MAX-PLANCK-GESELLSCHAFT

Report 2006-2007

Max Planck Institute for Foreign and International Social Law

Preface

This report provides information about the activities performed by the Max Planck Institute for Foreign and International Social Law over the two-year period 2006-07.

To begin with, the Introduction (I.) summarises the Institute's general tasks and describes the changes observed during the reporting period. This section above all serves as an inferential framework for the broad spectrum of research projects conducted. As such, and to a greater extent than before, it sets several of its own accents in order to emphasise the most important research fields and research approaches. Simultaneously, the Introduction gives an overview of contemporary social law developments from a comparative perspective and illustrates how these developments have been taken up in the research pursued at the Institute.

The next section is the largest. It depicts the manifold research projects undertaken by the Institute staff in the reporting period, outlining the individual phases from project planning until the publication of findings (II.). As in the preceding report, the projects are portrayed in brief, self-contained accounts. The respective texts have been prepared by the staff members entrusted with project coordination, even if all projects, with but a few exceptions (mainly consolidated under item 4.), are jointly planned and frequently carried out in collaboration with several researchers of the Institute. The following section informs about the promotion of junior scholars (III.). Doctoral students are assigned an important place at the Institute, a fact which is reflected in this year's report by a more detailed description of individual dissertation projects.
Subsequently, three sections comprehensively document the events carried out at or with the involvement of the Institute, the publications it has brought forth, and the lectures and teaching activities conducted by its staff members in the period under review (IV. – VI.). As in the past, the final sections list grantees and guests (VII.) and sum up the Institute along with its staff, bodies and functions (VIII.).

We hope this report will not only render an interim account of our activities, but will at the same time allow its readers to gain insights into the multifarious developments of social law. This is in turn hoped to stimulate interest both in our research work and in overall issues of social law.

Munich, January 2008

Ulrich Becker

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I. Introduction

1. Tasks, History and Structure of the Institute

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 from 1 September 2002.

The Institute is currently run by one director who is simultaneously responsible for its executive management. The research staff observe and analyse developments in social law and social policy in a number of European and non-European countries. This country-based structure is supplemented by responsibilities for specific subjects and the observation of international organisations. This division of tasks will basically be upheld in the years to come because social law is and will continue to be shaped primarily by national factors. Country-specific societal, economic and cultural backgrounds are therefore essential to the understanding of law, and it is in this sense that the expertise acquired by all staff of the Institute in the course of their longstanding activities can be brought to fruition. For some time now, a chief policy in engaging new research staff – considering also that only fixed-term posts are currently available – has been to seek experts on national social law regimes which are of particular significance to developmental and reform processes (cf. 2.1. below). Worth noting in this context is that country-specific investigations by no means become obsolete through processes of Europeanisation and internationalisation. This is because social law is characterised to a much lesser extent than other legal fields by unitarisation tendencies. And besides, the implementation of legal measures taken at the uppermost strata of a multi-level system is decisively influenced by national institutions and cultures. It goes without saying that the Institute-based knowledge of foreign law is augmented by including scholars from abroad in individual projects or by conducting projects with foreign cooperation partners.

2. The Institute's Research Programme

2.1. The Analytical Frame

Social law is subject to constant change, which in recent years has been based not only on adjustment needs inherent in the given systems, but also on developments that necessitate reforms of the systems as such. In systematically recording and analysing these developments, three central processes come to the fore. They run parallel to each other and, as has been detailed in previous reports, are interrelated in many ways. This aspect will be pointed out time and again in the following sections. It is expedient nonetheless to distinguish special features of significance to the analysis and comprehension of these processes, which may be characterised as follows:

- the Europeanisation and internationalisation of social law, in the sense of new regulatory levels above those of the state, and interdependencies between the legal requirements posed at these levels and state law;
- the adaptation and/or modernisation of social security systems in developed states,

in the sense of disencumbering the state in formal and substantive terms, thereby adopting new steering and action forms;
- the transformation of social benefit systems in developing and threshold countries, in the sense of building up state schemes to support and supplement traditional forms of social protection in the wake of rapid economic growth and concomitant societal change.

In exploring these three processes, basic questions are important in many respects. Again, this must be stressed as an initial premise. On the one hand, these questions are important for the examination of national legal orders. Social law can serve as an area of reference for enquiries into overlapping concerns of legal policy and legal doctrine, for instance the effects of privatisation or the role of competition in social benefit schemes. On the other hand, basic questions also have to be raised as far as the role of comparative law is concerned. In times of intensified exchanges of information, an often posed question is whether national regulatory patterns can be transferred to other countries' social benefit schemes – either because reform needs are similarly embedded in different states in that, say, demographic developments threaten the fundaments of pay-as-you-go risk coverage schemes; or because increasing economic exchange and migration calls for a greater convergence of social benefit schemes, as in the case of the European Union through the now institutionalised process of benchmarking; or because conventional social security options are to be replaced by new forms of protection in the wake of societal development and change. At any rate, all these issues presuppose knowledge of the national legal systems involved. Yet in seeking to clarify the above processes, the point is not merely to compare these national systems in functional terms, but (also) to illuminate their intrinsic mechanisms of action and their social and cultural foundations.

In this way, considerable weight accrues to general structures and principles, such as forms of democracy, rule of law or the protection of individual freedoms, but especially to the institutional arrangements underlying the actions of stakeholders and administrative authorities. Current reform debates readily reflect the increasingly important role of developments in social benefit schemes – important not only for financial purposes, but for the genuine realities of people's lives and the stabilisation of society.

2.2. Importance of Regulatory Levels above Those of the State

Europeanisation

Does European integration undermine the fundaments of the welfare state? And how social is Europe? These questions have become topical again – now that the Constitutional Treaty is known to have failed, also because all talk about a European Constitution was obviously unable to mask the image of technocrats sitting in Brussels and relentlessly pursuing market activities; and now that the pending so-called Reform Treaty (Treaty of Lisbon) is hoped to furnish the instruments needed to resume the blocked integration process.

If, at this point, we strike an intermediate balance, we see that two hypotheses cannot be confirmed: First, the creation of an internal market must invariably entail European social benefit systems, and economic freedoms and social solidarity must be aligned on a political level. Second, asymmetry between higher-ranking European market law and the member states' social law eventually leads to similar social benefits due to the need to reduce labour costs and to replace them with tax financing. Both these hypotheses have been refuted by the fact that there is no linear development towards either a higher level of harmonisation or a lower political level of uniformity. Although Community law affects national social law, the latter at the same time reflects back upon Community law. This results in interweavement and, in the end, gives European integration a social dimension, which continues to stem from the member states themselves and must take them into account.

The welfare state is a national achievement. Especially in times of economic prosperity, it may lose sight of its own fundaments, namely the personal responsibility of its citizens in a freely constituted community. Yet the

welfare state's basic efficiency remains undisputed, and without it German re-unification, for instance, would not have been manageable. Because the welfare state must rely on financial redistribution and, moreover, on compulsion, its implementation measures require democratic legitimation. How much equalisation is necessary or desirable in individual cases cannot be implied directly from the national constitution. This issue must constantly be decided anew within the political process. Until now, this process has been located at member state level. We know that even back when the European Economic Community was established, a bone of contention was whether merely "economic" or also "social" legislative competences ought to be incorporated into the founding treaty. The more moderate framework was ultimately resolved. Socially oriented Community law provisions were only adopted in favour of two objectives. The first sought to establish equal wages for women and men – initially, more an anti-dumping measure based on competition policy rather than an attempt at equal treatment. The second involved the coordination of national social benefit schemes – without which the fundamental freedoms, namely the free movement of workers, appeared unattainable. The academic accompaniment of this field and its modernisation was once again a subject of the Institute's work in the period under review (II.1.2.).

Since then, much has happened. The European Community has developed its own social policy approaches, notably a sophisticated gender equality policy and labour protection legislation. Step by step, EC institutions have been entrusted with additional competences for framing social policies via the detour of the Social Protocol adopted upon redrafting the pertinent chapter in the TEC through the Treaty of Nice. Yet all these competences are not far-reaching enough for the creation of EC social benefit schemes. Quite on the contrary: until today, there have been no earnest endeavours to establish such competences. Nor did the constitutional treaty reflect any such approaches towards comprehensive Europeanisation through legislative measures. Hence, it is not to be expected that the EC might develop a social insurance system out of existing labour protection legislation, as in the former case of the German Empire in the 19th century.

Even so, it is correct to assert that the project of completing the single market – an endeavour which has been reinforced since the adoption of the Single European Act – has not been without effects on the social law of the member states. To some extent, these effects reflect a well-known pattern, namely that of not setting European standards by way of secondary Community legislation but of applying the economic freedoms specified in the primary law of the TEC. It is easy to see that a field such as social law, which does not leave the organisation of solidarity up to society but subjects it to mandatory regulation, will come under pressure through the emphasis of individual freedoms. The Institute has repeatedly devoted itself to the attendant phenomena in the past (II.1.3. and II.1.4.). And it will have to go on doing so in the future because the effects of Community law raise ever new questions for the continuing validity and application of national law (cf. also the diverse publications listed under V.2.).

In taking an overall perspective, it becomes clear that existing competences are not decisive for the impact of Community law in the sense that contacts between economic and social law could be avoided entirely. Whether or not the ECJ goes too far in individual cases, nothing will change here in general as long as the functioning of the internal market and the economic freedoms that support it are not questioned as a whole.

The one solution that remains – at least, provided the creation of genuine European social law is out of the question – is to recognise the national social benefit systems by taking account of their specific features. To begin with, this applies in political terms in the sense of law-making. To what extent restraint must be exercised here is still debateable. Examples are nevertheless readily available. One is found in the recognition of so-called social award criteria alongside the strict economic principles defined in public procurement law. Then there is the Services Directive, which is applicable neither to "health care services" nor to "non-economic services of general interest". On behalf of the latter, the Commission is currently seeking to frame a separate directive that does greater justice to regulating the possibilities for accessing cross-border health services,

which have been extended through the fundamental freedoms.

The need to take account of social law must, however, also be ensured when applying primary Community law – and this poses a challenge to legal doctrine when addressing the fundamental freedoms, in particular the freedom to provide services and the free movement of Union citizens. Important here is that the underlying three-level test must incorporate the member states' competence and above all their factual responsibility for well-functioning social benefit schemes. For it remains solely up to the member states to determine their national level of social protection. Less incisive measures than the ones they have actually taken can only be an alternative if these do not lower this level. Further, the member states must remain responsible for assessing concrete endangerment, meaning they must be entrusted with a prerogative in such matters. And even where social rights are derived from Union citizenship, member states must in future be permitted to provide the social benefits *they* wish to provide in order to ensure that the fundaments of these benefits are not eroded by so-called social tourism. Member states therefore must not be prevented from subjecting social benefit entitlement to conditions that might be qualified as being indirectly discriminatory if this is necessary as a means of control and if, in this way, they wish to demand a "factual relationship" to the host state. Finally, a further limit to Community law intervention follows from the axiom which, though acknowledging the territorial and personal scope of existing rights, declares that these may not be taken to establish new rights. In other words, social benefits not provided for by a member state may not be created by the ECJ through its rulings. If benefits are denied for the simple reason that they do not exist, this cannot be deemed a restriction, and at the same time a violation, of a fundamental freedom.

If, nevertheless, the European Union has set itself the goal of achieving social progress and has in its more recent reform projects reinforced that aim, at least through the number of descriptors it uses to say so, then the question remains how the Union intends to go about this. To come full circle: social law in Europe will continue to be that of the member states, also in the future. It is they who give substance to this law and impart its shared principles (more detailed II.1.1.).

In this context, efforts to frame a common notion of "what is social" have been institutionalised through the so-called "open method of coordination" (OMC). Indeed, one might consider this designation inappropriate (actually, the procedure should have been called "method of open comparison"). And one might also question the full-bodied declarations that have accompanied it, heralding the world's strongest, knowledge-based economy on the basis of a European social model. All of which seems to obscure rather than define clear aims. But nonetheless – the OMC approach itself is to be welcomed. It comes as no surprise, then, that some consider OMC too soft while others feel it goes too far. But it brings member states together and calls upon them to exchange views on how they plan to adjust their social benefit systems to meet the shared challenges of a changing working world and of demographic processes, both of which have been accelerated by internationalisation. OMC is thus a means of exchanging proposals for solutions, a mutual learning process. Provided the Commission's pre-formulated guidelines and ways of achieving them are correctly understood – that is, not misconstrued as authoritative requirements – this can lead to more clarity in seeking to identify basic matters of social policy that should be regarded as indispensable in future.

Internationalisation

The findings of the project on the "implementation of international social standards" were published during the reporting period (cf. II.1.5.). They reveal persisting weaknesses inherent in international instruments specific to social law, but they also portray the manifold mechanisms used to put them into practice, at least in individual cases. Worth noting are not only vertical entanglements between the diverse regulatory levels, but also horizontal conflicts between social and economic standards. These conflicts are well-known from the European level and also play an important role at universal level.

As to the effects of international law on national law itself, distinct differences between

individual states tend to emerge. Such differences may be attributable to the density of their national constitutional requirements – at least, that was suggested by the comparison between Germany and the Netherlands. And this seems to hold true on the premise that in times of extensive changes to social benefit schemes, a stabilising element is seen in the adherence to more general legal provisions and the principles they express. This premise is also supported by the observation that in times of political upheaval and fundamental transformation of legal systems, international standards are sought out as a means of orientation. The development of labour law in South Africa, for instance, has already proven that this is so. Further findings of relevance to social law are awaited from the projects conducted by the second doctoral group on the subject of "influence of constitutional law and international law on the configuration of social security" (cf. III.2.).

Similar to the European regulatory level, international social standards are likewise influenced by developments at national level. Worthy of particular note here are considerations to undertake a fundamental reform of ILO Convention No 102 concerning Minimum Standards of Social Security, dating from 1952. Impulses to do so come from two very different directions: on the one side, developed states are pushing for these minimum norms to be brought into line with the modernisation of their social security systems, which were extended in the course of the 20th century; on the other side, developing states wish to see novel social security arrangements reflected at an international level. Such a reform nevertheless proves politically difficult in times when any change to social standards is feared to entail an extensive loss of social rights. Even so, the effectiveness of international standards will very likely be weakened further if they are not adapted, for they otherwise risk losing the necessary feedback to national social law. The Institute will therefore reinforce its future investigations on ongoing reforms to international social standards by way of its own projects and accompanying research.

2.3. Modernisation

The contemporary welfare state is now in a phase of profound change. From a historical perspective, this marks the third stage of welfare state development. Related to Germany, the first stage of "social state" development was launched by the seminal achievements of social insurance legislation adopted in the 1880s during the *Bismarck* era. Developments from the 1950s onwards may be regarded as the second stage. Comparatively little had meanwhile occurred in the preceding decades, other than extensions to the groups covered by the diverse social insurance schemes. It was not until the sweeping Pension Reform of 1957 that social insurance sought to secure some degree of participation in prosperity. Moreover, most of the non-contributory and non-means-tested benefits were also created from that time on. Even so, German social insurance continued to be based on employment. The only exceptions included a few categories of self-employed persons and non-employed persons deemed in need of protection. Germany thus failed to take the step of introducing universal coverage or of at least extending social insurance to include the entire working population – a step many other European countries had already taken in the course of the 20th century – some before and some after the Second World War.

For about ten years now, structural changes have again been in the spotlight. Flagging or absent economic growth and, in particular, demographic developments reflected in an ageing and declining population have caused distributional margins to shrink. Although social protection systems are acknowledged to fulfil an important function by integrating and stabilising political communities – a fact which is also increasingly recognised within the European Union – it is likewise acknowledged that these systems, and the state interventions associated with them, must be newly justified and adapted. Notwithstanding the above-outlined Europeanisation and internationalisation of social policy, decision-making as regards the configuration and, hence, the restructuring of social benefit systems must largely remain confined to the national level. In view of similarly embedded problems in other countries, the need for comparative studies is great indeed. For it

helps to find out more about other potential solutions – always on condition that comparisons take account of basic structures and yet address all relevant details, as otherwise nothing can be said about the transferability of individual reform measures.

New Forms of Regulation and Activation

Activation as an instrument of social security is not really new. Its origins date from the U.S. labour market policy adopted in the 1970s, but it is also found in Germany's newly amended employment promotion legislation. As a comprehensive strategy, however, activation is associated with the *Clinton* Administration. Thus starting in the United States, via Australia and the United Kingdom, activation has meanwhile reached all member states of the European Union and is found accordingly in the employment policy guidelines forming a part of European social policy. The aim of activation is to prompt changes in attitude on the part of both beneficiaries and the administrative bodies. In practice, however, it is very closely connected to the more recent tendency to reinforce the personal responsibility of individuals faced with social risks. And in the field of labour market policy, as is shown by the enactment of SGB II in Germany, growing importance is attributed not only to sanctions for the infringement of cooperation duties, but also to new regulatory instruments within the administration as well as new modes of outward action. The latter pertain to contractual agreements, which as such are of course nothing new, but which until a few years ago were scarcely used in the field of social benefit law – at least, not in the relationship between the administration and citizens. These developments have constituted the subject matter of a series of projects conducted at the Institute: from a comparative international and interdisciplinary perspective, "activation and employment promotion in a comparison" (II.2.5.); the dissertation on "integration agreements" (III.1.4.); and the dissertation, concluded in 2007 with a view to more general cooperation duties, on the subject of "damage mitigation duties under the liability and social security laws of Germany, Austria and Switzerland" (III.1.3.).

The heightened reform pressure of recent years has driven endeavours to improve the effectiveness and efficiency of social benefits. The underlying, at all times valid acknowledgement is that state redistribution measures are only legitimate if they are actually used to pursue a legally recognised objective. For reasons of political economy, such correlations are often not observed in well-established welfare states until the financial resources available for distribution run short. Only in the past few years have efforts to ensure the quality and enhance the efficiency of social benefits been stepped up perceptibly. These tasks tend to be precarious above all in benefit systems in which independent third parties are called upon to render the benefits, and they are mainly found in the health care and long-term care sector of most countries (which, contrary to widespread opinion, sometimes even include countries with a national health system). This sector is characterised by multiple legal relationships: benefits awarded by virtue of the legal bond between the funding institution and the beneficiary (so-called social benefit relationship) are delivered by benefit providers (e.g. physician or hospital), and thus based on a "performance relationship" between these providers and the beneficiary. The reciprocity between both legal relationships makes it necessary to regulate the relationship between providers and funding institutions, which may be regarded as a "guarantee relationship". Accordingly, such regulations govern matters ranging from the admission of providers (by way of either permit or contract), the securing of benefit delivery and provider remuneration, to quality and efficiency controls. General questions regarding this form of "guarantee" and the multi-dimensionality of the benefit delivery relationship as a whole are being addressed by a doctoral group established at the end of 2007 (III.3.). Competition as a specific steering instrument has also been a subject of Institute research in several projects. One such project is the largely concluded investigation entitled "Choice and Competition in Hospital Health Care" (II.2.1.). Then there is the recently initiated study on competition in the health care sector (II.2.3.), which focuses on competition regulation and appropriate regulatory regimes. Insights into the effects of competition have also been gained by scrutinising the Dutch health insurance reforms (II.2.4.); this examination was continued in the period under review and was

able to record early results of the latest Dutch reform in this sector. Of prime importance to legal developments in Germany is the so-called integrated care model (II.2.2.). This form of care delivery, which is meanwhile being practised on an increasing scale, permits not only cross-sectoral health care activities, but above all entails the conclusion of individual contracts between sickness funds and single providers and/or provider associations. Integrated care thus enhances competitively oriented demand conduct on the part of sickness funds, and such conduct reflects back on the supply side, namely on their relationship to the insured.

Judicial law enforcement was another subject of our research activity in the reporting period. This was reflected, on the one hand, in the continuation of the project on the function of social jurisdiction. This investigation dwells on recurrent demands for the consolidation of general and specific administrative jurisdiction in Germany, and thus belongs to the next point treated below (and more detailed in II.2.14.). On the other hand, the project on "mediation in social jurisdiction" (II.2.6.) has been newly launched. Here again, the focus is on a new field of application of familiar forms of action, namely amicable dispute settlement "built into" the judicial procedure. The project is the academic accompaniment of the model experiment initiated and sponsored by the Bavarian State Ministry of Labour and Social Affairs, Family and Women. The aim is to clarify the legal framework of mediation in social court proceedings and, in particular, to ascertain by means of empirical research the conditions and constellations in which mediation may serve as a helpful instrument to improve the pacification function and the efficiency of judicial proceedings, without detracting from the assurance of adequate legal protection by virtue of state authority.

Structural Reforms of Organisation and Benefits

In view of the broad lines of development described at the outset, current social law reforms tend to go beyond mere adjustments to existing systems. They impact fundamental aspects of structuring social benefit systems, notably as regards persons entitled to protection, promotion and support, as well as the level of benefits and, hence, the function of benefit systems as a whole. And this likewise affects the organisation of these systems as reflected, say, in the interplay of their diverse forms such as private and public insurance. Thus in Germany, the statutory pension insurance reform entailed elements of partial privatisation, while the latest health insurance reform seeks to intensify competition between private and statutory insurers. But even within Germany's social insurance branches numerous organisational changes have recently been undertaken. Apart from the incorporation of new steering instruments within the labour market administration, such changes involve the centralisation of self-governance in pension, health and accident insurance.

Alongside the assessment of new proposals for reforms to German social benefit systems from a legal point of view (regarding old-age protection, see II.2.7.), an additional goal of Institute research was to place the above lines of development in a comparative law perspective. To that end, the Institute, besides drawing on its own expertise, collaborates with foreign scholars, profiting from longstanding experience with as well as strong institutional ties to foreign establishments. One such collaboration in the period under review involved a comparative assessment in relation to Turkey, where social insurance schemes have been subject to a sweeping reform (II.2.12.). The observation of developments in the Swedish welfare state (II.2.13.) sheds light on how the Nordic model is responding to current challenges. In the process, the model's special features are highlighted, while the often too heavily accentuated particularities of Nordic social law are relativised vis-à-vis social law developments in other EU member states. As in the past, highly productive insights may be gained from comparisons with developed states whose legal systems have been shaped by cultural features that distinguish them from the European corpus of law. Worthy of note in this context is the ongoing project on the social law position of persons with disabilities in Europe and Asia (II.2.11.). Comparisons with Japan were undertaken in several projects highlighting respective current developments: in accident insurance (II.2.9.) as well as in health, long-term care and pension insurance (II.2.10.). Of great interest to

German readers is the study conducted over a longer term by a Japanese guest scholar at the Institute, for it shows how German social law reforms are perceived from the outside, thus placing them in a new light (II.2.8.).

Family and Social Security

The reinforcement of personal responsibility goes hand in hand with an altered distribution of societal and state responsibility for social security. The first doctoral group established at the Institute sought to look into this matter with the help of different examples (III.1.). A number of additional projects carried out in the reporting period were devoted to the role of the family in terms of social security. They embraced such issues as the promotion and support of children as well as the significance of changing gender role models. These themes were dealt with in highly differing ways. One procedure, for example, was to embark on comparative analyses of very specific questions such as gender-related retirement age limits in old-age protection (II.2.18.). This project took a new approach in that it dispensed with an extensive and work-intensive processing of legal foundations in favour of spotlighting narrowly outlined individual aspects prevalent in all countries examined. But also more comprehensive comparisons embracing foundational aspects and numerous countries were conducted, as was a bilateral exchange with Japan (II.2.17.) and a commentary on a specific German reform proposal (II.2.19.).

The study on "The Third Generation" has largely been brought to a close (II.2.15.). Its title, though somewhat pointed, expresses the view that social security systems rest not only on the shoulders of the working and the retiring generation, but also on those of the upcoming generation. This simple as well as fundamental recognition already had a bearing on the big German Pension Reform of 1957. Yet it likewise applies to the future of political communities as a whole. That is why this investigation, involving the legal systems of Germany, France, Italy and Sweden, focuses on social and childcare benefits as a whole, taking account of their complex correlations. In contrast to previous approaches, the study deliberately places children, and not the family, in the foreground: in the sense of protecting, supporting and promoting those members of society in whose hands the future of society lies.

To be sure, making family and child care compatible with employment plays an important role for the "third generation", albeit a rather indirect one. On the other hand, women's increased participation in the labour force obviously impacts gender role models more directly. A project supported by the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth took a comparative law perspective on how this trend will reflect back on social law and family law in selected European states (II.2.16.). An important aim is to analyse the interplay between family and social law – an aspect which has often been neglected on account of the separation of these two jurisprudential disciplines.

2.4. Transformation in Threshold Countries

In threshold countries characterised by a rapid pace of economic growth and mounting social inequality, the construction of social security systems is vitally important as an instrument of societal integration and stabilisation. In the context of general modernisation theories, one could hypothesise that industrialisation and increasingly differentiated work processes diminish the significance of societal forms of social protection, notably the family, causing these to be replaced either by other collective arrangements or by protection schemes under the responsibility and administration of the state. It is in this sense that attempts have been made to formulate a theory of welfare state development.

Yet, whether all states can generally be expected to follow a particular path of development is open and questionable. The early beginnings of social insurance in Europe already show that its emergence can only be explained against the backdrop of certain political constellations and notions of state philosophy. The same holds true for its further development. The history of social security is moreover marked by phases that were conducive to such development. But even if the relevant parallels could be drawn in an international comparison, the concrete choice of configurative elements, the mix of private

and state components, the degree of legally prescribed solidarity and the level of protection would ultimately depend on national particularities. That explains why uniform concepts for the layout of social protection have partly met with rejection and, in the event of their implementation, have often come up against practical difficulties.

Quite obviously, the lack of resources and bureaucratic infrastructures in developing countries limits their possibilities for building up adequate social protection systems in the short range. Yet even where economic power is growing and where precisely this fast pace of growth is heightening social inequalities and risks, there are many reasons why the mere adoption of certain models will not readily meet with success. An important reason tends to be the existence of a large informal sector, the significance of which was illuminated for South Africa in the project "Access to Social Security" (II.3.3.). Intrinsic features of this kind have also prompted demands to take greater account of developing countries' circumstances when reforming international protection instruments (cf. 2.2. above). Looking into these matters more extensively than in the past will be one of the Institute's future tasks. After a longer term of preparation and drawing on early ties established two decades ago, a cornerstone for this endeavour was laid in the form of an interdisciplinary workshop (II.3.1.). The workshop as well as the longstanding exchange of insights with scholars from Brazil, China and South Africa also has shown how important it is for threshold countries to compare developments among themselves.

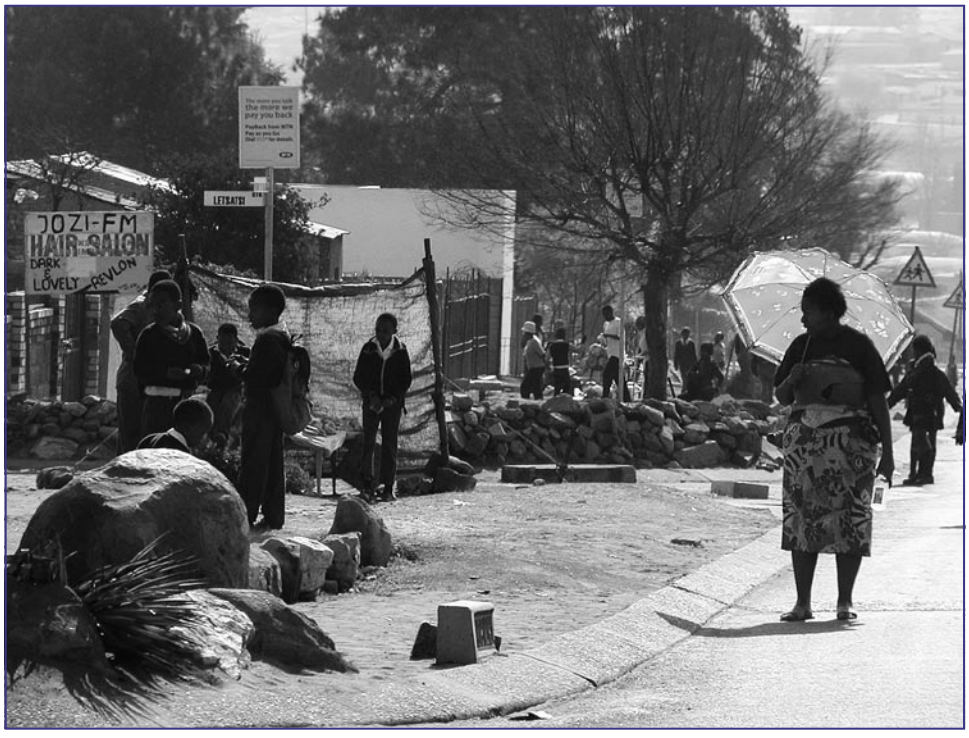
Two projects have been devoted to health care systems in different threshold countries. The one deals with the "right to health", above all in a German-Brazilian comparison including international law and the respective legal regimes of South Africa and Mexico (II.4.2.). This investigation elucidates the role of constitutional law for protecting social rights precisely in times of profound changes – whether through the extension or the reduction of benefits. The stabilising function of constitutional law has also been confirmed by the research on "equality through law" (II.4.3.). These thoughts will be engrossed by the Institute's third doctoral group (III.3.). The other project on health care systems in threshold countries focuses on the construction of a public health system in Indonesia (II.3.4.). This project, backed by third-party funds and assigned an advisory function, has clearly revealed the difficulties which arise when a system long left to its own devices is fundamentally restructured through the increased acceptance of state responsibility.

2.5. Global Social Order

In the wake of globalisation, life processes that used to be confined to the national realm now massively take place on a transnational scale. That applies especially to processes which, if they occur within a national frame, are in many countries accompanied by miscellaneous measures of social protection in the areas of gainful employment, need coverage, establishment and maintenance of family arrangements, and so forth. By the same token, that applies also to processes that bring about changes to these socially relevant life processes, say, through business formation and operations, capital migration, and the like. This growth in the transnationality of socially relevant activities tends to overtax national welfare states. International interpenetration weakens their territorially bound responsibilities. To an increasing degree, social protection needs to be rendered to persons whose fate is no longer locked within a single state, its economy and its society's cultural and civilising distinctions. The financial resources required for distributive purposes first have to be earned, although the encumbrance of productive factors can be evaded by way of transnational channels.

Regulations are therefore necessary to clarify demarcations, reciprocal accessibility and links between national social security systems – regulations that by far transcend previously established conflict of law rules governing social security (say, for migrant workers). The overriding aim must be to build up and sustain mutually accessible systems of social protection worldwide. It follows that such regulations are requisite at an international level. The international community must increasingly seek to furnish a regulatory concept of values and global governance, providing normative rules for the creation and maintenance of a social order that embraces both states and transnational actors. The ultimate question will also be how such a global social order relates to prosperity differences. This issue is compelling alone because these differences place restrictions on the reciprocal opening of national social protection systems. The globalisation of social protection is moreover not feasible unless its underlying principles (such as social justice, solidarity, participation, security, self-responsibility and subsidiarity) find worldwide recognition. The difficulties ensuing here are self-evident.

Even so, the Institute will attempt to cope with these difficulties. Previous research on this subject matter exhibits large deficits. In the field of public international law (as well as in individual other disciplines), one has come to acknowledge that an adequate



solution cannot consist in merely adopting international rules of law, but that one must also focus on the rights and obligations of individuals as well as transnational actors. Yet the main sights are still set on economic freedoms, with the liberalisation of trade considered a means of achieving progress. The distribution of prosperity gains (and the cushioning of prosperity losses) is nevertheless left up to the states. To the extent that environmental protection is included in the deal, this occurs from the perspective of resource protection, whose transnational importance is at the very base of economic actions. Even here we perceive a lack of binding rules. All the more so are such rules lacking in the sense of a global order governing social circumstances, the complexity of which is far greater in many respects.

In what way the international community should aspire to some form of global governance in the social sphere remains an unsolved question, one that is hardly even discussed. That may be attributable to various difficulties inherent, for example, in the setting of generally accepted distribution rules as well as in the creation of an institutional foundation, perhaps also in the fact that well-functioning nation states are indispensable to a successful international order. Given their urgency, these difficulties nevertheless do not suffice as a reason for eschewing intense and unbiased reflections on the creation of a global social order and its underlying prerequisites.

The most widespread approach taken so far in accessing this problem area has been to look at human rights. That is justified. Human rights manifest the unity of mankind. From that angle, an all-embracing social order seems an obvious consequence. Human rights are thus a central source of energy that must be tapped to impel research on an international social order. But, as elsewhere, the problem with a social order is that universal human rights need to be implemented within the particulate environment of national legal and social norms, and other concrete circumstances. Yet this tense relationship between the abstract universality of human rights and the particulate diversity of the global world is precisely the challenge facing the international community. The human rights approach is moreover often associated with selective one-sidedness. For instance, the rights of migrants would also have to be compared with the obligations of transnational corporations. Above all, however, a global social order requires an institutional framework – whose attendant difficulties derive to a far greater extent from the particulate diversity of concrete issues than from the universality of human rights.

In dealing further with this project, which has been launched through several workshops and lectures (II.1.5.), it will be important to link investigations to the research involving the International Labour Organisation and similar globally active international institutions. Yet the ILO applies itself to states. A global social order must, conversely, have its origins in the stewardship of the international community. Only thus can justice be done to the challenge of globalisation. It will moreover be necessary to revert to the thought reservoirs of legal philosophy when addressing the question of a just world order. The research called for here must nevertheless go beyond that. It must be more intent on finding positive solutions. And it should take a direction that is normative in its rudiments (as opposed to comparative observations of actual developments in social protection systems on the basis of, say, modernisation theories or a theory of global culture). In so far, the investigation of attainable solutions should be striven for. The creation of legal institutions will remain a prime goal.

3. Promotion of Junior Scholars

The promotion of junior scholars is assigned a special rank among the Institute's activities. This applies both to university teaching and to the mentoring of doctoral candidates, who are furnished with excellent working conditions at the Institute.

Mentoring of Doctoral Candidates

The work of three different doctoral groups overlapped temporally in the reporting period. Each of these groups consists of four or five doctoral candidates who are engaged in specific dissertation projects within the overall frame of a more or less broad general subject. Their aim is to cooperate closely by exchanging views on common methodological foundations as well as on issues relating to academic work procedures and individual thematic problems. The work of each group is launched in a brief retreat of one or two days. The group members then keep in touch through regular meetings in the Institute. These activities are rounded off by their participation in conferences with doctorands from other universities for the purpose of discussing their theses within a larger circle of interested junior researchers, thus also becoming familiar with other work styles. The doctorands who are engaged in separate projects (cf. III.4.) are asked to join a doctoral group that fits in with the timeframe of their dissertation.

The projects conducted by the first group on "state responsibility for social security in flux" (cf. III.1.) were largely completed by the end of 2007, although some of the doctoral examination procedures must still be brought to a close. Most of the doctorands of the second group, launched in 2005, on the "influence of constitutional law and international law on the configuration of social security" (cf. III.2.) took up their work early in 2006. The third group on "the triangular benefit delivery relationship in social law" (cf. III.3.) was established at the end of 2007. Although the first three doctorands have already been gained for this group, joint work on the subject matter will not start until the beginning of 2008.

Lectures and Courses

Serving again on the Faculty of Law of Ludwig-Maximilians-Universität (LMU) Munich in the period under review, the Institute director, together with assistant lecturers (Prof. Dr. *Jürgen Kruse* and RiSG Dr. *Hans-Peter Adolf*), conducted all social law courses offered by the LMU faculty. The director was thus one of the examiners for the oral part of the First State Law Exam, and he also held compulsory lectures on local government law in order to strengthen contacts between students and the Institute. In addition, he served as examiner in compulsory elective courses (main focus area 5) – business and corporate law: labour and social law.
Members of the Institute staff were also engaged as lecturers abroad (cf. VI.2.): within the frame of regular courses at the universities of Strasbourg, Rennes (*Kaufmann*) and Leuven (*Becker*), as well as within the frame of individual guest lectures at different universities (*Becker, Kaufmann, Sichert*).

4. Staff Changes

In 2006 and 2007, several staff members left the Institute. For years they held responsible positions and in this way shaped the Institute's activities and its image. They are to be thanked again here for their excellent and valuable services.

Thus, Ms *Christiane Hensel* retired from her long-held post as head librarian in 2006. In her temperamental and open way, she ensured that all staff were furnished with the necessary research material and that the library was always readily accessible to all guests. Many scholars from Germany and abroad appreciated her helpfulness and substantial support on behalf of their social law research. She was succeeded on 1 June 2006 by Mr *Henning Frankenberger*, in whom the library has now gained an academic head.
Ms *Vera Rosburg* also retired in 2006 from her many years of service in the director's office. Her thoroughness in administering the numerous projects and journeys, her attendance to countless callers from outside and within the Institute and, not infrequently, her timely reminders to the director provided a stabilising element. Her post is now occu-

pied by Ms *Andrea Feucht,* who took up work on 1 June 2006.
In the summer of 2007, Dr *Martha Roßmayer* changed from the Institute to the MPG Administrative Headquarters. She was responsible for the Institute's diverse reporting duties, the management of conferences and other events, and for assisting visiting scholars. These tasks are now performed by Ms *Anna Fenzl*, who joined the Institute on 1 November 2007.

Dr *Alexander Graser*, LL.M., habilitated in the summer semester of 2006 at the Faculty of Law of Ludwig-Maximilians-Universität Munich, thus qualifying as a university professor on the subjects of public law, comparative law, sociology of law and theory of law. Since the winter semester of 2006, Mr Graser has been full professor at the *Hertie School of Governance* in Berlin and holds the chair for Comparative Public Law and Social Policy.
Further departures from the research staff were *George Mpedi* (31/07/2006) and *Carlos Cota* (31/08/2006). The new research fellow, Dr *Yasemin Körtek* (from 01/09/2007) has taken over the country section for Turkey which had been unoccupied for several years.

As in previous years, there was considerable fluctuation among the other academic and student staff employed short-time for individual projects in the period under review (cf. VIII.1.). They are all to be thanked for their committed support of the Institute's work.
New doctorands engaged for the second doctoral group are *Viktória Fülöp* and *Anna Karina Olechna* (both from 01/2006) as well as *Dongmei Liu* (from 02/2006). *Nikola Friedrich* started her dissertation project on mediation in social court procedures in May 2007. The third doctoral group gained the doctorands *Markus Schön* and *Ilona Vilaclara* (both from 10/2007) as well as *Magdalena Neueder* (from 12/2007).
The new librarian, Ms *Kathrin Merker* was called in (from 10/2006) to reinforce the library team, whose workload on account of large-scale projects was exceptionally high, especially during the past two years. Finally, Dr *Monika Nißlein* was engaged half-time (from 09/2007) to actively take in hand the compilation of the Institute Report as well as preparations for the meetings of the Scientific Advisory Board and the Board of Trustees.

5. *The Institute as a Research and Meeting Place*

Work Facilities

The Institute has its own specialised library, whose collection has again grown over the reporting period. Meanwhile, more than 100,000 volumes are available to library users (cf. more detailed VIII.3. below). The books and periodicals above all cover the social law of international organisations, the European Union, Germany and selected European and non-European states. The holdings also include publications on social policy, the social sciences and economics as well as fundamental works of legal history and legal philosophy, and general treatises on constitutional, administrative, civil and labour law. Further information can be accessed via databases and Internet publications.

In this way, the Institute enables scholars to conduct social law and social policy research in a first-rate environment whose resources are unrivalled inside and outside of Germany. These work facilities as well as the expertise of its staff have made the Institute an internationally recognised centre of social law studies. This again attracted many guest scholars from Germany and abroad in the period under review – some of whom were supported by the Institute, while most had come to carry on differently timed studies sponsored by other institutions (cf. VII. below).

The promotion of visiting scholars as well as the organisation of guest lectures, workshops and conferences (cf. IV. below) foster both international and interdisciplinary exchanges. It is in this sense that the Institute also serves as a meeting place. This is certainly important, not least of all because the Institute's size does not permit it to observe all social law systems on an equal scale. And that is also why the collaboration with foreign partners forms such an important pillar

of its activities. These relationships are to be extended even further in future, especially by enlisting young social law scholars from abroad as well as researchers active the field of social policy.

Publications

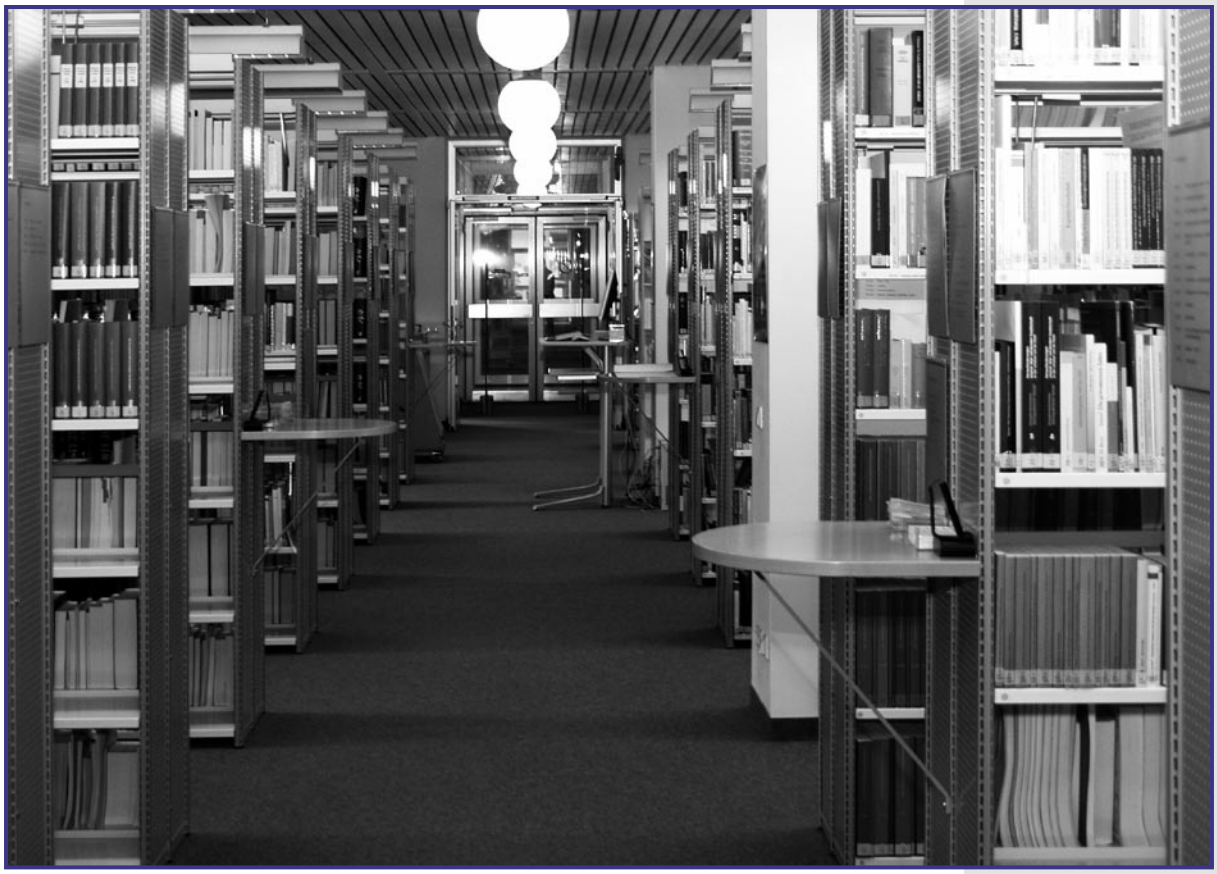
As a publicly funded academic establishment, the Institute considers it a central task to make its basic research results available to other institutions and the general public.
The findings of scholars employed with the Institute are not only published in German and foreign research journals (detailed under V.2. below); the Institute also offers its own channels for social law publications (cf. V.1. below). In collaboration with the Institute for Labour Law and Labour Relations in the European Community (IAAEG, in Trier), it publishes the *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht* (ZIAS). In addition, the Institute puts out two serials entitled *Studien aus dem Max-Planck-Institut für ausländisches und internationales Sozialrecht* and *Schriftenreihe für internationales und vergleichendes Sozialrecht*; four new issues of the former were published in the period under review. A series of working papers (*MPISoc working papers*) deals mainly with narrower, highly topical subjects or addresses specific circles. This low-budget publication is largely, but not exclusively, distributed via the Internet. In the reporting period, one English-language issue appeared with an overview by leading German scholars of current reforms to German health, long-term care and pension insurance. Lastly, the director edits the series *Schriften zum deutschen und europäischen Sozialrecht* (Nomos Verlag, Baden-Baden), of which four new volumes were released in 2006 and 2007.

Applied Research

Besides conducting its own research projects and promoting junior scholars, the Institute also strives to communicate its findings on German, European and international social law at home and abroad by participating in diverse conferences and workshops (cf. VI.1. below). This very often also involves exchanges with practitioners from ministries, associations and social benefit administrations, as well as with politicians. An important function here is exercised by the Institute's Board of Trustees, comprising high-ranking representatives of national and international bodies. In this way, the Institute seeks not only to perform advisory tasks, but simultaneously to enable its staff to take practice-related issues as an opportunity for further in-depth study or the verification of hypotheses.
Like most of the jurisprudential Max Planck Institutes, the Institute for Social Law also delivers expert opinions on behalf of courts in matters of foreign law (cf. VIII.8. below). In 2006 and 2007, this task played only a minor role and was performed additionally.

Ulrich Becker

II. Research



1. Europeanisation and Internationalisation

1.1. General Principles of Social Security Law in Europe

The progressive rebuilding of social security systems in European states is usually guided by the keywords of modernisation, competitiveness, or simply cost containment. In part, these processes are also initiated by supranational regulations. Yet most of the impetus comes from the nation states themselves, mainly because of their overriding regulatory powers. Now and again there are demands to refrain completely from national rule-making and to relocate fundamental issues of social policy to the supranational level. This nevertheless tends to be wishful thinking and does not in any way conform to the actual distribution of competences between the member states and the European Union.

In gaining an overall European perspective, it is therefore not possible to focus (only) on the supranational level. The more advisable approach in developing such a perspective would seem rather to take due account of the actual conditions of nationally organised social benefit systems before trying to find out whether they display any *convergences*. A suitable means of doing so is to identify general principles of social security law in Europe. This offers the advantage of being able to determine, in an intermediate step, how such systems providing social benefits have been shaped by law, and then to develop an overall European perspective on that basis. Indeed, one can thereby scarcely hope to discover *one* underlying principle for all European states. Yet, identifying their respective basic principles should make it possible to distil their convergences – assuming also that national systems are increasingly coming to resemble one another, at least in some of their parts.


THESES
DE PRINCIPIIS IVRIS:
IN INCLYTA ARGENTORA-
TENSIVM ACADEMIA AD DISPVTANDVM
PROPOSITAE
A
GEORGIO OBRECHTO IC.
& Academiæ Antecessore.
Respondente
IOSEPHO HETTLERO
Tubingensi.
ARGENTORATI
Excudebat Antonius Bertramus.

Starting Point

In its collaboration with the Research Unit Europe and Social Security (RUESS) of the Catholic University of Leuven, the Institute has set itself the goal of identifying common elements of national laws governing social security, despite all diversity in their intrinsic design. Featuring prominently here is the protection aspect: the special protection of persons in specific situations of need and the protection against risks. This particular function of social protection law could be the smallest common denominator for establishing the legal framework of a prospective General Part. The protection function can simultaneously be used to determine the legal framework for classifying the principles and, hence, for the actual work itself. A deliberate step has been to focus only on social security law. Although the protective intent is not as pronounced here as in the more general social protection law – given that the very concept of social security law presupposes that individuals are in some kind of a position to make their own provisions – we are assuming that the findings on social security law will as a whole be applicable to the entire body of social protection law.

The protective function of social security law is first of all reflected in the acceptance of responsibility for certain persons in specific situations of need. At the same time, however, this special protection is made to depend on preconditions whose absence would lead to a revocation of that function. This overall substantive legal framework comes under the particular protection of vested rights. In other words, the individuals concerned can and must be able to rely on their social rights in terms of substantive law, whose enforcement is in turn safeguarded by

legal provisions that facilitate access to social benefits.

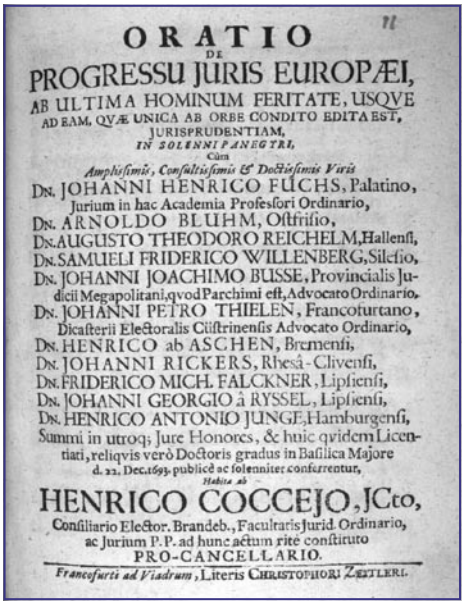
Procedure

The project group, consisting of members of the Institute (*Becker*, *Knecht*, *Quade*, *Ross*, *Sichert*) and RUESS (*Kapuy*, *Pieters*, *Schoukens*, *Zaglmayer*), adopted its mode of procedure in the course of the preliminary written work and the workshops held over the past few years. Based on the diverse notions of the protection function of social security law, the research project will concentrate on fundamental lines of protection rendered to individuals subject to collective risks. Notwithstanding their common features, each of these baselines reflects a different approach. Thus the collective element of social security law refers to mutuality and the need to accept mutual responsibility (solidarity). The individual element is aimed at personal responsibility and at co-participation (self-responsibility). The paternalistic element is mirrored in mandatory regulations on the protection of the individual (protection). And finally, the temporal element embraces the entire system of social security law in that it assumes protective functions and guarantees for specific periods of time (security).

The research project is devoted to the examination of the aforementioned elements (solidarity, self-responsibility, protection and security), an initial step being to trace these elements for the national legal systems under investigation. These legal systems include those of EU member or accession states and other states that have already established close legal ties to the EU. In order to identify the elements in the individual states, a questionnaire will be drafted for each element and forwarded to the cooperation partners. The second step will be to evaluate the national results obtained for each of the four elements. In keeping with the central idea of the project, the comparative legal analysis will be accompanied by the elaboration of convergences that permit a distillation of principles of social security law in Europe.

The Project and the Principle of "Security"

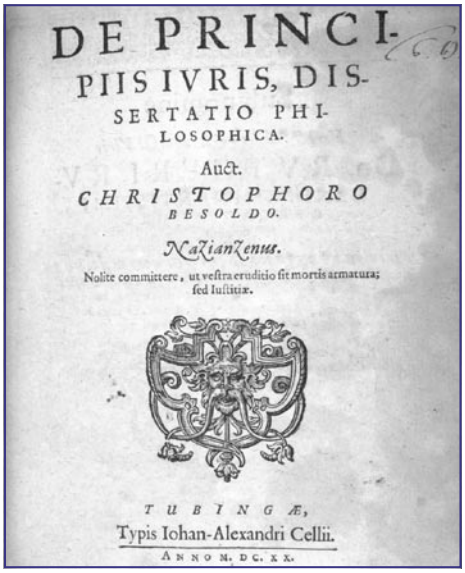
In the period under report, the research venture focused on the principle of "security" concerning the temporal description of legal



ORATIO
DE
PROGRESSU JURIS EUROPÆI,
AB ULTIMA HOMINUM FERITATE, USQVE
AD EAM, QVÆ UNICA AB ORBE CONDITO EDITA EST,
JURISPRUDENTIAM,
IN SOLENNI PANEGYRI,
Cum
Amplissimis, Consultissimis & Doctissimis Viris
DN. JOHANNI HENRICO FUCHS, Palatino,
Jurium in hac Academia Professori Ordinario,
DN. ARNOLDO BLUHM, Ostfrisio,
DN. AUGUSTO THEODORO REICHELM, Hallensi,
DN. SAMUELI FRIDERICO WILLENBERG, Silesio,
DN. JOHANNI JOACHIMO BUSSE, Provincialis Judicii Megapolitani, qvod Parchimi est, Advocato Ordinario,
DN. JOHANNI PETRO THIELEN, Francofurtano,
Dicasterii Electoralis Cüstrinensis Advocato Ordinario,
DN. HENRICO ab ASCHEN, Bremensi,
DN. JOHANNI RICKERS, Rhesâ-Clivensi,
DN. FRIDERICO MICH. FALCKNER, Lipsiensi,
DN. JOHANNI GEORGIO à RYSSEL, Lipsiensi,
DN. HENRICO ANTONIO JUNGE, Hamburgensi,
Summi in utroq; Jure Honores, & huic qvidem Licentiati, reliqvis verò Doctoris gradus in Basilica Majore
d. 22. Dec. 1693. publicè ac solenniter conferrentur,
Habita ab
HENRICO COCCEJO, JCto,
Consiliario Elector. Brandeb., Facultatis Jurid. Ordinario,
ac Jurium P. P. ad hunc actum rite constituto
PRO-CANCELLARIO.
Francofurti ad Viadrum, Literis CHRISTOPHORI ZEITLERI.

protection functions and guarantees within the individual social security systems. In taking this approach, that is, in excluding a certain body and scope of social rights from any changes, two forms of national action can readily be distinguished: the enactment of social security legislation on the one hand, and the administration and, hence, direct award of social benefits on the other.
The *legislative element* was investigated with a view to whether the legislature is entirely free by virtue of the constitution or international law in its lawmaking capacity, or whether such overriding legal norms restrict its actions to specific matters. A concomitant query was the extent to which other, adapted or derived, legal positions admit such free scope or restrict it, say, through the protection of property or confidence. Also of fundamental significance was the ascertainment of mechanisms that essentially permit future modifications but grant temporally limited protection for specific positions, for instance in the form of transitional provisions. Finally, a crucial question was whether the drafting of norms is possible at other levels such as that of the social administration, in the sense of either direct or indirect state administration, and to what extent such normative activities are subject to the same requirements as Acts of Parliament.

The *administrative element* was examined in terms of whether the social administration is conceded scope for discretion in individual cases and whether changes to existing


DE PRINCI-
PIIS IVRIS, DIS-
SERTATIO PHI-
LOSOPHICA.
Auct.
CHRISTOPHORO
BESOLDO.
NaZianZenus.
Nolite committere, ut vestra eruditio sit mortis armatura;
sed Iustitiæ.
TUBINGÆ,
Typis Iohan-Alexandri Cellii.
ANNO M. DC. XX.

practice are possible. An equally important question was whether administrative decisions are binding on the administration itself, and how once adopted decisions can be departed from, also in agreement with the benefit recipient. This correlates importantly with whether the administration is obliged to furnish information, advice and counselling, including the consequences of non-compliance or misrepresentation. And finally, a very basic issue is whether once reached decisions can in fact still be affected by new Acts of Parliament.

Reporters from 25 European states (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Germany, Great Britain, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and Turkey) were recruited for the investigation of the "security" principle. The findings of their country reports will flow into the final analysis for the "security" subproject, which is moreover to be published along with selected country reports.

Friso Ross

1.2. EC Coordination Law

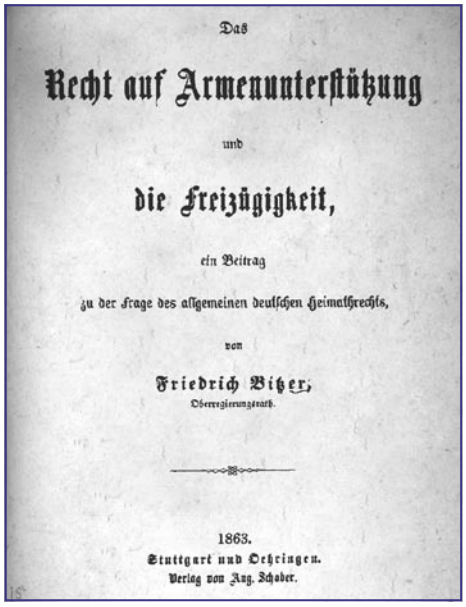
EC coordination rules governing social security – currently embodied in Regulations (EEC) Nos 1408/71 and 574/72, and due to be consolidated in Regulation (EC) No 883/04 and its implementing Regulation – have always formed a core area of the Institute's work. These pertinent legal instruments of the European Community meanwhile apply in all of the now 27 member states of the European Union; in the non-EU states of the European Economic Area (EEA) comprising Iceland, Liechtenstein and Norway; as well as, fully or partially, in a number of additional states on the basis of Association Agreements, for instance Switzerland.

These Regulations on the social security of migrant workers – they have been extended and now include self-employed persons – have the task of coordinating the social security schemes of the states covered. The increasing number and diversity of the national social and legal systems involved confront the European legislator, i.e. the Council and Parliament, as well as the European Commission with a host of legal problems. Thus, the coordinating rules must at all times take account of developments in the EU member states and, in particular, of amendments to their social legislation; incorporate the case law of the European Court of Justice (ECJ); and fulfil the mandate of the European Council adopted in the early 1990s requiring the simplification and modernisation of the entire corpus of EC coordination law.

As an initial step, this latter endeavour entailed the adoption of the above-cited Regulation (EC) No 883/04, which places EC coordination provisions on a new legal footing. Although the new Regulation is already valid, it cannot be applied until the attendant implementing Regulation has entered into force; this is scheduled for the end of 2009.

In this context, the Commission launched the project "trESS" (training and reporting on European Social Security). Under its auspices, seminars attended by theorists and practitioners of social law were held at national level in 2006 and 2007 for the discussion of problems posed by Regulation (EC) No 883/04. Specific bilateral problems between Germany and Austria moreover formed the subject of a complementary seminar. These events, organised by one of the Institute's researchers (*Schulte*), sought both to depict and to criticise the new Regulation. A further aim was to debate the difficulties of its application, also as regards the framing of the implementing Regulation. At the

same time, representatives of social security institutions exchanged views on practical experience gained in executing the EC coordination rules.


Das

Recht auf Armenunterstützung

und

die Freizügigkeit,

ein Beitrag

zu der Frage des allgemeinen deutschen Heimathrechts,

von

Friedrich Bitzer,

Oberregierungsrath.

1863.

Stuttgart und Oehringen.

Verlag von Aug. Schaber.

As a consequence of the "Decker/Kohll" case law of the ECJ on cross-border access to health care services, the prerequisites under which persons covered by German statutory health insurance (SHI) can use health services provided in other EU member states was a highly topical issue in these seminars. By passing the *GKV-Modernisierungsgesetz* [SHI Modernisation Act], the German legislature has transposed the corresponding legal provisions of Community law, so that it is now up to the Health Ministry as well as benefit funders and providers to fill these new legal options with life.

In 2007, collaboration between scholars and practitioners at these seminars also resulted in a publication on the reform of EC coordination law (Reform des Europäischen koordinierenden Sozialrechts. Von der VO (EWG) Nr. 1408/71 zur VO (EG) Nr. 883/04) edited by the *Deutsche Rentenversicherung Bund* and this Institute. The volume begins with an introduction on EC coordination law, retracing legal developments since 1958. Subsequently, the planned reform is discussed in commentaries penned by authoritative experts from the academic community, the government administration and social security institutions. A major part is devoted to a synopsis of the former and the new Regulation, with a prime view to the provisions impacting German statutory pension insurance.

Bernd Schulte

1.3. Health and Social Services in the Internal Market

The more recent case law of the ECJ on the cross-border provision of and access to medical services has added a new dimension to European health legislation. This has triggered considerable debate, especially with a view to medical services rendered by non-national physicians. Thus, the most frequent issues are: whether the national legislator may in such cases subject cost refunds or, where applicable, the direct award of in-kind benefits to an approval procedure; how information, advice, warranty and legal protection can be ensured within the scope of cross-frontier health care provision; and how compliance with quality standards can be guaranteed.
This debate has gained even more momentum through the adoption of Directive 2006/223/EC on services in the internal market. The Directive, which the member states must implement by the end of 2009, is part of the Lisbon Strategy proclaimed by the European Council in 2000.

Health care and social services of general interest constitute essential components of the member states' social protection systems and, hence, of the European social model as a whole. Recent years have moreover witnessed changes to the understanding of state tasks in the health and social policy sphere as well as to the performance of these tasks. In the past, social services of general interest were largely shaped by the state (in Germany, by the local authorities) in directly satisfying these elementary requirements of common welfare. In the course of the 1990s, the socially intervening welfare state has turned into an activating and cooperating social state, but also one with a leaner government. The social-benefit-providing state is thus threatening to mutate into a "benefit-guaranteeing" state that seeks to sustain an adequate level of social goods and services provision by entrusting third parties with these tasks instead of performing them itself. Such a state may then confine its actions to regulat-

ing and controlling these third-party activities and, where necessary, to refunding the expenditures arising from the performance of general welfare duties. This development towards economisation and privatisation has inevitably led to heightened interaction between pertinent welfare state activities and Community law, given that health and social services – to the extent that they are economic in nature, which is increasingly the case – form part of the European single market, an "area without internal frontiers" in which the free movement of services is guaranteed.

That cross-border health and social services themselves have so far been comparatively low in demand, even in the most open "euregios", and that also cross-border cooperation between funding institutions and providers remains fairly underdeveloped, is not solely attributed to the territorial foreclosure of member state social systems. Although system foreclosure still constitutes widespread practice, despite the "de-territorialisation" of service provision under EC law in the wake of the economic fundamental freedoms, the prevailing circumstances are also due to the specific nature of the services themselves, which are bound to regional, local, personal and cultural conditions and presuppose a relationship between providers and beneficiaries. These factors restrict the "exportability" of services and likewise make their "import" appear less attractive.

In presenting its first draft for a Directive on services in the internal market in 2004, the European Commission had taken another definite step towards completing this market. In 2006, however, under pressure from the European Parliament and several member states, notably France and Germany, the Commission re-submitted a modified proposal that exempted health benefits and most of the social services from the substantive scope of the Directive. Yet this does not mean that Community law does not apply to these services, given that they are directly subject to the freedom of establishment and service provision entrenched in the EC Treaty, which in turn "constitutes" the "European association of states" [*Europäischer Staatenverbund*]. Sufficient scope is thus left for the adoption of other legislation by the European lawmaker as well as for future ECJ rulings, which are difficult to forecast in terms of their reasoning and effects. An especially contested issue is whether it is still permissible to restrict the so-called country-of-origin principle. This problem was analysed by means of comparative investigations into the respective situations in the member states. The findings were discussed in a Commission working group and documented in a paper held on this subject at a conference organised by the Austrian EU Council presidency and the Commission in April 2006.

In dealing with this subject matter, jurisprudence is ultimately looking for ways to guarantee the legal certainty expected by funding institutions, service providers and Union citizens, and simultaneously to balance the legitimate concerns of the Commission with the interests of the member states. While the Commission is striving to complete the internal market, the member states wish to safeguard their traditional "social state arrangements" for services of general interest on behalf of their citizens – that is, to ensure the accessibility, affordability, quantity and quality of these services for everyone. The emergence of a European corpus of socio-economic law thus seems to be in the offing, the contours of which nevertheless remain ambiguous.

During the German EU Council presidency, a volume whose publication was funded by the (German) Federal Ministry of Family Affairs, Senior Citizens, Women and Youth was presented on the subject of globalisation and the European social model (*Linzbach/Lübking/Scholz/Schulte*, Globalisierung und Europäisches Sozialmodell, 2007). It deals with the effects of international law and international policy "beyond Europe" on the German social state and on the European social model. The European social model is thereby understood as the epitome of values which make up a social Europe and which have been enshrined in the Charter of Fundamental Rights of the European Union (Nice, 2000). After the failure of the Treaty establishing a Constitution for Europe, the Charter is to become legally binding through the Reform Treaty of Lisbon agreed by the European Council in October 2007.

Bernd Schulte

1.4. Pharmaceuticals in the Internal Market

Pharmaceutical products are an extremely important commodity in the internal market and as such form the subject of both secondary Community legislation and the member states' benefit legislation. The conflict, already in full swing in the national realm, is characterised by economic and competitive concerns vis-à-vis the objective of (solidarity-based) general health care delivery in terms of service provision and pricing law. This conflict has now also become manifest on a European level. In transcending national court rulings, numerous ECJ judgments illustrate the special role of pharmaceuticals within the conflicting field of national social law and Community legislation governing the internal market. In particular, the increasingly competition-oriented reforms to statutory health insurance law constantly fuel new disputes, which are both topical and fundamental in nature.

This was the subject matter of the XIXth Academic Colloquium held by this Institute in collaboration with the *Wissenschaftliche Gesellschaft für Europarecht* under the title "Arzneimittel im Europäischen Binnenmarkt" [Pharmaceuticals in the Internal Market]. The event took place in Munich on 1 and 2 December 2006, and was attended by scholars and practitioners from the fields of Community law and health law.
The prime focus of the colloquium was on the EC fundamental freedoms, notably the free movement of goods, and on the problems of classifying price regulation as an equally effective measure. The justification of potential obstructions was also addressed in that context. Importance was thereby attached to the distribution of competences between the Community and its member states. Additional basic questions concerned the application of European competition and cartel law to the relations between sickness funds and service providers (in the narrower sense) as well as pharmaceutical companies. Another key topic centred on problems of secondary legislation in connection with the various Directives on transparency, pharmaceuticals and public procurement. This broad field of investigation reflected the significance of pharmaceuticals in the internal market, and ranged from production and authorisation, trade, distribution and distributive channels to pricing, reimbursement and price regulation.

Following an introduction from the vantage points of Community law (*Schwarze*) and social law (*Becker*), the multi-faceted nature of the theme was already highlighted in the first paper on "possibilities and limits of a single market for pharmaceuticals" (*Roth*). In the field of (decentralised) market authorisation law, the possibilities for establishing a single market have largely been exhausted. National provisions governing distribution do not stand in the way of the single market, whereas price and reimbursement regulations are especially apt to enhance market imperfectness. National cartel and trademark laws, on the other hand, are aligned with the requirements of the exhaustion principle; however, the application of cartel law should take greater account of the peculiarities of the pharmaceutical market.
The subsequent statement on the crucial issue of distinguishing between pharmaceutical and food products, in both practical and legal terms, put a spotlight on the complex interplay between member state and Community legislation on the legal status of pharmaceuticals and foodstuffs (*Doepner*). This area is fraught with uncertainties, for example as regards the interpretation of national law in conformity with Community law, but also with a view to the dynamic updating of Community legislation.
The price rules embodied in the *Arzneimittelgesetz* [Pharmaceutical Act] and the *Arzneimittelpreisverordnung* (AMPreisV [Pharmaceutical Price Ordinance]) as well as the standardisation of pharmacy sales prices in conformity with national conflict-of-laws provisions also apply to non-national pharmacies that supply drugs to consumers in Germany (*Mand*). The *Teledienstgesetz* [Teleservice Act] and the E-Commerce Directive do not change anything here. The application of the AMPreisV does not infringe upon the free movement of goods; it is, in any case, justified.
The cultural and professional fundaments underlying "the role of pharmacies in the supply of drugs in the internal market" formed another main point of emphasis (*Tisch*). For reasons of security, quality and functionality, the status of the "health profession" needs to be strengthened in the face

of unrestricted liberalisation. It is moreover felt, for example, that one-stop hospital care delivery or the prohibition of pharmacy operation by non-owners, both of which have been challenged by Community law, must be sustained. ECJ judgments on the admissibility of restraints of competition and on possibilities for prohibiting mail-order business for prescription drugs lastly testify to an appropriate degree of sensitivity on the part of Community law in this context.

The next contribution examined the interpretation of a German social law regulation that impedes the free movement of goods enshrined in Article 28 of the TEC (*Sichert*). Under this regulation, producer discounts initially granted by pharmacies are refunded by pharmaceutical companies. Nevertheless, according to the consistent practice of the German social courts, these refunds are not granted to non-national mail-order pharmacies operating within the EU (which allow additional discounts). In addition, the possibility of applying EC competition law also to the provider relationship was postulated. This appraisal is based on the correlation of service and premium diversification under the most recent reform initiated through the *Gesetz zur Stärkung des Wettbewerbs in der gesetzlichen Krankenversicherung* [Act on Strengthening Competition in Statutory Health Insurance], notably with a view to integrated care contracts and discount agreements.

Community law provisions on cost-benefit assessments and fixed prices in the drug supply sector were the subject of the subsequent remarks, which referred to European cartel law and the so-called Transparency Directive No 89/105/EC (*Kingreen*). Ultimately, the effect of Community law on the steering of drug legislation is not only weakened by the lack of a concrete commitment to cartel law. Rather, it remains a task of the – often reluctant – national legislators to ensure competition, transparency and procedural justice.

At this point, a stand was taken (*Hess*) on the personnel-based legitimation of the *Gemeinsame Bundesausschuss* [Joint Federal Committee]. The advantage of basing Committee membership on skilled decision-making competence instead of relying solely on ministerial orders was stressed, as was the supervisory role of the Federal Ministry of Health. The powers of the Committee in the field of drug provision were then outlined, addressing the formation of fixed-price categories as well as the adoption of resolutions based on efficacy assessment, which is to be further developed towards cost-benefit analysis. The instruments of action are deemed practicable and, on the whole, positive for the purposes of sufficient, expedient and efficient drug supply.

The final paper was devoted to "steering and steering errors in the drug supply sector" (*Vorderwülbecke*). In opposition to the preceding remarks, the Joint Federal Committee is said to face structural as well as practical obstacles in a densely regulated environment. The Committee must moreover cope with "competing cost containment ideas". The point no longer appears to be self-governance but a form of remote administration that burdens pharmaceutical companies, as is shown by the examples of fixed-price-category formation and drug efficacy assessment.

All in all, the essays show in what ways EU member states continue to act as "rulers over health policy" (*Berg*) – a domain which in light of current developments continues to bear considerable potential for conflicts. Another finding illuminates the scope for a concordance-oriented perception of (social law) regulations in favour of quality, security and efficiency, on the one hand, and the extensive realisation of market freedoms, on the other. Profitable insights are furnished into the details and interlocking aspects of the laws governing drug supply and drug trade. Moreover, the foundations (in terms of legal doctrine) of health law and Community law, notably the free movement of goods, have been portrayed and questioned with a view to their application. The contributions to the colloquium are available as a publication: *Schwarze/Becker* (eds.), Arzneimittel im Europäischen Binnenmarkt, Europarecht (EuR), Beiheft 2/2007, Baden-Baden, 2007.

Markus Sichert

1.5. Internationalisation

The Implementation of International Social Standards

A study on international standard-setting activities in the field of social law was published in the period under review: *Becker/von Maydell/Nußberger* (eds.), Die Implementierung internationaler Sozialstandards, Zur Durchsetzung und Herausbildung von Standards auf überstaatlicher Ebene, Baden-Baden, 2006.

Upon ratifying international conventions, member states are obliged to implement the social standards, which are thus transposed into national law. The contracting states' compliance with these implementing duties is monitored and controlled by a variety of procedures. The majority of international conventions moreover require that member states report on their progress in incorporating the relevant international social standards into law and practice (reporting procedure). The task of reviewing of these reports is usually entrusted to expert committees. A variety of complaint procedures enable member states to participate in the monitoring process. Thus a member state of the International Labour Organization may file a complaint against another member state for not complying with contractual obligations and may request an investigation of the matter. Employer and employee associations are also permitted to lodge complaints. The diverse procedures for monitoring governmental implementation duties raise a number of questions. In addition, there appears to be a rising tendency to adopt social standards with "unspecific legal foundations" – that is, legal foundations whose primary purpose is not to protect minimum social standards. In view of the increasing globalisation of trade and economic relations, another ever more prominent question is how world trade law can be utilised for the enforcement and monitoring of social standards.

The first part of the newly presented study contains firsthand reports of German representatives on the supervisory committees of international organisations. Problems as well as solutions are thus depicted for the implementation of the International Covenant on Economic, Social and Cultural Rights (*Riedel, Schneider*), the European Social Charter (*Birk, Öhlinger*), and the social conventions of the International Labour Organization and the Council of Europe (*Nußberger, Heller*). The second part of the study is devoted to contributions that describe developments in the area of unspecific legal foundations with a view to the implementation of social standards: the European Convention for the Protection of Human Rights and Fundamental Freedoms (*Grabenwarter*), the American Convention on Human Rights and the African Charter on Human and Peoples' Rights (*de Wet*), as well as the legal instruments of the EC/EU (*Becker, Iliopoulos-Strangas*). Another focus is on social standards of the world trade system (*Blüther*). By including unspecific legal foundations, the subject matter has been broadened and supplemented by the implementing mechanisms of powerful "meta-national" organisations.

Further Development of International Social Standards

Instruments of international social law and individual social standards were the subjects of several projects. For instance, the project on "right to health", launched in 2007, sought to illuminate not only the national law of several states but also the Interna-

tional Covenant on Economic, Social and Cultural Rights (cf. II.4.2.). A contribution for the second edition of the *Encyclopaedia of Public International Law* deals with the European Social Charter (*Becker*), depicting the development, content and mechanisms of social rights protection in Europe. The treatise moreover criticises the fact that two different versions of the Charter are currently in force and makes a case for the clear commitment of all member states of the Council of Europe to fundamental rights. In doing so, contracting states should relinquish specificities and ambitious statements so as to permit the prospective inclusion of content-related amendments. The collective complaints procedure does not appear suitable because it is directed at collective bargaining parties. In the long run, individual rights to a review of contracting party obligations ought to be conceded, even though this demand is not likely to be fulfilled.

The adjustment of international social standards to changing circumstances is also gaining importance within the International Labour Organization. The most important instrument for the protection of social rights here is the Social Security (Minimum Standards) Convention No 102. In light of current reforms to social protection systems in developed countries as well as the need for building new systems in developing countries, this Convention, dating from 1952, is in danger of forfeiting its function as a universal framework for appropriate social security (cf. more detailed I.2.2.). Reform proposals are currently being prepared with the help of scientific experts from all parts of the world. This process is still under way, however, and it is not yet foreseeable whether it will actually result in the submission of concrete proposals for redrafting existing ILO social standards.

Research on a Global Social Order

Individual states are finding themselves unable or insufficiently able to cope with the increasing transnationality of social affairs by means of their existing national systems. It follows that classic tasks of the welfare state must be pursued on an international level within an appropriate framework. The attendant aim is to elaborate universal values and institutions that lay the foundations for a global social order (more detailed I.2.4.). This task is as innovative as it is difficult, and it is faced with misgivings that render it utopian and that foresee its failure on account of economic constraints, political calculations or lacking legal means. Perhaps that is also why this task has not, to date, been tackled by any research institute worldwide as a comprehensive project.

The Institute has therefore decided to take a tentative step and to look more closely at the opportunities and risks of such a project in order to gain an overview of existing research approaches. To that end, it held a workshop in December 2006 that served the purpose of exploring avenues of jurisprudential access. A supplementary interdisciplinary workshop took place in January 2007 and was followed by two single presentations in the spring of that year.

The "Workshop on the State of Research into a Global Social Order and Possibilities for its Further Investigation", held in December 2006, confirmed that the investigation of a global social order constitutes a novel approach that transcends the traditional understanding of social law and public international law (*Marauhn*). Any such research approach must therefore include national and international law since a global social order does not merely involve pure coordination law. In addition, research into a global social order is highly complex and affects several dimensions: legal aspects, economic necessities, societal issues, political preconditions, the relevant actors and state interests. Besides addressing the states and international governmental organisations, such research must also seek to embrace non-governmental organisations, and its overall objective can only be accomplished through the interplay of international law, private law and public law. Another workshop paper spotlighted the activities of international organisations such as the United Nations, the World Bank, or the International Labour Organisation (*Nußberger*). The protection of human rights, international social standards and bilateral agreements can support attempts at creating a system for a global social order. An example of a feasible legal approach is seen in EC coordination law, yet it must be noted that the legal fundaments in developing countries are not comparable

to those in Europe. One possibility would be to create an international framework and to influence individual states by setting international standards. The drafting of such legally binding standards could be entrusted to the existing international organisations, while at the same time seeking to modify the legal instruments already in place or simply to enforce them more emphatically. The final workshop paper primarily regarded research into a global social order as a question of the effective protection of universal human rights, stressing the considerable practical and political difficulties inherent in such a venture (*Scheinin*). Thus a global order already exists, but will naturally always come up against its limits where national interests and the sovereignty of individual states are in the foreground. This problem, which applies to any worldwide order, does not of course stop at the investigation of a global social order. This is shown, for instance, by the International Labour Organization, notably its Convention No 102, which has set international standards whose implementation and enforcement nevertheless reveal distinct weaknesses. The economic constraints of global competition and the interests of a global economy tend to push social aspects into the background in a worldwide context.

The second workshop held in January 2007, whose wider reach extended to general issues addressed by the social sciences and interdisciplinary research, was likewise devoted to the subject of a global social order. Its participants stressed the central role of internationality alongside that of interdisciplinarity. Accordingly, interdisciplinary research approaches must be viewed under the aspect of a "global social policy" on account of worldwide interpenetration. A great many international standards and norms on social security exist, but the decisive point is that they must be given more attention in societal, political and legal practice (*Leisering*).

Besides international orders, the legal regimes of individual states and regions must also be taken into account when reflecting on a global right to social security. The significance of the informal sector features very prominently in projects that focus on developing countries and their social systems (*Mares*). It was acknowledged that interdisciplinary approaches can be pursued for global research on education, international organisations, development aid policies, migration and migrant workers. Especially when addressing the subject of migration, it proves helpful to bear in mind social integration as well as political and economic aspects alongside the legal issues (*Palme*).

In March 2007, two lectures were given on the risks and opportunities involved in researching a global social order. One paper emphasised the approaches taken by sociology and legal philosophy on issues of combating poverty and global justice (*Pogge*); the other placed the creation of a global administrative law and means of structuring such an endeavour in the foreground (*Krisch*).

In his lecture, *Pogge* stressed that a global social order must be regarded as complementary. It will not suffice to construct new social institutions; rather, existing institutions together with new ones have to be integrated into a common global regime. An initial approach could be attempted via human rights, which constitute a necessary but insufficient prerequisite for a global social order. Human rights can shape the individual demands placed on an institutional order. In his remarks on global justice, Pogge emphasised the crucial role of combating poverty. Distributive problems, mounting inequality between rich and poor, as well as the lacking fulfilment by affluent states of their obligations towards those less well off are the core issues here. The responsibility of wealthy state governments for existing deficiencies is obvious, and is exemplified by their reticence towards dictators and global corporations in such issues as preservation of power and intellectual property rights for pharmaceuticals.

Krisch devoted his lecture to the administrative and organisational structures of solidarity-based systems within a global context. Besides stressing state responsibility, it is important to elaborate the roles of corporations and other actors such as non-governmental organisations, who are able to contribute to private forms of regulation. Worth noting, Krisch says, is that the term "social global law" is preferable to "global social law", with "soft law" playing a major part in this context. Above all the social dimension of public international law must be emphasised. The

legal norms and principles of participating organisations and institutions, such as the International Labour Organization and the World Trade Organization, could gain added significance here. Public international law, global administrative law and social law are thus the decisive legal fields for researching a global social order.

In sum, all participants stressed the meaningfulness and great significance of investigating a "global social order" as well as the difficulties that need to be coped with along the way – not to speak of the problems of successfully establishing such a new world order.

Ulrich Becker / Yasemin Körtek / Matthias Knecht

2. Changes in Developed States

New Forms of Regulation and Activation

2.1. Choice and Competition in Hospital Health Care

The organisation of hospital health care is increasingly guided by a mix of regulatory and competitive concepts. Especially within Europe and in obligatory or so-called basic social security systems, competition is primarily used as an instrument for accomplishing welfare-state allocation effects and tends less to be pursued as an intrinsic value within a freely constituted society. The purpose-oriented autonomy assigned to the actors involved is on its part subject to regulation needed to safeguard solidarity, but also to ward off impediments to "health care market" activities. This largely imperfect market is thus unique and, together with its submarkets, is both an expression and a subject of complex steering systems. To embark on a comparative law analysis of these steering mechanisms renders a host of interesting insights that are of especial significance to the cost-intensive hospital care sector.

It is in this sense that the hospital care sector served as the starting point for research activities based country reports, under the project entitled "Choice and Competition in Hospital Health Care", which has now largely been completed. The study is conceived as a German-American co-project between this Institute and the Institute of Government and Public Affairs of the University of Illinois. In an approach based on comparative law and transnational reflections, the project seeks to shed light on competitive instruments as well as on functional and steering modes in the health care sectors of Germany (*Sichert*), the Netherlands (*Walser*), Switzerland (*Ross*) and the United States (*Rich*). The investigations are embedded in introductory and fundamental thoughts on the relationship between competition and regulation as conceptions of normative steering in the health care sector (*Becker*). The resultant findings are currently being processed in a comparative analysis. The publication will include expertises delivered by renowned economists in the form of statements on each of the investigated countries. The underlying intent is to enrich the subject matter through interdisciplinary reflections on the concordance and disparity of key issues, the significance of legal findings from an economic perspective, and economic approaches to decisive steering modes.

Notwithstanding the particular cost intensity of services rendered in the hospital sector, the study takes account of the fact that the proportion of ambulatory hospital services varies markedly in the respective countries. How these services relate to other areas of ambulatory care, including the relevant financing structures, must likewise be considered, as must organisational pluralism and the diversity of funding institutions. Even when influenced by competition, hospital care moreover tends to be attested weak characteristics of quality management. Low volumes of (public) investment lead to short-windedness, and sectoral boundaries between ambulatory care, the in-patient treatment of acute cases and rehabilitation phases impede integrated care flows.

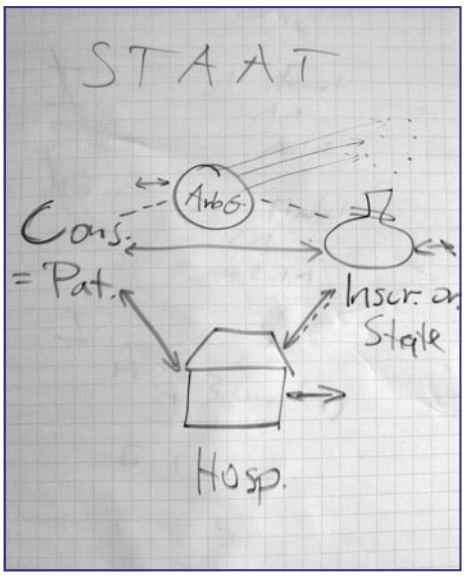
The analysis of normatively founded steering concepts based on competitive incentive functions starts off with the actors affected by them. The corresponding market relations illustrated in the study differ in the extent to which they are (im)perfect. At the heart of these relations lie incentives and the differently structured rights of patients who act as "consumers" in choosing a hospital and who

opt for a funding institution based on, say, a hospital-specific care concept. Competition for contracts, or also price competition, centres on the relations between funding institutions and hospitals. Inter-hospital relations correlate with the choices made by insured persons, who are likewise the reference point for competing funding institutions.

Competition as an instrument and controlling device of normative steering is merely a segment within a network of steering mechanisms that may also be regulatory in nature. Keeping track of this duality or interaction is just as important as acknowledging the following: the necessity of differentiating between normative and administrative steering; the potential double-function of (regional) corporations as addressees and norm-setting bearers of responsibility; the addressee status of corporatist associations; and the plurality and, in some cases, hierarchy of steering objectives. Especially patient rights to choose a hospital have shown how efficiency-specific competitive criteria frequently coincide with hospital planning aspects.

The aim of analysing action potential as well as normative incentive and steering mechanisms, and of assessing the results along comparative lines, made it necessary to identify systemic conditions that permit a conceptual transferability of the relevant approaches to other systems. Thus, the diversification of insurance benefits and pricing aspects are often distinguished in terms of (standard) basic coverage on the one hand – whether rendered by private insurance undertakings (Netherlands) or in the form of obligatory insurance (Switzerland) – and co-existing supplementary insurance markets on the other hand. At the same time, market-like structures within statutory/obligatory insurance must be identified and examined to ascertain whether the actions of funding institutions potentially make them undertakings.
In this connection, problems concerning functional and competitive structures in the health care sector revolve round the core issue of applicability of competition law – an issue which arises in all of the countries investigated and must be treated differently depending on the respective sub-markets. According to substantive law, institutional reorganisation processes entail additional problems for the relations between authorities supervising funding institutions and those supervising competition. An interesting example of awareness for "practical co-operation arrangements" is again found in the Netherlands.

The "success" of normative steering via competition can be assessed by looking at the



functions assigned to competition in health care delivery systems, notably the function of guaranteeing a general level of care through economic efficiency and quality. In light of the findings on the welfare-promoting steering potential of competitive instruments, the study illuminated the extent to which competition is, or could be, incorporated into health care systems as a genuine steering criterion.

Finally, in view of the results achieved, the "regulation of competition" must be appraised in terms of whether competition can prevail within its conflicting relationship to regulation, or even develop into the central steering approach of the future. Competition and regulation need not be regarded as mutually exclusive antinomies. For example, price regulation leads to competition for quality, rationalisation, specialisation and quantity (including the steering of supply streams). The reimbursement of hospital services is increasingly standardised on the basis of diagnosis-related groups (DRGs), which are found in partly differing forms in all of the countries investigated. Price competition is ruled out here, however, if these groups and (case) values are uniformly defined countrywide. Conversely, it exists where individual reimbursement negotiations are permissible, such as in the B segment for 10 percent of the *Diagnose Behandeling Combinaties* (DBCs) in the Netherlands, or where variables may be incorporated. Competition for quality can likewise be regulated by means of substantive requirements, such as the duty to publish quality reports. Such reports serve to improve the patient's decision-making ability in the sense of (striving for) an elimination of informational asymmetry. Competition and regulation may thus appear as components of causally interacting steering approaches. This is also underscored by the (competition-distorting) influence of highly regulated hospital subsidisation or one-sided investment support by individual regional authorities.

Organisational concepts of hospital care involving a regulatory-competitive mix are even found in the field of so-called managed care (MC), with Switzerland playing a pioneering role in MC development in Europe. Regardless of any autonomous self-commitment of the parties involved in such MC models, regulations such as the "any willing provider statutes" (United States) serve to counteract competitive concentration efforts on the supply side. MC organisations are obliged to contract in favour of all or certain groups of providers who are willing to accept the prevailing contractual terms and conditions. The application of (European) public procurement and competition law to integrated care contracts (Germany) remains contested.

Even so, increasingly competitive activities on the part of social-insurance-based sickness funds are progressively spreading into the realm of competition law traditionally reserved for enterprises. For the time being, however, competition in social security systems often tends to focus on structural advantages within the regulatory process. Notwithstanding causally linked steering approaches, the notions of competition and solidarity have not yet become fully compatible. The decisive normative structures that need to be investigated further, now and in the future, are both an expression of this finding and a reason for securing and elaborating concepts of "solidarity-based competition regimes".

Markus Sichert

2.2. Perspectives of Integrated Care and Competition

After a somewhat halting start, the integrated care of insured patients in Germany has become increasingly well-established and

is still growing in importance. The current health reform is aimed at intensifying this form of care delivery – on the one hand, by prolonging start-up financing and creating incentives for area-wide coverage and, on the other, by including long-term care in this integration concept. Hence, a more detailed investigation of this theme seems expedient from the viewpoints of both academic theory and practice. With this in mind, the Institute organised a conference on 19 April 2007 that was not only directed at representatives of the academic community but also called on the participation of practitioners. The event was devoted to two core subjects: "health care reform and the influence of Community law" and "competition within the scope of integrated care".

The programme commenced with a comparative law overview of the structures of trans-sectoral and interdisciplinary care in the Netherlands, France, Switzerland and Italy (*Walser*). It soon became clear that the fundamentally differing national health regimes have resulted in highly divergent integrated care structures and, hence, allow only very limited conclusions to be drawn for the German situation. The most distinct similarities were observed between the Dutch and German systems, whereas the Italian National Health Service scarcely displays any elements of integrated care.

Subsequently, the Community law provisions in the field of integrated care were elucidated, with three essential aspects placed in the fore (*Sichert*). First, the cross-border and trans-sectoral possibilities for including non-national providers in integrated care contracts were discussed, this being of especial relevance to foreign mail-order pharmacies and medical rehabilitation abroad, as well as to border-area cooperation agreements. Second, an outline was given of both the relevant secondary Community legislation – notably the Directive on the recognition of professional qualifications, the Directive on public procurement and the Regulation on the coordination of social security systems – and the fundamental freedoms and competition rules embodied in primary Community law. As for EC competition law, its substantive scope has evidently become applicable in a number of case constellations. In this context, the personal scope of Articles 81 et seq. TEC poses difficulties in the sense of whether sickness funds qualify as undertakings. Third, the lines of integrated care development in Germany were highlighted, accompanied by a short glance at expected changes (*Knieps*). The promotion of quality-based competition requires improvements to structural risk adjustment as well as the accelerated extension of new care forms in order to cope with simultaneous over- and under-coverage or with the often very poor

results of morbidity and mortality surveys. One cause for these developments is seen in the frictions arising at sectoral boundaries. That is why integrated care is felt to be of crucial importance, even though the corporatist structure of the system and the central role of professional law in Germany constitute considerable obstacles.

The second group of themes was devoted to the steady expansion of competition into the health care sector. Competition for contracts both between sickness funds and between benefit providers was one issue here. The first paper on competition for contracts between sickness funds in the field of integrated care queried whether the integrated care efforts undertaken by the legislator do adequate justice to the given requirements (*Kaempfe*). The paper identified major shortcomings in the health care sector (under-, over- and mal-coverage; high costs; excessive complexity) along with their causes (sectoral divisions; pure price competition), and explained how competition for contracts could eliminate these grievances (overall concept of competition; deregulation as a means of triggering discovery processes).
The corresponding paper on contractual competition between integrated care providers took a critical stance on the introduction of increased competitive elements because these elements are thought to raise costs (*Scholz*). From the point of view of service providers, the health care system exhibits reasons both in favour of participation in integrated care (higher remuneration of physicians; securing of referrals; savings through reduced documentation) and against it (uncertain rates of return in the face of further reforms; contract periods; termination modalities; succession; IT costs; professional re-qualification).

The thematic block on competition law was concluded by a presentation on the organisational structure of so-called medical care centres (*Medizinische Versorgungszentren*, MVZs) existing in Germany (*Möller*), followed by a discussion on the basis of two statements (*Seifert, Schinz*). It was stressed that MVZs constitute a relatively new form of care organisation and play a major role in the area of integrated care. Thus, 25 percent of all MVZs participate in such contracts, and two-thirds plan to do so. Setting up an MVZ involves pros (classic ambulatory–inpatient–ambulatory treatment path; planning reliability for hospitals; participation in integrated care programmes) as well as cons (uncertainty about future structures of ambulatory care; fewer referrals by practice-based physicians; lacking management skills) – both of which need to be weighed on a specific basis.

Quirin Vergho / Christina Walser

2.3. Interdisciplinary Research on Competition in the Health Care System

Competition in the health care system constitutes an important field of research, not only because it is highly topical, but because it impacts both the economy and society. In analysing the complex possibilities for structuring competition as well as its system-inherent limitations, one must go beyond legal approaches and seek the know-how of other disciplines. Prospects for such an in-depth investigation on competition in the health system were sounded out in a workshop held at the Institute on 19 December 2007. The aim was to engage in an interdisciplinary exchange of views and to elaborate perspectives for a joint project.

The health system's legal structures are generally criticised because they largely suppress competition, tend to partition-off systems, and pose problems of democratic legitimation (*Becker, Kingreen*). New problem areas have been created through the renunciation of collective contracts and the shift to integrated and trans-sectoral care, as well as through the contested applicability of public procurement law, cartel law and Community law as legal frameworks. Another question is whether existing legal regimes (governing competition) can be applied, or whether the specific case of "health-sector competition law" requires its own new legal frame.
Based on efficiency deficits attributed to lacking competition in the health care sector, these issues were illuminated from a social- and political-science perspective (*Gerlinger*). Competitive instruments in this sector can lead to more freedom as well as to the introduction of prospective, trans-sectoral reimbursement schemes. In the process, care delivery to the patient must remain a central

aspect. In addition, the interplay between economic incentives and health-oriented action must be given more weight.
From the economic point of view, competition between health insurers certainly entails greater cost efficiency and product diversity, but must not neglect quality (*Kifmann*). At the same time, the fairness of risk tariffs, the premium risk inherent in such tariffs, and cost pressure (as an anti-pole to quality) constitute variables which cannot be left out of the equation.

The individual contributions were followed by an avid discussion in which not only the workshop participants but also the Institute's research staff and doctoral students took part. It resulted in the drafting of a structured concept for a potential research project. The legal subject matter centres on the regulation of new forms of action on the part of sickness funds through the framing of individual contractual relations with providers. Interesting social-science issues include the transformation of sickness funds into market actors, the avoidance of negative effects of competition on the health sector, thereby taking account of experience gained in other countries, and steering perspectives for the prevention of social inequality and for improved health care delivery to socially underprivileged persons. These thematic approaches must be confined to individual sectors, given that the sectoral divisions existing in Germany are likely to remain intact in the coming years.

After a detailed project outline has been drafted, the envisaged lines of research are to be merged in an additional workshop devoted to joint issues. Beyond the planned participation of social law scholars, social economists and health scientists, this circle might be extended by health care researchers and/or competition lawyers. As to the regulation of new courses of action taken by sickness funds, the researchers involved are currently working out a proposition for appropriate subjects.

Magdalena Neueder / Matthias Knecht

2.4. Reform of Dutch Health Insurance

On 17 February 2006, the Institute held a workshop on the "reform of Dutch health insurance". Dutch lecturers informed the over 80 participants from the fields of science, politics and practice about the most recent reforms to the Dutch health insurance system, thus presenting an ideal forum for the discussion of latest developments. This event was a consistent follow-up to the previous research conducted by the Netherlands country section which had so far resulted in various publications, visits to Dutch universities and discussions with experts from the Dutch ministry of health.

The Dutch Health Insurance Act and the Act on State Subsidies for the Financing of Health Insurance, both of which entered into force on 1 January 2006, confronted the Dutch population with profound changes. The previous dualism between statutory and private health insurance was replaced by the uniform basic coverage of all Dutch inhabitants, which is intended to combine social compensation with the flexibility of private insurance. Of prime interest from the German vantage point is the previous Dutch system's striking resemblance with the current German health insurance structure, which is likewise characterised by the co-existence of statutory and private insurance, and is likewise subject to intense reform debate calling for a similar form of standard basic coverage.

Through this workshop, the Institute sought to contribute to a better understanding of the Dutch reform, to illuminate diverse indi-

vidual aspects of the restructuring processes, and to promote discussions both within the academic disciplines as well as between scholars, policy-makers and practitioners. To be sure, the differing historical, sociological and institutional backgrounds of a foreign legal order call for caution in drawing conclusions for another legal system. The particular novelty of the Dutch reform moreover results in a lack of secured empirical values. Even so, the highly interesting reforms observed in our neighbouring country are hoped to enrich discussion over the future sustainability of German health insurance. Beyond that, the more recent history of the Netherlands' health and long-term care insurance parallels that of Germany like no other European country.

The subject matter was introduced by an overview of core elements of the latest Dutch health insurance reform as well as its compatibility with the First Direct (Non-life) Insurance Directive issued by the European Council (*Walser*). The new basic coverage is rendered by privately organised insurance undertakings, whose freedoms are nevertheless restricted by numerous specifications set out in the public-law framework. Despite a host of detailed provisions governing, above all, the basic benefits package, care was taken to enable insurance undertakings to distinguish themselves from one another in designing their benefits and the concomitant premiums. The legislator hopes that the resulting competition between insurers will heighten efficiency in the health care sector.
The paper entitled "Fragen der Finanzierung in der niederländischen Reform des Krankenversicherungssystems" [Funding Issues under the Dutch Health Insurance Reform] served as a basis for the reports of the Dutch lecturers (*Hamilton*). In particular, the paper detailed the three major funding elements of the reformed system. Thus, approximately 45 percent of total revenue stems from flat mandatory premiums paid by the insured themselves to their respective insurers, who determine these amounts autonomously. Low income-earners are entitled to a government health allowance to mitigate social hardship if part of the flat premium is unaffordable in specific cases. About half of total revenue is raised from the income-related contributions paid into a health insurance fund by employers. This fund is used to make risk adjustment payments to insurers according to their policyholder structures. Another five percent of revenue derives from government subsidisation, which is taken to finance the non-contributory insurance of children and youths.
The paper entitled "Übergang zu einer flexibleren Gestaltung der Verträge in der niederländischen sozialen Krankenversicherung" [Transition to More Flexible Contracting in Dutch Social Health Insurance] highlighted the interchanging lines of development characterising regulation and liberalisation of contractual relations between insurers, the insured and providers over the past decades (*Velders*). Despite all efforts to make it more flexible, the health insurance sector clearly remains subject to extensive regulation. The regulatory authorities continue to play a central role in attempts to implement newly enacted flexibility measures or to create additional free scope. This subject was also taken up in the contribution on "Supervision and the Dutch Health Insurance System" (*Boelema*). It introduced the tasks and competences of the new Dutch health competition authority, the *Nederlandse Zorgautoriteit*, which is to supervise compliance with the new health insurance law and simultaneously to monitor and strengthen competition between health market participants.
The lecture on "Competitive Elements in the Netherlands Reform of Health Insurance" was largely devoted to the actual effects of the reform and to prospective lines of its further development (*Maarse*). The paper pointed out a certain degree of asymmetry as regards competition within the overall system. On the one hand, competition between health insurers for new customers is very pronounced, as is shown by some two million policyholders who have switched insurers since the beginning of the reform year. On the other hand, hardly any competition takes place in the relations between health insurers and providers or between the insured and providers – partly because of the pertinent regulations and partly owing to prevailing market disequilibria. Yet it is questionable whether competition confined almost solely to insurers will entail the hoped-for increases in efficiency. The current average flat premium rate, which has proven lower than the government expected, does seem to suggest this. The present pre-

mium level might, however, also be partially attributable to short-term subsidies granted to insurers, who may have used these to gain a good starting position on the market in the critical early months of the reform.

The papers made it clear that the two new laws implemented in January 2006 definitely do not overhaul the Dutch health insurance system from the ground up, but largely tie in with elements of earlier reforms and develop them further. Now that the administrative restructuring process – also as regards government subsidisation of premiums – seems to have run off smoothly for the most part, public acceptance of the reforms will crucially depend on the future trend in premiums.

Christina Walser

2.5. Activation and Employment Promotion in a Comparison

High unemployment trends constitute a major problem for many countries' social security systems, notably unemployment insurance. At the same time, unemployment poses an immense challenge to society as a whole. The relevant social protection schemes of some countries were conceived in times when the employment situation was good, and they were thus organised to meet the demands of a largely favourable labour market. Income replacement benefits awarded in the event of unemployment were generally satisfactory. Job-seeking difficulties were solved through well-adjusted promotional measures that led to rapid reintegration in employment markets with relatively high intake capacities. In the course of time, these protection schemes ceased to meet the requirements of labour market reality in view of persisting levels of high unemployment. Their mode of functioning sometimes became inefficient, often also restricted, and the options for providing assistance in the event of unemployment diminished, especially those that sought to reintegrate unemployed persons.
Many countries therefore strove to reform unemployment insurance and embarked on a restructuring or renewal of their specific regimes. This process was often accompanied by altered labour market and employment policies. In recent years, a few countries have initiated policy measures and action plans which have come to be known under the term "activation". Other countries have acknowledged these programmes as exemplary mod-

els, seeking either to adopt or copy them. The notion of "activation" requires a renunciation of the pure insurance model as it existed in some countries prior to the introduction of "activating measures"; however, the concept can be realised in manifold ways.

In 2005, the Institute for Employment Research (IAB) based in Nuremberg and this Institute decided to launch a joint international and interdisciplinary research project aimed at comparing different countries' labour market policy measures of "activation", as well as their implementation of new approaches for the reintegration or initial integration of jobseekers or simply unemployed persons unwilling to take up work. In 2006, the Institute for the Study of Labour (IZA) in Bonn joined the project, which has since been carried out by the three institutions under the lead management of three of their respective staff.
This international research venture differs from other investigations on labour markets, employment policy and unemployment, as it is unique in terms of both its subject matter – that is, "activation" as a means of promoting employment and combating unemployment – and its methodology.

The Term "Activation"

A growing number of countries have adopted the principle of "no rights without responsibilities", which also falls under the concept of activation and demands a partial withdrawal from the general insurance principle. Yet in order to satisfy the equation, work must in fact be available so that jobs may be created, thus allowing reintegration to become a reality. Activation can be understood as a joint form of employment-promoting action on the part of both jobseekers and unemployment insurance, although the former may, if necessary, be forced into such action. Activation calls for close cooperation between the benefit-providing institution and the jobseeker in a mutual effort to enhance individual employment prospects; however, further actors may be involved. The rights and duties of jobseekers are thereby legally defined. In any case, activation – whether in the sense of an extensive "activating strategy", the implementation of bundled measures guided by socio-political motives, or single measures with the aim of establishing the prerequisites for employment promotion and their concrete implementation – must be subordinated to a regulatory framework.

"Activation" as a legal term does not exist. Although the term as such does appear in a few legal regimes, it is then used to designate either a very specific measure (e.g. activation of funds for employment promotion) or the general framework for diverse policy measures aimed at job promotion and combating unemployment. In the latter sense, "activation" embraces all legal norms – or at least serves as a heading for them – that seek to reintegrate unemployed persons in the labour market and, quite generally, to promote employment. Hence, one result of the study has been to acknowledge that "activation" is as multifaceted as the legal systems investigated. Adopted solutions and modes of enforcement are similarly variegated and ultimately reflect the diverse understandings of the term.
In some countries the concept of "activation" is construed more narrowly and is taken to mean the measures and rules designed to accomplish labour market reintegration, while in others it has a broader connotation. Thus "activation" can, on the one hand, be linked exclusively to the legal norms governing employment promotion in the strict sense. On the other hand, it can also be wide enough to cover norms and measures that *a priori* have nothing to do with unemployment, for instance in the case of family benefit schemes, certain labour law regulations, or tax law.

Execution of the Study

An introductory and preparatory workshop held at the end of 2005 was devoted to depicting and discussing guidelines of "activation" in the selected countries. These guidelines served as the basis for elaborating the major ideas inherent in the concept and for preparing rough outlines of the country reports. The second workshop took place in 2006 and was entitled "(How) Does Activation Work? A Comparative Analysis". It was able to build on the findings thus far obtained and permitted a closer look at the role of law for activating measures.

The study has brought forth country reports on Denmark (*Köhler*, *Kvist*, *Pedersen*), France (*Barbier*, *Kaufmann*), Germany (*Eichhorst*,

Grienberger-Zingerle, *Konle-Seidl*), Great Britain (*Finn*, *Schulte*), the Netherlands (*Sichert*, *Sol, Koning*, *van Lieshout*), Sweden (*Hemstroem*, *Köhler*), Switzerland (*Bertozzi*, *Bonoli*, *Ross*) and the United States (*O'Leary*, *Quade, Dupper*). These reports are preceded by an introduction including definitions, and are rounded off by a synoptic final chapter furnishing a transnational comparison (*Eichhorst, Kaufmann, Konle-Seidl, Reinhard*). Besides the diverse socio-economic aspects and relevant legal norms, a special focus is also on constitutional provisions in the respective countries, as well as on the influences exerted by international and Community law on the respective schemes of employment promotion and labour market reintegration. Each country report has been written by at least two authors. Two special features thereby give the entire project a "pioneering" status on account of their novelty. First of all, the composition of the author teams is interdisciplinary, so that each investigation of a country's "activation field" takes both a legal and a socio-economic perspective. This mode of procedure was also upheld for the comparative chapter, which thus comprises elements of comparative law as well as a comparative socio-economic approach. Such a pivotal involvement of legal scholars in a research project on "activation" – a realm of study so far occupied predominantly by social and economic scientists – has evidently not been undertaken on a cross-national, comparative scale so far. Secondly, this deliberate innovative approach is reinforced by the likewise intended interdependence of the disciplines. Consistently, the country reports are not composed of two distinct disciplinary parts; rather, the legal and socio-economic aspects were, from the start, regarded as interconnecting, inseparable and coherent concepts, and the respective findings have been presented accordingly. Putting this methodological procedure into action proved a quite difficult task owing to the different understandings of the procedure itself as well as of the subject matter.

Functions and Modes of "Activation"

The functions and modes of activation were the main focus of the study, both for the country reports and the comparative analysis. The individual reports deal with the concept of unemployment and examine when and how activating measures take effect, as well as the methods employed. Thus, in some countries the promoting measures dominate, whereas in others benefit alterations after a certain period of time are in the foreground. For instance, training offers may replace cash benefits, and may or may not be mandatory. Considerable disparity between the individual countries moreover exists in terms of the interdependence of differing legal fields. Controls and sanctions are likewise important components of the individual reports. The ultimate aim of the study is not to summarise problems and solutions for each country, but to highlight individual solutions with reference to the respective country.

Otto Kaufmann

2.6. Mediation in Social Jurisdiction

On 1 September 2006, the two-year model project "Mediation in Social Jurisdiction" was launched in Bavaria. From this date, the parties involved have been enabled to participate in an internal court mediation procedure following the filing of an action or an appeal. Meanwhile, 68 mediation procedures have been carried out.

The Model Project

The Munich-based social court of first instance, the *Sozialgericht München*, and the likewise Munich-based appellate court, the *Bayerische Landessozialgericht München* (LSG), were among the courts participating in the model project. The Bavarian LSG moreover offers mediation for proceedings pending in the social courts of Nuremberg, Landshut, Bayreuth, Regensburg, Augsburg and Wurzburg, thus permitting mediation procedures across Bavaria.

Mediation is a voluntary procedure that attempts to solve an existing conflict with the support of a third person, the aim being to do comprehensive justice to all interests involved. Altogether 20 judges have been trained as mediators to preside over such proceedings. They are called upon to handle matters of social law with which they are not familiar as statutory judges. During the project phase, mediation is conducted in co-mediation, meaning a second mediator participates. As a rule, the competent court

proposes mediation to the parties concerned. This can occur at any stage in the proceedings. Mediation may, however, also be suggested by one of the parties or their counsel. The procedure is initiated after all those involved have given their consent. During mediation, court proceedings are suspended.

Successful mediation is ended by a so-called concluding agreement made in writing. Subsequently, the judicial action is likewise ended either through unanimous declarations of termination, settlement in court, withdrawal of the action, or recognition. This may occur by forwarding the concluding agreement reached in mediation to the original court. In cases where mediation fails, the action is resumed. So far, 55 cases of mediation have come to a close by concluding agreement. This corresponds to a success rate of about 80 percent.

Academic Accompaniment

The above model project has been accompanied by scholars of the Institute since 1 January 2007. The aim of such accompanying research is to analyse and assess the mediation procedures conducted under the model project, and to develop and refine the criteria governing their suitability. To that end, standardised written surveys of all participants in the procedure are conducted, and mediation as well as court files are evaluated. Seven different questionnaires are presented to the respective participants at the end of proceedings, namely to the statutory judges, mediators, claimants and defendants, counsels as well as recipients of a summons, and third parties. The latter may include persons who have no formal status in the judicial proceedings but are called upon to assist in mediation. Unequivocal allocation is ensured by assigning case reference numbers to the assessment sheets and questionnaires. The first step involves the recording of case-related information about the mediation procedure, notably particulars concerning the parties' initial positions. This is followed by all participants' comprehensive appraisal of the entire mediation proceedings and their results. In addition, the statutory judges and the mediators submit their expert assessments of the respective subject matter. The questionnaires were modelled on the well-proven constructs used in another model project entitled "Schlichten statt Richten" [Mediating Instead of Judging] conducted in Lower Saxony. The present survey nevertheless had to be adapted to the special features of social jurisdiction. So far, 139 questionnaires have been distributed, of which 130 have, at this point in time, been filled out and returned by the respondents. This corresponds to a response rate of 93 percent, with the questionnaires of claimants and defendants comprising the majority.

Nikola Friedrich

Structural Reforms to Social Benefit Systems

2.7. Restructuring Retirement Provision through Basic Pensions?

The sustainability of old-age pensions granted under the German statutory insurance scheme is a constant issue of political

debate. The 2001 pension reform has done little to alter that, since it left the basic structure of pension insurance unaffected, namely the strict reference between earnings and later benefits. Based on this computation formula, persons with low earnings during working life or with interruptions in their social biographies (e.g. parenting, unemployment) receive correspondingly lower retirement benefits. These low benefits often lie only slightly above the social assistance level, or sometimes even fall well below it. This leads to poverty in old age, a problem which in the past has above all impacted women. The legal recognition of parenting and caregiving periods as well as the introduction of pension rights splitting have not entirely eliminated poverty among elderly women, but have mitigated the situation somewhat. Moreover, fewer interruptions in the careers of women living in the five new German states, dating from their work biographies in former East Germany, have at any rate improved the statistical level of female old-age poverty in Germany.

Nevertheless, the subject of old-age poverty has not become obsolete. Quite on the contrary, it will grow into an even more crucial issue in the years ahead. The reasons for this are complex in nature. The aforementioned statistical effect of work biographies under the former East German regime will diminish as those concerned grow older. Several statutory amendments targeted at cost saving (e.g. lowering of survivors' pensions or recognition of survivors' earnings, curtailment of legally recognised training periods, or decline in contributions for unemployment periods) will entail lower pension benefits. At the same time, long-term unemployment and precarious employment relationships will negatively impact future beneficiary cohorts.

Benefits only marginally above the social assistance level moreover weaken the legitimation of mandatory contributions to statutory pension insurance. Already today, an average earner must contribute for 13 years in order to become eligible for a payment of €347, which is equivalent to the current social assistance rate. In the new German states, s/he must do so for even 15 years owing to the lower pension value. Taking account of housing support, which is also

granted under social assistance, about half to two-thirds of a working life is needed to acquire a pension above social assistance level. This, however, presupposes that the insured person continuously earned nearly €2,500 per month – a salary that many employees do not nearly reach, not even in full employment.

In light of these circumstances, the two Catholic associations devoted to worker and family issues in Germany, namely the *Katholische Arbeitnehmer-Bewegung Deutschlands* (KAB) and the *Familienbund der Katholiken*, have developed a joint pension model. It proposes the conversion of statutory pension insurance into a two-tier system of state retirement provision, consisting of practically universal entitlement to a "basic pension" and earnings-related "mandatory employee insurance". The third stage of the pension model envisages the extension of supplementary occupational pension plans and private retirement savings.
With the support of the Ministry of Labour, Social Affairs and Health of the federal state of North Rhine-Westphalia, the above associations launched a model study on the implementation of this concept. An additional partner, the "Social Policy and Labour Markets" research unit of the Ifo Institute for Economic Research at the University of Munich, was entrusted with projecting both the long-term financial development of state old-age pensions following the reform's implementation and the reform's distributive effects.

This Institute was assigned the task of appraising the reform model from its legal angle, notably under aspects of constitutional law. A particular legal difficulty was that the authors of the model deliberately seek to regulate financing via contributions, and not tax revenue, for reasons of legal certainty. Also, the model system's inclusion of civil servants and occupations regulated by professional chambers posed considerable legal problems. In the final analysis, however, the legal appraisal came to the conclusion, based on prevailing constitutional case law, that the model is unlikely to come up against absolutely insurmountable constitutional hurdles. Whether it can be translated into action on a political level was not a point of assessment. The initiators subsequently put both the model and the study up for discussion. In October 2007, a meeting with statutory health insurance representatives was held in Düsseldorf. As may be expected, these experts took a reserved stance towards the model and tended to favour solutions within the statutory regime – without, however, being able to explain how to eliminate the basic structural problem of later pension benefits being dependent on prior earnings. An additional conference with social welfare associations (e.g. Caritas), to which the Institute has likewise been invited, is scheduled for 13 June 2008 in Münster.

Hans-Joachim Reinhard

2.8. Social Security Reforms in Japan and Germany in the Face of their Ageing Societies

In 2007, *Katsuaki Matsumoto* presented the findings of his 18-month study conducted at this Institute on the subject of social security reforms in Japan and Germany in the face of their ageing societies. His research work was sponsored by the Volkswagen Foundation, the Japanese Ministry of Health, Labour and Social Affairs, and the MPI for Foreign and International Social Law. The findings have been published under the German title "Reformen der sozialen Sicherungssysteme in Japan und Deutschland angesichts der alternden Gesellschaft" (Studien aus dem Max-Planck-Institut für ausländisches und internationales Sozialrecht, vol. 39).

The study delivers insights into Japanese social insurance law and, in particular, contemporary reforms thereof. The fact that these reforms have occurred not in isolation but against the backdrop of German legal developments, and that German law has been observed from the vantage point of a foreign legal scholar, makes this study highly remarkable. A completely new vista thus opens up before German readers who are familiar with "their" law. They discover what aspects of their law are considered important from the angle of a foreign legal system and a foreign legal culture, and how some of their own country's reform measures are appraised from outside. Hence, readers are given access to a point of view that enables them both to see how their own law is analysed by others and to draw conclusions for juridical comparisons.

Both the German and the Japanese social insurance regimes have come under pressure to reform in recent years. The external reasons are comparable: demographic developments and international competition impact both economic systems. Even so, it seems that responses in Japan differ from those in Germany. This gives rise to a number of questions: What differences exist? What explains them? And what role will such explanations play in the future? The above study sheds light on these issues. It also casts doubt on the widespread view that comparable problems will entail comparable solutions despite all national and cultural distinctions. In other words, the study's findings contradict expectations of a common tendency towards modernisation marked by converging developments.

To begin with, it is correct that the origins of Japan's health insurance as well as its long-term care insurance, which was introduced much later, were strongly inspired by German examples. The organisation of the respective social protection branches nevertheless differs widely in the two countries. Thus, long-term care insurance in Japan covers only persons who are older than 40 and who are moreover classified into two insurance groups. The scheme also awards medical benefits and institutional care benefits without setting ceilings. On the whole, Japanese long-term care insurance is structured along more generous lines, but is also financed from the public budget. In contrast to Germany, no specific infrastructure was

created upon introducing this branch of insurance – an aspect which still plays an important role in present-day practice.

Japanese health insurance likewise differs significantly from its German counterpart. It covers all inhabitants, notably also self-employed persons and higher-income earners. Competition as a possible instrument (or approach) to enhance efficiency is alien to its conception, both on the side of insurers and that of providers. Instead, the system is extensively regulated by the government. Although the benefits catalogue remains comprehensive, more recent reforms have introduced an almost universal deductible rate of 30 percent. From the viewpoint of a country such as Germany, in which a mere practice fee of €10 triggers a collective uproar and calls for the resignation of those responsible, this is doubtless a remarkable personal contribution demanded of the insured. A growing problem in Japan is perceived in rising benefit expenditures on behalf of older insured persons – a problem which, owing to the special features of the Japanese system, goes hand in hand with the question of who should defray these costs in future. Worth noting here is that a major proportion of budgetary funds (currently about 50 percent) is expended on the care of persons over the age of 75.

All these issues affect fundamental aspects of social insurance organisation. They reflect, and this is the conclusion Katsuaki Matsumoto drew from his investigations, the intense hopes Japan is now placing in the "neutrality and expertise of the Ministry" and, above all, in the important role of equal treatment for social security entitlement. It will be interesting to see how these intrinsic features affect the impending reform of Japanese long-term care insurance. And one may be curious whether the trend observed in Europe towards defined contribution plans will also impact Japanese pension insurance, which provides an income-related benefit alongside the fixed national pension.

A positive summary at the current stage of development must read as follows: We have much to learn from one another on numerous individual issues. Quite evidently, however, our two countries are guided by differing general principles, which have been institutionally reinforced over time. Though similar reform measures might be adopted in Germany and Japan in future, fundamental differences will nevertheless persist in the longer range. Consequently, a functional investigation that blanks out normative fundaments will fail to do adequate justice to a comparative social law approach. To confirm this fact has been a big merit of Katsuaki Matsumoto's study.

Ulrich Becker

2.9. Perspectives of Accident Insurance in Japan and Germany

The longstanding academic exchange between this Institute and Kyoto University was continued and intensified in a conference held on 1 October 2007 in Munich on the perspectives of accident insurance

in Japan and Germany, including a look at Switzerland. The event was organised in collaboration with *Munich Re* and the association of *German Statutory Accident Insurance* (DGUV), and tied in with the symposium held in Kyoto in 2006 on the subject of occupational accident insurance, notably its insurance benefits and scheme organisation.

A German-Japanese comparison of accident insurance suggested itself in light of current reform discussions in Germany. On the one hand, Japan has a comparable reform background and its demographic development is likewise similar to that of Germany. On the other hand, Japan has already gained experience with regulations resembling those currently debated in Germany, such as a mixed form of financing based on pay-as-you-go and funding principles, or cost-sharing on the part of the insured in the case of accidents to and from work. Accordingly, the conference theme addressed aspects of insurance coverage from German and Japanese perspectives, as well as the question of financing. It also provided a forum for German and Swiss views on pension computation issues.

Scope of Insurance Coverage

In addressing the scope of accident insurance coverage, the Japanese side above all expounded on the "Karôshi" cases that subsume the diverse kinds of sudden, work-related death. Another focus was on the problems in connection with health damages caused by asbestos *(Nishimura)*. A largely government-funded law adopted in 2006 for the regulation of asbestos issues was explained in this context. The complexity of asbestos-related damages to health was pointed out from the reinsurer's angle, stressing the – internationally speaking – exceptional status of the employer's liability privilege under German law (*Lahnstein*).
With a view to the reform debate on restricting the scope of coverage in Germany, it was emphasised that the replacement of the employer's civil liability through statutory accident insurance is the underlying principle of the German system. Hence, it is considered possible that the extension of non-material damages under civil liability law could affect accident insurance law. The coverage of commuting accidents under employer-funded accident insurance was rejected in favour of employees' financial involvement (*Fuchs*).

Financing

The subject matter of financing centred on the relationship between pay-as-you-go and funding elements. The Japanese side presented the concept of applying the pure pay-as-you-go method to short-term benefits

and a special variant thereof to long-term benefits, whereby the discounted total expenditure calculated for newly arising benefit obligations is apportioned to the contribution payments of the three following years (*Muranaka*). A big problem in Japan is that a large share (approx. 14 percent) of companies liable to insurance are not registered and, hence, pay no contributions.
The German side saw the reform debate on the introduction of funding elements as the central issue (*Becker*). The formation of capital coverage is endorsed, on the one hand, for reasons of demographic development and, on the other, because insurance contributions levied on declining branches of industry are steadily increasing, given that former burdens must be borne by an ever smaller community of enterprises. The introduction of funding elements under the aspect of distributive justice is in principle the correct approach because the distribution of burdens is thus linked directly to causation. However, also the pay-as-you-go method does not *per se* conflict with intergenerational justice. Moreover, adjustment mechanisms could be provided in a system-compatible manner to avoid overburdening individual branches of industry. Yet when seeking a conversion of systems, dual burdens on individual generations would have to be avoided.
This thematic block was concluded with remarks by a reinsurer on the pros and cons of the different financing forms (*Upegui*).

Computation of Pensions

Pension payments constitute a large part of the financial burden of statutory accident insurance, which is why their re-assessment was chosen as the guiding theme for the last group of subjects. A comparison with the Swiss accident insurance scheme suggests itself in this context because of its concrete computation of pension amounts and the proportional reduction of benefits, as opposed to the application of reduced earning capacity as a measure of pension entitlement. That is why a depiction of Japan's system was abandoned at this point and replaced by that of Switzerland for the country comparison.
In Switzerland, a distinction is made between short-term benefits subject to a prospective pay-as-you-go procedure and pension benefits subject to a mixed pay-as-you-go funding procedure (*Umlagedeckungsverfahren*), whereby the prospective burden at the moment of benefit computation is allocated to the budget in discounted form and financed by pay-as-you-go appropriations (*Gächter*). A crucial feature of the Swiss model is seen in the complementary pension system under which accident insurance pensions of up to 90 percent of insured earnings are awarded alongside basic invalidity pensions. Frictions arise where persons were partially employed and partially self-employed, or not employed at all.
The final paper dealt with the reform debate on the calculation of pensions in Germany (*Kranig*). A main issue was the working draft of the Federal Government on an accident insurance reform aimed above all at amending the legal provisions regulating occupational diseases and pensions. Key points were abstract and/or concrete damage assessment and reductions in earning capacity, as well as the coordination of the two bodies of law governing accident insurance pensions on the one hand and statutory insurance pensions on the other.

Christina Walser / Martin Landauer

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

Project Structure

The GJJRSS project was launched in the last reporting period and then brought to a successful conclusion in 2007. It was managed by the Institute (*Becker*) and Chuo University (*Kaizuka*). During the 2005-07 timeframe, project participants investigated the Japanese and German health, pension and long-term care insurance schemes in an interdisciplinary and comparative approach. Besides rendering an overview of existing regulations and problem areas, they elaborated feasible options for dealing with the challenges that face the present social insurance systems in both countries.

Following the introductory workshop entitled "Social Security in Germany and Japan", held from 4 to 6 September 2005 in the Abbey of Frauenwörth (Frauenchiemsee), the further details of cooperation were agreed upon. The research activities thus targeted were conducted in individual studies by the three

working groups on health insurance, pension insurance and long-term care insurance.

Groundwork

The "pension insurance" group dealt with the topics of poverty in old age, mixed incomes, changes in working biographies, as well as pensions in relation to family issues. These four sub-areas of pension insurance law all centred on the aspect of sustainability, which nevertheless also plays a role in health and long-term care insurance. The "health insurance" group addressed the topics of solidarity and division, regulation and benefit delivery, as well as specific health care issues in an ageing society. The "long-term care insurance" group focused on quality assurance criteria, diverse caregiving models, the job market for care staff, and the funding of long-term care.

Workshop and Symposium in Japan

The findings of the three aforementioned working groups were presented and discussed on the occasion of the workshop "Social Security in Germany and Japan", held in Hakone/Japan early in October 2006. The report entitled "German Health Insurance – Solidarity, Financing and Personal Coverage" (*Becker*) started with a brief depiction of health insurance structures and fundamental statistical data. This was followed by a detailed account of the distribution of financial burdens, differences between statutory and private insurance, the major features of current health reforms, and the impact of ageing society on the health care system. The paper "Health Insurance in Germany: Benefits and Reimbursement" (*Busse*) highlighted individual statutory health insurance benefits, cost reimbursement, and the work of the Joint Federal Committee. The report on "Macro Evaluation of Health Care Systems" (*Fukawa*) outlined changes to the Japanese health care system expected for 2008 in response to Japan's similar problems of ageing society. Conversely, the report entitled "Issues in Health Care Service Provision" (*Matsuda*) placed individual benefits and their delivery in the foreground, alongside the very central effects of an ageing society on the health care system. The legal foundations for the reimbursement of physicians and regulatory measures in the Japanese health system were the key topics of the report entitled "State Regulation and the Medical Service Supply System" (*Tsuchida*). The "Comparative Study on LTC – Germany" (*Rothgang/Igl*) illustrated the basic features of German long-term care insurance and then gave an account of current challenges facing this insurance scheme, centring on market regulation, funding issues and care benefits. The study entitled "The Performance of Long-Term Care

Insurance and the Demand for Care Labour" (*Komamura*) presented the major innovations introduced by the reform of Japanese long-term care insurance in 2005; it took a look at the expenditure side and at the demands on nursing staff as well as their job prospects on the labour market. "Long-term Care Insurance – Services and Provisions" was the title of a contribution on individual long-term care models and benefits (*Hashimoto*). The report "Normative Issues Concerning Statutory Pension Insurance in Germany" (*von Maydell*) introduced the basic features of German pension insurance and then expanded on the role of the family in old-age protection, the effects of divorce on pensions, as well as pension rights splitting. Following this depiction of legal questions and problems, the next expertise dealt with current economic aspects of German pension insurance in the paper entitled "Sustainable Pension Systems in Times of Structural Changes in Demography, Economy and Society: The Case of Germany" (*Schmähl*). Its prime emphasis was on the distribution of financial burdens and risks, pointing out prospective further developments and reform opportunities. The Japanese reports on "Normative Issues of the Public Pension in Japan" (*Tanaka*), "Sustainable Framework of the Pension System" (*Fukawa*) and "The 2004 Pension Reform and the Impact of Rapid Ageing in Japan" (*Komamura*) focused on demographic challenges to the pension insurance system, and also discussed the 2004 reform as well as the various options of private retirement provision in Japan.

As a follow-up to the above workshop, the Symposium "Health Care, Long-Term Care and Pensions in Germany and Japan: New Forms of Solidarity and Competition" sought to present the project's results to other scholars, practitioners and the broad public. The introductory lectures on "Social Welfare Systems – Germany and Japan" (*Kaizuka*) and "Social Security in Germany – Status Quo and Recent Developments" (*Becker*) served to familiarise the audience with the overall theme. The subsequent papers entitled "Health Insurance in Germany: Challenges and Current Developments" (*Busse*), "Financing, Providing and Regulating Long-term Care in Germany – What Lesson Can We Learn from the German Experience?" (*Rothgang*), und "A New Paradigm Shift in German Pension Policy and the Impacts" (*Schmähl*) portrayed German lines of experience with health, long-term care and pension insurance. Afterwards, representatives from the German as well as the Japanese side (*Becker, Igl, von Maydell, Kaizuka, Tsuchida, Fukawa*) discussed the present systems of both countries and attempted to draw feasible or necessary conclusions for the future configuration of social insurance systems in Germany and Japan.

The findings of both the workshop in Hakone and the symposium in Tokyo showed that the ageing societies of both states and their social systems are faced with very similar challenges, which have only partially been met by the respective reforms undertaken to date. The individual studies were published in English in spring 2007 in the *Japanese Journal of Social Security Policy (JSSP)*. The German reports were moreover made available to interested readers in the Institute's *Working Paper No 2*, issued in August 2007. The Japanese team members will publish their research results in a volume that is to appear in the early part of 2008.

Matthias Knecht

2.11. The Law on Behalf of Persons with Disabilities in Europe and Asia

Since the 1990s, the Institute has increasingly been asked by visitors – above all by politicians and scholars – from Asian countries (P. R. China, Taiwan, Japan and Korea) about "European solutions" for the integration of persons with disabilities. This prompted the Institute to undertake a research endeavour into the "laws concerning persons with disabilities in Europe and Asia".
The documentation of a research conference held by the Institute and the German University of Administrative Sciences Speyer resulted in an initial German publication on the participation of persons with disabilities in civil society in Asia and Europe: "Teilhabe behinderter Menschen an der Bürgergesellschaft in Asien und Europa – Eingliederung im Sozial- und Rechtsvergleich –" (Speyer, 2002). The conference volume "Behinderung in Europa und Asien im Politik- und Rechtsvergleich. Mit einem Beitrag zu den USA" (Baden-Baden, 2003) was an extrapolation of that project on an international level. It is based on a comparative approach to policy and law, and contains a contribution on the United States.

From 20 to 24 October 2007, another workshop was held on the subject of "cultural foundations and hypotheses for diverging policies and legislation on behalf of persons with disabilities in Europe and Asia under conditions of demographic change" (German working title: "Kulturwissenschaftliche Grundlegung und Erklärungshypothesen divergenter Politiken sowie Rechtsetzung für Menschen mit Behinderung in Europa und Asien unter den Bedingungen des demographischen Wandels"). This event was a further step in preparing a final large international conference in Asia for the conclusion of the project in 2009. The workshop thus sought to draft and discuss a comparative framework based on the two previous research conferences in Speyer and Berlin. In contrast to the latter, however, an important interdisciplinary extension emphasised the ethnological and cultural-science dimensions of both disability policy and law. To that end, the circle of project initiators and organisers (*von Maydell, Pitschas, Schulte*) was enlarged through the inclusion of a Japanologist and cultural scientist (*Pörtner*). The choice of the final conference venue – Tokyo – was likewise a deliberate one, the aim being to give as many Asian country representatives as possible the opportunity to attend. The workshop, sponsored by the Robert Bosch Foundation in Munich, also took account of this thematic expansion in its selection of the subject matter.

The "intermediate findings" of the research project following the Munich workshop and prior to the final conference in 2008 might be characterised, on the one hand, by "manifold differentiation" versus "fragmentation and lack of transparency". On the other hand, the values and basic principles of disability policy seem to be converging, as evidenced by the UN Convention on the Rights of Persons

with Disabilities of 2006, which was framed and backed not only by European countries but also by many Asian states. The European Union has moreover been witnessing a convergent trend set in motion by common or at least similar demographic and economic parameters. This trend is simultaneously being supported by policies and – to an increasing degree – also by law.
In this way, EU states are not only characterised by a juxtaposition of policies and laws governing social benefits, rehabilitation and disability, on the one hand, and disability-specific prohibitions of discrimination, on the other. Rather, there is a growing tendency to integrate these two broad lines of action in the direction of a consistent European disability policy and a veritable European disability law.

Against this background, European disability policy and law would, at first glance, seem capable of serving as a model and lead for Asia. Even if this might ultimately hold true to a certain extent, according to some Asian experts, it should be conceded that the normative provisions of such a law have been reflected only insufficiently in the reality of disability-related affairs, also in Germany. This would seem reason enough to tackle a comparative socio-cultural and legal examination on the implementation and application of the pertinent social benefit regimes as well as on specific European anti-discrimination legislation in favour of persons with disabilities. This in turn could lend legal contours to the central concept of "participation", incorporating interdisciplinary and comparative aspects as well as theory and practice.

Bernd Schulte

2.12. Reform of Social Benefit Systems in Germany and Turkey

As a potential candidate for accession to the European Union, Turkey is called upon to modernise its legal order and adapt it to the so-called *acquis communautaire*. Accordingly, Turkey has undertaken considerable efforts in the recent past to do justice to the requirements of Community law. The Institute already set out years ago to accompany social security developments in Turkey by establishing contacts to Turkish scholars and practitioners. Collaborative activities between Turkish organisations and this Institute have thus brought forth a number of publications in both the Turkish and German languages.

Turkey's social security system is currently undergoing an intense rebuilding phase. Reform endeavours were already initiated in the 1990s and have led, inter alia, to the adoption of the new Social Insurance and General Health Insurance Act, which entered into force in May 2006. The wish to gain further information and to discuss these matters prompted the Turkish side to invite members of the Institute (*Becker, Sichert, Ross, Reinhard, Kaufmann*) to Ankara to report on developments in Germany, notably the most recent organisational and substantive-law reforms to unemployment, health and pension insurance as well as social assistance. To that end, the Turkish and German sections of the International Society for Labour Law and Social Security together with the Max Planck Institute for Foreign and International Social Law organised a conference, which took place in Ankara from 7 to 8 December 2006, on the subject of social security restructuring in Germany and Turkey ("Die Neustrukturierung der sozialen Sicherheit in Deutschland und in der Türkei").

The programme started off with an outline of reasons for and objectives of social law reforms in Germany and Turkey (*Becker, Güzel*). This was followed by respective portrayals of structural changes in the organisation of social insurance, basic protection and social assistance (*Ross, Sözer*), along with reports on basic features of the health insurance reform (*Sichert, Okur*) in both countries. An additional theme was the restructuring of pension insurance law from the vantage point of each country (*Kaufmann, Canıklıoğlu*). The concluding papers were devoted to substantive-law changes in basic protection and social assistance (*Reinhard, Akın*). In the subsequent discussions, the provisions of the new Turkish Social Insurance and General Health Insurance Act were regarded in relation to the relevant German reforms and subjected to a critical scrutiny – especially as the Act had been submitted to the Turkish Constitutional Court for an abstract judicial review. In its decision of 16 December 2006, the Court declared a large

part of the Act's reviewed provisions unconstitutional. Consequently, the Turkish legislature postponed the entry into force of this law three times – the last deferral was until 1 June 2008 – in order to make the necessary amendments as specified by the Constitutional Court. An analysis of this judgment by the Institute's new research staff member for Turkey (*Körtek*) has recently been published (ZIAS 4/2007).

Hans-Joachim Reinhard

2.13. The Swedish Welfare State: Its Modernisation, Stabilisation and Europeanisation

Under the current "labour market activation" project (see II.2.5. above), the Institute's country section for the Scandinavian states participated in the international and interdisciplinary collaboration with Danish and Swedish social scientists in preparing the labour- and social-law contributions to the respective country reports. The reports have thus extended the longstanding descriptive and comparative legal investigations on different aspects of the Danish and, in particular, the Swedish welfare state by including the fields of labour law, dismissal protection law, unemployment insurance, and employment placement. Previous research findings are available, inter alia, on the following subjects: the national health systems of the Nordic countries and the attendant models of patient insurance established there; retirement provision in Sweden and the current pension reform; the role of supplementary company pension schemes within the Swedish old-age protection system; and the legal regulation of part-time work in this country.

For some time now, there have been plans to sum up individual studies in a comprehensive jurisprudential analysis of the Swedish welfare state. Such a venture merits particular interest, given that Sweden is exemplary in several ways. Thus, Sweden has shown that even highly traditional welfare state institutions require extensive reforms in the face of present-day challenges; that specific, system-inherent reforms alone usually fail to provide sufficiently effective solutions to complex issues; and that necessary reforms, even if they involve radical modernisation, can be pushed through politically by way of democratic processes. All that should not be taken for granted. Since the 1990s, persisting economic stagnation and population ageing have led the social security systems of most European countries into more or less deep states of crisis. And, everywhere, this has in turn led to the adoption of more or less diversified reform legislation in response to massive saving constraints. In most cases, however, such lawmaking efforts were limited to mere corrections in detail. Only Sweden has succeeded in politically enforcing a sweeping reform of its entire system.

The project "Analysis of the Swedish Welfare State", envisaged as a monograph comprising manifold preliminary studies, has acquired a new dimension in the wake of Sweden's 2006 parliamentary elections. In September 2006, the Social Democrats, after a 12-year rule, lost power to the centre-right *Allians för Sverige*. These election results have been attested historic significance for diverse reasons. Worth remembering is that the Social Democrats had held the reins of government for 65 of the previous 74 years. During that span, the conservative camp won the elections twice, but in both instances these changes of government took place in the face of deep economic crises. In contrast to 1976 and 1991, Sweden was in the midst of an economic boom phase in 2006: with over four percent GDP growth, the economy had just peaked. Although a slight slowdown to about three percent was predicted for the next two years, the state budget was healthy and the economy was successful on the global market – not exactly a scenario that would provoke voters to change camps. Even so, the Social Democrats gained only 35.0 percent of the votes and thus suffered their worst poll defeat since the introduction of universal suffrage in 1911. Although the Moderates, who had attained 26.2 percent, were able to record the greatest success in their party's history, the Social Democrats nevertheless remained by far the strongest parliamentary party. Yet in forming a coalition with the other centre-right parties, the Moderates gained nearly two percent on the left-wing parties and the *Miljöparti* (Greens) and could thus form the government.
Against this background, it is usually stressed that the actual novelty of the 2006 polls and the potentially decisive factor was the un-

precedented unity of the four centre-right parties.
The change of government is not expected to impact most policy areas, notably social policy, simply because *Fredrik Reinfeldt* was successful in portraying his "new" Moderate Party as the true "workers' party" during the election campaign, thereby proclaiming the fight against (hidden) unemployment as the main goal of social policy. Hence, it is not a paradox if the electoral defeat of the Social Democrats has been interpreted as a "triumph for social democracy", given that the Moderates had adopted their policies. The conservative alliance had no longer been able to oppose a social policy whose benefits were claimed by a very large part of its own voters.

Accordingly, despite the change of government, there is little need, say, to doubt the institutional stability of the Swedish old-age protection reform, which was implemented at the turn of the millennium by the broad consensus of all parties. The question, rather, is whether the "cross-party" acceptance of a *well-developed* welfare state merely reflects a specific Swedish feature, or whether it augurs a tendency for other European welfare states. This aspect, along with the increasing impact of Community law and above all ECJ case law on Sweden's national (social) legislation, is to be incorporated into the above-mentioned research project.

Peter A. Köhler

2.14. Social Security Jurisdiction in a Comparison

The future organisation of social security jurisdiction is currently a topic of debate in the Federal Republic of Germany. This debate is connected with general reflections on a reform of state organisation with a view to creating more efficient structures. Whether legal protection should be afforded through specialised courts or a unitary judiciary is not a new issue (leitmotif: common rules of procedure under public law). Yet with regard to "expense reduction" and "budget efficiency" arguments, this discourse has acquired a novel quality, gained new legitimising force, and become a topic of political debate outside expert circles. Discussion about jurisdictional specialisation *per se* is nothing but a critical analysis of the actual state of affairs. Efficiency and cost-saving on the part of the judiciary often constitute criteria for reviewing whether due process of law has been realised for everyone. A number of changes already effected show that it can be expedient not to concede a third stage of appeal in every judicial action, or to renounce preliminary proceedings in specific cases, or to create appellate jurisdictions across Germany's constituent states.

Basically, however, scholars tend to focus on the more important aspect of judicial organisation. The core issue is whether there should or must at all be differences in procedure, organisation and personnel selection where courts are called upon to deal with specific facts. Research on this theme thus addresses the functionality of specific jurisdictions and the closely related possibilities and limits of differentiated jurisprudence. Accordingly, the Institute's project is devoted to the pros and cons of a unitary judiciary, proceeding from functional and due-process lines of reasoning, and also asking about potential intermediate solutions. To broaden its perspectives, the project takes a comparative law approach. For in all European states the judiciary has become more differentiated – and, in many cases, specialised in the legal protection of social benefits. How and why this is so, is the point of departure for the investigation. The project does not merely begin by addressing the stages of appeal – that is, panels of judges, courts or tribunals, and their legal structures – but also looks into the special features of social administration and its concomitant procedures.

The focus is thus on states with a long tradition of specialised courts or the rule of law. At the same time, prospective insights to be gained from so-called transformation countries and their judiciaries are included. In terms of content, only particular social benefits are highlighted because national legal systems tend to define these benefits and their legal protection differently. A major point of interest, moreover, is whether the legal protection of social benefits is in fact assigned to special first-instance courts or judicial branches and, if not, whether unitary judicial systems have special chambers for social benefit matters. Another subject is whether initial decisions by the social ad-

ministration may, or perhaps even must, be attended by further procedures before calling upon the courts. Finally, an important question with a view to functional aspects is whether specialised or lay judges deliver judicial decisions.

Friso Ross

Family and Social Protection

2.15. The Third Generation – Child-Related Social Benefits in a Legal Comparison

The Institute's comparative law project on the "third generation" seeks to portray the legal objectives and normative foundations of child support and childcare benefits in the legal systems of Germany (*Hohnerlein*), France (*Kaufmann*), Italy (*Hohnerlein*) and Sweden (*Köhler*) within a comprehensive framework of comparative law. The underlying intent is to systematise child-related social benefits within their broadest meaning – that is, including measures for the support and relief of families with children in the form of maintenance, on the one hand, and caregiving and education, on the other. The aim, moreover, is to appraise and compare on the basis of empirical findings the differing reasons underlying the legislation on "child benefits" and how they have evolved in the above countries. A central issue is whether child-related social benefits are recognised as private or rather as "public" tasks.

The reasons given for child-related social benefits and how they are framed constitute a highly topical issue in the face of demographic developments. But also in countries with relatively high birth rates there have been numerous reforms introducing new concepts for the provision, inter alia, of childcare benefits. This subject matter is closely related to notions of the family and family models underlying the diverse national family policies.

Child-related family benefits are extremely manifold and can, in functional terms, form a part of all protection regimes. This very often leads to overlapping of child/youth assistance law (originally intended as social compensation for specific disadvantages) with school and education law, as well as with local laws and labour law. The increased labour participation of mothers, who to this day feel primarily responsible for child-rearing, has become a central social issue in all countries compared. The legal responses tend to vary, with individually differing needs often best met by a flexible mix of time-related rights (under labour law, by adapting workplaces and granting special rights to employees with caregiving duties), cash benefits (under social law, by cushioning parenting work in the family), and infrastructural measures (including public and private offers).

Owing to its comparative law approach, the study could not be confined to traditional "family benefits" or measures for the equalisation of child burdens. On the one hand, specific benefits for additional needs, for instance on behalf of children with disabilities, were not considered for feasibility reasons. On the other hand, the aforementioned multi-functionality of some family-policy measures made it necessary to include schemes that cover child-related needs in an incidental way, even if they do not address them explicitly. Moreover, in some comparison countries, the new generation's transition to economic independence is increasingly delayed beyond their attainment of majority, so that the treatment of these young adults in terms of maintenance and social benefit law constitutes an additional problem.

On the Project's Progress in the Period under Review

Many of the already submitted, very lengthy country reports had to be updated owing to large-scale reforms of family policy in individual countries. This was necessary to take due account of changes in perspective that have often been paradigmatic in nature – for instance, the introduction of the parenting allowance in Germany in 2007. The framework of family law has likewise undergone changes in some states in the process of catching up with modernisation; this in turn required a careful assessment of potential repercussions on social benefits. The integration of manifold statutory revisions, sometimes comprising major conceptual amendments, delayed the completion of the country reports within the planned timeframe. Furthermore, a separate section on international law was developed in

the reporting period owing to the increasing significance of child-related perspectives in various international conventions (*Knecht*). The comparative evaluation of the country reports bundles the most important results and sums them up in the form of theses.

Provisional Results of the Comparative Law Analysis

The Fields of Law Governing Child Maintenance and Child Care: Legislative Choices and Underlying Reasons

The fields of law governing child maintenance and childcare benefits in the compared countries are highly heterogeneous. The allocation of these benefits to differing sub-fields of law can, on the one hand, affect legislative competence in federally structured legal systems and, on the other, influence the interpretation of law in its practical application as well as the specification of addressees or the financing of measures. The framing of social policy, on its part, cannot be seen in isolation, but is in numerous ways characterised by normative requirements governing, say, positions under family law, as well as by requirements of constitutional or international law. Changes in the legal status of children and in the awareness of their interests meriting protection have in recent years acquired a higher rank within the legal systems of the compared countries, and have thus impacted child maintenance and childcare benefits.

Regulatory Intents and Functions of Child-Related Social Benefits

Although the compared countries are traditionally assigned to different types of European family policy, correlative trends for child-related social benefits can be ascertained. Still featuring prominently among overarching regulatory intents is support of the parenting function from the child's perspective. This applies to support and relief granted to parents for child maintenance expenses, as well as to the combination of time-based rights and infrastructural measures inherent in childcare benefits. Support on behalf of the parenting function involves, on the one hand, the right to have a family and, on the other, all children's right to equal opportunities and self-development. Easing the burden of parents' primary maintenance responsibility through diverse monetary benefits remains an important objective in the compared countries; nowhere has it been given up in favour of childcare benefits. Besides general allowances for child maintenance, special needs are generally also recognised (housing, school expenses).

A particular concern is the combating of child poverty. Measures to that end are aimed at providing security to low-income families and families in difficult circumstances (single-parent and/or multi-child families). On the other hand, the prevention or subsequent correction of poverty through measures of labour market integration – notably that of mothers – is a further important aspect. The labour participation of mothers is deemed one of the most certain means of avoiding child poverty, but is only achievable if the necessary infrastructure is provided.

Finally, a purely child-specific regulatory goal is the promotion of child development and the creation of appropriate conditions for children's integration. Here, we witness a tendency for states to extend their traditional guardian function, i.e. intervention only if child welfare is at risk, to include a more preventive approach, i.e. avoidance of obstacles to development through furtherance and early intervention. This aspect plays a crucial role in seeking to embed child care in social or educational policies and in designing the concomitant measures. Thus, such measures may be viewed as part of the general public services that ensure equal participatory rights for all children, or as means-tested social benefit schemes with selective access. The advancement of child development is, moreover, closely linked to the aspect of preventing the violation of child rights within the framework of child protection.

Persistence of Differing Family Policy Concepts

Despite a certain degree of approximation, differing familial concepts persist in the compared countries until this day. Certain benefits are still often partially bound to matrimony. As a rule, the parent/child legal relationship no longer determines access to general monetary benefits (child allowance); as regards the actual award of maintenance, children are entitled to equal treatment. Additional resources, say, for accommodation and education in connection with schooling requirements are usually linked to earnings limits. In most countries, the personal earning responsibility of parents has been accentuated more strongly, even if they have children requiring care. This is attributable, on the one hand, to efforts at achieving *de facto* equality between men and women and, on the other, to EU concepts under the Lisbon Strategy which demand a higher level of female labour participation.

There is a distinct trend towards strengthening the role of fathers as caregivers (under the motto of "daddy rocks the cradle"). The greater involvement of fathers in caregiving tasks is reflected in family law regulations on parental custody after divorce. Thus, a joint custody regulation upon failure of the parental relationship has been adopted in all countries, the last of which to do so being Italy. The strengthening of the father role is moreover very conspicuous in the development of labour law rules on parental leave for childcare purposes. Provisions on leave periods granted exclusively to mothers are on the decline and are confined to the phase of statutory prohibition to employ women during maternity protection. In addition, new rules have been adopted that apply solely to fathers' leave of absence in connection with childbirth; other changes to parental leave involve quotas on behalf of fathers.
A novelty is the increasing emphasis placed on the rights and the perspective of the child. This vantage point entails differentiated treatment as regards access to public or publicly subsidised childcare offers (Sweden).

Developments in Childcare Benefits

Supportive child care and the advancement of child development, upbringing and education (i.e. childcare services outside the family) are based on two different regulatory objectives. The one aims to assist parents in their caregiving duties through infrastructural offers, notably to promote compatibility with work. The other, from the perspective of the child, seeks to foster development opportunities in the interests of children and, in particular, to support educational processes in pre-school age. The creation or guarantee of a wide offer of childcare resources is a need stressed in all the reports. Whether early childhood development (pre-school age) is regarded as a task of the educational or social authorities tends to differ and affects the following: 1) access to day-care facilities, quality assurance, and financing modalities (parental costs); 2) temporal scope of offers and need-based criteria; 3) options regarding preventive measures for the early detection of health impairments or even child abuse (via links to an early warning system for vulnerable children).

All things considered, important decisions for setting the future course of reforms with a view to the interests and rights of children are facilitated in all of the countries investigated. Experience gained from countries with a low level of child poverty shows that the recognition of child rights when framing maintenance and childcare benefits constitutes a crucial factor, especially in striving to ensure individual development opportunities for the third generation in times of sparse public funds and diminishing margins of distribution.

Eva Maria Hohnerlein

2.16. Gender Role Models in Family Law and Social Law in Europe

This Institute and the Department for Gender Equality based in the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) conducted a number of preliminary talks in summer and autumn 2006 on a planned research project to accompany measures for the attainment of gender equality within society. The academic study was subsequently given the go-ahead in November of that same year, allotted a timeframe of 18 months (from November 2006 until April 2008) and funded by the BMFSFJ. The initial phase of the project was devoted to the organisation of an international, interdisciplinary conference by the Institute in collaboration with the BMFSFJ entitled "Self-Responsibility, Private and Public Solidarity – A Comparative View of Gender Role Models in Family Law and Social Law in Europe". The conference was held from 4 to 6 October 2007 in the German-Italian Centre in Villa Vigoni in Menaggio on Lake Como. The next step was to identify the further need for research into the improvement of equal opportunities for women and men with a view to independent income security.

The subject of the conference was not gender equality *per se*, but rather the gender role models existing in society and law, and their significance for independent as well as derived income security under family and social law in the countries of Denmark, France, Germany, United Kingdom and Italy. The aim was to gain insight into the experiences of other countries and to "de-ideologise" discussion over the male breadwinner model.

On the Concept of Gender Role Models

Roles and role models are not legal but sociological concepts. They constitute a theoretical approach used to describe and comprehend links between individuals and society. Every individual assumes a number of roles. Behavioural roles result from typified expectations of society and display various levels of commitment: *must*, *should* and *can* expectations, with law forming a *must* expectation. A role occupant who fails to meet expecta-

tions might be sanctioned for his or her deviant behaviour. The shaping of role models is a complex socio-cultural and institutional process. Role models may ultimately assume a quality of cultural implicitness and, hence, no longer be queried. For a long time, this was the situation for gender role models.

Recent decades have marked an era of profound social change that was also reflected in altered gender role models – though not necessarily in all societal strata and legal fields simultaneously and synchronously. In keeping with the particular function of law to permit the contra-factual stabilisation of behavioural expectations, gender role models implicitly and explicitly embodied in law are often the last to change. Thus law may find itself in a "cultural lag", meaning social role models have changed while the institutional framework has not. This bears considerable potential for conflicts, given that law then cannot, or only improperly, offer norms that do justice to altered social behavioural patterns. In such cases, law forfeits its relevance, efficiency and public acceptance.

Research Background and Research Issues

In the literature, two models are generally contrasted with each other. The one is the traditional male breadwinner model, which is usually encountered in the sole earner marriage and in the very most cases implies the female spouse's dependence on maintenance. The other is the adult worker or dual earner model, which is characterised by the concept of both partners' economic self-responsibility.

What changes in private solidarity between partners as well as in social security systems result from altered gender role models? Which of the diverse arrangements tend to foster women's independent income security and which continue to provide incentives for sustaining their dependence on maintenance? To what extent have family law and social law – the two core matters at issue – developed reform strategies that take account of new gender arrangements and the legitimate interests of women in attaining independent income security? To what extent do regulations manifest inconsistencies and ambivalences that entail role uncertainty for those affected by them? A closely related question is whether the modernisation of gender roles adversely affects women and children, or whether it can be successful in re-allocating paid employment and unpaid family care work between men and women under the aspects of equality, partnership and shared responsibility.

Country Selection and Methodology

Italy and Germany are regarded as countries with a strong breadwinner model, while Denmark is considered a main proponent of the adult worker model with pronounced individualistic tendencies and a high proportion of full-time working women. France stands for a more family-oriented adult worker model. And the United Kingdom, finally, is a country that used to display distinct male breadwinner characteristics, but now features manifold "breadwinning arrangements".
The project is based on an inter- and intradisciplinary concept that places the involved sciences on an equal footing. Country teams were formed, comprising one representative, respectively, of family law, social law and the social sciences.

Central Themes of the Conference

Relationship between Self-Responsibility and Solidarity

Equal opportunities between men and women in terms of financial independence and personal autonomy involve three main sources of income: income from paid work, income from mutual support in marriage and partnership, as well as government transfers. The principle of self-responsibility serves to justify the curtailment of maintenance payments as well as social benefits. Contrary to initial impressions, the principle of self-responsibility need not strictly conflict with the principle of solidarity, but forms a part of the – at all times – presupposed family and societal relations.

Gender-Neutral Family Law and Social Law Regimes

Over the past few decades, family and social law regimes with a gender-specific bias have largely been superseded in Europe by legislation based on the equality and equal treatment of the sexes. Legal norms are now framed in a gender-neutral manner. Yet even rules formulated along gender-neutral lines can impact men and women differently. Although the state leaves it up to individuals to decide on

how they divide up their work, many incentives continue to be set, for example in Germany, that foster asymmetrical forms of role allocation in, say, the domain of marginal employment relations by referring to the woman's social protection through her husband. Moreover, one finds implicit role models that reinforce traditional gender behaviour, such as the model of non-employed mothers with children under the age of three, or the implicitly retained social law model of the so-called standard employment relationship.
All countries compared adhere to the principle of equal treatment in marital law. A targeted, pro-active promotion of equality in the sense of enabling independent income security is scarcely perceptible, however. Only after a marriage or partnership has failed does a tendency to assign more personal responsibility to the dependent spouse/partner become manifest.

Diversity of Gender Role Models and Gender Arrangements
Europe currently exhibits a wide range of gender arrangements coupled with differing opportunities for women to achieve independent income security. In Germany, for example, the combination of male full-time and female part-time employment is a preferred arrangement – albeit one that is only contingently suitable for attaining independent female income security. Indeed, the male breadwinner model as an absolutely dominating role pattern is now worn out. This model nevertheless remains quite alive in various country-specific forms, depending on socio-cultural structures, legal traditions and political objectives – both on a social and a legal level.

Re-Allocation of Paid Employment and Unpaid Family Care Work
To date, one can scarcely speak of any partner-based re-allocation of paid employment and unpaid family care work in Europe. In that respect, the modernisation of gender roles largely occurs to the detriment of mothers and children. Although studies conducted in France and Germany record positive changes in men's attitude towards partner-like job allocation, a contradiction between attitude and behaviour remains. The causes tend to be complex. And they are no doubt also grounded in the structure of labour markets (gender-specific wages, limited possibilities for working-time reductions, flexibility requirements, etc.).

Pluralism of Gender Role Models in the Long Run?
Although the empirical trend is clearly in the direction of modernising gender role models, it may well be that different role models continue to exist side by side in the future – not only during a transitional phase, but in the long run. Family and social law must respond appropriately to such pluralism in the sense of differing gender arrangements.

Is the Dual Full-Time Earner Model Only for an Elite?
Putting it bluntly, the adult worker model in its dual full-time earner version is the role model preferred by highly qualified women, while the male breadwinner model is favoured by less qualified women. The latter are confronted with limited opportunities on the labour market which likewise limit their opportunities for achieving sufficient, independent income security through their own gainful employment. Hence, in discussing women's independent income security, one must take account of growing inequalities within the female population.

Diversification of Family Patterns: Recognition and Valuation of Family Care Work
The recognition and valuation of family care work correlates with civil status. As was shown for the United Kingdom, family caregiving within the marital context is treated as equivalent with gainful employment and tied to rights. Under cohabitation law, unpaid caregiving work meets with much less appreciation. When sited within state-dependent single parenthood, family caregiving becomes at best non-existent or even negative. Glaring differences in valuation thus exist here and considerably worsen the living conditions of the women and children concerned. In all European states, single female parents and their children belong to the group with the highest poverty risk. In times of increasingly diversified family patterns, modern social and family legislation is called upon to provide suitable legal protection for new types of family, including the dissolution of cohabitation relationships, for example.

Reform Strategies for the Improvement of Women's Independent Income Security

Generally, three reform strategies for improving the independent income security of women can be distinguished. The first seeks to adapt female employment patterns to those of men. The aim is both partners' full-time employment, so that income security as well as social security is achieved via the labour market. The second strategy is targeted at the appreciation and financial recognition of hitherto unpaid caregiving work, and is found in many family law systems as well as in social protection regimes that, say, count parenting and caregiving periods towards the old-age pension. The third strategy links the recognition of family care work to incentives targeted at changing men's role in the direction of more partnership in allocating work.

Women's Independent Income Security via Gainful Employment

Notwithstanding various reform strategies, the undisputed result of the conference is that improvements to women's independent income security can be achieved first and foremost via gainful employment. Female employment has risen in all of the countries examined at the conference, albeit on differing scales and in differing ways. This is the result of a complex interplay between culture (models of gendered division of paid and unpaid work, maternity and childhood) and institutions (welfare state policies, labour markets and family patterns). In seeking to improve women's independent income security, it is therefore necessary to integrate them into the labour market on a continuous basis or with only brief interruptions.

Eva Maria Hohnerlein / Edda Blenk-Knocke

2.17. Family Policy in the Ageing Society – A German-Japanese Comparison

In Germany, demographic development currently features prominently among the widely discussed catastrophe scenarios. In Japan, too, declining birth rates give rise to mounting apprehensions and prompt the review of existing concepts of family policy. Why and in what manner should the state intervene? What is the societal significance of the family? What are the main features of "modern" family policy? These questions are addressed in a bi-national, interdisciplinary cooperation project between the Institute and Japanese social scientists. A two-day German-Japanese conference on this subject matter was held at the University of Tsukuba from 9 to 10 March 2006; it was followed by a symposium in Tokyo on 11 March 2006. On 15 March 2007, a workshop in Berlin attended by German and Japanese scholars was devoted, on the basis of the prior year's results, to an exchange of views on the intensification and continuation of previous collaboration in the field of family policy.

The aim of the conference at Tsukuba University was to create a forum for German and Japanese scholars to discuss the challenges posed by demographic changes to the family policies of both countries and, subsequently, to present the findings to a broad Japanese public in Tokyo. The project was initiated and organised on the Japanese side by Tsukuba University, Graduate School of Humanities and Social Sciences (*Motozawa*). Conceptual contributions from the German side were rendered by the Institute (*von Maydell*). In addition, the Institute delegated two (*Hohnerlein, von Maydell*) of the altogether four German lecturers. Organisational support was furnished by the Japanese Government, the Japanese-German Centre in Berlin, the German Institute for Japanese Studies and the Friedrich Ebert Foundation.

The interdisciplinary discussions were conducted by experts from the fields of history, demography, economics, sociology and social law. Given Japan's interest in practice-oriented views, political expertise on both countries was gained by also inviting representatives from the Japanese Cabinet Office (which counsels the Government under the direct authority of the Prime Minister) and the German ministry of family affairs.

In its choice of the subject matter, the conference trod unknown territory. To launch a bi-national colloquium on a theme so eminently ingrained in national traditions as well as being ideologically charged was a deliberate venture. A specific problem was that the Japanese language has no term for "family policy". The term used in the past seems to have the negative connotation of "pro-natalist" demographic policy. Nor does a ministry of family affairs exist. The Japanese Govern-

ment has nevertheless stressed the growing importance of family policy through its introduction of a special government ministry for equality and demographic issues. The thematic focus of the conference was on more recent changes in familial forms, including the different ways in which family-policy responses have emerged in the respective countries. In the process, the latest concepts of family policy planned for the 21st century were set against the background of other European experiences.

The various thematic blocks revolved around the following questions: What underlies the Japanese and German understanding of the family as a subject of government policy? What lessons can be learned from past experiences of the respective other country? How can family policy contribute towards developing the individual competences of family members through an appropriate, nationally adapted mix between infrastructure, time-based rights and monetary family benefits? Moreover, how can family policy enable women and men, mothers and fathers, to participate in both gainful employment and family care work without having to forego starting a family and caring for other dependants? The conference was successful in illuminating both the common features inherent in current developments as well as the disparate historical and cultural determinants of the family concept. One of the commonalities found was that both countries have failed to refine their family policy models sufficiently to do justice to actual changes in family patterns. Moreover, outdated attitudes to gender role allocation continue to predominate in both countries, in particular as regards the male breadwinner role. Besides the usual aspects of legal and infrastructural parameters that tend to focus on such issues as reconciling family and work, the specific psychological qualities of family "caring work" in the sense of "emotional work" were underscored as a worthy ideal of family caregiving.

The conference at Tsukuba University facilitated an open and stimulating exchange of thought based on fundamental papers, which were then substantiated from the respective national vantage points through contributions on selected individual issues, such as the societal importance of the family, the recognition of family work, or family support through social benefits. A final resume presented the following theses for a family policy designed to meet the needs of the 21st century: The main objective of sustainable family policy is not primarily to raise the birth rate, but to create a family-friendly regulatory framework. This includes a flexible combination of cash benefits, caregiving and educational infrastructures, as well as time-related rights for working parents. Family policy should centre on the individual rather than the abstract institution of the family, and should strive to do justice to the necessities of dividing family tasks between men and women based on the principles of equal rights and partnership. The conference doc-

umentation was published in Japan in 2007 (*Motozawa / von Maydell*, Familienpolitik im Vergleich zwischen Deutschland und Japan, Shinzansha Co., Tokyo).

The workshop held in Berlin in March 2007 sought to identify themes for further research collaboration, acknowledging that family policy is typically a cross-sectional subject that overlaps with numerous different policy fields. Such a fragmentation of regulations and arrangements affecting family policy often impedes the implementation of new approaches because this requires coordination with many other departments. The following subjects were discussed at the workshop: family policy and demographic development, taking a Japanese metropolis as an example (*Hara*); conclusions drawn from the latest German family report (*Meier-Gräwe*); the interplay between women's policy and family policy (*Hohnerlein*); corporate social and family policies (*Tanaka*); as well as general social and family policies (*von Maydell*).

Eva Maria Hohnerlein

2.18. Gender-Related Differentiation of Statutory Retirement Age

Low retirement age limits for women in old-age pension insurance schemes are on the decline. This is obviously in line with the general trend towards the equal treatment of men and women in social security matters. So far, there have only been few investigations into the reasons behind these specific differences between female and male age limits. This issue was addressed by members and guests of the Institute (*Walser, Darimont, Haerendel, Kaufmann, Schulte, Hohnerlein, Sichert, Olechna, Vergho, Köhler, Ross, Reinhard, Stefko, Fülöp*) in the form of individual analyses covering a total of 14 countries (Belgium, P. R. China, Germany, France, Italy, Netherlands, Poland, Portugal, Sweden, Switzerland, Spain, Czech Republic, Hungary, United Kingdom). The findings were recorded in country reports, which have been evaluated by the coordinators (*Becker, Haerendel*, ZIAS 2/2007).

Topics

In order to establish a common analytical horizon and the attendant comparability of results, the coordinators specified the following topics: 1) Provide an outline of the national old-age pension system. 2) Relate retirement age limits to the design of the system. 3) Describe the political decision-making process. What lines of argumentation prevail in the respective parliamentary or internal government debates on the retirement age issue? 4) Detail the (differing) retirement age limits. 5) What is the latest position on this issue? 6) (Optional) What conclusions may be drawn from a comparative examination of occupational pension plans or widows' pensions?

Results

It was generally shown that countries which place the basic social protection of their inhabitants in the foreground are less inclined to differentiate in this matter. Even so, exceptions, such as the United Kingdom where special age limits for women had been introduced in the past, could be found. On the whole, this matter evidently has less to do with the type of system than with the respective national discourse on old-age security and gender policy. Thus, in countries such as Germany or Italy which traditionally accentuate the male breadwinner model there seems to be a distinct readiness to restrict the gainful employment phase of women by means of lower age limits. Countries with distinct family-related retirement policies, such as France, frequently reward family care work by granting special concessions on pension claims, sometimes also on female retirement age, as in the case of the Czech Republic. All in all, instead of confronting women's double burden of employment and family care work with lower retirement age limits, the international trend, save for a few deviations, is moving towards the largely "gender-neutral" award of concessions such as the recognition of child-rearing periods for the assessment of pension expectancies. This is also the direction taken by Community law.

Ulrike Haerendel

2.19. Structural Reform of Pension Rights Adjustment

The splitting of pension rights upon divorce was introduced some 30 years ago and was at the time considered an impressive family law innovation. It reduced old-age poverty among

divorced women as they were accorded an independent claim to old-age protection. In the course of time, however, pension rights adjustment procedures have become highly complex. One reason is that an increasing number of occupational pension rights need to be taken into account. Owing to their different financial structure, these rights must first be made comparable with claims to statutory pension insurance benefits by way of a relatively complicated actuarial calculation. Another aspect is that more and more couples seeking divorce have acquired expectancies abroad which must be included and assessed in the adjustment procedure. The Institute has conducted several investigations on pension rights adjustment in conjunction with claims from abroad. Moreover, the Institute has received several enquiries from courts concerning the structure of non-national pension expectancies. The pertinent expertises have meanwhile been incorporated into higher court judgments (cf. OLG Karlsruhe, FamRZ 2006, 1848).

For some time now, the structural reform of pension rights adjustment has been a topic of ongoing discussion. The German Federal Ministry of Justice therefore set up an expert commission to deal with this matter. On the basis of the commission's findings, the Ministry has drafted a bill on the structural reform of pension rights adjustment and put it up for debate. The bill also regulates the consequent treatment of non-national expectancies. In this context, the Institute made several improvement suggestions, which have been incorporated into the bill. According to the drafted plans, foreign expectancies are to be qualified as not mature for adjustment and therefore referred to so-called contractual pension rights adjustment. If consistently implemented, these plans will impact international insurance careers, which are constantly on the increase because the European Community approves of and endorses migration. As a result, spouses with German expectancies will often be left empty-handed. Already now, contractual pension rights adjustment under the law of obligations is very hard, if not impossible, to enforce, even in Germany. If the liable partner resides abroad, enforcement without his/her cooperation is out of the question. Community law scarcely provides a legal basis for enforcement, since pension rights adjustment as a legal instrument at the interface between family law and social law falls through the cracks of existing agreements. On 11 April 2008, a group of experts will hold a seminar on the structural reform of pension rights adjustment. The event will also be attended by judges of the German Federal Court of Justice (BGH). The Institute will likewise be represented there and will continue to accompany the impending legislative procedure from a critical jurisprudential vantage point.

Hans-Joachim Reinhard

3. *Transformation in Threshold Countries*

3.1. Law and Social Security in Developing Countries

The Institute's social security research on developing countries is not confined to comparative law studies. Rather, it focuses also on the dualism between formal and informal social protection, which seems to be typical of these countries. In this context, "dualism" characterises the phenomenon whereby formal and informal arrangements exist alongside each other. Such dualism is inconsistent with the traditional assumption that informal social protection arrangements will one day be eradicated and replaced with formal systems. China and South Africa are good examples here, given that only a small proportion of their working populations participate in the formal protection regimes. Contrary to approaches taken in modernisation theories, high levels of economic growth in these countries have not caused their informal schemes to become obsolete. These schemes remain relevant for the coverage of individual risks. A quite different hypothesis, therefore, is that informal social protection arrangements will always exist, but will be adapted to prevailing circumstances and perhaps eventually connect with the formal systems

Theoretical Aspects of Social Security in Developing Countries

Our analyses mainly pursue approaches based on social policy, development theory and law. All three fields are closely interrelated on issues regarding developing countries.

Thus, social policy cannot be implemented without the political instruments of the legislature and, vice versa, legislative action not guided by political motives is unthinkable. Furthermore, development theory and its inherent approaches determine the influence exerted by the Western world on policies adopted in developing countries. Such external pressure to initiate change impacts both social policy and social legislation. For this reason, development policies and their underlying theories must be included in studies on law and social policy. An overview both of contemporary research on the social policies of developing countries and of past and present development policies is indispensable to further investigations on social security in developing countries.

Extending Social Security in Developing Countries

Developing countries tend to look towards industrialised nations and international organisations, such as the World Bank or the International Labour Organization, in seeking inspiration for reforms to their social security systems. Such a procedure might seem prudent given that developed countries and international bodies have gained more experience in this field. A frequent problem, however, is that approaches taken by international organisations often fail to take sufficient account of cultural conditions in developing countries.

Against this background, the Institute organised a workshop on 26 and 27 October 2007 that was attended by international scholars and sought to discuss the following questions: What approaches might be taken from a global perspective towards transforming social security in developing countries? What political measures are suitable for extending social security there? How should political measures and programmes be designed to ensure sustainable social security development in the developing world? What changes have occurred and what difficulties persist in this connection? Can developing countries absorb each other's successful projects and political measures?

The discussions showed that the problem areas highlighted in the diverse academic disciplines are similar, making it possible to find common themes for a more extensive investigation of social security in developing countries. A main stress here could be on the incorporation of informally organised social protection networks into state-run social security regimes. The resultant schemes would then promise to do adequate justice

to the cultural particularities of the respective country.

An alternative to previous international development policy in the social security sphere could be seen in so-called social cash transfers that guarantee a subsistence minimum to people in developing countries. The idea of paying social assistance to all needy citizens in developing countries is nevertheless opposed by the fact that these countries are scarcely in a financial position to arrange for this. A solution would be to finance such assistance via development aid funds. Yet, this is again disputed by the argument that development aid fosters poverty as money transfers lead to dependence. The payment of social assistance in developing countries would moreover reduce Western development aid to the provision of purely monetary benefits. It is illusory to think, however, that Western countries would lend such support out of sheer altruism without pursuing their own political ambitions, which often stem from the desire to patronise the receiving state and, hence, the individuals living there. The only way to counteract such a situation would be to give developing countries a legal claim to aid payments. So far, however, there is no such idea as a right to morally principled development aid.

In the end, the reception of law in developing countries remains a relevant option – one with which the Institute has been dealing over the past few years. Future research on social security in developing countries should thus be devoted to exploring what ideas and models could be accepted by whom and by way of which channels and at what time. Tracing these diffuse processes poses a big challenge to scholars at the present time.

Barbara Darimont / Yasmin Holm

3.2. Social Law Developments in China

Since the early 1980s, China's transformation from a centrally planned to a market economy has necessitated a reform of social security, given that all social protection arrangements under the planned economy were organised via state enterprises. Provisional regulations and decrees of the State Council have created a social security framework in the branches of pension, health, unemployment, accident and maternity insurance. So far, however, this regulatory framework is merely experimental in nature.

A commission established in 1993 for the drafting of a social insurance law had been unable to submit a bill owing to insurmountable differences of opinion. In 2003, a new commission was appointed; it presented a draft bill in November 2007. The bill has been approved by the State Council and forwarded to the Standing Committee of the National People's Congress for its first reading. At present, it is hard to say what regulations the statute will embody in its final version. Regardless of this, a depiction of the main legal problems is of crucial importance to the Institute's collaboration and advisory talks with Chinese cooperation partners.

Chinese legal experts have not yet clarified how detailed such a social insurance law should be. The main point of debate is whether the law should merely offer a general framework or contain specific social insurance guidelines. On the one hand, fundamental laws enacted during the ongoing process of social security reform are regarded sceptically because economic conditions and concomitant labour relations are changing too rapidly. On the other hand, a comprehensive social insurance law is considered conducive to the implementation of a social security system.
The current difficulties above all relate to the following three subject areas: degree of coverage, which is deemed too low; differing views on the funding principle versus pay-as-you-go financing; and lacking control mechanisms.

Degree of Coverage

The 2007 bill embraces all five social insurance branches, namely pension, unemployment, accident, health and maternity insurance. The category of persons covered is defined separately for each branch. In principle, however, all corporate employees – that is, workers in state enterprises and the private sector – are included in the social insurance coverage. Particular rules apply to the following groups: members of the armed forces, as they are enrolled in a separate scheme; civil servants, who come under the civil service law and, for example, are enti-

tled to civil service pensions; and the self-employed, who are free to decide on their participation in pension insurance.
The bill states that the government will establish a pension insurance scheme on behalf of the rural population and will promote the creation of a cooperative health insurance system in the rural areas. The State Council has moreover declared its aim to adopt concrete measures in the future. This clearly reflects the political will to set up these social protection systems.

Funding Principle versus Pay-as-you-go Financing

The bill does not specify a definite commitment to either the funding principle (formation of coverage capital), pay-as-you-go financing or partial capital cover in pension and health insurance. Although the current legal framework calls for the establishment of partial capital cover, this procedure is not effected in reality because the funded portion is used to finance existing pensions guaranteed by the former system. The entire abolition of partial capital cover, both in pension and in health insurance, is currently up for debate and is closely linked to the controversy over state financing and subsidisation of pension insurance. The question of who is to bear the burden of pension insurance financing has not been decided.

Control Mechanisms

At national level, the general supervision of social insurance institutions is a task of the Ministry of Labour and Social Security, which is supported in specific matters by the concomitant authorities at regional level. The 2007 bill calls for supervisory commissions (*jiandu weiyuanhui*) entrusted with the function of monitoring the social insurance funds. These commissions will be responsible for controlling the funds' finances, administration and investments; they are to be instituted at provincial level and will consist of representatives of the government, employers, trade unions and individuals. The commissions will not possess any real power, though, as their chief function is to submit proposals for changes or to request other authorities to intervene in the event of unlawful actions. The trade unions, too, will be called upon to exercise control over employers and over the enforcement of the social insurance

system. Yet this is a mere appeal whose content has not been specified further.

The current draft bill contains detailed provisions on handling violations of employer contribution duties. For example, the bodies responsible for levying contributions will be authorised to take measures on the mere suspicion of non-payment. Even so, not a single provision of the bill addresses litigation in social insurance matters. Hence, the settlement of legal disputes in this field remains an issue that has yet to be conclusively clarified. It is for this reason that the Institute's future collaboration with China will concentrate on the implementation and enforcement of law.

Barbara Darimont

3.3. Access to Social Security

Since its foundation in 1919, the International Labour Organization (ILO) has been devoted, inter alia, to enforcing the right to social security enshrined in a number of standard-setting conventions. Moreover, the signatory states of the International Covenant on Economic, Social and Cultural Rights of 1966 have recognised every individual's right to social security. This right includes social insurance. These international provisions highlight the great significance attached to ensuring access to the systems that serve to implement this right. Even so, less than half of today's world population actually has access to systems of social protection. It follows that, despite positive developments in 20th century social law, this field has forfeited none of its importance, especially as it addresses such issues as the effectiveness of social security systems and restrictions of personal insurance coverage. Manifold problem areas thus provide ample opportunity for academic research, for example into the protection of non-citizens or informal-sector workers, to name only two groups. Both groups are not as a rule covered by social security. The topical nature of these problems is reflected, on the one hand, in increased migratory movement, above all into European states, but also within the African continent, and, on the other hand, in the rise in non-contractual labour relations mainly in Asia and Africa.

The right of non-citizens to social security cannot be seen in isolation as it is closely interwoven with such other domains as immigration policy, citizenship and human rights. For instance, residence status often plays a role here. Informal-sector workers are frequently debarred from social security schemes because these schemes are traditionally based on an employment relationship. It follows that not only unemployed persons but also these informal workers are precluded from insurance coverage.

It is therefore of utmost interest to look into the causes for the exclusion of migrants and informal workers from the social security network. Proceeding from there, strategies for extending the coverage of these groups may then be elaborated.

This approach was taken for a comparative law study on the access of foreign citizens and informal-sector workers to social security. It was conducted by the Institute in collaboration with the Centre for International and Comparative Labour and Social Security Law (CICLASS) of the University of Johannesburg.

To reinforce this investigation, the workshop entitled "Access to Social Security for Non-Citizens and Informal Sector Workers" was held in Johannesburg on 18 and 19 January 2006. Current issues relating to the subject matter were discussed there by scholars from Germany (*Becker, Graser, Schulte*) and South Africa (*Olivier, Dupper, Millard, Mpedi, Nyenti, Smit*) as well as from Zimbabwe (*Kaseke*).
The study will be brought to a conclusion with the publication of its findings (*Becker/Olivier*, Eds., Access to Social Security for Non-Citizens and Informal Sector Workers: An International, South African and German Perspective; in preparation).
The project did not merely aim to examine the legal situations in the countries under comparison, but also sought to depict the respective institutional frameworks, legal instruments and legal techniques, and to assess these with a view to extending the coverage of the groups in question. In the process, existing gaps and improvement options were also identified. Another central objective was to explore all relevant issues from national,

international, supranational and regional vantage points, and to elaborate solutions.
The reports of the scholars thus render an extensive overview of these legal issues in various systems of law. Therein lies the fundamental contribution to the better understanding of legal and institutional difficulties arising in the social security coverage of migrants and informal-sector workers.

Yasemin Körtek / Ulrich Becker

3.4. Social Security in Indonesia – On the Creation of Legal Foundations for a Universal System

The Institute has been invited to exercise an advisory function in assisting the task force installed by the Indonesian Government in 2006 for the project entitled "Development of a Social (Health) Insurance System in Indonesia". The project has been entrusted to the *Gesellschaft für Versicherungswissenschaft und -gestaltung e.V.* (GVG) and is sponsored by the *Gesellschaft für Technische Zusammenarbeit* (GTZ). An intensive workshop, with all-day meetings on the subject, was held from 26 March to 4 April 2006 at the Institute. External participants included four representatives of the GVG (comprising the team leader and two Indonesian experts) as well as three representatives of the Indonesian Government. The advice rendered on the part of the Institute (primarily by *Sichert, Schulte;* also by *Becker, Darimont, Köhler, Reinhard, Walser*) commenced with a portrayal of social security foundations and individual insurance branches, their history and past experiences as well as current reform options. The concrete subject matter ranged from the conception of a legal protection system, via problems of levying and calculating contributions for farmers, to administrative structures in remote rural areas.

The work group's consultations conducted in spring 2006 were based on the following background information, task assignment and mode of procedure:
Large parts of the Indonesian population must make their own provisions for risks posed by the vicissitudes of life, notably the risk of illness, which often entails a considerable financial burden. To date, para-state and profit-oriented insurance institutions offer coverage mainly to public servants as well as to members of the police force and the military. Conversely, the scheme on behalf of private employees, *JAMSOSTEK*, actually insures only a very low percentage of all workers and, in effect, concentrates on cash benefits under pension insurance, as well as offering some health and accident insurance benefits. In these circumstances, characterised by a low level of benefits and lacking controls, needy persons usually bear the costs (of medical treatment) themselves, entailing many cases of excessive indebtedness. Apart from that, also private insurance enterprises operate on the market. The majority of service providers are government-employed. Though established across the country, these providers are predominantly concentrated in urban centres; they often tend to operate autonomously in accordance with competitive principles.

Since 2000 and in light of the amendment to the Constitution in 2002, a central policy of the Indonesian Government has been to eliminate the shortcomings and frictions inherent in the existing fragments of social protection, and to erect a highly efficient social security system for all citizens. Precedence is thereby given to the framing of a general health insurance law and the creation of mandatory coverage. This development is driven by Law No 40 adopted in 2004, Article 5(1) of which specifies the current overriding mandate: "Social security administrative bodies must be established by a law". Potential reform options are nevertheless impeded by two aspects. On the one hand, Article 5(2) and (3) of the Law provides that the above-outlined insurance schemes (*JAMSOSTEK*, *TASPEN*, *ASABRI* and *ASKES*) be sustained and transformed – if possible, exclusively and, if necessary, through the creation of additional insurance programmes (Art. 5(4)). On the other hand, Law No 40 was subjected to a constitutional review in 2005 at the initiative of local governments who saw their right to self-administration infringed. And, in fact, the Constitutional Court did declare Article 5(2)-(4) unconstitutional, whereas it deemed Article 5(1) and the corresponding transitional provisions constitutional. While the reform plans themselves already seem a Herculean feat, the development of their concrete options now suffers from the specific difficulties of interpreting this judgment and its

consequences for the implementation of legislative requirements.

The (first) reform project embodied in the "Law on establishing Social Security Administrating Bodies (SSABs)", whose main contents were roughly outlined by the Institute work group, already embraces far-reaching issues, which in our country are regulated in Books I, IV and X of the German Social Code (SGB) as well as in the Law governing the Social Courts (SGG). This endeavour is complicated further by references to the establishment of individual insurance branches, coupled with the attendant reform requirements. And these issues are in turn doubly compounded by problems arising from the plurality of insurance institutions. First, there is the horizontal plurality of insurers covering one and the same risk; their competence is limited to specific categories of insured groups. Second, the constitutional requirement of decentralisation calls for a multiplicity of insurers; this mainly entails problems of interleaving, homogeneity and subsidiarity. It is within such a multi-layered structure that the numerous provisions of Law No 40 on the establishment of administrative bodies must be implemented, whereupon the bodies themselves must again be coordinated. The whole procedure resembles a many-tiered network governed by statutory provisions as well as ministerial and presidential decrees.

All these issues were intensely discussed during the working weeks in Munich. The findings flowed into a comprehensive documentation outlining the general insurance law's regulatory contents, its interdependencies in terms of social insurance law and organisation, as well as the importance of the regulatory units for further linkages. These analyses were based on the statutory provisions (notably Law No 40) and on constitutional requirements. Without going into detail and bearing in mind the running legislative procedure, three fundamental reform options were available and had to take account of the often firmly voiced wishes of the Indonesian representatives: (1) transformation of existing insurance schemes in favour of entrusting exclusive responsibility for each insured risk to a separate scheme; (2) shared responsibilities in the sense of proceeding from the status quo, extending coverage to all citizens and transforming profit-oriented insurers into genuine social insurance institutions; (3) reallocation of insurance branches, partially allowing for multiple responsibility in the sense of one insurer covering several risks, and the simultaneous creation of a new institution on behalf of informal-sector workers.

The work group's documentation, subsequently presented to and appreciated by the

Indonesian Government, was an in-depth treatise on the pros and cons of the proposed regulatory options. Understandably, the proposals above all referred to the national level, although the pertinent implications of decentralisation were reflected upon, as far as this was possible. A further concept of reform-specific legislation based on this preliminary work was recently approved by the President and was being fine-tuned at the time this report was drawn up. There are additional plans to support the ongoing reform work *in situ* in Indonesia through advisory activities, which are to be allotted a timeframe of about two weeks. According to the present state of discussions and consultations, these activities are likely to centre on health and unemployment insurance.

Markus Sichert

4. Multi-Focus Research

4.1. Communities without Frontiers? On the De-concentration of Legal Affiliations to Political Communities

The integrating force of law has long been a standard theme of the German law of the state and its organs. Particular importance is thereby attributed to citizenship status – also, and precisely, in the sociological literature. In this respect, the mid-twentieth-century essay by T. H. Marshall entitled "Citizenship and Social Class" is well-nigh classic in the way it describes the gradual development of modern citizenship into a central element of integration within the state community. More recently, the auspices have changed. The literature is now full of views on the erosion of the (nation) state and parallel trends towards "multiple", "supranational" and even "global" or "cosmopolitan" citizenship. Conversely, national affiliations have been attested a loss of significance.

These changes and their potential consequences are the subject of a habilitation treatise accepted as a postdoctoral lecture qualification by the Faculty of Law of Ludwig-Maximilians-Universität Munich in the summer semester of 2006. In its core, it is a legal thesis; however, in the questions it poses and the statements it makes, it seeks to connect to broader socio-scientific issues. The work centres on a jurisprudential examination of subjective legal positions which tie in with the status of legal affiliation. The investigation nevertheless does not stop at nation-state affiliation, but looks beyond that into affiliations with surrounding political communities – from the local community upwards into the supranational realm. For these communities likewise often concede exclusive legal positions.

Yet only a few decades ago, such positions were largely concentrated in the status of national affiliation. This concentration had emerged from a centuries-long process, which has rightly been construed in the literature on legal history as an individual-rights-based reflex of modern state development. Today, one can perceive – thus the core thesis of the work – an inverted tendency: the legal content of citizenship status is dwindling without being regrouped within the casing of another affiliation status. The juridical analysis describes the differing dimensions of such de-concentration and identifies the mechanisms that spur it on. The study thus allows for an individual-rights-based perspective on the much described decline of the nation state.

This analytical corpus of the work is embedded in two additional parts that seek to connect its juridical findings to the socio-scientific literature within its broader meaning. The groundwork in the first section leads up to the subject matter by discussing the key terms of the investigation: "community",

notably "political community", "affiliation", "integration" and "community structures". The pertinent discourses of state theory, sociology and political philosophy are thereby absorbed.

The third and final section of the work asks about the consequences of the ascertained de-concentration process. The first chapter tests the plausibility of the supposition that nation-state affiliation status, along with its legal subject matter, could gradually forfeit its integrative potential. The second and concluding chapter then pans from the integrative to the legitimatising capacity of law. In that way, the work distinguishes various forms of rights-conferring legitimation and shows that some of these legitimising forms are undermined by the content-related de-concentration of legal affiliations and by the resultant possibility of community disintegration. This poses the threat of a de-legitimation of public authority, thus the conclusion.

Alexander Graser

4.2. Right to Health

Point of Departure

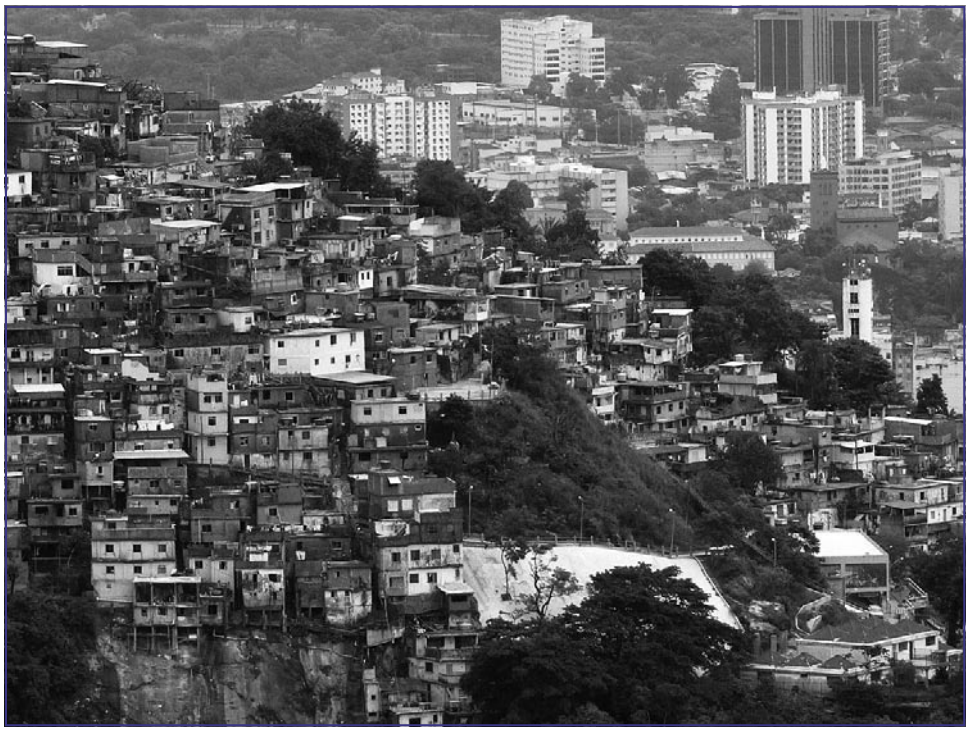
Is there such a thing as a right to health? If so, what is its precise intent and purpose, and how can it be enforced? These questions are of central relevance because although health is universally recognised as one of the basic prerequisites for a decent life, there are nevertheless still doubts at both national and international levels whether a corresponding subjective right does in fact exist. This is because of the discrepancy found in many countries between the endeavour to provide the best possible medical care and the actual care rendered to a (large) part of the population, coupled with the difficulties of financing comprehensive health care on a permanent basis. Thus, depending on a state's level of development and the responsibility it assumes for granting healthcare benefits, the spotlight is on building the necessary institutional structures, thereby taking account of societal and medical progress. And in this context, such a right to health represents a major and urgent concern. It could contribute to achieving the goal of comprehensive healthcare provision, but is simultaneously burdened by the problems that always and necessarily arise when seeking to postulate social rights.

The right to health is entrenched in a series of international treaties as well as numerous national constitutions. Alongside regional conventions in the field of economic, social and cultural rights – such as the European Social Charter, the African Charter on Human and Peoples' Rights, and the Protocol to the American Convention on Human Rights – a major international standard-setting instrument is the International Covenant on Economic, Social and Cultural Rights. Notably Article 12 of this Covenant lays down the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health". A General Comment thereby attempts to circumscribe the content of this article in greater detail. Yet such a commentary – or any effort, for that matter, to give concrete substance to contractual provisions at international level – will always be infused with the need to effect a compromise between representatives of highly differing countries. That alone makes it necessary to focus also on national legal systems in defining a right to health.

Procedure

The initially posed questions form the subject matter of a project in collaboration with Professor *Ingo Sarlet* (Pontifícia Universidade Católica do Rio Grande de Sul, Porto Alegre, Brazil). As a part of this project, an international conference was held in Rio de Janeiro in November 2007, with the preliminary aim of addressing related issues of international law. Nevertheless, national health care systems remain in the foreground. They are structured on the basis of statute law and its application in practice, without losing sight of the relevant constitutional requirements and the institutions responsible for their implementation.

An introductory paper portrayed the efforts already undertaken at international level and those still to be expected in seeking to substantiate the right to health (*Aart Hendriks*). The General Comment adopted in the year 2000 on Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) delivers crucial insights into the conceptual specification of



the right to health. It shows that the right to health cannot be equated with the right to being healthy. Rather, in formulating the aim of enabling individuals to enjoy the highest attainable standard of health, a twofold condition is put forward: the right to health is first of all reliant on the individual's biological and socio-economic circumstances, and secondly, on the financial resources of the government. This limitation was reflected in the rejection of the WHO definition of health upon framing the Covenant. The WHO defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". Accordingly, elements of the right to health within the meaning of the Covenant include availability, i.e. the existence of a sufficient number of health facilities; attainability, i.e. non-discriminatory access in physical, economic and informational terms; acceptability, i.e. respect for ethnic and cultural distinctions; as well as the necessary quality of healthcare benefits. The second paragraph of Article 12 ICESCR specifies the obligations of the state as follows: reduction of infant mortality; improvement of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; and creation of conditions which enable all persons to obtain medical service and medical attention in the event of sickness. Systematically speaking, the state is responsible for respecting and protecting its inhabitants, and for granting access to benefits and services.

In taking Brazil and Germany for the country comparison, the focus was on a threshold country and a developed country. In one respect, this provides a means of contrasting different levels of development. At the same time, however, the two-country comparison can contribute to ascertaining common approaches of legal doctrine, given that the German doctrine of law meets with a big response in Brazilian adjudication and jurisprudence. Both countries have recently witnessed significant court rulings in the field of health legislation that supply a promising point of reference for further study. Over and above that, the international perspective was broadened by including two additional countries in the conference, namely South Africa (*Marius Olivier*) and Mexico (*Miguel Carbonel*), both of which face challenges similar to those of Brazil. The respective economic and constitutional background was elaborated for all countries (*Ulrich Becker, Ingo Sarlet, Ricardo Lobo Torres*) as was the concrete administrative and technical implementation of their healthcare systems (*Markus Sichert, Rodrigo Brandão, Carlos Alberto Molinaro,*

Daniel Sarmento). It should be emphasised that in Brazil the enforcement of a right to medical treatment through court action is a widespread phenomenon, despite general difficulties inherent in the public health care system. These related issues were impressively depicted at the conference. Conference volumes are to be published in the English and Portuguese languages.

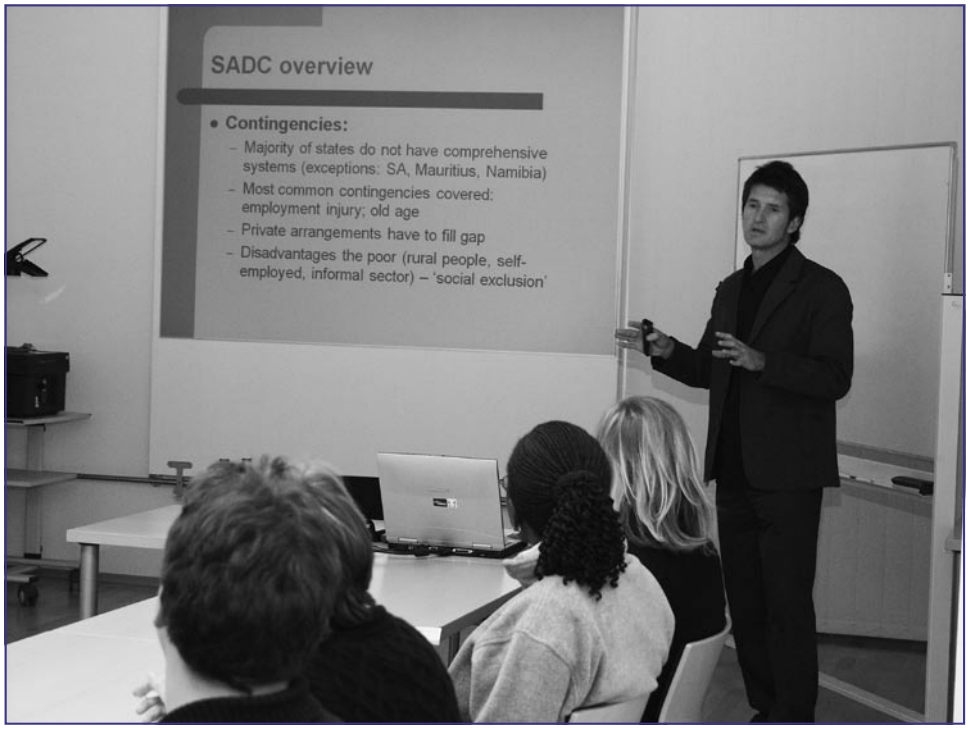
Ulrich Becker

4.3. 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. 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 equalize 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. In the preceding reporting period, the focus had been on affirmative action and Broad-Based Economic Empowerment as equality-promoting measures adopted in South Africa. In the period under review, this discourse gave way to the more specific subject of the old-age grant as a means of overcoming inequality.

Social assistance in South Africa consists of three main programs: (1) pensions for the elderly, (2) grants for the disabled and (3) grants for the support of poor children (the other grants are the war veterans' grant, the foster care grant and the care dependency grant). Old age and disability pensions are set at relatively generous levels for the developing world. The 2007 level is R 870 per month, or about $115 / €87. Relative to this amount, the child support grant is set at a low R 200 or about $25 / €19 per month and is only payable for children up to and including the age of 14. All three grants are means-tested. A total of almost 12 million people (or 25 percent of the total population) receive one or other social grant.

South Africa first introduced social pensions (also referred to as the old-age grant) for whites in the early 1920s, mainly as a social safety net for the minority of white workers not covered by occupational pensions. The pensions were gradually extended, but with



very dissimilar benefit levels, to other racial groups. Only in 1944 did the pre-apartheid state extend the social pension to include members of other race groups, and even then, pension payment size was legally determined by race at a ratio of 4:2:1 respectively for Whites relative to Indians/Coloureds relative to Africans. Pressure for equity in the treatment of racial groups became strong towards the end of apartheid, and in 1989 the government made a commitment to achieving racial parity in the pension program. In 1992 the means test was modified and unified across all races. The system was entirely de-racialised in 1993, just one year prior to the first democratic elections.

However, in one important respect the old-age grant remains overtly discriminatory. Since the mid-1930s, the pensionable age for men and women has been set at different ages, namely 60 for men and 65 for women. During 2006, an application was launched in the High Court to have the distinction declared unconstitutional. The applicants (all indigent males between the ages of 60 and 64) submitted that the distinction infringed three constitutional rights, namely the right to equality (section 9), the right to human dignity (section 10) and the right to social security (section 27), and that no justification existed for such a distinction. They asked that the pensionable age for both men and women be *levelled down* to the qualifying age of 60.

The application was opposed by the South African government. The government argued that the differentiation between men and women is justifiable because it aims to redress inequalities which arose from previous gender-based discrimination in South Africa. The government offered statistics to support the argument that women between the ages of 60 and 64 were in a more vulnerable position than their male counterparts as a result of the impact of colonialism, capitalism and apartheid on social relations in South Africa. Women lag noticeably behind men in each category of well-being: education, employment, the burden of unpaid care work, health, housing and access to services. In addition, the government presented studies showing that female pensioners tend to spend their pensions not only on food and resources for themselves, but also on other vulnerable members of their households, such as children. Men, on the other hand, tend to spend their pension on food and resources for themselves. As a result, the presence of a female pensioner in a household is associated with a reduction in the level of household poverty, which is one of the main aims of the social assistance system in South Africa.

Ockert C. Dupper

4.4. The Social History of Pension Insurance in the German Empire: 1871-1914

This research project was developed in collaboration with the Max Planck Institute for European Legal History in Frankfurt (*Stolleis*). It is based on a cooperation agreement between our two Institutes, providing for the joint funding of a half post with a term of two years. On the one hand, the project is embedded in this institutional network; on the other, it seeks to profit from other interdisciplinary approaches in its subject matter. The research is conducted by a historian. The MPI for Social Law offers the unique possibility for incorporating international pension insurance law into the discourse and for evaluating the related social law literature.

Research Aims

Previous research tended to concentrate heavily on the legislation and/or the political process leading up to the first Law on old-age and disability insurance, adopted in 1889. This project, by contrast, is devoted to correlations between old-age insurance legislation and the population groups directly or indi-

rectly impacted by it. Given the interdependent relationship between politics and society, two questions arise: On the one hand, how did interested circles push ahead policy formation and legislation in the field of old-age protection? On the other, how did progressive lawmaking reflect back on society? The evaluation of social statistics (e.g. population and occupation censuses) as well as official sources (e.g. official bulletins of the Reich Insurance Office) and narrative accounts (e.g. case files of the arbitration courts) furnishes specific points of reference for the local effects of this novel insurance form.

Structure and Content

The planned study consists of four more or less consecutive parts: 1) the workers' movement and workers' insurance, 1871-1881; 2) the path leading up to statutory pension insurance, 1881-1889; 3) the era of social law practice, 1890-1911; 4) old-age protection policy in the wake of the white-collar workers' movement, 1900-1914. This construct reflects the attempt to combine chronological and content-related aspects.

The first phase was definitely dominated by the industrial workers' movement, in the process of which workers were constituted as a "class", and which can thus be regarded as trigger for the Empire's social reform endeavours. The second phase stands for the political process that led to the first comprehensive legislative project in the field of old-age protection (Law dated 22 June 1889). Unlike most of the literature, this part focuses more strongly on the influence of societal forces and pressure groups. The third phase is characterised by social law practice. This part explores how provisions of the initial law were actually applied, and what disputes and review procedures arose. One aim here is to demonstrate to what great extent local differences among workers – depending on urban, rural or regional factors as well as sex and qualifications – impacted the application of law. The other intent is to show that the subsequent amending laws (1899 and 1911) were clearly shaped by practical experience gained, say, in the ascertainment of occupational disability. Finally, the last phase is marked by the central role of two groups who had for the most part been eclipsed by insurance legislation until 1911: white collar workers and widows.

State of Project Work

Although the project can make use of sources collected and published by the researcher herself (vol. 6/II of the "Quellensammlung zur Geschichte der deutschen Sozialpolitik 1867-1914"), further archives were viewed (*Bundesarchiv*, *Zentrum für Sozialpolitik*, *Bayerisches Hauptstaatsarchiv*). Beyond that, official (published) reports and statistical series play an important role. The work conducted so far has produced two sub-studies: "Geschlechterpolitik und Alterssicherung" [Gender Policy and Old-Age Protection] (DRV Heft 2-3/2007) and "Representations of Social Justice in the Discussions about Old-Age Pension Insurance in Germany", which has been positively reviewed by the German Historical Institute in London for publication in its Bulletin.

Ulrike Haerendel

4.5. Crises of the Welfare State: 1965-1995

From Reform into Crisis – The West German Welfare State: 1966-1982

Using archival sources, most of which have been made accessible for the very first time, this project seeks to investigate a phase of exceptionally strong welfare state growth and the subsequent turnaround triggered by the first oil price crisis, which marked the start of the austerity period. In correlating and analysing the rise, peak and reversal of welfare state expansion, the study sheds light on this reform era, revealing all of its ambivalence as a problem-solving and problem-producing epoch. In contrast to older interpretational patterns of contemporary history that primarily regard the years of post-war prosperity under the aspects of working off past problems and successful modernisation, this research perspective accentuates the long-term consequences of modernising processes and the genesis of new problem situations.

In an ever more transnationally networked world, nationally dominated fields of action such as social policy can no longer be portrayed adequately without their international references. It is in this context that one must also ask about the role of international expert cultures in socio-political decision-making processes as well as about the increasing

Europeanisation and transnationalisation of social protection since the 1960s.

The Emergence of Transnational Expert Cultures and their Influence on Socio-political Legislation through the Transfer of Leading Ideas, Knowledge Bases and Institutional Solutions
The initial step identifies the transfer actors and arenas. Subsequently, the conditional factors that either fostered or blocked the exchange of socio-political ideas are investigated. Thus, transfer effects are highly conspicuous in action fields in which pressing problems coincided with the realignment of academic reference disciplines, for example in education policy and the reform of psychiatric care. Conversely, firmly established interest structures were apt to considerably impede the transfer of ideas, as was impressively shown, say, by the delayed reception of the international debate on humanising working life.

Changes to Conditions of National Social Policy Action through Internationalisation and Europeanisation of Social Law: Underlying Reasoning
Ambivalent findings emerge here. On the one hand, debate over the loss of nation-state sovereignty may be interpreted in this context as part of a larger transatlantic discussion about changed options for state policy action – a discussion that had been going on since the 1970s under the catchphrase "crisis of government". On the other hand, an outright "discovery" of Europe as a socio-political action field simultaneously occurred on the German side, thus decisively contributing to the revival of this long idle field of European policy.

Fractured Affluence: Poverty, Economic Crisis and the Welfare State in Germany and the United Kingdom in the Last Third of the 20th Century

Since the end of the "Post-war Golden Age", European societies have been witnessing the reappearance of a phenomenon which they had thought overcome: the return of manifold forms of poverty. In examining poverty policy, the study is spotlighting a basic function of the welfare state that became all the more important, the more the Keynesian full-employment welfare state slithered into crisis.

The "lowermost net" of the welfare state acts as a sensitive indicator for the effects of economic and socio-structural change. These "challenges facing the welfare state" impacted the states of Europe in a similar manner, but occurred on differing social security levels and in differing political, economic and socio-cultural settings. As debates over poverty are closely linked to the way West European welfare societies assess themselves, the history of poverty and social inequality may be conceived from a comparative perspective as the "seismic history" of perception, mental processing and political handling of the global epochal upheavals initiated in the 1970s. This history helps to understand both the social stratification of European industrialised societies and the welfare state as a central structural element of this type of society.

In modern industrial societies, the manner in which social inequality is reflected and tackled politically tends to differ along national lines. The research project thus opted for a comparison between Germany and the United Kingdom in order to contrast these differences. The two countries' welfare state arrangements can be allocated to typologically differing basic models. The comparison is conducted along three guiding axes: The socio-historical perspective focuses on the development of income inequality and the different kinds of group-specific poverty risks. The discursive-historical perspective centres on the different forms in which poverty is perceived and defined in the sciences, the public and in politics. And the political-historical perspective explores poverty policy as an element of welfare state crisis management.

In terms of its research strategy, the investigation aims to retrace the last third of the 20th century as a phase of radical change in modern industrial societies, to profile social inequality as a key category for the historical analysis of contemporary society, and to establish a close analytical nexus between social history and the history of the modern welfare state.

Winfried Süß

4.6. The Reform of the World Anti-Doping Code

As a "shovel without a blade" or a "cart without a wheel" is how critics described the

state Anti-Doping Act recently adopted in Germany. These were also the introductory words (*Zimmermann*) to the symposium on the "Reform of the World Anti-Doping Code (WADC)", held on 5 October 2007 in Hamburg by the Forum on International Sports Law of the Hamburg-based Max Planck Institute for Comparative and International Private Law and this Institute. Current doping revelations have triggered widespread demands for state regulation. This is because many people feel that the fight against doping on the part of international and national sports associations lacks effectiveness and power of enforcement (*Becker*). Against this background, the symposium was devoted to a critical discourse on the WADC draft reform, which has meanwhile been adopted within the frame of the World Conference on Doping in Sport, which took place from 15 to 17 November 2007.

The introductory paper outlined the previous rulings of the Court of Arbitration for Sport (CAS) on the World Anti-Doping Code (*Martens*). The lecture began with a look at the strict liability principle. This principle was only recently confirmed as being in conformity with the law by the Swiss Federal Court in the proceedings concerning the cyclist Danilo Hondo. An additional focus was on the list of prohibited substances (so-called prohibited list) and its composition, which is highly disputed among lawyers, physicians and sport scientists. Nevertheless, "each case on its own merits" should remain the key criterion, thus the upshot of the paper.

The depiction of CAS rulings on doping was followed by remarks on the causes leading up to the WADC reform, expected changes and open legal issues (*Haas*). The reason why the WADC needed to be reformed so early on is attributed to regulatory gaps that soon became apparent after its adoption in 2004. The amendment places individual-case circumstances in the foreground and provides a wide margin of discretion for imposing bans on athletes. As a rule, the two-year penalty is to remain applicable. Very severe cases can, however, be liable to a four-year penalty. In particular circumstances, more stringent or mitigating exceptions to the regular penalty are possible. In addition, the introduction of the principal witness regulation is seen as an opportunity for exposing doping schemes. The hope is to set worldwide standards and to combat doping more effectively as a result of such harmonisation. The international regulatory framework needed to that end has already been created by way of the UNESCO Anti-Doping Convention. All in all, the reformed WADC is considered a firm step in the right direction (*Haas*).

The two above papers were followed by commentaries on WADC amendments by the representatives of athletes (*Rodewald, Jaksche*) and sports associations (*Oswald*) as well as sports lawyers (*Lehner*). Worldwide harmonisation was stressed by all as a prime necessity (*Rodewald*). Moreover, there is an urgent need to close gaps in legal and controlling systems, and to lead all national associations towards a streamlined control organisation. The much criticised "one-hour rule" is considered extremely dangerous and inexpedient owing to its great susceptibility to manipulation. Another central approach is seen in the application of uniform standards also to medical exceptions. The prin-

cipal witness regulation is regarded as both an opportunity and a risk. Athletes who only make tokenistic statements that do not help to clarify doping facts must be excluded from the circle of beneficiaries.
One assertion was that widespread doping in cycling virtually forces athletes to become part of the system in order to be successful (*Jaksche*). Another criticism was that the WADC reform had failed to sufficiently incorporate athletes' views. To ensure independence from the interests of associations, neutral and autonomous arbitration courts ranking above the association courts were deemed indispensable. The principal witness regulation was praised and regarded as the key element of the reform as it offers incentives to break free of the system. A further demand was to make out-of-competition tests more effective by establishing cross-national "anti-doping centres" within about three hours' reach of every athlete. At the call of those in charge, unannounced doping controls should be conducted at irregular intervals.
From the viewpoint of Olympic summer sports associations, the former WADC contained numerous gaps (*Oswald*). The proportionality of penalties remains the chief issue here. One solution proposed is to apply penal law principles in the form of "sentencing". In particular, the individual merits of each case and individual blameworthiness should be taken into account. Another proposal is to determine only a penalty framework and to leave individual penalties up to the well-tried assessment principles employed by sports and association courts. This solution is reflected in the amended WADC.
The problems of the former WADC are above all seen in the burden of proof and individual case merits (*Lehner*). Thus there are demands for a renunciation of the strict liability principle and the existing burden of proof regulation set out in the penalty system under sports law. The present rules are thought to contradict due process principles. Fault is moreover found in the inappropriate protection of athletes' rights and the insufficient observance of the proportionality principle. The proposed range of sanctions from three months to four years is assessed as a step in the right direction.

The subsequent discussion (chair: *Becker*) began by pointing at the highly criminal doping systems that have been able to emerge despite existing controls (*Haas*). These structures can only be annihilated through mutual efforts by the state and sports associations. The associations are often "led around by the nose" by athletes and their sponsors. A highly significant fact is that athletes who want to dope are offered substances not yet available on the market. All circumstances point to excellently functioning criminal structures (*Jaksche*). A further complaint was the adverse development of the principal witness regulation (*Figura*) and the frequently exhibited intransigence on the part of doping athletes who, like Jaksche for instance, regard themselves as "not guilty" figures in a coercive system (*Figura*). The flexibility of penalties under the new WADC is expected to encumber the work of CAS judges, but is viewed as a challenge to look forward to (*Martens*). Concluding, it was stressed that, notwithstanding the amended WADC, more courage is needed in framing sport regulations more simply and clearly in the future (*Haas*). The Code displays an utmost degree of complexity and is scarcely comprehensible to jurists and non-jurists alike. Future reforms should aim for the adoption of straightforward and easily understandable rules.

Matthias Knecht

4.7. Emeritus Workplace: Hans F. Zacher

The Complicated Wholeness Inherent in the Meaning of "Social"

All thought and discourse about the notion of "social" is subject to the challenge of a "twofold" dialectic. This dialectic may be conceived primarily as a complementary relationship between that which is unspecifically general about the term social and the specific meaning of social that is critical of inequality. Thus, there is the dialectic between the unlimited diversity of appearances, arrangements and significations of human cohabitation, on the one hand, and the correction and steering of societal conditions towards "more equality", on the other. This dialectic is "twofold" in the sense that it is realised, first, through *private and public-societal conditions and modes of life* and, second, through *politics, law and other manifestations of the state*. This produces a dense network of combinations: unspecifically social x society; unspecifically social x the

state; specifically social x society; and specifically social x the state. All of these combinations entail prerequisites and effects for all other combinations. And always, a valid answer to the question of the social quality of a society constituted within a state – even if this question is meant in the specific, inequality-critical sense of "social" – is found only if all components are perceived in their comprehensive interdependence: the unspecifically general sentiment and effectiveness of all (private and public) societal elements; the unspecifically general manifestations of the state; the respective specific, inequality-critical modes of conduct and effectiveness of (private and public) elements of society; and, finally, the specific, inequality-critical manifestations of the state.

In view of such interdependence, the above challenge must be seen in resisting the temptation to overestimate the specific meaning of social as well as state manifestations, while neglecting the unspecifically general meaning as well as the societal component. The inequality-critical specific social elements and/or state manifestations are thereby isolated and ultimately set *pars pro toto* as being one with "what is social". This occurs if, say, social benefit quotas (as shares of the specific social transfers granted by the state out of the national product) are regarded as comprehensive indicators for the social quality of a society and its polity. Or if – because a concept is lacking that explicitly embraces the entirety of the state *and* society – the terms "social state" and "welfare state" lead to the temptation to identify "what is social" with manifestations of the state. In truth, the meaning, possibilities and effects of all inequality-critical (specific) connotations of "social" always depend on the conditions preset by its general (unspecific) connotations. And the meaning, possibilities and effects of social intervention by the state in turn depend on the conditions preset by (private and public) society.

The relevance of these distinctions becomes clear if the specific, inequality-critical social elements are incorporated within the bundled aims of the *liberal social state*: prosperity, freedom, security, equality and protection against need. The liberal social state differentiates between absolute equality inherent in the subsistence minimum and relative equality within a setting of prosperity, freedom and security. And the state thereby prefers this relative equality which, although faced with the conflicting priorities of prosperity, freedom and security, derives its additional humane value from these conflicting priorities, just as it enhances the humane value of these conflicting priorities. The at-

tainment of this value structure is feasible only through the interplay between the state and society, between inequality-tolerant and inequality-critical conditions, and between regulatory and executive forces.

This problem area has been approached from two angles. The one approach is inherent in the concept of "social market economy" (Sozialstaat und Prosperität, 2006). The social market economy is a central medium that bundles and fulfils the aims of prosperity, freedom, security, equality and protection against need. The market economy produces prosperity, provides room for freedom, activates society and permits the state to focus on ensuring competition and the protection of non-economic goods. The competition-based market economy is a system characterised by a low level of regulation and state intervention and, hence, a system that seeks to include society in accomplishing the aforementioned bundle of aims. Yet the market renders equality moot, thus calling for a corrective. And that is where the equalising concern of the state comes into play – however indispensible private and public societal forces also may be. The success of this largely self-supporting economic concept and the recognition it has found have nevertheless caused another dimension of political and societal responsibility to recede into the background: the responsibility for (exclusively or essentially) non-economic goods – the responsibility for culture, education, health care, transport, other infrastructure, internal security, and the like. The provision and guarantee of these goods is of utmost importance for the accomplishment of the bundled aims of prosperity, freedom, security, equality and protection against need. However, this field of political and societal responsibility lacks a simple code – an essentially finished programme such as that inner code of the competition-based market economy. In particular, it also lacks correspondingly finished principles for the allocation of roles to the state and society

Worth exploring, above all, was the relationship between this sphere of responsibility and equality. Specific forms of social intervention that make the social market economy "social" essentially consist in *compensation for disadvantages* by means of protective rules and social benefits. "Equality through compensation" has therefore shaped the image of what is specifically social. The provision and guarantee of non-economic goods, on the other hand, fulfils the precept of equality through the *universality* of benefit offers and services. "Equality through universality" thus proves an alternative strategy for achieving equality. It is social in both the unspecifically general and the specifically inequality-critical sense.

The other approach taken to elaborate these correlations was found in so-called *multi-level systems*. Where the notion of social is accomplished in a multi-level system, the role of the state becomes differentiated (e.g. within the multi-level European system, the state must take account of European structures). But also the relationship between the state and society then takes on a new form. States constitute societies. Multi-level systems raise the following question: At which levels is society – or: are societies – constituted? The above-outlined basic pattern of the wholeness inherent in the meaning of social thus becomes amenable to further complexity. New constellations and new images arise, both for the realisation of the social objective and for the structure of society and its relationship to the state.

Initial access to this subject matter was gained through the work on the *social federal state* of the Republic of Germany (Der soziale Bundesstaat, 2003). The following issues were examined: the allocation of society to the aggregate entirety of the nation state; the extensive responsibility of the constituent states (*Laender*) for the provision and guarantee of non-economic goods and thus for "equality through universality"; and the primary responsibility of the federal government for "equality through compensation". These reflections led up to the *European Union* (Der europäische Sozialstaat, 2008). An entirely different configuration came to light here: the primarily member-state orientation of societies; the specific integration of a European society through market economy; the accompaniment of such integration by socially flanking the freedom of movement; the primary responsibility of the member states for the specific inequality-critical social element, and for the provision and guarantee of non-economic goods; the manifold over-

lapping of these member-state competences through Community law provisions and institutions; and the overt groping for "a social Europe" (thus spanning the unspecifically general as well as the specific notion of "social").

The Normative Background and Expression of "Social"

The *term* "social" was a modern European neologism. Initially, it had a descriptive meaning. Its normative connotation emerged in only a very vague manner. From the mid-19th century, "social ideas" began to materialise into concrete steps, thus turning the word "social" into something conceivable. These early institutions exemplified the normative meaning of the term. As "social achievements", they were (purportedly) irreversible, albeit capable of improvement and extension. The expression of "social" was thus *a priori* "path-dependent", and has remained so until this day. Yet also the demand for abstract norms was upheld as a means of levelling criticism at existing achievements and their further development. In order to give more effect to social demands, additional principles and corresponding terms were drawn upon. Old denominators were newly accentuated: "social justice" or "social security". New denominators were formulated: "solidarity", "participation", "inclusion", and the like. They remained ambiguous, however. And they remained philosophical, political or pre-legal norms. They are still sources of energy for the term "social", but they have no major steering effects. And they have no satisfactory outcomes. Their critical potential is inexhaustible – for there is no status quo that does not exhibit "equity gaps"; no feasible advantage that could not be additionally demanded in the name of "solidarity". "Path dependency" and the whirring normative backdrop are major characteristics of the reform problem.

The evolvement of pre-legal norms is accompanied by parallel attempts to create higher-ranking norms of positive law: state objectives; fundamental social or human rights; and social programmes enshrined in constitutions, European and international treaties, sometimes also in statute law (social code). Something "different" or something "more" can almost always be thought of by virtue of pre-legal norms – just as tensions between the limitedness of available resources and the dimensions of ("titled" and "untitled") social demands can always explain why actions fall short of what was legally agreed. As one knows today, social-programmatic constitutional norms say nothing about the social condition of a polity (Das "Soziale" als Begriff des deutschen und des europäischen Rechts, 2006).

Sustainability and Intergenerational Solidarity

The most significant growth in the political, pre-legal world of social norms has more recently been reflected in principles that demand constructive concepts for the legal configuration of cross-situational occurrences. Indeed, social benefit law has always been time-oriented and responsive to processes – or more precisely, to past occurrences. Social benefits mirror histories of provident provision (provisioning schemes) and histories of responsibility (social compensation schemes) as well as, to a lesser extent, histories of behaviour (selectively, in assistance and promotional schemes). Conversely, the sustainability principle, which was discovered in connection with environmental issues and was soon to become a matter of course, has also set the sights of social policy on its intrinsic meaning of *future responsibility*. Questions relating to "demographic change" urgently require solutions that interlink the past with the future. The existing principles of justice and solidarity have thus acquired an added dimension: *intergenerational justice* and *intergenerational solidarity* (Das Wichtigste: Kinder und ihre Fähigkeit zu leben. Anmerkungen zur intergenerationellen Solidarität, 2007; Pflichtteil und intergenerationelle Solidarität, 2007).

The Responsibility of the Social Law Doctrine

Important though higher-ranking norms may be for giving impetus to and for assessing the development of social elements, these elements can only find reliable expression in statute law and supplementary case law. The academic community is called upon to explain this statute law in its systematic structures. It is also called upon to depict the contents of positive law in such a way as to

enable users of law and those affected by it to recognise how law is to be applied to individual circumstances of life. Both tasks together are the responsibility of legal doctrine. Legal doctrine can only become valid or be applied if it is based on a functional analysis. In this sense, it also functionally renders account of the purposes served by law (Sozialrecht und Rechtsdogmatik, 2006; Entwicklung einer Dogmatik des Sozialrechts, 2006).

The Development of Social Benefit Law

Social benefit law is a highly differentiated and constantly changing law. Keeping track of these changes and portraying them therefore constitutes a necessity of its own (Sozialstaat und Rechtsschutz, 2006; Gemeinsame Fragen der Organisation und des Rechts der sozialen Leistungen, 2007). An especially enticing perspective for reflecting on the main features of social law development in Germany since the late 1960s was rendered on the occasion Franz Ruland's retirement from the management of the German Pension Insurance Fund, by retracing his academic and professional career (Franz Ruland 65. Eine Zwischenbilanz, 2007).

Globalisation

All reports ever written on the development of German social law primarily had to deal with the immanent problems of the national legal system. But they also had to address three problem areas that changed German social law from the outside: German unification, European integration, and globalisation. On an ever increasing scale, however, there has been a necessity to accept the challenge which arises for the *one world* in the sense of a global social order – whether a global order of human co-existence (Kinderrechte. Ein Beispiel für die globale Herausforderung des Rechts, 2007) or a global order for states as well as for non-state and transnational forces (Integrating Global Entirety by Integrating Diversity, 2007).

Hans F. Zacher

4.8. Emeritus Workplace: Bernd Baron von Maydell

The projects of this emeritus workplace can be distinguished according to whether or not they are incorporated in the research conducted by the Institute. For the most part, the Institute-related work stems from the period of the author's directorship and has been continued by and in collaboration with the Institute staff. These projects are reported upon elsewhere, so there is no need to discuss them here – meant above all are the projects on "The Law on Behalf of Persons with Disabilities in Europe and Asia" (II.2.11.), "Family Policy in the Ageing Society – A German-Japanese Comparison" (II.2.17.) and "German-Japanese Joint Research on Social Security" (II.2.10.).
Beyond the framework of the Institute, the author is involved in manifold other projects, only a few of which are pinpointed below.

European Social and Family Policy

In continuing the project of the *Europäische Akademie* on European social policy, an international seminar at the University of Tartu was devoted to a comparative investigation of Estonian family policy, notably in comparison with Finland and against the backdrop of approaches to an EU concept of family policy (Enabling Social Europe, 2005).

Estonian social and family policy, which must above all cope with the task of transformation as well as with the consequences of EU membership, has so far developed only selective measures for the promotion of families, and these are regarded as insufficient by the general public. These measures are also considered to lag clearly behind the concepts of other states, particularly those of northern Europe. In view of the demographic situation in Estonia, characterised by a low birth rate, rising life expectancy and a high incidence of emigration, a family policy integrated in economic and social policies is likely to enjoy top priority in the future. In the process, comparative analyses conducted by other states can gain considerable significance.

Adjustment of Old-Age Protection to Demographic Circumstances

The need to adjust old-age protection only to demographic challenges (rising life expectancy and declining birth rates) has long been recognised; however, the lawmaker has been reluctant to draw the pertinent conclusions

for statutory pension insurance. In addition, adopted regulations often fail to fit in well with the overall system of retirement security.

Contribution-based pension insurance financing has been retained although the demand for its realignment, from contributions to taxes, is widely accepted – mainly for reasons of international competition. Hence, the financing issue remains a central one and is also discussed in other states. A lecture in Sao Paolo on the occasion of the 17th Ibero-American Congress on Labour and Social Security Law dealt with these problems from a comparative law perspective.

One instrument for adjusting pension insurance to prolonged life expectancy is the raising of retirement age. Such a measure has been resolved in Germany for the future. Consequently, one must ask what benefits will become effective for those who do not attain this extended age limit in future (owing to early retirement, unemployment insurance, disability insurance, etc.) and what can be done to ensure that these benefits cover the necessities of life. Similar problems have arisen in Poland where a new pension system has been introduced, comprising a pay-as-you-go and a funded component as well as a raised retirement age limit. Hence, Poland must likewise seek solutions for early retirement benefits and the securing of a sufficient pension level. This was the subject of a seminar organised by the *Solidarnosc* trade union on the basis of a comparison between Poland, Germany and France.

Besides raising the retirement age, a further measure for adjusting pension insurance to meet demographic challenges is to lower the pension level by altering the pension formula. This nevertheless poses the danger that a growing number of pensions will thus fall below or barely exceed the social assistance level, despite long contribution periods. And this in turn causes potential beneficiaries to question the sense of providing for old age through contribution payments and undermines the acceptance of a pension insurance system based on mandatory contributions. The legislature has sought to compensate for the prospective lowering of the pension level by introducing a government-backed private pension plan (the so-called Riester Plan named after the Minister who drafted it). Private provision has thus become the instrument for achieving the welfare state goal of retirement security. Whether this goal can actually be accomplished is nevertheless doubtful. On the one hand, private provision is not obligatory so that precisely low-income earners will not make use of it, notwithstanding state subsidisation. On the other hand, the Riester pension is counted towards the basic old-age pension. Therefore, the private provisions of retirees with low pensions and no other retirement income could fail to yield an economic gain. This could further diminish the attractiveness of the Riester Plan for low-income earners. The Riester pension was also one of the themes of the German-Japanese social insurance comparison (MPI Working Papers 2/2007: Social Security Systems in Germany – Status Quo and Recent Developments, pp. 123 et seq.).

Organisation of Social Insurance

For nearly a century, the basic organisational structures within the German social insurance system remained fairly rigid. In recent years, however, they have been loosened, thus setting changes in motion. These changes are characterised by a tendency towards centralisation and the creation of more unity. This applies to pension insurance as well as to health insurance, which is undergoing extensive modification on account of the planned Health Fund. Accident insurance associations, too, are altering their structures in seeking to consolidate their numbers; these concentration efforts must not, however, jeopardise the fundamental principle of grouping insured companies with similarly structured risks. Centralisation in accident insurance could moreover imperil the synergy effects between accident prevention, payable levies and accident frequency. The fundamental structure of accident insurance was the subject of a German-Japanese seminar in Kyoto.

Mainly Investigated Countries

The countries dealt with were based on the author's previous cooperation relations and personal contacts to individual foreign scholars. These ties entailed invitations to lectures and congresses.

1. *Japan:* Intense exchanges of thought with scholars from the Japanese social law community have been in progress for many years and have involved several of the Institute's staff. Japan has a sophisticated social security system which – despite all differences – comprises a range of institutions and regulations that are similar to those in Germany. Above all the challenges (notably population ageing) facing the protection systems of both countries correspond with each other. To be sure, cooperation with Japanese academics is often hampered by language barriers, which moreover make it especially difficult to draw upon Japanese literature. On the other hand, personal exchanges are fostered through the openness with which Japanese researchers regard foreign problem solutions. Comparative social law is a far more widespread discipline in Japan than in Germany.

2. *Brazil:* The social security system of this country is fragmented. Its future extension will be influenced strongly by South American views on enhancing privately organised provision (Chile Model). At the same time, however, a large corpus of constitutional case law on social rights exists. Parts of Brazil's industry are highly developed (automotive industry). The need for a welfare state infrastructure is especially urgent in light of the extreme social divide between rich and poor.

3. *Poland and Estonia:* Both are transformation states, albeit with entirely different histories, populations and economies. A specific problem facing each of them, however, is that they must modernise their entire legal and economic systems and simultaneously adjust these to the regulatory framework of the EU. The pension schemes and family policies of both states served as examples within the scope of a study (*von Maydell / Borchardt / Henke / Muffels / Leitner*, Enabling social Europe, 2006).

Bernd Baron von Maydell

III. Promotion of Junior Researchers

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

It is possible to deduce certain structures for the division of responsibility between the state and society from the specific configuration of social security systems and how they are embedded in both statute and constitutional law. Reforms to social benefit schemes often lead to a re-allocation of responsibility, in particular where demands on the "personal responsibility" of individuals are altered or "state responsibility" is subject to substantive amendments.

The participants (*Grienberger-Zingerle*, *Landauer*, *Matthäus*, *Mimentza, Quade*) in the doctoral group on "state responsibility for social security in flux", set up in 2004, conduct research on this overarching theme. They moreover single out differing aspects of state responsibility and individual self-responsibility in their dissertations and elaborate the ensuing issues from a comparative law perspective, thereby focusing on Germany, Switzerland, Austria, Spain, England and the United States.

Martin Landauer

1.1. State Responsibility for the Provision of Institutional Long-Term Care – A Comparative Legal Analysis of Germany and England

The demographic trend predicted for Germany's ageing population will, over the medium term, lead to a rise in the demand for long-term care arrangements in general and institutional care services in particular. In future, not only the number of elderly persons in residential homes is expected to rise. In view of the growing proportion of geriatric care cases, also the demands on providing long-term nursing care will increase accordingly. There is some doubt whether the nursing home sector is capable of coping with the challenges which face it already, not to mention those which will arise as society ageing progresses. In its second report published in August 2007 on the quality of ambulatory and institutional care, the Medical Service of Health Insurance (MDK) pointed out major quality deficiencies in institutional care in Germany.

In light of these developments and proceeding from the overarching theme of shared responsibility between the state and society, the dissertation investigates state responsibility in the field of institutional long-term care. To that end, the study embarks on a juridical comparison between the German and the English legal system. It highlights the respective public long-term care benefits and subsequently examines how state agencies seek to steer the activities of private nursing home operators in order to induce them to meet the respective social policy expectations.

The main focus of the thesis is on the analysis, classification and legal assessment of the diverse regulatory instruments employed by the state in attempting to meet its responsibility in the sphere of institutional long-term care. The historically differing structural designs of the two countries' benefit delivery schemes are reflected in the likewise differing control instruments employed by the two jurisdictions. Especially in England, quality control aspects still seem to be dominated by traditional regulatory approaches rooted in hierarchical command and control systems. By reverting also to findings obtained from the so-called regulatory sciences, the study will moreover strive to infer explicit demands on various control instruments from the sector-specific features of institutional long-term care. This is also to illuminate reasons for the increased reference to seemingly outdated regulatory concepts such as that of "command and control". The findings gained from the country reports will ultimately flow into a commentary on the debate over the need to adjust general administrative law to the specific demands posed by the enabling state.

The investigation, which centres on the analysis of legal structures of steering the private sector in the field of institutional long-term care, is first and foremost based on a normative approach. However, it also reverts to the insights gained from neighbouring empirical disciplines, such as sociological research or nursing science, as a means of illustrating and underpinning its own findings.

Martin Landauer

1.2. Responsibility and its Attribution under Employment Promotion Law – A Comparative Law Analysis of "Employment Promotion Schemes" in the United States and Germany

"If a man does not choose to work, neither shall he eat." (*2 Thess. 3.10*) "He who does not work, shall not eat." (*August Bebel*) These two famous citations from utterly different sources describe two possible attributions of responsibility in working societies. The former puts in a nutshell the current allocation of responsibility in the employment promotion law of Germany, whereas the latter does so for the United States. This finding condenses into one "basic rule" the diversity of legal structural differences found in the labour promotion laws on either side of the Atlantic. Not only in linguistic terms can this basic rule be applied directly to the attribution of responsibility for the phenomenon of unemployment. In legal reality, such an attribution of responsibility is certainly much more complicated and variegated – thus the assumption; however, the subject matter has not been academically explored to date. Hence, the investigation has set itself this task by way of a so-called phenomena-oriented social law comparison.

The special feature of this methodology is that it "operationalises" the phenomenon "responsibility in connection with unemployment" prior to the actual comparison. In this way, the individual phenomena of responsibility and unemployment are processed both linguistically and socio-scientifically. The next step is to formulate specific circumstances that serve as indicators for the attribution and distribution of responsibility. The actual juridical comparison then seeks to elaborate and give a detailed account of the definitional elements of these circumstances in the two national legal systems. Finally, the criteria gained by operationalising the phenomenon of "responsibility" are formulated and compared in terms of responsibility attribution and distribution. For the better understanding of contemporary legal structures, the historical development of employment promotion policy in both states as well as the constitutional foundations of their respective welfare state or social state regimes are extensively taken into account.

A conspicuous aspect is that historical developments in the United States and Germany exhibit certain parallels. On the other hand, their welfare/social state regimes differ decisively in terms of whether individuals are able to assert claims against the state for a sociocultural subsistence minimum. In Germany, such a claim is derived from Articles 1(1) and 20(1) of the *Grundgesetz* (GG – Basic Law). In the United States, any such entitlement has repeatedly been denied by the U.S. Supreme Court, just as the U.S. government is not generally entrusted with any protection duties on behalf of its citizens. Furthermore, Article 20(1) GG obliges the German government to adopt a social policy, whereas Article I section 8(1) of the U.S. Constitution merely entrusts the federal government with the competence "to provide for… the general welfare of the United States".

Interestingly, despite similar social policy guidelines, contemporary legal structures in the two countries differ markedly, as does the distribution of responsibility between the actors with a view to the social risk of unemployment. Last but not least, the attribution mechanisms in unemployment promotion law likewise exhibit fundamental differences. This is most clearly revealed in the allocation of financial responsibility under the respective unemployment insurance schemes.

Besides reflecting on methodological requirements, the investigation is devoted to the highly detailed phenomenology of responsibility and unemployment. The country reports moreover furnish a systematic and contemporary description of the two unemployment law regimes.

Benno Quade

1.3. Damage Mitigation Duties under the Liability and Social Security Laws of Germany, Austria and Switzerland

The dissertation takes a comparative law perspective in examining the duties imposed on beneficiaries in the event of health-related impairments that result in claims to social benefits. The main focus is on the cooperation duties of persons entitled to sickness or disability benefits under social law, including the consequences arising from an infringe-

ment of these duties. The damage mitigation obligation under civil law was included in the study as it closely ties in with this subject matter. The selection of comparison countries sought to take account of the fact that damage mitigation issues surface only in conjunction with the respective legal system, but are not an independent problem of their own. Austria and Switzerland, the countries chosen for the comparison, have similarly developed and structured benefit systems in both their liability and social security law regimes, so that analogous problems may be expected. The investigation was based on the premise that restitution and compensation for impairments to health through the award of damages and social benefits are an expression of responsibility.

The obligation to mitigate damages under liability law is not actually a *legal* obligation but rather an *incidental* obligation that calls upon the beneficiary to undertake what is deemed reasonable. The beneficiary's blameworthy infringement of this obligation may lead to a curtailment or loss of the claim for damages. Any such curtailment must be in keeping with each party's contribution to causation and fault.

The social law part of the study seeks to elaborate the statutory bases for damage mitigation duties in the compared legal systems and, if necessary, to trace the relevant lines of development in both the literature and case law. The obligation to mitigate damages under liability law formed the basis for the recognition of this duty in both the Austrian and the Swiss social security regimes – initially only under social insurance law and later extending to the entire corpus of social law. Hence, similarities were to be expected in the legal situations prevailing under the social security and liability law of the two legal systems. These similarities were nonetheless also evident in German social law although it had not been subject to the same direct influence. As in the case of liability law, damage mitigation duties under social law constitute incidental obligations to take reasonable measures to remedy or mitigate health impairments, or their consequences, which give rise to social benefit claims. Under social law, too, these duties function as the basis for the right to refuse benefits but may in part already take effect at the preceding level of benefit prerequisites, notably as regards the principle of "rehabilitation takes precedence over pension payment". A major distinction vis-à-vis liability law is the unreserved obligation of the benefit-awarding institution to draw attention to the damage mitigation duty before its infringement can have any negative consequences for benefit entitlement.

The comparison of Germany's social law regulations with those of Austria and Switzerland has shown that, contrary to other opinions found in the literature, cooperation duties under this law must be understood as obligations to mitigate damages. The requirement of reasonability governing damage mitigation under liability law has its counterpart in the proportionality principle under social law. A significant criterion of reasonability/proportionality under both liability law and social law is the prospective success of damage-mitigating measures. The legal consequences of an infringement of damage mitigation duties are likewise similar under both regimes: claims to benefits are forfeited either partially or entirely, with causality constituting the utmost limit of benefit curtailment. Notwithstanding discretionary authority, any reduction of benefits must not exceed the forfeited benefit claim in case of a successful execution of measures demanded to mitigate damages. Legal consequences only take effect if the beneficiary can be blamed for the infringement of duties. Proof of blame is facilitated under social law because benefit reductions here are only allowed if the beneficiary was informed beforehand of his/her duty to cooperate.

Based on the findings thus obtained, the study ends with a critical inspection of selected problem situations encountered in German pension, health and long-term care insurance law. Essential note is also made of the fact that demands on the beneficiary to mitigate damages in social security matters must be inseparably linked to the support and cooperation of the benefit-awarding institutions.

Claudia Matthäus

1.4. Agreements in Social Law – Cooperative Instruments of Labour Administration in Germany and England: A Comparative Investigation of the "Integration Agreement" under German Law and the "Jobseeker's Agreement" under English Law

Under the Job-AQTIV Act and in implementing the findings of the so-called Hartz Commission (notably through the Fourth Act on modern labour market services and through the Federal Social Assistance Act's integration into the Social Code), the German legislature created an action instrument for the award of social benefits that used to be eclipsed by unilateral official action on the part of the administration. This new instrument takes the form of agreements between the social administration and beneficiaries concerning the award of specific social benefits, thereby stressing the beneficiaries' personal efforts in return. In the early phase of the dissertation, this novel job-promoting instrument was highly topical in conjunction with the slogan of "activating labour market policy". As the study progressed, this instrumental measure has been taken to illuminate the relationship between the state and its citizens along fundamental lines.

The comparative law dissertation seeks to gain insights into the regulatory frameworks, statutory rules and administrative scopes of action as well as into the limits and risks of agreements between the citizen and the state. The ultimate aim is not only to sort out and comprehend all these measures, conceived in a bout of politicking, but also to explain their (legal) functionality.
To begin with, this subject matter is related to so-called activating labour market policy. The subsequent step describes German and English labour market policies and how they tie in with the strategies of international and supranational institutions. The study is based on a fundamental examination of cooperative instruments, thus providing a frame for the subsequent country reports. This frame is ultimately employed as a grid pattern of evaluation. The fundamental part centres on quasi-contractual arrangements which merely bear the semblance of contracts on account of their structures (contractual metaphoricity!).

The respective country reports above all portray the *jobseeker's agreement* in English law as well as the two forms of *integration agreement* set out in the German Social Code (SGB III and SGB II). The basic legal structures of the corresponding unemployment protection schemes are likewise depicted. Case examples are then provided for the general remarks on reasons and aims as well as risks and limits of cooperative administration, as outlined in the fundamental part. These findings are then compared with each other and evaluated with a view to their consistency.

The jobseeker's agreement does not offer individuals any scope of action in terms of contract conclusion and subject matter. Even so, the administration is not allowed to operate in a "legal black hole" as it is bound by detailed specifications and, above all, is subject to the substantive control of the Social Security Appeal Tribunals. This system has yet to face its initial litmus test, however, since the level of unemployment has been low so far. By the same token, this means that only few jobs are available, and now that the English economy is experiencing a cyclical slowdown, one will see whether the labour administration operates efficiently. And one will see whether the administration knows how to "play the game" of incentives alternating with pressure to accept work, as set out in the legal provisions, and whether in doing so it will be able to safeguard the social security system. Furthermore, it remains to be seen whether the immense costs of the New Deal will continue to meet with political backing.

The integration agreement under SGB III suffers above all from the regulatory framework of unemployment insurance. The unemployment scheme faces enormous challenges and will no doubt have to be placed on the test-bed with regard to the relevant integration instruments. The SGB III integration agreement has not been able to develop properly on account of the reforms to the labour administration and its capacities, given that this authority is still responsible for the agreement's implementation. Yet this integration agreement is important because it accomplishes the aims and options of cooperation in their purest form, without instrumentalising them for educational and sanctioning purposes. Hence, a reinforced application of this version of the integration agreement is highly desirable and would certainly be profitable to the quality and work of the labour administration.

The integration agreement under SGB II is expected to gain importance because its legally prescribed sanctioning automatism provides the administration with an efficient steering mechanism. Precisely the jobseeker's contractual commitment in tandem with the clearly defined legal options for curtailing benefits upon non-compliance still offers unexploited scopes of action.

Maria Grienberger-Zingerle

1.5. Social Benefits to Migrants with Irregular Resident Status in Germany and Spain

In recent years, migration into Europe, especially its southern states such as Spain, has been increasing steadily. This phenomenon poses immense challenges for the social security systems in the member states of the European Union. To be sure, migration and asylum policy was declared a Community responsibility under the 1999 Treaty of Amsterdam, and the Community lawmaker was given new competences under Article 63 of the TEC. Even so, this latter treaty provision only empowers the Council to set minimum standards for the admittance of asylum seekers, the recognition of refugee status and the attendant procedural law. Community lawmaking competence is moreover restricted since only regulations deemed necessary for Community asylum policy may be enacted. The social protection of migrants is thus left to the competence of the national legislator.

Germany and Spain are of particular interest in exploring the phenomenon of "migration". These EU member states represent two central types of immigration countries within the Union: Germany as a country that sought to recruit foreign workers in the 1950s and 1960s, and Spain as a country whose workers emigrated during that time, but which has now become a new southern European immigration country. While the foreign population share in Germany has remained practically unchanged for years, it rose sharply in Spain between 1999 and 2007, from 1.9 to 10.0 percent of the total population. The immigration report of the Spanish migration authority states that Spain is the country which admits the most migrants in Europe.

The dissertation investigates the social law position of foreigners with irregular resident status in Germany and Spain. In doing so, it places state responsibility in the foreground. A central aim of the study is to show whether such irregular residents are essentially entitled to claim social benefits in the countries examined (horizontal level). The comparative focus is not, however, confined to a mere description of pertinent benefits in the two country reports, but strives to elaborate elements of interaction and reflexive action between social law and aliens law in both EU member states. Relevant supranational and international treaties are also taken into account in asking whether foreigners with irregular resident status would be entitled to social benefits on the basis of these legal instruments (vertical level).

Janire Mimentza

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

The dissertations of the doctoral group dealing with the "influence of constitutional law and international law on the configuration of social security" focus on the social law systems of countries so far not at the centre of the Institute's research activities. Besides the aim of expanding research to include, above all, Eastern European states, the formation of the doctoral group was also based on the realisation that the importance of normative social security foundations is generally underestimated when framing these systems. Instead, this discourse very often tends to concentrate on basic socio-economic parameters. In an increasingly globalised world, an exploration of normative foundations is therefore hoped to contribute to the greater observance of normative aspects.

The doctoral group was launched early in 2006 and consists of four participants (*Fülöp, Olechna, Liu, Vergho*). The individual studies are devoted to a detailed depiction of the social security systems in the countries of Hungary, Poland, P. R. China and Portugal, as well as to the influence of constitutional and international law on these systems.

Following an initial retreat in February 2006, the group then met for doctoral discussions at least once a month and was joined by *Ulrich Becker* on these occasions. The start-up phase, which lasted until about the end of 2006, was chiefly used to elaborate common methodological and subject-related foundations. The second phase involved the presentation of the group members' doctoral projects in the form of lectures. This phase was concluded in May 2007 by a workshop, which was also attended by the doctoral students of *Ingwer Ebsen* (University of Frankfurt). Since the summer of 2007, content-related issues have again become the topics of monthly discussions.

Quirin Vergho

2.1. Social Security in the Republic of Poland

The investigation commences with an examination of the state's highest-ranking legal norms which serve to shape and restrict its subordinate norms. The legal norms embodied in the constitution and in international treaties rank topmost in the hierarchy of a state's legal order, so that every other legal norm must have its origins in these norms. This also applies to the provisions governing social rights.

The first part of the dissertation portrays the Polish social security system, which has been subject to enormous changes in the wake of transformation and the attendant creation of a new legal, economic and social reality. The many legal rules adopted in the process, starting with the new democratic Constitution of 1997, as well as international provisions therefore need to be investigated. This simultaneously renders new insights into the legal regime of a country whose law has largely remained unexplored owing to the political circumstances that prevailed until 1989. A prime focus is on the pension reform based on the three-pillar model, the health insurance and family benefit reform,

21/22 February 2006:

Closed meeting of the doctoral group on the "influence of constitutional law and international law on the configuration of social security", Kloster Benediktbeuern.

The two-day retreat was devoted to the in-depth examination of external and internal definitions of social security systems and of the terms "constitution" and "international law", as well as to intense discussions of the methodology used for the determination of normative influences on the social security systems of the addressed countries.

and on reforms to unemployment and social assistance legislation, given that all of these areas played an extremely subordinated role before 1989. At the same time, the particular features of the Polish social security system are highlighted; these include: the lack of unemployment and family insurance; the separate regulation of sickness and health insurance; conversely, the joint regulation of disability and survivors' benefits; and broadly defined compensation regulations. The latter pertain to pension benefits awarded to victims of war and the military, army veterans, and victims of the Nazi and Soviet regimes.

The second part of the work is devoted to the Polish Constitution and, in particular, to the principles of social justice and equal treatment as well as fundamental social rights. In addition, it looks at the international social standards set above all by the ILO, the UNO and the Council of Europe, and examines their influence on the configuration of social security in the Polish legal system.

On the one hand, the dissertation assesses the impact of constitutional and international law on social security; on the other, it depicts the social security system of the Republic of Poland.

Anna Karina Olechna

2.2. Social Security in Portugal

Constitutions and international law form the main legal framework for the establishment of social security schemes. The dissertation investigates the significance of this legal framework for social security in Portugal. The Portuguese social law system is of notable interest because the Constitution contains a detailed catalogue of fundamental social rights. Hence, a profound pervasion of social law by these constitutional aspects may be expected, especially as the Portuguese Constitutional Court is entrusted with appropriate competences. On the other hand, the country's social security regime is still quite young so that particular difficulties arise in this context. And like other industrialised countries, Portugal must face the challenges posed by demographic and socio-economic developments.

The two prime objectives of the dissertation are to analyse the Portuguese social security system and to examine how the Constitution and international law influence this system. These aims are reflected in the structure of the investigation, which correspondingly consists of two main parts.

The first part begins with a definition of social security from both an internal and an external

perspective, thus abstracting from the solutions reflected in the Portuguese system. These fundamental considerations and the portrayal of historical as well as socio-economic parameters serve as a basis for the actual analysis of the system. This analysis begins with the system's institutional and financial structures and is then followed by detailed descriptions of its component parts. The latter mainly comprise the general regime (*regime geral*), the alternative or supplementary regimes (for civil servants and bank employees, among others), the analogous regimes (non-contributory schemes and the health service) and the social assistance regime (providing so-called re-integration income).

The second part initially takes a look at the normative fundaments – that is, the active influencing factors – and asks which of these foundations from the realm of constitutional and international law are of abstract and concrete significance to the Portuguese social security system. In doing so, the investigation is not confined to substantive law positions in the form of fundamental rights, or even fundamental social rights, but rather includes other normative requirements, notably those governing competences for the interpretation of the Constitution. Only after these normative bases have been analysed from a comparative law perspective and in relation to the situation in Portugal are the

24/25 May 2007:

Doctoral workshop held by the Max Planck Institute for Foreign and International Social Law in collaboration with the Chair for Public Law, notably Social Law, Prof. Dr. Ingwer Ebsen, Johann Wolfgang Goethe-Universität, Frankfurt/Main, Max Planck Institute for Foreign and International Social Law, Munich.

Viktória Fülöp: Einfluss von Verfassung und internationalem Recht auf die Ausgestaltung der sozialen Sicherheit in Ungarn [Influence of Constitutional and International Law on the Configuration of Social Security in Hungary]

Maria Angeles Martin-Vida: Anerkennung und Schutz von sozialen Grundrechten auf verfassungsrechtlicher Ebene: Rechtsvergleichende Überlegungen zur Rolle der sozialen Grundrechte in Zeiten des Staatswandels [Recognition and Protection of Fundamental Social Rights on a Constitutional Level: Comparative Law Reflections on the Role of Fundamental Social Rights in Times of State Transformation]

Anna Karina Olechna: Der Einfluss von Verfassung und internationalem Recht auf die Ausgestaltung der sozialen Sicherheit in Polen [Influence of Constitutional and International Law on the Configuration of Social Security in Poland]

Quirin Vergho: Der Einfluss von Verfassung und internationalem Recht auf die Ausgestaltung der sozialen Sicherheit in Portugal [Influence of Constitutional and International Law on the Configuration of Social Security in Portugal]

Annett Wunder: Rechtsharmonisierung durch Auslegung der Grundfreiheiten im Lichte der Kompetenzverteilung zwischen Gemeinschaft und Mitgliedstaaten am Beispiel der grenzüberschreitenden Krankenbehandlung [Harmonisation of Law through the Interpretation of Fundamental Freedoms in Light of the Distribution of Competence between the Community and its Member States, Taking Cross-Border Medical Treatment as Example]

Dongmei Liu: Der Einfluss von Verfassung und internationalem Recht auf die Ausgestaltung der sozialen Sicherheit in China [Influence of Constitutional and International Law on the Configuration of Social Security in China]

Susanne Plettner: Vertragswettbewerb in der GKV unter wettbewerbsrechtlichen Gesichtspunkten [Competition for Contracts in Statutory Health Insurance with a View to Competition Law]

Alexander Diehm: Rechtsfragen ambulanter Psychopharmakaversorgung in stationären Pflegeeinrichtungen [Legal Issues of Ambulatory Treatment with Psychotropic Drugs in Long Term Care Institutions].

individual measures of system construction contemplated. Meant here are the law-making and law-administering measures, and whether they tie in with the afore-established normative foundations. To that end, statutes and court rulings as well as the concomitant documentation are analysed as to whether they refer to the described foundations and, if so, how they have been affected by them.

Quirin Vergho

2.3. Social Security in Hungary

After the political turnaround – that is, after the change of regime, as it is referred to in Hungary – a prime necessity aside from the introduction of democracy and the capitalist conversion of the economy was to initiate a change within the realm of social affairs. This necessitated the reconfiguration of the role and duties of the state as well as the redefinition of fundamental values upon which the social security system was based. To that end, numerous constitutional amendments were adopted, and Hungary signed several international treaties addressing social rights. Responding first to the most urgent problems of the "transformation society", the legislature successively enacted laws that led to the creation of new institutions and forms of benefits. Political and academic circles soon launched into debates over the demographic situation of society and the economic efficiency of the government. By contrast, the legal framework underlying the newly established institutions was only marginally discussed and explored. These circumstances set the backdrop for the dissertation, which thus asks whether fundamental and human rights as well as other constitutional and international norms have influenced the framing of social security arrangements.

The first part of the work provides the fundament for the investigation into the influence of constitutional and international law on the configuration of the Hungarian social security system. It begins with the definition of the term "social security" and goes on to render a systematised description of the Hungarian system. The systematisation method has been selected to enable prospective comparative law analyses within the doctoral group in the form of a joint report. In addition, this methodology offers a sound basis for conducting other research on the Hungarian social security system. The in-depth description of the current system will include the legal provisions governing benefit entitlement as well as the diverse institutions and funding schemes for the individual types of benefits. The second part of the study is devoted to the influence of both constitutional and international law on the Hungarian social security system, thereby dealing with the conceptual meanings of the terms "influence", "constitutional law" and "international law".

A further objective is to look at how legislative procedures are influenced in terms of the respective texts of legal norms. This is done by analysing individual draft bills and the subsequently enacted laws on a content-related basis. The impact of constitutional and international law is likewise explored by assessing the recorded statements of legislative bodies, explanatory memorandums, committee transcripts and the minutes of parliamentary debates. The actual application of the law is reflected in the appraisal of Constitutional Court rulings. Worth stressing here is that the selected legal documentation, including the manner in which it has been influenced, is examined only with a view to its *legal* elements. That is to say, economic, cultural and other influences are left out of consideration. Even so, the concurrence of diverse factors will probably not make it possible to ascertain an unequivocal and causal legal influence in each case.

Viktória Fülöp

2.4. Social Security in the P. R. China

Since the beginning of the 20th century, China has been in the process of constructing a modern legal system through the reception of Western law, which in practice, however, often conflicts with the social structures and economic conditions prevailing in this country. Moreover, the enforceability of the citizen's fundamental rights laid down in the Constitution is the biggest problem of the Chinese legal system because these rights are not conceived as being judicially enforceable (against the state). This is reflected in the fact that Chinese law does not provide for a constitutional court. Consequently, not the Constitution and its interpretation, but

party-based decisions have steered social security policy so far.

The dissertation examines the construction and development of China's social security system in the wake of economic and societal transformation processes, paying particular attention to the role of the Constitution and the influence of international law.

The thesis first looks into the framework of the Constitution, analyses its role in social security matters and outlines future changes. In dealing with this subject matter, Chinese history and legal culture as well as traditional social structures are taken into account. The further aim is to investigate changes to the Constitution in the course of China's transformation from an agricultural country to a modern industrialised state.

The configuration of the Chinese social security system has been influenced to a greater extent by international law than by the Constitution. China is a member of the UNO and the ILO. The standards set by these organisations and transposed into Chinese law through ratification have had an extensive impact on Chinese jurisprudence. The thesis therefore illuminates the application of various international conventions and recommendations within the Chinese legal system. The intent is not only to ask how national laws have been enacted or amended on the basis of international law, but also to determine in which way international organisations seek to enforce ratified law in China through effective measures. In this context, a main focus is also on the technical assistance rendered by the ILO in the social security domain as well as on the activities of economic agencies such as the World Trade Organisation (WTO) and the World Bank.

Attempts by Western developed states to create a specific mechanism for enforcing and monitoring social standards within the frame of the WTO have considerably shaped social security legislation and legal practice in China. In order to adapt Chinese law to international trade rules, China enacted a host of laws following its accession to the WTO. The World Bank, too, has had a notable effect on the Chinese social security system. Thus, for instance, the pension insurance system was designed according to World Bank specifications.

Liu Dongmei

3. Doctoral Group: "The Triangular Benefit Delivery Relationship in Social Law"

Subject Matter

As a rule, services and benefits in kind are not delivered by the authorised funding institutions themselves, but by other private providers. This entails interaction and interdependence in the legal relationships between beneficiaries, providers and funding agencies. The statutory provisions governing legal relations between public funding institutions and private providers vary widely among the diverse social benefit schemes. In any case, state regulations are required to ensure the quality, financing and availability of social services. The necessary legal framework is based on European and national competition law, the EC fundamental freedoms and the respective national constitutional law.

In selecting appropriate steering mechanisms, the trend in Germany has been to abandon mandatory distribution procedures and, instead, to reinforce free market regulation through competitive incentives. The comparative law projects of the doctoral research students seek to determine above all how benefit delivery relationships in the compared countries have been framed and how these may affect current developments in Germany. The overarching aim of the doctoral group is the depiction, systematisation and problem-oriented analysis of underlying and generally valid structures of benefit provision in social law through private other parties.

Organisation

The third doctoral group was established in October 2007, starting with two doctorands (*Schön, Vilaclara*), and followed by a third (*Neueder)* in December 2007. In January and February 2008, the group will be completed

by two additional doctorands (*Meeßen*, *Schlegelmilch*). All group participants will be engaged in comparative law research but will work on different branches of social benefit provision. Modelled on the existing doctoral groups, the new unit will meet at regular intervals under the leadership of *Ulrich Becker* to elaborate comparative law methodology as well as key concepts and legal framework conditions relevant to the subject matter. In the process, the group members will report on the developmental stages of their own work and discuss these with the other participants. A several days' retreat is scheduled for January 2008 to stake out fundamental issues of the group's research.

Ilona Vilaclara / Markus Schön

4. *Individual Dissertation Projects*

4.1. The Occupational Accident and Disease Risk in Transnational Employment Relationships – Social Security and Employer Liability in the International Social Law of Germany and Australia

Transnational freedom of movement for workers needs to be accompanied by transnational social security. The achievement of this goal in turn necessitates the coordination of national social law systems. This has long been the subject of manifold regulations within the European Community. Yet the increased internationalisation of worldwide labour markets has shifted the effects of labour migration on the protection of social rights to this international level as well. Where comprehensive international coordination is lacking, gaps in protection may arise. The example of German-Australian relations was taken to investigate this risk in the above dissertation. The main focus was on occupational accidents and diseases, which not only involve the social protection of migrants but also raise the question of employers' tort liability.

On the one hand, problems of lacking coordination in this area relate to conflict-of-law issues concerning insurance obligation or entitlement; on the other, they arise in connection with the fulfilment of requisite criteria abroad and with the export of benefits. Apart from that, German statutory accident insurance with its substitution of the employer's private law liability diverges markedly from the liability regulations governing Australian schemes. Consequently, if the respective social insurance statute and the accident location do not coincide, restrictions on liability, crediting and recourse provisions or subrogation can only unfold limited effects within the international context.

With these aspects in mind, the author examined the two national legal systems with a view to their international social law orientation. She was able to establish the necessary foundations for this project in the course of a research stay at the University of Sydney and in collaboration with the Centre of Employment and Labour Relations Law in Melbourne. These findings were applied to the problem of coordination by way of a juridical comparison. To the extent that shortcomings were revealed, the study sought to elaborate concrete propositions for their solution. To that end, special attention was devoted to the possibilities for framing an inter-state agreement law and to existing accident insurance agreements. Included in the comparison at this level were the multilateral EC coordination rules as model provisions on specific freedom of movement issues. To warrant the highest possible degree of up-to-dateness, reference was made to the new coordination Regulation (EC) No 883/2004 and its Implementing Regulation, thereby pointing out the relevant changes vis-à-vis Regulation (EEC) No 1408/71.

Beyond this specific subject matter, the dissertation has developed generally valid and systematic aspects central to the coordination of accident insurance law. The introductory chapter on methodology describes the foundations of the comparative law analysis based on the systematisation of regulatory problems and principles inherent in international accident insurance law. The actual investigation was conducted by screening diverse individual cases in order to cover all the essential constellations and, in this way, to reveal their problematic aspects, enhance their clarity and ensure the comparability of solutions found in the different legal systems.

Monika Goller

4.2. The Admissibility of Social Award Criteria in the Light of EC Law

Public procurement law regulates the conditions under which the state is allowed to purchase goods and services from private undertakings. The primary function of this law is to meet the requirements of the public sector in fulfilling its tasks in accordance with the principle of "best value for public money". Numerous EU member states, however, have a long tradition of using public procurements to accomplish objectives beyond the pure coverage of public sector needs. Thus, public procurers often specify social award criteria which, for example, require tendering undertakings to employ long-term unemployed persons, trainees and women or to pay collectively agreed wages at the location of service provision. Still fairly widespread, moreover, is the ongoing protectionist tendency of the public sector to favour the home economy when awarding public contracts.

Against this conflict-laden background, the thesis examines whether and to what extent Community law permits public procurers to bind the award of public contracts to the fulfilment of social criteria. The study begins by illuminating the public procurement legislation valid until 31 December 2006 as well as the pertinent case law of the ECJ, notably its interpretation of the term "the most economically advantageous tender", which is common to all EC Directives on public procurement. The next step analyses the argument whereby the consideration of social award criteria is deemed to violate the prohibition of state aid under Article 87(1) of the TEC. Here, the aim is not only to refute this argument but, beyond that, to deduce arguments *in favour of* the admissibility of social award criteria under Community law by comparing EC state aid and public procurement legislation. The core objective of the thesis is therefore to compare these two highly dynamic fields of EC legislation, first, by taking a general look at their common features and, second, by elaborating concrete parallels between "compensation payments for the provision of services of general interest" and social award criteria.

In addition, the application of social award criteria is related to the judgments of the ECJ regarding *affirmative action* measures on the basis of Article 141 of the TEC and its derived secondary legislation. The Court has recognised such measures as being admissible for the realisation of equal opportunities. Accordingly, similarities in regulatory technique and mode of operation between these two fields are highlighted. The findings are reinforced by insights gained from the use of the cross-sectional instrument of *mainstreaming* which the Community legis-

lator has applied as an efficient method for achieving social policy goals. Proceeding from there, the overall issue of considering social aspects for the award of public contracts is subjected to a detailed review of proportionality that critically assesses all previous objections to the use of social award criteria. Of particular interest here is the award criterion that requires compliance with collectively agreed wages, this aspect being of exceptional relevance to practice and at the same time highly contested. The public procurement regime under EC secondary law as well as the case law of the ECJ on minimum wages is thereby appraised in terms of the freedom to provide services.

By distilling all of these results, the investigation arrives at specific requirements for the admissibility of social award criteria in terms of both primary and secondary EC legislation. The obtained findings are subsequently taken to review whether the manner in which social criteria have been incorporated into the new Public Procurement Directives, in force since 1 January 2007, comply with these requirements.

Ariane Wiedmann

4.3. Mediation in Bavarian Social Jurisdiction

The dissertation is embedded in the two-year model project "Mediation in Social Jurisdiction" (see II.2.6.). The main focus is on researching the legal framework governing internal judicial mediation in Bavarian social courts.

In the field of public law, mediation procedures have so far mainly been conducted in connection with environmental and planning law. By contrast, the subject matter of proceedings mediated within the scope of the above model project pertains to the classic forms of administrative action. This raises a series of questions concerning the regulatory framework of mediation in this area of public law. These issues must be explored with a view to constitutional and administrative law requirements, including social law. Mediation presupposes the negotiating authority of the competent administration. This makes it necessary to enquire about the leeway available to administrative authorities and their possibilities for taking action. An expedient approach, beyond that of legal doctrine, is therefore seen in assessing the practical experience gained from the model project. Accordingly, the thesis is not only devoted to a jurisprudential analysis, but also scrutinises practice-based model cases.

Internal court mediation involves alternative dispute settlement procedures embedded within a jurisdiction. The study thus also explores how mediation can be incorporated into court proceedings. The main focus is on options for the in-court mediation *de lege lata*. If required, legal policy aspects are also illuminated, as are necessary extensions and modifications of framework provisions *de lege ferenda*.

Nikola Friedrich

4.4. Free Movement of Physicians within the European Union

The opening of health care markets and the current move towards greater "liberalisation" has heightened the importance of physicians' professional mobility across the European Union. Despite extensive discussion, it still remains questionable on what scale such mobility can or may be used in the first place. This is because the freedom of accessing and exercising a profession often conflicts with common welfare interests. Correspondingly, Community measures for the approximation of laws may conflict with national regulations. The dissertation examines potential limits to the claiming and extension of the Community right to free movement on the part of physicians with a view to the conflicting priorities of European integration and individual member state sovereignty. The central aim of the study is to inspect the major obstacles to the free movement of physicians in terms of access to and exercise of the medical profession in light of the freedom of establishment and the freedom to render services.

Based on the intrinsic features of the medical profession, the status of physicians within society is elaborated. This is supplemented by reflections on the position of physicians in a National Health Service arrangement, on the one hand, and a social insurance system, on the other. Subsequently, the competences of

both the EU and its member states for taking health care action on behalf of the public interest are discussed. The applicability of a graded proportionality test model to state interventions in the free movement of physicians is examined and confirmed. By illustrating the overall setting for the regulation of free movement, the right to access and exercise the medical profession is subjected to a detailed Community law appraisal, including the individual kinds of intervention in the fundamental freedoms.

The core problem of investigating limitations to the free movement of physicians in connection with the creation of a single European market lies, inter alia, in the harmonisation of diverging legal provisions. By distinguishing between market access regulations and such rules that solely impede the exercise of a profession, and by taking account of the differing justification requirements, it is possible to strike an adequate balance between the extension of free movement (of persons) envisaged by Community law, on the one hand, and member state regulations of the medical profession, on the other. The analogous application of the so-called *Keck* formula shows that regulations governing professional modalities are prohibited only if they are overtly or covertly discriminatory, unless justification grounds are provided. Conversely, pure market access regulations or professional rules that obstruct such access must be appraised in light of the prohibition of professional restrictions and can only be justified by compelling reasons of general interest. In the realm of subjective access to a profession (recognition of professional qualifications), the coordination and gradual harmonisation of professional specifications for physicians is gaining momentum. Where obstacles to the cross-border mobility of physicians are related to the distribution and administration of government resources in the health care sector, these obstacles will nevertheless continue to be erected in the field of objective access to the profession. More transparency and reinforced cooperation between member states are expected here.

Dimitris Kremalis

5. Doctorates

Supervision:
Ulrich BECKER

2006: Ariane WIEDMANN: "Die Zulässigkeit sozialer Vergabekriterien im Lichte des Gemeinschaftsrechts", Ludwig-Maximilians-Universität Munich.

2006: Monika GOLLER: "Arbeitsunfall- und Berufskrankheitenrisiko bei grenzüberschreitenden Beschäftigungsverhältnissen – Soziale Sicherheit und Arbeitgeberhaftung im internationalen Sozialrecht Deutschlands und Australiens", University of Regensburg.

2007: Claudia MATTHÄUS: "Schadensminderungspflichten im Haftpflicht- und Sozialrecht Deutschlands, Österreichs und der Schweiz", Ludwig-Maximilians-Universität Munich.

6. Habilitation

Supervisor:
Ulrich BECKER

2006: Alexander GRASER: "Gemeinschaften ohne Grenzen? Zur Dekonzentration der rechtlichen Zugehörigkeit zu politischen Gemeinschaften?", Ludwig-Maximilians-Universität Munich.

IV. Events Organised by the Institute

1. Conferences and Workshops

18/19 January 2006:
Workshop: **"Access to Social Security for Non-Citizens and Informal Sector Workers"**, Max Planck Institute for Foreign and International Social Law and Centre for International and Comparative Labour and Social Security Law (CICLASS), University of Johannesburg, South Africa.

Marius Olivier, Ulrich Becker: Welcome and overview of project
Ockert Dupper: Institutional framework, legal instruments and legal techniques relating to the promotion of access to social security for non-citizens: An international perspective
Bernd Schulte: Institutional framework, legal instruments and legal techniques relating to the promotion of access to social security for non-citizens: A German perspective
Daleen Millard: Co-ordination methods and legal instruments for promoting access to social security for non-citizens: A South African perspective
Alexander Graser: Taking inclusion seriously: An outside perspective on the Khosa decision of the Constitutional Court of South Africa
Nicola Smit: Institutional framework, legal instruments and legal techniques relating to the promotion of access to social security for informal sector workers: An international perspective
Edwin Kaseke: Institutional framework, legal instruments and legal techniques relating to the promotion of access to social security for informal sector workers: A South(ern) African perspective
George Mpedi: Promoting access to social security for informal sector workers: A German perspective
Mathias Nyenti: Adjudication and enforcement mechanisms and the administrative framework.

17 February 2006:
Workshop: **"Reform der niederländischen Krankenversicherung"** (Reform of the Netherlands Health Insurance System), Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome and overview of project
Christina Walser: The Netherlands health insurance system from a German perspective
Geert Jan Hamilton: Funding issues under the Netherlands health insurance reform
Gert Jan Velders: More flexible contracting in the Netherlands health insurance system
Bob Boelema: Supervision and the health insurance reform
Hans Maarse: Competitive elements in the Netherlands reform of health insurance.

9/10 March 2006:
Research colloquium: **"Familienpolitik in der alternden Gesellschaft. Ein deutsch-japanischer Vergleich"** (Family Policy in the Ageing Society. A German-Japanese Comparison), Tsukuba University, Japanese-German Center Berlin (djzb), German Institute for Japanese Studies (DIJ), Friedrich-Ebert-Stiftung (FES) and Max Planck Institute for Foreign and International Social Law, Tsukuba University, Tokyo, Japan.

I. Introduction and historical development
Miyoko Motozawa: Significance of the German-Japanese comparison
Toshiko Himeoka: Historical development of the term "family" and of familial forms in Germany and Japan
II. The family as a subject of government policy
Masanobu Masuda: The Japanese understanding
Wolfgang Meincke: The German understanding – the significance of family policy
Discussion: What is the meaning of family? What is the meaning of family policy? Why is there no term for

"family policy" in Japan? Chair: *Harald Kleinschmidt*
III. Demographic background
Makoto Ato: Development of family structures in society – demographic background
Sawako Shirahase: The economic significance of the family
Discussion: Need for and objectives of family policy. Chair: *Makoto Arai*
IV. Societal importance
Sumio Hatano, Harald Conrad: Welcome
Miyuki Shimoebisu: The societal importance of the family – the family providing social services
Bernd Baron von Maydell: Objectives and tasks of modern family policy
Discussion: The societal importance of the family and the societal recognition of family care work. Chair: *Yoko Tanaka*
V. Family support
Takahiro Eguchi: The legal situation in Japan with special regard to social law
Eva Maria Hohnerlein: Family support through social benefits – The legal situation in Germany, notably with respect to social law
Discussion: What is still missing? What has been ignored? Chair: *Nanako Tamiya*
VI. Comparing family policies of European countries
Uta Meier-Gräwe: Changing family realities and the paradigm shift in German family policy
Discussion: What lessons can be learned from the experiences of the European countries? Chair: *Harald Conrad*
VII. Theses for a modern family policy
Miyoko Motozawa: Presentation of a draft concept on modern family policy
Discussion: Objectives and tasks of a modern family policy designed to meet the needs of the 21st century. Chair: *Miyoko Motozawa*
Bernd Baron von Maydell: Summing up and closing statement.

11 March 2006:
Colloquium: **"Migration, Beschäftigung und soziale Sicherheit"** (Migration, Employment and Social Security) on the occasion of the 60th birthday of Prof. Dr. Michael Wollenschläger by Hans Hablitzel, Eckhard Kreßel and Ulrich Becker, Würzburg Residenz.

Ulrich Becker: Welcome
Hans Hablitzel: Formal address
Albert Schmid: The German Federal Office for Migration and Refugees (BAMF) one year after the enforcement of the Immigration Act
Eckhard Kreßel: Labour market reforms
Peter Stiegnitz: Migration of workers to and from Hungary: A sociological research on migration
Andrzej Sakson: Migration problems in Poland
Albrecht Weber: Aspects of illegal migration from the viewpoint of EC law
Ulrich Becker: Migration and social security.

22/23 June 2006:
3rd Workshop: **"General Principles of Social Security Law in Europe"**, Research Unit Europe and Social Security (RUESS) of the Katholieke Universiteit Leuven and Max Planck Institute for Foreign and International Social Law, Frauenchiemsee.

Friso Ross: The legal principle "security"
Ulrich Becker, Matthias Knecht, Danny Pieters, Benno Quade, Friso Ross, Paul Schoukens, Markus Sichert: Discussion on other legal principles.

30 June 2006:
trESS seminar: **"Die gemeinschaftsrechtliche Koordinierung der Systeme der sozialen Sicherheit in der Europäischen Union"** (The Coordination of Social Security Systems under EC Law in the European Union), EU-funded trESS network (training and reporting on European Social Security), Bernd Schulte (National trESS network expert, Germany), German Federal Ministry of Health, Berlin.

Bernd Schulte: Introduction to the seminar
Bernhard Spiegel: The new Regulation (EC) No 883/2004, the proposal for its implementing regulation and the current ECJ case law on EC coordination law
Rainer Schlegel: EC coordination law from the point of view of German social jurisdiction
Albrecht Otting: The new Regulation (EC) No 883/04 and the proposal for an implementing regulation from the point of view of the German Federal Government
Matthias Hausschild: The Regulation from the point of view of the German Pension Fund (GRV)
Hans-Holger Bauer, Frank-Peter Kampmann, Stefanie Klein, Günther Lorff: The Regulation from the point of view of statutory health insurance.

2/3 October 2006:
Workshop: **"Social Security in Germany and Japan"**, National Institute of Population and Social Security Research, Chuo University and Max Planck Institute for Foreign and International Social Law, Hakone, Japan.

Tetsuo Fukawa, Yasuko Hashimoto, Keimei Kaizuka, Kohei Komamura, Shinya Matsuda, Kotaro Tanaka, Takeshi Tsuchida, Ulrich Becker, Reinhard Busse, Gerhard Igl, Matthias Knecht, Bernd Baron von Maydell, Heinz Rothgang, Winfried Schmähl: Discussion of the country reports.

4 October 2006:
Symposium: **"Health Care, Long-Term Care and Pensions in Germany and Japan: New Forms of Solidarity and Competition"**, Institute for Health Economics and Policy, Chuo University and Max Planck Institute for Foreign and International Social Law, Tokyo, Japan.

Keimei Kaizuka: Social welfare systems – Germany and Japan
Ulrich Becker: The future direction of social security and a new form of solidarity in Japan und Germany
Reinhard Busse: Health insurance in Germany: Challenges and current developments
Heinz Rothgang: Financing, providing and regulating long-term care in Germany – What lesson can we learn form the German experience?
Winfried Schmaehl: A new paradigm shift in German pension policy and the impacts
Ulrich Becker, Bernd Baron von Maydell, Gerhard Igl, Keimei Kaizuka, Takeshi Tsuchida, Tetsuo Fukawa: Penal discussion: "Health care, long-term care and pensions in Germany and Japan: New forms of solidarity and competition".

23/24 October 2006:
2nd Workshop: **"Activating Labour Market Policies"**, Institute for Employment Research (IAB), Institute for the Study of Labour (IZA) and Max Planck Institute for Foreign and International Social Law, Bonn.

Regina Konle-Seidl, Otto Kaufmann, Werner Eichhorst: General aims and research questions of the joint project
Regina Konle-Seidl, Otto Kaufmann, Werner Eichhorst: The joint work so far: Experiences and difficulties
Dan Finn: Target groups of activation
Giuliano Bonoli: Changes in benefits, enabling schemes and benefit conditionality
Regina Konle-Seidl: Activation and the welfare state logic: Breaking with path dependence
Benno Quade: Legal foundations of activation: Activation and law – the citizen and the state
Otto Kaufmann: Activation and legal problems
Markus Sichert: Constitutional and international legal aspects of activation in different welfare states
Els Sol, Lisbeth Pedersen: Governance: Reorganization of administrative bodies
Bernd Schulte, Harm van Lieshout: Implementation: Formal and actual procedures and practical experiences, legal aspects
Christopher O'Leary, Jean-Claude Barbier: Outcomes of activation: Socio-economic aspects – General overview
Friso Ross: Outcomes of activation: Legal aspects – General overview
Markus Sichert: Outcomes of activation: Legal aspects – Specific problems
Werner Eichhorst: Preliminary conclusions – Outline of the concluding chapter.

1/2 December 2006:
XIX[th] Academic colloquium: **"Arzneimittel im Europäischen Binnenmarkt"** (Pharmaceuticals in the Internal Market), Wissenschaftliche Gesellschaft für Europarecht and Max Planck Institute for Foreign and International Social Law, Munich.

Jürgen Schwarze, Ulrich Becker: Welcome and introduction
I. Basic issues
Wulf-Henning Roth: Possibilities and limits of a single market for pharmaceuticals
Ulf Doepner: Statement on distinguishing between pharmaceutical and food products
II. Sale of pharmaceuticals
Elmar Mand: The national sales law governing the cross-border sale of pharmaceuticals
Lutz Tisch: Statement on the role of pharmacies in the supply of drugs in the internal market
III. Price rules and price regulation
Markus Sichert: New forms of drug supply and discounts for non-national providers operating within the EU
Thorsten Kingreen: Fixed prices and drug efficacy assessment
Ulrich Vorderwülbecke, Rainer Hess: Statements.

7 – 9 December 2006:
Seminar: **"Die Neustrukturierung der sozialen Sicherheit in Deutschland und in der Türkei"** (Social Security Restructuring in Germany and Turkey), Turkish and German Sections of the International Society for Labour and Social Security Law (ISLSSL) and Max Planck Institute for Foreign and International Social Law, Ankara, Turkey.

I. Reasons for and objectives of restructuring
Ulrich Becker: A German perspective
Ali Guzel: A Turkish perspective
II. The organization of social security: restructuring
Friso Ross: A German perspective
Ali Nazim Sözer: A Turkish perspective
III. Basic features of restructuring health insurance
Markus Sichert: A German perspective
Ali Riza Okur: A Turkish perspective
IV. Basic features of restructuring pension insurance
Otto Kaufmann: A German perspective
Nurşen Canıklıoğlu: A Turkish perspective
V. Restructuring social assistance
Hans-Joachim Reinhard: A German perspective
Levent Akın: A Turkish perspective.

18 December 2006:
Workshop: **"State of Research into a Global Social Order and Possibilities for its Further Investigation"**, Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome and introduction
Thilo Marauhn, Angelika Nußberger, Martin Scheinin: State of research to date
Thilo Marauhn, Angelika Nußberger, Martin Scheinin: Possibilities for investigating a global social order.

8 January 2007:
Workshop: **"Social Policy Research: Substantive Perspectives and Potential Links to Legal Aspects"**, Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome and introduction
Isabela Mares: Future directions of research in the study of social policy
Lutz Leisering: Relating sociological and legal research on global social policy
Joakim Palme: Possible links between socio-legal questions and social policy research
Isabela Mares, Lutz Leisering, Joakim Palme: Statements on interdisciplinary approaches: Potential links between the legal studies of the institute and social policy research.

19 January 2007:
German-Austrian trESS seminar on the European coordination of social seucrity legislation **"Probleme der grenzüberschreitenden Inanspruchnahme von Sozialleistungen (Grenzgänger, Patienten, Anbieter)"** (Problems of the Cross-Border Use of Social Security Benefits (Migrant Workers, Patients, Suppliers)), EU-funded trESS network (training and reporting on European Social Security),

Bernd Schulte (National trESS network expert, Germany), Walter J. Pfeil (National trESS network expert, Austria), Bavarian State Ministry of Labour and Social Welfare, Family Affairs and Women, Munich.

15 March 2007:
German-Japanese Workshop: **"Familienpolitik"** (Family Policy), Max Planck Institute for Foreign and International Social Law Munich, Tsukuba University and Japanese-German Center, Berlin.

Miyoko Motozawa, *Bernd Baron von Maydell:* Introduction
Toshihiko Hara: Family policy and demographic development (describing the problem and coming to terms with it?)
Uta Meier-Gräwe: The 7th German family report and its significance for a German-Japanese comparison
Eva Maria Hohnerlein: Women's policy and family policy
Yoko Tanaka: Corporate social and family policy
Bernd Baron von Maydell: General social and family policies.

26 March 2007 – 5 April 2007:
Expert workshop: **"Soziale Sicherheit in Indonesien"** (Social Security in Indonesia), Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Standards of international social security law
Barbara Darimont: System and structure of health insurance law in China
Peter A. Köhler: Old age pensions. History and stability of the old age pension system – basic elements
Hans-Joachim Reinhard: Unemployment insurance
Bernd Schulte: General issues in social insurance
Bernd Schulte: Death benefits
Bernd Schulte: Law enforcement
Markus Sichert: The grand legal design: Mapping basic principles and general issues of common structures of insurance law
Markus Sichert: Outlines of a law on social security administrative bodies – with special regard to issues of decentralization
Markus Sichert: Social security administrative bodies: Health insurance and financing at a glance
Markus Sichert: Designing Health Insurance Law: Funds and pooling – central and decentralised structures
Markus Sichert: Special issues of designing Health Insurance Law: Collecting contributions, pooling, contracting for services and quality management
Christina Walser: System of statutory Health Insurance Law
Christina Walser: System of work accident insurance.

19 April 2007:
Workshop: **"Perspektiven integrierter Versorgung im Wettbewerb"** (Competition within the scope of integrated care), Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome and overview of project
I. Influences of EC law and healthcare reform
Christina Walser: Integrated care in Europe – a comparative law overview
Markus Sichert: Community law provisions in the field of integrated care
Franz Knieps: Integrated care developing towards a new "regular care"?
II. Contractual competition for integrated care
Jutta Kaempfe: Competition for contracts between health insurance funds in the field of integrated care
Karsten Scholz: Competition for contracts between benefit providers in the field of integrated care
Karl-Heinz Möller: The so-called medical care centres (MVZs) and integrated care
Tobias Seiffert: Statement from the point of view of a medical care centre
Alfried Schinz: Statement from the point of view of statutory health insurance physicians.

25 May 2007:
trESS seminar: **"Die gemeinschaftsrechtliche Koordinierung der Systeme der sozialen Sicherheit in der Europäischen Union"** (The Coordination of Social Security Systems under EC Law in the European

Union), EU-funded trESS network (training and reporting on European Social Security), Bernd Schulte (National trESS network expert, Germany), Marcus Göbel, German Federal Ministry of Health, Berlin.

Bernhard Spiegel: Outline of the trESS project and trESS network
Bernd Schulte: Introduction to the seminar
Bernhard Spiegel: The European coordination of social security legislation – the current situation (with special regard to the European Report)
Franz-Peter Kampmann: The implementing regulation of Regulation (EC) No 883/2004: Title III Chapter I: Health Insurance
Matthias Hauschild: How far has Electronic Data Transfer got with respect to the new regulation
Ulrike Kraus: Taking into account child-rearing periods in other Member States according to the new Regulation
Elisabeth Reker: Cross-border medical care from the point of view of German health insurance
Günther Lorff: Statement
Bernhard Pabst: The right of recourse within EC coordination law
Rolf Schuler: The coordination of European social security legislation in the light of German case law.

22 June 2007:
4th Workshop: **"General Principles of Social Security Law in Europe"**, Research Unit Europe and Social Security (RUESS) of the Katholieke Universiteit Leuven and Max Planck Institute for Foreign and International Social Law, Katholieke Universiteit Leuven, Belgium.

11 – 13 July 2007:
Workshop: **"Choice and Competition in Hospital Health Care"**, Institute of Government and Public Affairs, University of Illinois and Max Planck Institute for Foreign and International Social Law, Frauenchiemsee.

7 September 2007:
Alumni Meeting 2007, Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome; report on the most recent developments of the Institute and its current research projects
Christina Walser: The reform of the Netherlands health insurance system against the background of the new German law on strengthening competition in statutory health insurance.

1 October 2007:
Conference: **"Perspektiven der Unfallversicherung in Japan und Deutschland"** (Perspectives of Accident Insurance in Japan and Germany), Max Planck Institute for Foreign and International Social Law, German Statutory Accident Insurance (DGUV), Munich Re, Munich.

Ulrich Becker: Welcome and overview of project
I. Insurance coverage
Kenichiro Nishimura: Accidents to and from work and occupational diseases in Japanese statutory accident insurance with special regard to the Karôshi cases and the problem of asbestos
Maximilian Fuchs: Restricting the scope of insurance coverage in German statutory accident insurance with respect to accidents to and from work and occupational diseases
II. Financing
Takashi Muranaka: The duality of capital funding and pay-as-you-go in the financing system of Japanese statutory accident insurance
Ulrich Becker: Financing statutory accident insurance – opportunities and risks when introducing funding elements
Héctor Upegui: Pros and cons of the different financing forms of the accident insurance for workers, observed in selected markets
III. Computation of pensions
Thomas Gächter: Computation of pensions in the Swiss accident insurance scheme
Andreas Kranig: Reform debate on the calculation of pensions in German statutory accident insurance.

4 – 6 October 2007:
Interdisciplinary conference: **"Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich"** (Self-Responsibility, Private and

Public Solidarity – A Comparative View of Gender Role Models in Family Law and Social Law in Europe), German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and Max Planck Institute for Foreign and International Social Law, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio (Como), Italy.

Ulrich Becker, Eva Maria Welskop-Deffaa: Welcome addresses

Trudie Knijn: The change in gender role models across Europe: Is the adult worker model on the advance?

I. Theoretical framework

Kirsten Scheiwe: Retracing the gender role models in family law and social law – an attempt at reconstruction

Eva Maria Hohnerlein: Gender role models and social benefits – issues for comparative research

Marianne Heimbach-Steins: Concepts of self-responsibility and gender role models from a socio-ethical perspective

II. Gender role models in German family and social law: Coherencies and contradictions

Stephan Meder: Self-responsibility and solidarity in family law, taking spousal maintenance after divorce as an example

Anne Sanders: Aspects of marital property law

Hans-Joachim Reinhard: Self-responsibility, marriage-related solidarity and public solidarity in contributory and non-contributory social benefit schemes: Gender role models in German social law

Ute Klammer: Independent and dependent income security of women – empirical evidence

III. A comparison across Europe of gender role models in family and social law

Italy:

Maria Giovanna Cubeddu-Wiedemann: Self-responsibility and private solidarity between spouses: Gender role models in Italian family law – notably matrimonial property law and spousal maintenance after divorce

Edoardo Ales: Gender role models under Italian social law: Individual responsibility, marriage related solidarity and public solidarity in contributory and non-contributory social benefit schemes

United Kingdom:

Anne Barlow: Self-responsibility and private solidarity between spouses: Gender role models in British family law – notably matrimonial property law and spousal maintenance after divorce

Linda Luckhaus: Gender role models under British social law – self-responsibility, marriage-related solidarity and public solidarity in contributory and non-contributory social benefit schemes

Jacqueline O'Reilly: Independent and dependent income security of women – empirical evidence

France:

Harry Willekens: Self-responsibility and private solidarity: Gender role models – notably matrimonial property law and spousal maintenance after divorce in France, with references to Belgium

Nicole Kerschen: Gender role models in French social law: Self-responsibility, marriage-related solidarity and public solidarity in contributory and non-contributory social benefit schemes

Marie-Thérèse Letablier: Independent and dependent income security of women – empirical evidence

Denmark:

Line Olsen-Ring: Self-responsibility and private solidarity between spouses: Gender role models in Danish family law – notably matrimonial property law and spousal maintenance after divorce

Kirsten Ketscher: Gender role models in Danish social law – self-responsibility, marriage-related solidarity and public solidarity in contributory and non-contributory social benefit schemes

Bent Greve: Independent and dependent income security of women – empirical evidence

IV. Summary and conclusions in a comparative perspective

Dieter Martiny: Conclusions from a comparative family law perspective

Eberhard Eichenhofer: Conclusions from a comparative social law perspective

Panel discussion: Gender role models, self-responsibility and solidarity – Where are we going in Europe? *Eberhard Eichenhofer, Jeanne Fagnani, Trudie Knijn, Dieter Martiny, Ingeborg Schwenzer, Reinhold Thiede, Paola Villa.*

5 October 2007:
Symposium: **"Die Reform des World Anti-Doping Code (WADC)"** (The Reform of the World Anti-Doping Code (WADC)), Max Planck Institute for Foreign and International Social Law, Max Planck Institute for Comparative and International Private Law and Forum on International Sports Law, Hamburg.

Reinhard Zimmermann: Welcome and introduction
Dirk-Reiner Martens: The WADC and the previous rulings of the Court of Arbitration for Sports (CAS)
Ulrich Haas: The reform of the WADC from a legal perspective
Jörg Jaksche: Commentary: The reform of the WADC – the perspective of athletes
Marion Rodewald: Commentary: The reform of the WADC – the perspective of athletes
Denis Oswald: Commentary: The reform of the WADC – the perspective of the associations
Michael Lehner: Commentary: The reform of the WADC – the perspective of sports lawyers
Ulrich Becker: Chair of discussion.

12 October 2007:
Presentation of the commemorative publication "Alterssicherung in Deutschland" (Old Age Social Security in Germany) to Prof. Dr. Franz Ruland on the occasion of his 65th birthday, Kardinal-Wendel-Haus, Munich.

Ulrich Becker: Welcome and formal address
Gerhard A. Ritter: The German social state and the reunification.

20 – 24 October 2007:
Workshop: **"Kulturwissenschaftliche Grundlegung und Erklärungshypothesen divergenter Politiken, sowie Rechtsetzung für Menschen mit Behinderung in Europa und Asien unter Bedingungen des demographischen Wandels"** (Cultural foundations and hypotheses for diverging policies and legislation on behalf of persons with disabilities in Europe and Asia under conditions of demographic change), Max Planck Institute for Foreign and International Social Law; funded by the Robert Bosch Stiftung, Kardinal-Wendel-Haus, Munich.

I. Foundations
Bernd Baron von Maydell: Introduction to the discussion
Peter Pörtner: Cultural foundations
Andreas Kruse: Forms of disability in an ageing society
Miyoko Motozawa: Disability and the family
Klaus Lachwitz: Policy and legislation on behalf of persons with disabilities between "the state and the market"
Rainer Pitschas: Persons with disabilities and local social policies
Burkhard Rappl, Alexander Drewes: Statements on disability policy in Germany
Werner Tegtmeier: Social policy, notably disability policy, in the German social state since the reunification
II. Disability policy and disability law in South and East Asia
Ming Cheng Kuo: Disability policy foundations: Asia
Kwang Seok Cheon: Services on behalf of persons with disabilities: Asia
William Gnanasekaran: India: Policy and the law relating to the integration of persons with disabilities
Soh-Yeon Won: Korea: Educational policy on behalf of young persons with disabilities and the development of legislation and adjudication
Makoto Arai: Japan: Guardianship of older persons with disabilities
Ding Na: P. R. China: The situation of gainfully employed persons with disabilities in the P. R. China
III. Disability policy and disability law in Europe
Bernd Schulte: Disability policy foundations: The European Union
Peter Trenk-Hinterberger: Services on behalf of persons with disabilities: Europe
Franz Pennings: Netherlands: Forms of healthcare services and social services on behalf of persons with disabilities








Peter A. Köhler: Sweden: Participation and access for everyone, including persons with disabilities
Jef van Langendonck: Representation of persons with disabilities in Belgian social policy
Petr Tröster: Czech Republic: The role of persons with disabilities in civil society
Maksat Kachkeev: Russia: The rights of persons with disabilities in Russia: The state of affairs with regard to current developments
IV. Further procedure – future prospects
Alexander Graser: Concluding report.

26/27 October 2007:
Workshop: **"Law and Social Security in Developing Countries"**, Max Planck Institute for Foreign and International Social Law, Munich.
Ulrich Becker: Welcome speech
I. Social security in developing countries: A theoretical perspective
Keebet von Benda-Beckmann: Law, development and social security
Lutz Leisering: Basic income schemes in developing and transitional countries
II. Collision or harmonisation of formal and informal social security?
Edwin Kaseke: Social security provisioning in Southern Africa: Developing a framework for the integration of informal social security into the formal systems
III. Developing or transforming social security in developing countries
James Midgley: Developing appropriate approaches for developing social welfare in developing countries: A global perspective
Debi Saini: Community-based forms of social security: Can the Indian approach be replicated in other developing countries?

8/9 November 2007:
International Conference on the Right to Health, Max Planck Institute for Foreign and International Social Law and Pontifícia Universidade Católica do Rio Grande do Sul, Rio de Janeiro, Brazil.
I. The right to health at international level
Aart Hendriks
II. Background: Constitutional and financial law
Ulrich Becker: Constitutional background in Germany
Ingo Sarlet: Constitutional background in Brazil
Ricardo Lobo Torres: Financial background in Brazil
III. Organisation of the healthcare system
Markus Sichert: Statutory health insurance in Germany
Rodrigo Brandao: Health system in Brazil – Organizational and structural aspects
Carlos Alberto Molinaro: Access to courts and instruments of enforcement of the right to health
Daniel Sarmento: Control of administration and legislation
IV. Experience gained from other countries
Miguel Carbonell: The situation in Mexico
Marius Olivier: The situation in South Africa.

4 December 2007:
Workshop: **"Neueste Entwicklungen in der sozialen Sicherheit in Deutschland"** (Latest Developments in Social Security in Germany), Max Planck Institute for Foreign and International Social Law, Renmin University of China, Beijing.
Barbara Darimont: Deguo de canjiren shehui kaozhang (Social security of persons with disabilities in Germany)
Ulrich Becker: Social security in Germany: Emergence, extension and reform with special regard to old age pensions.

19 December 2007:
Workshop: **"Wettbewerb im Gesundheitswesen"** (Competition in the Health Care System), Max Planck Institute for Foreign and International Social Law, Munich.
Thorsten Kingreen, Ulrich Becker: The legal subject matter
Thomas Gerlinger: Issues and research approach illuminated from a social- and political-science perspective
Mathias Kifmann: Competition between health insurers from an economic perspective.

2. Guest Lectures

11 January 2006:
Dr. Fangfang YANG, Renmin University of China, Beijing, P. R. China: "Chinese Governmental Responsibility for Pension Insurance".

23 February 2006:
Surab KWIRKWAIA, Institute of State and Law of the Georgian Academy of Sciences, Tbilissi, Georgia: "Möglichkeiten für den Aufbau des Sozialstaats in postkommunistischen Gesellschaften (Allgemeine Übersicht)".

2 May 2006:
Corinne PACIFICO, University of Fribourg, Switzerland: "Koordinierung der Systeme der sozialen Sicherheit im Freizügigkeitsabkommen CH-EU".

28 June 2006:
Dr. Heping CAI, Renmin University of China, Beijing, P. R. China: "Ländliche Wanderarbeitnehmer in China – Probleme und Lösungsansätze".

30 June 2006:
Dr. Alpay HEKIMLER, Faculty of Economics, Department of Labor Economics and Industrial Relations, University of Istanbul, Turkey: "Die Sozialversicherungsreform in der Türkei: Grundlagen der Neustrukturierung des Sozialversicherungssystems".

20 July 2006:
Prof. Dr. Robert C. L. MOFFAT, Levin College of Law, University of Florida, USA: "The Entitlements Blackhole: The Transformation of the West".

11 October 2006:
Dr. Gerda NEYER / Harald WILKOSZEWSKI, Max Planck Institute for Demographic Research, Rostock: "The European Population and Policy Laboratory".

13 December 2006:
Prof. Ockert DUPPER, University of Stellenbosch, South Africa: "Challenging the Old Age Pension Eligibility Criteria in South Africa: Some Preliminary Remarks".

28 February 2007:
Qingmei QIAO, Renmin University of China, Beijing, P. R. China: "Problems and Trends in Chinese Accident Insurance Program – Learning from Germany".

6 March 2007:
Prof. Dr. Akira MORITA, Toyo University, Tokyo, Japan: "Überlegungen zur japanischen Rechtskultur – unter dem Gesichtspunkt der 'Amae' als Schlüsselbegriff".

13 March 2007:
Prof. Dr. Thomas POGGE, Columbia University, New York, USA: "Stand der Forschung und Möglichkeiten der Erforschung einer Weltsozialordnung. Anerkannt und doch verletzt: Die Menschenrechte der Armen".

22 March 2007:
Dr. Martin STEFKO, Charles University in Prague, Prague, Czech Republic: "Überblick über das Tschechische System der Sozialsicherheit".

26 March 2007:
Prof. Jian MI, China University of Political Science and Law, Beijing, P. R. China: "Überblick über das chinesische Rechtssystem".

27 March 2007:
Dr. Nico KRISCH, London School of Economics, UK: "Stand der Forschung und Möglichkeiten der Erforschung einer Weltsozialordnung".

26 April 2007:
Dr. Winfried SÜß, History Department, Ludwig-Maximilians-Universität Munich: "Der Wohlfahrtsstaat in der Krise der 1970er Jahre. Überlegungen zum deutschen Fall und Anmerkungen zum europäischen Vergleich".

19 June 2007:
Prof. Dr. Erwin MURER, Lehrstuhl Arbeits- und Sozialversicherungsrecht (Chair of labour and social insurance law), Law Faculty, University of Fribourg, Switzerland: "Zur Reform der schweizerischen Invalidenversicherung".

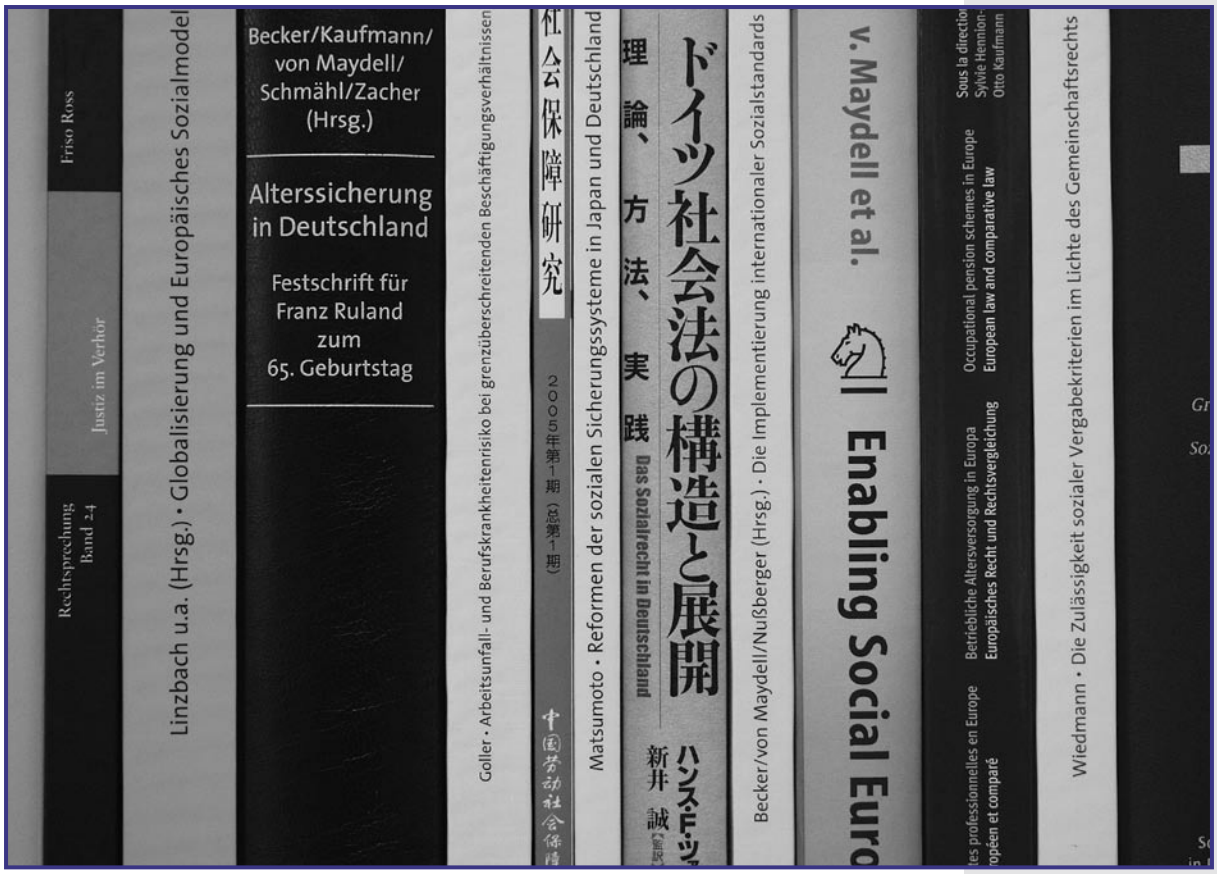
19 September 2007:
Dr. Nurşen CANIKLIOĞLU, Faculty of Law, Marmara University, Istanbul, Turkey: "Die finanziellen Leistungen aus der gesetzlichen Sozialversicherung gemäß dem Gesetz Nr. 5510".

15 November 2007:
Prof. Dr. Grega STRBAN, University of Ljubljana, Slovenia: "Reformen des Sozialrechts in Slowenien – Arbeitslosenversicherung, gesetzliche Krankenversicherung, Einführung einer Pflegeversicherung".

19 November 2007:
Prof. Gongcheng ZHENG, Renmin University of China, Beijing, P. R. China: "Zuixinde zhongguo de shehui baozhang lifa de fazhan" (Recent Developments in the Social Law of the P.R. China).

29 November 2007:
Prof. Dr. Ockert DUPPER, University of Stellenbosch, South Africa: "Recent Developments in South African Social Law".

V. Publications



1. Publications of 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. 37:* Becker, Ulrich; von Maydell, Bernd; Nußberger, Angelika (eds.): Die Implementierung internationaler Sozialstandards. Baden-Baden, 2006.

- *Vol. 38:* Wiedmann, Ariane: Die Zulässigkeit sozialer Vergabekriterien im Lichte des Gemeinschaftsrechts. Baden-Baden, 2007.

- *Vol. 39:* Matsumoto, Katsuaki: Reformen der sozialen Sicherungssysteme in Japan und Deutschland angesichts der alternden Gesellschaft. Baden-Baden, 2007.

- *Vol. 40:* Goller, Monika: Arbeitsunfall- und Berufskrankheitenrisiko bei grenzüberschreitenden Beschäftigungsverhältnissen. Baden-Baden, 2007.

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

- *Vol. 2:* Social security systems in Germany. Status quo and recent developments. Munich, 2007, 177 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 und internationales Sozialrecht and Institut für Arbeitsrecht und Arbeitsbeziehungen in der Europäischen Gemeinschaft. Heidelberg, 1987 –

Vol. 20. Iss. 1 - 4. 2006, 404 p.
Vol. 21. Iss. 1 - 2. 2007, 223 p.

2. Publications by the Institute Staff

Ulrich BECKER

— Das "Soziale" und der Wettbewerb aus juristischer Sicht. In: Deutsche Rentenversicherung (ed.), Das Soziale in der Alterssicherung. Bad Homburg, 2006, pp. 65-78.

— Deguo fading yiliao baoxian de fazhan (The development of German statutory health insurance). In: Shehui baozhang yaniju (Social security studies) (2006) 1, pp. 40-53.

— Der soziale Bundesstaat in der Europäischen Union. In: Ralf Thomas Baus / Udo Margedant (eds.), Sozialer Bundesstaat – ein Spannungsfeld. Sankt Augustin, 2006, pp. 203-222.

— Der Sozialstaat in der Europäischen Union. In: Deutscher Städtetag (ed.), Der Städtetag 59 (2006) 6, pp. 12-16.

— Gemeinschaftsrechtliche Einwirkungen auf das Vertragsarztrecht. In: Friedrich E. Schnapp / Peter Wigge (eds.), Handbuch des Vertragsarztrechts. 2nd ed. Munich, 2006, pp. 777-811.

— Schutz und Implementierung von EU-Sozialstandards. In: Ulrich Becker / Bernd von Maydell / Angelika Nußberger (eds.), Die Implementierung internationaler Sozialstandards. Baden-Baden, 2006, pp. 139-178.

— (ed.): Shehui baozhang yanjiu (Social security studies). Beijing, 2006.

— Sozialpolitische Geschichte Deutschlands. Normative Grundlagen. In: Erwin Carigiet / Ueli Mäder / Michael Opielka / Frank Schulz-Nieswandt (eds.), Wohlstand durch Gerechtigkeit. Zürich, 2006, pp. 59-71.

—; Heckmann, Dirk; Kempen, Bernhard; Manssen, Gerrit: Klausurenbuch öffentliches Recht in Bayern. Verfassungsrecht, Kommunalrecht, Polizei- und Sicherheitsrecht, öffentliches Baurecht. Munich, 2006.

—; von Maydell, Bernd; Nußberger, Angelika (eds.): Die Implementierung internationaler Sozialstandards. Baden-Baden, 2006.

— Alterssicherung im internationalen Vergleich. In: Ulrich Becker / Franz-Xaver Kaufmann / Bernd von Maydell / Winfried Schmähl / Hans F. Zacher (eds.), Alterssicherung in Deutschland. Festschrift für Franz Ruland zum 65. Geburtstag. Baden-Baden, 2007, pp. 575-610.

— Das Wettbewerbsstärkungsgesetz – eine verfassungsrechtliche Bewertung. In: Zeitschrift für das gesamte Medizin- und Gesundheitsrecht (ZMGR) (2007) 5-6, pp. 101-112.

— Einführung. In: Jürgen Schwarze / Ulrich Becker (eds.), Arzneimittel im Europäischen Binnenmarkt. Baden-Baden, 2007, pp. 3-5.

— EU-Beihilfenrecht und soziale Dienstleistungen. In: Neue Zeitschrift für Sozialrecht (NZS) 16 (2007) 4, pp. 169-176.

— Freedom of movement for workers. In: Dirk Ehlers (ed.), European fundamental rights and freedoms. Berlin, 2007, pp. 255-280.

— Hartz-IV und was sich dahinter verbirgt – Ziele, Inhalt und Bewertung des SGB II. In: Theodor Tomandl / Walter Schrammel (eds.), Sicherung von Grundbedürfnissen. Vienna, 2007, pp. 23-61.

— Migration und soziale Sicherheit – die Unionsbürgerschaft im Kontext. In: Armin Hatje / Peter M. Huber (eds.), Unionsbürgerschaft und soziale Rechte. Baden-Baden, 2007, pp. 95-111.

— Migration und soziale Sicherheit. In: Ulrich Becker / Hans Hablitzel / Eckhard Kreßel (eds.), Migration, Beschäftigung und soziale Sicherheit. Berlin, 2007, pp. 53-71.

— Solidarity, financing and personal coverage. In: The Japanese journal of social security policy 6 (2007) 1, pp. 1-30.

— Sozialrecht in der europäischen Integration – eine Zwischenbilanz. In: ZFSH SGB 46 (2007) 3, pp. 134-143.

— Verbandsautonomie und Gemeinschaftsrecht im Sport. In: Rainer Pitschas / Arnd Uhle (eds.), Wege gelebter Verfassung in Recht und Politik. Festschrift für Rupert Scholz zum 70. Geburtstag. Berlin, 2007, pp. 996-1018.

— Vorwort. In: Katsuaki Matsumoto, Reformen der sozialen Sicherungssysteme in Japan und Deutschland angesichts der alternden Gesellschaft. Baden-Baden, 2007, pp. 5-9.

—; Busse, Reinhard: Health insurance. In: Max-Planck-Institut für ausländisches und internationales Sozialrecht (ed.), Social security systems in Germany. Status quo and recent developments. Munich, 2007, pp. 7-76.

—; Hablitzel, Hans; Kreßel, Eckhard (eds.): Migration, Beschäftigung und soziale Sicherheit. Berlin, 2007.

—; Haerendel, Ulrike: Einführung: Geschlechterbezogene Differenzierung in den Altersgrenzen der Rentenversicherungssysteme. In: Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS) 21 (2007) 2, pp. 105-113.

—; Kaufmann, Franz-Xaver; von Maydell, Bernd; Schmähl, Winfried; Zacher, Hans F. (eds.): Alterssicherung in Deutschland. Festschrift für Franz Ruland zum 65. Geburtstag. Baden-Baden, 2007.

Schwarze, Jürgen; — (eds.): Arzneimittel im europäischen Binnenmarkt. Baden-Baden, 2007. (Europarecht: Beiheft; 2007/2).

Heping CAI

Ländliche Wanderarbeitnehmer in der Volksrepublik China. In: Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS) 20 (2006) 4, pp. 297-319.

Barbara DARIMONT

— Deguo jiating zai shehuifa zhong de maose (The role of the family under German social law against its cultural background). In: Shehui baozhang yanjiu (Social security studies) (2006) 1, pp. 172-181.

—; Cheng, Yanyuan: Reform und Gesetzgebung der chinesischen Arbeitsunfallversicherung. In: Gesellschaft für Versicherungswissenschaft und -gestaltung (ed.), Soziale Sicherung in China. Berlin, 2006, pp. 93-111.

— Dezentralisierung im chinesischen Einheitsstaat? In: Michael Stolleis / Wolfgang Streeck (eds.), Aktuelle Fragen zu politischer und rechtlicher Steuerung im Kontext der Globalisierung. Baden-Baden, 2007, pp. 57-73.

— Die Verabschiedung des Arbeitsvertragsgesetzes vor dem Hintergrund moderner Sklavenhaltung in der VR China (The passage of the Labour Contract Law against the background of modern slave labour in the PRC). In: China aktuell 36 (2007) 5, pp. 96-114.

— V. R. China: Frührente für Frauen zur Bekämpfung der Arbeitslosigkeit. In: Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS) 21 (2007) 2, pp. 119-126.

Cheng, Yanyuan; —: Die Debatten über die Entwürfe des Arbeitsvertragsgesetzes. In: Zeitschrift für Chinesisches Recht (ZChinR) 14 (2007) 2, pp. 172-181.

Mpedi, Letlhokwa George; —: The dualist approach to social security in developing countries. In: Journal of Social Development in Africa 22 (2007) 1, pp. 9-33.

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— Affirmative action in South Africa: (M)Any lessons for Europe? In: Verfassung und Recht in Übersee (VRÜ) 39 (2006) 2, pp. 138-164.

— Indirect social security as a means to address poverty in South Africa. In: Elize Strydom (ed.), Essential social security law. 2nd ed. Cape Town, 2006, pp. 190-204.

— Maternity protection. In: Elize Strydom (ed.), Essential social security law. 2nd ed. Cape Town, 2006, pp. 155-168.

—; MacEwen, Martin; Louw, Andre: Employment equity in the tertiary education sector in the Western Cape. In: International journal of discrimination and the law 12 (2006) 8, pp. 191-212.

Viktória FÜLÖP

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Hans F. ZACHER

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— Georg Wannagat zu seinem besonderen Geburtstag. In: Die Sozialgerichtsbarkeit (SGb) 53 (2006) 6, pp. 329-333.

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VI. Papers and Lectures

1. Papers

Ulrich BECKER

Chair of panel: **"Promoting Access to Social Security for Informal Sector Workers"**. Seminar: "On Access to Social Security for Non-Citizens and Informal Sector Workers", University of Johannesburg, South Africa (19 January 2006).

Welcome, introduction and **closing statement** of the workshop: "Reform der niederländischen Krankenversicherung", Max Planck Institute for Foreign and International Social Law, Munich (17 February 2006).

Welcome and paper: **"Migration und soziale Sicherheit"**. Colloquium on the occasion of the 60th birthday of Prof. Dr. Michael Wollenschläger: "Migration, Beschäftigung und soziale Sicherheit", Max Planck Institute for Foreign and International Social Law, Würzburg Residenz (11 March 2006).

Keynote speech: **"Die Auswirkungen der europäischen Integration auf den sozialen Bundesstaat"**. Workshop: "Sozialer Bundesstaat – ein Spannungsfeld. Sozialpolitik in föderalen Staaten", Konrad-Adenauer-Stiftung, Cadenabbia, Italy (25 March 2006).

Commentary on **"Age and Legal Reasoning"**. MaxNetAging Conference III, University of Virginia, Charlottesville, USA (10 May 2006).

Questionnaire on **"General Principles of Social Security Law in Europe (GPSoc)"**. Workshop: "Challenges for the Social Sciences and the Humanities for Europe", Max-Planck-Gesellschaft and Katholieke Universiteit Leuven (RUESS), Leuven, Belgium (11 September 2006).

Participation in the talks on **"Der Anspruch auf Krankenbehandlung in der GKV nach der Entscheidung des BVerfG"**, Institut für Europäische Gesundheitspolitik und Sozialrecht (Institute for European health policy and social law), Johann Wolfgang Goethe-Universität, Frankfurt am Main (12 September 2006).

Contribution to discussion: **"Social Protection and Social Security Reforms"**. EU-China Seminar: "The EU and China Experiences of Employment and Social Policies", European Commission, Brussels, Belgium (19 September 2006).

"Versicherte Personen der deutschen Unfallversicherung". Workshop: "Japanisch-deutscher Austausch zu Fragen des Unfallversicherungsrechts", Kyoto University, Japan (27 September 2006).

"Organisationsreform in der deutschen Unfallversicherung". Workshop: "Japanisch-Deutscher Austausch zu Fragen des Unfallversicherungsrechts", Kyoto University, Kyoto, Japan (28 September 2006).

"Health Insurance in Germany". Workshop: "German-Japanese Joint Research on Social Security (GJJRSS)", National Institute of Population and Social Security Research, Chuo University and Max Planck Institute for Foreign and International Social Law, Hakone, Japan (2 October 2006).

Opening Speech: **"The Future Direction of Social Security and a New Form of Solidarity in Japan und Germany"**. Symposium: "Health Care, Long-Term Care, and Pensions in Germany and Japan: New Forms of Solidarity and Competition", National Institute of Public Health and Ministry of Health, Labour and Welfare, Chuo University and Max Planck Institute for Foreign and International Social Law, Tokyo, Japan (4 October 2006).

"Social Security Reforms in Germany". Workshop: "Strukturelle Probleme in der medizinischen Versorgung in Deutschland und Japan", National Institute of Population and Social Security Research, Tokyo, Japan (5 October 2006).

"Der Stand des europäischen Sozialrechts". Symposium: "Soziales Europa?", Institute for European Constitutional Science (IEV), FernUniversitaet (supported

distance learning) in Hagen
(20 October 2006).

Commentary on **"Autonomy in Old Age: Voting as a Case Study"**. MaxNetAging Conference IV, Max Planck Institute for Foreign and International Social Law, Carolinska Medico-Chirurgiska Institutet and University of Virginia, Naples, Italy
(10 November 2006).

"Grundzüge des EU-Beihilferechts im Bereich der Daseinsvorsorge".
2nd symposium: "Krankenhaus und Recht", German Heart Centre, Munich
(16 November 2006).

"Soziale Rechte für Unionsbürger".
GVG-EU committee meeting of the Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Cologne
(22 November 2006).

Introduction and chair, XIXth Academic Colloquium: "Arzneimittel im Europäischen Binnenmarkt", Wissenschaftliche Gesellschaft für Europarecht and Max Planck Institute for Foreign and International Social Law, Munich (1 December 2006).

"Reformen der Sozialleistungssysteme in Deutschland – Gründe und Entwicklungsperspektiven". Seminar: "Die Neustrukturierung der sozialen Sicherheit in Deutschland und in der Türkei", Turkish and German Section of the International Society for Labour Law and Social Security and Max Planck Institute for Foreign and International Social Law, Ankara, Turkey
(7 December 2006).

Welcome and introduction. Workshop: "State of Research into a Global Social Order and Possibilities for its Further Investigation", Max Planck Institute for Foreign and International Social Law, Munich
(18 December 2006).

Welcome and introduction. Workshop: "Social Policy Research: Substantive Perspectives and Potential Links to Legal Aspects", Max Planck Institute for Foreign and International Social Law, Munich
(8 January 2007).

Commentary on **"Regionale Differenzierung des Alterns"**. Conference: "Altern, Stadtentwicklung und Umwelt", AG LeoTech Alter, Vienna, Austria
(25 January 2007).

"Reforms of Old Age Pension Insurance – International Perspectives and Legal Questions". Demographic colloquium, Max Planck Institute for Demographic Research, Rostock
(31 January 2007).

"Verfassungsrechtliche Bindungen der Krankenkassen bei Kooperationsvereinbarungen". 10th Marburg Talks on pharmaceutical law of the Forschungsstelle für Pharmarecht (research unit on pharmaceutical law), Philipps-Universität Marburg
(15 March 2007).

"Sozialmodell und Menschenbild in der Hartz IV-Gesetzgebung". 14th conference of the Academy's commission: "Die Funktion des Gesetzes in Geschichte und Gegenwart", Göttingen Academy of Sciences (16 March 2007).

"Europäische Integration und soziale Rechte". Series of papers and talks organised by the Goethe-Institut and the Centre for European Constitutional Law, Athens, Grece (20 March 2007).

"Das GKV-Wettbewerbsstärkungsgesetz – Eine verfassungsrechtliche Bewertung". Symposium: "Wettbewerbsstärkungsgesetz – Stärkung des Wettbewerbs?", Deutsche Gesellschaft für Kassenarztrecht e.V. (German association of statutory health insurance physician law), Kaiserin-Friedrich-Haus, Berlin
(18 April 2007).

Welcome and introduction. Workshop: "Perspektiven integrierter Versorgung im Wettbewerb", Max Planck Institute for Foreign and International Social Law, Munich
(19 April 2007).

Contribution to discussion, expert panel: **"European Observatory on Health Systems and Policies/Research Project"**. European Commission, Brussels, Belgium (27 April 2007).

"Hartz IV und was sich dahinter verbirgt", Institut für Arbeits- und Sozialrecht (Institute for labour and social law), University of Vienna, Traunkirchen, Austria (11 May 2007).

"Entwicklung der Rechtsprechung des EuGH zum Sozialrecht". Colloquium: "50 Jahre EU – 50 Jahre Rechtsprechung des Europäischen Gerichtshofs zum Arbeits- und Sozialrecht", German Federal Ministry of Labour and Social Affairs, Berlin (25 June 2007).

School lectures on **"Hartz IV – sozial ungerecht? Spaltung der Gesellschaft oder Rettung des Arbeitsmarktes"** within the scope of the General Meeting of the Max-Planck-Gesellschaft held before secondary school students from Toni-Jensen-Schule and Thor-Heyerdahl-Gymnasium, Kiel (28 June 2007).

Introduction to the workshop: "Choice and Competition in Hospital Health Care", Institute of Government and Public Affairs, University of Illinois and Max Planck Institute for Foreign and International Social Law, Frauenchiemsee (11 July 2007).

Welcome and report on the most recent developments of the Institute and its current research projects, Alumni Meeting 2007, Max Planck Institute for Foreign and International Social Law, Munich (7 September 2007).

Contribution to discussion of: **"Zustandsbeschreibung und mögliche Entwicklungstendenzen – Finanzierung und rechtliche Aspekte"**. Conference: "Alter, Bildung, und lebenslanges Lernen", AG LeoTech Alter, Bad Saarow, Berlin (27 September 2007).

Welcome and overview of project. Conference: "Perspektiven der Unfallversicherung in Japan und Deutschland", Max Planck Institute for Foreign and International Social Law, Munich (1 October 2007).

"Die Finanzierung der gesetzlichen Unfallversicherung – Chancen und Risiken bei Einführung von Kapitaldeckungselementen". Conference: "Perspektiven der Unfallversicherung in Japan und Deutschland", Max Planck Institute for Foreign and International Social Law, Munich (1 October 2007).

Welcome and introduction to the interdisciplinary conference: "Eigenverantwortung, private und öffentliche Solidarität – Rollenbilder im Familien- und Sozialrecht im europäischen Vergleich", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and Max Planck Institute for Foreign and International Social Law, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio (Como), Italy (4 October 2007).

Chair of the symposium: "Die Reform des World Anti-Doping Code", Max Planck Institute for Comparative and International Private Law and Forum on International Sports Law, Hamburg (5 October 2007).

Welcome and formal address at the presentation of the commemorative publication: "Alterssicherung in Deutschland" to Prof. Dr. Franz Ruland on the occasion of his 65th birthday, Kardinal-Wendel-Haus, Munich (12 October 2007).

"Der nationale Sozialstaat in der Europäischen Union: von Einwirkungen und Verschränkungen", History Department, Early Modern History and Contemporary History, Ludwig-Maximilians-Universität Munich (24 October 2007).

Welcome and commentary. Workshop: "Law and Social Security in Developing Countries", Max Planck Institute for Foreign and International Social Law, Munich (26 October 2007).

"Constitutional Background in Germany". International conference on the right to health**,** Max Planck Institute for Foreign and International Social Law and Pontifícia Universidade Católica do Rio

Grande do Sul, Rio de Janeiro, Brazil (8 November 2007).

"The Right to Health in Germany: On Social Rights under the German Constitution", II Congreso Internacional de Direitos Sociais, Procuradoria Geral do Municipio do Rio de Janeiro and Max Planck Institute for Foreign and International Social Law, Rio de Janeiro, Brazil (12 November 2007).

"Europarechtliche Rahmenbedingungen für die Beteiligten im GKV-Wettbewerb". Conference: "Vertragsmodelle – Optionen und Strategien für die Marktbeteiligten im System der GKV", Colloquium Pharmaceuticum, Frankfurt am Main (22 November 2007).

"Social Security in Germany: Emergence, Extension and Reform with Special Regard to Old Age Pensions". Workshop: "Neueste Entwicklungen in der sozialen Sicherheit in Deutschland", Max Planck Institute for Foreign and International Social Law, Renmin University, Beijing, P. R. China (4 December 2007).

"Zu den juristischen Fragestellungen" (with Thorsten Kingreen). Workshop: "Wettbewerb im Gesundheitswesen", Max Planck Institute for Foreign and International Social Law, Munich (19 December 2007).

Barbara DARIMONT

"Chinesisches und deutsches Sozialversicherungsrecht – Rezeption und Rechtstransfer?", East Asian Seminar, Freie Universität Berlin (15 February 2006).

"Soziale Sicherheit in Schwellenländern". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (28 April 2006).

"Insolvenzfähigkeit von Krankenkassen – Bedeutung, Folgen und verfassungsrechtliche Zulässigkeit". Seminar on legal questions of current social security system reforms, Jugendhaus Josefstal, Josefstal/Schliersee (12 February 2007).

"System and Structure of Health Insurance Law in China". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (2 April 2007).

"Deguo de canjiren shehui baozhang (Social security of persons with disabilities in Germany) ". Workshop: "Soziale Sicherheit behinderter Menschen in Deutschland", Max Planck Institute for Foreign and International Social Law, Renmin University, Beijing, P. R. China (4 December 2007).

Alexander GRASER

"Taking Inclusion Seriously? – An Outside Perspective on the Khosa Decision of the Constitutional Court of South Africa". Seminar: "Access to Social Security for Non-Citizens and Informal Sector Workers", University of Johannesburg, South Africa (18 January 2006).

"Equality through Law? – Some Structural Remarks on Equality Related Regulation in the US and Europe". 3rd conference of MaxNetAging, University of Virginia, Charlottesville, USA (10 May 2006).

"Das Verbot der Alterdiskriminierung – Ein Prinzip von Verfassungsrang?". Habilitation paper presented at the Faculty of Law of the Ludwig-Maximilians-Universität Munich (27 July 2006).

Concluding report. Workshop: "Kulturwissenschaftliche Grundlegung und Erklärungshypothesen divergenter Politiken, sowie Rechtsetzung für Menschen mit Behinderung in Europa und Asien unter Bedingungen des demographischen Wandels", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (24 October 2007).

Maria GRIENBERGER-ZINGERLE

"Activating Labour Market Policy – Der Landesbericht Deutschland". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (31 May 2006).

Ulrike HAERENDEL

"Gesellschaftliche Ordnungsvorstellungen im Entstehungsprozess der gesetzlichen Rentenversicherung in Deutschland, 1887-1889". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (26 July 2006).

"Frauen als Rentenversicherte im Kaiserreich". Oberseminar (graduate class) Prof. Dr. Michael Stolleis, Max Planck Institute for European Legal History, Frankfurt am Main (7 November 2006).

"Geschlechterpolitik und Alterssicherung: Das Beispiel der vorgezogenen Altersrente für Frauen". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (24 January 2007).

"Representations of Social Justice in the Discussions about an Old Age Pension System in Germany". Conference: "Imagination and Commitment. Representations of the Social Question 1870-1940", University of Groningen, Netherlands (11 May 2007).

"Alter, Gesellschaft und Recht. Zur Sozialgeschichte der Rentenversicherung im Kaiserreich 1871-1914". Oberseminar (graduate class) Prof. Dr. Hans Günter Hockerts, History Department, Ludwig-Maximilians-Universität Munich (4 July 2007).

"Die 'Gleichschaltung' der Münchner Stadtverwaltung im Dritten Reich". Conference: "Stadt und Nationalsozialismus", Austrian Working Committee for Urban History, Archive of the City and Province of Vienna, Austria (10 October 2007).

"Vorgezogene Altersrenten für Frauen: Geschichte, Funktion, internationales Recht". Conference: "Lebensalter und Recht", Max Planck Institute for European Legal History, Frankfurt am Main (19 October 2007).

Eva Maria HOHNERLEIN

"Unterstützung der Familie durch Geldleistungen und soziale Dienste – Die Situation des deutschen Rechts, insbesondere des Sozialrechts". Colloquium: "Familienpolitik in der alternden Gesellschaft. Ein deutsch-japanischer Vergleich", Tsukuba University, Japanese-German Center Berlin (jdzb), German Institute for Japanese Studies (DIJ), Friedrich-Ebert-Stiftung and Max Planck Institute for Foreign and International Social Law, Tsukuba University, Tokyo, Japan (10 March 2006).

Statement, panel discussion of the colloquium: "Familienpolitik in der alternden Gesellschaft. Ein deutsch-japanischer Vergleich", Tsukuba University, Japanese-German Center Berlin (jdzb), German Institute for Japanese Studies (DIJ), Friedrich-Ebert-Stiftung and Max Planck Institute for Foreign and International Social Law, Tsukuba University, Tokyo, Japan (10 March 2006).

"Institutionelle und familiäre Bedingungen der Kindererziehung in Deutschland", Graduate School of Social Welfare, Hanazono University, Kyoto, Japan (15 March 2006).

Statement, panel discussion of the German-Japanese symposium: "Pflegeversicherungsreform und Pflegequalitätssicherung – Aus deutschen Erfahrungen lernen", organised by the Friedrich-Ebert-Stiftung and the Conference of the Social Welfare Institutions of the Prefecture of Hyogo, Kobe, Japan (18 March 2006).

"Where are We Going to? Tendencies of Change, Transformation and Challenges". Research conference: "The Development of Public Childcare and Preschools in Europe – Path Dependencies and Change – Institutional Perspectives", University of Hildesheim (21 October 2006).

"Familienpolitik und Frauenpolitik". German-Japanese workshop: "Familienpolitik", Max Planck Institute for Foreign and International Social Law, Tsukuba University and Japanese-German Center (jdzb), Berlin (15 March 2007).

"Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich" (with Edda Blenk-Knocke). Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (16 May 2007).

"Rollenleitbilder und Sozialleistungen – Fragestellungen aus vergleichender Sicht". Interdisciplinary conference: "Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and Max Planck Institute for Foreign and International Social Law, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio (Como), Italy (5 October 2007).

"Rente weiterhin mit 57? Rentenreform in Italien". Seminar: "Alterssicherung im internationalen Vergleich", Deutsche Rentenversicherung Bund, Erkner near Berlin (26 October 2007).

Otto KAUFMANN

"Le recours préjudiciel". Workshop: "L`Europe Sociale", Robert Schuman University, Strasbourg, France (17 May 2006).

"Le service des soins de santé dans les Etats membres: Choix des assurés". European colloquium: "Dialogue sur une stratégie européenne pour les services", Confrontations Europe, Brussels, Belgium (8 June 2006).

"Modèle social européen ou modèle de société?". Internal conference: "L'engagement des acteurs sociaux", Ipse (Institut de la Protection Sociale Européenne), Helsinki, Finland and Tallinn, Estonia (paper and conference organization) (1 September 2006).

"Activation and Legal Problems". 2nd workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Institute for the Study of Labour (IZA) and Max Planck Institute for Foreign and International Social Law, Bonn (23 October 2006).

"Grundzüge der Neustrukturierung der Rentenversicherung aus deutscher Sicht". Seminar: "Die Neustrukturierung der sozialen Sicherheit in Deutschland und in der Türkei", Turkish and German Section of the International Society for Labour Law and Social Security and Max Planck Institute for Foreign and International Social Law, Ankara, Turkey (8 December 2006).

"**Einführung in das Gesamtprojekt – (How) does the Activation Work? A Comparative Analysis"**. Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (21 February 2007).

"Objectifs et réalités de la stratégie de Lisbonne. La stratégie de Lisbonne, contrepoids régulateur ou cheval de Troie de la mondialisation?". 32nd Ipse Meeting, Ipse (Institut de la Protection Social Européenne), Lisbon, Portugal (3 July 2007).

"Reform des sozialen Sicherungssystems in Deutschland: Grundsätzliches und Motive". International conference: "Wirtschaftliche und sozialpolitische Strukturreformen in Deutschland und der Türkei", Ege University and Konrad-Adenauer-Stiftung, Izmir, Turkey (19 October 2007).

Matthias KNECHT

School lecture on **"Recht und Rechtsprechung im Nationalsozialismus"** within the scope of the General Meeting of the Max-Planck-Gesellschaft; held at Toni-Jensen-Schule, Kiel (27 June 2007).

School lecture on **"Recht und Rechtsprechung im Nationalsozialismus"** within the scope of the General Meeting of the Max-Planck-Gesellschaft; held before sec-

ondary school students from Thor-Heyerdahl-Gymnasium, Kiel (28 June 2007).

School lecture on **"Der Europäische Verfassungsvertrag – Europa auf dem Weg von der Wirtschafts- zur "Werte"-Gemeinschaft"** within the scope of the General Meeting of the Max-Planck-Gesellschaft; held before secondary school students from Thor-Heyerdahl-Gymnasium, Kiel (28 June 2007).

Peter A. KÖHLER

"Sozialrechtskodifikation in Schweden". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (11 January 2006).

"Old Age Pension. History and Stability of Old Age Pension System – Basic Elements". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (3 April 2007).

"Schweden: Teilhabe und Zugang für alle – auch für behinderte Menschen". Workshop: "Kulturwissenschaftliche Grundlegung und Erklärungshypothesen divergenter Politiken, sowie Rechtsetzung für Menschen mit Behinderung in Europa und Asien und den Bedingungen des demographischen Wandels", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (23 October 2007).

Claudia MATTHÄUS

"Schadensminderung und Mitwirkung bei eingeschränkter Erwerbsfähigkeit". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (5 April 2006).

Bernd BARON VON MAYDELL

"Die Zukunftsperspektiven für das deutsche Gesundheitssystem", Rotary Club München-Mitte, Munich (3 March 2006).

"Gesellschaftliche Anerkennung von Familienarbeit – Familienarbeit und Erwerbsarbeit". Colloquium, Tsukuba University, Japan (9 March 2006).

"Gesellschaftliche Anerkennung von Familienarbeit – Familienarbeit und Erwerbstätigkeit". Colloquium: "Familienpolitik in der alternden Gesellschaft. Ein deutsch-japanischer Vergleich", Tsukuba University, Japanese-German Center Berlin (jdzb), German Institute for Japanese Studies (DIJ), Friedrich-Ebert-Stiftung and Max Planck Institute for Foreign and International Social Law, Tsukuba University, Tokyo, Japan (10 March 2006).

"Ziele und Aufgaben einer modernen Familienpolitik". Colloquium: "Familienpolitik in der alternden Gesellschaft. Ein deutsch-japanischer Vergleich", Tsukuba University, Japanese-German Center Berlin (jdzb), German Institute for Japanese Studies (DIJ), Friedrich-Ebert-Stiftung and Max Planck Institute for Foreign and International Social Law, Tsukuba University, Tokyo, Japan (10 March 2006).

"Grundzüge der deutschen Pflegeversicherung". German-Japanese symposium: "Pflegeversicherungsreform und Pflegequalitätssicherung – Aus deutschen Erfahrungen lernen", organised by the Friedrich-Ebert-Stiftung and the Conference of the Social Welfare Institutions of the Prefecture of Hyogo, Kobe, Japan (18 March 2006).

Statement, panel discussion of the German-Japanese symposium: "Pflegeversicherungsreform und Pflegequalitätssicherung – Aus deutschen Erfahrungen lernen", organised by the Friedrich-Ebert-Stiftung and the Conference of the Social Welfare Institutions of the Prefecture of Hyogo, Kobe, Japan (18 March 2006).

School lecture on **"Reform des Gesundheitssystems"**, held before secondary

students from Theodolinden-Gymnasium, Munich (24 April 2006).

"Die Rahmenbedingungen für grenzüberschreitende Gesundheitsleistungen". German-Polish conference of the Club de Genève, Wroclaw, Poland (24 May 2006).

"Die heutige Situation der deutschen Unfallversicherung, insbesondere die Reformdiskussion". German-Japanese workshop on accident insurance, Kyoto University, Japan (26 September 2006).

"Normative Issues of the Public Pension System in Germany". Workshop: "Social Security in Germany and Japan", Hakone, Japan (2 October 2006).

"Entwicklungsprobleme des deutschen Systems sozialer Sicherheit". Conference of the Deutsch-Brasilianische Juristenvereinigung e.V. (DBJV) (German-Brazilian lawyers association), Rio de Janeiro, Brazil (6 November 2006).

"Zusammenwachsendes Europa – auch im Recht". New Year's Reception, Augustinum Heidelberg (8 January 2007).

"Familienpolitik und allgemeine Sozialpolitik". German-Japanese workshop: "Familienpolitik", Max Planck Institute for Foreign and International Social Law, Tsukuba University and Japanese-German Center (jdzb), Berlin (15 March 2007).

"Die private Krankenversicherung in der Diskussion". Rotary Club München-Mitte, Munich (23 March 2007).

"Familienpolitik in Westeuropa, insbesondere Deutschland". Conference: "Familienpolitik in Estland – Nationale Gegebenheiten und europäische Einflüsse", European Academy, Domus Dorpatensis and University of Tartu, Tartu, Estonia (27 April 2007).

"Einsatz von nichtärztlichem Personal in den EU-Mitgliedstaaten". Annual meeting of the Arbeitsgemeinschaft für ArztRecht, Frankfurt am Main (12 May 2007).

"Entwicklung des europäischen und internationalen Arbeits- und Sozialrechts". ECJ colloquium of the German Federal Ministry of Labour and Social Affairs, Berlin (26 June 2007).

Introduction to the discussion. Workshop: "Kulturwissenschaftliche Grundlegung und Erklärungshypothesen divergenter Politiken, sowie Rechtssetzung für Menschen mit Behinderung in Europa und Asien unter den Bedingungen des demographischen Wandels", Max Planck Institute for Foreign and International Social Law, Munich (22 October 2007).

"Soziale Sicherheit in den Ländern der EU". European expert conference: "Die Zukunft der sozialen Sicherung in Europa", Katholisch-Soziales Institut (KSI), Bad Honnef (31 October 2007).

"External Review of the European Report". Final conference of the trESS project – training and reporting on European Social Security, Gent, Belgium (8 November 2007).

"Die Finanzierung sozialer Leistungen, insbesondere im Alter". 17th Ibero-American Congress on Labour Law and Social Security, Sao Paulo, Brazil (21 November 2007).

"Vorzeitliche Altersrenten im deutschen Rentenversicherungssystem". International expert conference of the trade union Solidarnosc, Gdansk, Poland (12 December 2007).

Benno QUADE

"Die konstitutionelle Verantwortung des Staates für das Wohlergehen des Einzelnen in den USA". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (8 March 2006).

"Legal foundations of activation: Activation and law – the citizen and the state", 2nd workshop: "Activating Labour market Policies", Institute for Employment Research (IAB), Institute for the Study of Labour (IZA) and Max Planck Institute for

Foreign and International Social Law, Bonn (23 October 2006).

Hans-Joachim REINHARD

"El factor de sustanibilidad en los pensiones alemanes". Conference: "Pensiones sustanibles para el futuro", Ministerio de Trabajo y Asuntos Sociales, Madrid, Spain (25 March 2006).

"Aktuelle Entwicklungen im deutschen Betreuungsrecht". Conference: "Betreuungsrecht in der Zukunft", Deutscher Betreuerverband (German guardians association), Erkner near Berlin (23 May 2006).

"Social Assistance and Guaranteed Minimum Income in Germany". Conference: "Formulation of Standards for Urban Subistence Security in China", Ministry of Civil Affairs of the People's Republic of China and Gesellschaft für Technische Zusammenarbeit (GTZ), Beijing, P. R. China (27 June 2006).

"Das Rentenmodell der katholischen Verbände". Workshop: "Grundsicherung in Deutschland", Ministry of Social Affairs of North Rhine-Westphalia, Düsseldorf (31 October 2006).

"Sozialhilfe und Organisation der Leistungen aus deutscher Sicht". Seminar: "Die Neustrukturierung der sozialen Sicherheit in Deutschland und in der Türkei", Turkish and German Section of the International Society for Labour Law and Social Security and Max Planck Institute for Foreign and International Social Law, Ankara, Turkey (8 December 2006).

"La Reforma de la Seguridad Social en Alemania". Social security expert meeting, Universidad Pablo de Olavide, Seville, Carmona, Spain (15 December 2006).

"Leistungen bei Pflege in Spanien". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (13 March 2007).

"Social Security in Germany". Workshop: "German Legal System", Department of Business Administration, Fulda University of Applied Sciences (27 March 2007).

"**Unemployment Insurance"**. Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (4 April 2007).

"Das Rentenmodell der katholischen Verbände". Workshop: "Grundsicherung in Deutschland", Ministry of Social Affairs of North Rhine-Westphalia, Düsseldorf (11 April 2007).

"Einführung einer Pflegeversicherung in Spanien". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (18 July 2007).

"Eigenverantwortung, eheabhängige und solidarische Absicherung von Frauen – Rollenleitbilder in der Sozialversicherung und in beitragsunabhängigen Leistungssystemen". Interdisciplinary conference: "Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and Max Planck Institute for Foreign and International Social Law, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio (Como), Italy (5 October 2007).

"'Aktivierung' aus rechtlicher Sicht". Workshop: "Aktivierung im internationalen Vergleich", Institute for Employment Research (IAB) and Max Planck Institute for Foreign and International Social Law, Munich (15 October 2007).

"Ausländische Anwartschaften im Versorgungsausgleich". Development seminar for lawyers specialised in matters of family law, Rechtsanwaltskammer München (22 October 2007).

"Reform der portugiesischen Sozialversicherung. Reform der Rentenversicherung in Europa". Workshop Deutsche Rentenversicherung Bund, Erkner near Berlin (25 October 2007).

Friso ROSS

"General Principles of Social Security Law in Europe". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (27 April 2006).

"The Legal Principle *Security*". 3rd workshop: "General Principles of Social Security Law in Europe", Reseach Unit Europe and Social Security (RUESS) of the Katholieke Universiteit Leuven and Max Planck Institute for Foreign and International Social Law, Frauenchiemsee (22 June 2006).

"Outcomes of Activation: Legal Aspects – General Overview". 2nd workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Institute for the Study of Labour (IZA) and Max Planck Institute for Foreign and International Social Law, Bonn (24 October 2006).

"Die rechtliche Organisation der sozialen Sicherheit in Deutschland". Seminar: "Die Neustrukturierung der sozialen Sicherheit in Deutschland und in der Türkei", Turkish and German Section of the International Society for Labour Law and Social Security and Max Planck Institute for Foreign and International Social Law, Ankara, Turkey (7 December 2006).

"Die rechtlichen Systeme beruflicher Rehabilitation in der Bodenseeregion (Österreich, Schweiz, Deutschland und Liechtenstein)". 2nd international workshop: "Leistungen zur Teilhabe am Arbeitsleben: Berufliche Eingliederung in der Bodenseeregion", EURES Bodensee, German Pension Insurance Baden-Württemberg and German Trade Union Federation (DGB) Baden-Württemberg, Isny (26 February 2007).

"Between *Back to Work* and *Working Poor*: Labour Market Activation in Switzerland (Sucess, Difficulties and Legal Challenges)". 5th International Research Conference on Social Security, International Social Security Association, Warsaw, Poland (5 March 2007).

"Rechtliche Herausforderungen für die sozialen Dienste in der Europäischen Union". Faculty of Social Work, Health and Nursing, University of Applied Sciences Ravensburg-Weingarten (15 June 2007).

"Das System der Existenzsicherung im deutschen Sozialrecht". Faculty of Social Work, Health and Nursing, University of Applied Sciences Ravensburg-Weingarten (15 June 2007).

"Normative Steering and Competition in Hospital Health Care – Challenging Regulatory Schemes by Way of Emerging Market Approaches" (with Markus Sichert). 5th Annual ESPAnet Conference 2007, Vienna University of Economics and Business Administration (WU Wien), Austria (21 September 2007).

"Leistungserbringung im Sozialrecht: Marktprinzip versus Steuerung durch die Leistungsträger", Department of Social Sciences, University of Applied Sciences München (22 October 2007).

"SGB II und SGB XII als rechtliche Konzepte der Mindestsicherung: Gemeinsamkeiten und Unterschiede", Department of Social Sciences, University of Applied Sciences München (22 October 2007).

"Arbeitsmarktintegration in der Schweiz: Erfolge der Arbeitslosenversicherung und Probleme der Invaliditätsversicherung". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (14 November 2007).

"Die rechtlichen Grundlagen der Globalisierung im Rehabilitations- und Kurbereich in Deutschland und in der Europäischen Union". 12th Bad Mergentheim Talks: "Reha in Europa: Gefahren und Chancen", Bad Mergentheim (21 November 2007).

"Strukturen und Prinzipien der Grundsicherung in Deutschland: Vergleichende Betrachtung von SGB II und SGB XII". Fachbereich Gesellschaftswissenschaften und Soziale Arbeit (department of social sciences and social work), University of Applied Sciences Darmstadt (22 November 2007).

Bernd Schulte

"Institutional Framework, Legal Instruments and Legal Techniques Relating to the Promotion of Access to Social Security to Non-Citizens: A German Perspective". Seminar: "Access to Social Security for Non-Citizens and Informal Sector Workers", University of Johannesburg, South Africa (18 January 2006).

"Rechtsfragen zur grenzüberschreitenden Altenpflege zwischen Deutschland und Österreich". Expert conference: "Gibt es noch Grenzen in der Altenpflege zwischen Bayern und Österreich?", organised by the Consulate General of the Republic of Austria in Munich, Rosenheim (26 January 2006).

"Neuere Entwicklungen im Sozialrecht – Die Europäische Dimension". Conference 5a: "Neuere Entwicklungen im Sozialrecht", German Judicial Academy, Trier (7 February 2006).

"Aktuelle Entwicklungen im deutschen Betreuungsrecht". Expert workshop: "Pflegeversicherung und Betreuungsrecht – Problemfelder und Reformansätze in Deutschland und Japan?", Japanische Gesellschaft für Betreuungsrecht (Japanese society on adult guardianship) and Friedrich-Ebert-Stiftung, Tokyo, Japan (14 March 2006).

"Quo vadis Europäische Verfassung? Historischer Rückblick, aktuelle Konturen aus rechts- und politikwissenschaftlicher Sicht, Perspektiven". Conference: "Die Europäische Verfassung – Status quo", Gesellschaft für sozialen Fortschritt e.V. (Association for Social Progress), Berlin (31 March 2006).

"The Community Legal Context and Social Services. Comments". Conference: "Social Services of General Interest", Austrian EU Presidency, Austrian Federal Ministry of Social Security, Generations and Consumer Protection and European Commission, Vienna, Austria (19 April 2006).

"Das Soziale Europa". Workshop: "Zu einer sozialen Verantwortung in Europa – Neue Sozialpolitische Entwicklungen in der Europäischen Union", German Welfare Congress, Düsseldorf (4 May 2006).

"Sozialpolitische Fragestellungen auf nationaler und europäischer Ebene". Workshop: "Alt und Behindert in Europa – Fragen, Ideen und Konzepte aus Wissenschaft und Praxis", Bundesverband für Körper- und Mehrfachbehinderte e. V., Berlin (5 May 2006).

"Guardianship Law in Germany and Europe". Workshop: "Guardianship Law in International Perspective – Germany, Japan and the United Kingdom", Japanische Gesellschaft für Betreuungsrecht (Japanese society on adult guardianship), London, Great Britain (10 May 2006).

"Fundamental Rights in the Member States of the European Union and the European Union". V. Seminário Internacional de Direitos Fundamentales, Pontifícia Universidade Católica do Rio Grande do Sul, Porto Alegre, Brazil (22 May 2006).

"Age Discrimination in Europe". International conference: "Impact of Ageing. A Common Challenge for Europe and Asia", Military Academy, Vienna, Austria (9 June 2006).

Project overview, seminar: "Die gemeinschaftsrechtliche Koordinierung der Systeme der sozialen Sicherheit in der Europäischen Union", organised within the scope of the EC funded trESS-project, German Federal Ministry of Health, Berlin (30 June 2006).

"Wenn die Gerechtigkeit fehlt – soziale Sicherung und soziale Standards". Special meeting: "Arbeit ist für alle da?! Zur Zukunft der Erwerbsarbeit", Evangelische Akademie Bad Boll (28 July 2006).

"Policies towards Dependency in Germany", 5th International Seminar-Course on Social Policy, 'Gumgersindo de Astaterate'-Stiftung, Madrid, Spain (25 September 2006).

Chair, résumé and closing statement, expert meeting: "Grenzüberschreitende Erbringung von Dienstleistungen im Gesund-

heits- und Sozialbereich", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and Observatory for the Development of Social Services in Europe, Berlin (26 September 2006).

Speech: **"Vom Gastarbeiter zum Mitbürger, 50 Jahre Europäische Sozialrechtskoordinierung"**, held on the occasion of the anniversary: "50 Jahre Verbindungsstelle Deutschland – Italien", German Pension Fund Schwaben, Augsburg (5 October 2006).

"Implementation of Formal and Informal Procedures and Practical Experiences, Legal Aspects". 2nd workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Institute for the Study of Labour (IZA) and Max Planck Institute for Foreign and International Social Law, Bonn (23 October 2006).

"Wie stellt sich heute Zukunft dar? – Der Markt wird europäisch. Gemeinnützigkeit, Wettbewerb, Freizügigkeit!". 7th Federal congress, The Workers' Samaritan Federation (ASB), Lübeck (26 October 2006).

Chair of the workshop: "Soziale Dienstleistungen aus europäischer Sicht, nach Einigung über die Dienstleistungsrichtlinie – Auswirkungen auf soziale Betriebe". 8th annual fair and congress for the social market in Europe, ConSocial, Nuremberg (8 November 2006).

Statement: **"Zur Zukunft der Sozial und Gesundheitsdienstleistungen in der Europäischen Union"**. Expert panel: "Zukunft der Dienstleistungen in der Europäischen Union", Konrad-Adenauer-Stiftung, Berlin (13 November 2006).

"Aktuelle Probleme der Auslegung und Anwendung europäischer und internationaler Rechtsinstrumente". Preparatory conference for the project: "Compatibility of the Ukrainian Social Security Legislation with the European and International Standards", Ministry of Labour and Social Policy of Ukraine and Council of Europe, Paris, France (5 December 2006).

"Europa ohne soziale Säule? Der Europäische Sozialkonsens als neuer Ansatz? ". Lecture on the European social model, Liaison Office of the Free State of Saxony in Brussels, Belgium (23 January 2007).

Keynote speech: **"Challenges and Solutions for Dementia Care"**. Discussion meeting: "Dementia – Who Takes Care?", European Parliament, Brussels, Belgium (24 January 2007).

"Sozialpolitische Dienstleistungen und Europäisches Gemeinschaftsrecht". Social policy colloquium: "Aktivierender Sozialstaat und Privatisierung" (Christoph Sachße/Florian Tennstedt), University of Kassel (30 January 2007).

"EU-Zuständigkeiten im Gesundheitsbereich unter Berücksichtigung der EuGH-Rechtsprechung und der Auswirkung auf das deutsche Gesundheitswesen". Expert conference: "Interessenvertretung bei der Europäischen Union unter besonderer Berücksichtigung der Auswirkungen der EU-Politiken auf das deutsche Gesundheitswesen", ZENO and Konrad-Adenauer-Stiftung, Bonn (6 March 2007).

"Europäisches Sozialrecht". Conference: "50 Jahre Römische Verträge. Supranationale Institutionen und transnationale Erfahrungsräume", Berliner Kolleg für Vergleichende Geschichte Europas, Berlin (17 March 2007).

Statement: **"Sozialdienstleistungen von öffentlichem Interesse"**. Meeting of the Expert Group "Legal Advice on Social Services of General Interest", European Commission, Directorate General for Employment and Social Affairs, Brussels, Belgium (20 March 2007).

"General Issues in Social Insurance", "Death Benefits", "Law Enforcement". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (26 March – 5 April 2007).

Statements on **"Vereinbarkeit der ukrainischen Gesetzgebung zur sozialen Sicherheit (Gesundheitswesen, Alterssicherung, Familienleistungen, Beschäftigung) mit Europäischem und Internationalem Recht"**. Meeting: "Compatibility of the Ukrainian Social Security Legislation with the European and International Standards", Ministry of Labour and Social Policy of Ukraine and Council of Europe, Kiev, Ukraine (24 – 25 April 2007).

Chair of workshop and paper on **"Chancen grenzüberschreitender sozialer Dienstleistungen"**, 5. Kongress der Sozialwirtschaft (social economy congress): "Europa sozial managen", Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege e.V. and Bank für Sozialwirtschaft in collaboration with the Bundeszentralen der Akademien der Freien Wohlfahrtspflege, Magdeburg (26 April 2007).

Paper: **"EG-rechtliche und EG-politische Vorgaben für die Entwicklung des deutschen Gesundheitswesens und die ärztliche Tätigkeit"**, held before the regional delegates at the Landesdelegiertenversammlung, Hartmannbund – Verband der Ärzte Deutschlands (German physicians association), Landesverband Bayern, Bad Griesbach (5 May 2007).

Project overview, seminar: "Die gemeinschaftsrechtliche Koordinierung der Systeme der sozialen Sicherheit in der Europäischen Union", organised within the scope of the EC funded trESS-project, German Federal Ministry of Health, Berlin (25 May 2007).

"Europäische Systeme der sozialen Sicherung im Überblick". Conference: "Soziale Sicherung in Europa: Modelle des Schutzes im Alter, bei Krankheit und bei Arbeitslosigkeit im internationalem Vergleich – Europäischer Vergleich der rechtlichen Rahmenbedingungen und Handlungsmöglichkeiten", European Works Council of the automotive supplier ZF Friedrichshafen, Tretnang (5 July 2007).

"Internationaler Vergleich der Absicherung gesundheitlicher Risiken", Grundkurs Sozialmedizin/Rehabilitation Teil II, Bayerisches Landesamt für Gesundheit und Lebensmittelsicherheit, Akademie für Gesundheit, Ernährung und Verbraucherschutz und Bayerische Akademie für Arbeit, Sozial- und Umweltmedizin, Munich (5 August 2007).

"Pflege in Europa und Dienstleistungsfreiheit – Eine Zwischenbilanz", Parliamentary talks of the Bruesseler Kreis: "Qualität, Kundensouveränität und Finanzierbarkeit sozialer Dienstleistungen – Deutsche Sozialunternehmen fordern europaweite Regelung für soziale Dienstleistungen von allgemeinem Interesse", European Parliament, Brussels, Belgium (19 September 2007).

"Pflege in Europa und Dienstleistungsfreiheit – Eine Zwischenbilanz". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (9 October 2007).

"Behindertenpolitische Grundlegung: Die Europäische Union", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (23 October 2007).

"Möglichkeiten der Erweiterung des Sozialversicherungsschutzes auf selbständig Erwerbstätige aus verfassungs- und aus europarechtlicher Perspektive". Workshop: "Die Einbeziehung Selbständiger in die Sozialversicherung aus sozialpolitischer, finanzpolitischer und rechtlicher Sicht", Friedrich-Ebert-Stiftung, Berlin (9 November 2007).

"Auswirkung von europäischem Wirtschaftsrecht auf das Recht der Gesetzlichen Krankenversicherung". Executive conference: "Spannungsfeld Wettbewerbs-, Sozial- und Kartellrecht – Auswirkungen für Krankenhäuser, Krankenkassen und Industrie", ZENO, Berlin (26 November 2007).

"Social Inclusion – Die Europäische Dimension". Workshop: "Social Inclusion", Hans-Böckler-Stiftung, Berlin (20 December 2007).

Markus SICHERT

"Disease Management Programmes and the Risk Structure Adjustment Scheme in Germany". Report to Japanese delegation, Max Planck Institute for Foreign and International Social Law, Munich (20 March 2006).

"Choice and Competition in Hospital Health Care". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (27 April 2006).

School lecture on **"Der Sozialstaat in der Bewährung"** within the scope of the General Meeting of the Max-Planck-Gesellschaft; held at Wöhlerschule, Frankfurt am Main (11 July 2006).

School lecture on **"Die freiheitliche demokratische Grundordnung und das NPD-Verbotsverfahren"** within the scope of the General Meeting of the Max-Planck-Gesellschaft; held at Dreieichschule, Langen (11 July 2006).

School lecture on **"Das Parteiverbot in der wehrhaften Demokratie"** within the scope of the General Meeting of the Max-Planck-Gesellschaft; held at Richarda-Huch-Schule, Dreieich (12 July 2006).

Schulvortrag **"Das Sozialstaatsprinzip"** within the scope of the General Meeting of the Max-Planck-Gesellschaft; held at Main-Taunus-Schule, Hofheim (13 July 2006).

"Constitutional and International Legal Aspects to Activation in Different Welfare States". 2nd workshop: "Activating Labour Market Policies", Institute for Employment Research (IAB), Institute for the Study of Labour (IZA) and Max Planck Institute for Foreign and International Social Law, Bonn (23 October 2006).

"Outcomes of Activation: Legal Aspects – Specific Problems". 2nd workshop "Activating Labour Market Policies", Institute for Employment Research (IAB), Institute for the Study of Labour (IZA) and Max Planck Institute for Foreign and International Social Law, Bonn (24 October 2006).

"Conceptualizing Activation along Legal Lines". Expert workshop: "Interdisciplinary Workshop on Activation in Social Security", Hugo Sinzheimer Instituut, Amsterdam, Netherlands (14 November 2006).

"Neue Versorgungsformen und Rabatte für ausländische Leistungserbringer", XIXth Academic Colloquium: "Arzneimittel im Europäischen Binnenmarkt", Wissenschaftliche Gesellschaft für Europarecht and Max Planck Institute for Foreign and International Social Law, Munich (2 December 2006).

"Grundzüge der Neustrukturierung der Krankenversicherung", Turkish and German Section of the International Society for Labour Law and Social Security and Max Planck Institute for Foreign and International Social Law, Ankara, Turkey (7 December 2006).

"Das Recht der Aktivierung zur Arbeitsförderung in den Niederlanden". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (21 February 2007).

"The Grand Legal Design: Mapping Basic Principles and General Issues on Common Structures of Insurance Law". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (27 March 2007).

"Outlines of a Law on Social Security Administrative Bodies – With Special Regard to Issues of Decentralization". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (29 March 2007).

"Social Security Administrative Bodies: Health Insurance and Financing at a Glance". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft

für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (30 March 2007).

"Designing Health Insurance Law: Funds and Pooling – Central and Decentralised Structures". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (4 April 2007).

"Special Issues of Designing Health Insurance Law: Collecting Contributions, Pooling, Contracting for Services and Quality Management". Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (5 April 2007).

"Gemeinschaftsrechtliche Vorgaben für integrierte Versorgung". Workshop: "Perspektiven integrierter Versorgung im Wettbewerb", Max Planck Institute for Foreign and International Social Law, Munich (19 April 2007).

"Normative Steering and Competition in Hospital Health Care – Challenging Regulatory Schemes by Way of Emerging Market Approaches". ESPAnet Conference 2007, Vienna University of Economics and Business Administration (WU Wien), Austria (21 September 2007).

"Statutory Health Insurance in Germany". International Conference on the Right to Health**,** Max Planck Institute for Foreign and International Social Law and Pontifícia Universidade Católica do Rio Grande do Sul, Rio de Janeiro, Brazil (8 November 2007).

"Promoting and Saving Social Security Standards by Constitutional Control". II Congreso Internacional de Direitos Sociais, Procuradoria Geral do Municipio do Rio de Janeiro and Max Planck Institute for Foreign and International Social Law, Rio de Janeiro, Brazil (12 November 2007).

Quirin VERGHO

"Das portugiesische Alterssicherungssystem – Stand der Reformbestrebungen". Conference: "Alterssicherung im internationalen Vergleich", Deutsche Rentenversicherung Bund, Erkner near Berlin (25 October 2007).

Christina WALSER

"Die niederländische Reform der Krankenversicherung aus deutscher Sicht". Workshop: "Reform der niederländischen Krankenversicherung", Max Planck Institute for Foreign and International Social Law, Munich (17 February 2006).

"Die Reform der Krankenversicherung der Niederlande – ein Modell für Deutschland?". Meeting of the Board of Trustees, Max Planck Institute for Foreign and International Social Law, Munich (29 April 2006).

"EuGH-Rechtsprechung im Bereich grenzüberschreitender Inanspruchnahme von Gesundheitsdienstleistungen und ihre Auswirkung auf Anbieter und Nutzer und Nutzerinnen und die Sozialschutzsysteme". Expert meeting: "Grenzüberschreitende Erbringung von Dienstleistungen im Gesundheits- und Sozialbereich", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and Observatory for the Development of Social Services in Europe, Berlin (29 September 2006).

"Die Reform der niederländischen Krankenversicherung". Conference: "Koordinierung und Umsetzung von Europarecht in das nationale Sozialrecht der EU-Mitgliedsländer", German Judicial Academy, Trier (15 November 2006).

"System of Statutory Health Insurance Law" and **"System of Work Accident Insurance"**. Expert workshop: "Soziale Sicherheit in Indonesien", Gesellschaft für Technische Zusammenarbeit (GTZ), Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG), Max Planck Institute for Foreign and International Social Law, Munich (2 – 3 April 2007).

"Integrierte Versorgung in Europa – Ein rechtsvergleichender Überblick". Workshop: "Perspektiven integrierter Versorgung im Wettbewerb", Max Planck Institute for Foreign and International Social Law, Munich (19 April 2007).

"Die niederländische Krankenversicherungsreform vor dem Hintergrund des GKV-Wettbewerbsstärkungsgesetzes". Alumni meeting 2007, Max Planck Institute for Foreign and International Social Law, Munich (7 September 2007).

"Der Arbeitsunfall im niederländischen Recht". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (12 December 2007).

Hans F. ZACHER

Commentary: **"Rechte von Kindern und Minderjährigen in internationalen Chartas"**. 12th Plenary Session of the Pontifical Academy of Social Sciences, Vatican City (1 May 2006).

"Pflichtteil und intergenerationelle Solidarität". Symposium: "Pflichtteilsrecht", Bucerius Law School, Salzau Castle near Hamburg (1 December 2006).

"Der europäische Sozialstaat". Series of papers and talks: "Reden über Europa", organised in collaboration with the Centre for European Constitutional Law, Goethe-Institut Athens, Grece (20 March 2007).

Commentary: **"International Society and the Idea of Justice"**, 13th Plenary Session, Pontifical Academy of Social Sciences, Vatican City (27 April 2007).

Speech: **"Franz-Xaver Kaufmann"**, delivered on the occasion of the awards ceremony of the "Schader-Preis 2007" for Franz-Xaver Kaufmann, Schader-Stiftung, Darmstadt (10 May 2007).

Address: **"Carl Friedrich von Weizsäcker †"**. Session of the Human Sciences Section held within the scope of the General Meeting of the Max-Planck-Gesellschaft, Kiel (27 June 2007).

2. Lectures

Ulrich BECKER

Ludwig-Maximilians-Universität Munich

WS 2005/2006: Lecture on public law: "Sozialrecht I" (2 hrs.).

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

WS 2005/2006: Seminar (focal subject 5): "Arbeits- und Sozialrecht in Europa" (with M. Coester and P. Tröster) (in collaboration with the University of Prague).

SS 2006: Public law seminar: "Fußball und Recht" (2 hrs.).

WS 2006/2007: Lecture (focal subject 5): "Grundlagen des Sozialversicherungsrechts" (2 hrs.).

WS 2006/2007: Seminar on public and social law: "Rechtsfragen aktueller Reformen sozialer Sicherungssysteme" (2 hrs.).

SS 2007: Lecture "Kommunalrecht" (2 hrs.).

SS 2007: Public Law seminar: "Rechtsfragen der Dopingbekämpfung im Sport" (with D. R. Martens) (2 hrs.).

WS 2007/2008: Lecture (focal subject 5): "Grundlagen des Sozialversicherungsrechts" (2 hrs.).

WS 2007/2008: Public law seminar: "Sozialrecht und Antidiskriminierungsrecht" (2 hrs.).

Katholieke Universiteit Leuven, Belgium

2005/2006, 2006/2007: Course "EC Social Security (except coordination)" held under the "European Master's in Social Security" programme.

Guest lectures

22 May 2006: "Recent Reforms of German Social Insurance Systems", Faculty of Law, Department of Labour Law and Social Security Law, University of Ljubljana, Slovenia.

4 December 2007: "Social Security and Constitution – On the Role of Social and Civil Rights for Social Protection", Renmin University, Beijing, P. R. China.

5 December 2007: "Social Security in Germany: Emergence, Extension and Reform with Special Regard to Old Age Pensions", Southwest University of Finance and Economics, Chengdu, P. R. China.

7 December 2007: "Social Security in Germany: Emergence, Extension and Reform with Special Regard to Old Age Pensions", Zhejiang University, Hangzhou, P. R. China.

Carlos L. COTA

WS 2005/2006: "Basics in Legal English I", Faculty of Law, Ludwig-Maximilians-Universität Munich (2 hrs.).

SS 2006: "Basics in Legal English II", Faculty of Law, Ludwig-Maximilians-Universität Munich (2 hrs.).

Ockert DUPPER

WS 2005/2006: Public law seminar: "Antidiskriminierungsrecht in Deutschland / Antidiscrimination Law in Germany" (with U. Becker) (2 hrs.).

Otto KAUFMANN

Robert Schuman University, Strasbourg, France

2006/2007: Lectures on European social law within the scope of the "Master 2 Droit Social", Faculté de Droit.

2006/2007: Seminars on German, French and European labour and social law, Institut du Travail.

2007/2008: Lectures on European social law within the scope of the "Master 2 Droit Social", Faculté de Droit.

2007/2008: Seminars on German, French and European labour and social law, Institut du Travail.

Other Universities

March/April 2006: Lecture: "Europäische Sozialpolitik/Gemeinschaftsrecht", Cours de Politiques Sociales Européennes within the scope of the "Master International Franco-Polonais", University of Wroclaw, Poland (9 hrs.).

December 2006: Lecture: "Droit allemand et droit international" within the scope of the "Master 2 droit, Santé et Protection Sociale", Université de Rennes I and Ecole Nationale de la Santé Publique, France (10 hrs.).

March/April 2007: Lecture: "Europäische Sozialpolitik/Gemeinschaftsrecht", Cours de Politiques Sociales Européennes within the scope of the "Master International Franco-Polonais", University of Wroclaw, Poland (9 hrs.).

12 March 2007: Guest lecture: "L'assurance dépendance en Allemagne" within the scope of the programme "Population et société", IDHEAP (Institut de hautes études en administration publique), Swiss Graduate School of Public Administration, Lausanne, Switzerland (4 hrs.).

December 2007: Lecture: "Droit allemand et droit international" within the scope of the "Master 2 droit, Santé et Protection Sociale", Université Rennes I and Ecole Nationale de la Santé Publique, France (10 hrs.).

Other seminars

11 – 12 April 2006: Development seminar: "Connaissance des systèmes de santé et de la couverture maladie dans l´Union Européenne (European social law and cross-border medical care)", organised with the Institut de la Protection Sociale Européenne (Ipse) on behalf of Formation Inter Mutuelles Assistance, Niort, France.

Matthias KNECHT

WS 2006/2007: "Sozialwirtschaftliche Gestaltungsformen im internationalen Rahmen", Fachbereich Allgemeinwissenschaften und Betriebswirtschaftslehre, University of Applied Sciences Kempten (2 hrs.).

Friso ROSS

WS 2006/2007: "Grundkurs Öffentliches Recht I", Arbeitsgemeinschaft, Ludwig-Maximilians-Universität Munich (2 hrs.).

Martha ROSSMAYER

WS 2006/2007: Lecture: "Einführung in die Politikwissenschaft", Evangelische Fachhochschule Nuremberg, Fachbereich Sozialwesen (2 hrs.).

SS 2007: Lecture: "Politische Steuerung und politische Beteiligung", Evangelische Fachhochschule Nuremberg, Fachbereich Sozialwesen (2 hrs.).

Markus SICHERT

Guest lectures

15 November 2006: "The Law of Activation in the Netherlands" (Master Course "Labour Law"), Hugo Sinzheimer Instituut, Amsterdam, Netherlands.

16 July 2007: "Die Rolle des Europäischen Rechts für die Zukunft des deutschen Gesundheitswesens", held within the scope of the seminar: "Europäische Sozialpolitik und das Deutsche Gesundheitswesen", Political Science Department, Leibniz Universität Hannover.

VII. Grantees and Guests

1. Grantees

1 August 2005 – 31 July 2006: Dr. Fangfang YANG, Renmin University of China, Beijing, P. R. China: "Systematic Comparison of Governments' Responsibility for Social Insurance between Germany and China".

1 January 2004 – 31 December 2006: Prof. Dr. Ockert C. DUPPER, University of Stellenbosch, South Africa: "Entwicklungen und Reformen des Sozialrechts in den USA in vergleichender Perspektive".

2 August 2006 – 31 August 2006: Prof. Dr. Makoto ARAI, University of Tsukuba, Tokyo, Japan: "Rechtsfürsorge im Sozialstaat aus betreuungsrechtlicher Perspektive".

9 January 2007 – 9 April 2007: Dr. Martin STEFKO, Charles University in Prague, Czech Republic: "Grenzüberschreitende Sachverhalte im Sozialrecht des EU-Mitgliedstaates".

1 February 2007 – 30 June 2007: Dr. Winfried SÜß, Ludwig-Maximilians-Universität Munich: "Von der Reform in die Krise. Der westdeutsche Wohlfahrtsstaat 1966-1982".

1 June 2007 – 31 August 2007: Dr. Matteo BORZAGA, Università degli Studi di Trento, Italy: "Scheinselbständige und arbeitnehmerähnliche Personen im italienischen und deutschen Sozialrecht".

1 September 2007 – 30 September 2007: Dr. Nurşen CANIKLIOĞLU, Faculty of Law, Marmara University, Istanbul, Turkey: "Sozialrechtliche Fragen der Subunternehmerschaft, Arbeitnehmerüberlassung und des Betriebsübergangs".

15 September 2007 – 2 October 2007: Prof. Dr. Kenichiro NISHIMURA, Kyoto University, Japan: "Wegeunfälle und Berufskrankheiten in der japanischen gesetzlichen Unfallversicherung".

1 November 2007 – 30 November 2007: Dr. Grega STRBAN, University of Ljubljana, Slovenia: "Reformen in Slowenien".

2. Guests

1 October 2005 – 27 February 2006: Surab KWIRKWAIA, Institute of State and Law of the Georgian Academy of Sciences, Tbilissi, Georgia: "Möglichkeiten und Grenzen für den Aufbau des Sozialstaates in postkommunistischen Gesellschaften".

1 March 2006 – 26 May 2006: Corinne PACIFICO, University of Fribourg, Switzerland: "Amtshilfe und Zusammenarbeit der Behörden und Einrichtungen gemäß Art. 8 Lit. e FZA (Freizügigkeitsabkommen)".

1 April 2006 – 31 March 2007: Prof. Dr. Akira MORITA, Toyo University, Tokyo, Japan: "Überlegungen zur japanischen Rechtskultur – unter dem Gesichtspunkt der 'Amae' als Schlüsselbegriff".

3 April 2006 – 31 March 2007: Prof. Dr. Junko TAKAHATA, Kyoto Sangyo University, Japan: "System der Arbeitslosenversicherung in Deutschland und Japan (Rechtsvergleichende Studie)".

22 May 2006 – 15 December 2006: Dr. Heping CAI, Renmin University of China, Beijing, P. R. China: "Das deutsche Recht der sozialen Sicherheit".

1 July 2006 – 31 July 2006: Prof. Dr. Qinqin SHEN, China Institute of Industrial Relations, Beijing, P. R. China: "Die Arbeitslosenversicherung und die Sozialpolitik in Deutschland".

3 July 2006 – 31 August 2006: Prof. Dr. Kwang-Seok CHEON, College of Law, Yonsei University, Seoul, Korea: "Die Entwicklung des deutschen Sozialrechts in den letzten 10 Jahren unter der globalen Diskussion über die Krise und Reform des Wohlfahrtsstaates".

25 July 2006 – 23 August 2006: Prof. Dr. Miyoko MOTOZAWA, College of Social Sciences, University of Tsukuba, Tokyo, Japan: "Familienpolitik in der alternden Gesellschaft".

2 August 2006 – 15 August 2006: Dr. Peter HERRMANN, ESOSC (European Social Organisational and Science Consultancy), The Jasnaja Poljana, Clonmoyle, Ireland: "European Social Policy and European Social Law".

1 September 2006 – 28 February 2007: Qingmei QIAO, Renmin University of China, Beijing, P. R. China: "Comparative Study between German and Chinese Accidents Insurance Systems".

1 September 2006 – 30 September 2007: Prof. Dr. Hitohiro TAKIZAWA, Momoyama Gakuin University, Osaka, Japan: "Rechtsstellung Behinderter in der Bundesrepublik Deutschland und in Japan".

9 October 2006 – 23 October 2006: Prof. Dr. Kazuaki TEZUKA, Chiba University, Japan: "Alternde Gesellschaft und Rentenprobleme".

19 March 2007 – 31 March 2007: Prof. Dr. Makoto ARAI, University of Tsukuba, Tokyo, Japan: "Rechtliche Vertretung für Menschen mit Behinderung in den EU-Staaten".

3 July 2007 – 31 July 2007: Prof. Dr. Wei-In TSAI, National Cheng Kung University, Tainan City, Taiwan: "Grundprinzipien der Finanzierung von Sozialversicherungen".

26 July 2007 – 27 September 2007: Dr. Juan Díaz RODRÍGUEZ, Universidad de La Laguna, Tenerife, Spain: "Die Entwicklung des sozialen Schutzes in Deutschland".

1 August 2007 – 31 August 2007: Prof. Dr. Makoto ARAI, University of Tsukuba, Tokyo, Japan: "Wechselbeziehungen zwischen Privatrecht und Sozialrecht".

10 August 2007 – 26 August 2007: Prof. Dr. Miyoko MOTOZAWA, University of Tsukuba, Tokyo, Japan: "Weiterentwicklung des gemeinsamen Projekts 'Familienpolitik'".

30 October 2007 – 29 March 2008: Tulia ACKSON, University of Dar es Salaam, Tanzania: "Coordination of Social Security in the Southern African Development (SADC) and East African Communities (EAC) ".

11 December 2007 – 10 April 2008: Yue FU, Graduate School of Humanities and Social Sciences, University of Tsukuba, Tokyo, Japan: "The Effects and Challenges of the Integration Policy for Migrants in EU – The German Experiences and the Harmonization in EU Level".

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 (until 8/2006)
Dr. Barbara Darimont
Dr. Alexander Graser (until 7/2006)
Dr. Eva Maria Hohnerlein
Dr. Otto Kaufmann
Dr. Matthias Knecht (from 5/2006)
Dr. Peter A. Köhler
Dr. Yasemin Körtek (from 9/2007)
George Mpedi, LL.M. (until 7/2006)
Prof. Dr. Hans-Joachim Reinhard
Dr. Friso Ross
Dr. Bernd Schulte
Dr. Markus Sichert
Dr. Christina Walser

Doctoral Candidates

Nikola Friedrich (from 5/2007)
Viktória Fülöp (from 1/2006)
Maria Grienberger-Zingerle (until 8/2006)
Martin Landauer (until 9/2006; 8/2007 to 9/2007)
Dongmei Liu (from 2/2006)
Claudia Matthäus (until 9/2006)
Janire Mimentza
Magdalena Neueder (from 12/2007)
Anna Karina Olechna (from 1/2006)
Benno Quade (until 6/2006)
Markus Schön (from 10/2007)
Quirin Vergho
Ilona Vilaclara (from 10/2007)

Academic Assistants

Katharina Beckmann (until 9/2006)
Dr. Edda Blenk-Knocke (from 11/2006)
Martin Breuer
Mathias Enzler (from 11/2007)
Dr. Ulrike Haerendel (from 7/2006)
Nuria Homfeld (until 9/2007)
Susanne Jagla (until 9/2006)
Dr. Matthias Knecht (until 4/2006)
Doreen Knöfel (from 5/2006)
Claudia Laes (until 11/2007)
Luise Lauerer (from 4/2007)
Martin Landauer (from 10/2007)
Claudia Matthäus (10/2006 to 2/2007)
Magdalena Neueder (2/2007 to 5/2007)
Thomas Neumair (from 8/2007)
Douglas von Rittberg (until 12/2007)
Melanie Schmidt (from 5/2007)
Markus Schön (8/2007 to 9/2007)
Ingo Seitz (from 10/2007)

Student Assistants

Lena Dobnig (until 9/2006)
Felix Grollmann (from 4/2006)
Evdokia Hatzieleftheriadi (3/2007 to 5/2007)
Yasmin Holm (from 1/2007)
Pia Jaeger (until 1/2006)
Tomasz Jarczyk (2/2007 to 10/2007)
Despoina Kanellopoulou (2/2007 to 9/2007)
Doreen Knöfel (until 4/2006)
Lukasz Kokot (from 8/2007)
Sarah Lempp (from 11/2006)
Katharina Liebe (from 11/2006)
Wiebke Maurus (2/2007 to 6/2007)
Claudia Mayer (until 7/2006)
Thomas Merl (2/2007 to 4/2007)
Sara Michalelis (from 11/2006)
Philine Nau
Thomas Neumair (4/2007 to 7/2007)
Antonia Pöhm (2/2007 to 4/2007)
Oxana Rimmer (from 4/2007)
Gianna Schlichte (from 4/2006)
Miriam Schmid (from 9/2007)
Markus Schön (until 7/2007)

Jingzhong Shang (2/2007 to 7/2007)
Mathias Skironi (from 11/2006)
Danielle Soares Delgado Campos (2/2007 to 4/2007)
Robert Spisiak (until 3/2006)
Stefan Stegner (6/2007 to 8/2007)
Dorothee Streubel (2/2007 to 4/2007)
Ralf Suhre (until 6/2007, from 10/2007)
Katrin Vehling (4/2006 to 3/2007)
Felix Walther (1/2006 to 10/2006)

Library

Henning Frankenberger (head, from 6/2006)
Christiane Hensel (head, until 5/2006)
Melanie Jackenkroll
Silke Klöckner (until 1/2006)
Kathrin Merker (from 10/2006)
Irina Neumann
Andrea Scalisi

Secretariats and Other Services

Andrea Feucht (from 6/2006)
Roswitha Ellwanger
Anna Fenzl (from 11/2007)
Marlin Freise
Hertha Fricke
Dr. Monika Nißlein (from 9/2007)
Werner Pfaffenzeller
Vera Rosburg (until 6/2006)
Dr. Martha Roßmayer (until 6/2007)
Heike Wunderlich

Translation Sevices

Esther Ihle
Eva Lutz, M.A.

Administration

(jointly with the Max Planck Digital Library)

Josef Kastner (head)
Brigitte Albrecht (from 11/2006)
Annemarie Batzek
Jutta Czöppan (until 3/2006)
Daniela Gratzl (until 8/2006)
Elfriede Hurmer (until 7/2006)
Karl-Heinz Katzbach
Sylvia Klemm
Heidrun Kohnle-Koitzsch (from 3/2007)
Eva Kraatz (from 5/2007)
Christine Moser
Claudia Pethke (from 10/2006)
Hans Puchberger (until 6/2006)
Michael Reinert
Andreas Schmidt

IT

(jointly with the Max Planck Digital Library)

Dr. Andreas Wohlschläger (head)
Oliver Janitza (from 3/2007)
Axel Römmelmayer

2. Scientific Advisory Board and Board of Trustees

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3. Library

The Institute's library offers a unique collection of specialised literature on German and foreign social law and bordering fields. In addition to the pertinent country-based social law literature, its holdings also cover European Community law, constitutional law, public international law, family law, economic law, consumer protection law and labour law, as well as some very area-specific collective fields concerning individual research projects. The holdings comprise printed statutory material, periodicals, loose-leaf editions, as well as published and "grey" (monograph) literature from over 100 countries. Also, access is provided to diverse specialist databases (JURIS, Beck, LexisNexis, OECD online, etc.) and other electronic research options. The library moreover ensures the quick procurement of external literature and documents, thus serving as a highly efficient research and working instrument for the scholars and guests of the Institute, including other academically interested users.

The library ranks among the leading research libraries and has the largest holdings of social law literature worldwide. It currently comprises over 100,000 volumes, consisting of some 8,000 bound journals and continuing sets. Serial issues embrace 238 periodicals, 111 German and 127 foreign; 191 loose-leaf collections, 152 German and 39 foreign; and 12 newspapers, 3 German and 9 foreign. In the past two years alone, the library's stock of monographs increased by nearly 10,000.

Publications by the Institute's scholars are collected by the library staff, who record, archive and make them accessible on the central electronic eDoc-Server of the Max Planck Society. Institute publications are moreover entered in an in-house database maintained by the librarians, and are thus made available via intranet.

In 2006, six new-acquisition lists were printed and forwarded to interested users. At the turn of 2006/2007, these lists were replaced by the more contemporary form of monthly electronic notices on the homepage.

Special funds appropriated in 2007 by the Max Planck Society under its library promotion programme were used to purchase additional material. In this way, gaps could be closed and certain holdings brought up to date. Additions to collective fields focused on China, Brazil, Spain, Italy and India. While procurements in 2006 had already exceeded the previous annual average by 50 percent, the number of monographs newly entered in

2007 was enlarged by 100 percent compared with previous years.

In the course of comprehensive stocktaking as well as extensive reorganisation within the reading room and the stacks, numerous media were catalogued for the first time. This further enhanced transparency and facilitated the use of library holdings. The basement stacks were furnished with 800 running metres of compact shelving for new additions of literature. Based on the inventory conducted from February to May 2007, the entire stock of monographs and serials has now been recorded in the online catalogue. And of course, all ordered media as well as works currently in processing can be researched via WebOPAC.

In summer 2006, a reading corner with a sofa and chairs was arranged and the offer of leading European dailies was extended. Besides catering for the information needs of the Institute's scholars, this measure served to create an inviting place to retreat and spend some time in the library.

Meanwhile, 35 MPI libraries use the Aleph software manufactured by ExLibris, and two further institutes plan to do so in future. The entire system and, hence, the libraries' catalogue are maintained and administered by the *Gesellschaft für wissenschaftliche Datenverarbeitung* on a central server in Göttingen. The individual libraries access the specific adaptations they themselves designed to meet their particular needs. Via the information portal VLib (Virtual Library), the holdings of nearly all MPI libraries and many other key local resources can be reached.

The adaptation to ExLibris Version 16 of the integrated Aleph 500 library system demanded major additional efforts on the part of the staff. The next conversion to Version 18 is scheduled for spring 2008. This alteration is not, however, expected to be quite as extensive and will not entail any essential changes to the WebOPAC user interface.

The long-planned access to the *Bibliotheksverbund Bayern* (BVB) will be implemented along with the installation of the above new version of the library system. As a result, the acquisition of existing data upon title entry will already be possible when cataloguing orders. Further synergy effects, the use of diverse foreign data of other large research libraries (such as, say, the Library of Congress) and a consistently high-level quality of descriptive cataloguing are thus anticipated. The Institute's stocks will also become more visible in the process. All this will substan-

tially upgrade the information available to external users.

The library's vast collection of works is increasingly attracting the interest of other academic circles. To meet the attendant needs, the so far rather limited number of guest workplaces has been extended to a present total of nine. With a view to the intensified use of the library and its holdings, Library Regulations were drafted in the summer of 2006 and took effect the following autumn.

Since summer 2007, the library has been equipped with three research terminals, which are actively used. A total of five workplace computers are available to guests. In the wake of RFID (Radio Frequency Identification) installation in autumn 2007, further reconfiguration measures have helped to give the library a more modern and appealing touch. These measures have moreover made it possible to welcome some 800 visitors to the library – in addition to the longer-term foreign guests already working at the Institute.

The RFID Project

The summer of 2006 marked the beginning of initial plans and ideas for the installation of a self-issuing and book-security system in the library. The systems of seven leading European suppliers of library charging and software systems were carefully examined in the preliminary market viewing process. Subsequently, these firms were invited to Munich to present their concepts on behalf of the specific requirements of the Institute.

The chief target was to improve and facilitate library usability through the installation of the apparatus. The usual time-consuming process of filling out borrowing slips when removing media for workplace use was generally felt to be unsatisfactory. Borrowing was to become faster and easier. A concurrent aim was to achieve more transparency by being able to ascertain the precise location of every book at all times. The aspect of book security was not given any priority, but was merely a side-effect of the aforesaid requirements. The overriding concern was thus to enable the automatic self-issuing of literature by library users and, in contrast to traditional libraries, to do so without opening the book. The new RFID technology appeared to meet these needs. The presentation of the concepts was followed by a tender procedure, which was concluded in December 2006.

The successfully procured system permits the user to self-issue media at several termi-

nals installed to that end. By way of special ID cards the Institute's scholars are able to sign in at the stations and must simply place the selected media on the surface of the self-issuing terminal. The system recognises the individual media and their number, without it being necessary to open the books and scan a barcode. So-called stack borrowing means that several media can be issued in a single step. All issue proceedings are displayed on a user-friendly touch screen. The lending procedure is concluded with the touch of a finger. Immediately after that, the altered location of the media is recorded on WebOPAC for the information of other users. Trips to the library can therefore be dispensed with as users can readily see in which office the needed book is located.
Another frequent problem of the past was "string lending" among scholars, meaning the informal handover of media; this often entailed time-consuming searches. Now every research office possesses its own hand-held scanner with which loans may be transferred via the barcode label. The borrower must only log on to WebOPAC via his/her password and the new correct location of the medium is henceforth noted in the library catalogue.

In the course of stocktaking and preparations for the RFID project, the library team was at times reinforced by up to 12 student assistants. In accordance with staff instructions, they moved holdings, affixed barcode labels to all media, and thus performed valuable preliminary maintenance and cataloguing work. After attaching labels to the over 100,000 volumes, each of these media was located in the catalogue of the electronic library system at the special converting stations. Once the correct match was confirmed, the medium was assigned an RFID chip integrating it within the library software. The ExLibris graphic design of this label serves Institute library purposes. Moreover, its barcode distinctly allocates it to the respective medium. The installation of the RFID self-issuing and book-security apparatus was successfully completed at the end of November 2007. The test phase will commence in January 2008. All functionalities will be available in spring 2008.

Henning Frankenberger

4. Homepage and Internet

An initial phase of longstanding cooperation for the design of a uniform Web presence and the implementation of a content management system (CMS) was successfully concluded in 2007 by the Max Planck law institutes (MPI for Comparative and International Private Law, Hamburg; MPI for Comparative Public Law and International Law, Heidelberg; MPI for Intellectual Property, Munich; MPI for Foreign and International Criminal Law, Freiburg; and this MPI). On that occasion, the new Web pages were presented by the project groups involved in the cooperation. The groups, comprised of the respective IT division members and researchers from the individual institutes, had been entrusted with the task of finding solutions for installing and adapting diverse data sources. This not only meant dealing with a range of IT-specific matters, but above all made it necessary to take account of concepts developed by the researchers for obtaining efficient access to juridical contents.

CMS has been installed on a common hardware platform used by all of the five above institutes. The joint editing server permits the efficient exchange of expertise between these institutes, each of which has also maintained its own Web server to allow the parallel application of specific software solutions developed in the past to meet individual requirements. The new system moreover enables researchers to administer their own Web pages and to create so-called personal homepages containing their publications and other contents. In this way, scholars can contribute their own input to the Web presentation of their institute and constantly update these entries. As required, the diverse editing functions can be used to define the online availability of any displayed information as well as the duration of data availability. All staff data maintained in internal databases and released for public access automatically appears in the relevant columns of an institute's Internet pages. This is an excellent example of the direct synergetic effects of modern computer-aided work. The advantages of such a highly standardised Website layout are readily appreciated by users as well. CMS facilitates quick and simple navigation among the manifold information offers of the Max Planck law institutes. At the same time, this jointly established platform can be enhanced efficiently by the institutes in either concerted or individual actions.

An additional project is devoted to the extension of the Institute's internal database *Amalie*, which is ultimately to include a comprehensive publications database with miscellaneous query and citation modes. *Amalie* will moreover serve as an integrated work instrument for all administrative activities concerning scholars employed with the Institute. This is to simplify work processes and heighten their efficiency.

Axel Römmelmayer

5. Honours

Makoto ARAI

2007: Humboldt Research Award presented at the Humboldt Symposium, 22 – 25 March 2007, Bamberg.

With the conferral of the Humboldt Research Award 2006 to the Japanese legal scholar, Prof. Dr. Makoto ARAI (Tsukuba University), the Humboldt Foundation honoured an internationally outstanding academic who has spent many years in investigating the socio-political challenge of the ageing society from the perspective of private and social law. For nearly ten years Professor Arai has regularly conducted research at the Max Planck Institute for Foreign and International Social Law in Munich and has been involved in projects of the German-Japanese research cooperation on family and social law. His special interest in comparative law and cultural comparisons was recently documented by his Japanese-language publication of fundamental social law studies by Hans F. Zacher edited in 2005. The Humboldt Research Award made it possible to extend his cooperation with the Max Planck Institute for Foreign and International Social Law, enabling him to spend further periods of research at the Institute in 2006 and 2007.

Friso ROSS

28 November 2006: Werner Pünder-Preis of the Johann Wolfgang Goethe-Universität, Frankfurt am Main.

The Werner Puender Prize is awarded by Frankfurt University and sponsored by Clifford Chance to honour outstanding research on topics dealing with "Freedom and Totalitarianism". Friso Ross was awarded the prize for his dissertation "Justiz im Verhör: Kontrolle, Karriere und Kultur während der Diktatur von Primo de Rivera (1923-1930)" (Justice under interrogation: modes of control, career paths and cultural life under Primo de Rivera's dictatorship, 1923-1930). In his study the author sheds light on an important period for the history of law and justice in Spain which preceded Franco's dictatorship and which has largely been forgotten in Germany. The formal address was held by Prof. Dr. Dr. h.c. mult. Michael Stolleis. The prize was presented by the Chairman of the Association of Friends and Sponsors of the University, Hilmar Kopper, and by the President of Frankfurt University, Prof. Dr. Rudolf Steinberg.
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Ulrich BECKER

5 December 2007: Appointment as visiting professor at the South Western University of Financial Economics, Chengdou, P. R. China.

6. Work of Institute Members in External Bodies

Ulrich BECKER

Editorships

- Neue Zeitschrift für Sozialrecht (NZS) (co-editor since 2000)
- Schriften zum deutschen und europäischen Sozialrecht, Baden-Baden (since 2000)
- Kommentar zum SGB I (since 2001)
- Schriftenreihe für internationales und vergleichendes Sozialrecht, Berlin (since 2002)
- Studien aus dem Max-Planck-Institut für ausländisches und internationales Sozialrecht, Baden-Baden (since 2002)
- Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS), Heidelberg (co-editor since 2002)
- Zeitschrift für europäisches Sozial- und Arbeitsrecht, Wiesbaden (ZESAR) (co-editor since 2002)
- Zeitschrift für Sozialreform (ZSR), Wiesbaden (co-editor since 2004)

Memberships of steering committees, executive boards, research associations

- Steering Committee of the Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG)
- Executive Board of the social insurance division of the Deutscher Verein für Versicherungswissenschaft
- Executive Board of the Gesellschaft für Rechtsvergleichung
- Executive Board of the German Section of the International Society of Labour and Social Security Law (ISLSSL)
- Executive Board of the Deutscher Sozialrechtsverband

Memberships of advisory boards, boards of trustees, committees, research organisations

- Research Promotion Council Deutsche Rentenversicherung Bund – research network old-age pensions (FNA)
- Research Advisory Board of the journal ZFSH/SGB Sozialrecht in Deutschland und Europa
- Advisory Board of the Graduate School of Social Sciences (GSSS) of the University of Bremen
- Editorial Advisory Board of the International Social Security Review
- ISSA Advisory Board on Social Security Policy and Research
- Research Advisory Board of the journal Social Security Studies (Shehui baozhang yanjiu), Beijing, P. R. China
- 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 FernUniversität (supported distance learning) in Hagen
- Selection Committee of the Alexander von Humboldt Foundation for the promotion of institute partnerships
- Advisory Commission for the project "Cross Border Welfare State"

Other memberships

- Disciplinary Committee of the German Athletics Association (DLV)
- Selection Committee for the conferral of the dissertation award of the Gesellschaft zur Förderung der sozialrechtlichen Forschung e.V.
- Working group of the Leopoldina/ Acatech on opportunities and problems of an ageing society: the world of work and lifelong learning
- Arbitrator's Award Office of the leading associations of statutory health insurance at the Bundesverband der landwirtschaftlichen Krankenkassen

Eva Maria HOHNERLEIN

- Referee for the journal "Sozialer Fortschritt"

Otto KAUFMANN

- Centre du droit de l'entreprise, Strasbourg, France
- Laboratoire de droit social, Strasbourg, France
- Commission "Europe", Ipse, Paris, Brussels
- Conseil d'orientation, Ipse, Paris, Brussels
- Working group "Zukunft der Sozialpolitik", Hans-Böckler-Stiftung, Düsseldorf
- Expert Committee/Advisory Board "Betriebsrentensysteme", Hans-Böckler-Stiftung, Düsseldorf
- Conseil Scientifique, Bulletin de Droit Comparé du Travail et da la Sécurité Sociale

Peter A. KÖHLER

- German-Nordic Lawyers Association (DNJV)

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 die Kassenzahnärztliche Versorgung (Federal arbitration office for medical treatment by statutory health insurance dentists)
- Deputy chairman of the division "Unternehmensmitbestimmung vor dem Hintergrund europarechtlicher Entwicklungen" of the Deutscher Juristentag 2006, Stuttgart
- Expert Commission on "Ziele in der Altenpolitik" of the Bertelsmann Foundation, Gütersloh
- Group of Consultants for the Application of Article 76 of the European Code of Social Security, Strasbourg
- Evaluation Committee of the social insurance department of the Bonn-Rhein-Sieg University of Applied Sciences
- Board of Trustees of the Foundation for Liberal Arts and Science, Domus Dorpatensis, Tartu, Estonia

Hans-Joachim REINHARD

- Certification Committee of the German Science and Humanities Council on the foundation of the University of Applied Sciences of the German Federal Employment Agency (HdBA), Mannheim

Bernd SCHULTE

- Member of the Executive Board of the Gesellschaft für Sozialen Fortschritt e.V.
- Steering Committee of the Deutscher Verein für öffentliche und private Fürsorge

Markus SICHERT

- Coordination of the expert counselling on "Social Security in Indonesia" on behalf of the Indonesian National Social Security System (NSSS) Task Force, in collaboration with the Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG) and the Gesellschaft für Technische Zusammenarbeit (GTZ), with assistance of Bernd Schulte et al.

Hans F. ZACHER

- Honorary chairman of the Executive Board of the Deutscher Sozialrechtsverband
- Member of the Research Advisory Board at the German Federal Ministry of Economics and Technology
- Member of the Research Advisory Board of the publication project "Geschichte der Sozialpolitik in Deutschland seit 1945" (German Federal Ministry of Labour and Social Affairs/Bundesarchiv)
- Member of the Pontifical Academy of Social Sciences
- Member or the Board of Governors of the Weizmann Institute of Science, Rehovot, Israel

7. Collaborations

German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Berlin
Eva Maria WELSKOP-DEFFAA

and Eva Maria HOHNERLEIN, Edda BLENCK-KNOCKE

Self-Responsibility, Private and Public Solidarity – A Comparative View of Gender Role Models in Family Law and Social Law in Europe
The project looks into the gender role models existing in society and law, and their significance for independent as well as derived income security under family and social law in the countries of Denmark, France, Germany, United Kingdom and Italy. The aim is to gain insight into the experiences of the countries under investigation and to 'de-ideologise' discussion over the male breadwinner model.

Chuo University, Tokyo
Keimei KAIZUKA
National Institute of Population and Social Security Research, Tokyo
Tetsuo FUKAWA

and Ulrich BECKER, Matthias KNECHT

German-Japanese Joint Research on Social Security (GJJRSS)
A group of German and Japanese economists and legal scholars investigated the German and Japanese social insurance schemes, notably health, pension and long-term care insurance. Besides rendering an overview of the current situation they looked into the legal possibilities as well as the economic necessities and elaborated feasible options for dealing with the social insurance reforms on the agenda in both countries.

German University of Administrative Sciences, Speyer
Rainer PITSCHAS
Ludwig-Maximilians-Universität (LMU) Munich, Japan-Zentrum
Peter PÖRTNER

and Bernd BARON VON MAYDELL, Bernd SCHULTE

Disability in Asia and Europe, a comparative approach to policy and law
Based on a comparative approach, the interdisciplinary project works out strategies to solve disability-related problems. It investigates the forms of disability in an ageing society, the impacts of disability on the individual case and the family, policies and legislation on behalf of persons with disabilities, as well as the handling of disability in various countries of Europe (Germany, Belgium, Netherlands, Italy, Sweden, Spain, Czech Republic) and Asia (India, Japan, Republic of Korea, Republic of China/Taiwan, P. R. China).

Europäische Akademie on European Social Policy, Bad Neuenahr-Ahrweiler
Carl F. GETHMANN
University of Tartu, Department of Social Sciences, Estonia
Maju LAURISTIN

and Bernd BARON VON MAYDELL

Family Policy in Estonia
The investigation focuses on problems of Estonian family policy, notably in comparison with other European developments.

Gesellschaft für Technische Zusammenarbeit (GTZ), Eschborn
Asih Eka PUTRI, Miroslaw MANICKI, Oka MAHENDRA
Gesellschaft für Versicherungswissenschaft und -gestaltung e. V. (GVG), Cologne
Martin WREDE
on behalf of the **Indonesian Government** (Ministry of Health, Ministry of Labour and Transmigration, Ministry for People's Welfare) and the
National Social Security System Task Force
Heru MARTONO, Andi Syahrul PANGERAN

and Ulrich BECKER, Markus SICHERT

Social Security in Indonesia – reform-induced concepts for a basic legislation governing a comprehensive social security system for all citizens
The Institute has been invited to exercise an advisory function in assisting the Task Force installed by the Indonesian Government in 2006 for the project entitled "Development of a Social (Health) Insurance System in Indonesia". The project has been entrusted to the GVG and is sponsored by the GTZ.

Institute for Employment Research of the Federal Employment Agency (IAB), Nuremberg
Regina KONLE-SEIDL
Institute for the Study of Labour (IZA), Bonn
Werner EICHHORST

and Otto KAUFMANN

Activating labour market policy – a comparison
This international and interdisciplinary project investigates the labour market policy measures of "activation", as well as the implementation of new approaches for the reintegration or initial integration of jobseekers or simply unemployed unwilling to take up work. Legal scholars, economists and social scientists from Germany, the United States, France, Denmark, Sweden, the United Kingdom, Switzerland and the Netherlands participated in this project.

Katholieke Universiteit Leuven,
Research Unit Europe and Social Security (RUESS)
Danny PIETERS, Paul SCHOUKENS

and Ulrich BECKER, Friso ROSS

General Principles of Social Security Law in Europe
The research project is devoted to a comparative legal analysis of the fundamental principles of social security law in various EU Member States, the EFTA Member States and the EU Accession States. The criteria relevant to the investigation were established by the cooperation partners and will be examined by the reporters with regard to the respective legal systems and incorporated into the country reports.

Kyoto University
Kenichiro NISHIMURA

and Ulrich BECKER, Bernd BARON VON MAYDELL

Perspectives of accident insurance in Japan and Germany
The collaboration project focuses on the exchange of current problems of accident insurance law in Japan and Germany.

Max Planck Institute for Demographic Research, Rostock
James W. VAUPEL, Marc LUY, Rainer HEUER, Andreas EDEL

and Ulrich BECKER, Matthias KNECHT

MaxNetAging Research School (MNARS) under the MaxNetAging-Programme of the Max-Planck-Gesellschaft
MaxNetAging conducts interdisciplinary, transnational research into the causes, patterns, processes and consequences of human ageing and is part of the comprehensive research activities carried out by the Max-Planck-Gesellschaft in this field. MNARS grants scholarships and offers research opportunities at the institutions participating in the project in order to assist junior researchers in dealing with the subject of human ageing.

Max Planck Institute for European Legal History, Frankfurt am Main
Michael STOLLEIS

and Ulrike HAERENDEL

The Social History of Pension Insurance in the German Empire: 1871-1914
The research project investigates the societal background to the origin of German pension insurance and its impact on the society of the Kaiserreich. The project is carried out by Dr. Ulrike Haerendel who does biographical research, views the archives and conducts the study.

Renmin University of China,
Department of Social Security, Beijing
Gongcheng ZHENG

and Ulrich BECKER, Barbara DARIMONT

Comparative law analysis of current issues; investigation into the factors influencing the development of Chinese social law (including the aspects of its creation and reception); exchange of researchers and junior researchers.

University of Illinois, Institute of Government and Public Affairs
Robert RICH

and Ulrich BECKER, Markus SICHERT

Choice and Competition in Hospital Health Care
The interdisciplinary project is based on comparative law and deals with competition and regulation as conceptions of normative steering in the health care sector. It seeks to shed light on competitive instruments as well as on functional and steering modes in the health care sectors of the United States, Switzerland, the Netherlands and Germany. Research is conducted by both social law experts and economists.

University of Johannesburg, Centre for International and Comparative Labour and Social Security Law (CICLASS)
Marius OLIVIER

and Ulrich BECKER

Research into the coordination of social security systems in SADC and into the institutional frameworks for extending access to social security for non-citizens and informal sector workers in Germany and South Africa. The collaboration also includes exchanges with lecturers from other South African universities.

University of Tsukuba
Makoto ARAI
University of Heidelberg
Andreas KRUSE
University of Dortmund
Gerhard NAEGELE

and Bernd SCHULTE

Adult Guardianship Law in Comparative and International Perspective
A comparative law project on the adult guardianship law (in Germany "Betreuungsrecht") of Germany, France, the Netherlands, Japan, Canada, the United States and the United Kingdom, currently focusing on Germany and Japan.

University of Tsukuba, Graduate School of Humanities and Social Sciences
Mioko MOTOZAWA

and Bernd BARON VON MAYDELL, Eva Maria HOHNERLEIN

Family Policy in the Ageing Society – A German-Japanese Comparison
A comparative analysis of the family policies of Japan and Germany including caregiving and educational infrastructures, cash benefits and other social policy measures.

8. Legal Opinions

Peter A. KÖHLER, Ulrich BECKER

15 October 2006: Opinion on behalf of the *International Tribunal for the Law of the Sea, Hamburg* on the Tribunal's civil servants' claims for refund of the contributions to German unemployment insurance.

Bernd BARON VON MAYDELL

December 2006: The German accident insurance scheme, contribution to a comparative opinion on behalf of the *Chinese Government* on the coverage of work accidents.

Hans-Joachim REINHARD

13 January 2006: Opinion on behalf of the *Amtsgericht Laufen* on the assessment of Austrian pension entitlements in effecting pension rights adjustment.

7 April 2006: Opinion on behalf of the *Amtsgericht Freiburg* on the assessment of U.S. pension entitlements in effecting pension rights adjustment.

3 July 2006: Opinion on behalf of the *Oberlandesgericht Köln* on the assessment of British pension entitlements in effecting pension rights adjustment.

20 October 2006: Opinion on behalf of the *Oberlandesgericht Karlsruhe* on the assessment of Taiwanese pension entitlements in effecting pension rights adjustment.

15 February 2007: Opinion on behalf of the *Ifo Institute Munich* on the assessment of the pension scheme of the Catholic associations.

12 January 2007: Opinion on Behalf of the on the *Amtsgericht Pforzheim* on the assessment of Estonian pension entitlements in effecting pension rights adjustment.

6 March 2007: Opinion on behalf of the *Amtsgericht Hamburg-Barmbek* on the assessment of French pension entitlements in effecting pension rights adjustment.

17 April 2007: Opinion on behalf of the *Amtsgericht Mülheim a.d. Ruhr* on the assessment of British pension entitlements in effecting pension rights adjustment.

12 June 2007: Opinion on behalf of the *Oberlandesgericht Karlsruhe* on the assessment of Turkish pension entitlements in effecting pension rights adjustment.

21 September 2007: Opinion on behalf of the *Amtsgericht Osterholz-Scharmbeck* on the assessment of U.S. pension entitlements in effecting pension rights adjustment.

Christina WALSER

29 March 2006: Opinion for Dr. Stefan Gress on behalf of the *Ministry of Health, Toronto, Canada*, on Social Health Insurance, Private Health Insurance and Waiting Lists in Germany and the Netherlands.

30 January 2007: Opinion on behalf of the Landgericht Köln on recourse claims regarding incapacity benefits under Dutch law.

9. Alumni Network

The Institute has started to build up an alumni network, offering ex-colleagues the opportunity to correspond with one another and to keep in touch with the Institute. Former guests who were active at the Institute over prolonged periods have also been integrated in the network. As have alumni of the director's earlier chair for Public Law, German and European Social Law at the Faculty of Law of the University of Regensburg, since their network became "homeless" when *Ulrich Becker* accepted the post in Munich in 2002. The database *Alumnisite* has been installed to this end, enabling members to contact one another on academic or personal issues. Alumni may thus register and create their own profiles. The data they wish to disclose to other users is left completely to their own discretion. For instance, some members have merely provided their office addresses, while others have furnished details about their current fields of work and focal points of interest. In this way, an active exchange is made possible, with the professional aspect likely to be in the foreground initially. Yet, seeking contacts for personal reasons might also be helpful, for example, prior to a trip abroad, to obtain particulars about the country of another alumnus or accommodations there. Apart from that, *Alumnisite* will supply information about activities of the Institute, thus keeping alumni abreast of current events – whether lectures, publications or staff changes.

Alumni Meeting 2007

To enable personal and not just virtual contacts between members, an alumni meeting is to take place at the Institute once a year.
The first such meeting was held on 7 September 2007 in Munich. It was attended by former staff who had been active at the Institute over the last three decades as well as by guests from various countries. The occasion provided an agreeable setting for the report on most recent developments of the Institute and its current research projects (*Becker*), the presentation of library innovations (*Frankenberger*), and an academic lecture on the Dutch health insurance reform against the background of the new German law on strengthening competition in statutory health insurance (*Walser*). This lecture illuminated major elements of Dutch health insurance, which has been reconfigured to enhance competition among the diverse actors. The paper likewise pointed out the lack of such parameters in German health insurance law, where competition for lower contribution rates will be restricted rather than promoted through the planned Health Fund.
The presentations were followed by a pleasant get-together that afforded ample opportunity for both personal and scholarly exchanges.

Quirin Vergho / Christina Walser

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