in the coming years to bring together scholars interested in the social security arrangements of developed and threshold countries.

Barbara Darimont / George L. Mpedi

3.2. Processes of Social Law Reception in China

Under the planned economy, social benefits in China were granted exclusively by the state-owned enterprises. With the introduction of the market economy, inter-company competition was accelerated, as a result of which state enterprises ceased to be competitive as they remained burdened with the high costs of social benefits. Consequently, the need to reform the social protection rendered

solely by state enterprises has grown with the introduction of economic reforms since the early 1980s. The requisite reform process began in China twenty years ago and is now showing initial results. Thus pension, health, unemployment, accident and maternity insurance schemes have been established for urban inhabitants. Legal regulations have been adopted for all of these social insurance branches and are to be given further substance in the coming years.

A comparison of the situations in Germany and the P.R. China reveals that the acknowledged reasons for reforms are similar in parts, notably insofar as they stem from the demographic trend and growing international economic ties. Yet they are highly different not only in their effects, but above all with a view to the respective starting positions in the two countries. While China must seek to build new structures, Germany concentrates on restructuring its well-established systems. Even so, points of contact evidently exist along these lines. For whoever wishes to create something new will consider reverting to models that have proven themselves elsewhere. In doing so, however, account must not only be taken of whether existing preconditions permit the adoption of a particular model, but also whether that model is adaptable in the first place. This may result in modifications whose analysis will be of interest to the "solution-exporting" country: both to better understand the bases of its own systems and to monitor options for their further development.

Influence of Legal Culture on the Reception Process

The comparison of legal cultures is a necessary precondition for the transferral of law. Receptions of law already played an important role in China at the beginning of the previous century, as many statutes and legal norms were imported from Western Europe in the 1920s and '30s. That "tradition" was upheld by China's Communist Party when it introduced law from the Soviet Union. In practice, however, the acquired law often proved incompatible with domestic law and legal comprehension. It is thus scarcely surprising that the reception of law, also referred to as Westernisation or modernisation, is now again a subject of intense discussion in the P.R. China. From the legal scholar's point of view, it remains open whether a reception of Western ideas is an expedient method for bringing about a substantial change in China's legal system, its legal thought and legal culture.

Fundamentally, taking a look at different legal cultures – here, the European and the Asian – first demands an inquiry into the conditions under which reception can take place at all, when it will be successful, and how thus absorbed law fits into the new societal, economic and cultural context. That applies to the reception procedure. Beyond that, of course, the results of such reception are likewise of great interest and promise to deliver new insights on the significance of cultural influences on law. In this respect, it is possible to distinguish between a macro- and a micro-perspective: for one thing, by asking in what way law is changed through reception and, for another, by examining whether the reception of law has repercussions on the entire legal system and, hence, on legal culture per se, thus being capable of changing it.

Reception serves to develop law. Selective instances of reception and adaptation characterise legal systems that have adjusted to social, political and cultural changes. In this context, social law appears an especially rewarding field of investigation. That holds true at any rate if one assumes that this field of law is shaped by its close correlation with prevailing societal and economic circumstances. Social law in particular affects the distribution of duties between the state, social institutions and the individual; at the same time, its level of development depends on the organisation and degree of economic exchange relationships.

In this light, it is indeed remarkable that, despite the sweeping social changes now occurring, a specific discussion on the reception of social law has been launched neither in China nor in Germany. By contrast, the reception of social insurance models is already being contemplated from a political and socio-scientific perspective under the heading of "social policy learning". Consequently, the conference entitled "Grundfragen und Organisation der Sozialversicherung im Rechtsvergleich zwischen Deutschland und China" (Basic Issues and Organisation of Social Insurance in a Juridical Comparison Between Germany and China), held at Ringberg Castle from 28 June to 2 July 2004, has paved the way for an interdisciplinary exchange. It was attended by German and Chinese scholars from various disciplines and resulted in a conference volume (*Becker, Zheng, Darimont*).

Reception of Autonomous Administration in China

Foremost among the insights gained has been the better understanding of Chinese social law. In Western welfare states, the function of subjective rights is to help enforce social policy objectives. Yet the weak institutionalisation of social policy in the organisation of Chinese government, the low level of its juridification and the lacking judicial protection of social rights has exposed welfare state benefits in China to the danger of party policy influences.

Given such difficulties, it is worth considering to what extent German autonomous administration could contribute to solving problems in China. The Chinese side has shown an interest in adopting a tripartite form of self-administration as it is practised in the German unemployment insurance scheme. Such a construct would, of course, have to be adapted to Chinese conditions, and – so it is conceded – this process would probably take years to accomplish. Hence, further analyses are needed on how, precisely, codetermination could be strengthened in China and in what respects it could be modelled on the German example of autonomous administration.

The follow-up conference entitled "Entwicklung der sozialen Sicherheit in China und Deutschland" (Development of Social Security in China and Germany), held in Beijing on 25 and 26 December 2005, re-addressed the subject of German autonomous administration as a model for the P.R. China. In addition, the influence of legal culture on social law was pursued further with the help of cross-sectional subjects such as the role of the family under social law. This subject matter also needs to be researched with a view to developing and threshold countries. Apart from legal culture, future investigations are to deal more extensively with the influence of international law on Chinese social law in order to look into the effects of absorbed law and to analyse its impact on the manifestation and functioning of law in China.

Barbara Darimont

3.3. South African Perspectives on Undergoing Transformations

The Max Planck Institute for Foreign and International Social Law established a country section for South Africa in autumn 2003. Research activities conducted under the auspices of this country section include an ongoing research project between the Institute and the Centre for International and Comparative Labour and Social Security Law (University of Johannesburg) on access to social security for non-citizens and informal sector workers; a nearly complete doctoral thesis on "Redesigning the South African unemployment protection system: A socio-legal inquiry"; and a joint research paper on the dualist approach to social security provisioning in China and South Africa (this is a product of a collaborative effort between this country section and that for China). In addition, the Institute is involved in a DAAD-supported exchange project between the University of Frankfurt/Main and the University of Johannesburg.

Access to Social Security for Non-citizens and Informal Sector Workers

The project on access to social security for informal sector workers flowed from a project planning seminar which was held on 15 June 2004 in Munich by researchers from the Institute and the Centre for International and Comparative Labour and Social Security Law. The aim of this project is to investigate the *legal techniques* (e.g. coordination of social security schemes), the *institutional framework* (e.g. adjudication and enforcement mechanisms) and the *legal instruments* (e.g. Constitutions, Treaties and Protocols) for extending access to social security to *non-citizens* and *informal sector workers*. This investigation, which focuses on South Africa and Germany, is intended at researching the specific causes (from a legal perspective) of the social exclusion of migrants and informal sector workers from accessing social security. The significance of this study is that it will contribute towards the better understanding of the challenges (of a legal and an institutional nature) facing non-citizens and informal sector workers in their quest to access social security. Furthermore, appropriate strategies for extending social protection to migrants and informal sector workers suitable for both countries under study will be developed. The preliminary research findings will be presented by participating researchers from the Institute and the Centre for International and Comparative Labour and Social Security Law at a workshop to be held on 18 to 19 January 2006 in Johannesburg. It is foreseen that the final project findings will be disseminated through a project publication.

Redesigning the South African Unemployment Protection System

The aim of this doctoral study is to critically analyse the South African unemployment protection system so as to identify the existing deficiencies and to develop proposals on how to reconstruct the system, with particular emphasis on legal hindrances, challenges and implications. The South African unemployment protection system is largely built on an unemployment insurance approach. In addition, it is confronted by the following main issues and challenges. Firstly, the official unemployment rate of 26.5% is unacceptably high. The urgency that this reform should be treated with stems from an acknowledged fact that unemployment comes with a heavy price tag for employees and their employers, unemployed persons and their communities, and (most importantly) the state. Unemployment results in, *inter alia*: loss of output that unemployed workers could have produced; loss of freedom and social exclusion; poor health (both physical and psychological) and mortality; discouragement for future work; and the lack of organisational flexibility and technical conversion. Secondly, the scope of coverage of South African unemployment protection is limited. It does not extend coverage to groups such as civil servants, persons who participate in learnership agreements (e.g. contracts of apprenticeship), the unemployed youth and certain categories of foreign nationals. Persons who fall outside the strict formal-sector based definition of "employees" and/or "contributors" are also excluded. Furthermore, measures to promote employment, prevent job losses and (once job losses are inevitable) to (re)integrate those who lost their jobs into the labour market are limited in the South African unemployment system.

The significance of the study is that the most salient deficiencies found in the South African unemployment protection system are highlighted and measures, which include legislative proposals, to remedy those deficiencies are proposed. At the same time, proposed remedies are aimed at improving the South African unemployment protection system that is presently in need of comprehensive overhaul. It, therefore, follows that this study does not only contribute to existing academic debates in the field of unemployment protection. Apart from the legislative proposals, a major contribution is also made in the form of policy options for the South African unemployment protection system and policymakers alike. This is so because, on many occasions, the South African social insurance and social assistance legislation, academics and policymakers fall into a trap of viewing the South African unemployment protection system from what one can call a narrow-minded point of view. That is, they fail to recognise protection from unemployment as something that stretches beyond mere unemployment insurance. There is a dire need for a comprehensive unemployment protection system: a system that will combat unemployment and (above all) promote employment by introducing measures that will create work (tackle youth unemployment, and integrate people with disabilities into the labour market), prevent unemployment and (re)integrate those who lost jobs into the labour market.

DAAD-Supported Exchange Project Between the Institute, the University of Frankfurt/Main and the University of Johannesburg

Under the auspices of the DAAD-supported exchange project, two or three LLM students from South Africa visit the Institute for Labour and Civil Law of the University of Frankfurt/Main and this Institute each year for the purpose of conducting research for their mini-dissertations on social security and labour law related topics. In addition, the director of this Institute and several academics from the University of Frankfurt/Main present lectures at the University of Johannesburg on social security and labour law related themes.

On 29 and 30 June 2005, a conference was organised within the framework of this project in Frankfurt/Main. This conference focused on the integration of labour and social security law in the SADC region. Papers presented at the conference covered the following topics which are crucial to the development of the social security systems and the labour law regimes of the SADC countries: Developing minimum standards for social protection in SADC: the value of comparative experiences; Harmonisation of labour law regimes in the SADC region; Redesigning unemployment protection systems within SADC countries: comparative experiences; Co-ordination of social security: lessons from a comparative perspective; Regional charters of fundamental rights regulating social protection: the relevance of the European experience for the SADC context; and Different approaches to harmonisation of labour laws within the European Community: lessons for the SADC context. In addition, the conference addressed specific issues relating to experiences and perspectives on the LLM and LLD Programmes in Labour and Social Security Law such as: developing a curriculum for structured doctoral teaching; research capacity training for post-graduate students; and addressing the need for capacity building amongst historically disadvantaged institutions and historically disadvantaged students.

George L. Mpedi

3.4. Solaris

The Institute's country reports provide an overview of the legal, economic, political and/or social situation comprising or influencing social law in a particular country. The subsequent annual reports or updates pres-ent the current status, subsequent to changes, modifications, developments, and/or the tendencies in these fields. Both the reports and, of course, the annual updates have proven to be very valuable tools.

Reports are written by authors who actually work and live in the respective country. These authors comprise an international correspondence network with the Institute's researchers and staff. In addition to the personal contacts which have been established and enjoyed, the network has also shown its

academic merits, since it allows for highly efficient information exchanges and insight into the various domestic occurrences from a local and international point of view.

The reporting system is currently undergoing a major transformation. The idea is to provide the advantages of modern technology to enhance the data retrieval and comparison possibilities without detriment to continuity or coherency, the latter thus also allowing the traditional method of simply choosing a country and reading uninterrupted through the entire report. With this in mind, *Solaris*, the *Social Law Reform Information System*, has been conceived to integrate country reports into an Internet platform which allows for various views of the same contents and thus also permits for diverse comparison methods and links to available sources.

Solaris will remain a system based on the country report as its starting point. In this respect, it is not only a database with listings of various reports and/or sources but should remain a comprehensive system with a common basis which, at the same time, provides the advantages of multiple listings and the information retrieval options of a database. Reports will also be consolidated with the subsequent updates to provide a comprehensive, ongoing overview of a particular country. Updates or relevant news, i.e. the contents of most annual reports, will nevertheless also continue to be highlighted as a separate listing based on the event's subject matter or chronological order. Once the consolidated individual reports have been established, similarities and/or differences concerning institutions, subjects, themes, solutions, etc., between the different countries can also be highlighted, thus allowing for direct comparisons between two or more countries.

The sources of country information, for example statutes, facts and figures, court decisions, insofar as possible, will also be included and linked to the reports as well as listed in the bibliographical references. The novelty here, besides providing available excerpts, is also allowing these to become integrated into the updates or news listings. In doing so, it will actually be possible to follow a current event whilst it is still in process, and not only at the end of the year.

The authors who form the correspondence network were also taken into consideration in the *Solaris* planning. Authors will have the possibility to access the platform directly and thus include the latest news and edit or amend their reports online. Participating authors and researchers will also be provided with a platform to exchange information, ask questions, provide their comments and inform on topics of general interest. Of course the results of such forums and possibilities for participation are not yet known. Nevertheless, the opportunities for research, discussions and comparisons should prove useful to authors, researchers and *Solaris* users in general.

Carlos L. Cota

4. Multi-Focus Research

4.1. Equality Through Law

One of the fundamental questions of distributive ethics is how benefits and burdens should be distributed between people. One long-standing answer to that question is the ideal of *equality*. Equality may have replaced liberty as the central topic of contemporary political and legal discourse. Two questions figure prominently in the debate about equality. The first question is Amartya Sen's: "Equality of What?". If we are to distribute benefits and burdens equally, Sen argues, we have to determine what dimensions of people's lives should be compared in order to establish whether one person is worse off than another. In other words, we have to determine what needs to be "equalised". Equality must be of *something* in order that we have a substantive egalitarian principle. A choice has to be made (based on acceptable reasons of course) and this choice will inevitably lead people to be treated unequally in other respects. One advantage of taking this approach, and an important one, is that it draws attention to the fact that certain measures in the pursuit of equality involve treating people unequally.

In the second place, Joseph Raz asks whether our numerous appeals to equality are not in fact an appeal to some deeper normative value (such as human dignity, redistribution, participative democracy, etc.) rather than to

egalitarian principles. Raz acknowledges that we often talk about equality because we stand to gain from the good name that "equality" has in our culture. However, there is a danger in using the language of equality when we are in fact talking about other values. The price we pay, Raz writes, is in "intellectual confusion".

These considerations represent the underlying theoretical assumptions for the project "Equality Through Law". In the attempt to answer the question whether legal strategies can contribute to the ideal of equality, one must in each instance ask *what* one is in fact trying to equalise by means of legal strategies; acknowledge that the process may involve treating people unequally; and finally be careful not to use the concept of "equality" as a mere rhetorical device when in fact talking about deeper underlying values that have nothing to do with strict egalitarian principles.

Affirmative Action

The term "affirmative action" refers to a range of programmes directed towards targeted groups in order to redress inequalities resulting from discriminatory practices. Broadly it takes two forms: policies to alter the composition of the labour force, and policies to increase the representativeness of government, public committees and educational institutions. Affirmative action, thus understood, is practised in many countries, including South Africa, the United States, many countries within the European Union, India and Canada, to name just a few.

Affirmative action can take a number of forms. A distinction is often drawn between "weak affirmative action" and "strong affirmative action". Weak affirmative action essentially involves efforts to ensure equal opportunity for members of groups that have been subject to discrimination. Examples of such efforts are active recruitment of qualified applicants from the formerly excluded groups, special training programmes to help them meet the standards for appointment, and measures to ensure that they are fairly considered in the selection process. Strong affirmative action, on the other hand, involves the use of what has been called "preferential treatment". There are at least two possible responses to a situation where certain groups are underrepresented, for example, in an employer's workforce. Either the preference given to members of a certain group can be allowed to influence decisions between candidates who are otherwise equally qualified (for example, in the European Union), or it might go beyond this and involve the selection of a member of the targeted group over other candidates who are in fact better qualified for the position (as is the case, for example, in South Africa).

Many believe that affirmative action represents an injustice – a departure from the widely held belief that people should be treated without regard to characteristics such as race or sex. The manner in which affirmative action is *justified* is therefore crucial to the mounting of a successful defence of the policy, but its justification has not always been clearly articulated. Too often, supporters and opponents rely on not wholly articulated beliefs in the rightness or wrongness of affirmative action, and simply deny the validity of genuinely held opposing views. The most common justification for affirmative action is to view it as a form of compensation for past discrimination. To the extent that the argument for affirmative action is a compensatory one, the argument involves an essential reference to unjust actions in the past, and is thus essentially backward-looking. This justification raises a number of common (and often fatal) objections. However, affirmative action can also be justified in a more forward-looking manner in which less emphasis is placed on the injustices of the past and more attention is given to a vision of the society we would ultimately like to attain – a society in which people are treated as civic equals, and this in part by means of affirmative action measures. Although the details of this forward-looking justification varies, its fundamental thrust is twofold: first, that affirmative action is a way of overcoming prejudice by changing widely held attitudes towards members of disadvantaged groups (what is referred to as the *attitude-changing* argument) and second, that affirmative action is a necessary tool for integrating disadvantaged groups into a democratic society, thereby breaking what would otherwise be an endlessly continuing cycle of poverty, subservience and social inequality (what is referred to as the *integration* argument).

Broad-Based Black Economic Empowerment (BBBEE)

As a social and legal system, apartheid has had a devastating effect on the social, economic, political and cultural life of especially black South Africans. Despite its demise in the early 1990s, the apartheid has left an indelible mark on the country. For instance, in a country review conducted in 1992 by the International Labour Organisation (ILO), it was found that South Africa had the highest levels of inequality of any country in the world for which the ILO had data. Ten years later, in 2002, the World Development Report found that only five other countries had a higher level of inequality than South Africa as measured by the Gini coefficient. Statistics show that poverty is overwhelmingly concentrated in the African and Coloured populations, and that this racial inequality is reflected in unemployment figures, too. The latest annual report issued by the Commission for Employment Equity reveals that 81.5% of all top management positions are currently occupied by Whites, 10% by Africans, 5% by Indians, and 3.4% by Coloureds. At the end of 2003, only 21 of the over 400 companies listed on the Johannesburg Securities Exchange (JSE) were black-controlled.

In order to redress these disparities, the South African government has embarked on an ambitious programme to achieve the economic empowerment of black persons (indigenous Africans, Coloured and Indians that are South African citizens), known as Broad-Based Black Economic Empowerment. BBBEE means the empowerment of all black people (Africans, Coloureds, Indians) including women, workers, youth, people with disabilities and people living in rural areas (so-called "black designated groups") and includes the following goals: (i) increasing the number of black people who manage, own and control productive enterprises and productive assets; (ii) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises; (iii) human resource and skills development; (iv) affirmative action, that is achieving equitable representation in all occupational categories and levels in the workforce; (v) preferential procurement; and (vi) investment in enterprises that are owned or managed by black people. Achieving these goals involves a number of instruments, including legislation and regulation, preferential procurement, institutional support for black businesses, and financial and other incentive schemes. What is clear is that the debate in South Africa is no longer whether BBBEE is necessary, but how best to achieve BBBEE while at the same time ensuring growth and continued investment in the country.

Ockert C. Dupper

4.2. Emeritus Workplace: Hans F. Zacher

(1) The life activities social law seeks to address cannot be confined to the scope of application of a national legal system, much less that of a constituent state. Rather, in many instances, these activities transcend the limits of such a system. Hence, there is a need for some form of accompanying or affiliating inclusion, as laid down and fulfilled under citizenship and residence law, as well as under the conflict-of-laws rules regulating social law. Beyond that, however, there is also a need for comprehensive forms of governance which relativise the differences between national legal systems through joint institutions and regulations, and which supplement the governance of domestic relations and processes through the governance of transnational, supranational and international relations and processes. All these external and supranational regulations foster changes in national social law, just as they themselves are exposed to the immanent and external driving forces of their own change processes. This *interaction of diverse forms of non-concurrent (successive) national and supranational social law with diverse forms of concurrent (co-existing) national and supranational social law* characterises the thematic ensemble of the emeritus workplace in a special way.

Such interaction *is manifested to an extreme in the history of German social law*. These correlations were highlighted in two investigations: the one extending over the entire historical epoch ("Deutschland den Deutschen? Die wechselvolle Geschichte des sozialen Einschlusses im Deutschland des 19. und 20. Jahrhunderts" [Germany to the Germans? The Changeful History of Social In-

clusion in Germany of the 19th and 20th Century], 2004); the other concentrating on the era of German division ("Sozialer Einschluss und Ausschluss im Zeichen von Nationalisierung und Internationalisierung" [Social Inclusion and Exclusion Under the Banner of Nationalisation and Internationalisation], 2004). An additional study reflected the development of social law in its further context as the law governing life in German society – from a national legal order to a mixture of national, European, international and transnational bodies of law ("Sechs Jahrzehnte Rechtsgeschichte" [Six Decades of Legal History], 2005).

(2) Individual works focused on the relationship between *national law* and *European Community law*. These included a paper (in print) held at a conference organised by the research network on old-age security, entitled "Das Soziale als Begriff des deutschen und des europäischen Rechts" (The 'Social' Element as a Concept of German and Community law). The article illustrates how distinctly the ongoing, European openness of the term "social", as it is used in the discussion over the "European social model", differs from its narrower, German openness, as it is known from the interpretation of the "social state objective" embodied in the Grundgesetz (constitution). Especially in this context, it is instructive to note how very much the comprehension of the word "social" is reliant on its historical background. To compare the political, legal and, notably, the legislative developments whereby the social element has been entrenched in the recollection of society thus seems expedient. In a national context (e.g. the German), this historical background might display a certain degree of closeness. Yet for Europe as a whole, such a comparably close historical basis cannot be ascertained. Indeed, the historical paths taken by the social element differ far too greatly from one EU member state to another. A similarly instructive comparison focuses on the principles that underlie the development of the social element within a national framework (expressed in German thought by the concepts of justice, solidarity, participation, security, etc., or more generally and elementarily, by "more equality"). Here again, a common ensemble of comparable recognisability is nevertheless lacking for Europe as a whole. And in the individual member states, the accentuation of the social element has differed greatly in the past.

An essentially different approach was taken by the colloquium "Steuer- und Sozialstaat im europäischen Systemwettbewerb" (The Tax and Social State in European Institutional Competition), held jointly by the Max Planck Institute for Intellectual Property, Competition and Tax Law and the Max Planck Institute for Foreign and International Social Law. On that occasion, Hans F. Zacher was asked to present the final remarks ("Schlussbemerkungen"; in print). The organisers had decided to begin with a very pragmatic approach – no doubt rightly so, given the difficulty of finding a common point of departure. This approach unveiled a host of correlations between tax law and social law, between the various national tax and social law systems, and finally between European and national law. The final remarks sought to perpetuate this rich yield of suggestions in a systemic endeavour – in other words, to integrate the particular findings into a larger unity. Nevertheless, this effort, too, was unable to lead beyond initial propositions.

(3) *An equally national, European and global theme: fundamental social rights* ("Soziale Grundrechte", 2005).

(4) Conversely, other investigations focused on the *historical dimension* of national law. Thus, collaboration was continued on the comprehensive collected edition entitled "Geschichte der Sozialpolitik in Deutschland seit 1945" ([History of Social Policy in Germany since 1945]; edited by the Bundesministerium für Arbeit und Sozialordnung and Bundesarchiv). In the period under review, this co-endeavour concentrated on the effective editing responsibility of the Scientific Council (Hans Günter Hockerts, Franz-Xaver Kaufmann, Gerhard A. Ritter, Peter Rosenberg, Hartmut Weber, and Hans F. Zacher). However, the emeritus workplace also delivered a textual contribution, consisting in a report for the 11th volume (*1989 – 1994*) entitled "Gemeinsame Fragen des Rechts und der Organisation sozialer Leistungen" ([Common Issues on the Law and the Organisation of Social Benefits]; in print). This contribution is not only a description of the factual development of

common grounds of social benefit law. It above all seeks also to find endogenous and exogenous reasons why the solutions found until the period reviewed in volume 11 are called into question. Put differently: the investigation portrays to what extent reforms prove necessary and what direction they are considered to take, or should take. Moreover, both this diagnosis and the therapy for social benefit law are substantially influenced by the Europeanisation and globalisation of social problems and their solutions.

(5) A new description of the *social state* itself has also become necessary in the light of a large number of crucial developments ("Das soziale Staatsziel" [The Social State Objective], 2004; "Sozialstaat" [Social State], 2005).

(6) Prominent among the social problems that need new perceptions and solutions in many countries of the world, especially also in Germany, is that of *intergenerational relations*. From the 1950s, many people in West Germany believed that the *"inter-generation contract"* had provided an especially fitting and conclusive solution in finding an appropriate social policy relationship between the generations. In truth, one had not only underestimated the wide gap between a "contract" and a political concept; what is more, the political concept, too, was deficient. Owing to the way it was implemented, the concept affected only two of three generations (the middle and the older generation), while the third (the younger) generation was included only imperfectly. Later on, society aging, declining employment opportunities for the middle generation, but above all "child poverty" in the German society spotlighted the need for a critical discussion. Meanwhile, the problem was also perceived as one that faces every human society – and is thus a problem of every social policy – and that existing structures and normative conditions give the problem a different configuration in each case, calling for differently tailored solutions. Hence, it seemed advisable to place the urgently needed analysis of the German development in an international context ("Children and the Future", 2004; "Kinder und Zukunft", 2005; "Das Wichtigste aber sind die Kinder" [Most Important are the Children], in print).

(7) All past and present research on the social state and on constitutional declarations concerning the social state objective have shown that the *development and implementation of national social law depends very much less on normative policy requirements than on governance and actual societal conditions. The same no doubt holds true for the development and*

implementation of supranational, international and transnational law. Here, obviously, the interplay between the forms of governance and the realities which in each case fill out the configurative and operative framework of supranational, international and transnational law is much more manifold and may be much more complex than national societal conditions. Indeed, no less obvious is the fact that the knowledge of these configurative and operative conditions of supranational, international and transnational law will be much more incomplete and unreliable than the knowledge of societal structures and activities governed by national law. It was therefore welcomed that Hans F. Zacher was able to play a responsible part, within a global and interdisciplinary research context (Pontifical Academy of Social Sciences, 2005), in investigations on structures which supplant democratic statehood within the framework of supranational, international and transnational law ("Report on Democracy", 2004; "Democracy in Debate", 2005; "Demokratie als Gestaltungsaufgabe" [Democracy as a Configurative Task], 2005).

(8) A particular accomplishment of comparative law work was the editing by Professor Makoto Arai (Tokyo) of a *collection of fundamental works* by Hans F. Zacher *on German social law in the Japanese language* ("Doitsu Shakaiho no Kozo to Tenkai. Das Sozialrecht in Deutschland", 2005). The project was launched on the initiative of Professor Arai, who also brought it to completion. Nevertheless, project planning and implementation were undertaken in close collaboration with Hans F. Zacher.

Hans F. Zacher

4.3. Emeritus Workplace: Bernd Baron von Maydell

European Social Policy

European social law and European social policy resulting from the cooperation of EU member states and institutions are central fields of the Institute's work. This problem area was addressed by an internationally constituted interdisciplinary project group under German leadership (*von Maydell*). Upon completion of its work, the project group presented the study "Enabling Social Europe" (published by *Springer*) in Brussels on 8 December 2005. The project involved the disciplines of philosophy and jurisprudence as well as the economic and social sciences. Its members were recruited from western, northern and eastern Europe. As the study progressed, the interdisciplinary approach proved helpful in identifying the many facets of the subject matter and in developing strategies for a future European social policy.

The investigated subject matter, "European social policy", is discussed very controversially in the political debate. On the one hand, there is wide agreement that social policy is, and should remain, a task of nation states. From this national perspective, Europe is viewed as a risk to these states' own social systems, for instance as regards migration from east and west. On the other hand, a European social policy is considered to exist already, at least rudimentarily, and is regarded as an important prerequisite for the creation of a European identity in the awareness of Union citizens. In this respect, the European Social Model has been evoked as a reality, or at least as an objective to be striven for.

The ambivalent assessment of a European social policy is attributed to the insufficient awareness that the EU already determines vital aspects of social policy – aspects that go beyond the previously "communitised" social security of migrant workers. Yet there is also a lack of clarity about the objectives and instruments of a modern social policy under conditions of globalisation. This background enhanced the attractiveness of the project theme, but at the same time demanded very complex approaches and analyses.

The understanding of objectives and instruments of social policy has undergone fundamental changes over the past century. Originally, the prime intent was to grant social benefits in order to avoid poverty and reduce inequality. Modern notions of social policy, however, are geared to the concept of fundamental social rights of the individual. The aim is to foster the individual citizen's development within society, so that he or she is enabled to participate in societal life. This aim cannot be achieved alone through the payment of social benefits. Rather what is

needed is a broad approach that also embraces and integrates education policy, family policy and labour market policy, as well as others. The underlying concept is to couple the provision of support with the activation of beneficiaries' own efforts.

This modern social policy concept geared to the development of the individual within society is able to rely on basic principles and values enshrined in the European Community treaties – underscored by the fundamental rights section of the draft Constitutional Treaty. Moreover, upon taking stock we see that, alongside its coordination law designed to secure the free movement of workers within the EU, the European Community exerts manifold additional influences on social policy such as, for instance, the reflex effects of the fundamental freedoms laid down in the EC Treaty. Thus the European Court of Justice in Luxembourg construed the free movement of goods and services to mean that statutory health insurance benefits can in principle be claimed in other EU member states. Which is why frequent reference is made to an emerging European market for healthcare benefits, despite the national alignment of healthcare systems.

A common European element, however, can also be seen in the fact that social protection systems in EU member states concur with one another in important points. This is the assumption underlying the thesis of a uniform European Social Model. It would be verifiable through a comprehensive comparison of national social systems. Yet that task could not have been tackled by the project group within the allotted timeframe. Instead, the group had to confine itself to specific examples by examining and comparing sub-areas of social policy, namely health policy, family policy, old-age security and prevention of poverty, for two member states respectively. These comparative country studies, which included two transformation states, revealed a great many common features as well as numerous differences. A very distinct finding was that the individual states display differing measures of success in implementing the approach of the "enabling welfare state". At the same time, such a comparison conveys valuable suggestions on how effective and less effective reforms could be designed.

An ethically founded social policy can help secure social cohesion and integration in society. This demands a policy targeted at the integration of citizens – a demand that applies to both the national and the European level. Here, the project group sought to investigate the concrete demands facing the individual social policy fields included in the national comparisons. The subsequently targeted objectives do not require a harmonisation of national social protection systems. Rather, these objectives can be advanced effectively by a policy aimed at converging national and supranational levels while coordinating social policy with other policy fields. In the process, the Open Method of Coordination can indeed be a suitable instrument if it observes the defined objectives and does not lead to a hidden form of harmonisation.

Social policy at both national and supranational levels should seek to contribute to a society in which the goals of productivity and effectiveness are reconciled with the principles of fairness and justice. The ongoing development of a European social policy can help accomplish this end.

German-Japanese Cooperation

The Max Planck Institute has maintained extensive research contacts with Japan for a long time, contacts that have been continued and intensified over the past two years. This collaboration has been outlined above under the Institute's research on the adjustment of social security systems in developed countries (cf. II. 2. 10. and 2.11. above). An additional project, which is currently in its preparatory phase, will consist in a joint investigation on family policy in Japan and Germany. On the Japanese side, this project, organised by the Japanese government in collaboration with the Japanese-German Centre in Berlin, is headed by Prof. Motozawa (University of Tsukuba). A symposium at the University of Tsukuba and a conference in Tokyo are scheduled to take place in March 2006.

Apart from the above-mentioned Institute projects in the period under review, the German-Japanese cooperation also included a one-month research and lecture stay in Japan. The stay took place in October 2004

following an invitation by the Japan Society for the Promotion of Science. The central theme of the academic work conducted during that month was the development of social security in Japan – in comparison to Europe and with a special view to globalisation. The individual issues focused on elder care and on assuring the quality of such care. Several papers were held on this subject at different universities and on behalf of civil servants engaged in social administration. Another thematic focus was the internationalisation of social law. Worth noting here is a report given at the University of Tsukuba on the social policy influences of the Council of Europe and the European Union, as well as a lecture following an invitation by the Japan Society for Social Law in Tokyo on the subject of "The Influence of European and International Law on German Social Law". Along with four Japanese co-reports, this lecture was intensely discussed with the members of the Society.

The stay in Japan, which included the attendance of an international congress on Alzheimer's disease in Kyoto, presented several occasions for a new exchange of ideas with numerous, well-acquainted Japanese colleagues, but also for establishing fresh contacts. The opportunity to meet with a number of young colleagues and students was an especially pleasing aspect. It was impressive to observe how scholars from various universities and disciplines and of differing ages collaborate in so-called research communities set up to investigate interrelated subjects. German academics could no doubt profit from this form of research cooperation.

Bernd Baron von Maydell

III. Promotion of Junior Researchers

1. Doctoral Group: "State Responsibility for Social Security in Flux"

Subject Matter

With the development of the welfare state from the second half of the nineteenth century, industrialised countries began to accept "social responsibility" for their citizens. Their legislatures created "social security systems" in which also the state was included as an actor – in quite differing forms and functions. In the course of their history, these social security systems were differentiated more and more (also in legal terms): they were systematised, and their benefits were improved and progressively diversified. Society's growing economic efficiency made it possible to include ever more sections of the population in social security and to extend coverage to additional and, in part, new social risks.

Because the configuration of social security systems is bi-directionally linked to socio-economic reality, the legislator in today's industrialised states is faced – albeit to differing extents – with new problems to which the social security systems themselves are contribute. Most prominent among these problems are demographic change, mass unemployment, cost trends in the health and long-term care sector, social benefit abuse and high ancillary wage costs.

One thing is certain: existing and impending financial gaps in social security systems cannot be closed endlessly through contribution or tax increases. Already now, high ancillary wage costs are viewed as a locational disadvantage for German enterprises in international competition. Moreover, the raising of social insurance contribution rates and the tax burden find less and less acceptance among those impacted by them, thus setting boundaries to their political enforceability.

Current reform debates and reform laws are infused with the term "responsibility" – whether as *individual* or *personal* responsibility, or as *entrepreneurial* responsibility or *state* responsibility. Responsibility by nature is not only a legal term, but one that is relative and needs to be substantiated. Thus, depending on its object or subject, the essence of responsibility changes. That applies above all to the social security sphere, which involves quite different risks (e.g. old age, sickness, unemployment) as objects of responsibility, and quite different actors (e.g. the state, social partners, employers, employees, unemployed persons) as subjects of responsibility. Social law does not only acknowledge various areas of responsibility, it also configures these. Constitutional law as well as other legal fields come to bear in the process. Accordingly, a country's constitution can, for instance, assign responsibility to the state, while its law governing non-nationals can variegate state responsibility for citizens and non-citizens.

Hence, in order to examine areas of responsibility in different legal systems, the term itself must first be defined and its essence fathomed out in a specific context. Only then can an investigation – for example, with a view to Germany – deal with such issues as the partial privatisation of benefit provision in the long-term care sector, or current reforms to the healthcare system or to the labour market (Hartz reform laws), in conjunction with their effects on state and personal responsibility. A comparative law analysis can focus on the legal means used to configure areas of responsibility, on ways to ensure that all actors meet the responsibilities incumbent upon them, and on the (legal) grounds for existing disparities in the layout of responsibility areas.

Organisation and Individual Subjects

In the course of 2004, a doctoral group was established to deal with the above-outlined subject of "State Responsibility in the Field of Social Security". In November 2004, the group of five doctorands (*Grienberger-Zingerle, Landauer, Matthäus, Mimentza and Quade*) was complete, and its members began to elaborate a conceptual framework for this project, alongside their own research work. The joint concept on the overall theme of "state responsibility" serves as a basis for their dissertation projects and places these in a common context.

To date, this concept has remained an "alive paper" that is continually questioned, re-

drafted and supplemented by the doctoral group in a concerted effort, and that is replenished by individual findings, notably from the work on foreign legal systems. After completion of all dissertation projects, the group aims to publish a joint article based on the framework paper. The article will highlight the essence of state responsibility under social security law from a comparative perspective and simultaneously elucidate the significance of statutorily prescribed responsibility for social law relationships.

In the period under report, the doctorands worked mainly on their dissertation projects and were partially involved in other Institute projects relating to their doctoral theses.

Maria Grienberger-Zingerle examines the inclusion of the individual through agreements with benefit providers, in particular under aspects of employment promotion law in Germany and England. She also participates in the "labour market policy" project.

Martin Landauer deals with the state responsibility for guaranteeing benefit delivery by private providers in the long-term care sector under German and English law.

Claudia Matthäus investigates personal responsibility with a view to sickness and disability-related benefits under German, Austrian and Swiss law.

Janire Mimentza focuses on the social rights of non-nationals in Germany and Spain.

Benno Quade compares the legal division/distribution of responsibility in the employment promotion schemes of Germany and the United States. He is also involved in the "principles of social security law" and "labour market policy" projects.

Activities

Alongside the doctoral group, an additional pilot project launched by the Institute was the doctoral seminar. Apart from the doctorands, it was attended by *Ulrich Becker* and some of the research fellows (*Dupper, Graser, Ross, Sichert*), and consisted in 15 meetings over the course of the report period.

The seminar gave the doctorands an opportunity to query aspects of the framework concept, to present their theses, and to discuss assumptions and specific questions or problems. The evaluation shows that the seminar has proven itself as a critical expert forum in which relevant questions and problems were by all means debated controversially.

From 4 to 6 February 2005, the Institute launched the *Workshop for Young Social Law Researchers* in collaboration with Eberhard Eichenhofer (University of Jena). It was attended by nine participants (*Grienberger-Zingerle, Landauer, Matthäus, Mimentza and Quade* [all LMU München and MPI], Kremalis [LMU München], Abig, Schultze, Wehner and Will [all University of Jena]) who presented their projects and contended with objections and critical questions. In this way, they were able to find assistance and suggestions for the further progress of their work. The workshop was moreover a chance for the Institute's doctoral candidates to establish contacts to other young social law researchers and, in a few cases, to lay the foundations for an ongoing fruitful exchange. Above all, however, the participants, according to their own estimation, were able to profit from the papers of the others and from the extensive and critical review of their own presentations.

The Institute gave four doctorands (*Grienberger-Zingerle, Landauer, Mimentza, Quade*) the opportunity to attend the *Workshop for Young Researchers 2005* held by the European Institute of Social Security from 22 to 28 May 2005 in Graz, Austria. The meeting brought together eleven doctoral candidates from various European countries and Japan who research social security and social law in their dissertation projects.

From November 2004 till November 2005, *Benno Quade* was spokesman of the doctoral network of the Max Planck Society (PhDnet). On 18 October 2005, the Institute placed its infrastructure at the disposal of the PhDnet workshop entitled "Scientific Publications", which was also attended by three doctorands of the Institute.

Benno Quade

2. *Doctoral Group: "Influence of Constitutional Law and International Law on the Configuration of Social Security"*

Subject Matter

The realignment of social security systems plays an important role in political debate, not only in Germany but in many other countries as well. Most of the discussions concentrate on the increasing difficulty of financing these systems. The basic legal parameters underlying potential reforms, by contrast, tend to be less in the foreground and are often even considered annoying obstacles that stand in the way of implementing once-found solutions. Yet, in order to find a comprehensive solution to the problems at hand, it is necessary to focus also on legal factors alongside socio-economic concerns. Taking centre stage here are the legal requirements laid down by constitutional and international law, given that the legislature must align its actions with these norms – even if international law's inclusion in national law may occur in various ways and to differing degrees of commitment. Hence, both norm complexes constitute the basis for legislative measures in general, and they need to be complied with specifically in rebuilding social security systems and defining individual social benefit claims. A reform of social protection schemes cannot be implemented successfully without analysing their normative foundations.

In addition, social systems are subject to the growing influence of internationalisation and globalisation. This leads not only to competition between basic economic parameters, but also between national social security systems. The configuration of these systems and, in particular, their financing are increasingly taken as arguments for relocating production facilities and generating employment. Whether in fact there are target conflicts between the maintenance and creation of social security, on the one hand, and the maintenance and creation of jobs, on the other, is not the point in question. The decisive fact is merely that this aspect is gaining importance in the ongoing discussion, thus making it ever more imperative here to ask what boundaries the constitution and international law can set to social reforms.

Organisation and Individual Subjects

The doctoral group, designed to accommodate four to six doctorands, has already taken up its work at the Institute (*Fülöp, Gibek, Liu, Vergho*). In terms of its members, this new group is more internationally oriented. Three of the previously engaged doctorands come from abroad, where they have so far largely completed their school and academic education. The main focus of the individual investigations is not on comparisons of different legal systems, but on the detailed depiction of the legal system in a given country. The influence of constitutional and international law is examined by *Viktoria Fülöp* for Hungary, *Anna Gibek* für Poland, *Dongmei Liu* for the P.R. China and *Quirin Vergho* for Portugal.

The international and specifically eastern European orientation of the doctoral group will allow the Institute to gain insights into the social law systems of countries previously not at the centre of its reflections. Moreover, by promoting young scholars from these countries, the Institute aims to secure future access to a widely ramified and sustainable network of international scholars.

In terms of its organisation, the new doctoral group will be guided and supervised in the same manner as the first group. Thus it, too, will meet regularly at intervals of initially two weeks, and then somewhat longer periods, for doctoral seminars attended also by *Ulrich Becker* and some of the fellows and staff of the Institute. In the course of this seminar, the common foundations of the subject matter are to be elaborated, and each group member is to outline the developmental stages of his or her work. At the outset, a small closed meeting is to foster a concentrated discussion of the most important general issues and strengthen group cohesion. Apart from that, external doctorands not affiliated with the Institute are to be invited to present work done at their home universities on related subjects. An additional seminar is

planned at the Institute. Moreover, the doctorands' renewed participation in an EISS workshop is scheduled for spring/summer 2007.

Quirin Vergho

3. Doctorates

Supervision:
Bernd BARON VON MAYDELL
Ludwig-Maximilians-Universität, Munich

2004: Roland KLEIN: „Das Verhältnis der Kollisionsnormen in der VO (EG) 1408/71 zum Internationalen Arbeitsrecht in EGBGB und EVÜ".

Supervision:
Ulrich BECKER
University of Regensburg

2004: Markus SICHERT: „Die Grenzen der Revision des EU-Primärrechts".

2004: Ulrich FEIERLEIN: „Klägerlegitimation und gewillkürte Prozessstandschaft im Verwaltungsprozess".

2004: Hannah KREUZER: „Die Wirkung der Grundrechte im deutschen und italienischen Privatrecht – Eine rechtsvergleichende Untersuchung".

IV. Events Organised by the Institute

1. Conferences and Workshops

3 June 2004:
Conference: "Grenzüberschreitende Inanspruchnahme von Krankenhausleistungen" (Cross-Border Medical Care in the Hospital Sector), Max Planck Institute for Foreign and International Social Law, Munich.

Arnold Schreiber Cross-border use of hospital services from the point of view of the German Federal Ministry of Health and Social Security – possibilities and realities
Günter Danner The cross-border use of hospital services in practice in diverse EU member states
Klaus Wambach Possibilities for economic activity on the part of hospitals, taking a Nuremberg clinic as example
Christopher Hermann Economic consequences of the current ECJ case-law on the freedom to provide services in respect of inpatient hospital care
Ulrich Becker In-patient services vis-à-vis ambulant hospital services
Stefan Wöhrmann, Christof Maaßen Statements
Christina Walser Qualitative prerequisites governing the cross-border use of hospital care services
Günter Danner, Sibylle Merk Statements
Arnold Schreiber, Gerhard Knorr, Monika Kücking, Günter Danner, Klaus Wambach, Christof Maaßen Final legal policy statements by the participants on the necessary legal framework for efficient EU-wide access to hospital services.

15 June 2004:
Workshop: "South African and German Perspective on Social Security Law and Schemes", CICLASS University of Johannesburg and Max Planck Institute for Foreign and International Social Law, Munich.

Nicola Smit South African Social Security Law and Schemes
Marius Olivier Social Security Framework of the SADC
Friso Ross German Social Security Law and Schemes
Bernd Schulte Social Security Framework of the EU.

28 June – 2 July 2004:
Conference: "Grundfragen und Organisation der Sozialversicherung im Rechtsvergleich zwischen China und Deutschland" (Basic Issues and Organisation of Social Insurance in a Juridical Comparison Between Germany and China), Max Planck Institute for Foreign and International Social Law, Munich, Ringberg Castle/Tegernsee.

Yongxian Gao Overview and current problems of social insurance in China
Georg Recht Overview and current problems of pension insurance in Germany
Franz Knieps Overview and current problems of health insurance in Germany
Ingwer Ebsen Grundgesetz (German constitution) and social security
Meixia Shi Constitution and social security
Lutz Leisering Social policy learning and dissemination of knowledge in a globalised world
Yiyong Yang Problems relating to the reception of models from the viewpoint of a developing country
Hans Jürgen Rösner Transferability of social policy experience from industrialised countries to developing countries
Liejun Wang Commentary
Jia Lin Comparative law and reception of law: significance for Chinese social security legislation
Barbara Darimont State of discussion in Germany on the reception of social security law
Quanxing Wang Discussion and definition of the term "social law" in China
Bernd Baron von Maydell Discussion and definition of the German term „Sozialrecht"
Zhichao Lin Commentary
Yi Lin General presentation on social insurance organisation in present-day China
Guanyi Dai Problems of social insurance authorities in the P.R. China
Helmut Platzer Conceptions and functions of autonomous administration in Germany
Gongcheng Zheng Autonomous administration: an alternative for the organisation and administration of social insurance?
Ulrich Becker Experiences and discussions relating to autonomous administration in Germany
Fangfang Yang Commentary
Ningning Ding Institutions organised under private law as alternatives to the public organisation of individual pension insurance accounts?

Heinz-Dietrich Steinmeyer Discussion on institutions organised under private law in German pension insurance
Song Zhang Commentary
Otto Ernst Krasney Dispute settlement under social law in Germany
Yanyuan Cheng Dispute settlement under social law in the P.R. China
Yisheng Gong Commentary.

7 July 2004:
Discussion meeting: "Sozialrecht" (Social Law), Landessozialgericht München (Higher Social Court) and Max Planck Institute for Foreign and International Social Law, Munich.
Friso Ross The jurisdiction of the social courts in Europe: a project outline.

24 July 2004:
Research colloquium on the occasion of the 70th birthday of Bernd Baron von Maydell: "Die Rahmenvorgaben des inter- und supranationalen Rechts für die aktuellen Reformen im Arbeits- und Sozialrecht" (The Framework of International and Supranational Law Governing Current Reforms in Labour and Social Law), Max Planck Institute for Foreign and International Social Law, Munich.
Angelika Nußberger Introduction
Ulrich Becker On current developments in EC social legislation and their effects on the reform discussion in Germany
Winfried Schmähl EC enlargement to the east and the Open Method of Coordination as a factor influencing retirement provision in the EU
Angelika Nußberger Securing the status quo in international social (security) law and current discussion over reforms and saving measures
Heinz-Dietrich Steinmeyer The role of the Council of Europe in the social sphere, considering policies for the disabled as an example
Andreas Hänlein ILO standards and maternity benefits in Germany
Winfried Boecken Protection against (unfair) dismissal: back to protecting vested rights
Jürgen Kruse Current issues on the reform of the healthcare system.

12 November 2004:
1st Workshop: "Principles of Social Security Law in Europe", Research Unit European Social Security of the Catholic University of Leuven and Max Planck Institute for Foreign and International Social Law, Leuven, Belgium.
Friso Ross Underlying Principles of Social Security Law in Europe: A project proposal
Bernhard Zaglmayr Principles of Social Security Case Law in Europe.

18/19 November 2004:
German-Japanese symposium on social security law: "The Role of Private Actors in Social Security", Max Planck Institute for Foreign and International Social Law, and The Japan Cultural Institute, Cologne.
I. German Employment Promotion
Legal Aspects:
Hisaaki Fujikawa, Angelika Nußberger
Economic Aspects:
Kazutoshi Koshiro, Ulrich Walwei
II. Pension Insurance
Legal Aspects:
Hiroya Nakakubo, Bernd v. Maydell
Economic Aspects:
Noriyuki Takayama, Holger Viebrok
III. Health and Long-Term Care Insurance
Legal Aspects:
Kazuaki Tezuka, Ulrich Becker
Economic Aspects:
Katsuaki Matsumoto, Jürgen Wasem

3/4 December 2004:
Colloquium: "Steuer- und Sozialstaat im europäischen Systemwettbewerb" (The Tax and Social State in European Institutional Competition), Max Planck Institute for Intellectual Property, Competition and Tax Law, and Max Planck Institute for Foreign and International Social Law, Munich.
I. Revenue Erosion Versus Expenditure Explosion?
Ulrich Becker The social law perspective
Wolfgang Schön The tax law perspective
Kai A. Konrad Human capital formation, taxation and globalisation
II. Effects of the Emerging European Market Order
Hanno Kube National tax law and EC state aid law
Wulf-Henning Roth Commentary
Richard Giesen National social law and EC competition law
Josef Drexl Commentary

Christian Waldhoff Distinguishing between taxes and social security contributions under EC law
III. Tax and Social Law in Respect of Cross-Border Issues
Michael Lang Double load and double exemption under tax law
Thorsten Kingreen Follow-up paper on social law
Jacob Joussen Social law problems in the posting of workers
Dietmar Wellisch Follow-up paper on tax law
Hans F. Zacher Closing statement.

4 – 6 Februar 2005:
Workshop for Young Social Law Researchers, Max Planck Institute for Foreign and International Social Law, Munich.
Benno Quade Responsibility and solidarity under social security law in the United States and in Germany
Claudia Matthäus Participation and damage minimisation under civil law and social law
Peter Wehner Compensation for non-material damage in the case of occupational accidents and diseases
Maria Grienberger-Zingerle Agreements under social law. A comparative law analysis of cooperative forms of action by labour administrations in Germany and England
Ingmar Schultze Contract structures in labour administration
Judith Will Family promotion under social law
Martin Landauer State responsibility for guaranteeing long-term care benefits
Constanze Abig The Europeanisation of social law
Dimitrios K. Kremalis Freedom of movement for members of the medical profession in the EU.

7 February 2005:
Workshop held by the "Steering Committee of German-Japanese Joint Research on Social Security", Max Planck Institute for Foreign and International Social Law, Munich.

16 February 2005:
Workshop: "Equality Through Law? Affirmative Action in Brazil and South Africa", Max Planck Institute for Foreign and International Social Law, Munich.
Ingo Sarlet Affirmative action in Brazil
Ockert C. Dupper Affirmative action in South Africa.

6 April 2005:
German-Japanese workshop: "Sozialrecht in der alternden Gesellschaft – Reformpolitik in Japan und Deutschland" (Social Law in an Aging Society – Reform Policies in Japan and Germany), Max Planck Institute for Foreign and International Social Law, and Federal Ministry of Health and Social Security (BMGS), Berlin.
Katsuaki Matsumoto, Takeshi Tsuchida, Kenji Shimazaki, Franz Knieps Health Insurance
Katsuaki Matsumoto, Kenji Shimazaki, Ulrich Becker Long-term care insurance
Katsuaki Matsumoto, Takeshi Tsuchida, Georg Recht Pension insurance.

15 April 2005:
Workshop: "Constitutional Litigation of Welfare Reform – Concepts and Outcomes in Israel and Germany", Max Planck Institute for Foreign and International Social Law, Munich.
Guy Mundlak Constitutional litigation of welfare reform in Israel
Markus Sichert Constitutional litigation of welfare reform in Germany and its impact on social policy and law-making
Bernd Schulte The legal guarantee of a "social minimum" in German Law and in an international perspective.

5/6 September 2005:
Workshop: "Social Security in Germany and Japan", German-Japanese Joint Research on Social Security, Max Planck Institute for Foreign and International Social Law, Frauenchiemsee.

28/29 October 2005:
Workshop: "Implementierung internationaler Sozialstandards und -rechte (IISR) – Bestandsaufnahme und Weiterentwicklung" (Implementation of International Social Standards and Rights – Survey and Further Development), Max Planck Institute for Foreign and International Social Law, Munich.

Bernd von Maydell Introduction
Eibe Riedel International Covenant on Economic, Social and Cultural Rights
Jakob Schneider Commentary
Rolf Birk European Social Charter
Theo Öhlinger Commentary
Angelika Nußberger Conventions of the International Labour Organization and European Code of Social Security
Wolfgang Heller Commentary
Christoph Grabenwarter European Human Rights Convention
Erika de Wet/Helen Keller Commentary
Ulrich Becker Social rights in the EU
Julia Iliopoulos-Strangas Commentary
Andreas Blüthner Social standards of international finance institutions
Markus Sailer Influence of the IMF and the World Bank.

18/19 November 2005:
Colloquium: "Les retraites professionnelles d'entreprise en Europe" (Occupational Pensions in Europe), Institut de l'Ouest: Droit et Europe/Université de Rennes I, and Max Planck Institute for Foreign and International Social Law, Rennes, France.

O. Kaufmann La place des retraites professionnelles d'entreprise dans la protection vieillesse
S. Hennion-Moreau L'impact du droit communautaire sur les retraites professionnelles d'entreprise
J. M. Dupuis, C. El Moudden Les enjeux économiques des modes de retraite en Europe
E.-M. Hohnerlein L'égalité de traitement entre les hommes et les femmes
M. Le Barbier-Le Bris L'égalité de traitement entre les hommes et les femmes
F. Muller Le régime professionnel dans la Directive 2003/41 et les droits nationaux
M. Körner Promotion des retraites complémentaires facultatives en Allemagne
M. Del Sol, J. Ferrion Les modes d'épargne-retraite en France
F. Ross The Swiss Occupational Pension Scheme and its impact on the Swiss Old Age Pension System
J. Carby Hall Les modes de retraite d'entreprise dans le système britannique
Ph. Martin Portabilité des retraites professionnelles et mobilité salariale
F. Wismer La fiscalité des dispositifs français d'épargne d'entreprise
H.-J. Reinhard La fiscalité des dispositifs allemands d'épargne d'entreprise
J.-P. Chauchard Synthèse des travaux.

25/26 November 2005:
Conference: "Entwicklung der Sozialversicherung in China und Deutschland" (Development of Social Insurance in China and Germany), Social Security Research Centre of the People's University, Beijing, and Max Planck Institute for Foreign and International Social Law, Beijing, China.

Hong Yao Latest developments in health insurance in China
Ulrich Becker Latest developments in health and long-term care insurance in Germany
Kaiping Jiao Latest developments in pension insurance in China
Georg Recht Latest developments in pension insurance in Germany
Shunhua Sun Latest developments in Chinese accident insurance
Joachim Breuer Latest developments in German accident insurance
Junling Jia Latest developments in social law jurisdiction in China
Peter Udsching Latest developments in social law jurisdiction in Germany
Gongcheng Zheng Migration, mobility and social security in China
Ulrich Becker Freedom of movement for workers and social security in the EU
Shuguang Shen Organisation of social insurance in China
Thorsten Kingreen Autonomous social administration in Germany
Shangyuan Zheng The role of the family under social law in China
Barbara Darimont The role of the family under social law in Germany
Jitong Liu Is the model of the Western welfare state implementable in China?
Stephan Leibfried Bypasses for a "social Europe": lessons from the history of Western federalism.

7/8 December 2005:
2nd Workshop: "Principles of Social Security Law in Europe", Research Unit European Social Security of the Catholic University of Leuven, and Max Planck Institute for Foreign and International Social Law, Leuven, Belgium.

13 December 2005:
Presentation of the Japanese edition of research papers on German social law by Hans F. Zacher (editor of the Japanese version: Makoto Arai, Tsukuba University, Japan) "Sozialrecht in Deutschland" (Social Law in Germany), Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker Introduction
Makoto Arai German social law in Japan
Bernd Baron von Maydell The research activities of the Institute on German-Japanese comparative social law
Hans F. Zacher Social law in Germany.

19/20 December 2005:
Expert workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Nuremberg, Institute for the Study of Labor (IZA), Bonn, and Max Planck Institute for Foreign and International Social Law, Lauf/Nuremberg.

Jean Claude Barbier Keynote speech
Benno Quade, Werner Eichhorst, Regina Konle-Seidl Country Report Germany
Otto Kaufmann, Jean Claude Barbier Country Report France
Ockert C. Dupper, Christopher O'Leary Country Report USA
Niels Ploug Country Report Denmark
Bernd Schulte, Dan Finn Country Report United Kingdom
Markus Sichert, Els Sol, Harm van Lieshout Country Report Netherlands
Maria Hemstroem Country Report Sweden
Friso Ross Country Report Switzerland
Hans-Joachim Reinhard Country Report Spain.

2. Guest Lectures

11 February 2004:
Dr. Katsuaki MATSUMOTO, National Institute of Population and Social Security Research, Ministry of Health, Labour and Welfare, Tokyo, Japan: "Gesundheitsreform in Japan".

8 March 2004:
Prof. Dr. Kenichiro NISHIMURA, Faculty of Integrated Human Studies, Kyoto University, Japan: "Neuere Entwicklungen des japanischen Arbeitsunfallrechts".

15 March 2004:
Prof. Dr. Paul SCHOUKENS, Institute of Social Law, Catholic University of Leuven/European Institute of Social Security, Leuven, Belgium: "Illegal migrant workers and access to social protection".

10 May 2004:
Prof. Dr. Ockert C. DUPPER, Stellenbosch University, South Africa: "Remedying the past or reshaping the future? Race-based affirmative action in the United States".

27 May 2004:
Prof. Dr. Eberhard EICHENHOFER, School of Law, Social Law and Civil Law, Friedrich-Schiller-Universität in Jena: "Eigentum — Verschulden — Vertrag: Privatrechtsbegriffe als Sozialrechtskonstrukte".

16 June 2004:
Dr. Grant DUNCAN, School of Social and Cultural Studies, Massey University Albany, Auckland, New Zealand: "Social Security and the Third Way in New Zealand: How have third-way policies responded to the legacy of neo-liberalism?".

6 July 2004:
Prof. Dr. Robert F. RICH, College of Law, University of Illinois, Champaign, USA; Institute of Government and Public Affairs, University of Illinois, Urbana, USA: "Legal and Political Challenges to Health Care Reform in the United States and Germany".

12 July 2004:
Prof. Dr. Jürgen WASEM and Dr. Stefan GRESS, chair for medicine management, University of Duisburg-Essen: "Der morbiditätsorientierte Risikostrukturausgleich als Voraussetzung für die wettbewerbliche Weiterentwicklung der gesetzlichen Krankenversicherung".

14 July 2004:
Prof. Dr. Terry CARNEY, University of Sidney, Australia: "Lessons from Australia´s Fully Privatised Labour Exchange Reform (Job Network): From `rights´ to `management´".

27 October 2004:
Prof. Dr. Ockert C. DUPPER, Stellenbosch University, South Africa: "Is there a right to affirmative action in South Africa? Two opposing views".

18 January 2005:
Dr. Clemens PROKOP, President of the German Athletic Association (DLV), Frankfurt/Main: "Aktuelle Rechtsfragen des Dopings – Nachweis, Verfahrensfragen, Rechtsschutz".

13 June 2005:
Dr. Sara STENDAHL and Dr. Thomas ERHAG, Department of Law, Göteborg University, Sweden: "Are the different legal strategies for `rehabilitation to work´ comparable?".

15 June 2005:
Prof. Dr. Rubén M. LO VUOLO, Academic Director Centro Interdisciplinario para el Estudio de Políticas Públicas (Ciepp), Buenos Aires, Argentina: "Social protection in Latin America: different approaches of managing social exclusion and their probable outcomes".

28 June 2005:
Prof. Dr. Robert F. RICH, College of Law, University of Illinois, Champaign, USA; Institute of Government and Public Affairs, University of Illinois, Urbana, USA: "Legal and Policy Approaches to Health Care Cost Reduction".

13 July 2005:
Prof. Dr. Ockert C. DUPPER, Stellenbosch University, South Africa: "Broad-based black economic empowerment".

6 December 2005:
Prof. Dr. Franz-Xaver KAUFMANN, Faculty of Sociology, University of Bielefeld: "Der Bevölkerungsrückgang als Problemgenerator für alternde Gesellschaften".

V. Publications

1. Publications by the Institute

Studien aus dem Max-Planck-Institut für ausländisches und internationales Sozialrecht (Publication series by the Max Planck Institute for Foreign and International Social Law). Ed.: Max-Planck-Institut für ausländisches und internationales Sozialrecht. Baden-Baden, 1984 – .

- *Vol. 32:* Darimont, Barbara: Sozialversicherungsrecht der V. R. China. Baden-Baden, 2004.

- *Vol. 33:* Becker, Ulrich; Graser, Alexander (eds.): Perspektiven der schulischen Integration von Kindern mit Behinderung. Baden-Baden, 2004.

- *Vol. 34:* Becker, Ulrich; Schlachter, Monika; Igl, Gerhard (eds.): Funktion und rechtliche Ausgestaltung zusätzlicher Alterssicherung. Baden-Baden, 2005.

- *Vol. 35:* Becker, Ulrich; Boecken, Winfried; Nußberger, Angelika; Steinmeyer, Heinz-Dietrich (eds.): Reformen des deutschen Sozial- und Arbeitsrechts im Lichte supra- und internationaler Vorgaben. Baden-Baden, 2005.

- *Vol. 36:* Becker, Ulrich; Zheng, Gongcheng; Darimont, Barbara (eds.): Grundfragen und Organisation der Sozialversicherung in China und Deutschland. Baden-Baden, 2005.

Working Papers.

Ed.: Max-Planck-Institut für ausländisches und internationales Sozialrecht.
Munich, 2005 – .

- *Vol. 1:* The role of private actors in social security. München, 2005, 136 p.

Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS) (Journal for foreign and international labour and social law).
Ed.: Max-Planck-Institut für ausländisches, and internationales Sozialrecht und Institut für Arbeitsrecht und Arbeitsbeziehungen in der Europäischen Gemeinschaft.
Heidelberg, 1987 – .
Vol. 18. Iss. 1-4. 2004, 434 p.
Vol. 19. Iss. 1-4. 2005, 426 p.

Max-Planck-Institut für ausländisches und internationales Sozialrecht.
Kernarbeitsnormen in Verträgen der Entwicklungszusammenarbeit.
Eschborn, 2004.

2. Publications by the Institute Staff

– B –

Becker, Ulrich: Avrupa'nın Sosyal Politikası. In: Alpay Hekimler (ed.), AB – Türkiye & endüstri ilişkileri (EU – Turkey and industrial relations). Istanbul, 2004, pp. 29-44.

Becker, Ulrich: Der Finanzausgleich in der gesetzlichen Unfallversicherung. Baden-Baden, 2004.

Becker, Ulrich: Die alternde Gesellschaft. In: Juristenzeitung (JZ) 59 (2004) 19, pp. 929-938.

Becker, Ulrich: Die soziale Dimension des Binnenmarktes. In: Jürgen Schwarze (ed.), Der Verfassungsentwurf des Europäischen Konvents. Baden-Baden, 2004, pp. 201-219.

Becker, Ulrich: Einführung. In: Ulrich Becker / Alexander Graser (eds.), Perspektiven der schulischen Integration von Kindern mit Behinderung. Baden-Baden, 2004, pp. 9-14.

Becker, Ulrich: Generationengerechtigkeit als juristisches Problem. In: Verband Deutscher Rentenversicherungsträger (ed.), Generationengerechtigkeit - Inhalt, Bedeutung und Konsequenzen für die Alterssicherung. Frankfurt am Main, 2004, pp. 56-64.

Becker, Ulrich: Grenzüberschreitende Versicherungsleistungen in der Krankenversicherung. In: Jürgen Basedow / Ulrich Meyer / Dieter Rückle / Hans-Peter Schwintowski (eds.), Lebensversicherung – betriebliche Altersversorgung, VVG-Reform, grenzüberschreitende Versicherungsleistungen in der Krankenversicherung, der Handel mit gebrauchten Versicherungspolicen. Baden-Baden, 2004, pp. 171-188.

Becker, Ulrich: Lockerung des Mehr- und Fremdbesitzverbots von Apotheken im Lichte des Grundgesetzes und der Grundfreiheiten des EG-Vertrags. In: Elmar Mand (ed.), Neuregelung des Apothekenrechts. Frankfurt am Main, 2004, pp. 48-65.

Becker, Ulrich: Private und betriebliche Altersvorsorge zwischen Sicherheit und Selbstverantwortung. In: Juristenzeitung (JZ) 59 (2004) 17, pp. 846-855.

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Becker, Ulrich: Selbstbindung des Gesetzgebers im Sozialrecht. In: Matthias von Wulffen (ed.), Festschrift 50 Jahre Bundessozialgericht. Cologne, 2004, pp. 77-96.

Becker, Ulrich: The challenge of migration to the welfare state. In: Eyal Benvenisti / Georg Nolte (eds.), The welfare state, globalisation and international law. Berlin, 2004, pp. 1-31.

Becker, Ulrich: Arbeitnehmerfreizügigkeit – § 9. In: Dirk Ehlers (ed.), Europäische Grundrechte und Grundfreiheiten. 2nd. ed. Berlin, 2005, pp. 257-283.

Becker, Ulrich: Artikel 16a GG. In: Christian Starck (ed.), Kommentar zum Grundgesetz. 5th fully rev. ed. Munich, 2005, pp. 1541-1645.

Becker, Ulrich: Artikel 16 GG. In: Christian Starck (ed.), Kommentar zum Grundgesetz. 5th fully rev. ed. Munich, 2005, pp. 1487-1540.

Becker, Ulrich: Das Gemeinschaftsrecht, die deutschen Sozialleistungssysteme und die Debatten um deren Reform. In: Ulrich Becker / Winfried Boecken / Angelika Nußberger / Heinz-Dietrich Steinmeyer (eds.), Reformen des deutschen Sozial- und Arbeitsrechts im Lichte supra- und internationaler Vorgaben. Baden-Baden, 2005, pp. 15-32.

Becker, Ulrich: Deguo shehui baoxian de zizhuquan (Germany's social security self-administration system). In: Shehui baozhang yanjiu (Social security studies) (2005) 1, pp. 56-67.

Becker, Ulrich: Die Harmonisierung der Pensionssysteme in Österreich – Quadratur des Kreises? In: Benjamin Kneihs (ed.), Wirtschaftssteuerung durch Sozialversicherungsrecht? Vienna, 2005, pp. 222-245.

Becker, Ulrich: Die Regelungen des GMG zu dem Verhältnis von privater und gesetzlicher Krankenversicherung in nationaler und europarechtlicher Perspektive. In: Institut der Deutschen Zahnärzte (ed.), IDZ-Information (2005) 1, pp. 32-43.

Becker, Ulrich: Gemeinschaftsrechtliche Vorgaben für die Leistungserbringung im Bereich der Sozial-, Kinder- und Jugendhilfe. In: Archiv für Wissenschaft und Praxis der sozialen Arbeit 36 (2005) 3, pp. 20-32.

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Becker, Ulrich: German health and long-term care insurance. In: Max-Planck-Institut für ausländisches und internationales Sozialrecht ‹München› (ed.), The role of private actors in social security. Munich, 2005, pp. 3-18.

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Becker, Ulrich: Nationale Sozialleistungssysteme im europäischen Systemwettbewerb. In: Ulrich Becker / Wolfgang Schön (eds.), Steuer- und Sozialstaat im europäischen Systemwettbewerb. Tübingen, 2005, pp. 3-39.

Becker, Ulrich: Soziale Selbstverwaltung in Deutschland. In: Ulrich Becker / Gongcheng Zheng / Barbara Darimont (eds.), Grundfragen und Organisation der Sozialversicherung in China und Deutschland. Baden-Baden, 2005, pp. 225-243.

Becker, Ulrich: Verfassungsrechtlicher Schutz rentenrechtlicher Positionen. In: Landesversicherungsanstalt Oberfranken und Mittelfranken (ed.), LVA-Mitteilungen 47 (2005) 5, pp. 228-240.

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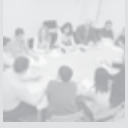

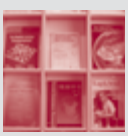
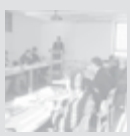

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VI. Papers and Lectures

1. Papers

Ulrich BECKER:

8 January 2004: "Mögliche Konsequenzen der Anwendung des Wettbewerbsrechts auf die Vertragsstrukturen". Workshop: "Zur Anwendbarkeit des Wettbewerbsrechts auf die gesetzliche Krankenversicherung", Verband der Angestellten-Krankenkassen e.V. – Arbeiter-Ersatzkassen-Verband e.V. (association of the salaried employees' health insurance funds/workers' health insurance funds), Siegburg, Erkner near Berlin.

14 January 2004: "Primäres EU-Recht vs. EuGH-Rechtsprechung". EU Committee meeting of the Gesellschaft für Versicherungswissenschaft und -gestaltung (GVG), Kolpinghaus International, Cologne.

26 January 2004: "Grenzüberschreitende Gesundheitsversorgung in Europa". Conference series: "Dahlemer Forum – Gesundheitsversorgung in Europa", European Centre for Comparative Government and Public Policy, Berlin.

2 March 2004: "Freie Berufe im Binnenmarkt". European policy talks: "Dienstleistungen der Heilberufe im europäischen Kontext – zwischen Binnenmarkt und Gemeinwohl", German Medical Association (BÄK), Brussels.

5 May 2004: Introduction to the workshop: "Binnenmarkt – Chancen und Risiken". Conference: "Tag der Freien Berufe 2004 – Freiberuflichkeit im neuen Europa", Bundesverband der Freien Berufe (German association of the self-employed), Urania, Berlin.

7 May 2004: Chair of panel discussion: "AusSicht(en) der erweiterten EU – was erwartet uns?". European week 2004, Ost-West-Zentrum (Europaeum), Regensburg University.

13 May 2004: "Rehabilitation im Recht der Europäischen Gemeinschaft". Judicial development seminar organised by the regional insurance institution LVA Braunschweig for the social court judges of Niedersachsen and Bremen, Bad Pyrmont.

3 June 2004: Introduction and chair of the workshop: "Grenzüberschreitende Inanspruchnahme von Krankenhausleistungen", Max Planck Institute for Foreign and International Social Law, Munich.

8 June 2004: "Rechtliche Aspekte des Solidaritätsprinzips in der umlagefinanzierten Alterssicherung". Seminar: "Fortentwicklung des Sozialstaats, europäische Benchmarks – Handlungsbedarf für die umlagefinanzierte und ergänzende Alterssicherung". Hans Böckler Foundation and German Federal Ministry of Health and Social Security: "Zukunft des Sozialstaats – Wandel der Erwerbstätigenstruktur und Alterssicherung", Cologne.

29 June/1 July 2004: Introduction and paper: "Erfahrungen und Diskussion über die Selbstverwaltung in Deutschland: Ist eine Reform der Selbstverwaltung in Deutschland notwendig?". Conference: "Grundfragen und Organisation der Sozialversicherung im Rechtsvergleich zwischen China und Deutschland", Max Planck Institute for Foreign and International Social Law, Ringberg Castle, Tegernsee.

15 September 2004: "Das Verhältnis von privater und gesetzlicher Krankenversicherung in nationaler und europarechtlicher Perspektive". Workshop: "Zu rechtswissenschaftlichen Implikationen des GMG für die versorgungspolitischen Perspektiven", Institute of German Dentists (IDZ), Cologne.

25 September 2004: "Soziale Gerechtigkeit – Anspruch und Wirklichkeit". Law congress: 52. Juristentag, Evang.-Luth. Dekanant, Munich, Evangelische Akademie, Tutzing.

29 September 2004: "Sozialgerichtliche Praxis im europäischen Ausland". 50th anniversary and 36th judicial meeting of the Federal Social Court: "50 Jahre Bundessozialgericht – 50 Jahre Sozialgerichtsbarkeit", Kassel.

5 October 2004: "Spaltet Hartz die Gesellschaft? Zu den Verteilungswirkungen der jüngsten Arbeitsmarktreformen". Sociology conference, Federal Employment Agency (BA), Institute for Employment Research (IAB), Munich.

6/7 October 2004: "The rights of the European citizen – balancing equity with choice". PARALLEL FORUM A1: "Values, principles and objectives of health policy in Europe: The need for a European consensus as the basis for a new concerted health strategy". 7th European Health Forum Gastein: "Global Health Challenges – European Approaches and Responsibilities", Bad Hofgastein.

22 October 2004: "Abwendung und Ausgleich von Benachteiligungen als Aufgabe des Sozialrechts aus deutscher Sicht". Conference of the Turkish and the German Section of the International Society for labour Law and Social Security: "Neuere Entwicklungen des türkischen und des deutschen Arbeits- und Sozialrechts", Freiburg.

19 November 2004: "German Health and Long-Term Care Insurance – Legal Aspects". German-Japanese Symposium on Social Law, 2004: "The Role of Private Actors in Social Security", Max Planck Institute for Foreign and International Social Law, Munich, and The Japan Cultural Institute, Cologne.

3/4 December 2004: Introduction and paper: "Die sozialrechtliche Perspektive". Workshop: "Steuer- und Sozialstaat im europäischen Systemwettbewerb", Max Planck Institute for Intellectual Property, Competition and Tax Law, and Max Planck Institute for Foreign and International Social Law, Munich.

11 December 2004: "Aktuelle Reformen in der deutschen Sozialversicherung". Workshop on comparative German and Chinese social law, Renmin University of China, Beijing, China.

25 January 2005: "Europarechtliche Dimensionen der Leistungsgestaltung und Beispiele der Leistungserbringung im europäischen Ausland". Workshop organised by the Deutscher Verein (German Association for Public and Private Welfare): "Neugestaltung der Leistungsbeziehungen unter Berücksichtigung wettbewerblicher Verfahren", Berlin.

4 March 2005: "Verfassungsrechtlicher Schutz rentenrechtlicher Positionen". Sozialrechtstage, Bayreuth.

15 March: "Sozial- und verfassungsrechtliche Kernfragen der Zusammenlegung von Arbeitslosen- und Sozialhilfe". 3. Kölner Sozialrechtstag (3rd Social Law Conference of Cologne), Cologne.

6 April 2005: Introduction and chair on the subject of long-term care insurance: "Pflegeversicherung", by Katsuaki Matsumoto. Joint German-Japanese workshop: "Sozialrecht in der alternden Gsellschaft – Reformpolitik in Japan und Deutschland", German Federal Ministry of Health and Social Security, Berlin.

7 April 2005: "Die so genannte Harmonisierung der Pensionssysteme – Eine Quadratur des Kreises?". Conference: "Wirtschaftssteuerung durch Sozialversicherungsrecht?", Vienna.

12 April 2005: Introduction and chair of discussion-round with Prof. Robert Rich: "Ist der Gesellschaftsvertrag noch zu retten? Deutsch-amerikanische Betrachtungen zur Zukunft der öffentlichen Sozial- und Gesundheitssysteme", America House, Munich.

22 April 2005: Short paper as member of the Leopoldina/Acatech working group: "Chancen und Probleme einer alternden Gesellschaft: Die Welt der Arbeit und des lebenslangen Lernens". Constituent meeting of the Leopoldina/Acatech working group on its prospective work schedule, Marbach Castle, Oehningen/Bodensee.

25 April 2005: "Sozial- und verfassungsrechtliche Fragen der Zusammenlegung von Arbeitslosen- und Sozialhilfe". Judicial development conference on social jurisdiction (Richterfortbildungstagung der Sozialgerichtsbarkeit des Landes Baden-Württemberg für Berufsrichter/innen in der Sozialgerichtsbarkeit des Landes Baden-Württemberg), Ludwigsburg.

3 May 2005: Chair of panel discussion: "Europa XXL – Eine Gefahr für die Stabilität der Europäischen Union? ", Ost-West-Zentrum (Europaeum), Regensburg University.

21 June 2005: "The legal problems in complying with ILO Instruments". Joint conference: "Legal and non-legal impediments to the application of international labour standards: German experts meet ILO", Friedrich Ebert Foundation and International Labour Organisation, Geneva, Switzerland.

29 June 2005: "Co-ordination of social security: lessons from a comparative perspective". Conference on comparative law: "Integration of labour and social security law in the SADC-Region", Frankfurt/Main.

1 September 2005: "Sozialpolitische Geschichte/Sozialgeschichte". Colloquium: "Arbeitnehmer/innen-Solidarität oder Bürger/innen-Solidarität? Die Schweiz und Deutschland im sozialpolitischen Vergleich", University of Basel, Switzerland.

16 September 2005: "Altern, Zivilgesellschaft und Politik". Meeting: "Chancen und Probleme einer alternden Gesellschaft: Die Welt der Arbeit und des lebenslangen Lernens", Leopoldina/Acatech working group on aging, Potsdam.

28 September 2005: "Die Zusammenlegung von Arbeitslosen- und Sozialhilfe in sozial- und verfassungsrechtlicher Fragestellung". Meeting of professional judges on the development of social jurisdiction in Bavaria, Dillingen.

13 October 2005: Statement: "Standards in der EU". Thematic block: "Innovationen im europäischen Gesundheitswesen", European Health Congress, Munich.

22 October 2005: "Wettbewerb und soziale Sicherung". Conference: "Soziale Sicherung und Wettbewerb – Europäische Vorgaben und Nationale Regelungen", University of Rijeka, Croatia.

29 October 2005: "Soziale Rechte in der EU". Workshop: "Implementierung internationaler Sozialstandards und -rechte (IISR)", Max Planck Institute for Foreign and International Social Law, Munich.

8 November 2005: "Reformen und Perspektiven der sozialen Sicherheit in Deutschland und Europa", Procuradoria-Geral do Município, Rio de Janeiro, Brazil.

10 November 2005: "Reformen und Perspektiven der sozialen Sicherheit in Deutschland und Europa" and "Gesetzliche und private Versicherung in Deutschland (Schwerpunkt Krankenversicherung)", Faculty of Law, Catholic University, Porto Alegre, Brazil.

11 November 2005: "Reformen und Perspektiven der sozialen Sicherheit in Deutschland", Associação dos Magistrados Catarinenses – AMC/Escola Superior da Magistratura do Estado de Santa Catarina, Florianopolis, Brazil.

25 November 2005: "Neueste Entwicklungen in der Kranken- und Pflegeversicherung in Deutschland und China". Conference: "The development of social insurance in China and Germany", Social Security Research Centre of the People's University Beijing, China.

26 November 2005: "Arbeitnehmerfreizügigkeit und soziale Sicherheit in der EU: Die Koordinierung der sozialen Sicherungssysteme". Conference: "The development of social insurance in China and Germany", Social Security Research Centre of the People's University Beijing, China.

1 December 2005: "Das ‚Soziale' und der Wettbewerb". Annual Confernce 2005: "Das Soziale in der Alterssicherung", Forschungsnetzwerk Alterssicherung (research network on old-age provision), Erkner near Berlin.

Barbara DARIMONT:

24 April 2004: "Rechtsrezeption und Kultur: Praxis des chinesischen Sozialrechts". Board of Trustees, Max Planck Institute for Foreign and International Social Law, Munich.

25 May 2004: "Entwicklungshilfe im Bereich Recht: Die 'Law and Development'-Diskussion und die Auswirkungen in der Praxis auf die rechtliche Entwicklungshilfe zwischen Deutschland und VR China", Otto Suhr Institute for Political Science, Freie Universität Berlin.

30 June 2004: "Diskussionsstand der Rechtsrezeption in der sozialen Sicherheit in Deutschland", Ringberg Castle, Tegernsee.

20 September 2004: "Dezentralisierung und die Auswirkungen auf die Gesetzgebung in der Volksrepublik China", Max Planck Institute for European Legal History, Frankfurt/Main.

12 November 2004: "Recent efforts at social security reform in China", University of Trier.

25 November 2004: "Pluralismus von Rechtssystemen". Seminar on legal anthropology of the Ludwig-Maximilians-Universität, Munich.

20 January 2005: "Alterssicherung in China auf dem Hintergrund konfuzianisch-marxistischer Lebensvorstellungen". Seminar on legal anthropology of the Ludwig-Maximilians-Universität, Munich.

21 June 2005: "The legal problems in complying with ILO Instruments". Workshop "Legal and non-legal impediments to the application of international labour standards: German experts meet ILO", Friedrich Ebert Foundation and International Labour Organisation, Geneva, Switzerland.

21 October 2005: "Rentenversicherung in der Volksrepublik China". Conference: "Altersicherung im internationalen Vergleich", VDR, Erkner near Berlin.

26 November 2005: "Deguo jiating zai shehuifa zhong de juese" (The role of the family in German social law). Conference: "Entwicklung der Sozialversicherung in Deutschland und China", Beijing, China.

Ockert C. DUPPER:

8 February 2004: "The Equal Protection Model in the United States: Overview and Recent Developments". Seminar: "Dimensionen Rechtlicher Gleichheit", Max Planck Institute for Foreign and International Social Law, Hochries/Chiemgau.

18 May 2004: "Remedying the Past or Reshaping the Future? Justifying Race-Based Affirmative Action in South Africa and the United States", Johann Wolfgang Goethe-Universität, Frankfurt/Main.

22 June 2004: "Affirmative action in South Africa and the United States: Justifying the unjustifiable?", Ludwig-Maximilians-Universität, Munich.

13 March 2005: "Ensuring Equality through Law: Issues in Affirmative Action from a Comparative Perspective". Seminar: "European Employment and Equality Law", Venice International University, San Servolo, Venice, Italy.

7 April 2005: "Justifying Affirmative Action Measures", Equality and Unfair Discrimination in Employment, Nelson Mandela Metropolitan University, Port Elizabeth/ South Africa.

7 April 2005: "Affirmative Action as a Defence", Equality and Unfair Discrimination in Employment, Nelson Mandela Metropolitan University, Port Elizabeth/ South Africa.

8 July 2005: "Broad-Based Black Economic Empowerment in South Africa: A Critical Analysis", German-South African Lawyers Association (GSLA), Cologne.

10 December 2005: "Affirmative Action in South Africa: Recent Developments and Future Challenges", German-South African Lawyers Association (GSLA), annual meeting, Hamburg.

19 December 2005: "Activating Labour Market Policies in the United States". Expert workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Lauf/Nuremberg.

Alexander GRASER:

13 April 2004: "Der gekündigte Arbeitnehmer als Objekt gesetzgeberischer Fürsorge". Colloquium on law and the economy, University of Kassel.

23 September 2005: "Approaching the Social Union?". Paper held on the occasion of the final conference: "Law and Democracy in Europe's Post-National Constellation". Project: "Citizenship and Democratic Legitimacy in the EU", Robert Schuman Centre for Advanced Studies, European University Institute, Florence.

3 November 2005: "Law and Aging – Perspectives for an Interdisciplinary Cooperation". 2nd conference held by the Max Planck International Research Network on Aging, Marbella.

Eva-Maria HOHNERLEIN:

22 June 2005: "Sozialstaat und soziale Sicherheit – Herausforderungen und Reformtendenzen im europäischen Vergleich". School lecture held before students of Teterow secondary school (within the scope of the annual meeting of the Max Planck Society in Rostock), Teterow.

20 September 2005: Seminar held on the pension reform in Italy within the workshop series: "Pension reform in Europe", Institut de Travail de l'Université de Strasbourg, Strasbourg, France.

20 October 2005: "Flexible Work and Social Security. How earnings-related pension schemes cope with part-time workers. The case of Germany and other foreign experience", Turkish social insurance fund SSK, Ankara, Turkey.

21 October 2005: "Policies to improve the social protection of part-time workers". Paper held before Turkish social partners, Turk-Is, Ankara, Turkey.

18 November 2005: "L'égalité de traitement entre hommes et femmes dans les retraites professionnelles d'entreprise – les évolutions récentes en Allemagne". International colloquium on the subject of company pensions in Europe (Colloque International sur les retraites professionnelles d'entreprise en Europe), Institut de l'Ouest: Droit et Europe (IODE) de l'Université de Rennes I, Centre d'excellence Jean Monnet, and Max Planck Institute for Foreign and International Social Law, Rennes, France.

Otto KAUFMANN:

11 March 2004: "Bürgerliches Recht und Sozialrecht". Discussion meeting: "Droit social et droit commun", Strasbourg University, France.

2 July 2004: "Soziale Sicherheit und die EU-Erweiterung". Conference organised by the Institut de la Protection Sociale Européenne (IPSE), Budapest, Hungary.

26 November 2004: "Le droit commun (le code civil) et le droit social". Two hundredth anniversary of the "code civil", organised by the University of Rijeka and the French Embassy, Rijeka, Croatia.

17 November 2004: "Tendenzen in der deutschen Sozialversicherung insbesondere in der Krankenversicherung", Institut de la Protection Sociale Européenne (IPSE), Paris, France.

19 January 2005: "Les retraites complémentaires en Europe et le droit communautaire", Assemblée constitutive MV4-Parunion, Paris, France.

25 February 2005: "Les travailleurs âgés en Allemagne". Colloquium : "La sortie du travail des travailleurs âgés", Palais des Congrès, organised inter alia by Strasbourg University and Inspection du Travail, Alsace, Strasbourg, France.

4/5 July 2005: "Reformen in der sozialen Sicherung: Gründe und Wege". Conference: "Efficiences des réformes de la protection sociale: attentes, résultats actuels et avenir", Institut de la Protection Sociale Européenne (IPSE) and European Commission, London, Great Britain.

3 June 2005: "La cohésion sociale en Allemagne". Colloquium : "La cohésion sociale", Institut régional de l´Administration de Metz, France.

20 October 2005: "Die französische Alterssicherung". Conference: "Alterssicherung im internationalen Vergleich", DRVBund, Erkner near Berlin.

18 November 2005: "La place des retraites professionnelles d´entreprise dans la protection vieillesse". International colloquium on the subject of company pensions in Europe (Colloque International sur les retraites professionnelles d'entreprise en Europe), Institut de l'Ouest: Droit et Europe (IODE) de l'Université de Rennes I, Centre d'excellence Jean Monnet and Max Planck Institute for Foreign and International Social Law, Rennes, France.

6 December 2005: "Mitbestimmung in Deutschland/Partizipation". Seminar: "Partizipation CGT Confédération", CGT, Courcelle, France.

Peter A. KÖHLER:

31 March 2004: "Gesundheitswesen in Schweden", Kölner Sozialrechtstage, Cologne.

27 – 28 May 2004: Seminar (with participants form Svenska Metall): "Auf dem Weg zu einem zweistufigen System der Arbeitsbeziehungen in Deutschland?", Hans Böckler Foundation, Düsseldorf.

Claudia MATTHÄUS:

6 October 2005: "Perspektiven der Rehabilitation im erweiterten Europa". 50th professional training course of the expert group on rehabilitation, Verband der Krankenhausdirektoren in Deutschland (Association of hospital managers in Germany), Bad Steben.

Bernd BARON VON MAYDELL:

21 January 2004: "Wandlungen im Konzept der Daseinsvorsorge und das Sozialrecht". Lecture series: "Sozialrecht in Rechtsprechung und Wissenschaft", University of Kassel.

24 April 2004: "Rationierung im Gesundheitswesen in Europa", Arbeitsgemeinschaft für ArztRecht, Frankfurt/Main.

5 May 2004: "Zur Zulässigkeit der Vermittlung von Versicherungsverträgen durch gesetzliche Krankenkassen", VDVM (Association of insurance brokers), Cologne.

27/28 May 2004: "International Social Security Standards in the Southern (Eastern) Mediterrian Countries". Seminar of the Council of Europe, Limassol, Cyprus.

30 June 2004: "Der Begriff Sozialrecht". Conference: "Grundfragen und Organisation der Sozialversicherung in Rechtsvergleich zwischen China und Deutschland", Max Planck Institute for Foreign and International Social Law, Ringberg Castle, Tegernsee.

29 September 2004: "Europarat und EU-Organisation und sozialpolitischer Einfluss", University of Tsukuba, Japan.

7 October 2004: "Sozialpolitik und internationales Recht", University of Tsukuba, Japan.

8 October 2004: "Rechtliche Regelung des Pflegedienstvertrags in Deutschland", University of Meiji, Japan

9 October 2004: "Weiterentwicklung der Pflegeversicherung". Research group on long-term care embracing several universities, Tokyo, Japan.

13 October 2004: "Sicherung der Qualität der Pflege", City Council of Kobe, Japan. 14 October 2004: "Pflege und Qualitätssicherung", Prefecture of Osaka, Japan.

16 October 2004: "Die internationale Dimension des Arbeits- und Sozialrechts", Kyushu University, Fukuoka, Japan.

21 October 2004: "Sozialrechtsstudium in Deutschland", University of Nagasaki, Japan.

23 October 2004: "Der Einfluss des europäischen und internationalen Rechts auf das deutsche Sozialrecht", Association for Japanese Social Law, Tokyo, Japan.

30 October 2004: "Pflichtversicherung – Segnung oder Sündenfall?" and "Muß Sozialversicherung eine Pflichtversicherung sein?", Hamburger Gesellschaft zur Förderung des Versicherungswesens mbH (HGFV), Hamburg.

11 November 2004: "Reformen des Sozialstaats im internationalen Vergleich", Frankfurter Juristische Gesellschaft, Frankfurt/Main.

12/13 November 2004: "Herausforderungen der Altersvorsorge im 21. Jahrhundert". 10th Social Law Conference of Münster, Münster.

16 November 2004: "Verbindung von Steuer- und Sozialrecht", University of Hohenheim, Stuttgart.

19 November 2004: "German Old-Age Pension Insurance – Legal Aspects". German-Japanese social law symposium: "The Role of Private Actors in Social Security", The Japan Cultural Institute in Cologne, Cologne.

26 November 2004: "Arzthaftung oder Behandlungsschadensversicherung. Die Situation in anderen europäischen Ländern", Arbeitsgemeinschaft der wissenschaftlichen medizinischen Fachgesellschaften (AWMF) Düsseldorf, Arbeitskreis Ärzte und Juristen, Göttingen.

3/4 December 2004: "Auswirkungen der entstehenden europäischen Marktordnung". Colloquium: "Steuer- und Sozialstaat im europäischen Systemwettbewerb", Max Planck Institute for Intellectual Property, Competition and Tax Law, and Max Planck Institute for Foreign and International Social Law, Munich.

12 January 2005: "Lösungsansätze für soziale Zukunftsfragen in Deutschland", Gustav Stresemann-Institut (GSI), Bonn.

28 January 2005: "Die alternde Gesellschaft in Japan", Rotary Club, Munich.

2 February 2005: "Die Überwachung sozialer Standards durch den Sachverständigenausschuss der ILO", Faculty of Law of the University of Zagreb, Croatia.

15 March 2005: "Das System sozialer Sicherheit in Deutschland und die Notwendigkeit seiner Reform", Günter Stöhr-Gymnasium, Icking-Irschenhausen.

9 June 2005: "Die Neuordnung der Sozialhilfe und der Arbeitslosenhilfe im System des Sozialrechts der Bundesrepublik Deutschland", University of Danzig.

27 June 2005: "Zur Reform des Krankenversicherungssystems in Deutschland", Rotary Club, Munich.

1 September 2005: "Zur Verwirklichung des Gleichbehandlungsgrundsatzes in der Alterssicherung", Inner Wheel Club, Bonn.

15 September 2005: "Ziele der Altenpolitik" and "Zur Frage der Rationalität von Altersgrenzen", Bertelsmann Foundation Expert Committee, Berlin.

21 October 2005: "Kassenwettbewerb (Wettbewerb zwischen privater und gesetzlicher Krankenversicherung)", University of Rijeka, Croatia.

28 October 2005: Introduction, workshop: "Implementierung internationaler Sozialstandards und -rechte (IISR) – Bestandsaufnahme und Weiterentwicklung", Max Planck Institute for Foreign and International Social Law, Munich.

9 November 2005: "Entwicklungen des Sozialrechts in Europa", University of Porto Alegre, Brazil.

11 November 2005: "Entwicklungen des Sozialrechts in Europa", University of Florianopolis, Administrative Sciences, Brazil.

13 December 2005: "Die deutsch-japanische Zusammenarbeit auf dem Gebiet des Sozialrechts". Presentation of the Japanese edition of Professor Dr. Hans F. Zacher's volume: "Sozialrecht in Deutschland", Max Planck Institute for Foreign and International Social Law, Munich.

George MPEDI:

23 June 2004: "The Extension of Social Protection to Non-formal Sector Workers – Experiences from SADC and the Caribbean". IIRA 5th Regional Congress, Seoul, Korea (with M. Olivier).

17 September 2004: "Formulating an integrated social security response – Perspectives on developing links between informal and formal social security in SADC region". EGDI-WIDER Conference on Unlocking Human Potential: Linking the Informal and Formal Sectors, Helsinki, Finland (with M. Olivier and E. Kaseke).

26 January 2005: "Systematising Social Security Law as a Means to Extending Access to Social Security in South Africa". CROP/CICLASS Law and Poverty VI Workshop, Johannesburg/South Africa.

30 June 2005: "Unemployment Protection in SADC Countries: Trends and Challenges". DAAD Conference on the Integration of Labour and Social Security Law in the SADC-Region, Frankfurt/Main.

11 November 2005: "The role of religious networks in extending social protection: Observations from a South African perspective". Conference: "Social Security in Religious Networks: Changes in Meanings, Contents and Functions", Max Planck Institute for Evolutionary Anthropology, Halle/Saale.

12 November 2005: "Extending social security and labour law protection to the South African informal sector: An enquiry into recent developments in the taxi sector". Annual African Law Association Conference, Heidelberg.

29 November 2005: "The extension of labour law and social security protection to non-formal sector workers – Experiences from SADC and the Caribbean". 4th International Industrial Relations Association African Regional Congress, Mauritius (with M. Olivier).

30 November 2005: "Informal Social Security and Formal Social Security: Development an Integrative Approach". 4th International Industrial Relations Association African Regional Congress, Mauritius (with M. Olivier and E. Kaseke).

13 December 2005: "Extending unemployment protection to the excluded and vulnerable: Perspectives on developments in South Africa". Second Global Labour Forum, New Delhi, India (with M. Olivier and A. Govindjee).

Hans-Joachim REINHARD:

30 January 2004: "Consumer Protection through EU-Directives – The acquis communautaire in the field of consumer law, Seminar European Unfair Competition Law", Garmisch-Partenkirchen.

18 May 2004: "Soziale Sicherung und Erwerbstätigkeit – eine reformbedürftige Verbindung", University of Applied Sciences (FH), Fulda.

24 June 2004: "A previdenência social pública e privada, as suas inter-relações e o seu custeio: A tributação dos fundos de pensão abertos e fechados". VIII Congreso de Tributário da Abrats, Belo Horizonte, Brazil.

13 July 2004: "El papel del federalismo en la reforma de la organización del Sistema de la Seguridad Social en Alemanna", Universidad Melendez Pelayo, Santander, Spain.

15 March 2005: "La Ley de Sostenibilidad de las Pensiones, Seminario sobre prolongación de la vida activa", Ministerio de Trabajo y Seguridad Social, Madrid, Spain.

20 September 2005: "Europäisches Sozialrecht", University of Moskau-Sergiev Posad, Moscow, Russia.

18 November 2005: "La fiscalité des dispositifs allemands d'épargne d'entreprise", University of Rennes, France.

20 December 2005: "Beschäftigungspolitik in Spanien", Institute for Employment Research (IAB), Lauf/Nuremberg.

Friso ROSS:

15 June 2004: "German Social Security Law and Schemes: An Introduction", Workshop: „South African and German Perspective on Social Security Law and Schemes", Max Planck Institute for Foreign International Social Law and CICLASS of RAU Johannesburg, Munich.

7 July 2004: "Sozialgerichtsbarkeit in Europa: Eine Projektskizze". Discussion meeting: "Sozialrecht", Max Planck Institute for Foreign and International Social Law and Landessozialgericht (Higher Social Court of Munich), Munich.

12 November 2004: "Underlying Principles of Social Security Law in Europe: A project proposal". 1st workshop: "Principles of Social Security Law in Europe", Research Unit European Social Security of the Catholic University of Leuven and Max Planck Institute for Foreign and International Social Law, Leuven, Belgium.

18 November 2004: "Kulturrelativismus, Kulturevolutionismus und die Rechtswissenschaft: Franz Boas in seiner Zeit". Seminar on legal anthropology chaired by Wolfgang Fikentscher, Ludwig-Maximilians-Universität, Munich.

18 November 2005: "The Swiss Occupational Pension Scheme and its impact on the Swiss Old Age Pension System". Colloquium: "Les retraites professionnelles d'entreprise en Europe", Institut de l'Ouest: Droit et Europe (Université de Rennes I) and Max Planck Institute for Foreign and International Social Law, Faculté de Droit et de Science Politique, Rennes, France.

20 December 2005: "Labour Market Activation in Switzerland: Background, Strategies and Legal Aspects". Workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Nuremberg, Institute for the Study of Labor (IZA), Bonn, and Max Planck Institute for Foreign and International Social Law, Management Academy of the Federal Employment Agency (BA), Lauf/Nuremberg.

Bernd SCHULTE:

1 March 2004: "Europäische Sozialpolitik – eine Bestandsaufnahme nach dem Verfassungskonvent und vor der Erweiterung", "Julius-Leber-Forum: Bremer Dialog", Friedrich Ebert Foundation, Bremen.

14 March 2004: "Perspektiven Europäischer Sozialpolitik – Die rechtliche Konstitutionalisierung des Sozialen und die politische Strategie der offenen Methode der Koordinierung". Meeting: "Das Europäische Sozialmodell im 21. Jahrhundert", Friedrich Ebert Foundation, Berlin.

1 – 2 April 2004: "Social Inclusion Workshop 1: The Access to Social Protection and Information for Migrants". Irish Presidency of the EU/European Commission Conference: "Reconciling Mobility and Social Inclusion – The role of employment and social policy", Bundoran, Ireland.

7 April 2004: "Europa als Herausforderung und Chance für den deutschen Sozialstaat". Forum 6: Europa des Sozialstaatskongresses: "Mut zur Gerechtigkeit!", IG Metall, Berlin.

7 and 8 May 2004: "1st Session – Implementation of Regulation 1408/71: Preparations by new Member States". Conference: "Co-ordination of Social Security in an Enlarged Europe: now and tomorrow", Irish EU Presidency/Commission of the European Union/Ministry of Labour and Social Affairs, Budapest, Hungary.

13 May 2004: "Statement: Binnenmarkt und Daseinsvorsorge aus rechtlicher Sicht". Hearing: "Soziale Dienste und Wettbewerb in Europa", Arbeiterwohlfahrt – Bundesverband e. V., Frankfurt/Main.

5 June 2004: "Brauchen wir eine neue Seniorenpolitik?" Hearing: "Soziale Dienste und Wettbewerb in Europa". Gerontologica 2004 "Zukunft Alter", Wiesbaden.

18 June 2004: "Die Europäische Verfassung aus Sicht der Kinder- und Jugendhilfe". 12th Deutscher Jugendhilfetag, Osnabrück.

30 June 2004: Statement: "Integration strategies – learning from experience". Dialogue: "What EU Strategy for Integrating Migrants", European Policy Centre – King Baudouin Foundation – Bertelsmann Foundation, Brussels, Belgium.

6 July 2004: "Die Sozialgesetzgebung der neuen EU-Mitgliedstaaten – Stand und Perspektiven". 4th expert meeting with countries acceding the EU and German speaking neighbouring countries: "Der soziale Dialog in Mitteleuropa – Ein Erfahrensaustausch zu sozialen Diensten und damit zusammenhängenden Fragen", Deutscher Verein für öffentliche und private Fürsorge e.V. (German Association for Public and Private Welfare), Frankfurt/Main.

26 August 2004: "Das Europäische Sozialmodell im 21. Jahrhundert". Steuerungskreis, Sozialmodell der Friedrich-Ebert-Stiftung, Berlin.

16 September 2004: "La prise en charge de la dépendance en Allemagne". 11ème Journée de droit de la santé "Santé et Dépendance", Institut de droit de la santé/Université de Neuchâtel, Neuchâtel, Switzerland.

23 September 2004: "Grundzüge europäischer Sozialstaatsmodelle im Vergleich". Politische Sommerakademie für Studierende: "Der Sozialstaat unter Globalisierungsdruck", Katholische Akademie, Berlin.

4 October 2004: "Überblick über rechtliche Rahmenbedingungen in der Migrationsarbeit – Europa". Conference: "Polen in der EU und Europäisches Recht – Fit für Migration ...?", Caritasverband Wuppertal e. V., Wuppertal.

8 October – 18 October 2004: Lecture trip: "Alterssicherung in Deutschland und Europa", "Reform der sozialen Sicherheit in der Bundesrepublik Deutschland", "Das soziale Europa – die soziale Dimension der Europäischen Union", Konrad Adenauer Foundation, Rio de Janeiro, Florianapolis, São Paulo, Brazil.

11 November 2004: "Betreuung: Rechtsfürsorge im Sozialstaat aus sozialrechtlicher Perspektive". 9th VormundschaftsGerichts-Tag: "Was ist ‚Betreuung'? Rechtsfürsorge im Sozialstaat", Erkner near Berlin.

16 November 2004: "Auf dem Weg zu einem europäischen Sozialstaat? – Die Entwicklung der Europäischen Union zum sozialpolitischen Akteur". Colloquium on social policy: "Sozialpolitik der Europäischen Union", Universität/Gesamthochschule Kassel.

24 November 2004: "Europäisches Recht und Gesundheitsmarkt". Forum II: European law in the healthcare sector, European Health Care Congress: "Contact, Communication, Cognition, Contract", Ministry of Health, Social Affairs, Women and Familiy Affairs of North Rhine-Westphalia, Düsseldorf.

26 November 2004: "Perspektiven der wohlfahrtsstaatlichen Entwicklung in Europa". "Forum für soziale Gerechtigkeit in Europa: Sozialreform oder Sozialabbau in Europa?", Forum II: Welfare state reform in Europe/social policy as a competitive factor in Europe?, Osnabrück.

3 December 2004: "Alterssicherung und Sozialhilfe (Grundsicherung)". Annual meeting 2004: "Interdependenzen in der sozialen Sicherung – Wirkungen und Reformoptionen", Verband Deutscher Rentenversicherungsträger/Forschungsnetzwerk Alterssicherung, Leipzig.

2 February 2005: Conference 2005: "Recht und Politik der Europäischen Union – Risiken und Chancen für die Freie Wohlfahrtspflege", Landesarbeitsgemeinschaft der Freien Wohlfahrtspflege in Bayern, Kloster Ettal.

2 March 2005: "Die Sozialwirtschaft als Europäischer Marktplatz". Socio-economic management: "BENCHMARKING. Politische und betriebliche Implikationen aus benchmarking Prozessen", University of Applied Sciences (FH), Mainz.

11 March 2005: "The legal guarantee of a social minimum in German law and in an international perspective". Workshop: "Constitutional Litigation of Welfare Reform – Concepts and Outcomes in Israel and Germany", Max Planck Institute for Foreign and International Social Law, Munich.

17 March 2005: "Die Europäische Union als sozialpolitischer Akteur". Annual meeting 2005: "SOZIALRAUM EUROPA" on the social protection in the EU member states of Eastern Europe, Gesellschaft für Programmforschung und Deutsche Gesellschaft für Technische Zusammenarbeit, Berlin.

7/8 April 2005: "The implementation capacity of the Open Method of Coordination in related policy areas: selected cases". Seminar: "The Open Method of Coordination (OMC) as a new mode of governance", Bertelsmann Foundation, Gütersloh.

4 May 2005: "Soziale Dienstleistungen von allgemeinem Interesse – soziale Daseinsvorsorge – und Europäisches Wettbewerbsrecht – ein Problemaufriss". Annual conference for the heads of social assistance offices, Arbeiterwohlfahrt Bundesverbandes e. V., Remagen-Rolandseck.

20 June 2005: Expert meeting: "Die Erbringung von Gesundheits- und Sozialdienstleistungen nach Europäischem Gemeinschaftsrecht", Ministry of Health, Social Affairs, Women and Familiy Affairs of North Rhine-Westphalia, Düsseldorf.

1 July 2005: "Einführung in die Thematik des Europäischen koordinierenden Sozialrechts und seine Anwendung in Deutschland". Seminar: "Die Gemeinschaftsrechtliche Koordinierung der Systeme der sozialen Sicherheit in der Europäischen Union", European Commission/Training and Reporting on Social Security (trESS) Network, Berlin.

4 July 2005: "Der Sozialstaatsgedanke – Modell oder Auslaufmodell?". Annual meeting 2005: "Soziale Verantwortung neu denken", Katholischer Akademikerverband, Bonn.

2 September 2005: "Einführung in die Thematik des Europäischen koordinierenden Sozialrechts und seine Anwendung in Deutschland". Seminar: "Die gemeinschaftsrechtliche Koordinierung der sozialen Sicherheit in der Europäischen Union", European Commission/Training and Reporting on European Social Security (trESS) Network, Berlin.

15 September 2005: "Die Europäische Rechtsentwicklung im freien Dienstleistungsverkehr und ihre Auswirkungen auf die Leistungserbringung in der sozialen Sicherheit". Conference: "Das europäische Koordinationsrecht der sozialen Sicherheit und die Schweiz", Europainstitut an der Universität Zürich/Kompetenzzentrum für Fragen des Europarechts/Stiftung für Juristische Weiterbildung Zürich, Zurich, Switzerland.

17 September 2005: "The EU and Pension Policy". International Conference: "Transformation of the Modern State. From State Provision to State-Regulated Markets in European Old-Age Security?", Verband Deutscher Rentenversicherungsträger (VDR), Bielefeld University/Faculty of Sociology, and Deutsche Forschungsgemeinschaft (DFG), Erkner near Berlin.

21 September 2005: "Reform der Alterssicherung in Deutschland" and "Die soziale Integration von Migranten in Deutschland und in der Europäischen Union", Konrad Adenauer Foundation, Mexico City, Mexico.

23 September 2005: "Seguro de Pensión de Jubilación en Alemania". International seminar: "Reform der Rentensysteme – Erfahrungen und Herausforderungen für die Politik in Europa und Lateinamerika", Konrad Adenauer Foundation, Mexico City, Mexico.

26 September 2005: Conference for scholarship holders: "Wie kann soziale Gerechtigkeit in Europa erreicht werden?", Cusanus-Werk, Oldenburg.

29 September 2005: "Politische Aspekte des Generationenzusammenhalts in Europa". Expert conference: "Generationen in Familie und Gesellschaft in einem zusammenwachsenden Europa", Deutsche Gesellschaft für Gerontologie und Geriatrie, Mannheim.

10 October 2005: "Aktuelle Rahmenbedingungen des Sozialstaats". Consultation: "‚Arme habt Ihr alle Zeit bei Euch' – Perspektivenwechsel der Diakonie?", Diakonisches Werk der Evangelisch-Lutherischen Kirche in Bayern e. V., Tutzing.

31 October 2005: "Impulse geben. Wachstum und Innovation für Deutschland und Europa". Steering committee: "Europäisches Sozialmodell", Friedrich Ebert Foundation, Berlin.

3 November 2005: "Rechtsakte und rechtliche Rahmenbedingungen auf EU-Ebene". Conference: "Die Zukunft des Europäischen Sozialmodells – Eine deutsche Perspektive", Observatory for the Development of Social Services in Europe and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Berlin.

10 November 2005: "Europäischer Dienstleistungswettbewerb – Chancen für die soziale Arbeit?". 7th annual fair and congress for the social market in Germany: "ConSozial 2005", Bavarian State Ministry for Labour, Social Welfare and Family Affairs, Nuremberg.

15 November 2005: Panel discussion statement: "Zukunft der Altersvorsorge in Deutschland". 6th SOKA-BAU practitioners' meeting: "Perspektiven der Altersversorgung in Deutschland", SOKA-BAU Service-Vorsorge über Wirtschaft, Wiesbaden.

28 November 2005: Working group meeting: "Die offene Methode der Koordinierung - eine kritische Bewertung", Desk Officers for European Affairs from the Laender Ministries of Labour and Social Affairs, Mainz.

2 – 4 December 2005: "Der Einfluss der Rechtsprechung des Europäischen Gerichtshofs auf die Koordination der Systeme der sozialen Sicherheit der EU-Mitgliedstaaten". Seminar, Rumanian Ministry for Labour, Social Affairs and Family Affairs and Hanns Seidel Foundation, Sinaia, Rumania.

8 December 2005: "Poverty Alleviation Policies". Conference: "Social Conditions in the Enlarged Europe", Wissenschaftszentrum Berlin für Sozialforschung/European Foundation for the Improvement of Living and Working Conditions, Berlin.

14 December 2005: "Internationaler Vergleich der Absicherung gesundheitlicher Risiken". Grundkurs Sozialmedizin/Rehabilitation Teil 2, Bayerisches Landesamt für Gesundheit und Lebensmittelsicherheit/ Akademie für Gesundheit, Ernährung und Verbraucherschutz/Bayerische Akademie für Arbeits-, Sozial- und Umweltmedizin, Munich.

19 December 2005: "Country Report United Kingdom". Expert workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB) and Max Planck Institute for Foreign and International Social Law, Lauf/Nuremberg.

Markus SICHERT:

15 April 2005: "Constitutional Litigation of Welfare Reform in Germany and its Impact on Social Policy and Law-making". Workshop: "Constitutional Litigation of Welfare Reform – Concepts and Outcomes in Israel and Germany", Max Planck Institute for Foreign and International Social Law, Munich.

21/22 October 2005: "Kooperative Versorgungsformen in einer solidarischen Wettbewerbsordnung – Integrierte Versorgung und Medizinische Versorgungszentren", University of Rijeka, Rijeka, Croatia.

19/20 December 2005: "Activating Labour Market Policies – Country Report Netherlands (Law)". Workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Lauf/Nuremberg.

Christina WALSER:

15 January 2004: "Reformen der niederländischen Krankenversicherung", Max Planck Institute for Foreign and International Social Law, Munich.

11 March 2004: "Le système de santé aux Pays-Bas avec les réformes actuelles", Robert Schuman University, Strasbourg, France.

3 June 2004: "Qualitative Voraussetzungen der grenzüberschreitenden Inanspruchnahme von Krankenhausleistungen", Max Planck Institute for Foreign and International Social Law, Munich.

Hans F. ZACHER:

1 May 2004: "Children and the Future. A Few Remarks on Intergenerational Solidarity". Xth Plenary Session of the Pontifical Academy for Social Sciences, Vatican City.

3 May 2004: Report on Democracy. Colloquium on the occasion of the Tenth Anniversary of the Pontifical Academy of Social Sciences, Vatican City.

24 May 2004: After-dinner speech held at the gala dinner organised by The Chinese Academy of Social Sciences (CASS) on the occasion of thirty years of cooperation between the Max Planck Society and CASS, Beijing, China.

23 June 2004: "Verantwortung für den Sozialstaat: gesamthafte Rationalität und institutionelle Reform". Conference: "Sozialstaats-TÜV Grundlagen einer langfristigen Reformpolitik", Katholisches Forum Niedersachsen, Hanover.

30 June 2004: Address (also on behalf of the MPG president) held at the colloquium celebrating the emeritus status of Dr. Rosenbauer, Max Planck Institute for Aeronomy, Lindau.

11 October 2004: "Kinder und Zukunft – einige Anmerkungen zur intergenerationellen Solidarität", Faculty of Law, University of Wroclaw, Poland.

6 November 2004: "Für einen Sozialrat in Deutschland!?". Annual meeting 2004 of the Ökumenische Arbeitsgemeinschaft sozialethischer Institute (ÖAsI), Münster.

4 December 2004: Concluding statement at the colloquium: "Steuer- und Sozialstaat im europäischen Systemwettbewerb", Max Planck Institute for Intellectual Property, Competition and Tax Law, and Max Planck Institute for Foreign and International Social Law, Munich.

10 January 2005: Congratulations to Professor Hans-Heinrich Jeschick (on behalf of the MPG president) at the colloquium on the occasion of his 90th birthday, Max Planck Institute for Foreign and International Criminal Law, Freiburg/Breisgau.

25 January 2005: "Über einige Schwierigkeiten, das Soziale zu lehren – Zur Entwicklung der katholischen Soziallehre", University of Applied Sciences (FH), Fulda.

14 February 2005: On behalf of the MPG president: "Peter Hans Hofschneider: Verantwortung für die Wissenschaft". Commemoration in honour of Peter Hans Hofschneider, Max Planck Institute of Biochemistry, Martinsried.

19 April 2005: Address held at the dinner on the occasion of the symposium for the 70th birthday of Professor Herbert Walther, Max Planck Institute of Quantum Optics, Garching.

29 June 2005: Address held (on behalf of the MPG president) on the occasion of the 25th anniversary of the German-Spanish Astronomical Center (DSAZ) at Calar Alto Observatory and the rearrangement of the German-Spanish cooperation on the joint use of astronomical facilities, Spain.

22 September 2005: Federal Conference 2005: "Sozialstaat und Rechtsschutz", Deutscher Sozialrechtsverband e.V., Leipzig.

1 December 2005: FNA annual meeting 2005: "Das ‚Soziale' als Begriff des deutschen und des europäischen Rechts", Erkner near Berlin.

2. Lectures

Ulrich BECKER:

Ludwig-Maximilians-Universität, Munich:

WS 2003/2004: Lecture on public law: "Verwaltungsrecht II" (local government law) (2 h).

WS 2003/2004: Lecture on social law: "Sozialversicherungsrecht" (2 h).

WS 2003/2004: Public law seminar: "Dimensionen rechtlicher Gleichheit – dogmatische, vergleichende und theoretische Aspekte" (with Alexander Graser) (2 h).

SS 2004: Public law seminar: "Sportrecht" (2 h).

WS 2004/2005: Lecture on social law: "Sozialrecht I" (2 h).

WS 2004/2005: Lecture on public law: "Verwaltungsrecht II" (local government law) (2 h).

WS 2004/2005: Public law seminar: "Perspektiven des Sozialstaats – Verfassungs-, europa- und zivilrechtliche Bezüge" (with Alexander Graser) (2 h).

SS 2005: Public law seminar: "Rechtsfragen des Sports" (2 h).

WS 2005/2006: Lecture on social law: "Sozialrecht I" (2 h).

WS 2005/2006: Lecture (focal subject 5): "Grundlagen des Sozialversicherungsrechts" (2 h).

WS 2005/2006: Public law seminar: "Antidiskriminierungsrecht in Deutschland/ Antidiscrimination law in Germany" (with O. Dupper) (2 h).

WS 2005/2006: Seminar (focal subject 5): company law: labour and social law; former focal subject 4: company law and labour law: "Arbeits- und Sozialrecht in Europa" (with M. Coester and P. Tröster) (in co-operation with the University of Prague).

Guest lectures:

2003/2004; 2004/2005: Course on "European and International Social Security" under the "European Master in Social Security" programme, Catholic University Leuven, Belgium.

15/16 April 2004: Lecturers' meeting (European Master in Social Security), Leuven, Belgium.

17 August 2004: "Introduction to European Social Policy" (Diploma Class), University of Johannesburg/South Africa.

17 August 2004: "European Social Policy and Social Security Coordination" (Master Class), University of Johannesburg/South Africa.

18 August 2004: "Introduction to the Coordination of Social Security Systems in the EU" (Diploma Class), University of Johannesburg/South Africa.

20 August 2004: "European Social Policy and Social Security Coordination" (Master Class), Mafikeng Campus, Northwest University/South Africa.

11 December 2004: "Entwicklungen des Sozialrechts in internationaler Perspektive", Renmin University of China (People's University), Beijing, China.

2004/2005: Lectures held at the Athinisin Ethnikon Kai Kapodistriakon Panepistimion, Athens, under the SOCRATES/ERASMUS staff exchange programme

2004/2005 between Ludwig-Maximilians-Universität of Munich and the Law Faculty of the University of Athens, Greece.

16 May 2005: "European social law and the EC coordination of social security systems".

16 May 2005: "Introduction to European social policy". Doctoral seminar "Sozialversicherungsrecht".

17 May 2005: "The German statutory health care insurance and cross-border medical treatment". Doctoral seminar: "Gesundheitsrecht".

10 August 2005: "The impact of constitutional law on social security" (Master Class), University of Johannesburg/South Africa.

11 August 2005: "Fundamental rights and social security", Mafikeng Campus, Northwest University/South Africa.

12 August 2005: "Fundamental rights and social security", Campus Wilderness near George, South Arfrica.

15 August 2005: "The impact of constitutional law on social security" (Post-Graduate Diploma in Social Security), University of Johannesburg/South Africa.

28 November 2005: "Entstehung, Entwicklung und Perspektiven der Sozialversicherung in Deutschland", Renmin University of China (People's University), Beijing, China.

Carlos L. COTA:

2004/2005: "Basics in Legal English", Faculty of Law, Ludwig-Maximilians-Universität, Munich (2 h).

Ockert C. DUPPER:

WS 2004/2005: LLM in Labour Law, Nelson Mandela Metropolitan University, Port Elizabeth, South Africa (with A. van der Walt) (2 h).

WS 2004/2005: Employment Discrimination Law, University of Stellenbosch, South Africa (with Chr. Garbers) (2 h).

WS 2005/2006: Antidiscrimination law in Germany – international and comparative perspectives, Ludwig-Maximilians-Universität, Munich (with U. Becker) (2 h).

Guest lectures:

18 May 2004: "Remedying the Past or Reshaping the Future? Justifying Race-Based Affirmative Action in South Africa and the United States", Faculty of Law, Johann Wolfgang Goethe-Universität, Frankfurt/Main.

22 June 2004: "Affirmative action in South Africa and the United States: Justifying the unjustifiable?", Faculty of Law, Ludwig-Maximilians-Universität, Munich.

13 March 2005: "Ensuring Equality through Law: Issues in Affirmative Action from a Comparative Perspective", Venice International University, San Servolo, Venice, Italy.

Alexander GRASER:

Ludwig-Maximilians-Universität, Munich:

WS 2003/2004: Seminar: "Dimensionen rechtlicher Gleichheit" (with mit U. Becker) (2 h).

WS 2003/2004: Study group: "Kommunalrecht" (1 h).

WS 2004/2005: Seminar: "Perspektiven des Sozialstaats" (with U. Becker) (2 h).

WS 2004/2005: Study group: "Kommunalrecht" (1 h).

Eva-Maria HOHNERLEIN:

20 September 2005: "La Réforme des Retraites en Italie de 2004", seminar on the pension reforms in Italy, Institut de Travail, University of Strasbourg, France.

Otto KAUFMANN:

Robert Schuman University of Strasbourg, France:

2004: Institut du travail: Seminars on German, French and European law.

2004: Faculté de droit: European social law, German and French labour and social law.

1 June 2004: Lecture at the IAE (institut d'administration de l´entreprise): basic principles of German labour law.

11 December 2004: Report on a doctoral thesis (rapporteur de thèse).

2005: Institut du travail: Seminars on German, French and European law.

2005: Master (former DEA; Master 2): European social law; basic prinicples of codetermination (participation); basic principles of business transfers (on the basis of both European and national law).

2005: Magistère franco-allemand: German labour law.

2005: Institut d'Administration de l'Entreprise, IAE: International and European labour and social law, German labour law.

Other universities:

15/16 October 2004: Lecture on German social law and retirement provision in an international comparison within the scope of the "Master protection sociale", (formerly DESS protection sociale), Université de Rennes I and Ecole nationale de la santé publique, ENSP (9 h).

2/3 December 2004: 1st seminar, international project: Old-age, a social risk?, Université de Bordeaux IV, Comptrasec/ CNRS (German report).

December 2005: Université de Rennes I and Ecole nationale de la santé publique, ENSP: Master droit, santé, éthique and Master protection sociale: droit de la protection sociale "On the origins and current situation of social law, health insurance and pension insurance in Germany" (in French) (9 h).

Bernd BARON VON MAYDELL:

30 January – 1 February 2005: Introduction to European labour and social law, University of Rijeka, Croatia (in English) (8 h).

April 2005: Introduction to the German law of obligations with special regard to the law reform, University of Tartu, Estland (20 h).

Hans-Joachim REINHARD:

Various courses under his professorship at the University of Applied Sciences (FH) Fulda, Social & Cultural Sciences Department, study course: “Sozialrecht”.

Friso ROSS:

WS 2004/2005: 1st state examination prparatory course on public law: Constitutional and European Community law, Ludwig-Maximilians-Universität, Munich (with C. Ohler, C. Herrmann, K. Engelbrecht) (6 h).

VII. Grantees and Guests

1. Grantees

1 January 2004 – 31 December 2005: Prof. Dr. Ockert C. DUPPER, Stellenbosch University, South Africa: "Entwicklungen und Reformen des Sozialrechts in den USA in vergleichender Perspektive" (Development and reforms of social law in the United States from a comparative perspective).

1 January 2004 – 31 December 2004: Dr. Katsuaki MATSUMOTO, National Institute of Population and Social Security Research, Ministry of Health, Labour and Welfare, Tokyo, Japan: "Anpassung von Sozialversicherungssystemen an die gesellschaftliche und wirtschaftliche Entwicklung – Japan und Deutschland im Rechtsvergleich" (Adjustment of social insurance systems to societal and economic developments – Japan and Germany in a legal comparison) (funded by the Volkswagen Foundation).

1 June 2004 – 28 July 2004: Prof. Dr. Robert F. RICH, College of Law, University of Illinois, Champaign, USA: "Social Contract and Health Policy".

14 June 2004 – 2 July 2004: Dr. Grant DUNCAN, School of Social and Cultural Studies, Massey University Albany, Auckland, New Zealand: "Concepts and indicators of well-being as basic objectives for social security".

1 July 2004 – 30 July 2004: Prof. Dr. Sidnei BENETI, Faculty of Law, São Bernardo do Campo, São Paulo, Brazil: "Sozialrecht und Sozialgerichtsbarkeit" (Social law and social jurisdiction).

1 October 2004 – 24 March 2005: Dr. Alpay HEKIMLER, Faculty of Economics, Dept. of Labor Economics and Industrial Relations, University of Istanbul, Turkey: "Flexible Arbeitszeitmodelle in Deutschland im Lichte des europäischen Arbeits- und Sozialrechts" (Flexible working time models in Germany in the light of European labour and social law).

23 May 2005 – 17 June 2005: Dr. Grant DUNCAN, School of Social and Cultural Studies, Massey University Albany, Auckland, New Zealand: "New Zealand's family assistance/tax credit policy, as announced in the 2004 Budget and to be implemented over the next two years".

1 July 2005 – 30 September 2005: Dr. David MONTOYA, Dept. of Labour Law and Social Security, University of Alicante, Spain: "Pension plans in the European Union from a comparative perspective".

1 August 2005 – 31 December 2005: Dr. Fangfang YANG, Renmin University of China, Beijing, China: "Systematic comparison of governments´ responsibility for social insurance between Germany and China".

2. Guests

1 January 2004 – 23 April 2004: Yaraslau KRYVOI, Director International Human Resources Centre ‚Professional', Minsk Institute of Contemporary Technologies and Marketing, Minsk, Belarus. Research project: "Auswirkungen der Globalisierung auf die Systeme sozialer Sicherheit" (Effects of globalisation on social security systems).

1 March 2004 – 30 June 2004: Dr. Matteo BORZAGA, University of Trento, Italy: "Bibliotheksrecherchen im Rahmen eines Equal-Projekts der EU" (Library research under the EU project EQUAL)

2 July 2004 – 21 July 2004: Prof. Dr. Terry CARNEY, Faculty of Law, University of Sydney, Australia: "European experience with neoliberal (semi-privatisation) contracting arrangements in welfare (e.g. some of the UK so-called third-way ideas), mental health issues, adult guardianship".

5 July 2004 – 20 July 2004: Dr. Peter HERRMANN, Dept. of Applied Social Studies, University College Cork, Ireland: "Personenbezogene Dienstleistungen und soziale Einrichtungen in vergleichender und europäischer Perspektive" (Personal services and social institutions from a comparative and European perspective).

16 July 2004 – 23 August 2004: Prof. Dr. Miyoko MOTOZAWA, Institute of Social Sciences, Tsukuba University, Tokyo, Japan: library research.

2 August 2004 – 20 August 2004: Prof. Dr. Makoto ARAI, The Institute for Advanced Postgraduate Studies of Business Law, Tsukuba University, Tokyo, Japan: "Das Betreuungsgesetz im Zusammenhang mit dem deutschen und japanischen Sozialrecht" (The law governing care and control (guardianship) with regard to German and Japanese social law).

2 September 2004 – 14 September 2004: Prof. Dr. Kazuaki TEZUKA, Dept. of Law, Faculty of Law & Economics, Chiba University, Chiba, Japan. Preparations for the German-Japanese conference held on 18/19 November 2004 at Cologne: "Reforming Social Security in Japan and Germany: Comparative Studies", library research.

27 September 2004 – 22 October 2004: Hui-Hua SHIH, Section Chief of the Bureau of National Health Insurance, Underwriting Division, Taipei, Taiwan: "Health security for the poor and other disadvantaged groups in Germany and other European countries".

18 October 2004 – 31 October 2004: Prof. Dr. Ute KÖTTER, University of Applied Sciences (FH) Cologne, Dept. of Social Work. Research on a comparative study: "Reform des Sozialhilferechts in Deutschland, den Niederlanden und Großbritannien" (Reform of social assistance law in Germany, the Netherlands and Great Britain).

1 December 2004 – 28 June 2005: Wenyong DONG, The Institute of Law, CASS, Beijing, China: "Juridical comparison of German and Chinese health insurance".

13 December 2004 – 30 November 2005: Prof. Dr. Satoshi KURATA, School of Law, Hokkaido University, Sapporo, Japan: "Rechtsvergleichende Untersuchung der Organisationssysteme japanischen und deutschen Sozialversicherungsrechts" (Comparative law study of organisational systems of Japanese and German social insurance law).

13 December 2004 – 30 November 2005: Dr. Kayo KURATA, School of Law, Hokkaido University, Sapporo, Japan. Research on: "Rentenversicherungssysteme in Deutschland und Japan und der demografische Faktor, Schutz der Familie, Pflegeversicherung, Krankenversicherung" (Pension insurance systems in Germany and Japan with regard to the demographic factor, family protection, long-term care insurance and health insurance).

1 January 2005 – 30 June 2005: Dr. Katsuaki MATSUMOTO, National Institute of Population and Social Security Research, Ministry of Health, Labour and Welfare, Tokyo, Japan: "Anpassung von Sozialversicherungssystemen an die gesellschaftliche und wirtschaftliche Entwicklung – Japan und Deutschland im Rechtsvergleich" (Adjustment of social insurance systems to the societal and economic developments – Japan and Germany in a legal comparison).

7 February 2005 – 18 March 2005: Prof. Dr. Thomas GÄCHTER, Rechtswissenschaftliches Institut, University of Zurich, Switzerland: "Grundlagen des schweizerischen Sozialversicherungsrechts. Das schweizerische Sozialversicherungsrecht in seiner völker-, verfassungs- und verwaltungsrechtlichen Einbettung" (The basic principles of Swiss social insurance law. Swiss social insurance law in its international, constitutional and administrative law context).

11 July 2005 – 19 July 2005: Prof. Dr. Terry CARNEY, Faculty of Law, University of Sydney, Australia: "Australian Social Security Law & Policy. Welfare State or Welfare Market?".

20 July 2005 – 22 August 2005: Prof. Dr. Miyoko MOTOZAWA, Institute of Social Sciences, Tsukuba University, Tokyo, Japan. Joint project: "Familienpolitik" (Family policy).

2 August 2005 – 25 August 2005: Prof. Dr. Makoto ARAI, The Institute for Advanced Postgraduate Studies of Business Law, Tsukuba University, Tokyo, Japan: "Zweites Betreuungsänderungsgesetz im Zusammenhang mit dem deutschen Sozialrecht" (Second amendment to the law on care and control (guardianship) in connection with German social law).

4 August 2005 – 31 Ocotber 2005: Jakub PAWELEC, Jagiellonian University in Krakow, Poland: "Betriebliche Altersversorgung in Polen, Deutschland und Österreich" (Occupational pensions in Poland, Germany and Austria).

1 September 2005 – 31 October 2005: Prof. Dr. Yu-Jun LEE, Dept. of Public Policy and Administration, National Chi-Nan University, Puli, Taiwan: "Die Errichtung der Sozialkammern in der Verwaltungsgerichtsbarkeit und die Einbindung ehrenamtlicher Richter in Taiwan" (The establishment of social divisions in administrative jurisdiction and the integration of lay judges in Taiwan).

1 October 2005 – 31 December 2005: Surab KWIRKWAIA, Institute of State and Law, Georgian Academy of Sciences, Tiflis, Georgia: "Möglichkeiten und Grenzen für den Aufbau des Sozialstaates in postkommunistischen Gesellschaften" (Possibilities for and limits to welfare state construction in post-communist societies).

4 October 2005 – 28 October 2005: Prof. Dr. Kazuaki TEZUKA, Faculty of Law and Economics, Chiba University, Japan: "Gesundheitsreform in Deutschland und Japan" (Health care reform in Germany and Japan) and "Demographische Entwicklung in Deutschland und Japan und der Einfluss auf die Rentenpolitik" (Demographic development in Germany and Japan and its impact on pension policy).

21 November 2005 – 31 December 2005: Prof. Dr. Leonie STANDER, Faculty of Law, North-West University, Potchefstroom, South Africa: libarary research.

VIII. The Institute

1. Personalia

Scientific Members

Prof. Dr. Ulrich Becker, LL.M. (EHI)
Managing Director
Prof. Dr. Bernd Baron von Maydell
Emeritus
Prof. Dr. Dr. h.c. mult. Hans F. Zacher
Emeritus

Research Staff

Carlos L. Cota (Internet and CMS)
Dr. Barbara Darimont
Dr. Alexander Graser
Dr. Eva-Maria Hohnerlein
Dr. Otto Kaufmann
Dr. Peter A. Köhler
George Mpedi, LL.M.
Prof. Dr. Hans-Joachim Reinhard
Dr. Friso Ross
Dr. Bernd Schulte
Dr. Markus Sichert (from 12/2004)
Dr. Christina Walser

Academic Assistants

Katharina Beckmann (from 10/2005)
Stefan Berger (09/2004 to 05/2005)
Martin Breuer
Nuria Homfeld (from 10/2005)
Susanne Jagla (from 10/2004)
Sabine Keseberg (until 07/2004)
Simone Knab (until 08/2004)
Dr. Matthias Knecht
Claudia Laes
Claudia Matthäus (from 10/2005)
Douglas von Rittberg (from 09/2005)
Alexander Sopp (08/2004 to 12/2005)
Franziska Thanner (until 06/2004)
Quirin Vergho (until 06/2005)

Doctoral Candidates

Monika Goller (until 06/2005)
Maria Grienberger-Zingerle (from 02/2004)
Thomas Köster (04/2004 to 06/2004)
Martin Landauer
Claudia Matthäus (until 09/2005)
Janire Mimentza (from 12/2004)
Benno Quade (from 03/2004)
Quirin Vergho (from 07/2005)
Ariane Wiedmann (until 03/2005)

Student Assistants

Lena Dobnig (from 08/2004)
Carolin Drägert (until 01/2005; 03/2005 to 07/2005)
Pia Jaeger
Eirini-Nektar Kitsara (until 03/2004)
Doreen Knöfel (10/2004 to 09/2005)
Claudia Mayer
Hana Meyer (until 03/2005)
Christine Regnauer (until 04/2004)
Markus Schön (from 03/2004)
Robert Spisiak (from 12/2004)
Ralf Suhre (from 03/2004)
Dan Tidten (until 07/2005)
Christine Wachter (until 01/2004)
Felix Walther (03/2004 to 08/2004; from 11/2005)

Library

Christiane Hensel (head)
Melanie Jackenkroll (from 11/2004)
Silke Klöckner (from 06/2005)
Irina Neumann
Eliane Rammler (until 05/2005)
Andrea Scalisi
Michaela Tokosova (until 03/2005)
Melanie Winkler (partial retirem. 2003-2004)

Secretariats and Other Services

Roswitha Ellwanger
Marlin Freise
Hertha Fricke
Werner Pfaffenzeller
Vera Rosburg
Dr. Martha Roßmayer
Ingrid Werner-Böll (partial retirem. 2003-2005)
Heike Wunderlich

Administration

(*jointly with the MPI of Cognitive Neuroscience – Munich branch*)

Josef Kastner (head)
Annemarie Batzek
Jutta Czöppan
Daniela Gratzl
Elfriede Hurmer
Karl-Heinz Katzbach
Sylvia Klemm
Christine Moser
Hans Puchberger
Michael Reinert
Hermann Spiegl (until 03/2005)

Translation Services

Esther Ihle
Eva Lutz

IT

(*jointly with the MPI of Cognitive Neuroscience – Munich branch*)

Dr. Andreas Wohlschläger (head)
Fiorello Banci (until 02/2005)
Karl-Heinz Honsberg (until 06/2004)
Henryk Milewski (until 09/2005)
Axel Römmelmayer
Andreas Schmidt
Max Schreder (until 06/2005)

2. Scientific Advisory Board and Board of Trustees

Scientific Advisory Board

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3. Library

The library with its collection of specialised literature on foreign and international social law offers a unique stock of statutory material and literature from over a hundred countries, predominantly in original versions. In addition, it embraces very specific collective fields on relevant research projects, and literature on subjects which in the light of current political developments in Europe are gaining ever more significance, for instance the European Union's enlargement to the east. Complementary legal fields (e.g. European Community law, labour law, commercial law) are also represented as base literature.

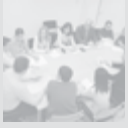
The library currently comprises some 84,000 volumes, consisting of 170 looseleaf collections, approx. 7,570 bound journals and continuing sets, as well as 255 current periodicals – of which 124 are published in the German language and 131 in others – and 7 newspapers. The library's holdings have grown by about 6,500 publications over the past two years.

Publications by the academic staff are archived and made accessible on a central electronic server (eDoc) of the Max Planck Society. Furthermore, new acquisition lists are published four to five times a year in printed form and on the library's homepage.

Under a library support programme on behalf of the Max Planck libraries of the humanities section, our library was granted reinforcement funds through which it substantially extended and exploited its holdings in two areas. Thus, these funds were used to fill gaps in the library's stock and to tap the resources of specific collective fields. The latter concerned such countries as China, South Africa, Austria and Switzerland, as well as transformation processes in developing countries and interdisciplinary projects with economic and social scientists. These additional procurements have augmented stock growth by about a third over the past two years.

A second large-scale project under the special funding programme is due to be implemented: Institute publications from 1976 until today are to be made accessible on our homepage database. The database will record publication data in such a way as to permit their flexible retrieval, their research according to different formal and contextual criteria, and their citation in a variety of desired formats. For instance, the bibliography








for the Institute Report can thus be generated automatically. The database will offer comprehensive access to the Institute's published research results. A potential step would be to provide access to full texts on the Intranet in the form of scanned PDF files.

The entire collection of monographs and periodicals as well as all orders are recorded on the online catalogue. Library users and staff are thus able to access holdings quickly and effectively. In February 2006, a new version of the Aleph software will lead to substantial system enhancement. The previous user interfaces of several modules are to be completely redesigned, offering additional functionalities (e.g. in web OPAC) and, in particular, two new components which are to become applicable over the next few years:

With the help of a self-check module, the lending procedure is to be converted into an electronic circulation system.

The ADAM module will enable so-called catalogue enrichment, meaning the indices, particularly of periodicals and Festschriften, can be scanned and incorporated into the online catalogue and thus made researchable. The project will involve the collaboration of several, mostly law-oriented libraries, which will scan their own holdings, load them onto a central server and place them at the disposal of all libraries. Shortly, 34 Max Planck Institutes will be using Aleph. The system is administered on a central server in Göttingen and accessed by the libraries via their own adaptation tailored to their specific requirements. In addition, the Max Planck Society's information portal VLib (Virtual Library) permits access to the holdings of almost all MPI libraries and to many other local resources of importance to the respective libraries.

Via the new Aleph version, our library – together with the library of the Munich-based Max Planck Institute for Intellectual Property, Competition and Tax Law – will be affiliated with the *Bibliotheksverbund Bayern* (BVB), which has been applying Aleph as a network software for over a year. In this way, existing titles can be conveyed to the local database, the external data of other large libraries can be used (e.g. Library of Congress), and a high standard of uniform catalogue entries is guaranteed. Furthermore, this cooperation offers external users substantial information on the holdings of our specialised library.

In addition to the online catalogue, users can also access other online and CD ROM databases. Over and above this, the library provides information and research options on particular subject areas from legal and general bibliographic sources on the Internet. These include electronic journals offering Max Planck Institutes free access within the EZB system (electronic journal library), as well as the online databases furnished by a number of publishing syndicates through joint institute contracts. The Internet also permits the use of other libraries, databases, electronic journals and services.

Unavailable books can be obtained from the Bavarian State Library or other facilities in the vicinity. Urgent requests for literature not at hand in Munich are met by a document delivery service, which supplies journal essays (usually by e-mail) as well as monographs.

In addition to the foreign guests who worked in the Institute over a prolonged period, approx. 520 guests used the library.

Christiane Hensel

4. Homepage and Internet

This Institute has had a long IT cooperation with the Department of Psychology of the Max Planck Institute for Cognitive and Brain Sciences (MPI CBS; until 2003 the Max Planck Institute for Psychological Research). What in the beginning started as pooling based on the common office building and network system used by the two Institutes has given way to interesting resource management and sharing solutions which, in turn, resulted in IT developments and advancements for all who have been involved. Besides the daily tasks of network administration, some of the key advancements in 2005 for the consolidated IT department were using and developing open-source solutions to increase network security and speed as well as developing and/or improving database solutions for contact, communication and publication information management.

The centralisation of MPI CBS in Leipzig will cause the IT department to be separated accordingly. This, nevertheless, was not apparent with regard to the advancements made in the past year. Not only has the internal information exchange been improved, but also the basis for researcher information pooling has been laid down. Databases were thus conceived and implemented to also accommodate expansions concerning internal and external contact information usage, alumni contact platforms and forums, searchable publication listings (including contents and participants' information, comments and notes) as well as other extensions as foreseen also in association with the existing collaborations of this Institute in general and with other institutes on specific projects.

Internet: IT for Law or Law by Way of IT?

The Internet co-operation between the legal research Max Planck Institutes not only resulted in the harmonisation of the respective online information structures but has also provided a basis for such novelties as a collateral, consolidated system. The latter will thus allow the user to quickly access an overview of legal information from all of the participating institutes and respective legal fields. The collaboration began with the assessment of the common necessities and the evaluation of efficient Internet solutions. The task led to the formation of a project group consisting of members from the IT departments together with researchers from the respective institutes.

The Technical Side

The first technical questions consisted in finding solutions for the implementation, adaptation and/or complete restructuring of various data sources and data storage systems to suit the output necessities. Data output of any system would have to fulfil the criteria of the web interface without compromising flexibility, accessibility and security. Furthermore, data exports have to meet the technical standards of the various import and storage and/or publication systems used by the Max Planck Society.

The Legal Side

In addition to the contents, from a researcher's point of view, accessibility, structure and, of course, how to best find the information are all factors on deciding what and how the information output should be. The group's work paved the way to results which will shape the respective institutes' internal and external information availability and structure, as well as for the future inter-institute co-operation.

CMS

The group's conclusions led to a centralised contents management system (cms) with, however, divided instances and separated web servers for the individual institutes. Once the framework was established, subgroups further determined the actual design, sitemap and data and/or database structure(s) to be implemented into the final system. The collaboration allowed for a rather complete analysis of the various electronic presentation issues which exist in any academic research institute. This was then narrowed down to the necessities of publications concerning law issues and the requirements of the researchers within an institute to obtain and display their information.

As for the users or visitors of the new cms, the co-operation has allowed for harmonisation of the respective sites' structure. Being familiar with one of the platforms will basically signify familiarity with the others. Furthermore, the road has been paved for a unified platform on which all of the participants may present information on law in general and specifically concerning the respective institute. This means that one platform can allow for general comparisons regardless of the field of law and access to general or cross-institute resources, whilst providing the necessary indications for which the particular institute may provide the details.

Carlos L. Cota

5. Honours

Ulrich BECKER:

28/11/2005: Appointment as Guest Professor at Renmin University of China, Beijing, China.

Hans F. ZACHER:

2004: Officer of the National Order of Merit of the Republic of France.

6. Work of Institute Members in External Bodies

Ulrich BECKER:

- Arbitrator's award office of the leading associations of statutory health insurance at the *Bundesverband der landwirtschaftlichen Krankenkassen*
- Research promotion council of the *Deutsche Rentenversicherung* – research network on old-age pensions (FNA)
- Editorial board of the journal *Internationale Revue für Soziale Sicherheit* (issued by IVSS)
- ISSA Research Advisory Board
- Board of trustees of the Institute for Labour Law and Industrial Relations in the European Community (IAAEG), Trier
- Board of trustees of the *Institut für europäische Verfassungswissenschaften* at the *Fern-Universität* (supported distance learning) in Hagen
- Advisory board of the Graduate School of Social Sciences (GSSS) of the University of Bremen on the subject of "The Modern Welfare State"
- Disciplinary committee of the German Athletics Association (DLV)
- Research advisory board of the journal *Social Security Studies* (Shehui baozhang yanjin), Beijing, China
- Working group of the *Leopoldina/Acatech* on opportunities and problems of an aging society: the world of work and lifelong learning
- Executive board of the *Gesellschaft für Rechtsvergleichung*
- Executive board of the German division of IGRAS
- Steering Committee of the GVG
- Executive board of the social insurance division of the *Deutsche Verein für Versicherungswissenschaft*

Ockert C. DUPPER:

- Research advisory board of the *Deutsch-Südafrikanische Juristenvereinigung*

Eva-Maria HOHNERLEIN:

- Referee for the journal *Sozialer Fortschritt*

Otto KAUFMANN:

- Advisory board of the journal *Bulletin de droit comparé du travail et de la sécurité sociale*, COMPTRASEC UMR CNRS, Université Montesquieu-Bordeaux IV, France

Bernd BARON VON MAYDELL:

- Independent member and chairman of the board of arbitration pursuant to § 129(8) SGB V (registered pharmacies)
- Independent member of the *Bundesschiedsamt für Kassenzahnärztliche Versor-*

gung (Federal arbitration office for medical treatment by CHI physicians)
- Deputy chairman of the old-age pension division of the *Deutsche Juristentag*, Bonn 2004
- Chairman of the project group on European social policy of the *Europäische Akademie* in Bad Neuenahr
- Expert commission on "objectives of old-age policy" of the Bertelsmann Foundation
- Expert group on European issues on behalf of the German Bishops' Conference
- Group of consultants for the application of Article 76 of the European Code of Social Security, Strasbourg, France
- Commission on the evaluation of the civil-law institutes of the Faculty of Law of the University of Graz, Austria (2005)

Hans-Joachim REINHARD:

- Advisory board of the *Revista Internacional de Direito Tributario*, Belo Horizonte, Brazil

Bernd SCHULTE:

- Chairman of the research group on "European social law/European social policy" at the *Deutsche Verein für öffentliche und private Fürsorge*
- Chairman of the "Europa" research group of the international sub-committee of the *Gesellschaft für Sozialen Fortschritt*

Hans F. ZACHER:

- Honorary Member of the Senate of the *Max-Planck-Gesellschaft*
- Member of the executive board of the *Deutsche Sozialrechtsverband*
- Member of the research advisory board at the German Federal Ministry for Economics
- Member of the research advisory board for the publication project "Geschichte der Sozialpolitik in Deutschland seit 1945" (*Bundesministerium für Arbeit und Sozialordnung/Bundesarchiv*)
- Member and Council Member of the Pontifical Academy of Social Sciences
- Member of the Board of Governors of the Weizmann Institute in Rehovot/Israel

7. Legal Opinions

Hans-Joachim REINHARD:

31 March 2004: Opinion on behalf of the *Oberlandesgericht Schleswig-Holstein* on the assessment of Austrian pension entitlements in effecting pension rights adjustment (on divorce).

7 May 2004: Opinion on behalf of the *Amtsgericht Osnabrück* on the assessment of British pension entitlements in effecting pension rights adjustment.

2 August 2004: Opinion on behalf of the *Oberlandesgericht München* on the assessment of Austrian pension entitlements in effecting pension rights adjustment.

25 October 2004: Opinion on behalf of the *Amtsgericht Trier* on the assessment of British pension entitlements in effecting pension rights adjustment.

28 November 2004: Opinion on behalf of the *Amtsgericht Oldenburg* on the assessment of British pension entitlements in effecting pension rights adjustment.

21 February 2005: Opinion on behalf of the *Landessozialgericht Niedersachsen-Bremen* on the crediting of Swiss pension rights (accruing from divorce) against German survivors' pensions.

14 May 2005: Opinion on behalf of the *Amtsgericht Fürth* on the assessment of U.S. pension entitlements in effecting pension rights adjustment.

3 June 2005: Opinion on behalf of the *Amtsgericht Schorndorf* on German-Israeli social insurance agreements.

11 August 2005: Opinion on behalf of the *Amtsgericht Königstein/Taunus* on Spanish invalidity insurance.

Friso ROSS:

27 October 2005: Opinion on behalf of the *Landgericht Rottweil* on Swiss liability and accident insurance law; subrogation of integrity compensation; principle of congruence; conflict between international private law and international social (security) law.

Christina WALSER:

7 May 2004: Opinion on behalf of the *Amtsgericht Bad Neuenahr-Ahrweiler* on the legal personality of Belgian health insurances and on the assignment of claims to the refund of medical treatment costs under Belgian law.

9 October 2004: Opinion on behalf of the *Amtsgericht Husum* on Dutch pension rights adjustment.

8. Alumni

The Institute has been researching, analysing and publishing, thereby providing legal information to governments, NGOs, courts, academics, students and the general public for over twenty-five years. This has only been possible thanks to the people who have participated in the Institute's research, publications and the building of the knowledge base which has been essential for past, current and future studies. The social law community also deserves our recognition. The logical solution is therefore to establish a system which allows the Institute to provide a reunion of former and current members, as well as to inform alumni of current events, lectures and publications and provide a means of communication between them. Technical advancements and developments are also to permit alumni to register and thus reassume their ties to the Institute. Further to providing a "social-law directory", perhaps one of the most interesting aspects of the alumni network will also include a platform on which information exchanges can directly take place. Participants will thus be able to ask their questions and brainstorm with their colleagues at will.

Carlos L. Cota

Impressum:

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