MAX-PLANCK-GESELLSCHAFT

Report 2008 – 2009

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 during the past two years. It depicts the research projects and activities carried out by the Institute staff members and describes the developments experienced by the Institute over the two-year period 2008 – 2009.

The structure of this report is based on that of previous reports. To begin with, the introduction (I.) delineates the research programme of the Institute, introduces the latter and summarises the individual research projects that run the gamut of social benefits law. It particularly details the theoretical and methodical issues of comparative social law, as well as the role of the welfare state within the process of European integration. Subsequently, a brief description of the promotion of junior researchers, another core task of the Institute, is given. The introduction is concluded by a summary of the Institute's general tasks, as well as by a description of its structure and of the changes observed during the reporting period.

The next section outlines the individual research projects (II.). The objectives of the latter, as well as their configurations and chosen methods of research are portrayed in brief, self-contained accounts. The respective texts have been prepared by those staff members entrusted with the project coordination, even if most projects are jointly planned and frequently carried out in collaboration with several researchers of the Institute. The third section of this report provides information about the promotion of junior researchers (III.). Since doctoral students are assigned an important place at the Institute, a description of the individual dissertation projects is provided in keeping with the previous report.

Subsequently, three sections comprehensively document the events carried out at, or with the involvement of, the Institute, as well as the publications it has brought forth, and the lectures and teaching activities conducted by its staff members in the period under review (IV.-VI.). The final sections list grantees and guests (VII.) and sum up the Institute along with its staff, bodies and functions (VIII.).

This report 2008 – 2009, too, contains an interim account of our activities. However, we also hope that it will at the same time allow its readers to gain insights into the developments of social law and stimulate interest in overall issues of social law. To know that we have succeeded in doing so would make particularly worthwhile all efforts put into the production of this report. On that note, I would again like to express my heartfelt thanks to all staff members involved.

Munich, February 2010

Ulrich Becker

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I. Introduction

1. Research Programme of the Institute

1.1. Theoretical Foundation

The Functional Conditionality and Political Arbitrariness of Social Law

In its core, social law is the law of social benefits. Social benefits are those benefits which are provided by the government, or for which at least some sort of public responsibility is assumed, and which pursue a particular social objective. This social objective is, above all and in contrast to other social measures in a wider sense, the setting up of a certain infrastructure such as public transport or the provision of certain goods such as water, in order to help, to support, to secure or to compensate individuals. With the aid of social benefits, individuals are to be enabled to secure their livelihood and to participate in society. Social benefits law in this sense is the very core of the Institute's research activities, with our research seeking to take a holistic account of the various equivalent protective measures.
It follows from this very rough circumscription that social benefits law can be defined by its specific functionality. And it is this functionality which makes it imperative to change the positive law on social benefits more or less permanently in order to adapt it to societal changes in general and to its societal reference points in particular.
At the same time, however, law is to fulfil a stabilisation function. In order to do so, it can stipulate the points of reference itself. And it can try to establish a normative framework for all societal and governmental action, and this is the specific task of constitutional law.

True, the latter postulates a high degree of abstraction: The constitution, too, must leave room for political decisions. The provisions contained in it are therefore in particular need of specification, which leads to the effect that the line between law and politics may get blurred. This, however, is a problem located at the downstream level of interpretation of constitutional law and not, as in social law, already at the upstream level pertaining to the establishment of institutions designated for intervention on the part of the welfare state. In fact, the question as to which social benefits systems are to be established remains an open one. The constitution contributes little to an answering of the question as to how much social protection is needed, and thus hardly figures in the determination of the security level (1). And even the question as to what kind of social protection is to be granted, i.e. how social benefits systems are to be configured, is not predefined by objective necessities in terms of socio-political requirements (2).

(1) It is widely known, however, that it is the task of the state – or more generally, of a political community – to address the social hardships and needs of its citizens. And any international review will give evidence of the fact that at least most states fulfil this task in practice and provide help, support, compensation and coverage against risks through the granting of social benefits.

The Virtues of the Good Regiment (Isaac Schwentner, 1592, Old Town Hall, Regensburg).

In Germany, there exists a well-established historical and ideological background for the conviction that it is the task of the state to secure the principles of the exercise of freedoms and to support those who are limited in their capability to exercise their freedoms autonomously. This had been pointed out already by *Lorenz von Stein* in the mid-19th century: "Real freedom is owned only by him who owns the conditions of the latter, i.e. who owns the material and intellectual goods as the conditions for self-determination." (Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage, vol. 3, Das Königtum, die Republik und die Souveränität der französischen Gesellschaft seit der Februarrevolution 1848, 3rd ed. 1921, p. 104), and from this he deduced that the state had to "support the economic and societal progress of all its citizens" (Gegenwart und Zukunft der Rechts- und Staatswissenschaften Deutschlands, 1876, p. 215). These quotes express the correlation to self-responsibility that had existed from the beginning, yet at the same time they illustrate the interrelation between the protection of freedom and equality. The welfare state should intervene in cases where individuals can no longer help themselves (and their families), where this cannot be expected or where their self-sufficiency is compromised (*Laband,* Das Staatsrecht des Deutschen Reiches, vol. 3, 5th ed. 1913, p. 289). It is to support the actual potentialities to exercise one's freedom, thus creating the fundamental conditions for a freedom-oriented society inclusive of its economic system. At the same time, the chances of all to participate in society are to be equalised, or at least adjusted, with state support being differentiated according to individual needs. Analogous ideas have become largely established in state practice. The interdependency of freedom and equality is retained here, regardless of the modern theories sprung from mostly US American philosophy of the 20th century on the establishing of state tasks, which base their allocation rules either on the one or the other specific basic value. At the same time, a normative concept of social justice and the welfare state has been established at the international level. Human rights have been contributing to this fact (particularly the International Covenant on Economic, Social and Cultural Rights, as well as the European Social Charter), and now that the Lisbon Treaty has entered into force the phenomenon is being reinforced within the European Union through its Fundamental Rights Charter with the relevant social rights contained in it, whereby welfare state tasks are emphasised.

All this, however, does not predefine the extent and level of intervention on the part of the social state. The sort and amount of social benefits to be granted to an individual remains open in the aforementioned general description. Since social law measures out what assistance an individual is to, and can expect to, receive under certain conditions granted by the society in which he lives, the determination of social benefits depends on the views we hold in regard to the role of the individual and to his life in a society and thus to the responsibilities of the state. This requires political decisions. The specification of general values in terms of social law greatly varies even within the European Union. This can be illustrated, for instance, by a brief look at the statutory old age security systems: The replacement rate of old age pensions, measured against previously earned income, greatly varies among the member states (for a rough overview cf. 'Pensions at a Glance' published by the OECD).

(2) What is more, no clear function-related specifications according to which social benefits systems must or should be organised can be discerned. A comparison of the systems established in other states yields proof of this. The population of a country can be provided with health care via a state-run health service or a health insurance. True, the respective choice of organisation will imply certain consequences: national health systems are tax-financed, for instance, while insurance systems are based on contributions. However, even when a system has been chosen, there still remains enough freedom as regards its configuration. The insurance option conveys little about the question as to who is to receive insurance coverage, and just as little about the issue under which legal form the insurance providers operate, how contributions are calculated and which financial compensations are effected within the system. Conversely, opting for a national health service does not automatically determine the question whether the respective service providers are involved in health care provision as independent agents or as employees, and it says nothing either about the

way their services are remunerated. Provision for old age can, and increasingly does, rest on several pillars: A first pillar, which serves as basic insurance and which, as a rule, is operated under public law; a supplementary second one which is agreed on by the parties to a collective agreement or subsidised and regulated by the state; and a third where insurees can freely opt for the insurance coverage of their choice and which is subject to some sort of regulation not for reasons pertaining to social policy but for reasons of consumer protection. Contrary to certain studies which seem to observe an interrelation between private actors and state bodies for the first time, the fact that the second pillar also takes on a social security function does not come as news. Already the extended study on old age provision carried out by the Institute in 1991 (*Zacher*, Alterssicherung im Rechtsvergleich) described the complexity of this protection system and emphasised the need to combine various systems. On these grounds it can be said that only an overall picture will give information on the actual level of social security in a country. This, however, reveals nothing about the extent to which private forms of insurance are regulated, and therefore also nothing about the extent to which the state, by way of supporting the former, has acquitted itself of its duty to provide social security. It is obvious that the assessment of situations differs greatly if one looks at, say, Germany on the one hand, and the United Kingdom on the other – and the greatly varying effects of the financial crisis on the respective old age provision systems confirm this conclusion.

Consequences for the Methodology and Validity of Legal Comparison

(1) The diversity and variety of social benefits systems first and foremost underlines the significance of a methodical approach to legal comparison that is just as traditional as it is general, namely the significance of the functionality principle.
Indeed, the methodology of legal comparison is increasingly being discussed again. These discussions primarily deal with two different questions: on the one hand with epistemological requirements that principally concern the finding of a subject that is to be incorporated into a comparison, i.e. the finding of the relevant laws; on the other hand with the function and the functioning of the law per se, thus addressing the objectives of legal comparison. It is remarkable in this regard that the discussion is ultimately less about the correct procedure than about the significance of comparisons.

(2) Against this background it must be noted that the projects of legal comparison carried out at the Institute in the past and the present have been focusing to a special degree on the functionality principle. While it has been assumed that social law reacts to certain social needs and seeks to correct deviations from a situation that is regarded as the rule, it is particularly the finding of the relevant laws which, in most cases, rests upon a differentiated socio-political basis. Projects laid out accordingly are therefore able – even in crossing the often overemphasised line between public and private law, i.e. independent of the respectively chosen forms of intervention on the part of the social state – to illustrate the complexity of the rules of social law and to analyse their interplay. In this way, functional equivalences can be worked out without this necessarily having to be connected to a general theory (i.e. one that goes beyond the subject of social law) for the explanation of these equivalences. And it can be demonstrated, as measured by general regulation theories or by superior normative statements, for instance on postulations regarding justice, what kind of particularities feature in the different types of social benefits systems even if they follow comparable objectives (of security).
This, however, does not reveal anything about the objectives of the comparison of social law. The latter can, first of all, certainly serve to portray the variety of potential legal solutions. Yet, if such a comparison is to be anything more than a random listing of solutions, it will also have to attempt to organise them. Further, it should preferably lead to an evaluation. In many cases, however, such an evaluation will run into difficulties. If it makes reference to the bases of the comparison and thus to the socio-political reviewing of certain situations of need, it will in turn also have to make its own socio-political statements. If, on the other hand, the evaluation is to lead to normative statements, difficulties may arise because, for one thing, an overarching normative standard across legal

systems is not always readily apparent and, for another thing, because the constitutional provisions that primarily come into consideration as such standards are relatively open to socio-political system decisions. This means that subsequent decisions are subject to more restricted legal specifications as regards system consistency or congruity, yet that they in turn are dependent on previous system decisions and thus on the institutional configuration of social benefits systems. Since system decisions may vary depending on the relevant country, even the conclusions to be derived from common normative specifications remain restricted in their validity as regards the evaluation of existing social benefits systems.

(3) All this does not mean, however, that studies of legal comparison in social benefits law are superfluous. Quite the contrary: In times of reforms pertaining to social law great interest is still expressed with regard to information on alternative *solutions to socio-political problems.* Due to their detail and accuracy, comparative legal studies are particularly capable of providing precise and complete information on the institutional conditions and particularities of a specific social policy. In this regard, different configurations are to be selected depending on the respective overall aim:

- If they are to illustrate the *effects* of the law, they can by way of *single studies* examine particular forms of intervention on the part of the welfare state or focus on particular steering instruments. In such cases, the conditions for the effectivity of the law should be included and information should be given on either the various approaches to a solution via law or the various fields of application of law. The countries for comparison are to be chosen accordingly: either – to highlight the contrasts – in accordance with the respectively varying basic normative concepts, or – with a view to a potential parallelism of individual measures or instruments – with a similar institutional configuration of the respective social benefits systems that attract interest. Studies in comparative law cannot, however, deliver their own effectiveness analyses. For this purpose, they are dependent on interdisciplinary research that includes the social sciences;
- the interface between the socio-political and the legal responsibility hosts studies which give information on the interplay of different social benefits systems in the context of coping with particular social needs. They are to be set up as broadly as possible in the form of *overall studies* or needs-based macro-comparisons, or must at least again include legal systems with varying basic normative concepts, since they are to convey fundamental information regarding an entire area of social benefits law. In terms of social policy they are revealing in that they reflect the *complexity* of intervention on the part of the welfare state. This is significant particularly in order to obtain comprehensive knowledge on those systems that might influence and even substitute each other. In the future, however, it will make sense to no longer resume the classic categories of social security, such as sickness, accident or old age insurance. It is of greater interest, at least if there is sufficient basic knowledge in this regard, to choose comprehensive socio-political issues as starting points, for instance the prolongation of working life or integration into the labour market. A comparison that seeks to find functional equivalents must then factor in very differently oriented and organised benefits; with regard to the aforementioned examples this includes the interplay of different provision and compensation systems such as insurance against the risk of sickness, accidents, invalidity or, respectively, pension insurance, as well as employment promotion; further, it must also include the legal configuration of the role of the employer.

The two aforementioned approaches are characterised by the intent to base the respective targeted results on the comparative basis and thus on the core issues of social politics. Nonetheless, it is a fact that research has so far only marginally touched on the necessity to use comparisons in social law also directly for the purpose of *obtaining legal knowledge*. Within this meaning, research in legal comparison may be oriented at working out common principles and application rules, at facilitating the systematisation of national social law, and at recognising foreign dogmatic particularities. If it pursues these objectives, the conceptualisa-

tion of individual comparative research projects will require an intensified elaboration of dogmatic issues, without this also having to mean that the simultaneous illustration of the common problem and the socio-political indicators suitable for its description would have to be foregone. As regards the depiction of foreign law, the different levels of legal doctrine deserve attention. In this context it is interesting to see which role social law, in terms of a particular form of administrative law, plays in relation to general administrative law, and to find out which regulative provisions belong to constitutional law.

The individual properties of social law can be examined step by step at different levels. Research projects of this type unfold their value particularly in comparison with general principles and institutes.

- At a *constitutional level* information can be obtained on the relationship between the state and the individual, the politically constituted community and society, for instance by way of examining the following issues: the forms of state duties exercised, for the outline of which the experiences of social law gained in connection with the so-called enabling state yield ample demonstration material; related to this but more fundamental, the significance of a differentiation between private and public law or, respectively, the exchangeability of the latter due to the aforementioned phenomenon, i.e. the parallel existence of insurance authorities and insurance companies as providers of social security. Comparable as regards objectives, but more specifically oriented at a contribution to the science of legal sources and to the application potential of particular steering instruments, it is worth studying the relationship between competition, state regulation and self-obligation via neo-corporatist regulation on the part of those involved.

- At an *operational level* social law can yield contributions to questions concerning legal doctrine that are connected to particular forms of action: To mind here comes the permanent administrative act, whose revocation has with good reason been subjected to a special regulation in Social Code Book X, but more fundamentally also the preliminary binding measures and thus studies on how insecurity can be reduced gradually. Another starting point that is just as interesting is the utilisation of administrative contracts as a cooperative form of action for the selection of benefits that are to be designed individually; after all, they are gaining new significance particularly as regards employment promotion and, at the same time, they dissolve the lines between coercion and acceptance, thus putting less binding legal protection into question. Detached from the forms of action and related to the decision programme or, respectively, to the control of the results arising from it, the examination of discretion and of scopes of evaluation in social benefits administration, too, promises advantages, since many of the issues that are to be decided upon require special expertise, e.g. as regards the assessment of individual states of health, the effectiveness of pharmaceutical products or the security of health care provision on the whole.

The comparison of social law is also allotted a further genuinely legal task area which is characterised by its hierarchy of legal norms and which can be addressed by way of directly identifying potential *conflicts between norms* at higher levels and ones at subordinate levels rather than by socio-political or systematic preconsiderations pertaining to law.

- This refers, on the one hand, to the verification of the compatibility of national regulations with international law or with European Union law. Such verification, too, requires a comparison of legal systems. A vertical comparison of law may easily lead to misunderstandings, however, as international and supranational law are valid in their own right. The law of nations and European Union law form part of the national legal system and in this regard subject the national legislator to specifications. In doing so, they also provide their own valuation standards, and this is the key distinction from a comparison of separated national legal systems.

- Valuation standards across legal systems do not only result from individual social law regulations pertaining to international law or to contract law and to the secondary law of the European Union, but also from fundamental rights and from general legal principles such as the principle of the rule of law. With the Treaty of Lisbon having entered into effect in Europe, the corresponding general provisions are becoming more and more defined. This will increasingly facilitate the future measuring of social state intervention against common principles of European law.

Dynamics of Social Law: The Fundamental Processes of Change

As emphasised at the beginning, social law is a changing law. This is true not least because social law has to adapt to the societal conditions which it seeks to influence. Yet, the transformations in the past years have been radical and have resulted in structural changes that also make clear that the underlying values are at least being subjected to shifts of emphasis (1). The changing processes as such can be categorised according to the affected operating level and level of development (2).

(1) Well over are the times when the social state, and thus also the social benefits systems, were geared at expansion. Change has been necessitated by the developments on the job market observed for some years now, as well as by societal changes brought about for their part especially by globalisation and an aging and shrinking population. The efforts made to effect savings in social policy have therefore been noticeable for quite a while. In Germany, cost containment acts have since the 1980s ranked among the favoured legislative measures in statutory health insurance law. By way of the Pension Reform Act of 1992 a consolidation course was adopted also in pension insurance. Apart from a modification to the pension adjustment, this involved the reinforcement of the so-called participation equivalence, i.e. of the correlation between contributions and pension payments. It is a trend which also features in the statutory old age provision systems of most other European countries, just like the extension of the combination of unfunded and funded pension schemes.

On the one hand, it is the endeavour for more efficiency that is behind the indicated reforms of social benefits systems. It is not for nothing that both in health care and in employment promotion attempts at quality assurance are becoming increasingly significant. This factors in the improvement of benefits and services, but also generally in the efforts to account for the efficiency principle in a more pronounced way. On the other hand it is striking that the aforementioned concept of self-responsibility is experiencing a renaissance. However, the changes are by far more differentiated than what some statements have us believe. Looking at the overall range of social state intervention, it is hardly appropriate to speak of an extensive decrease in state responsibility as regards social protection. The activation strategy adopted in employment policy is, rather, highly ambitious and characterised by the endeavour to integrate all employable persons into the labour market. In family policy, too, the state is now trying to exert a stronger influence on societal processes. It is based on the expectation that the protecting and supporting state may, in return for its services, expect a certain degree of personal efforts taken on the part of its citizens, as well as some input in order to increase the benefits to society. The emphasis on self-responsibility in the welfare state cannot do without a considerable degree of paternalism. At the same time it is unclear how much space the society of citizens is supposed to be allowed without this compromising the reliability of necessary social corrections, and how much competition and how many alternatives social benefits systems can take in order to continue to fulfil their functions. That these systems, even if they enforce solidarity, contribute to societal stability has in Germany been proven by the history of statutory pension insurance: The latter contributed significantly to the integration of large population groups both after World War II and after the Reunification. And it is particularly through social benefits that the effects of the current financial crisis on the labour markets have been cushioned.

(2) If one analyses the observable changes whilst taking into account the relevant regulation levels as well as the respectively reached stages of development, three separate processes can be discerned. They run parallel to each other and, as has been

detailed in previous reports, are interrelated in many ways. These processes are:

- the Europeanisation and Internationalisation of social law. This phenomenon is characterised by the increasing significance of supranational regulation levels and the interconnections that arise from the provisions stipulated at these levels and from national law (cf. below, 2.2. and II.1.);

- the adjustment or, respectively, modernisation of social security systems in developed countries, characterised by a modification of the forms of tasks to be completed on the part of the state and by the utilisation of new forms of steering and of action (cf. below, 2.3. and II.2.);

- the transformation of social benefits systems in developing countries or emerging nations. In these countries the societal change, which is connected to rapid economic growth, leads to the necessity of setting up new and more comprehensive social benefits systems that are to contribute to the support and completion of the traditional forms of security (cf. below, 2.4. and II.3.).

The differentiation of the mentioned processes shows particularities which are important for the analysis and understanding of these processes. For their examination, fundamental questions play an important role in many respects. Social law can serve as an area of reference for enquiries into overlapping concerns of legal policy and legal doctrine, for instance as regards the effects of privatisation or the role of competition in social benefits schemes. At the same time, comparative law is increasingly gaining in significance. In times of intensified exchanges of information, a frequently posed question is whether and which national regulatory patterns can be transferred to other countries' social benefits 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 interpenetration and migration calls for a greater convergence of social benefits 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. In any event, knowledge of the respective national legal systems is required in the mentioned cases. The regulation techniques used therein as well as the ideas of order underlying these systems are to be included in the legal comparison just as much as their distinctive modes of action, and their societal and cultural requirements.

In this way, general structures and principles such as the shaping of democracy, the rule of law or the protection of individual freedoms are gaining in importance, but especially so are the institutional arrangements on which the actions of those affected and of the administration are based. That the development of social benefits systems takes on an increasingly important role, and not only in financial terms, but particularly in regard to the realities of people's lives and to the stabilisation of society, can be readily gathered from the current reform debates.

1.2. National and Supranational Social Law

Europeanisation

In its decision on the Lisbon Treaty – remarkable in many regards, but also in need of discussion – the Federal Constitutional Court has not only emphasised in a deliberately pointed and at the same time simplifying way the role of the state in these times of increasing international integration, but has also counted social state intervention among its core tasks. Viewed in this light, the question as to what extent European integration jeopardises the performance of this task is again becoming ever more pressing. And this is the point of origin for the repeatedly articulated fear that the European Union might undermine the foundations of social welfare. It mostly implicates a one-dimensional examination of the relationship between the supranational and the national legal system: How does European Union law affect national law? And how much scope is left to the national legislator for the regulation of his social state intervention? Already in the past years it had been emphasised that this sort of

examination was not suitable to sufficiently outline the particularities of European integration. It is curtailed in two ways: For one thing, it does not take into account the interactions taking place between the various levels of the legal systems. For another thing, it restricts itself to the isolated effects of the legally binding European provisions without factoring in their socio-political basis. It hereby mostly ignores the fact that – both through individual social regulations in the broader sense and by way of socio-political coordination processes – more and more European social standards are developed.

(1) As regards the starting point: In the political multi-level governance system of the European Union the distribution of competences is an expression of the normative attribution of responsibility. In accordance with the concept of the treaties, social protection is to remain within the area of national responsibility. The welfare state is not only a national accomplishment, but shall also continue to be seen as a national issue. In that regard, and with particular reference to the implementation of the Lisbon Treaty, nothing has changed. To be sure, the coordination of the various social security systems had from the beginning constituted a vital task of the European Community that was approached in order to prevent any loss of social rights due to migration (as for the coordination regulations and their reform, cf. II.1.2.). And extending far beyond that, a common social policy has since the 1970s formed in the Community, while the dispute over the relationship between economic law and social benefits law, which had existed at the time of its foundation, gradually ceased. It is particularly through the Single European Act, the Maastricht Treaty and the Treaty of Amsterdam that the competences of the Community regarding law-making in this area have been perceptibly extended. However, they have been formulated just as cautiously as they are now being exercised. The European Union, into which the European Community has also formally been completely incorporated since the ratification of the Lisbon Treaty, may only enact regulations pertaining to social security for the purpose of protecting particular groups of persons; a harmonisation of health policy has been ruled out. Furthermore, the regulations may only contain minimum requirements.

This also means: The decision regarding the establishment and configuration of social benefits systems is to be effected through the democratic process of political opinion-forming by each member state individually. The underlying legitimation requirements are based on national specifications; the normative framework is provided by the national constitutions.

(2) The allocation of powers provided in the constitutional order thus leaves the member states their determining role in regard to the social system, as long as this means the special protection of employees and the granting of social benefits. However, this does not rule out the possibility that this role might *de facto* be jeopardised. After all, the economic liberties and economic-political principles contained in the EC Treaty do not merely refer to particular areas of life, but are generally applicable. Accordingly, they may also relate to social benefits law. Indeed, the contingencies between commercial law and social law have greatly increased since the mid-nineties. For the welfare state two phenomena are of significance in this regard: the extension of social rights on the one hand, and the opening up of socially isolated markets on the other hand.
While it has always been commonplace within the EC for contribution-financed payments to be exported, this is not so usual for benefits in kind: They are to be granted abroad only in exceptional cases. This is based on the postulation that the state should be in a position to assure the quality of the respective service provision. The European Court of Justice upended this approach some time ago in a series of decisions: it argued that due to the economic nature of medical and other treatment services, both their beneficiaries and their providers could base themselves on the free rendering of services. On these grounds they are allowed to receive or provide treatment abroad, and they are entitled to have such treatment abroad reimbursed by their health insurance or health service (for details see II.1.3.).

Yet, the more recent jurisdiction of the European Court of Justice does not only extend social rights in terms of territory, but also in terms of persons protected. The reason for this is no longer the protection of an economic activity, but the prohibition of discrimina-

tion based on nationality. This prohibition of discriminatory practices goes hand in hand with EU citizenship, which by now constitutes more than just an "empty shell". Every EU citizen, i.e. every citizen of an EU member state, now has the right to reside in any other member state of his or her choice. This right of residence leads to rights during a citizen's residence due to the prohibition of discrimination. Non-national EU citizens must no longer be denied social benefits by the host country on the grounds of foreign citizenship. Even the requirement to provide evidence of permanent residence now comes under pressure due to it constituting an indirect discrimination. The resulting benefit for EU citizens from other EU member states also and especially applies to non-contributory benefits, i.e. assistance and support allowances like social welfare, benefits for their integration into the labour market or educational grants. It is a crucial point in that the general right of free movement – unlike the free movement of workers, the right of establishment or the freedom to provide services – is independent of employment. In this respect, social rights are no longer directly expected to be at least some sort of de facto and regular compensation for productivity gains.

European Court of Justice, Luxembourg.

(3) Anyone who might, in view of these developments, have expected the increasing influence of European economic law to result – quasi inevitably – in an erosion of the national social benefits systems, has been proven wrong. Rather, the scopes of action of the member states have largely been retained. The instrument for maintaining these scopes of action is the utilisation of the possibility to justify exceptions – one could, in this respect, talk of the negative side of negative integration. It is as if Europe had put the hand of the market on the social benefits systems, yet without wanting to destroy their structures through its grasp.

A first evidence of this hypothesis is the fact that the European Court of Justice has recognised the freedom to call on the services of any care provider(s) within the European Union, but that it has also limited this freedom in the case of social benefits. For one thing, an exception is to be made for inpatient treatment. For another thing, the member states have the right to limit the freedoms of insured persons if the functionality of the security systems is jeopardised.

A step further has been taken by the European Court of Justice in regard to the relationship between European competition law and national social benefits law. For the activities of social benefits institutions are not classified as entrepreneurial, and in this sense economic activities, but as social activities. This characterisation also includes the procurement activities necessary for the actual provision of benefits. In sum, this means: European Union law does not enforce the opening up of markets, but leaves it up to the decision of the respective state to opt for an either market-based or non-market-based organisation of the provision of goods and services.

(4) Exceptions in favour of social law are no longer only made by the judicature with regard to primary law, but can also increasingly be found in EC secondary law. They have thus lost their sole connection to negative integration and reached positive integration. Therefore, they are transported from the application level to the level of law-making, thus acquiring an abstract and general meaning.

The most important examples of this can be found in the Posted Workers Directive and in the Services Directive, as well as in European public procurement law, the applicability of which to the activities of the sickness funds has been made plain by the European Court of Justice in the reporting period. The Ser-

vices Directive, which is to help make practical improvements to the free circulation of services within the European Union, had been the subject of long discussions and of a long legislative procedure. The result of it is that it is applicable neither to "health services" nor to particular "social services" nor "non-economic services of general interest". The plans for the so-called Patient Directive, which was to stipulate special provisions for cross-border treatment services, have been put on hold. Conversely, the Posted Workers Directive is creating its own secondary law exceptions from the freedom to provide services with the aim of extending at least some basic conditions prevailing in the domestic labour market also to foreign workers who are posted to a member state. This regulation aims at the protection of workers and employees and the preservation of fair competition, yet it does not aim at the protection of the domestic labour market as regards the merely temporary activity of employees in the context of a rendered service. In the end, however, the Posted Workers Directive constitutes a compromise that purposes a balance between the national collective bargaining policy and the utilisation of comparative advantages in terms of labour costs.

(5) European Union law has thereby also experienced a gradual enrichment in regard to social law in the very field of commercial law, which is its basic domain. Yet, is this development of a general kind? And is it stable and not merely owed to rather short-term fluctuations in European policy? This is indicated – which is an important step beyond the cited decisions of the Court of Justice and the legislator – by the increasing normative foundation of social issues at European level. The European Union is no longer only dependent on legal guiding principles stemming from the member states. Rather, its legal regulations increasingly reflect social objectives in their own right that are gaining in importance. The procedure of normative enrichment and superimposition is by no means new. In this regard, I should like to mention the contractual agreement on equal pay for men and women. This regulation originally served to establish equal competition. Since the 1970s the regulation has, through several guidelines, partly been defined more precisely, and partly been extended, with the result that the topic of gender equality has mutated into an independent goal of European policy. This goal has meanwhile in turn been reinforced in the context of primary law and has become part of a stable European anti-discrimination policy. It should further be noted that the concept of the "social market economy" has for the first time been expressly mentioned in the Lisbon Treaty.
The European Charter of Fundamental Rights might assume similar importance in this regard. With the Lisbon Treaty entering into force, it has turned into a legally binding document. The Charter documents the status of fundamental rights protection attained in Europe. This also includes the protection of social rights, summarised in a chapter headed "Solidarity". The respective provisions are not predominantly designed to lay down individual rights. They are rather intended to identify state tasks. And it is particularly in view of the fact that social benefits law is not to be entrenched at European, but at member state level, and of the aforementioned problem that the assumption of the hence continuing state responsibility may be compromised in practice, that one thing becomes clear: The social rights of the Charter of Fundamental Rights do not place the European institutions under an obligation to engage in further activities. They rather compel these institutions to respect established national social benefits law, i.e. they may possibly also compel them not to take individual measures. In this regard, they reinforce the described development towards a more restrained exercise of the fundamental freedoms and of competition law in cases that may result in collisions with socio-political measures taken by the member states.

(6) The European Union has not stopped its efforts to enrich its economic law with "infusions" of social law and to extend its general principles on the social protection of its citizens. Rather, it has continued its convergence strategy initiated in the 1980s by way of a strategy that has been operating under the name of Open Method of Coordination (OMC) and which has received its own contractual basis within the framework of employment policy.
This strategy is distinguished by its procedural character. Thus, common goals are laid down, indicators for the assessment of the goal attainment are determined and national measures are examined, in order to then

reconsider further measures as well as to reassess the goals and indicators. It is, within the framework of the overall process, not a matter of enacting binding provisions. However, especially in areas covered by the OMC the convergences within the meaning of common reform strategies cannot be overlooked. This equally concerns old age security and labour market policy. These developments also appear to be influenced by the objectives promoted by EC bodies. In many respects, clear directions are posited, and an independent profile of a common social policy has become discernible over the years. It focuses on the integration of economic and social policy, on the prohibition to discriminate, on equal access to social benefits, and on the support of particularly needy persons.

(7) How can these developments be described? There is a whole range of potential points of criticism that can hardly be overlooked: They first and foremost refer to the still recognisable orientation towards basic economic decisions. Furthermore, European social policy is, like the overall integration process, highly pragmatic. What is largely missing is an independent normative discourse at European level. One will look in vain for instructions based on constitutional theories on how to effect a just organisation of the relationship between society and the individual – even if, looking at the developments in the national social states, one needs not necessarily be convinced of their shaping power. And above all, to come full circle: Is the social state, as a result, not at the same time crucially weakened by European social policy?
Firstly, no unidirectional influence on the part of the European Union is discernible. Socio-political reform measures are obviously actuated via discourses at national and European level. In many cases, however, it cannot be determined as to which players play the decisive roles in this regard. Sometimes the European process of coordination has an accelerative effect, at other times it creates impulses, yet it is never the sole determining factor. Secondly, the soft coordination process, by which the European bodies are seeking to advance common objectives in social policy, leaves the member states the relevant scope for implementation. The decision of what tasks to assume is left with the member states. As regards the institutional arrangements for the organisation of solidarity, they discernibly follow their own paths and the once chosen lines of development. Thirdly, the European Union reinforces certain tendencies for reform: by way of its request for financial feasibility of social benefits it intensifies the emphasis on individual self-responsibility, the focus on particularly needy persons as regards assistance, and the priority of contribution-based provision and prevention. And yet, the normative basic ideas of social policy in Europe forming in this way seem to be in keeping with those developed in the member states.
As a result, European economic law is enriched by social law, if only to a moderate extent and with repeatedly arising coordination difficulties. Noticeable at the same time is the endeavour to transform into common goals the underlying substratum, gained by way of comparison, of the various national welfare states. In this sense, too, the European Union builds upon national achievements. It does filter the perceived, changes it and opens up new perspectives. Yet, it does not make any specifications. While the scope for action among the member states is actually narrowed, they gain new influence by participating in the European discourse. The concept of the social state in Europe is thus characterised by an evolving process of interaction. It is, at the same time, a process of mutual learning so as to cope with the challenges the social state is faced with due to its demographic developments and due to internationalisation. In the task of achieving the former, the European integration process serves as a way to form, by way of consolidation, one entity that may facilitate the joint tackling of the consequences of globalisation.

Internationalisation

There are two characteristics that impart particular significance to European Union law: its direct applicability, including the direct bestowal of subjective rights to its citizens, and its higher rank in relation to national law – even if, in this regard, a fundamental limitation due to national constitutional provisos still cannot be ruled out. Only few other regional international organisations represent political communities, or even unions based on law that might be comparably assertive. And most of them restrict themselves to issues regarding transnational activities. The

rules on free movement are incomplete. Socio-political approaches are largely non-existent (cf. II.1.6.). The regional organisation of social protection is thus still left to the national level, and even its coordination remains fragmentary. International law alone continues to come into consideration as a source for regulations that transcend national law; its implementation, however, depends on implementation decisions made on the part of the national bodies. Globally, too, a closer coordination and cooperation, seen by many scientists already as a process of constitutionalisation, can only rely on this legal instrument. True, the human rights are to help overcome the traditional limitations to cross-national legal relationships inherent to international law; however, their effectiveness in practice is, today, not less jeopardised than in the past. For this reason, too, deliberations regarding a world social order in a wider sense continue to be relevant (1). Yet, since there will be no such thing as a "superstate", and as sovereignty has proven volatile on the international level, any international regulatory approaches will, in the future, have to remain closely linked to national law and any related developments. They will only have a stabilising effect if they are at the same time open enough to absorb these developments (2).

(1) Globalisation means that life processes that previously took place within a national context are meanwhile to the largest extent taking place on a transnational level. This is also and particularly true for those processes that, insofar as they take place within a national context, are in some way or other accompanied by measures of social protection, as is the case in many countries (gainful employment, demand fulfilment, establishment of and provision for family units/associations, etc.). No less does it hold true for processes which change the conditions for those particular socially relevant life processes (such as the establishment or the operation of businesses, the flow of capital and so on). This increase in transnationality in regard to socially relevant processes places too great a demand on the national social states. International interaction weakens their territorial responsibility. Social protection is to be granted increasingly to persons whose lives are no longer firmly attached to a state, its economy or to the cultural and societal particularities of its citizens. The financial means required for allocation are to be generated despite the fact that the effective contributory factors may get lost due to transnational movement. Therefore, it is necessary to set up regulations which make clear specifications on the delimitation, reciprocal openness and linking of national systems of social protection, and which are to provide clarification to a far greater extent than anything the conflict of social systems (e.g. regarding migrant workers) has so far accomplished. The objective must be to ensure the setup and maintenance of mutually open systems of social protection worldwide. Such regulations will also be required at international level. The international community must increasingly provide a value and regulation framework which is to keep normative provisions on the setup and maintenance of a social system available both for the respective states and for transnational actors. In the end the question will also be as to how such a world social order relates to wealth disparities. The question is an obvious one for the sheer fact that these disparities set limits to the mutual opening up of national systems of social protection. Besides, globalisation of social protection is unimaginable without the principles behind it (such as social justice, solidarity, participation, security, self-responsibility and subsidiarity) finding worldwide recognition as well. As regards research, an actual beginning can, for a start, be made by looking at the aforementioned human rights, at the existing instruments for the regulation of social protection at international level, but above all by addressing the rudiments of social law systems at the respective national level as well as their conditions for development.

(2) The International Labour Organisation (ILO) and the setting of standards initiated by it in the field of social security therefore continues to deserve attention – and particular attention at that, since its role to contribute on a worldwide basis to the setting of social norms is and continues to be a precarious one in view of the dissimilar paces of development at national level on one side and at international level on the other side. If it wants to exert its influence, it must not be overtaken by the developments of the national social benefits systems. Of particular interest in this context are the efforts to undertake a fundamental reform of ILO Convention No. 102 concerning Minimum Standards of

Social Security, dating from 1952. They were rather tentative and have lost momentum again. This is a cause for concern, since the impulses for reform come from two very different directions: on one side, from developed states which are pushing for these minimum norms to be brought into line with the modernisation of their social security systems that were extended in the course of the 20th century; on the other side, from the developing states that wish to see novel social security arrangements acknowledged at an international level. In this regard, there is some indication that the existing international minimum standards do not so much stipulate a state of development generally worth striving for or a universally valid normative basis, as they do in fact require an overhaul. This is what the ISSISS project (International Standard Setting and Innovation in Social Security) is to investigate (II.1.7.). It compiles facts on the various developments in social benefits systems observable worldwide, correlates them with the international standards and examines the actual need for reform against the theoretical background of challenges and opportunities regarding global standard setting.

1.3. Modernisation of Developed Social Benefits Systems

The fact that the welfare state is undergoing a phase of change has already been emphasised (cf. above, 1.1.). This phase marks the third stage of a development: Following the seminal achievements of social insurance legislation adopted in the 1880s during the Bismarck era, and the extension of the welfare state particularly between the 1950s and the 1970s, the task is now to adjust to the change in the labour markets brought about by growing internationalisation, as well as to the societal transformations influenced by demographic change. Both quite obviously result in a greater division of labour between the state and society and thus also in structural reforms of the social benefits systems.

It should be noted here that Germany had early on lost its pioneering role as regards the establishment of social security systems. German social insurance is based on employment; the only exceptions include 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. It was not until 2009 that health insurance protection became obligatory for the entire population. At the same time, however, the concept of the continental European social insurance was developed further in Germany by way of introducing long-term care insurance – not for the purpose of establishing new responsibilities on the part of the social state, but, and insofar quite in line with the tendencies of the general development, for the purpose of a more efficient performance of present welfare state tasks.

Flagging or absent economic growth and, in particular, demographic developments reflected in an aging 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 any state intervention 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 benefits 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

(1) The origins of activation as a central theme for the configuration of social security date from the U.S. labour market policy adopted in the 1970s, but can also be found in Germany's newly amended employment promotion legislation. As a comprehensive strategy (workfare), activation is associated with the *Clinton* administration. Starting in the United States, 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 aiming at a harmonisation of European social policy. The aim of activation is to prompt changes in attitude on the part of both beneficiaries and the benefit-awarding institutions. 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 has been shown by the creation 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 benefits law – at least not in the relationship between the administration and the citizen. In the period under review, these developments also constituted the subject matter of an interdisciplinary and comparative project on activation and employment promotion in various developed states, which was concluded with the publication of the respective findings (II.2.1.). These findings are of significance particularly with regard to social policy. They have also led to the realisation that the legal configuration of the activation strategy in the labour market policy still requires an assessment that is based on a genuinely legal perspective (also cf. above, 1.1.). However, now that any comparison will be restricted to selected EU member states, common assessment criteria are available due to the evolving European principle of the rule of law and the European fundamental rights.

(2) 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 dependencies 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 been stepped up perceptibly to ensure the quality and enhance the efficiency of social benefits. For this reason the Institute has within the context of a conference addressed the matter of quality assurance in long-term care (II.2.2.), a topic that is still in its infancy in Germany. Further information can be gathered from a comparison with the situation in England, which is the subject of a doctoral project (III.3.3.). The task to assure economic efficiency and quality is precarious above all in benefits systems where independent third parties are called upon to render the benefits, meaning that in most countries they are mainly found in the health care and long-term care sector and, contrary to widespread opinion, sometimes even in countries that provide a national health sys-

tem. 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 or, respectively, provision relationship or insurance relationship) are delivered by service 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 procurement and provision relationship. Accordingly, such regulations govern matters ranging from the inclusion of providers (by way of either authorisation 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.2.). Competition as a specific steering instrument repeatedly served as a subject of Institute research in the past years. One such project entitled "Choice and Competition in Hospital Health Care" (II.2.3.) has meanwhile been concluded with a German publication. The changes effected by the US health reform are yet to be incorporated into the scheduled English publication.

(3) Judicial law enforcement was another subject of our research activity in the reporting period. This was reflected in the conclusion of the project on "Mediation in Social Jurisdiction" launched at the beginning of 2007, with a publication reporting on the Bavarian model project (II.2.4.). The focus here was on a new field of application of familiar forms of action, namely amicable dispute settlement that is "built into" a judicial procedure. The project clarifies the legal framework of mediation in social court proceedings and, evidenced by a survey among the involved judges and parties inclusive of their representatives, provides information on 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, the current social law reforms tend to go beyond mere adjustments to existing systems. They impact fundamental aspects of structuring social benefits systems, notably as regards persons entitled to protection, promotion and support, as well as the level of benefits and, hence, the function of benefits systems as a whole. 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 sought to intensify competition between private and statutory health insurers. But even within Germany's social insurance branches numerous organisational changes have recently taken place. Apart from the incorporation of new steering instruments within the labour market administration, such changes involve the centralisation of self-administration in pension, health and accident insurance.

(1) Seizing upon the various reforms of social security systems, the goal of Institute research was, on the one hand, to place the above lines of development in a comparative law perspective. To that end, the Institute especially came to draw on its own expertise during the period under review. Resulting from this were several publications that made visible the transformations taking place in the social benefits systems of various countries: first and foremost in Sweden (II.2.5.), which is of particular interest due to the fact that it also touches upon the characteristics of the Scandinavian welfare state; or in Turkey (II.2.6.), where efforts have been made to build up, by way of combining content and organisation, a more comprehensive social protection system; and further, in Italy (II.2.7.).

(2) On the other hand, the developments were examined quite selectively with a view to several specific social security systems. Occupational pension schemes (II.2.8.) deserve particular attention for the fact that they are, in a multiple pillar model of old age security, assigned a special function for the

protection of individually attained living standards. In this regard, the focus was on the question as to which arrangements are made in the various European states in order to ensure security for the granting of benefits in the face of capital market crises in general, and of the current financial crisis in particular. With respect to old age security for civil servants (II.2.9.) the question was examined whether this type of security scheme is, also in countries other than Germany, subject to specific principles arising from the particularities an entrustment with sovereignty entails, and what the consequences are for the respective principles ensuing from the reforms of the general old age security systems already effected in many states.

The Institute has furthermore started to put increasing focus on social security in view of the potential need for long-term care, initially within the scope of various individual projects and within the framework of a new postgraduate research group. Beyond that, examinations shall be carried out to reveal in which ways the welfare state reacts to the particular needs of people requiring long-term care: How is the situation of need as such defined and accounted for? What benefits or services are provided through which systems? And how can a suitable infrastructure be created? In view of the demographic changes, these questions are gaining particular significance. The macro-approach hereby pursued is to provide an initial overview (on some overall studies in this regard, cf. above, 1.1. – Consequences for the Methodology and Validity of Legal Comparison). Particularly due to the very fact that comprehensive and specific benefits systems for the provision of long-term care benefits and services do not exist in every country, and also since the performance of such services usually involves private persons, this overview will have to be effected in terms of a cross-system approach; in any case, it will provide further information on the complexity of social benefits systems.

(3) After all, as has been emphasised in previous reports, highly useful insights may be gained, especially in connection with modernising efforts, from comparisons with developed states whose legal systems have been shaped by cultural features that distinguish them from the European corpus of law. This approach is followed up in the project on the social security status of persons with disabilities in Europe and Asia (II.2.11.), which was continued during the period under review and which yielded findings that have been published in one issue of the Institute publication series.

Family and Social Security

The aforementioned reforms in social security systems are expressive of an altered allocation of societal and state responsibility with regard to social security. In this context, family – still – plays a special role. Here comes to mind the interdependency between maintenance law, social law and tax law that had been emphasised by *Kahn-Freund* (Comparative Law as an Academic Subject, 1965, p. 22). It presupposes the coexistence of relationships pertaining to family law and social law where a connection may exist on the supposition that social law assumes obligations to meet claims established under public law. Yet, the connections are at the same time, and beyond that, of a more fundamental kind. A family is a community of maintenance, even though in civil society its effective range is – unlike *Hegel* still presumed – no longer "so comprehensive" (Elements of the Philosophy of Right, 1821, Sec. 238). Where social institutions can provide for the necessary protection, state assistance only takes on a subsidiary function – in any event this can be a freedom-oriented basic assumption.

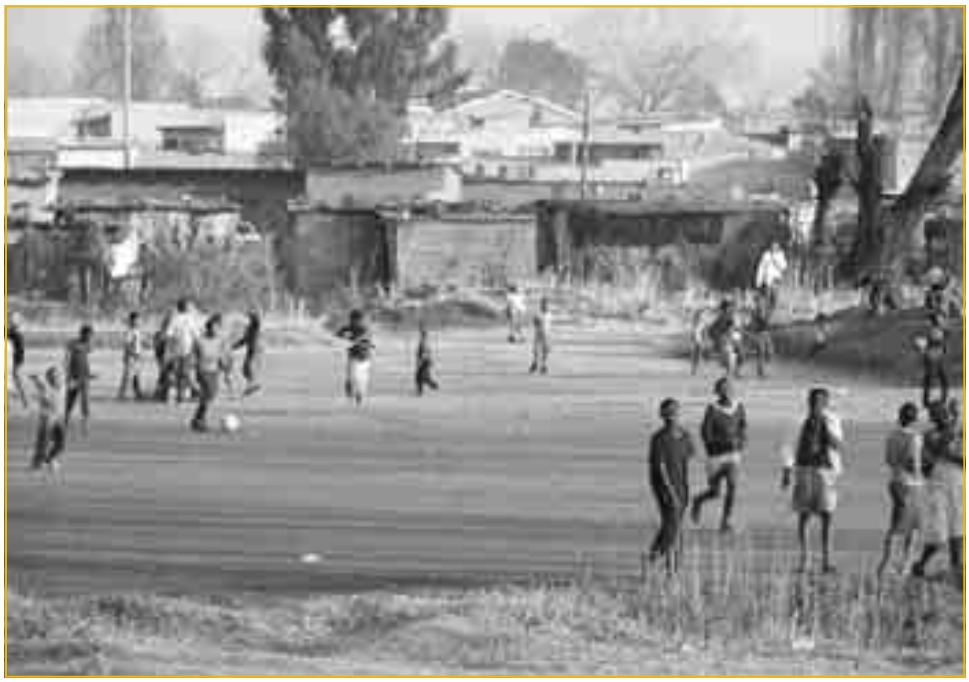
However, the welfare state can no longer rely on the protective function to be provided solely by the family. It intervenes in various forms right up to pedagogical assistance, and supports the commitment to children, not least in order to secure its own existence in response to societal changes. In doing so, it has to take account of changing family structures and roles. This refers to the recognition of new forms of cohabitation, and particularly to the significance of independent rights of children. Social law and family law are to be coordinated in this matter. The basis required for this is a horizontal comparison between both legal areas.
Against this background, the Institute has in the reporting period continued to examine this project of many years on the consequences of changing roles in the family and

of changing family structures (II.2.12. and II.2.13.). It remains an important aim 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. Other publications (II.2.14. and Commentary on the Federal Parenting Benefit and Parental Leave Act (BEEG), cf. V.2.) examined the parenting benefits that have been introduced in Germany, because their configuration does not only raise various constitutional questions, but – linked to the previously mentioned issues – because they are expressive of a new political objective concerning the family and the labour market, partly modelled on foreign examples, with the objective of engaging more women in the labour force.

1.4. Establishment of New Social Benefits Systems in Threshold Countries

In threshold countries, characterised by a rapid pace of economic growth and mounting social inequality, the development 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.

(1) The mere supposition that the indicated fundamental relationships might be universally valid does not per se yield a simple evolutionary theory of the social benefits state. This is suggested by the mere fact that the development of particular social benefits systems features national particularities, that it is owed to special circumstances and backgrounds and that it is expressive of certain values whose universality cannot be taken for granted. To be mentioned in this context are the beginnings of social insurance in Europe, whose emergence was substantially characterised by political objectives 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 or political decisions unrelated to social protection. That explains why uniform concepts for the layout of social protection partly meet with rejec-



tion and, in the event of their implementation, often come up against practical difficulties. In this context, too, it should once more be mentioned that the setting of universally laid out provisions according to international law will not only have to comprise different stages of development, but also include various configurations of social security systems (see above, 1.2. – Internationalisation).

Quite obviously, the lack of resources and bureaucratic infrastructures in developing countries limits the possibilities of the latter 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, thus representing a possibility and need for state intervention, there are many reasons why the mere adoption of certain models will not readily meet with success. One important reason is the existence of a large informal sector, the significance of which was illuminated for South Africa in the volume entitled "Access to Social Security" published during the reporting period (ed. by *Ulrich Becker* and *Marius Olivier*). In regard to the respective particularities it still holds true that it is of utmost importance for threshold countries to view their respective developments in mutual comparison.

(2) In regard to the transformation of social benefits systems in threshold countries, the Institute focused on two areas during the reporting period: One deals with the development of social law in China. The currently still unfinished legislative projects, particularly those in the field of social insurance, leave important issues open in this regard, for instance regarding the question whether a national pension insurance system is to be aimed at (II.3.2.). It is painfully obvious that the disparities between urban and rural security will, at least in the foreseeable future, not be overcome. This also becomes clear when looking at the new measures taken for the improvement of health care services (cf. II.3.1.).

(3) The second focus is dedicated to the right to health. Is there such a right? What is it specifically targeted at, and how can it be implemented? These questions are of core interest, because on the one hand the realisation that health is one of the basic requirements for humane living conditions has been universally acknowledged, yet on the other hand there are doubts both at international and national level as to whether there is such a thing as a corresponding subjective right. The reason for this is the discrepancy existing in many countries between the endeavour to provide the best possible medical care and actual availability of services to a (major) part of the population, but also the difficulties regarding the long-term financing of comprehensive health care provision. Thus, depending on the development stage of the respective states responsible for the granting of health services, the setup of the required institutional provisions and the consideration of social and medical developments are coming to the fore. And a right to health in this context always represents a matter of key concern and of urgency which may contribute to the implementation of a comprehensive health care system, yet which will at the same time be laden with those difficulties that are always and necessarily connected with a postulation of social rights. In view of this, it is remarkable that in several Latin American countries the courts have awarded individuals with rights to particular treatment benefits that were directly derived from their respective constitutions. Such decisions are no isolated cases and are not restricted to the supreme courts; in Brazil, for instance, every year thousands of

such decisions are made. This entails serious socio-political consequences, because here the health care system is at risk of losing itself in individual cases. Of course this also raises constitutional questions: questions regarding the importance of social rights and the role of the courts, with the recognition in principle of the division of powers. A comparison between Latin American countries and Germany is also of particular legal interest in light of the strong response that German legal doctrine receives, for instance, in Brazilian jurisdiction and legal theory (cf. II.3.3.).

2. Promotion of Junior Researchers

The promotion of junior researchers is assigned a special rank among the activities of the Institute. 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

In the years 2008 and 2009, two doctoral groups existed at the Institute. A doctoral group is a group of four or five doctoral candidates who are engaged in specific dissertation projects within the overall frame of a more or less broad principal topic. The aim of such cooperation in the context of a doctoral group is to create an intensive exchange of views on common methodological foundations as well as on issues relating to academic work procedures and individual thematic problems.
The work of a new doctoral group is launched in a brief retreat of one or two days. Regular meetings at the Institute are organised in order for the group members to keep in touch. These activities are rounded off by their participation in conferences, organised by themselves or by other institutions, with doctoral students from other universities for the purpose of discussing their theses within a larger circle of junior researchers, thus also becoming familiar with other work styles. Two workshops were, beyond that, organised by the members of the doctoral group dealing with the "Triangular Benefit Delivery Relationship in Social Law": one workshop in a peaceful location in order to make an interim assessment of their own work together with their supervisor; a second one in order to exchange expert opinions with other professors. Doctoral students who are engaged in individual dissertation projects (cf. III.3.) are asked to join a doctoral group that fits in with the timeframe of their dissertation.

Iris Meeßen, Daniela Schweigler, Magdalena Neueder, Markus Schön, Michael Schlegelmilch, Kyung Choi, Ilona Vilaclara, Nikola Wilman (left to right) and Prof. Dr. Ulrich Becker.

Seminar "Sport und 60 Jahre Grundgesetz", summer term 2009, Abtei Frauenwörth, Frauenchiemsee.

The projects conducted by the first group on the "Impact of Constitutional Law and International Law on the Configuration of Social Security" (cf. III.1.) have, as regards contents, been largely completed. Since some parts will still have to be revised, and due to the duration of the doctoral examination procedures, they will only be brought to a close in the course of the year 2010. At the beginning of 2008, the project on the "Triangular Benefit Delivery Relationship in Social Law" (cf. III.2.) was launched. The doctoral group involved in this topic has been examining the different branches of social benefits provision or, respectively, care sectors, starting from the subject of pharmaceuticals and medical devices in health insurance law, via rehabilitation benefits and services for disabled persons, benefits pertaining to child and youth services, right through to further education programmes. Intensive discussions and various meetings have helped form a cross-sectoral understanding of the benefit delivery relationship, which is a basic requirement for the development and examination of a whole range of issues.

Lectures and Courses

In the period under review the director's teaching activities were characterised mainly by the introduction of the main focus areas and the university part of the First State Exam in Law. He conducted the social law courses (together with assistant lecturer Prof. Dr. *Jürgen Kruse*) offered in the context of main focus area 5, business and corporate law: labour and social law. For the lecture "Introduction to Social Insurance Law", course examinations were offered which formed part of the University Exam in Law. The director was, furthermore, one of the examiners for the oral examinations of the First State Exam in Law as part of the First Examination in 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 Leuven (*Becker*), Strasbourg, Rennes, Poitiers (*Kaufmann*) and Kempten University of Applied Sciences (*Knecht*), as well as within the frame of individual guest lectures at different universities (*Becker, Darimont*).

3. Development of the Institute

3.1. 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 focusing on 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*. With the latter acquiring 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 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 was and is basically upheld, 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. A chief policy in engaging new research staff has been to seek experts on national social law regimes which are of particular significance to developmental and reform processes (cf. above, 1.1.). 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 fields of law by unitarisation tendencies. 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.

3.2. Staff Changes

As in every Institute Report, staff changes can also be reported for the year 2008 and 2009. Yet, in the period under review, unlike in the previous reporting period, these changes did not relate to any leadership positions in the individual fields of work at the Institute. Heartfelt thanks must be extended to librarians *Melanie Jackenkroll* and *Kathrin Merker*, who left the Institute during the reporting period. In years of dedicated work Ms Jackenkroll rendered outstanding services to the Institute library; she is now employed at the German Patent Office. New employees in the library are *Stefan Götz* (as of July 2009), *Nadja Rudoba* (as of August 2009) and apprentice *Alexandra Müller* (as of September 2008). *Esther Ihle* left her position with the translation service. Her position at the Institute has been filled by *Christina McAllister*. *Ms Mareike Kiy* was put in charge of looking after our guests. The administration team, who are also responsible for the Max Planck Digital Library, were joined by *Andrea Then* (in July 2009), *Annemarie Huber* (in August 2009) and apprentice *Adriana Exner* (in September 2008).

Departures from the research staff were: Dr. *Markus Sichert* (as of 31 December 2007), who now works with the Federal Social Insurance Office; Dr. *Matthias Knecht* (as of 31 December 2008), who accepted a position with the Stuttgart Region Economic Development Corporation [*Wirtschaftsförderung Region Stuttgart GmbH*]; Dr. *Christina Walser* (as of 28 February 2009), who is presently employed with the state parliamentary fac-

tion of the Free Voters [*Landtagsfraktion der Freien Wähler*]; and Dr. *Friso Ross* (as of 30 June 2009), who was awarded a professorship of social work law [*Recht der Sozialen Arbeit*] at Erfurt University of Applied Sciences. New among the research staff are *Nikola Wilman* (as of August 2008), whose work focuses on health (insurance) law and social law in the USA and Canada, as well as *Lorena Ossio* (as of September 2008), who devotes herself to the topic of social law in the Latin American countries and to the social dimension of regional integration.

In the years 2008 and 2009, too, there was considerable fluctuation among the other academic and student staff employed short-time for individual projects (cf. VIII.1.).

On behalf of the many, a few shall be named: *Doreen Knöfel* changed from the Institute, where she was part of the academic staff, to the Bavarian State Ministry for Labour and Social Affairs, Family and Women. Upon completion of her doctoral thesis, *Nikola Friedrich*, too, took up a position at that ministry. *Melanie Schmidt* (now *Hack*) has received a scholarship to do her doctorate at Oslo University. All staff involved within the reporting period are to be thanked for their committed support of the Institute's work.

New doctoral students engaged for the doctoral group focusing on the "Triangular Benefit Delivery Relationship in Social Law" are *Iris Meeßen* (as of January 2008) and *Michael Schlegelmilch* (as of March 2008). In October 2008, *Kyung A. Choi* started her comparative dissertation project on legal issues regarding the social insurance contribution in Germany and Korea. In November 2008, *Daniela Schweigler* started her dissertation project on the theoretical and practical significance of the request of claimants to hear a specific physician in social court practice (Section 109 SGG). This project is sponsored by third-party funds from crime victim aid organisation *Weißer Ring*.

3.3. The Institute as a Research and Meeting Place

Work Facilities

The Institute has its own specialised library, whose collection has again grown during the reporting period (cf. VIII.3.). The books and periodicals cover, above all, the social law of the 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 funda-

Our student staff: Alexandra Dietzen, Ellen Buschuew, Markus Vordermayer, Sara Michalelis, Katharina Mayer, Katharina Huber, Annemarie Aumann, Stefan Stegner, Si Liu (left to right) and Prof. Dr. Ulrich Becker.

mental 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. At the beginning of 2008, library use was significantly simplified, and thus improved, by the implementation of an RFID system and, in the summer of 2008, by the installation of scanners. In 2009, a W-LAN hotspot was installed in order to be able to offer internet access to guests also via their own computers.
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 Germany. These work facilities as well as the expertise of its staff have made the Institute an internationally recognised centre for social law studies. This again attracted many guest scholars from Germany and abroad in the period under review – some of whom were funded by the Institute, while most had come to carry on differently timed studies sponsored by other institutions (cf. VII).

The promotion of visiting scholars as well as the organisation of guest lectures, workshops and conferences (cf. IV) foster both international and interdisciplinary exchange. It is in this sense that the Institute also serves as a meeting place for researchers interested in social law and social policy. This is certainly important, not least because the size of the Institute does not permit the latter to carry out observations on the entirety of social law systems on an equal scale all by itself. And this is also why cooperation with foreign partners forms such an important pillar of its activities. These relationships are extended also by enlisting young social law scholars from abroad as well as researchers active in the field of social policy.

Publications

As a publicly funded academic establishment, the Institute considers it a core task to make its basic research results available to other institutions and the general public.
The findings of scholars employed by the Institute are not only published in German and foreign research journals (cf. V.2.); the Institute also offers its own channels for social law publications (cf. V.1.). In collaboration with the Institute for Labour Law and Labour Relations in the European Community (IAAEG, 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*; seven 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 also distributed via the internet. In the period under review, one issue appeared on the model project entitled "Mediation in Bavarian Social Jurisdiction" (*Mediation in der bayerischen Sozialgerichtsbarkeit*). Lastly, the director edits the series *Schriften zum deutschen und europäischen Sozialrecht* (Nomos Verlag, Baden-Baden), of which two new volumes were released in 2008 and 2009.

Applied Research

Besides conducting its own research projects and promoting junior researchers, the Institute also strives to communicate its findings on German, European and international social law at home and abroad, especially by participating in diverse conferences, workshops and lecture events (cf. VI.1. and 2.). This very often also involves exchanges with experts from practice working at ministries, associations and social benefits institutions, as well as with politicians. In this way, the Institute seeks to not only perform advisory tasks, but to also enable its staff to take practice-related issues as an opportunity for further in-depth study or for the reassessment of hypotheses.
Like most of the legal Max Planck institutes, the Institute for Social Law also delivers expert opinions on behalf of courts in matters of foreign law (cf. VIII.7.). In 2008 and 2009, this task played only a minor role and was performed in addition to the aforementioned research activities.

Ulrich Becker

II. Research

1. Europeanisation and Internationalisation

1.1. General Principles of Social Security Law in Europe

For some time now, Europe's social security systems have been in a phase of change. What can be observed in this regard is particularly the ongoing, or in any case intended, institutional change of social security within the individual states. Within the respective national discourse, the reasons given for this change are the fiscal and socio-political guidelines. In this regard, the aspect of the basic institutional conditions for social security systems is often not duly recognised. It is therefore not unusual for conflicts to arise between economically and/or socio-politically sensible reforms and the national law, particularly constitutional law. The institutional guidelines also limit the possibility of implicitly transferring successful reforms to another country. In order to tackle future challenges in Europe, it will be necessary to deal with the common foundations in the social security systems in a comparative way.

If, accordingly, the understanding of Europe's socio-economic challenges and their institutional framework conditions is to be promoted, focus will have to be especially on the legal bases and principles of the national social security systems. Admittedly, the European Union is increasingly devoting its efforts to social policy. Yet, the main responsibility regarding socio-political action continues to lie with the member states. On the one hand, they respond to social matters in different ways in terms of structure and legal norms. On the other hand, it cannot be overlooked that reforms in social security systems are taking place under mutual influence and observation and are thus incorporated in the process of European integration. It therefore seems necessary to define the convergences in the institutional framework conditions for social security and to promote in this way the understanding of the "social" as an independent value.

Starting Point and Procedure

The project, initiated by the Institute and executed in collaboration with the Research Unit Europe and Social Security (RUESS) of the Catholic University of Leuven, confines itself to the guiding principles of the national social security systems. It focuses on legal principles, since the strong juridification of the social – and with it the dominance of the European constitutions in regard to the economic, social and legal order, as well as its impact on the structure of the social framework – has been noticeable in all European states.

The project is dedicated to those guiding legal principles that are expected to yield general statements on the commonalities in the social security law of the European states. A functional aspect serves as a starting point in this context: social security law aims at the special protection of persons in specific situations of need and against specific risks. This basic function is reflected in the principles to be examined through individually varying forms: The collective dimension of social security law refers to reciprocity and the need to accept mutual responsibility (*solidarity*). The individual dimension is aimed at personal responsibility and at co-participation (*self-responsibility*). The paternalistic dimension is reflected in mandatory regulations aiming to secure the individual (*protection*). And finally, the temporal dimension embraces the entire system of social security law in that it assumes protective functions and provides guarantees for specific periods of time (*security*).

The research project is devoted to the examination of the principles of *solidarity, self-responsibility, protection and security*. The aim is to trace the mentioned principles for the respective national legal systems and to individually analyse the national findings with regard to each of the four principles. In addition to this comparative legal analysis, a central focus is the identification of convergences that allow the distillation of the principles of social security law in Europe.

The Project and the Principle of *Security*

Research on the principle of *security* was completed within the reporting period. By means of questionnaires, the legal systems of 25 European countries were examined by national correspondents. The final analysis was based on 14 country reports (Belgium, Germany, Greece, Great Britain, Ireland,

Iceland, Italy, Luxembourg, the Netherlands, Sweden, Switzerland, Slovenia, Spain and the Czech Republic). These country reports, an introduction to the overall project and its individual parts, as well as two analyses oriented by different topical aspects (legislation/administration) will flow into the publication of a collection of essays in the English language (*Becker/Pieters/Ross/Schoukens*, Security: A General Principle of Social Security Law in Europe, 2010).

The principle of *security* refers to legal protection functions within the individual social security systems and guarantees these functions for a specified period. In taking this approach, that is, in excluding a certain body and scope of social rights from any changes, the principle of *security* facilitates a differentiation between two forms of national action: the enactment of social security "legislation" on the one hand, and the "administration" and thus direct awarding of social benefits on the other. In both areas, notable convergences were identified with a view to the examined European states.

The Principle of *Security* and Social Legislation

To begin with, it can be said that legislation in all countries is explicitly or implicitly, by way of constitutional regulations, called upon to establish and maintain social security systems for the benefit of its citizens. These regulations range from differentiated specifications to simple distinctions, such as the requirement to establish social welfare systems as well as social security systems. In any case, no legislator may shirk the responsibility to do *something* with regard to social security systems.

Secondly, it can be seen that, once established, rights pertaining to social security cannot be revoked by implication. Throughout Europe the continuous development of particular rights conferring prospective entitlement, if not property rights, has been noticed; on the whole, these rights mediate particular protection. Thus, the principle of *security* ranges among further principles pertaining to the rule of law, such as legal security or proportionality. Whoever seeks to curtail social rights or social benefits by law has to make sure that existing regulations cannot be unanimously revoked. The principle is limited, however, where the legislator is at the same time obliged to maintain the respective social security systems for the benefit of the citizen and thus to effect reforms. In this context, proportional, non-arbitrary and thus objective criteria are to be considered, which must above all comply with the respective transitional measures and regulations. Here too, as with the maintenance of the systems, the principle of equality is of considerable significance in all countries, both for the benefit of the individual and for the benefit of comparable groups. In this respect the temporal element of the principle becomes particularly evident: transitional arrangements may entail temporary inequalities for the benefit of the individual, yet in the long run equality must be established for the benefit of the other parties.

To a certain extent, however, the protective mechanisms of the principle of *security* are clearly and very closely connected to other protective mechanisms, such as the protection of property or the protection of entitlements. On closer inspection it therefore becomes apparent that constitutional provisions or other higher-ranking laws (may) protect the positions of the individual – at least temporarily – against legislative action, but that the sole orientation by higher-ranking laws and by legislation would narrow the perspective on the principle of *security*: for a mere focus on the former would disregard the fact that the "lex in actu" is effected mainly through administrative action, and that confidence is therefore developed mainly in that very area. The citizen must not only be able to rely on legislation as regards his arrange-

Dr. Friso Ross.

ments for the present or the future; he will also particularly seek to find reliability in any administrative action pertaining to the execution of laws. This is particularly true for social security and any benefits related to it.

The Principle of *Security* and Social Administration

The relationship between the social administration and the citizen in European countries is characterised by the validity of administrative actions and decisions. This means that the citizen can plan ahead, since he can trust in the continued legal validity of a decision or action. This legal validity is predefined by the letter of the law. The confidence resulting from the interaction between the social administration and the citizen is legally constitutive. Both parties, yet especially the citizen, place their trust in continued legal validity and confidence; the protection of these values is indispensible due to the fact that the individual cannot negotiate the conditions of the respective social security system. The protection of legal validity and confidence arises from the actual situation in which the citizen is confronted with the social administration. Any administrative decision resulting from it will form the basis for the establishment of legal validity and confidence. The latter will benefit from the – time-related – immutability of the respective decision. It is this immutability, as well as the predictability, of decisions that shape the protection of the citizen's interests.

In this regard, the trans-European principle can, with respect to administrative action, only communicate itself via the stipulation that any decisions to be made be consistent, reliable and predictable. To this extent, the first findings showing that the estimation of the actual nature of *discretionary power* differs in the various legal systems are not overly relevant. Of greater significance, however, is the fact that similar mechanisms to limit *discretionary power* are effective and have been applied in the examined legal systems. All this serves to facilitate the continued validity of the citizen's legal positions, while leaving the administration a certain scope for action. It is therefore also of great importance that new laws enacted in the European countries have, on principle, no influence on previously made decisions. In cases where, for instance, advantageous norms may be applied to old issues in accordance with the "benefit of the doubt" principle, it even reflects favourably on the distinctive features of European social security law, since the position of the citizen is strengthened here.

The principle of *security* manifests itself particularly well in a core area of the protection of legal validity under social administrative law, namely in the retrospective revocation or mutability of decisions. Here, too, it does not matter that – with respect to the question as to what degree of binding effect a wrong decision as to affiliation may have – no homogenous picture can be provided; after all, affiliation to the respective system is merely a facet. Much more substantial is the result that, in regard to the issue of the binding effect of an advantageous, yet unlawful payment of benefits, the latter cannot simply be revoked, and this applies to nearly all legal systems that have been examined. In this regard, it is especially the protection of legal validity that acts as a basis for the principle of *security*. Finally, mention is to be given to the fact that in the examined legal systems the duty to provide information to their citizens is stipulated, and that any breach thereof will have consequences, be it in the form of compensations or in the form of revocations of the respective decisions. To conclude, the comparison illustrates that, with respect to the relationship between the citizen and the social insurance or welfare administration, security is a principle of social administrative law that has become valid all over Europe.

Friso Ross

1.2. European Coordination Law

As in previous years, EU rules coordinating social security formed a core area of the Institute's work on European Union law during the period under review, this time to mark a special occasion: On 1 May 2010, Basic Regulation (EC) No. 883/2004 and Implementing Regulation (EC) No. 987/2009 will replace the secondary legal instruments of European coordination law that had, since 1 January 1973, been effective in the form of Regulations (EEC) No. 1408/71 and No. 574/72. With respect to social security, these regulations ("European laws") are to guaran-

tee the free movement of insured persons of EU member states who, in addition to national citizenship, hold a European legal status due to Union citizenship which, among other things, certifies the right of free movement. Initially, this right applied to the six countries forming the European Coal and Steel Community (1951), as well as – later – to the European Economic Community and the Atomic Energy Community (1958). Today, it applies to the 27 member states of the European Union, to the non-EU member states of the European Economic Area, namely Iceland, Liechtenstein and Norway, as well as to Switzerland, which is bilaterally associated with the European Union and its member states.

Reform of European Coordination Law

Regulations (EEC) No. 1408/71 and No. 574/72 on the coordination of social security systems to the benefit of employed persons, self-employed persons, students and families of the former were in the past subject to multiple and manifold amendments and updates in order to account for changing legal regulations at national and European level, for the enlargement of the EU to include new member states, as well as to comply with the relevant judicature of the European Court of Justice.
By way of enacting Regulation (EC) No. 987/09 as an Implementing Regulation with regard to Basic Regulation (EC) No. 883/04 and publishing it in the Official Journal of the European Union on 30 October 2009, the years of planning to reform European coordination law have found their legislative foundation. In this regard, the declared goals of the reform – simplification and modernisation – have, from a scientific perspective, only been reached to a certain extent in view of the necessity (not least due to the principle of unanimity, which was applicable until the Lisbon Treaty entered into force and modified the EC Treaty) to find a compromise on numerous individual issues among today's 27 EU member states. The European Commission as the initiator and "engine" of the reform process certainly must be credited the fact that it has undertaken efforts to bring to the table scientists and hands-on experts in coordination law, as well as their protagonists, in order to speed up implementation of the reform. The author of this article participated in this process:

- by way of conducting advanced training courses for staff members of the ministerial bureaucracy, of the social benefit agencies and of benefit and service providers in Germany, Austria, Romania and Estonia, as well as
- by way of participating in conferences and research seminars initiated by the European Commission in
  - Prague, contributing with a presentation regarding the application of coordination regulations to measures of active labour market policy,
  - Ghent, contributing with a presentation regarding the problems of applying the new coordination regulations to health services and benefits, as well as in
  - Stockholm, for the evaluation of seminars carried out on the part of the European Commission on the various branches of social security covered by the coordination regulations (illness in-

cluding long-term care needs, motherhood/fatherhood, old age, invalidity and provision for dependants, unemployment, family benefits, benefits in the event of accidents at work or occupational illnesses) – with a view to regulatory gaps that are to be filled preferably by the latest upon commencement of the new regulations on 1 May 2010 and to ambiguities related to these legal instruments, as well as with respect to existing implementation problems in the member states.

This kind of "participant observation" of the European legislative process is an important step towards a "European" interpretation of the respective EU legislation.

Social Protection Within the EU Against the Risk of Social Long-Term Care Needs

At European level efforts have been intensified to provide solutions for social protection against the risk of social long-term care needs. Endeavours to firmly fix the conditions on benefits in the case of long-term care needs in Regulation (EC) No. 883/04 on social security in a separate chapter have so far been unsuccessful. However, the European Court of Justice (leading case: the German case of "Molenaar v Allgemeine Ortskrankenkasse Baden-Württemberg") has qualified social long-term care benefits and services as sickness benefits within the meaning of European coordination law and thus also given impetus for the new Regulation (EC) No. 883/04 to contain a provision (Article 34) which coordinates the combination of monetary care benefits and care benefits in kind originating from different member states.

As regards social protection against the social risk of requiring long-term care benefits and services, Germany has, since the introduction of social long-term care insurance in the mid-1990s, taken a leading role at the international level. After all, corresponding regulations in Belgium (Flemish Community), Luxembourg, the Netherlands, Spain and also Japan owe their implementation to a considerable extent to the German model. Researchers of the Institute (*Becker, Reinhard, Schulte*) were actively involved as mediators in the process.

Bernd Schulte

1.3. Transnational Health Care Provision in Europe

Since the insights gained by the European Court of Justice (ECJ) in the year 1998 through the "Decker/Kohll" judgements on the cross-border provision and use of health care benefits and services, meanwhile concretised and specified in nearly a dozen ECJ judgements, it has also been fixed by the European Supreme Court that the fundamental economic freedoms of the common market, especially the freedom to provide services, are also applicable in the area of social security and health care. Consequently, service providers, e.g. physicians, have the right not only to set themselves up in other member states, but also to offer their services on a cross-border basis. In turn, patients and insured persons are entitled to use medical services also in other EU member states.

Since the so-called Services Directive of the year 2006 had excluded health and social services from its relevant material scope of application due to their specifics and significance for the health of the population, the European Commission submitted a "Proposal for a Directive on Patients' Rights in Cross-Border Healthcare" on 2 July 2008. Among other things, this legislative initiative was intended to codify the relevant judicature of the European Court of Justice. The realisation of this proposal would have meant that, in the light of the jurisdiction of the European Court of Justice, a further pathway – under secondary law – to transnational provi-

sion of health care would have opened up in addition to the already existing pathways leading via the aforementioned coordination regulations on the social security of "migrating" EU citizens and via European primary law concerning the freedom to provide services. Such a new pathway would certainly not have contributed to the standardisation and simplification of European health care. As this proposal for directive could not be passed during the Swedish EU presidency in the second half of 2009, this problem – which is of particular significance for Germany, since it has a health care system that is attractive also to Union citizens from other member states, as well as differentiated and efficient – will in the future continue to factor as an important module for a European health care system *in nuce*.

This "Europeanisation" process has also been supported by various judgements of the European Court of Justice on European competition law (e.g. its – negative – decision on the entrepreneurial capacity of the German employers' liability insurance associations [*Berufsgenossenschaften*] and thus at the same time on the inapplicability of EU competition law to an "oligopoly" of social insurance agencies), including decisions regarding European state aid law (e.g. with regard to German hospital financing), as well as recent decisions regarding European public procurement law (with respect to the procurement of medical devices through sickness funds). This process is to lead to the establishment of more effective and more efficient health care systems in the European Union by way of more competition, international division of labour and reciprocal learning (for instance within the context of the political strategy termed Open Method of Coordination (OMC)) in the fields of health care and social long-term care.

Bernd Schulte

1.4. New Developments in European Law

The Lisbon Treaty

Upon entry into force of the Lisbon Treaty on 1 December 2009, the Constitution of the European Union has, even without a formal constitutional document, in a material sense received a new legal foundation corresponding, as regards contents, to a large extent to the failed Treaty establishing a Constitution for Europe. The European Community has merged institutionally into the European Union, the Treaty on European Union and the Treaty on the Foundation of the European Community have been amended, the latter having been renamed "Treaty on the Functioning of the European Union" (FEU Treaty), and finally the Charter of Fundamental Rights of the European Union has become legally binding. The "principle of fundamental rights protection" (including the fundamental social rights) of the European Association of States [*Europäischer Staatenverbund*] has since been in keeping with that of a modern constitutional state.

What is furthermore remarkable in terms of social policy and social law is the fact that the principle of social market economy has now been explicitly entrenched in the EU Treaty (Art. 3 Para. 3) and that the welfare state – still the responsibility of the member states – has been strengthened against the economic fundamental freedoms as well as against the rules of competition of the common European market. In this way, the European Social Model has also been given certain normative features.

The FEU Treaty has in Art. 48 (ex Art. 42 EC) introduced the majority principle – furnished with a national right of veto as an "emergency brake", as it were – for law-making purposes in the area of European coordination law, a principle that is to simplify law-making in this area in the future.

European Jurisdiction

"*50 Jahre EU – 50 Jahre Rechtsprechung des Europäischen Gerichtshofs*" [The EU turns 50 – 50 years of jurisdiction by the European Court of Justice] was the title of a conference and its appurtenant publication dedicated to the role of the European Court of Justice in the areas of freedom of movement, coordination rules governing social security, labour law, protection of labour and gender equality, as well as anti-discrimination for reasons other than gender (*Müntefering/Becker*, 2008).

The European Court of Justice has made remarkable contributions particularly to the coordination of social law and related judicial matters through meanwhile about 500

decisions that have strongly characterised this field of law. In the recent past it has been decisions on Union citizenship, on the fundamental economic freedoms as well as on competition law (including state aid law) and public procurement law that have contributed to the Europeanisation of social law. Today there are approaches not only for a descriptive but also for a normatively understood European social model that is to be conceived in terms of a guideline for the future development of the welfare, respectively social state principle in Europe, and this fact is owed largely to the endeavours of the European Court of Justice. The conference of the European Institute of Social Security held in Berlin in September 2008 to mark 50 years of European coordination law ["*50 Jahre Europäische Sozialrechtskoordinierung in Europa*"], the results of which were resumed in a final contribution by a member of the Institute (*Schulte*), served as a forum which provided the opportunity to give an account of this development.

Bernd Schulte

1.5. Posting Workers in the European Union – Problems Experienced in the Practice of Social Law

In these times of increased mobility the transnational posting of workers is growing in importance. Given the sometimes huge differences between the various national legal systems numerous problems arise, including – among other things – the difficulty in legally assessing the facts relevant to the posting of a worker with respect to social security issues. Once a person takes up work abroad, it must be clarified which social insurance legislation becomes applicable to the respective case. This must not lead to the accidental circumstance that the worker is insured in both countries or in neither country. On 20 April 2009 the Institute organised a conference in cooperation with the Bavarian Higher Social Court and headed by *Ulrich Becker* that sought to display and discuss the most crucial practice-relevant problems from a socio-legal perspective. Particular focus was given to issues pertaining to European law in the context of Regulation (EEC) No. 1408/71, as well as to questions relating to liability law in the light of the relevant jurisdiction of the Federal Court of Justice. More than 60 participants from ministries, associations, judiciary, social services administration and the advocacy had the opportunity to obtain first-hand information from experts from science and practice on the issue of posting workers and to put their own questions up for discussion.

Nikola Wilman.

To begin with, the legal situation in the field of application of European Community law was described in order to introduce the topic (*Schulte*). The aim of the regulations regarding social security passed on the basis of Art. 42 of the EC Treaty – i.e. Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72 (soon to be Regulation (EC) No. 883/04 and Regulation (EC) No. 987/2009) – is to coordinate, not harmonise, the social security systems of the member states. The member states are to decide themselves on the configuration of their social security systems. The free movement of workers as one of the four European fundamental economic freedoms can only be guaranteed, however, if the relevant gainful activity in another EU member state does not entail adverse conditions as regards the social security status of the worker. Community law identified this problem early on and thus set up certain criteria by which the applicable national legal system is to be determined. Thus, according to Art. 13 II of Regulation (EEC) 1408/71, both employed and self-employed workers fall under the host country principle or, respectively, the country-of-employment principle, meaning that they are covered by the social insurance scheme of the member state in which they actually work. An exception thereof is effected by Art. 14 I lit. a of Regulation (EEC) No. 1408/71 for cases regarding the posting of workers. Accordingly,

a worker employed in the territory of a member state by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another member state to perform work there for that undertaking shall continue to be subject to the legislation of the first member state, provided that the anticipated duration of that work does not exceed twelve months and that he is not sent to replace another worker who has completed his term of posting. The new Regulation (EC) No. 883/04 provides for a one-time posting period of now 24 months. According to the speaker, problems were caused particularly by the lack of definite criteria characterising the "employment relationship" in the sending state, as well as the different methods of posting applied in practice by the individual member states. Furthermore, he advocated for better coordination, or even harmonisation, of the elements regarding the posting of workers in labour law, social law and tax law.

Subsequently, the regulation on the posting of workers in German law was explained, along with the applicable jurisdiction of the Federal Social Court *(Rittweger)*. In the German legal system, Sections 3 to 6 of Social Code Book (SGB) IV contain conflict rules for the determination of the social security status. However, the posted workers' rules of SGB IV are only applied if Regulation (EEC) No. 1408/71 is not applicable as a supranational conflict rule under European law, or if there is no social security agreement between Germany and the respective non-EU country (e.g. South Africa, Brazil). In the manner of European Union social law, German law, too, stipulates that any person who works in Germany must also pay social insurance contributions in Germany, meaning that in regard to social insurance the place-of-employment principle strictly applies (Sec. 3 No. 1 SGB IV). German law also contains an exception (Sections 4 and 5 SGB IV) regarding the posting of foreign workers to Germany and German workers to other countries, which states that the posted worker shall retain his social security status in the country of origin for the duration of his stay abroad. The application of German social law in the event of posting a worker from Germany to another country first and foremost implies an existing employment relationship in Germany which is to continue after the worker's return from abroad. In this context, the speaker explained in more detail the comprehensive jurisdiction of the German Federal Social Court on the local allocation of employment. He also referred to employee-employer agreements regarding the temporary "suspension" of an employment in Germany, which would "kill" the employee's posted worker status. The accordance of Section 4 SGB IV regarding the application of German law abroad with Section 5 SGB IV regarding the application of foreign law in Germany has repeatedly been postulated, particularly by the Federal Social Court, meaning that the posting of German workers abroad and the reception of foreign workers in Germany are to be handled on an equal basis. However, criticism has been raised against the factual tendency in the jurisdiction of the Federal Social Court to assume that, in the majority of cases, German social security law is applied, meaning that the application of foreign social law in Germany is expected only rarely.

Subsequently, the problem of posting workers to non-European countries was illustrated by reference to the case of Australia *(Jansen)*. The social security agreement concluded on 13 December 2000 between Ger-

Dr. Monika Jansen (City Administration of Augsburg), Dr. Bernd Schulte and Stephan Rittweger (judge at the Bavarian Higher Social Court).

many and Australia coordinates the regulations on statutory pension funds applicable in the two countries. The agreement facilitates the addition of German and Australian periods of coverage in order to retain the right to claim benefits, as well as the forwarding of pension payments to the other country (so-called export of benefits). In principle, however, the country-of-employment principle applies, i.e. compulsory insurance is based on the regulations of the country in which the respective gainful activity is carried out. An exception from this principle can be made if the case involves the posting of a worker from Germany to another country or, respectively, if an application is made for compulsory insurance to continue in Germany. Through the supplementary agreement of 9 February 2007, the requirements for the posting of workers were harmonised, and a standardised posting period of 48 months was specified.
National regulations still apply to health and accident insurance, since they do not form part of bilateral agreements. Posted workers face problems especially in cases where the legal posting periods of the two countries vary (as a rule, this period amounts to six months in Australia, yet up to eight years according to German law), with workers running the risk of being covered by "double insurance".

The second part of the conference started with a presentation on the "practical problems regarding the posting of workers within the EU, especially with a view to electronic processing" *(Kraus)*. The basic idea of the German pension insurance database, which centrally registers all issued E 101 posting forms for Germany, is to battle against the abuse of the free movement of services. The registration of the forms via the data records of the pension insurance agencies (DSRV) in Würzburg is based on Section 150 III, V SGB VI: it provides an automated retrieval procedure for supervisory authorities and serves as a device for the transmission of data to the social security agencies. Furthermore, it facilitates the comparison of data and the gathering of evidence for potential abuse due to the possibility of analysing particular criteria. Suspicious cases can be viewed, case notes and findings can be added. Further proposals suggest the extension of the database to encompass the entirety of E 101 forms, the deletion of data five years after expiry of the validity period (not after data entry), the stipulation of routine checks in Section 150 SGB VI, the extension of assessment and risk criteria, as well as the integration of the "basic file" installed in accordance with Section 28p VIII SGB IV.

The presentation was followed by a lecture on liability issues with respect to the employment of foreigners from other EU member states in Germany *(Pabst)*. In this context, focus was put on the principle stating that "the liability privilege depends on the relevant social security statute". As the starting point in cases of liability, Art. 93 Para. 2 Regulation (EEC) No. 1408/71 was presented: The liability privilege follows the rules of the applicable social security statute if the basic liability law (tort statute) and the social security statute diverge. Consequently, Sections 104 to 106 SGB VII also become applicable with regard to the foreign tort statute, yet not in cases where persons covered by foreign social security systems have an accident in Germany. Although Art. 93 Para. 2 Regulation (EEC) No. 1408/71 has, for more than 50 years, not been subject to factual changes, there are, for practical reasons, only two decisions that the Federal Court of Justice made on the issue, namely the so-called tractor case and the "*Bördeheimfahrerfall*", yet no decisions have been made in this regard by the European Court of Justice. The question of how the liability privilege is to be applied is relevant also because liability privileges in the EC/EEA/Switzerland differ as regards their range of validity. Contrary to the early years of the conflict rules, the former basic model of the liability privilege has in the 27 member states of the European Union become an exception. This means that any worker who has had an accident in Germany and who is covered by a foreign social security system without liability privilege under EC/EEA/Swiss law, may sue his German employer for damages at German civil and labour courts, whereas German employers do not enjoy the protection of Sections 104 to 106 SGB VII due to Art. 93 Para. 2 Regulation (EEC) No. 1408/71. The fact that such cases have, so far, been very rare can be put down to practical reasons, but not legal ones.

Nikola Wilman/Iris Meeßen

1.6. The Social Dimension of Integration Processes in Latin American Countries

Starting Point

The vision of continental unity in the region of South America developed during the times of the independence movements and goes back to the freedom fighter *Simón Bolívar*. Over the past centuries, various regional and subregional international organisations have been founded and bilateral and multilateral international agreements have been concluded for the purpose of political integration. The objectives of these organisations and their implementation mechanisms vary. The integration efforts have social objectives in common, yet of varying prioritisation.

Founded in the context of the Montevideo Agreement, the *Asociación Latinoamericana de Integración, ALADI*, which is superordinate to the *Comunidad Andina de Naciones, CAN* (Andean Community) and to the *Mercado Común del Sur, MERCOSUR* (Southern Common Market) is, as the legal successor to the Latin American free trade zone, an organisation geared towards economic cooperation and the creation of a common market.

The Andean Community (CAN) was established in 1969 by means of an agreement between Bolivia, Peru, Ecuador, Colombia, Chile and Venezuela. The primary objective is not to effect economic integration by way of expanding trade, but rather to support the development of economically weaker member states. The present members of the alliance are Bolivia, Peru, Ecuador and Colombia.

MERCOSUR, founded in 1991 as an economic association between Argentina, Brazil, Uruguay and Paraguay, and with Bolivia and Chile as associated states, represents an internal market with the primary objective of economic integration. By way of the declaration of 1998, *Declaración Socio-Laboral del MERCOSUR*, MERCOSUR has provided for a harmonisation of the respective national labour codes. However, the member states are not legally bound to this declaration, since MERCOSUR does not contain any supranational elements.

Quite unlike the institutional configuration of the Andean Community (CAN) with its nationally dependent Court of Justice of the Andean Community, whose *directivas* have direct legal force. The *Secretaría General* as the political body of CAN takes its decisions by a majority vote of the member states, meaning that state competences are actually transferred to an international body. The Andean Community (CAN) follows the example of the European Union. It has effected a range of regulations regarding the social dimension. However, the respective national systems lack enforcement mechanisms.

The research objective against this background is to examine the social dimension of

MERCOSUR and the Andean Community (CAN). The social dimension of an integration process refers to regulations pertaining to social protection, but also to social security, that are binding for the member states. The examination particularly focuses on the situation in the respective countries and on the way these regulations have been received. Transnational freedom of movement is also to be included in the examination, since economic integration must be coupled with social integration. Both integration processes are based on the equal treatment of the member state citizens.

For this purpose, it is necessary to analyse the new Ibero-American Multilateral Convention on Social Security of 2009, ratified by Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Spain, Paraguay, Peru, Portugal, Uruguay and Venezuela, and implemented in 2010 in El Salvador, Ecuador, Chile, Brazil, Spain, Uruguay and Venezuela; after all, it represents an innovative international instrument containing common rules.

Implementation

The impact of national, international and even supranational integration processes on the national legal systems and on social security systems, as well as the interplay resulting from such an impact are rarely examined from a legal perspective. The objective of the research is therefore to analyse the various regional systems in Latin America along with the relevant regulations pertaining to the transnational freedom of movement.

The research project focuses on subregional organisations, focusing in this context on the Andean Community (*Comunidad Andina de Naciones, CAN*) and the Southern Common Market (*Mercado Común del Sur, MERCOSUR*). The relevant agreements on social security for the entirety of Latin America, as well as their implications, shall be included in the examination.

The first step will be to systematise the existing social standards set by subregional organisations with regard to the exercise of the right to free movement within the Latin American integration process.

Furthermore, the global discourse on the role of social policy in integration processes in general is to be completed by a detailed regional discourse on the Latin American integration process in particular, including the potential necessity for regulation of the latter.

In a second step, the involved subregional systems shall serve as examples for the comparison and analysis of the framework conditions of the institutions, the relevant international agreements and their enforcement mechanisms purposing the development of a "social dimension" within the context of the Latin American integration process. In this regard, one must consider the fact that common measures in the field of social security here meet with various specific, historically evolved social protection systems. Depending on the respective national understanding and national cultural tradition, expectations may vary with respect to sovereign action in the social field.

Lorena Ossio

1.7. International Standard Setting and Innovation in Social Security

The project on "International Standard Setting and Innovation in Social Security" (ISSISS) is to discuss possible inconsistencies between international standards on the one

hand and innovative approaches in national legislation on the other hand. In this context, we start from the assumption that innovative approaches exist in both highly developed and rudimentary social security systems. However, innovations may be appraised differently in industrial and developing countries. Some innovations may even take up earlier ideas, which is why post-industrial as well as developing countries shall be under investigation. Due to the differing starting situations and problems, investigations are to be carried out in two workshops. The first one dealt with the most recent social security developments in countries with a low per-capita income. A second workshop, scheduled for May 2011, will look into the situation and innovative trends in the developed countries. The big issue is whether universal minimum standards for social security do in fact exist. These universal standards are basically set out by the International Labour Organisation (ILO) in the form of conventions which are to be ratified by the individual countries, and therefore they constitute the main focus of research.

The ILO conventions on social minimum standards, and especially Social Security (Minimum Standards) Convention No. 102 of 1952, are regarded as obsolete in various aspects as they were set up at a time when politics focused on the labour question. Along with the general criticism of linking the receipt of social insurance benefits to an employment relationship and of the wording, which is in some parts discriminating under the aspect of gender equality, it is also the organisational structure of the ILO in general that has become the subject of complaints.
In addition, the ILO conventions are criticised for concentrating on traditional social risks, yet leaving new social risks – such as HIV/AIDS – aside. HIV/AIDS is a new risk, as it is not only a disease whose risk factors might possibly be compensated through a health care system, but also a pandemic that can orphan children across entire regions by killing off their providers. Poverty is not covered by the ILO conventions either. Neither responsibility-sharing between the state and its citizens, nor funding issues nor problems regarding privatisation are covered by the ILO conventions. Some of the criteria have already been discussed with respect to Europe; however, there are, as yet, no scientific findings with regard to the developing countries.

Developing Countries and Minimum Social Security Standards

At the Workshop entitled "International Setting of Standards and Innovation in Social Protection in Low Income Countries", which took place from 14 to 16 October 2009, the innovative approach was to investigate the ideas of developing countries regarding minimum social security standards and to find out whether the ILO standards were actually compatible with the respective situations of these countries.

Many developing countries do not feature the social structures once valid for Europe. Especially the triparity among trade unions, employers and governments is a concept unfamiliar to many developing countries that is also coming to be questioned in the developed world. In developing countries people are often employed in the informal labour market without enjoying any social protection. It is therefore doubtful whether social minimum standards can be applied to developing countries at all. It is in this very context that the ILO has been accused of not supporting the struggle against poverty. That is why the more recent ILO policy includes projects and activities such as the Campaign on Decent Work. Furthermore, it must be discussed whether the struggle against poverty should be made a legal obligation and whether conventions should be set up by the ILO that match the developing countries' needs. Irrespective of the ILO, the question arises as to what further international norms and what further institutions may be taken into consideration in order to establish minimum social security standards. In this respect, especially experts from the developing countries shall get a chance to speak, as the discussion has so far primarily been led by the Western countries. This *bottom-up* approach constitutes the academic challenge the first workshop will have to face.

In developing countries, research is basically conducted in the field of social policy, since social benefits law in these countries still tends to lack differentiation. For this reason, the workshop was arranged in an interdisciplinary manner, thus allowing renowned researchers from developing countries to take part in the discussion. Unlike in socio-political, sociological and economic re-

Dr. Barbara Darimont, Prof. Dr. Angel Guillermo Ruiz Moreno (University of Guadalajara), Lorena Ossio and Dr. Yasemin Körtek, Prof. Dr. Edwell Kaseke (University of the Witwatersrand) and Maria Korda (Tilburg University), Lorena Ossio, Prof. Dr. Frans Pennings (Utrecht University) and Prof. Dr. Ulrich Becker (top left to bottom right).

search, however, issues of social security predominated, with legally binding conventions being the object of the investigation – conventions defining the common consensus on minimum social security standards. However, a difficulty arising in this regard was the fact that many developing countries engage in achieving international standards only to a very limited extent, since they are mainly concerned with finding solutions to their own national problems. Yet, the question arises whether it is rather distinct systems of social security that will form in the developing countries due to the fact that their national issues are vastly different from issues troubling the Western world.

In the developing countries efforts have been made to integrate informal social security systems into the formal, i.e. public, systems. A further approach is *microinsurance*, which has been used as an experimental feature particularly in the health care sector.

Informal Social Security

Informal social security is understood in terms of support systems within the family, among neighbours or in the form of civil self-help. The concept of informal social security builds on existing systems of self-help and civil initiatives and follows a *bottom-up* approach. Existing networks of informal social security are to be reinforced specifically by means of tax money. The advantage of such systems lies in the fact that they are not tied to formal employment relationships, which most persons simply do not have in developing countries. Indeed, these persons could be covered by voluntary insurance schemes; yet, the low wages of those employed in the informal labour market sector impede such a development. Concepts of informal social security are, in fact, also based on contributions; however, the latter can also be made in the form of personal involvement, for instance. It must be emphasised, however, that such concepts are limited in their effectiveness, since they can cover risks only on a very small scale. This is due, on the one hand, to the meagre financial means available, but on the other hand also to the fact that urbanisation has eroded these systems. After all, the systems at issue lack sufficient control mechanisms, and therefore they are prone to mismanagement and corruption.

On the whole, it can be assumed that informal social security will probably only ever serve as a supplement to the formal systems

and can at best be combined with the existing public systems of formal social security.

Microinsurance

Microinsurance is a new concept implemented in the context of health care provision in order to fight poverty. The idea behind it is to create low-budget insurance schemes that provide access to basic health services and operate on a small community level. Over the last few years, various schemes of this sort have been tested. They differ in terms of size, organisation, involvement of public actors, administration, service provision and control, as well as in terms of involvement of private insurers. The fundamental principle is the inclusion of the poor. The results differ greatly, with one of the biggest problems still being the meagre financial resources. Furthermore, health care provision in poor countries lacks infrastructure. Commercial insurers are rather unwilling to invest in such regions, since they do not expect any profits from such insurance schemes; thus, they do not take serious interest in building up some sort of infrastructure.

Many such systems have shown to link up with the public systems in the long term. Therefore they represent some sort of interim solution for the expansion of the public systems. The workshop did not clarify whether or not they actually fulfil this function. It seems appropriate to organise a separate workshop solely devoted to the topic of *microinsurance* in order to examine these questions.

Future Project Work

In a second workshop, the results from the first workshop on developing countries shall be presented. New legal instruments shall be investigated that are acceptable to all countries and that will provide a higher level of social security for everyone. In the context of examining the industrial countries, issues like long-term care insurance, privatisation in social security, but also measures of activation in social security, are to be examined.
The present deficits in existing ILO instruments are generated by the lack of possibilities for all people to gain access to minimum social security benefits, as about half of the world's population is not covered by any social security system. That is why standards must be established that promote both economic development and the reduction of poverty and inequality. In this context the question arises as to what we – i.e. the global community – expect from international social standards.

Barbara Darimont

2. Changes in Developed Countries

Regulatory Instruments and Forms of Action

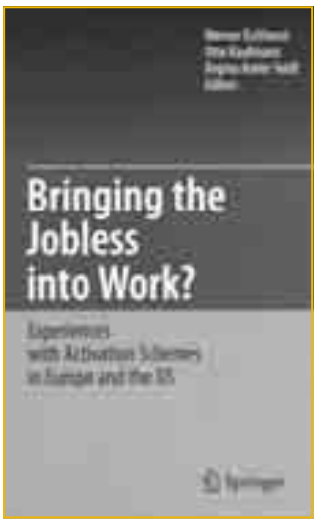
2.1. Activation and Employment Promotion

In a joint and interdisciplinary research project, the Institute for Employment Research (IAB) based in Nuremberg, the Institute for the Study of Labour (IZA) in Bonn and the Max Planck Institute for Foreign and International Social Law compared at international level the labour market policy measures of "activation", as well as the implementation of new approaches for the (re)integration of unemployed persons and jobseekers (cf. Report 2006 – 2007, pp. 39 – 41). The project was concluded successfully with a publication which presents the various aspects and objectives of activation measures in an interdisciplinary way.

Compared against other labour market research projects that focus on labour market policy and employment policy inclusive of unemployment insurance, the project on "activation" differs both in regard to its research topic and to its methodical implementation: the examination of the respective "activation fields" is made from a legal and a socio-economic perspective at the same time.

Apart from the various socio-economic aspects and legal norms regarding the fight against unemployment, the impact of international law and EU law on employment promotion, as well as the measures for reintegration into the labour market, were illustrated by way of eight country reports (Denmark, Germany, France, Netherlands, Sweden, Switzerland, USA, United Kingdom). Furthermore, the constitutional provisions of the countries involved in the comparison were analysed in cases where they did not only

take on superior, but also practical significance for the object of study, i.e. for activation as a means to promote employment. The country reports are preceded by an introduction presenting the fundamental principles of the examination. The concluding chapter is devoted to transnational comparisons.



It can be established that the socio-political notion of "activation" is not ascribed to one generally valid definition. Even at national level, "activation" can be configured in various ways. The models designed for this purpose are of interest particularly from a sociological perspective. Among the different concepts relevant also from a legal point of view, it is, for one thing, the "liberal model" that is to be emphasised: it is characterised by a narrowly limited range of social services that features rather strict and rigid performance qualifications. For another thing, some sort of "compensation model" between society and the individual is propagated: this model is characterised by a less restrictive awarding of benefits and a stronger positive involvement of the state in employment promotion. Against this background it must be underlined that an acceptable approach for comparative work could be found, an approach that was compatible with the interdisciplinary mode of operation.

From a legal point of view, the result of the activation measures seems to take precedence over the stipulation of the respective model, meaning that the decisive factor is the determination as to which legal norms are to benefit which type of employment promotion, and how reintegration is to be realised. The term "activation" becomes valid for jurists via the legal norms that are specified for the attainment of the predefined objectives. Law always depends on political, i.e. societal guidelines. The comparison has shown that despite the individual national concepts, there are transnational commonalities or, respectively, convergence tendencies with regard to the general objective to introduce activation measures and to determine the target groups, as well as with a view to the utilised implementing instruments. By way of law-making in accordance with the political guidelines, activation receives its specific configuration, which again is influenced by regulatory measures. Finally, the comparison led to the finding that all countries examined featured systems that were not only based on activation per se, but also on accompanying obligatory or voluntary measures in the forefront of unemployment.

Based upon the findings of this first study, a follow-on project was initiated within the reporting period *(Becker, Kaufmann)*. This project primarily aims at an analysis of the *legal* aspects pertaining to the regulation of "activation".

Otto Kaufmann

2.2. Quality Assurance in Long-Term Care

The Institute devoted a conference to the topic of quality assurance in long-term care ["*Qualitätssicherung in der Pflege*"]; it was held on 12 and 13 June 2008 and was headed by *Ulrich Becker*. It was organised in cooperation with *Gerhard Igl* from the Institute for Social Law and Social Policy in Europe at Kiel University. The event was held on the occasion of the commencement of the Act on the Further Development of Long-Term Care [*Pflege-Weiterentwicklungsgesetz*] on 1 July 2008, which contains regulations pertaining to the development and application of expert standards and which – due to the obligation to publish audit reports in comprehensible form – aims at greater transparency. Approximately 50 participants from science and practice engaged in lively discussions on these topics, with the main focus being the preparation and practical implementation of quality standards.

The conference was opened by *Gerhard Igl*, who introduced the audience to the legal framework conditions of quality assurance in Germany. The focus of his presentation was the question as to how quality standards could become binding, for instance through

employment law or social benefits law. He also expanded on the supervision of standards through the state, the social benefit institutions or the professional associations.
Subsequently, *Bernd Schulte* presented the European guidelines for quality assurance, particularly Regulation (EEC) No. 1408/71 and Regulation (EC) No. 883/04. In many member states quality assurance in long-term care has not been established yet; the guiding principles for the selection of indicators and statistics might be of help in this regard.
Friso Ross, Christina Walser and *Martin Landauer* then explained the systems of quality assurance in Austria, the Netherlands and England. Regulations in Austria focus on nursing allowance and continue to be dominated by guidelines on structural quality, while in the Netherlands they are based on a rather subjective approach reflected particularly in a personal budget. In England, too, structural quality is a core aspect; however, it is increasingly supplemented by elements regarding the process and outcome quality.

The second group of topics was dedicated to the methodology and practice of quality assurance. *Thomas Klie* from the Protestant University of Applied Sciences in Freiburg elaborated on the development of standards for quality assurance, and particularly on the national expert standards, quality levels and other quality requirements. Following this, *Peter Pick* from the Medical Service of the Central Federal Association of Health Insurance Funds [*Medizinischer Dienst der Spitzenverbände der Krankenkassen*] emphasised the necessity to revaluate the investigative role of the Medical Service. *Ingrid Hendlmeier* from the Central Institute of Mental Health [*Zentralinstitut für seelische Gesundheit*] in Mannheim gave an account of the difficulties arising in the context of developing quality standards. Her report was supplemented by *Mona Frommelt*, director of Hans-Weinberger-Akademie der AWO e.V. [Workers' Welfare Association], who elaborated on the implementation of quality standards in long-term care institutions for the elderly. She made clear that successful implementation depended not only on structural requirements, but above all also on the relevant resources and on the readiness of the management to adapt to the respective conditions. In a concluding presentation *Harry Fuchs* (Düsseldorf) reminded his audience that it is not the administrative regulations, but the interests of the persons involved that should be the focus of quality assurance.

Racing for the green light in quality assurance.

The event has made clear that the legal regulation and practical implementation of quality assurance have been finalised neither in Germany nor at European level, and that research in this regard will continue to be an urgent requirement also in the future.

Christina Walser

2.3. Choice and Competition in Hospital Health Care

"The health care system is ailing." In Europe, we are accustomed to the multitudinous chants of this sort. The songs of praise to the healing powers of competition nevertheless tend to differ in their intensity, but are in any case accompanied by modern instruments. Competition, as well as choice, serve as steering instruments in the health care system on a transnational basis, and are to achieve allocation effects based on the principles of the welfare state and to counteract the continuing rise in medical costs. However, the understanding of competition varies greatly, and so do the type and scope of competitive elements and the steering mechanisms intended for them. At the same time, competition for its part is subject to normative steering. It conflicts with state intervention and regulation, which are bound to the provision of needs-based services on the basis of solidarity and which characterise the common statutory security systems.

Starting Point and Procedure

The project, initiated by the Institute and carried out in cooperation with the Institute of Government and Public Affairs of Illinois University, focuses on a particularly costly field of health care: the hospital sector. Apart from it being subject to high costs, its quality management is also attested to be often poorly configured. Low investment results in deficient budgets, and sector divisions between the ambulatory care phase, the inpatient acute phase and rehabilitation phases hamper integral care flows. Evidence-based reform standards are rare, however. Since repeated and barely available financial injections cannot guarantee a cure to this dilemma, new pathways will have to be opened up. The main path to be opened up in this regard is competition: competition will progressively open up choices and configuration options that are specifically predefined in order to engage the parties involved in competition to the benefit of economic efficiency and quality in hospital health care.

The project was completed during the period under review (*Becker/Ross/Sichert*, Wahlmöglichkeiten und Wettbewerb in der Krankenhausversorgung: Steuerungsinstrumente in Deutschland, den Niederlanden, der Schweiz und den USA im Rechtsvergleich, 2010). The comparative legal studies, supplemented by economic comments, focus on the normative incentives and steering mechanisms utilised in Germany, the Netherlands, Switzerland and the USA. It is the functions allocated to competition in social care systems, above all the guaranteed provision of basic health care through economic efficiency and quality, that serve as assessment criteria. The findings regarding the welfare-promoting steering potential of instruments used in competition shed light on the way how competition is or could be enshrined in health care as a genuine structural feature. In this context, every country examined displayed a particular interrelation between competition and regulation.

Choice and Competition in Germany

Competition in hospital health care, regulated to a particular extent in the course of the most recent reforms, has turned out to be, first and foremost, a "competition for structural advantages in the regulated system". It is especially in the triangular legal relationship (in social insurance law) that competition-based relationships must be arranged in a multipolar way.

The direct competition of hospitals (service providers) stands out from the list of market segments in the mixed system based on regulation and competition. Competition law, broadly applicable in this relationship according to substantial socio-legal examination, as well as the here restrictively exercised medical professional law, contribute to the protection of the growing number of competitive relationships. The competitive pressure exerted by social law and hospital law leads to the circumstance that competition law is increasingly given a new effective range. This circumstance is less pronounced as regards the relationships between sickness funds.
The hospital health care market is a market area driven by patient demand; however, from a strictly legal perspective, patients do not have any adequate right of choice. A decisive parameter in competition is the quality of treatment, and this is sometimes connected to specific financing through the sickness funds. Massive restrictions in pricing law lead to concentration and specialisation, as well as to the restructuring of hospitals and

of service provision. Apart from the frequently exercised "targeted referral", competitive advantages outside planning-based provision are often aimed for by way of "innovative models" (privatisation of services) beyond plan-regulated health care provision.
Competition through *managed care* does not simply mean competition for contracts with sickness funds, but also competition within the "internal cooperation" of service providers for efficient networking, and concentration processes that partly entail significant problems regarding broad availability of health care and emergency health care provision.
Planning and competition can block each other; likewise, there is competition for inclusion in structure planning among the parties involved. In keeping with the exclusion of investment, dual financing tends to have the same distortive effect on competition as local loss relief and *diagnosis related groups*, DRGs (which do not allow for genuine price competition anyhow); the latter, after completion of the convergence phase, have turned out to be uniform (only) in the federal states. It becomes clear in this context that normative steering purposes may occasionally thwart each other. It is particularly in this regard that Germany must, as a consequence of the most recent health reform of 2007, reorganise the regulatory framework of hospital financing.

Choice and Competition in the Netherlands

Competitive instruments are also on the increase in the Netherlands amid persisting tensions between competition and regulation. These new structures, providing more leeway for choice and individual behaviour, are nevertheless characterized – depending on the market segment and the respective actors involved – by a kind of gradual and instrumentally disparate "market conformity" or perfection. Shaped by the most recent health reform, the market for insurance services, for instance, has already grown significantly; in this area, new supervisory structures, among other things, have become effective, especially to monitor the – in this sense regulated – basic conditions.
It is only very recently that hospital competition, too, has become subject to control through competition rules in the form of applicable competition law. It is the result of pruning back the previously dominant regulation through the state, on which the original assumption was based that hospitals could not compete with each other.
Market-conform structures in the hospital sector have come to exist due to the corresponding further development of medical care structures. This dimension of *managed care*, which was in the Netherlands established earlier than in Germany, integrates above all general practitioner care and – unlike in Germany – hospital-based medical specialist care in order to open up profitability reserves. Decisive as regards competition is the fact that in this context a contract competition has been established with a view to appropriate agreements with the sickness funds.
Furthermore, what is significant with respect to steering is the partial authorisation of price competition. It is based on the finding that even steering through DRGs does not necessarily have to be strictly regulatory, but that the evaluation unit per billing unit may also be freely negotiable regardless of a potentially fixed relative weighting of treatment cases. An orientation partially based on price competition is effected by means of authorising 10% of listed DRGs for tariff negotiation.
Altogether it can be said that the formation of market-conform structures is accompanied by that type of competitive control which seeks to take account of the conditions of incomplete health care markets in a particular way to the benefit of a general provision of health care. In the light of the flexibility and interaction discernible in this context, real regulatory competition is rare.

Choice and Competition in Switzerland

The relationship of the insured person with the hospital, particularly his right to opt for a hospital of his choice, is very closely linked with the guidelines for guaranteed health care provision within the canton. Due to this, an insured person is not permitted to go to a non-cantonal hospital unless absolutely necessary for medical reasons, even if it is located only few kilometres from his place of residence. These *ordre public* provisions unnecessarily narrow down the right of choice virtually and legally. As for health insurance, insured persons have a wide range to choose

from within the obligatory system provided through the Health Insurance Act (KVG). The range of choice for insured persons and the obligation to contract on the part of the insurers are core elements for the organisation of socially acceptable competition.
The relationship among hospitals is also characterised by *ordre public* provisions, which in turn aim at the preservation of the public hospitals. However, it turns out that numerous private hospitals have not only managed to stand their ground without any state subsidies, but that they have also found their niches by way of specialisation. The clear preference of public hospitals has not led to the elimination of private hospitals; rather, the public hospitals have decreased in number more noticeably.
The relationship between hospitals and insurers is characterised by great freedom of arrangement as regards the collective agreements. The provisions of the Health Insurance Act do not exclude new impulses, such as SwissDRG for instance, from being incorporated in the system. In this context, the rather anti-competitive element of horizontal collective agreements has proven beneficial to the basic conditions of competition. The relationship between the statutory insurers has been tarnished from the outset due to the fact that up to date not a single private enterprise has ever acted as a health insurer in accordance with the Health Insurance Act. The so-called competitive elements can therefore not be sufficient, since it is only the old social funds that share the market despite legislative intention to the contrary. On the whole, the individual relationships and markets clearly outline the differences as regards the various elements of competition. It can therefore be said that competition in statutory health insurance plays a role already today and, above all, that it also fulfils significant functions.

Choice and Competition in the USA

Competition in the hospital sector appears to be characterised fully by competitive elements. Only a closer look reveals that regulative aspects are of great importance and that areas predefined by the state leave little scope for action – not least due to statutory measures at federal and individual state level. The de facto dominance of *Medicare* and *Medicaid*, yet also individual legislative acts like EMTALA (Emergency Medical Treatment and Active Labor Act) *or HIPAA* (Health Insurance Portability and Accountibility Act) characterise the hospital system and result in the fact that also the seemingly exclusive private sector is significantly affected thereby.
The relationship of the insured person towards the hospital is further characterised by the fact that the former is restricted in his options to choose a hospital. Examples in this context are insurance contracts concluded by employers which narrow down the choice of a hospital, or the *managed care* programmes in general, whose very aim is to guarantee high quality by means of coordination and thus also to restrict the range of service providers to choose from. On the other hand, EMTALA at least laid the foundations for the requirement that, in an emergency, hospitals receiving any *Medicare* revenue must treat the respective patient. The same holds true for the relationship between insured persons and their insurances. Anyone who is subject to *Medicare* or *Medicaid* has, by law, no actual choice as regards the respective conditions of his insurance scheme. Yet also with respect to the employee benefit plans there are restrictions by law.
Furthermore, the relationship between the insurances, benefit plans or third payers and the hospitals in general also shows that the possibilities of free pricing and collective wage arrangements are limited. Here too, this is due to the dominant position of *Medicare* and *Medicaid*, whose financial and organisational impact often leads to pricing and collective wages being arranged to their benefit. However, the individual states have been trying to constrain the power of *Medicare* and *Medicaid*, as well as of large employee benefit plan providers, with the aid of antitrust laws in order to prevent the formation of monopolies in the context of pricing and collective wage arrangements.
Altogether, the individual market structures show – regardless of the question whether they originate from relationships under private law or rather from governmental health programmes – that the competitive elements of the US American health care system are linked to state regulation and restriction, thus representing a conflict between free choice und statutory insurance, albeit to a slightly different extent than in European countries.

Choice and Competition as Structural Features of Health Law

Choice and competition in the individual states show that, legally, health care systems are combinations of competition and regulation. A question of less importance is whether existing competition (organised under private law) is (strongly) superimposed by regulations, or whether provisions pertaining to social law adopt system-specific elements of competition. The universal characteristic of a "health competition law" is rather its material and institutional-organisational duality. The shaping of these structures is accompanied by a "gain" in entrepreneurial character for both (public and non-profit) hospitals and (social) sickness funds. It has led to the establishment of individual control structures. This material duality, or tripartite structure to be exact in the case of Switzerland, is illustrated, for example, by the Dutch insurers involved in the basic and the supplementary insurance market, as well as by the Swiss social sickness funds acting on the mandatory and the supplementary insurance market, which are in this respect subject to different regimes or rules respectively. This development is accompanied by a partial convergence of systems, by an enrichment of social elements (basic insurance, basic rate) in private insurance law, as well as by the enrichment of elements of competition like optional rates and cost sharing (Switzerland, Germany) in social insurance law, which requires the application of the principle of solidarity.
The mentioned duality is, at the same time, expressive of ambiguity and friction. Hospitals, i.e. businesses, the fusion of which is subject to antitrust control and whose management capacities are competitively incorporated into the market by means of *managed care* authorisations and integrated care, stand in competition for market access, the latter of which is regulated in accordance with planning aspects; in this context, mediate or immediate price competition is regularised or even excluded. The right of the consumer to opt for a hospital of his choice is also based on multiple legal planning requirements. Competition in health care therefore is and indefinitely continues to be a "steered", "planned" or "incomplete" competition or, respectively, will only be "realised in parts". This statement also holds true for the USA, for which the research project has been able to show a significant deal of regulation, as well as to outline the influence of governmental programmes on *managed care*. The de facto existing markets in the health sector are therefore tightly regulated. This applies to both the hospital market and the insurance market.

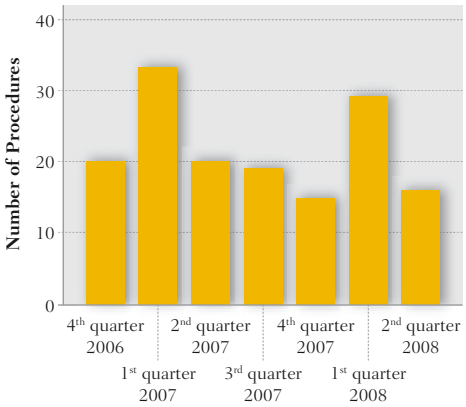
The exact degree of choice and competition to be implemented will have to be determined in a conceptual framework. A certain conflict regarding the various concepts will continue to exist, not least because decision-making for the benefit of further reform takes place within a framework of regularisation and "interwoven regulations", with policy-makers being the federation, the cantons, states and federal states. The combination of extending the general obligation to insure with the obligation to contract and to admit new members, as well as the measures taken against risk selection can be regarded as successful implementations to the benefit of the objective of competition in terms of its social function, i.e. to the benefit of the patient or, respectively, the insured person. As the consumer, he or she can benefit from particular hospital-based insurance services. However, even though importance will continue to be attached to the demand for health care provision services in a particular hospital, the systemic steering potential is limited due to planning restrictions and limitations through *managed care*, as well as due to the fact that priority is given to regulatory quality assurance. We could well do with less intensified competition; however, for the benefit of the social we could never do without regulation.

Friso Ross/Markus Sichert

2.4. Mediation in Bavarian Social Jurisdiction – Findings of a Model Project

Mediation is a procedure implemented to solve conflicts. It aims at a solution for all parties involved in a conflict by means of providing a mediator. The latter is to help the parties involved to find solutions, but does not make any decisions. A particular form of mediation is court-based mediation, which in a way combines the court proceedings with a mediation procedure. It deals with conflicts that are already pending before a court, but

in addition to the court proceedings regulated through procedural law it tries to effect a solution that is acceptable to all interests involved; the solution itself is to be found by the parties and negotiated among them.



Total number of mediation procedures.

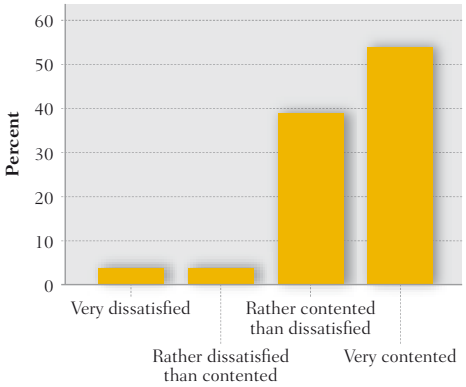
Court-based mediation is therefore fundamentally different from a court settlement. Mediation is also conducted by judges, but – according to the definition in Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters of 21 May 2008 – it is judges who are not "responsible for any judicial proceedings concerning the dispute in question". The mediating judge acts as a go-between, but not as a decision maker. The definition given at the 67th German Jurists Forum summarises the particularities of court-based mediation as follows: it is conducted in pending proceedings at court and by judges who are trained mediators.

Court-based mediation has also been increasingly put to the test in Germany. It was initially offered at common courts, but has for some years now also been conducted by the administrative and social courts. However, the introduction of court-based mediation has been met with no inconsiderable scepticism by some critics. For one thing, a clear division between court proceedings and out-of-court procedures is preferred by some in order to make sure that the various functions of the relevant procedures are not mixed and that, as a result, their specific advantages are preserved. For another thing, mediation is regarded as hardly suitable especially with a view to social court proceedings, since in this context it is mostly about conflicts between a citizen and an administrative authority, and the respective social judge usually has to decide on whether or not to grant social welfare benefits to the citizen. For the purpose of testing the suitability of court-based mediation in social jurisdiction, a model project termed "Mediation in Social Jurisdiction" was launched on 1 September 2006. It was promoted by the Bavarian State Ministry of Labour and Social Affairs, Family and Women, and has received scientific support from the Institute since 1 January 2007 (cf. Report 2006 – 2007, p. 41 f.). This model project was concluded within the period under review. The findings have been published (*Becker/Friedrich*, Mediation in der bayerischen Sozialgerichtsbarkeit, Abschlussbericht zur Evaluation eines Modellprojekts, *MPISoc Working Paper,* vol. 3, 2009; *Bayerisches Staatsministerium für Arbeit und Sozialordnung, Familie und Frauen*, Mediation in der Sozialgerichtsbarkeit, Ergebnisse eines Modellprojektes, 2009).

Mediation in matters relating to social benefits aims at two things: for one thing, it seeks to improve the conditions for a consensual and permanent conflict resolution; for another, it intends to simplify and speed up court proceedings. From 2006 to 2008, the model project "Mediation in Social Jurisdiction" served as an instrument to examine the question as to whether and how these objectives could be accomplished. It was conducted at the Munich Social Court [*Sozialgericht*] and at the Bavarian Higher Social Court in Munich [*Landessozialgericht*]. The Bavarian Higher Social Court offered mediation also for proceedings pending in the social courts of Nuremberg, Landshut, Bayreuth, Regensburg, Augsburg and Würzburg, thus facilitating mediation procedures throughout Bavaria.

Questionnaires	Received
Claimants and defendants	135
Authorised representatives	60
Recipients of a summons and third parties assisting in the mediation	13
Statutory judges	45
Mediators	80
Total	**333**

The data set is based on a total of 333 *questionnaires.*



Main participants' degree of satisfaction with the procedures.

The aim of the accompanying scientific research at the Institute was to analyse and assess the mediation procedures conducted in the context of the model project, and to develop and refine the criteria governing their suitability for mediation. To that end, standardised written surveys were conducted, and mediation as well as court files were evaluated.

The model has proved successful: the empirical results of the accompanying scientific research show that the objectives pursued with the aid of court-based mediation could be achieved. This applies to both the suitability of mediation as an alternative to resolve conflicts that can be embedded in court proceedings, and to the simplification of conflict resolution in general.

Within the framework of the model project, a success rate as high as 80% could be achieved. In this context, one must consider the fact that also very complex cases or cases involving great difficulties as regards the relationship between the opposing parties were referred to mediation. In many cases, mediation lead to comprehensive conflict management and a conflict resolution in the interests of all parties involved, one that was sustainable and permanent, and that went beyond the initial subject matter of dispute.

The parties involved were highly satisfied with both the mediation procedures and with the respective concluding result.

Court-based mediation may resolve existing conflicts more efficiently. With the aid of mediation, quick solutions could be found for proceedings and costly hearing of evidence could be avoided.

There is much evidence to support the assumption that mediation may contribute to permanent solutions and to the prevention of future conflicts. Court-based mediation contributed to a more effective improvement of conflict resolutions and in this sense to a change in the culture of conflict management in issues pertaining to social law. In one case, it effected an agreement between social benefits institutions on permanent conflict management. Opposing parties who experienced court-based mediation stated that they would consider resorting to this type of conflict management procedure again in the event of similar conflicts, or that they would try to settle conflicts themselves by way of consensual efforts to come to an agreement.

In numerous cases, the particular situation of the claimant was highlighted or previous behaviour on the part of the respective authority was discussed. Court-based mediation thus contributes in a special way to the peaceful settlement of a conflict and to legal peace as such.

As regards the suitability of conflicts for court-based mediation, only little can be said due to the variety of selection mechanisms and the relatively small number of cases available. Mediation within social courts is particularly promising in matters pertaining to health insurance, accident insurance and pension insurance. It is especially used as an instrument to settle conflicts regarding social benefits and reimbursement issues.

Future Conflict Management	No		Probably No		Probably Yes		Yes	
	n	%	n	%	n	%	n	%
Conflict management without third parties (n = 124)	14	11.3	29	23.4	48	38.7	33	26.6
Out-of-court conflict management (n = 126)	58	46.0	33	26.2	22	17.5	13	10.3
Court-based mediation (n = 130)	12	9.2	22	16.9	58	44.6	38	29.2
Court proceedings (n = 127)	36	28.3	56	44.1	19	15.0	16	12.6

Survey results regarding the tendencies for future conflict management.

Field	Agreement Concluded		
	Yes	No	Total
Health insurance	33	3	36
SHI-accredited physicians/dentists	1	0	1
Long-term care insurance	4	3	7
Accident insurance	29	5	34
Pension insurance	12	3	15
Federal Employment Agency	5	1	6
Child (raising) allowance	0	1	1
Benefits law and compensation law	0	1	1
Matters pertaining to Social Code Book (SGB) XII	8	5	13
Matters pertaining to Social Code Book (SGB) II	5	2	7
Total	**97**	**24**	**121**

Fields of procedures referred to mediation and concluded agreements.

Court-based mediation seems to be particularly suitable in cases where a permanent (business) relationship exists between the opposing parties or where future cooperation is necessary or intended.

Within the framework of the model project, court-based mediation has proven an effective and powerful alternative to the settlement of conflicts pertaining to social law through substantive judicial decisions. It remains to be seen what effects are to be expected of mediation in the event that it is offered throughout Germany; it essentially depends on the future configuration of mediation procedures and their linking with social court proceedings. It is therefore advisable to continue court-based mediation in social jurisdiction and to extend it step by step in consideration of further evaluations. The experiences gathered in the model project support the claim that comprehensive information on mediation is to be provided both to the judges in general and to the parties involved in actual procedures; further, that conditions for judges acting as mediators are to be improved.

Ulrich Becker/Nikola Friedrich

Structural Reforms in Social Benefits Systems

2.5. The "Swedish Model" in the Context of the Nordic Welfare States – an Analysis of Socio-Legal Processes of Change

The welfare states of the European North had early on constituted a focal area of research at the Institute. The "universalistic" approach of the social legislation in these countries to guarantee social security for all citizens via general tax revenues has made the inclusion of Denmark and Norway into various research projects – e.g. the project on the "Comparison of Old Age Security Schemes for Civil Servants" – particularly interesting. The examination of the legal configuration of the "Swedish Model" and of its changes was effected by way of repeatedly including it in other Institute projects and by an independent analysis of important factors of change, such as the pension reform of the year 2000, for instance.

The classification of Sweden as a "social democratic" welfare state or as a "social democratic and unionised consensus democracy", a common view that is still widely and uncritically accepted outside Sweden, finally seems to have become outdated – at least since the most recent major reforms took place. Universalism and uniformity of social benefits no longer characterise the legal regulations and even less do they depict the legal reality. Since such changes do not come to pass at one specific time in history, the legal analysis of the Swedish welfare state had to take into account processes developing over a longer period of time. It is especially the more traditional institutions of a social state that, depending on their respective configuration, need very specific reform due to new types of contemporary challenges. Having observed the history (of law) of the Swedish way towards "*folkhemmet*" [the people's home], the task was then to understand that the legislator indeed tackles specific reforms that are in

conformity with the system first, but that these efforts alone usually fail to provide sufficiently effective solutions to complex issues, especially since the issues involved might, in the course of such minute reform steps, in turn change once more. However, by way of a sweeping reform of its statutory pension insurance, Sweden has demonstrated in a way unprecedented in Europe that, despite the internationally well-known inertia exhibited by established institutions, fundamental changes, e.g. the reform of an entire system of social security, are politically feasible and can be realised in a rational way by the legislator in the course of democratic processes.

As holds true for the comparative description of legal regulations in other countries in general, here, too, the rule applies that an abstractly evaluative overview can only obtain scientific validity through knowledge of the multifarious differences in legal detail. The extension of the scope necessary for this aim was first and foremost effected by way of integrating Swedish law into the majority of research projects carried out by the Institute, in addition to the continuous observation and description of the law pertaining to the "classical" social risks (loss of income due to illness, accidents at work, invalidity, old age). In this way, the particularities of Swedish disability law became apparent: the fact that municipalities are assigned the task to implement in practice the rights of disabled persons that are centrally defined by the legislator; and that administrative sanctions are imposed specifically to make sure these rights are effectively enforced. Several studies examined the progress regarding gender mainstreaming in social law; this was supplemented by detailed analyses of existing labour regulations (part-time work) and family law (configuration of parental allowance and parental leave, legal status of children). A broader illustration of labour law, protection against dismissal, employment promotion and placement services was provided with regard to Sweden (and also Denmark) in the context of the "activation" project in international and interdisciplinary cooperation with sociologists, political scientists and economists from the two Nordic countries.

Latest Findings

Naturally, the focus was on the analysis of the years of preparatory work for the sweeping pension reform enacted in 2000, its legislatively highly innovative opening of obligatory pension to the capital market, and on the observation of the new law being put to its first test in the current financial crisis (cf. *Köhler*, Die neue Alterssicherung Schwedens in der globalen Finanzkrise – bedingt krisenfest?, DRV 2010, No. 1, pp. 102-118). The Swedish attempt to create a future-proof old age security system that virtually regulates its legal orientation automatically in accordance with economic and demographic changes at this stage already reveals the following two things: problems arising at national level can, in this way, indeed be counterbalanced without the legislator repeatedly having to effect amendments; however, it is hardly possible for a legislator of an individual country to effect complete immunisation against global crises that might hit the country from outside. The changes in numerous details (not only) of social law have produced two more research

results: for one thing, the fact that by way of Sweden's accession to the EU, the "Swedish Model" has lost a multitude of particularities related to labour and social law, but not its general singularity; for another, that Sweden in its current state within a long process of change no longer primarily represents the social democratic "middle course", but – by having enshrined equality for women in family law – a model formed by social change.

Peter A. Köhler

2.6. Harmonisation and Extension of Coverage in Turkish Social Insurance Law

In the past years, significant legislative projects in the field of social security were initiated by the Turkish legislator. The recently implemented new Social Insurance and General Health Insurance Act No. 5510 of 31 May 2006 has served to restructure Turkish social insurance law and to introduce a general health insurance. Changes to the systems of social welfare and the social services remain to be effected. The relevant draft laws have already been formulated.

Apart from reforms in the social security system, the focus has increasingly been on the fight against unemployment and on employment promotion. Legislative measures in this field, particularly the lowering of the employer's share of social security contributions, have ameliorated the conditions for employers.

Reform Process

The Turkish social security system has been under reform for years. One result of this reform process has come in the form of Amending Law No. 4447 of 25 August 1999. The socio-political significance of this law lies, for one thing, in the circumstance that the age for entitlement to retirement benefits has gradually been raised to 58 for women and to 60 for men in order to guarantee sustainable pension funding – and that unemployment insurance has been introduced for the first time. For another thing, the state has for the first time been obligated to participate in the financing of unemployment insurance by way of state contributions to social insurance – in addition to governmental transfer payments to cover the deficits in social insurances.

A further important result in this progressing reform process is Social Insurance and General Health Insurance Act No. 5510, which provided the social security system with a new legal basis. The Turkish social insurance system had previously been regulated via five different social insurance systems that would grant their respective insurees and dependants of the latter social security benefits in the event of accidents at work or occupational diseases, in cases of illness, maternity, invalidity, old age or death. Social insurance was introduced for employees by way of Social Insurance Act No. 506 dating from 1964. Employed persons in agriculture belonged to the group of persons insured in accordance

Dr. Yasemin Körtek and Prof. Dr. Ulrich Becker.

with Social Insurance Act No. 2925 dating from 1983. Social Insurance for self-employed persons was introduced in 1971 by way of Social Insurance Act No. 1479, for self-employed persons working in agriculture it was introduced in 1983 by way of Social Insurance Act No. 2926. Finally, civil servants and other persons employed in the public service were entitled to social security benefits on the basis of the regulations of Pension Insurance Act No. 5434 dating from the year 1949.
Further, the respective social insurance system for the occupational category of employed persons, self-employed persons and of persons employed in the public service provided for different social insurance agencies each that were to see to the implementation and enforcement of the respectively applicable social insurance laws.

The new Social Insurance and General Health Insurance Act No. 5510, adopted by the Turkish Parliament on 31 May 2006, came into effect on 1 October 2008. Act No. 5502 of 16 May 2006 facilitated the establishment of one Social Security Institution (*Sosyal Güvenlik Kurumu*) which is now responsible for the implementation and application of the new law in place of the previously existing social insurance agencies; any assignments and competences of the latter have been transferred to this new Social Security Institution. With the aid of the new Social Insurance and General Health Insurance Act, the previously existing variety of regulations on social security valid for the different occupational categories were combined in one body of laws and harmonised accordingly to the greatest possible extent. Its legal scope is applicable to insured persons who are employed, self-employed and persons employed in the public service. As a consequence, a major part of the regulations found in Acts numbered 506, 2925, 1479, 2926 and 5434 has been abolished. Certain regulations contained in the mentioned acts continue to be in force, not least due to the legal principles pertaining to the protection of confidence and the exclusion of retroactive effects. The regulations of Act No. 5510 regarding pension benefits, for instance, shall apply to persons employed in the public service if their compulsory insurance first commenced after the effective date of the act.

The most important, and at the same time most difficult part of the present reforms, not yet concluded but repeatedly criticised, is the reorganisation of health care: in this context, a general health insurance in the form of a statutory insurance liable to contributions is to be introduced, which is to guarantee health insurance coverage for the entire population. The most important changes include the introduction of a referral system (*sevk zinciri*) that is to be strictly complied with: it consists of three (treatment/care) levels and is connected to the practitioner-centred model. The act introduces a new service provision law that obliges the insurer to guarantee financial feasibility with respect to the intend-

PD Dr. Hediye Ergin (Marmara University, Istanbul), Prof. Dr. Andreas Hänlein (University of Kassel) and Prof. Dr. Tankut Centel (Koç University, Istanbul).

ed health care services. The actual health care services are provided via third parties, i.e. the service providers, either on the basis of a contractual relationship with the Social Security Institution or without such a contract. Any insured person requiring health care services will have to comply with the conditions of the predefined referral system and, consequently, first have to seek treatment with a service provider at care level I. General practitioners who have a corresponding agreement with the Ministry of Health belong to the category of service providers at care level I, along with the medical centres and private health facilities for the ambulatory treatment of insured persons. Hospitals are the primary service providers at care level II, while university clinics are at care level III in the referral system. For another thing, the insured person must make sure that the public or private service provider selected by him has contractual relationships with his insurance. Otherwise the treatment costs will not be borne by his insurance, except in cases of emergency. In cases of illness, insured persons will receive benefits in kind from the general health insurance. By contrast, monetary social security benefits will be granted by those insurance branches related to short-term insurance *(kısa vadeli sigorta kolları)*, such as accident insurance, health insurance (statutory sick pay), and maternity insurance, as well as by branches related to long-term insurance *(uzun vadeli sigorta kolları)*, such as invalidity insurance, pension insurance and survivors' insurance.

In its progress report of 2008, the European Commission placed positive emphasis on the restructuring of the social security system of Turkey, a candidate for joining the EC; against this background, the Institute organised a conference in cooperation with the German-Turkish Lawyers Association [*Deutsch-Türkische Juristenvereinigung e.V.*], which took place on 30 and 31 October 2009, focusing on the topic of German and Turkish social law and inheritance law. Apart from the description of the new social insurance law in Turkey, including the introduction of the general health insurance, the most recent developments in German social law were illustrated in order to form a basis for comparison. The lively discussion following the presentations made obvious that there is demand for further comparative legal research in this field. The conference also served to provide an insight into Turkish inheritance law, since issues relating to inheritance law may become particularly relevant for social law in cases where people become dependent on social welfare. Given the high number of migrants of Turkish origin in Germany, knowledge of Turkish inheritance law will gain in importance.

Measures to Fight Unemployment and Promote Employment

The Turkish labour market is characterised by high unemployment and a huge number of workers whose gainful activity is not registered with the Social Security Institute. According to the latest figures of 15 January 2010 (last updated: November 2009) provided by the Turkish Statistical Institute, the labour force participation rate is at 48.8%; the proportion of workers who are not registered with social insurance amounts to 44.5%.

These alarming labour market figures prompted the Turkish government to increase their statutory and administrative measures in order to fight unemployment and illicit employment. One thing common to all legislative efforts in recent years is the circumstance that employer obligations related to the employment of workers have been relaxed and financial burdens minimised. According to the Turkish legislator, the high rates of unemployment and of illicit work are, above all, due to high staff costs, a claim that has also been brought forward by employers and their lobbies. The contributions to be paid for insurance branches related to long-term services, i.e. invalidity, old age and survivors' insurance, amount to 20% of the relevant income of the insured person, with 11% to be borne by the employer and 9% by the employee. Benefits relating to maternity insurance and cash benefits in cases of incapacity for work due to illness, as well as benefits in the event of accidents at work or occupational illness, belong to the insurance branch related to short-term benefits. The contribution rate for this insurance branch varies, depending on the risk category of the respective company, from 1% to 6.5% and is to be borne solely by the employer. Contributions to unemployment insurance to be paid by employees amount to a rate of 1%, by employers to a rate of 2% and by the

state to a rate of 1% of the gross income relevant for the calculation of social insurance contributions. The contribution rate to be paid to general health insurance amounts to 12.5%. In this context, employees are to pay 7.5%, while employers are to pay 5%.

An example of legal measures enacted in recent years for the purpose of employment promotion that deserves particular mention is Act No. 5763 of 15 May 2008, the so-called employment package *(istihdam paketi)*, by way of which amendments in labour and unemployment law, among others, were effected; it focuses on the limitations of the employer's duties to give work laid down in labour law, and on the incentives created in this context for employers in the private sector. The Labour Act of Turkey, Law No. 4857, obligates private and public employers to employ handicapped persons in jobs appropriate for their professions and physical and psychological statutes at businesses where they employ 50 or more workers. The total ratio of workers to be employed in this scope has now been statutorily fixed at 3%. Furthermore, the contributions to social insurance that used to be imposed on the employer for each handicapped employee are, as of now, paid by the state. Beyond that, benefits have been created for employers who employ handicapped workers without being statutorily obliged to do so, or who exceed the standardised mandatory percentage of handicapped workers to be employed. In these cases the state bears 50% of the employer's contributions to the social insurance scheme that are to be paid for these employees. In order to keep employer's contributions low despite the employment of additional workers, and especially in order to promote the professional integration of women, a regulation similar to the one applicable in the field of labour law has been introduced in unemployment insurance law: In cases where workers between the age of 18 and 29, as well as women of 18 years and older are in actual fact employed, the employer's contributions to be paid to social insurance are progressively borne by the Turkish Unemployment Insurance Fund for a period of five years if the employment was taken up within one year of the commencement of the respective regulation and if the relevant employees had been unemployed for a minimum of six months on the effective date of the regulation.

The fight against unemployment, as well as employment promotion in Turkey in the light of the present economic framework conditions were addressed in a lecture that took place at the Institute on 18 December 2009, where one expert for Turkish social and labour law from each Dokuz Eylül University in Izmir *(Sözer)* and Koç University in Istanbul *(Centel)* were invited to speak. The measures implemented by the Turkish legislator to fight unemployment and promote employment were explained and assessed with respect to social insurance and labour law. On the whole, it can be noted that the numerous legislative efforts seem to be only of limited success. Instead of creating further benefits for employers and of financing employer's contributions in existing social insurance funds like the Unemployment Insurance Fund, the Turkish legislator is required to develop an employment strategy. For this purpose, the economic and structural reasons factoring in unemployment will first have to be explored.

Yasemin Körtek

2.7. Developments Regarding Old Age Pensions in Italy

Within Europe, Italy long belonged to those countries that boasted a seemingly generous old age security system, which in the course of time was extended gradually to cover the whole working population including the self-employed. Since the 1990s, the Italian pension system has been undergoing continuous reform. The reason for this is the enormous burden of pension payments that has been added to the social security expenditures. In 2006, the relevant costs amounted to 14% of the gross domestic product – almost twice the OECD average (7.2%).

Two aspects of this reform process were examined as part of Institute projects in the period under review: for one thing, the integration of the public service and of special schemes for civil servants into the general reforms of old age pensions, for another the extension of occupational supplementary provision for those employed in the private sector, for which, as of 2007, new legal bases have come into force.

Pension Schemes for Civil Servants

Old age security for the public service is administratively organised as a separate social insurance system. The regulations pertaining to substantive law were, in the course of a comprehensive harmonisation process, largely adjusted to the regulations valid for the private sector. This does not only apply to those public servants whose employment relationship is today anyhow regulated under private law, but fundamentally also to the small circle of government employees who are subject to a particular public service law (essentially judges and public prosecutors, the police service, the armed forces and university professors).

Until the beginning of the 1990s, pension conditions were much more favourable for persons employed in the public service than for those employed in the private sector. This was true both for the requirements for pension to become payable and for the amount of benefits paid. Taking the example of 40 years of gainful employment, the income replacement rate in the private sector was at nearly 80% of a person's last income, while government employees could receive a little over 94%, and employees of the local authorities could even receive up to 100% of their last income. The options regarding early retirement were particularly generous. Contrary to persons employed in the private sector, who, after 35 years, were entitled to a so-called seniority pension (regardless of age), employees of the local authorities were entitled to seniority pension already after 25 years, and government employees were entitled even after only 20 years of gainful employment. For mothers to qualify for this form of pension, the minimum working period required was once again reduced by another five years. The most noticeable privileges to the public service were already being reduced at the beginning of the reform phase, as early as 1992 and 1993. In this context, reductions in pension payments were for the first time introduced, varying in accordance with the missing years of service. By way of the pension reform of 1995, a further core reform issue was implemented: the gradual harmonisation of the old age pension systems, including the public service. Harmonisation in this context did not mean the complete equalisation of systems, but the adoption of basic principles with regard to pension law, especially concerning pension eligibility criteria and benefit calculation. Some special regulations have been retained, e.g. higher pensionable ages for judges and university professors.

The gradual abolition of pension privileges in the public service, and the convergence of old age pension systems in Italy was a significant argument for the general pension reforms to be accepted, particularly since the latter were accompanied by major cuts to the statutory pension scheme.

Development of Occupational Pension Schemes in Italy

Italy is a latecomer as regards the extension of its pension system through supplementary, capital-funded pension schemes. Contrary to other European countries, supplementary insurance in Italy is almost entirely financed from the employees' personal savings and capital. As part of the reform process negotiated between the government and social partners, the second pillar of old age security, i.e. the *previdenza complementare*, was to be extended in order to counterbalance any benefit losses in the statutory pension insurance. Until now, participation in the supplementary pension systems of the second pillar has been voluntary for persons employed in the private sector; however, tacit consent has recently been introduced in this regard: anyone who does not explicitly object within a period of six months, automatically accumulates capital in a supplementary pension fund.

Supplementary provision for old age includes various forms of provision systems which aim at topping up the statutory pension insurance benefits by way of additional benefits. Both collective forms (closed pension funds; yet also collective participation in open pension funds) and individual forms (individual participation in an open pension fund or individual life insurance contracts with an insurer) are provided. On the whole, the collectively agreed closed pension funds play a prominent role. Supplementary provision has been extended particularly in sectors linked to strong social partners.

In January 2007, new legal bases for the reinforcement of occupational and individual supplementary insurance became effective.

In this context, the respective control and protection regulations were extended in order to accommodate the special purpose of these instruments to guarantee appropriate pension benefits. As an incentive in addition to the possibility of tax deductions, a special financing mechanism has been established. The former mandatory compensation for a termination of employment (so-called *trattamento di fine rapporto*) amounting to 6.91% of the annual gross pay has, since 2007, been transferred into a supplementary pension fund, except in cases where the employee has explicitly objected to these terms. If there is no closed pension fund available, the contributions go into a new supplementary pension fund established especially for this purpose by the Italian national social security institute INPS. Meanwhile, approximately 22% of gainfully employed persons (five million) participate in supplementary pension schemes, 3.6 million of whom are employed in the private sector. However, there are still wide differences as regards the situation of men and women, as well as the individual regions. The average coverage rate of male employees is at 25.14%, while that of female employees is at 16.42%. In this respect, the partial privatisation of the pension system certainly leads to aggravated gender-specific inequalities as regards income in old age.

Contrary to some historical supplementary pension funds, the more recent systems belong to the type of supplementary pension that stipulates fixed contributions; the amount of pension payments are, in this context, not dependent on an overall protection level defined in relation to previous salary, but on the profit situation of the pension fund. In some cases, however, statutorily fixed capital guarantees are provided. Pension benefits from supplementary pension schemes are linked to the eligibility to receive statutory pension payments. The waiting period is five insurance years. The employee entitled to a pension has the option of either a life-long monthly pension, or a combination of a one-time capital payment to the amount of a maximum of 50% of his or her overall pension savings plus life-long monthly payments from the remaining pension capital accumulated.

Under certain conditions, benefits can be granted already before retirement as advance payments from the saved capital, e.g. for health expenditures or urgent housing requirements. In exceptional cases, accelerated maturity (early payment) can be effected, meaning the disbursement of: 50% of the capital in the event of long-term unemployment of more than twelve months, 100% of the capital in the event of unemployment of more than 48 months or of permanent invalidity.

After a minimum of two years' membership with a supplementary pension scheme, the insured person may transfer his/her entire individual positions to a different supplementary pension scheme. A transfer of employer's contributions is only possible, however, if this has been provided for in the respective collective agreement. In sum, the reforms have indeed increased the coverage of supplementary pension schemes. Yet, the majority of gainfully employed persons face uncertain prospects regarding appropriate pension payments in old age. Especially persons who are in particular need of protection and who are limited in their capacities to pay contributions – i.e. younger employees, persons employed in atypical labour contracts, and women – as well as residents of the southern regions of Italy run a very high risk of old age poverty, unless supplementary pension schemes are supported by additional protective measures at regional level. To be sure, in the face of the international financial and economic crisis it is legitimate to ask whether it would not make more sense to invest these public funds in guaranteed minimum old age pension schemes.

Eva Maria Hohnerlein

2.8. Occupational Pensions in Europe: Guaranteed Security?

Nearly all European states and also many other countries have in recent years – and especially after the turn of the millennium – effected more or less extensive reforms in order to consolidate their pension systems; some systems have been changed fundamentally. This was necessary, since especially demographic developments and the negative labour market situation with its high rates of unemployment called for an adjustment of the social security systems in general and of the pension systems in particular.

For these reasons, but also due to deliberations pertaining to management policy – for occupational pensions have become a core aspect of occupational social policy –, the percentage of occupational pensions and other supplementary old age insurance schemes in the overall provision for old age have increased in some countries. In actual fact, reform-based benefit cuts in statutory pensions, which some pension systems had to cope with, are also absorbed by means of improved occupational pension funds. Supplementary occupational pensions can thus counterbalance deficits in statutory old age security and expand its range of benefits. In this regard, it must be taken into consideration, however, that in countries like Germany, where occupational provision for old age is not obligatory, a large proportion of employees do not participate in additional collective pension schemes. And individually configured pension schemes are not made use of to the extent that they might counterbalance deficits in statutory pension insurance.

Based on a conference on "Occupational Pensions in Europe", the findings of which were published in 2007 (*Hennion-Moreau/Kaufmann*, Betriebliche Altersversorgung in Europa, Europäisches Recht und Rechtsvergleichung, 2007), a further conference under the motto of "Governance of Occupational Pensions in Europe: Guaranteed Security?" took place on 28 and 29 May 2009.

The international conference was organised jointly by the Max Planck Institute for Foreign and International Law, the Western Institute of Law and European Studies (IODE) of Rennes I University, Hans-Böckler-Stiftung and Friedrich-Ebert-Stiftung. The Institute and IODE were in charge of the concept and content-related planning, while Hans-Böckler-Stiftung was responsible for organisational issues onsite.
The aim of the conference was to examine the essential elements relevant for establishing and controlling occupational pension schemes based on the findings of the previous conference, i.e. to compare them and analyse them from different perspectives. Experts from science and practice exchanged opinions regarding the question as to how occupational provision for old age is, in due consideration of international or, respectively, European law, organised, governed and secured in Germany, Sweden, Spain, Switzerland and Italy, and what the future perspectives of occupational pensions might be.

The global financial and economic crisis had, already before the conference, made obvious what kind of risks pensions may face as regards sustainable security, and how important it is therefore to be able to rely on solid and obligatory control functions. Against the background of the financial crisis, the focus thus shifted towards subjects revolving around the control, and even governance, of financing mechanisms, yet without fundamentally deviating from the overall subject matter. For problems relating to control cannot be limited to one area, but are to be viewed as a whole, because they touch upon all aspects of occupational provision for old age. With regard to international developments, the phrase "Guaranteed Security?" was added to the title of the conference, in order to especially emphasise the significance of control at the financial level. The assessment of the stability of these systems in crises seemed to be advisable particularly in view of the current financial crisis – and it continues to be of significance. The full scope of the financial crisis with regard to occupational pensions is far from assessable yet, and it will doubtlessly continue to have an impact on various occupational pension schemes. The (financial) security of occupational pensions and the question as to whether and how it will be guaranteed therefore continue to be highly current issues.

Dr. Otto Kaufmann.

The establishment, implementation and control at all levels of the occupational pension systems entail numerous legal questions, yet particularly with a view to the financing modalities and investment policy these questions also revolve around ethical aspects. In this regard, it is also of interest to examine and analyse the obligatory or merely voluntary interaction of social partners in order to find out what scopes for action exist and which control and decision-making powers are granted on each side.

The various subject areas selected in this overall context were treated as follows:
The main topic of the conference referring to the "Current Situation of Occupational Pensions" was addressed and discussed in various ways: the challenges to occupational pension schemes were illustrated in a comparative overview (*Kaufmann*); the role of occupational pensions was placed in the context of economic liberty (*Hennion*); further, the socio-economic governance (*Döring*) and contractual guarantees of occupational pensions were explained (*Pierre*).
Another focal area was the financial security of occupational pension schemes. The speakers reported on the financial security of the respective occupational pension schemes in Sweden (*Köhler*), as well as in Spain and Germany (*Reinhard*), Switzerland (*Ross*) and Italy (*Hohnerlein*).

The subject area of "Corporate Governance and Social Dialogue" was discussed by way of presentations on the governance options open to employers (*Lutjens*), the governance options open to the employees' representatives (*Kessler*) and on employees' rights in occupational pension schemes (*Reinhard*). This was followed by a presentation relating to the question whether International Accounting Standards would guarantee a more secure governance of occupational pensions (*Jubé*). By way of an overview, which included the future perspectives for occupational pension schemes (*Becker*), the subject area on "Governance Elements and Future Development of Occupational Pensions" was concluded.
Following this, the different actors involved in occupational pension schemes and the representatives of the social partners discussed current developments.

The individual subject areas and panel discussions were moderated by *Heinz Stapf-Finé*, *Gabrielle Clotuche*, *Renate Hornung-Draus* and *Claude Blumann*. *Gert Nachtigal, Heinz Stapf-Finé*, *Dominique Boucher* and *Klaus Stiefermann* defended the viewpoints of social partners and actors.

The discussions demonstrated, among other things, that some pension systems show large deficits, a fact which has an impact on the quality and scope of people's old age security. Yet, it has also become clear that occupational pension schemes do not face the same financial difficulties in the various countries. The more pronounced the regulations on the respective forms of investment are, the more secure the relevant occupational pensions seem to be. However, risk investment also figures in the calculation, which may in turn decrease the level of security. This refers to systems whose control mechanisms are given too little importance, or to the fact that existing rules and regulations prohibiting risk investment are disregarded. As mentioned before, it is at this level that control functions take on crucial significance.

A publication containing the updated conference presentations is currently being prepared. It will be edited by *Otto Kaufmann* and *Sylvie Hennion* and published by Springer, Heidelberg.

Otto Kaufmann

2.9. Comparison of Old Age Security Schemes for Civil Servants

The demographic, economic, social and political developments of the past years have presented the European old age security systems with great challenges and indicated that there is considerable need for reform. The reforms of pension systems in the member states of the European Union, aiming to guarantee appropriate pensions and financial sustainability, especially show a rise in retirement age and the reduction of possibilities related to early retirement: higher life expectancies particularly result in the requirement to increase the employment rates of older workers by means of creating incentives for people to prolong their working lives – for instance by way of linking the entitlement to benefits more closely to the amount

of contributions paid. There are also examples where pay-as-you-go pension systems are supplemented by capital-funded pension systems in order to base the respective old age security system on several pillars.

Apart from the statutory pension systems, which mostly cover employees and self-employed persons in the private sector, there are further basic security systems that guarantee pension benefits to particular groups of persons or professions. A basic security system of this sort beyond statutory pension insurance is the pension system for civil servants. These old age security systems, too, are affected by the demographic and economic developments. Increasing longevity, for instance, leads to higher pension expenditures, while low birth rates strain the financial bases. In order to be able to guarantee sustainable pensions, reforms similar to those effected in statutory pension insurance will be necessary.

Since there is considerable scientific interest in the establishment and configuration of particular systems of old age security, the Institute has carried out a legal study of the various pension plans for civil servants.

The objective of the comparative project dealing with the legal comparison of old age security schemes for civil servants and their relevant reforms is to find out whether there are specific principles in German civil service law (*Körtek*) that might be of significance with a view to old age security schemes for civil servants (*Becker*), and whether such principles also exist in other countries selected for comparison – namely France (*Kaufmann*), Italy (*Hohnerlein*), the Scandinavian countries of Denmark, Norway and Sweden (*Köhler*), the Russian Federation (*Chesalina*), Switzerland (*Ross*), Slovenia (*Strban*), the Czech Republic (*Stefko*) and the United Kingdom (*Landauer*). The service law of the European Union (*Knecht*) and of the United Nations (*Köhler*) has been included in the study, since European Union law is directly related to the EU member states, and since the internal regulations of the universal United Nations Organisation represent what is globally accepted as service law. It is furthermore of scientific importance to relate the experiences gained in the application of comparative law, inclusive of the constitutional guidelines for civil service pensions in Germany (*Köhler*). In their country reports the correspondents primarily examined the question whether employment with a particular employer (government, international or supranational organisation) and for particular tasks (exercise of sovereign power) necessarily entails duties and privileges with regard to (public) service law, and whether these duties and privileges related to service law form the basis for a specific scope of social security in old age. In this context, the public service and the duties and privileges of the civil servant's status were described, with focus on the general and – if applicable – particular pension systems inclusive of the reforms of recent years. The comparative analysis (*Köhler*) has shown, among other things, that in the reference countries, unlike in Germany, the legal situation is not predominantly shaped by constitutional provisions or the jurisdiction of the Supreme Court. It has further demonstrated that constitutional guarantees for civil servants are exclusive to Germany.

Being a special system of social security, civil service pensions in Germany are part of civil service law and represent, as distinct from statutory pension insurance, a comprehensive provision system for old age. Civil service pensions are subject to the institutional guarantees

for civil servants according to Art. 33 Para. 5 GG [Basic Law] – as an amendment to Art. 33 Para. 4 GG – whereby the law of the public service is regulated and developed with due regard to the traditional principles of the professional civil service. The alimentation principle as a traditional principle of the professional civil service obligates the employer to provide a civil servant – in turn for full dedication to his or her office – with a livelihood appropriate to the rank, importance and responsibility of the civil servant's office. The legislator has wide scope for action as regards the concretisation of his obligation to provide appropriate alimentation following from Art. 33 Para. 5 GG, i.e. the legislator is not precluded from adjusting civil service pensions, as well as statutory pensions, to changing demographic and economic conditions. There are no constitutional objections to adjustments based on developments in statutory pension insurance, provided that the principles applicable to civil service pensions are observed.

The study also revealed that not every country included in the comparison has a specific pension system for civil servants. In France, civil service pensions are provided through special systems and borne directly by the state. Despite the fact that workers in public employment in Italy functionally hold a civil servant-like status, this specific employment status is under Italian law no longer linked to the duties and privileges related to civil service pensions. In Switzerland, provision for old age for government employees is integrated in the 1st and 2nd pillar of the general pension plan. The regulations pertaining to old age and survivors' insurance (1st pillar) do not contain any provisions specific to government employees. In the United Kingdom, pension plans for civil servants are incorporated in the general pension system, meaning that the latter can particularly draw upon "state basic pension" as a form of basic insurance. Denmark has statutory regulations regarding pensions for civil servants employed by the state or the municipalities. In Norway, pensions for civil servants employed by the state and for most civil servants employed by the municipalities are statutorily standardised through the Norwegian Public Service Pension Fund, a "state-guaranteed" fund for covering pension costs. In Sweden, civil service pensions are defined by collective agreement through the "Pension Agreement for Government Employees". The Russian Federation has, since 2002, apart from the general contribution-based "work pension" also had a tax-financed state pension for civil servants. In Slovenia, as well as in the Czech Republic, civil servants are insured under the general statutory pension scheme. The EU staff regulations are comparable to German civil service law as regards the level of regulatory detail and complexity, while the service law of the international civil servants follows the provisions of the UN Charter.

The project has been successfully concluded and the research findings, inclusive of the various country reports, have been published (*Becker/Köhler/Körtek*, Die Alterssicherung von Beamten und ihre Reformen im Rechtsvergleich, 2010).

Yasemin Körtek/Peter A. Köhler

2.10. Social Security and Long-Term Care Dependency

Social protection against the risk of long-term care dependency has so far only featured sporadically in Institute research. Even though the Institute was involved in the drafting, introduction and further development of protection schemes against the risk of long-term care dependency in Japan, the activities and publications issued in this context to support the Japanese colleagues were rather descriptive and primarily referred to the German law pertaining to long-term care insurance. Furthermore, several studies on

long-term care insurance arisen at the Institute from this context were prepared by Japanese guest researchers with the aid of locally provided resources.

A current Institute project is specifically devoted to the issue of social security for persons who provide long-term care to family members. In this context, additional information on the social protection of carers in foreign legal systems was included where applicable. Yet, the topic is narrowly restricted to one closely defined area and aims, similar to the mentioned projects in Japan, at advisory support within the framework of planned normative changes and improvements.

A further reason for the circumstance that the issue of social protection against the risk of long-term care dependency has until now rarely found its way into scientific research may be the fact that legal implementation has only been effected recently and that the standard-setting process can by no means be regarded as finished. German long-term care insurance in its pioneering role has just turned 15 years, but has already been subject to several amendments and reforms due to deficiencies that could not be foreseen at the time of its introduction. It has also become apparent that protection against the risk of long-term care dependency is linked to a variety of other legal areas. To labour law, for instance, when it comes to the issue of combining work and family life – a topic which the new Federal Minister for Family Affairs *(Schröder)* wishes to increasingly focus on in the political discussion.

Prof. Dr. Hans-Joachim Reinhard.

Although there has always been a general need for long-term care services, social protection against the risk of long-term care dependency does not count among the "classical" measures taken such as those adopted to provide for old age security or medical care in the case of illness. Long-term care dependency is, furthermore, no firmly defined risk, since it can be based on various factors and can have various implications. The line dividing the risk of long-term care dependency from the risk of illness, disability or the general aging process is blurred, often precluding precise classification. True, the risk of becoming dependent on long-term care increases with age; however, it is not limited to the elderly. In extreme cases, people may be dependent on long-term care from birth, or become dependent due to an accident without them having suffered from any pre-existing condition.

Meanwhile, several countries have included social security schemes against the risk of long-term care dependency in their political agendas. Various other countries are considering the inclusion of such schemes. At European Union level, too, social security against the risk of long-term care dependency has become one of the big challenges to cope with in the coming years, and it has even become part of the Open Method of Coordination. The problem appears to be more complex even than the issue of guaranteeing sustainable old age security systems. For unlike in pension insurance, it is not only financial feasibility that is to be guaranteed, but also the provision of human resources. There is a shortage of qualified carers already today. A considerable proportion of care services is provided through unqualified carers, illegal immigrants or family members trying (and often failing) to cope with the situation. The issue of long-term care dependency is thus not only linked to social questions, but also touches upon questions pertaining to aliens law or, respectively, immigration law and to some originally non-juridical aspects like quality assurance and organisation. However, the last-mentioned areas, too, must be given a legally comprehensible and litigable form.

As far as could be determined, there is only little foreign literature on long-term care dependency that goes beyond the illustration of the most important relevant national norms

(e.g. the Long-Term Care Act). It is therefore appropriate to examine the risks of long-term care dependency by way of a comparative analysis. An examination of this sort cannot do without a description of the primary national norms implemented to insure against the risk of long-term care dependency, because information on the legal status quo is to be gained first. It must, however, not confine itself to a portrayal of the provisions stipulated in social law regarding insurance against the risk of long-term care dependency (in Germany that means to Social Code Book XI). Further fields of social law (e.g. pension law), as well as the mentioned norms pertaining to labour law and aliens law, must be included.

In order to make the comparison more effective, the task is not merely to compare the respective regulations and to work out their commonalities and differences. The issue of insurance against the risk of long-term care dependency calls for a comparison of systems.

As with health care, the European Union has two different implementation approaches.
In some countries, social security is primarily linked to paid employment. Insurance against the risk of long-term care dependency is, on principle, only granted to gainfully employed persons. Persons who are not economically active are insured under derivative systems (e.g. family insurance, voluntary insurance). In any case, contributions are obligatory and, as a rule, a minimum contribution period must be evidenced. This socio-political approach views long-term care dependency as an individual problem which is to be solved, first and foremost, at private level. Accordingly, this concept places great demands on the family of the person in need of long-term care. Social protection against the risk of long-term care dependency is closely tied to the role of the family; in Germany, for instance, this phenomenon is illustrated by the fact that childless persons have to pay higher social security contributions. This is justified as a kind of family transfer payment.
Other countries consider protection against the risk of long-term care dependency as a social task which the individual and his family cannot cope with on their own. For this reason, tax-funded support on the part of the state is required. This kind of support ties in with the status of legal citizenship, but is not connected to previous employment or contributions, respectively premium payments. This society-centred approach often goes hand in hand with tax-financed health care within the framework of a general health service. Yet, this is not necessarily the case everywhere (e.g. not in Austria).
The new Spanish system that was introduced in 2007 is included in the examination: for one thing, a great deal of literature and material on the topic had, already within the reporting period, been collected for a publication (*Reinhard*, Die soziale Absicherung von pflegenden Familienangehörigen in Spanien, 2009), resulting in sufficient data availability. For another thing, the Spanish system follows an approach opposite to the one pursued by the German system. Long-term care in Spain is deliberately not intended to be a task primarily carried out by the family, but by social services that are essentially tax-financed.

Spain serves as an appropriate country for comparison also for other reasons. Although matters in this regard have been regulated through national legislation, their execution – and thus to some extent also financing – rests at the regional level. Practice has shown that long-term care is implemented in various ways, meaning that the actual provision of care services is also organised in very different ways. There are similarly striking regional discrepancies in Germany, e.g. as regards the establishment of care bases. Other countries (e.g. Austria, Belgium, Italy) likewise provide for regional regulations as regards protection against the risk of long-term care dependency.

Furthermore, cooperation was launched in the period under review (2009) within the framework of a project conducted by Málaga University. This cooperation was continued at the end of March 2010 in the form of a joint seminar on social protection for migrants who require long-term care, i.e. primarily citizens of the central and northern European countries who have become long-term residents in Spain.

Regarding long-term care benefits in European law, even the new EU coordination law merely offers a rudimentary regulation (Art. 34 of Regulation (EC) 883/04) relating to sickness benefits. The necessity to couple tax-financed systems with insurance systems

entails a range of practical implementation problems; the examination of this issue will therefore take place within an EU legal framework. After all, it is to be examined whether a coordination rule that was designed for the provision of services for a limited period of time (illness) can also be applied to a provision of services that is nearly always intended for a longer period of time (long-term care) and thus has to satisfy completely different needs.

In terms of feasibility, the plan is to first start with an analysis of the Spanish system. Austria, the Netherlands and Belgium serve as further appropriate study regions, as well as South Tyrol where an autonomous regional social security system against the risk of long-term care dependency was established in 2008. It is worth considering whether the United Kingdom should not be included in the study due to the structural similarity of its social services with the Spanish *servicios sociales*. It is currently impossible to assess the suitability of the Netherlands as a country for comparison, since it has just undergone extensive reform. Any inclusion of further countries in the comparative study will require internal or external country experts. Moreover, it must be examined whether EU funds will be available for this project within the framework of the *PROGRESS Programme* (Social Security and Social Integration).

Hans-Joachim Reinhard

2.11. The Law Concerning Persons with Disabilities

The project on the "Law Concerning Persons with Disabilities in Europe and Asia", which goes back to a cooperation between Institute members (*von Maydell/Schulte*) and the German University of Administrative Sciences Speyer (cf. Report 2006 – 2007, p. 50) was continued in a workshop that took place in Munich from 20 to 24 October 2007; its findings have been published (*von Maydell/Pitschas/Pörtner/Schulte*, Politik und Recht für Menschen mit Behinderungen in Europa und Asien unter den Bedingungen des demografischen Wandels – kulturelle Voraussetzungen und Erklärungshypothese, 2009).

The right of persons with disabilities to social participation has, at the latest with the passing of Social Code Book IX (SGB IX) in Germany, moved from its marginal position to the centre of attention of both German social law in general and of scientific research. It has been demonstrated, not least due to the implementation of the UN Convention on the Rights of Persons with Disabilities of 2006, which has been legally binding in Germany since 26 March 2009, that today the rights of persons with disabilities are given worldwide attention and to an increasing extent also worldwide recognition.

The contracting parties to the Convention explicitly emphasised the significance of international cooperation and the promotion of the latter for the support of national efforts to realise the goals of this legal instrument. This circumstance lent unpredicted relevance to the project, unforeseeable at the time of its conceptualisation in as early as 2001.

Initiated by *Bernd Baron von Maydell, Bernd Schulte* and *Rainer Pitschas* (German University of Administrative Sciences Speyer), who were later joined by *Peter Pörtner* (Centre for Japanese Studies at Ludwig Maximilian University Munich) and his expertise in the cultural sciences and on Asia, the project was originally conducted as a response to numerous requests from Asian countries for information on the legal and political situation regarding persons with disabilities in Europe. Today, this legal and political field bears a normative (i.e. humanitarian, human rights- and social law-related) reference. Its dimension today is to an increasing extent due to state regulations, but it is also a result of the successful protection and enforcement of interests on the part of persons involved, their families, representatives, as well as of particular social groups. This has not least been demonstrated by the elaboration of the UN Convention on the Rights of Persons with Disabilities, which was to a considerable extent prepared "by those affected for those affected".

Individual studies on the dimensions of disability law and disability policy pertaining to family matters, the education system, working life and the protection and enforcement of political interests were utilised at the most recent workshop in order to cope, by way of exemplary investigations, with the topical complexity – which as such requires a broad

Dr. Bernd Schulte.

interdisciplinary approach. Naturally, this did not exhaust the full research potential of the project; after all, new research questions were formulated in the course of the project, and these can be pursued in the future. At the same time, a summary of the findings gained so far should be given: it is to be noted in this regard that, for one thing, the demographic development and, for another, the awareness process within our society concerning the social problems and rights of persons with disabilities – a process that has meanwhile also received a legal basis at international level due to the normative provisions of the mentioned UN Convention – seem to suggest a convergent development of the rights and policies regarding persons with disabilities in Europe and Asia. It must be considered, however – and this is a result of the deliberations on disability issues made in the cultural sciences – that the common principles on disability policy expressed in the Convention can, for the most part, be derived from European law and from European disability policy; they have thus ultimately developed from both Council of Europe and European Union tradition, as well as occidental tradition and, despite this common root, have retained very individual socio-cultural "dialogue forms" in the various countries even within Europe. In light of this experience it seems appropriate to examine even more closely than before the basic decisions, fundamental concepts and basic views of the Asian and European reference countries with their different cultural bases. After all, different conceptions of the human being have been formed and, accordingly, semantically identical terms may well take on quite different connotations. In fact, decisions on the type and quality of disability law and policy are not least made according to the respective underlying fundamental ideas, the conception of man presupposed by the relevant societies, the respective definition of "health", "normality" and also "disability", as well as to the prevailing notion of the term "decent living". Only if these widely varying conditions are taken into account, solutions might be found also at global level to problems challenging persons with disabilities who, after all, equally share the same needs throughout the world.

This suggests an intensification of efforts to promote the cultural dialogue and scientific, and in particular legal, comparison between European and Asian countries to a greater extent than has so far been the case. It also corresponds with this aim to allow the research project, which has been discussed at conferences in Speyer, Berlin and Munich, to be continued in Asia. In this context, Japan in particular should be considered as a location for the research project: the relations between Europe (and especially Germany) and Japan show comparatively great similarities as regards their policies for persons with disabilities, and it is not mere coincidence that, also with respect to social protection against the risk of social long-term care dependency, both countries have appropriate social protection systems (with Germany's influence on Japanese long-term care insurance being obvious). Furthermore, there are clear parallels between Germany and Japan as regards legal support for adults in the form of guardianship law. In this context, Germany has certainly taken on a pioneering role with a view to social benefits law, rehabilitation and social participation. At the same time, it has a great deal of catching up to do with respect to anti-discrimination law, since it does not have its own specific "anti-discrimination culture", and since the latter is imparted through European law.

Legal Protection for Persons with Disabilities and for Elderly Persons

As regards guardianship law for adults, intensive cooperation has existed for years between the "father" of Japanese guardianship law and president of the Japanese Association of Guardianship Law for Adults, *Makoto Arai* (University of Tsukuba, Japan) and our

Institute (*Schulte*). This cooperation has been expressed in the form of research visits, symposia and seminars in Germany, Japan, Australia, Great Britain and other countries (*Schulte*), as well as, most recently, in the ongoing joint efforts to devise the programme for the first World Congress on Guardianship Law, which is to be hosted in Yokohama (Japan) in 2010. The aim of the Institute in this regard is, for one thing, to highlight the interrelations between legal support and social guardianship and, accordingly, between a legal institution subject to private law and social benefits law per se; for another thing, to advance the German reform debate on guardianship law both in an interdisciplinary and comparative way.

Bernd Schulte

Family and Social Security

2.12. Modernisation of Gender Role Models – a Challenge to Family Law and Social Law in Europe

The years 2008 and 2009 saw the continuation of the long-term interdisciplinary cooperation project between the Institute (project manager: *Hohnerlein*) and the Department for Gender Equality based in the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), which examines in a comparative way and at European level the changing gender role models for women and men in society and in social law and, respectively, family law (cf. Report 2006 – 2007, pp. 57 – 60).

Dr. Edda Blenk-Knocke in conversation with Prof. Dr. Ulrich Becker.

During the period under review, the first project phase was completed with a publication (edited by Institute members *Eva Maria Hohnerlein* and *Edda Blenk-Knocke*) of the extensive documentation of the first conference held in October 2007 and its scientific evaluation (cf. *BMFSFJ*, Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich, 2008); this was followed by the planning and execution of an international workshop for a more detailed evaluation and continuation of the first conference. This workshop termed "Gender Role Models in Europe: Legal, Economic and Cultural Dimensions" took place at the German-Italian Centre in Villa Vigoni in Menaggio, Italy, from 20 to 22 October 2008. The findings of this workshop, too, were evaluated and published in a conference paper put together by Institute members *Eva Maria Hohnerlein* and *Edda Blenk-Knocke* (cf. *BMFSFJ*, Rollenleitbilder und -realitäten in Europa: Rechtliche, ökonomische und kulturelle Dimensionen, 2009). Subsequently, the third project phase began, starting with the conceptual preparatory work for the formation of three autonomous research groups who were to discuss selected topics with the ulterior goal of developing recommendations for action for the German legislator. The group headed by *Ulrich Becker* dealing with the topic of social security for caregivers ["*Soziale Sicherung von Pflegepersonen*"] and the group headed by *Barbara Dauner-Lieb* (University of Cologne) focusing on marital property rights in relation to tax law ["*Ehegüterrecht mit steuerrechtlichen Bezügen*"] took up their research work during the last quarter of 2009. For the third research group dealing with female breadwinners ["*Frauen als Ernährerinnen der Familie*"] a workshop will be organised in May 2010. The members of the project *(Hohnerlein, Blenk-Knocke)* are also involved in the research groups.

Findings of the Workshop of 2008

The countries included in the European comparison were – apart from Germany, which represented the main focus of the workshop – Denmark, France, Belgium, Great Britain, Italy, the Netherlands, Sweden, Switzerland and Spain.
The starting point was the modernisation of gender role models with a view to independ-

ent income security for women and the inherent challenges to family law and social law. It is especially the educational expansion and the increase in economically active women and mothers, but also the radical changes in dependent gainful employment that contributed to the changing reality of gender relations, as seen in the shift away from the traditional male breadwinner model towards new models, such as the dual earner model and the full-time/part-time employment combination (modified breadwinner model). Empirical findings regarding Europe show a country-specific pluralism of gender arrangements, meaning that different constellations exist for women and men with respect to their division of paid work and family work.

Change and Continuity of Gender Role Models in Germany

A first focus, which was mainly related to the social sciences and their empirical findings, was on the changing gender role models in Germany as viewed from various perspectives.

The Historical Perspective

Historical analysis has made clear that gender role models are closely linked to historical events. It is particularly the two world wars that left obvious traces in the configuration of gender role models and, at the same time, in their changing rate or, respectively, their persistency. The strong position of the housewife and of the type of marriage where the woman stays at home both dominate the Weimar period, the time of National Socialism and the early years of the Federal Republic of Germany. The increase in female employment, the provision of social security to mothers through social protection regimes, and the rise of the women's movement all factor in the change of traditional gender role models, a process that came to pass much more slowly in Germany than in other European countries.

Male Role Models Under Change

From the viewpoint of men's studies, today's gender role models in Germany are highly differentiated: the traditional male role has been overturned, and many men are now on the search for a new male identity. However, despite a noticeable change in attitude among men, little change in behaviour has so far been registered. The readiness to assume responsibility for family care work also depends on various structural criteria. Differences in pay between men and women *(gender pay gap)* are one significant obstacle, resulting in the circumstance that the person with the higher income usually stays in the job.

Retraditionalisation of Task Allocation During Marriage

The fact that gender role models may persist for a long time is supported by a sociological long-term study carried out in Germany which deals with the question as to which factors are decisive for labour division among married couples with regard to housework. At the beginning of a marriage, about 50% of couples share their housework fairly; after 14 years of marriage this percentage is down at only 13.7%. The most significant reason for this striking retraditionalisation of task allocation during marriage turns out to be the

birth of the first child, irrespective of the educational level, extent of gainful activity or income of either partner.
It is still a widely held view in numerous countries, not only in Germany, that housework and educational work are defined as female domains. Thus, double burden is primarily a problem of gainfully employed women, not of men.

Female Breadwinners

One group extending this plurality of lifestyles which has only recently been given attention in scientific research is the group of women representing the sole or, respectively, main breadwinners in their families. The proportion of female breadwinners in multi-person households amounts to 20%. More than half of this group live in a partner relationship; the remaining proportion of female breadwinners are single mothers. It is often difficult situations that make women take on the role of the breadwinner, e.g. if her partner is unemployed or in precarious employment. The female breadwinner is, by a majority, not an equivalent to the male breadwinner. Her lifestyle rather involves difficulties caused by the double burden of paid employment and unpaid family work.

Gender Role Models in Family Law

The second core topic of the workshop was dedicated to gender role models in family law in Europe.

Toward Equal Sharing in Marital Property Law Across Europe

Various models pertaining to equal sharing in marital property law were compared from a legal perspective with a view to the question as to which model best suits which type of partnership arrangement. Solidarity between the spouses is regulated in these models in different ways according to marital status (solidarity within the marriage or in the case of divorce). In the Roman corpus of law, it is the community of property acquired during marriage that defines the statutory property regime; by contrast, the Nordic and Germanic law systems mostly feature equal sharing systems, which also include the statutory property regime in the community of accrued gains (separation of property with accrued gains being equalised on termination of the marriage) that is applied in Germany.

Self-Responsibility and Solidarity in the Case of Divorce

The interplay of self-responsibility and solidarity is of core significance particularly with respect to marriages and partnerships with an asymmetrical task allocation. The unequal division of family work and paid employment between men and women is a true reflection of the lives of many couples. In the event of a divorce it will have to be clarified who is to carry the burdens of such an asymmetrical task allocation. Which consequences are to be borne by the affected spouse (self-responsibility), and which are to be borne by the former marriage partner (private solidarity) and by the state (state solidarity)? Great Britain, for instance, promotes the idea of private solidarity among partners in the case of divorce, while Sweden gives priority to state solidarity.
The German maintenance law reform of 2008 blends in with the general tendencies in European family law. The reinforcement of self-responsibility among divorced couples and the increase in endeavours to counterbalance marriage-related disadvantages as a legitimate basis for post-marital maintenance correspond with the European trend.

Coherence of Property Law and Pension Law

A further paper enlarged upon the issue regarding the allocation of pension entitlements as part of the statutory equalisation of property rights in the case of divorce. The focus was on the coherence of property law and pension law in various European countries. In this context, the main question was whether and to what extent the configuration of the statutory property regime has an impact on the sharing of pension rights in old age security schemes.

Child Support in Germany

The differentiation in German child support law between cash alimony (usually referring to the father) and caregiver alimony (usually referring to the mother) is based on the traditional male breadwinner model. The question is whether this dichotomy of life realities of divorced parents lives up to today's pluralisation of lifestyle models.

Gender Role Models in Social Law

A third core topic was dedicated to the various socio-political approaches to long-term

care issues, with focus on the associated gender role models for the purpose of providing social security to persons who offer long-term care services to family members. After all, throughout Europe it is mainly women who provide care to their older family members.

Long-Term Care in Germany

The core principle of long-term care benefits legislation applicable in Germany, i.e. "priority of home care over institutional care", implicitly places an obligation on women to be involved in the long-term care of family members, since this is the case at a rate of 75%.
The underlying German gender role model connected to the provision of long-term care through family members is that of the traditional male breadwinner, which is based on the assumption that the spouse is not gainfully employed (or a low-income earner) yet insured indirectly via her husband, and thus can do without an income of her own that secures her livelihood, as well as without an independent social security plan. This socio-legal configuration of family caregiving supports the traditional gender role structure along with the related deficits in independent income security for women. The growing participation of women in the labour market calls this currently existing structure into question, however, because its social preconditions (wives without gainful employment or with a low income) are breaking down.

Balancing Employment and Long-Term Care

The Home Care Act was effected in Germany in 2008 with the purpose of improving the conditions for balancing employment and long-term care work. The legal provisions for the utilisation of long-term care time comply with the adult worker model. In reality, however, it is more women than men who are likely to make use of long-term care time, not least due to the gender pay gap between men and women, as well as due to part-time work, which is particularly common with women. Yet, measures to reconcile employment and family caregiving should be available to both genders, and not lead to long-term withdrawal from the job market.

Long-Term Care in Spain and the Netherlands

The legal configuration of long-term care in Spain opposes the German model insofar as the Spanish Social Security Act of 2006 stipulates the priority of public institutions over home care via family members in cases of long-term care dependency. Women are not to be kept from the labour market or forced back into family work (orientation towards the adult worker model). However, due to the lack of professional long-term care infrastructure, the law is far from being translated.
In the Netherlands, the situation regarding the reconciliation of employment and family caregiving has been improved due to the introduction of a personal budget for persons requiring long-term care and the possibility to conclude a contract with family members on the provision of long-term care services. Many women reduce their working hours and compensate income deficits by means of cash benefits from the personal care budget. What is more, the Dutch basic state pension – which is not means-tested – reduces the risk of old age poverty.

Summary

We live in a time of diverse gender arrangements which may, depending on the family law and social law of the respective country, be linked to variable options for women to establish their own independent income security. This is especially true for arrangements indicating an asymmetric division of gainful employment and family work. The modernisation of gender role models poses great challenges to society: the combination of gainful employment and childcare, as well as of gainful employment and long-term care to be provided to old and sick family members must be guaranteed and, at the same time, independent income security must be provided to those who assume these tasks.

Edda Blenk-Knocke

2.13. Institutional Framework Conditions Regarding Solidarity Between Adults in Europe

In two separately published studies, the legal embodiment of solidarity relationships in family law, maintenance law and social law were examined; further, their normative *rationale*, as well as the correlations and coherence between the various legal materials were investigated.

Solidarity Relationships Between Adult Generations in Europe

The first study compared the legal regulations on maintenance obligations between adult generations in Germany and four further European countries – France, Italy, Great Britain and Sweden (cf. *Hohnerlein*, Rechtliche Rahmenbedingungen der Ausgestaltung intergenerationaler Beziehungen im internationalen Vergleich. In: Kocka/Kohli/Streeck, Altern: Familie, Zivilgesellschaft, Politik. 2009, p. 139-172). Moreover, an analysis was made of the extent to which social benefit institutions can resort to maintenance claims under private law in order to pass on all or a part of the costs for subordinate social benefits and services – particularly with regard to inpatient long-term care – to adult family members. The author of this study was supported in her research by the country correspondents responsible for France and Sweden.

In social reality there are manifold forms of assistance and of financial support that relatives provide to descendants and ascendants. Both the state and the legal system can recognise and support the – mostly voluntary – provision of such services in different ways, for instance within the scope of tax law. Financial solidarity between adult generations is also enshrined as a legal obligation in most legal systems. This particularly includes the maintenance obligations regulated under civil law (family law).

Financial solidarity obligations between the generations may play a role not only in direct relationships under private law, but also after advance performances on the part of a social benefit institution. The European countries regularly provide for support of their citizens or inhabitants in particular situations of need. This includes assistance schemes for needy persons who cannot maintain their own livelihood and who are not able to draw on other benefits either. These assistance benefits are typically subsidiary to other public benefits and also to private maintenance rights. In order to avoid emergency situations that might threaten a person's existence, the state may grant an advance payment, even if the person in need is entitled to claim maintenance from relatives. In such cases the state may, under certain circumstances, seek redress against the family of the person in need.

The framework for the legally binding economical relationships between generations is formed by statutory maintenance claims pertaining to family law on the one hand and, on the other, by the specific regulations pertaining to social law regarding the obligation of the family to meet claims. Both fields of law are interrelated. In cases where claims under private law between adult generations have been abolished or restricted, the significance of public social benefits gains even greater weight. The availability of public social benefits influences income levels in its own right, and thus also the need for maintenance under private law.

It often becomes problematic in cases where public social benefit institutions enforce private rights to maintenance by way of recourse claims against family members. This may generate tensions within the family. The obligation of adult children towards their parents to meet claims (so-called parent maintenance) often becomes an issue when parents require nursing care for a longer period of time. It is especially inpatient home care for persons requiring long-term care that is very costly. Often the persons involved do not have a sufficient income of their own. In such cases, they will be forced to cover remaining cost either by way of claiming maintenance from their children or grandchildren, or via social welfare. The parent generation may also be forced to claim maintenance in cases where no long-term care is required, but where their age-related financial demands cannot be met via old age pensions from their provision systems for old age. The number of these cases of maintenance, which in former times mainly hit older women, can be reduced by way of creating non-subsidiary minimum security systems.

Parental claims of maintenance against adult children in particular are disputed from the point of view of legal policy. There are tendencies to minimise this type of imposed solidarity at the expense of subsequent generations. What is less disputed is the issue regarding the obligation of parent generations to provide financial assistance to their adult children, which may become applicable in the case of permanent incapacity for work or reduced earning capacity on the part of the children.

Within Europe (Germany, France, Italy, England, Sweden) there are vast differences as regards the legal configuration of family maintenance and of the regulations on financial claims against family members in different generations (particularly with a view to recourse), as well as regards the respective justification.

The obligation between adult generations to provide maintenance, as stipulated under family law, can be found in the codifications of both the German and the Roman law tradition. In Germany, France and Italy this obligation has hardly been changed since its first codification. The configuration of social benefits systems, and particularly the introduction of non-subsidiary basic security systems, has repercussions on the maintenance obligations under private law, since poverty tends to be prevented by such measures.

Apart from that, it is up to the courts to put the obligation to pay maintenance in concrete terms. Direct maintenance claims among relatives are rare. Yet, the existence of such obligations plays a role as regards the granting of particular social welfare benefits or social services. Various methods are applied in Germany, France and Italy in order to impose financial solidarity between adult generations publicly, i.e. through the social benefit institutions. In this context, complex connections are established between regulations pertaining to civil law and regulations pertaining to social (welfare) law. There are many indications that locally responsible social benefit institutions are increasingly under pressure to provide for refinancing and that altogether there is a growing tendency to make use of family-related solidarity benefits. In Germany, the rights of recourse under social law were changed for this purpose to the effect that maintenance claims are now automatically assigned by law (cessio legis) – both in the case of social welfare benefits and in the case of the new basic insurance for jobseekers – instead of by notification on the part of the social welfare institution regarding the transfer of the maintenance claim, as used to be the case in the past. In France, the "intensity of calls for payment" effected by social welfare authorities has increased even without changes in legislation due to changes in administrative practice. Despite this increase in refinancing pressure on the part of social benefit institutions there is also a reverse trend which aims to restrict or minimise the recourse to relatives in cases of maintenance obligations – which is effected partly via the legislator and partly via the courts.

England and Sweden show a fundamentally different approach. There, it is only minors or young people in training who can claim maintenance under private law from their parents, as well as spouses – and partners who have the same rights as spouses – who can claim maintenance from each other. By way of abolishing statutory obligations to provide maintenance, efforts were made to banish the fears on the part of the parent generation of becoming economically dependent in the long term. Furthermore, the obligation to provide maintenance was abolished with the aim of promoting a certain readiness between the generations to make voluntary financial contributions to a limited extent. Health and long-term care services are, if required, made available to the needy at no charge in the form of universal public services. These legal systems do not expect family members to assume incalculable financial risks in order to cover long-term care expenses for independent adult children or, conversely, aged parents.

Comparison of Property Law and of the Allocation of Accrued Pension Rights in Europe

The second study was developed in the context of the multi-phase project dealing with the question of what was to follow the breadwinner model ["Was kommt nach dem Ernährermodell?"], which has been conducted since 2006 by the Institute in cooperation with the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). The focus of this study was on solidarity relationships in marriages that were based on the division of labour and the related interplay of property law and old age security (cf. *Hohnerlein*, Güterrechtlicher Vermögensausgleich und Aufteilung von Rentenanrechten im Scheidungsfall – zum Zusammenspiel von Güter- und Sozialrecht in Europa. In: BMFSFJ (ed.), Rollenleitbilder und -realitäten in Europa: Rechtliche, ökonomische und kulturelle Dimensionen, 2009, pp. 126-141).

The division of work between men and women has, despite the profound changes in the working world as well as in family structures, until today had a significant impact on the scope of financial independence in old age. After the numerous reforms pertaining to the reduction of statutory old age pensions in many countries of the European Union, the prevention of old age poverty and social exclusion in old age is once again becoming a significant political objective at European level. In general, it is particularly women who are hit by poverty in old age, since in most countries it is still them who carry out unpaid family work and who are less integrated in the labour market than men. In income-based security systems they therefore have fewer chances than men to receive full pension entitlements and thus to have a sufficient pension that is guaranteed to them independent of their partner's income. The extent of gaps in social security correlates, on the one hand, with the structure of the respective social security systems, but on the other hand also with the consequences of a gender-specific allocation of roles.

Deficits are particularly evident in contribution-based pension systems which also provide, apart from a basic pension, pension payments based on "earned income". This raises the question to what extent the individual risk of insufficient income-based pensions can be minimised beyond social welfare, if it is the consequence of a divorce of a marriage that was based on the division of labour. In this context, it makes sense from the viewpoint of equal opportunity policy to also justify – in addition to collective compensation mechanisms (e.g. recognition of childrearing periods) – a certain individual responsibility of the partner for the financial consequences of a divorce in the event of an asymmetric allocation of roles during the marriage. This has been effected by the German legislator by means of the pension rights adjustment.

The core aspect of the multi-country study was the question whether and to what extent the statutory matrimonial property schemes in the relevant European countries (Denmark, France, Great Britain, Italy, the Netherlands, Sweden and Switzerland) included accrued pension rights in the apportionment of assets and liabilities in the event of a divorce, and which consequences could be expected for old age security from the so-called *Errungenschaftsgemeinschaft* [community of property acquired during marriage] which, different from the German *Zugewinngemeinschaft* [separation of property with accrued gains being equalised on termination of the marriage], refers to an equal sharing of property acquired during marriage.

The interplay of matrimonial property law and social law does not follow any uniform pattern as regards the sharing of the partner's pension rights in the event of divorce. The type and scope of such a sharing of pension rights seem to be less influenced by a particular statutory property regime than by the configuration of the respective old age security system.

No affirmation has been made on the general assumption that the forms of community of property are to a greater extent than other property regimes linked to a financial equalisation between the two spouses as regards the build-up of provident provision for old age. With a view to the configuration of statutory property regimes that belong to the type of community of property acquired during marriage, for instance, pension entitlements acquired during marriage are either regarded *de jure* as personal rights which do not come under property that is to be allocated, or they are excluded *de facto*, as the Italian example illustrates. In fact, in terms of the statutory

Dr. Eva Maria Hohnerlein.

property regime in the Netherlands, the even more comprehensive community of property was introduced, along with a pension rights adjustment. Yet, this pension rights adjustment does not refer to the statutory pension pertaining to the first pillar of old age security, for this basic non-income-based pension is available to all citizens who have completed the required residence period, irrespective of actual contributions made. Since provision for basic needs in old age is defined as a collective task, a redistribution of pension rights among spouses is not necessary for this first pillar. The old age pension plan in Denmark [*folkepension*], too, guarantees a minimum provision for basic needs, irrespective of a distribution of property rights in the system of the deferred community of property. A very differentiated solution is found in Swiss law: here, the modified community of property acquired during marriage comes in the form of participation in acquired property, in regard to which social law on principle facilitates the acquisition of rights on the part of economically inactive spouses for the first pillar of old age security, as long as the gainfully employed spouse has made a certain amount of contributions.

An automatic equal splitting of pension rights is, as a rule, not provided for the first pension pillar in other countries than Germany. If ever, the allocation of pension entitlements plays a role with regard to the second and third pillar of old age security. Yet, even in this constellation the allocation under property law is no typical feature of a community of property acquired during marriage. If pension rights are included in compensation systems under property law, flexible allocation modalities are preferred in most cases which allow for a fair solution beyond the strict 50/50 division.

In view of the complexity of lifestyles it is, however, not surprising that the pathways to a consistent setup of social law and family law are extremely rocky, particularly as regards the changing gender role models, and that the conflicting objectives between the equal opportunity policy and a pension policy aiming at the development of poverty-proof pensions are not so easy to reconcile.

Eva Maria Hohnerlein

2.14. Family Policy as an Economic Policy: On the Introduction of Parental Allowance in Germany

In the year 2008, the second phase of the interdisciplinary research collaboration on family policy with Tsukuba University was continued in Tokyo in the context of a further expert meeting and subsequent symposium on family policy in Germany and Japan [in German entitled "Familienpolitik in Deutschland und Japan"]. This time, the focus was on concepts regarding family policy in terms of economic and social policy in Germany and Japan. Two scientific members of the Institute (*von Maydell, Hohnerlein*) participated in this expert meeting, while one doctoral candidate of the Institute (*Schön*) took part in the preceding workshop, where Japanese and German junior researchers had the opportunity to introduce their research work on family policy. The respective papers were published in Japanese (*Motozawa/von Maydell*, 家族のための総合政策II -市民社会における家族政策 [Family Policy in Society], 2009).

Since the end of 2002, a profound paradigmatic change has taken place in Germany's family policy. After decades of family affairs having been regarded essentially as some sort of private matter, it has now become an indispensable key player for the economy and for society. Services and benefits pertaining to family policy are increasingly viewed and justified in terms of their benefit to the economy. Regarding the dialogue between Germany and Japan it is particularly interesting to see that the support of a family-friendly work and business culture is deemed to be a crucial part of a sustainable family policy, and that in many cities strategic alliances between politics, the economy, trade unions and welfare associations have been established (Local Alliances for the Family, *Lokale Bündnisse für Familie*). A further novelty in German family policy is the linking of family and gender policy, which also played a role in the drafting of the new parental allowance [*Elterngeld*].

During the reporting period, the German-Japanese dialogue was provided with a first assessment of the new parental allowance in Germany in terms of its economic implications. The results were published in the Japanese conference proceedings.

The new parental allowance is a tax-financed monetary benefit granted to parents of babies born after 2006. It is to prevent loss of income (income replacement function), open up effective options for mothers and fathers with a view to their share of child-raising periods, and promote the economic independence of both parents as well as provide appropriate compensation for their (missed) opportunity costs.

Both the social aspect and the labour-related aspect of this allowance pursue objectives pertaining to *family policy*. The aim is to offer mothers and fathers the chance to stay at home and take care of their newborn child themselves during its first phase of life, without them having to fulfil the requirements of the working world at the same time. These family policy objectives are also to effect positive results for the *overall economy*. Political and economic goals can, since 2007, not only be detected in the context of labour law in the granting of certain "rights to time off", but more so than before also in the social support benefit known as parental allowance. The aim is to increase the proportion of working mothers and to give qualified young women the opportunity to achieve their full workforce potential. Accordingly, incentives are given to keep career breaks after giving birth as short as possible, and in the context of parental leave special protection against dismissal is granted in the form of a specific employment guarantee which enables the respective parent to return to his or her old place of work.

However, efforts to reach the economic and political aims have also been made by way of new concepts promoting the compatibility of family and working life, which are characterised by a transition from the sequential three-phase-model (education and first work experience, "baby break", return to work, with phases not overlapping) to a parallel model with the aim of keeping career breaks as short as possible during the infancy phase. This new approach enables the caretaking parent to maintain his or her professional qualification and thus helps avoid child and family poverty, which are often consequences of long career breaks or failed marriages. Supporting women in their wish to work instead of promoting long career breaks ultimately also reduces the risk of old age poverty in women and relieves the public funds as regards the financing of benefits guaranteeing a basic social minimum.

The new parental allowance supports these objectives by way of

- a shortened eligibility period for this social benefit (down to twelve months for one parent), as compared with 24 months granted in the case of the former child-raising allowance
- the introduction of two extra months for the partner's share in child-raising (daddy months)
- payments configured as a (limited) salary substitute (with an upper ceiling) instead of a means-tested social assistance benefit.

By way of extended options regarding the switch from full-time to part-time work, the

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labour law regulations on parental leave have created incentives for women to take shorter employment breaks. Special protection is granted against dismissal.

In sum, even though the reform has not managed to effect a rise in birth rates, it has indeed extended coverage in relation to the previously granted child-raising allowance. Today, nearly 100% of persons interested are covered by the allowance, while this percentage was at only 77% before the introduction of parental allowance. 50% of families experience a stabilisation or even increase of income after the birth of a child. Empirical findings disprove the common myth that parental allowance was, first and foremost, an instrument for well-paid female academics. The proportion of working mothers has increased: due to the general limitation of the benefit period to 14 months at the most for both partners, the proportion of working mothers has risen since the introduction of parental allowance. Empirical findings evidence an earlier return to work not only with respect to women who were employed before taking parental leave. Also women who were not employed before the birth of their child are more likely to take up employment one and a half years later. Mothers who resume employment unintentionally late claim that this is due to lacking and/or overly expensive childcare facilities, as well as to a lack of part-time jobs.
There has also been a rise in paternity leave: the proportion of fathers who receive parental allowance has risen to a national average of 16% and has thus increased fivefold. However, most fathers (57.5%) stay at home only for the minimum period of two months. 20% decide to take a paternity leave of three to eleven months, and 14% make use of the maximum period of twelve (respectively 14) months. Most fathers opt for part-time childcare, while the proportion of full-time fathers amounts to 8.5%.

These results show that the new parental allowance has been configured to have a great impact on politics and the economy. In relation to this, the socio-political efforts, i.e. the support of parents who are not integrated in the labour market, are rather humble. While support for this target group has not been cut entirely, its scope has nevertheless been significantly reduced.

Eva Maria Hohnerlein

3. Transformation in Threshold Countries

3.1. Health Reforms in China

The deficiencies in China's health care system have in recent years been intensively and publicly discussed in the People's Republic for the fact that every citizen is affected by them. In 2008, eight different proposals for reform were submitted to the Chinese central government, none of which gained acceptance. This makes obvious that the health care system does need reform, but also that no uniform concept or consensus has been found so far. Thus, the subject remains relevant to the Chinese discussion. The following part outlines the legal situation with regard to health insurance, as well as the possibilities for reform.

Like all branches of social security in China, health care is divided into a rural and an urban part. According to the Labour Law of 1994 and the Labour Contract Law of 2007, employees in the cities obligatorily participate in urban social insurance. In rural areas participation in the new collective health care scheme is voluntary.

Urban Health Care

Until the economic reforms, urban health care used to be exclusively financed by the public enterprises. After some provinces had experimented with various projects since the early 1990s, the State Council passed the "Resolution to Establish a Basic Health Insurance System for Urban Employees" on 14 December 1998.

The health insurance system for employees has been conceived according to a concept elaborated by the World Bank which provides for a solidarity fund along with an individual account for each person insured. The latter pays a certain percentage of his income into his individual account, which is kept for him by the respective human resources and social security bureau. Treatment costs above the 10% limit of the average local income are covered by the solidarity fund. If treatment costs remain below the 10% limit of the local average income, they have to be financed from the individual accounts or by the pa-

tients themselves. As the maintenance of individual accounts and solidarity funds involves great administrative efforts, some poorer provinces are allowed to operate exclusively with solidarity funds. On the whole, the cost-intensive individual health insurance accounts will probably be abolished in the near future. These accounts were originally conceived to build up old age reserves in the health insurance fund, since older people merely pay low contributions, but require medical treatment more often. For an aging society like in the People's Republic of China it is necessary to build up such reserves. In practice, however, the administrative expenses for keeping the accounts turn out to be quite high, because benefits have to be constantly reassessed and reapproved. This is different with respect to pension insurance, as pension benefits are only assessed once, i.e. when retirement age has been reached, and are then paid out on a monthly basis. Financial profit can rarely be made from the low amounts invested in the individual health insurance accounts.

The actual contribution of employers to the individual health insurance of their employees is currently at 6% of the total monthly payroll of the respective enterprise. 30% of this amount goes to the employees' individual accounts that are maintained by the respective human resources and social security bureau for each person insured, while the rest of the amount is accumulated in the solidarity fund. Employees contribute 2% of their wages; this proportion goes entirely to the respective individual accounts. Basic health insurance is exclusively financed by employer and employee contributions and by interest accruing from accumulated capital; as yet, no state subsidies have been granted to health insurance.

In the event of illness, persons covered by basic health insurance receive medical treatment and benefits in kind mostly against prepayment, with costs being refunded retrospectively. There is, however, great uncertainty on the part of the insured as to whether and to what extent expenses will be refunded. Of course, there are tables and lists specifying the basic, refundable benefits and services, but these guidelines include a scope of discretion on the part of the authority. On principle, this type of reimbursable medical services must be provided in hospitals or by physicians who have concluded an appropriate contract with the Human Resources and Social Security Bureau. The lack of proper state regulation of hospital services is currently being criticized, with reference being made to hospitals which provide medical treatment that is not covered by state health insurance or which charge fees for preliminary examinations that are not included in health insurance either. These services include medical checkups, treatment and hospital stays. Benefits in kind are pharmaceuticals which the insured persons may obtain from pharmacies contracted by the human resources and social security bureau. The costs of these pharmaceuticals are paid back if they appear on the list of refundable drugs. The lists are drawn up by the national Ministry of Human Resources and Social Security.
When implementing the resolution on urban health insurance, it became apparent that, by way of covering employees only, a large part of the population was not included in this type of insurance at all. Under the planned economy, entire families and their children had received health care by state enterprises, meaning that on principle the entire urban population had been covered by sickness insurance. Now, new systems of health care need to be created for groups of persons like children, students or elderly persons without insurance coverage. Hence, along with the obligatory basic health insurance for urban employees, a basic health insurance for urban citizens has been created, allowing non-employed urban residents, students and children to take out such insurance on a voluntary basis.

Rural Health Care

In the countryside, the former cooperative health care system set up in 1968 collapsed with the economic reforms, as collectives and also local authorities turned out to be no longer responsible for health care. Illness has become a poverty risk for the rural population. According to investigations made in 2003, inhabitants of rural areas paid an average amount of 7,051 RMB for the medical treatment of a severe illness, while the average per capita annual income in rural areas amounted to 2,622 RMB that very year. An illness requiring intensive medical treatment may therefore plunge entire families into poverty.

A new cooperative medical care system was launched in July 2003 in order to cope with this problem. Rural inhabitants can join this insurance scheme on a voluntary basis – hence the insurance is not an obligatory state insurance. If a rural inhabitant participates in the system, he or she will have to contribute 20 RMB annually to this health insurance, while the central and the respective local government each contribute a further 40 RMB per person annually. Participants in this insurance are reimbursed the treatment costs for serious illnesses, e.g. illnesses that involve inpatient hospital treatment. According to an ambitious political target, this health insurance scheme is intended to cover 90% of the rural population by the year 2011. It remains to be seen whether this type of insurance will still be taken out on a voluntary basis on that condition.

Dongmei Liu, guests Yifan Yang (Southwest University of Finance and Economics, Chongqing) and Dr. Quan Lu (Renmin University, Beijing), Dr. Barbara Darimont (left to right).

In 2003, the Ministries of Civil Affairs, of Finance and of Health published their resolutions on the implementation of rural health care assistance. This supplementary system grants financial support to needy inhabitants of rural areas, allowing them to participate in the new cooperative medical care system. In regions where this system has not yet been established, persons in need are paid their medical treatment of serious illnesses. However, benefits are only granted upon request, which means that the treatment of acute diseases has to be paid for in advance by the insured person. This rural health care assistance is supported by aid funds established by the local governments; the funds are mainly financed by the local governments themselves. In the poor central and western regions of China the local governments receive financial support from the central government.

The plan is to harmonise the three insurance systems, i.e. the basic health insurance system for urban employees, the cooperative medical care system for the rural population and urban health insurance for persons without any other insurance coverage. Moreover, so-called medical assistance systems have been established for both the rural and the urban population. These systems, financed through state funds, provide basic medical care to persons in need.

The Chinese government seeks to establish access to "health care for all" and is thereby reacting to the problems posed by the present, hopelessly fragmented system. The success of this endeavour will ultimately depend on the relations between the provincial governments and the central government. Especially in the field of social law there exists some sort of "quasi-federalism" which is, however, neither regulated in the Constitution nor in any other national regulations. For this reason, future Institute research will concentrate on individual areas in order to identify the problems resulting from this erratic regulatory pattern that prevent legal enforcement, i.e. problems which are most likely to be resolved only by way of a clear distribution of competences. It remains questionable, however, whether China will be able to revert its decentralisation course taken so far. Yet, a reversion will be crucial for China's objective to eventually have a uniform health insurance system, as well as a harmonised social legislation.

Barbara Darimont

3.2. Pension Insurance in China as a Constitutional Task

On 27 and 28 April 2009, the 9th symposium of the Chinese-German Dialogue on the Rule of Law, with focus on pension insurance law in the constitutional state ["*Das Recht der Rentenversicherung im Rechtsstaat*"], took place in Shenzhen, P. R. China. It was organised by the State Council of China in cooperation with the German Federal Ministry of Justice, with assistance in the preparation provided by the Max Planck Institute for Foreign and International Social Law. The Chinese-German Dialogue on the Rule of Law was initiated in the year 2000. Until now, the focus has mainly been on topics pertaining to administrative law. The 9th symposium concentrated on issues regarding a basic structure, financing, the administrative structure and benefits granted in the Chinese and German pension insurance systems.

Individual questions regarding comparative law were discussed in work groups. One of the greatest problems in China is the huge discrepancy between urban and rural conditions, which is also reflected in the pension insurance system; this problem is to be solved by way of implementing one uniform pension insurance scheme. The framework conditions for this purpose were stipulated in the draft of the Social Insurance Act of 2008. The exact details are to be laid down by the respective provincial governments after the adoption of the Act, which is expected for 2010. Potential coordination rules are being considered in this context. Yet, it is still unclear whether the administration of the pension insurance, and particularly of the funds of the latter, are to be effected centrally or at decentralised level. The central state and the growing discrepancies in incomes between urban and rural areas require a standardisation if their inhabitants are to be kept from venting their displeasure on social injustice. The decentralisation that has been initiated and led to some sort of "quasi-federalism" thwarts political efforts to standardise the pension insurance system.

A further core topic of the discussion was the way in which the respective laws might be enforced; in this context, the lack of legal protection in social insurance law was highlighted. The Chinese and the German side held different views regarding the question whether a separate jurisdiction should be established for social disputes, or whether the existing jurisdictions in China were sufficient. The Chinese participants argued that a separate jurisdiction would require the setup of an enormous administrative structure with nearly 30,000 new lawyers and approximately 1,200 social courts, which was hardly possible under the present circumstances.

On the whole, the German-Chinese exchange on issues pertaining to social law has meanwhile become a tradition. Many a Chinese norm related to social law has been modelled on the German legal framework. At present,

however, the Chinese experts must also acknowledge the dissimilar starting conditions which oppose the adoption of German laws. It is for this reason that the German-Chinese exchange on social law continues to be regarded as indispensable by both countries.

Barbara Darimont

3.3. The Right to Health in Latin America – Appropriate and Effective Access to Health Care Services

Topics

The Right to Health

The right to health is entrenched in a series of international treaties as well as numerous national constitutions. The General Comment on Art. 12 of the "International Covenant on Economic, Social and Cultural Rights" (ICESCR) adopted in the year 2000 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 be healthy. Rather, in formulating the aim of enabling individuals to enjoy the highest attainable standard of health, a twofold condition is put forward: for one thing, the right to health is reliant on the biological and socio-economic circumstances of the individual and, for another, on the financial resources of the government.

While the classical liberal fundamental rights are designed to protect the sphere of individual freedom against state intervention, fundamental social rights are directed at active assistance on the part of the state. As regards the right to health, the state is to provide such active assistance by way of creating the legal and financial preconditions for a functioning health system.

The Conflict Between Individual Rights and the Collective Right to Health

The right to health is programmatic in the sense that it is geared to creating a functioning health system and that it therefore first needs to be developed through intensive efforts on the part of the state and individuals. However, especially in Latin America there are legal systems which go beyond this programmatic nature of the fundamental social right to health by granting certain persons subjective public rights to health.

Given the limited resources in a specific public health system, a conflict arises between the financing of the enforcement of individual rights to health and the means available for the maintenance of the collective health system, particularly with a view to the fact that half of the population does not have any access to health care services.

The Configuration of the Right to Health Through Jurisdiction

In contrast to corresponding provisions in European constitutions, most Latin American constitutions seek to understand the right to health not merely in terms of a purely objective legal or programmatic guiding principle, but as a way to directly impart a legal right to access to health care services. Developments in these legal systems have reached a new dimension in the context of the jurisdictions of the Constitutional Court of Colombia and the Brazilian Supreme Court regarding the enforcement of the right to health. The number of decisions of the Colombian Constitutional Court related to the claiming of medical benefits and services has remarkably increased between 1998 and 2008. The same development has been observed in Brazil.

Latin America seeks to bridge the gap between the normative requirement and the practical applicability of social rights partially by way of creating specific legal protection instruments. Both by way of the legal remedy termed *acción de tutela* or – as in the case of Brazil – the *tutela anticipada*, the rights to medical treatment services are derived directly from the Constitution. One of the core points of discussion in the project is this individual realisation of the right to health through such a legal remedy.

The Relationship Between the Executive and Judicial Branches with Respect to the Enforcement of the Right to Health

Apart from tensions existing in Latin America between the collective and the individual right to health, conflict has also arisen between the executive and the judicial governance of the health system. This conflict results directly from the scarcity of resources in the health care system that individuals are faced with in their efforts to legally enforce their subjective right to health.

While the executive branch tries to administer the deficiencies in the health care system, the judicative branch grants rights to individuals which further aggravate the conditions for financing general health care.

The growing tendency in Latin America to enforce the right to health through court procedures has become relevant especially with a view to the various national legal systems. Furthermore, it is important to examine the role of the judiciary branch in the substantiation of the obligation to render services in the health care system, particularly with regard to its function as a "distributor of welfare". Initially, governmental control of the health care system was to be effected through legislation, while the respective health care policy was to be implemented by the executive branch. It is particularly areas under special jurisdiction that may significantly contribute to the substantiation of benefit rights; yet, they are not to replace the function of legislation. This, however, is exactly what is happening to some extent in several Latin American countries, and therefore the ensuing questions regarding the division of powers necessitate a more detailed analysis.

Research Questions

The following research questions are to be articulated more clearly and answered in the course of this project:

How is the Right to Health Configured?
The main focus of this examination is on the definition of the right to health. It is about the fundamental question whether there actually exists a right to health and what it is precisely aimed at.
Both in Colombia and Brazil, significant court decisions on health law have been made recently, and these should be analysed in greater detail. It must be clarified which subjective rights to health do in fact exist and how far the validity of the collective right to health extends. In this context, the efficiency of the health care system shall also be examined.

What are the Interrelations Between the Right to Collective Health and the Right to Individual Health?
The conflicting relationship ensuing from the scarcity of resources in the health care system between collective rights and individual rights is to be illustrated by way of legal comparison; in this regard, the "human rights" debate shall be examined with respect to its function to show a way out of this quandary.

How can these Subjective Rights be Implemented in a Procedural Way?
The growing number of court decisions in Latin America is to be closely examined with a view to the legal remedies for effective legal protection. Common to all Latin American legal systems with respect to the configuration of these legal remedies is the actual effectiveness of the legal enforcement of rights in a specific case. A good example is the case of Colombia, whose Constitutional Court grants nearly 70% of claims to individual health care services. Furthermore, it is to be clarified what implications the actual access to constitutional jurisdiction may have and what consequences ensue from an either diffuse or concentrated configuration of the constitutional jurisdiction.

What Kind of Correlation Exists Between the Executive Administration of the Health Care System and the Judicial Protection of a Subjective Right to Health?
Against the background of the remaining research questions it is to be clarified to what extent the *judicialisation* of administrative decisions in the health care system leads to a "reduction" of executive governance of the health care system. In this context, the dis-

cussion shall also include questions relating to the democratic legitimisation of government decisions. Taking the health care system as an example, the study is to give quintessential answers to fundamental issues regarding the development of the relation between the executive and the judicial branch.

Method and Implementation

In order to answer the abovementioned research questions, the focus will be on Brazil and Colombia. The legal situation of these two countries is to be examined by way of a comparison.
This will enable, for one thing, the portrayal of two different legal systems in Latin America, contrasting the federal system of Brazil with the unitarian system of Colombia, and showing the specific configuration of jurisdiction in each country. For another thing, the verification of theoretical assumptions also has to involve German legal doctrine as a major factor, since in the countries mentioned the latter has been adopted to an impressive extent and holds a special status in legal comparison.
In the context of the project, two conferences shall be organised by scientists from Latin America and Europe, which will address and critically evaluate the various aspects of the access to health care services ensuing from the right to health. The project shall be concluded by way of a book publication and, if applicable, entail further publications in legal journals.

Lorena Ossio

4. Multi-Focus Research

4.1. Emeritus Workplace Hans F. Zacher: Theory of Comparative Social Law

The Difficulty of a Beginning

In 1973, the Max Planck Society decided to launch a project group dedicated to international and comparative social law. The research work of this project group was to enable the competent Boards of the Max Planck Society to form a judgement on whether it was useful to found a Max Planck Institute in the mentioned field. The project was aimed at a dual purpose: for one thing at the further development of the established legal potential of the Max Planck Society by way of expansion into this new field of law which had, due to the evolvement of the social – or welfare – state, quickly become a life-determining force; for another thing, it was aimed at serving as a disciplinary contribution in the legal tradition of the Kaiser Wilhelm / Max Planck Society to a scientific solution of social, respectively welfare state issues pertaining to humaneness, society and politics. And it is in this very sense that the project group, and soon afterwards (as of 1980) the Max Planck Institute for Foreign and International Social Law, was to enter unchartered territory.

"*Comparative Law*"

The young group had to search for exemplary models, and the latter were discovered mainly in comparative private law. The paradigm developed in this field, namely the pre-legal problem formulation, was to also serve as a key to a method of comparing social law. This paradigm is governed by the realisation that the comparison of law per se only reveals immediate equalities and inequalities, that it does not, however, deduce the meaning of these equalities and inequalities. This meaning emerges from the challenges that the law responds to, or should, respectively could, respond to. These challenges constitute the very pre-legal problem by means of which the legal problem solutions can be compared.

The process leading to the formulation of the pre-legal problem starts with the expertise- and experience-based assumption that there are similarities between several problem solutions that are indicative of a common or similar problem. The comparison concentrates on problem solutions related to different national legal systems, while the respective problem to be tackled is essentially the same in all countries concerned. To identify this essential common denominator despite the elementary dissimilarity of systems is one crucial precondition for a comparison of laws to be successful: this is to be effected through the formulation of the pre-legal problem. To accomplish this feat specifically for "social law" and to introduce this method to the matter of social law was the essentially new task that the project group had to perform.

"*Social Law*"?

What common feature is implied by the term "social law"? In the most general sense, "so-

cial" means any kind of connection to society. This would render every kind of law "social". The term "social law" would, in this sense, not be limited in its meaning. (The Anglo-Saxon conception of language and thinking places so much emphasis on this most extended sense of "social" that the term "social law" still largely meets with objection, if not incomprehension). In a more specific sense, "social" means the very orientation towards the common weal or towards societal commonalities, the negation of which is condemned as "anti-social". In this sense, too, "social" would not bear a meaning specific to one particular area.

This differs from the critical normative, political notion of "social", which postulates "more equality" in societal relations and opposes inappropriate inequalities in living conditions, if such inequalities are attributed to economic causes or have economic impacts. To be more precise: inequalities are to be prevented, minimised or counterbalanced. This conception of "social" was a product of the European modern era and an answer to the omnipresent potential risk of extreme inequality resulting from the expansion of freedom. This conception of "social", too, is a mandate to law in its entirety. However, there are areas of law that are based on this "social" purpose as an underlying principle – legal areas that are significantly characterised by this "social" purpose. Legal areas that had previously not existed in the law, which thus essentially owe their existence to the "social": the law of "social benefits". In its very nature, it is a canon of state-organised benefits which is to supplement the generally prevailing potential resources of life to the effect that all or as many contingencies as possible be provided with sufficient capacity to meet requirements. In German law, these benefits have been codified by the Social Code. Internationally, they are mostly found under the collective term of "social security" or "social protection".

Apprehending, Understanding, Evaluating

What is the ultimate purpose of compari-son? The classical goal of all comparative research is, among other things, to improve the knowledge and understanding of individual specificities – i.e. of one's own laws in the context of legal comparison, or of one's own circumstances and policies in the context of comparing particular social conditions and their political configurations – and to be able to evaluate these factors in a better way. Yet, in a world of manifold and intensive exchange – exchange of information, of value judgements, of economic goods and of individual experience due to migration etc. – where commonalities have to be organised in various ways, knowledge, understanding and evaluation of the respective foreign circumstances have gained similar and no less importance: it is a matter of knowing, understanding and evaluating the commonalities and differences in the myriad fields of social encounter and joint organisation. Nevertheless, two purposes are emphasised in this context.

- One is the clarification of the functionality of specific problem solutions, as well as more detailed knowledge of the modes of action. This is important for the development of the individual solutions. It is also important for the configuration and development of cross-border solutions, be they unilateral, bilateral or multilateral in nature.

- The other purpose is to identify the "best" solution. Such a solution is particularly popular. Yet, it is also particularly problematic. What are the criteria to distinguish the "best" solution from "better" or "worse" solutions? The multiplicity of compared solutions may serve as food for thought. Yet, they require their own justification. And what impact do the specific national factors in the development and effectiveness of a solution have with respect to the application of these criteria?

The Objective

The project group and the Institute thus were, and still are, confronted with the task of developing "social benefits" schemes that are to provide the various manifestations to be considered in a certain comparative framework with structures capable of integrating the different systems and reorganising them in their turn.

Research Progress

Topoi of Comparative Social Law

The three and a half decades following the founding of the research group were characterised by ample research in the mentioned areas:

Research work

- that was based on individual "social situations"; on particular categories of persons to be protected; on benefits and services; on the various processes of benefit delivery; on service/benefit providers;
- that dealt with cost coverage and the redistribution of financial burdens; with the relationship between service providers and beneficiaries; with the overall context of similar benefits systems (such as provision, compensation, assistance and support systems);
- that examined national social law systems as a whole; or even – in an exemplary or general way – the various kinds of national social law systems (e.g. in "socialist" states, developing countries, transition countries), subcontinental or continental similarities;
- that investigated the dependency of national social law on the respective institutions and on the fundamental rights-based or programmatic guidelines of national constitutional law;
- that studied the permeability and correlation of various national social law systems with regard to national or international conflicts of laws and the harmonisation of legislation;
- and, not least, the manifold research work produced on the contribution of international law and international organisations to the contents and the functionality of national, transnational or international social law.

All these problems are reflected in a highly complex way in European law – both in the law and the institutions related to the Europe of the European Council and – if no longer comparable due to its unique character – in the supranational system of the European Community/Union – and thus in the abundance of research work on "European" topics.

Changing Circumstances

Research at the Institute also became involved in new factual political and legal developments. This held true for the "social" as

Prof. Dr. Dr. h.c. mult. Hans F. Zacher.

such. In historical terms, the Institute was founded at the end of the "golden age of the welfare state", which had begun with the post World War II recovery phase and which, in the mid-1970s, transitioned into a phase characterised by resistance movements and reorientation, but also by regression. Soon afterwards, the collapse of the dualism between the liberal social state and the "socialistic" state changed the scene. Globalisation became a downright reality. With previously unimaginable radicalism, comparative law increasingly turned into a question of law "in itself": a question of the sum of globally applied *law*. And comparative social law turned into a question of social law "in itself": a question of the sum of globally applied *social law*.

True, since "social law" only ever represents a subset of overall law, this question only makes sense in the context of the consideration of what the sum of social law can mean and actually does mean under the extremely varied conditions of other forms of law. In parallel with all these developments, the European Union, too, has gained momentum. As a rule, comparative social law among member states, and to a great extent also in relation to third countries, only makes sense if it is understood in the European context.

Increase and Intensification of Information and Research

An essential change regarding Institute research in comparative law has finally come about due to the fact that comparative "social" research has broadened and deepened during the period since the founding of the project

group, both within Germany and outside – at national, continental, regional and worldwide level, due to the establishment of governmental, societal, transnational and international institutions, in the course of independent and earmarked research or due to a pragmatically informative or argumentative purpose. On the whole, projects dealing with comparative *law* are the exception in this context.

The material collected and examined in this context is abundant. What is confusing, however, is the abundance of disciplinary approaches, the multitude of purposes pursued, the parallelism of independent science and interest-driven information, the differences in reliability as regards previous research findings and, not least, the wide scope granted to the processing of acquired information. One factor is of particular significance for the Institute: the fact that the multitude of factual or – somehow or other – socio-scientifically designed material might replace or eliminate the legal and jurisprudential approach to the matter.

Situation Analysis: "Social Law" and Structures of the Social

On these grounds the obvious thing to do is to review the theoretical approach in Institute research.

Social Law = Law of "Social Benefits and Services" as the Objective of Comparative Social Law

All "social benefits" are characterised by the fact that

- they serve, by way of monetary benefits or services and benefits in kind, to guarantee sufficient and appropriate coverage for individual needs;
- they complement a primary system of demand fulfilment capability and of demand fulfilment – meaning that they are of a secondary nature;
- the former is effected in the name of a critical-normative principle which explicitly refers, by means of the term "social", to the respective movement of the European modern era or, under a different name – particularly "*welfare*" – to its ideational potential;
- the policy of the common weal is of essential significance in the definition of the "social" and in the design of "social benefits"; further, that
- they are governed by the respectively applicable law.

Accordingly, "social law" is law that is, in this sense, essentially characterised by its social purpose.

Common terms like "social security" or social protection" are pragmatic indicators of what is deemed characteristic of accordingly summarised regulations. Whenever these terms are used within the meaning of "social benefits", a certain extent of inaccuracy is allowed for the sake of emphasis.

Structures of the Social – Primary "Normality" Versus Secondary "Social Correction"

"Social benefits" per se are never sufficient to establish "social conditions". However, they are necessary in order to establish living conditions which are regarded as "socially adequate", in combination with a primary system that produces and ensures livelihood in general (i.e. a system that also factors in needs, demand fulfilment capabilities and demand fulfilment).

The issue as to how "social" the respective living conditions are in a certain polity and to which extent these conditions can be termed "social", always depends on the configuration of the primary system of living conditions and its mode of operation. Nevertheless, the quality of the "social" no less depends on how the secondary system of "social benefits" is configured, how it functions and how both systems complement each other. The common opinion held in the social sciences that the "social" quality of a polity can be deduced from the scope or proportion of "social benefits" granted is quite wrong. If "social" is to mean "more equality", a polity whose primary system of living conditions favours "more equality" may, even at a lower proportion of social benefits granted, be "more social" than a polity whose primary system demonstrates a higher proportion of social benefits granted, but which favours inequality. The deficits of disparate living conditions cannot be adjusted at will by means of "social benefits".

This can also be explained as follows: "Social benefits" bring about "more equality" by way of preventing, reducing or balancing out inappropriate inequality. "Equality", however, is not simply brought about by merely "balancing out inequalities". Rather, "equality" is to be effected primarily in terms of "equality through universal standards". Failure to create "equality through universal standards" cannot be compensated at will by way of "balancing out inequalities". The most significant example is universal access to education. In the legal context it is elementary for equality to be effected, first and foremost and indispensably, by means of the universality of law: the universality of legislation; the universality of the independent, incorruptible judge bound to this universal legislation; the universality of the incorruptible administration bound to universal legislation, and so on. Deficits in the law failing to bring about "equality through universal standards" cannot be compensated by way of "social benefits". To the contrary: Such a deficiency will also result in the failure of the attempt to establish "equality through the compensation of inequalities". (Multiple evidence of this is provided in development aid policy). "Equality through universal standards" is therefore a crucial element of the "social". However, "equality through universal standards" belongs to the system of universal living conditions – or else it does not exist. This is sound evidence of the fact that the creation of "social conditions" is a synthesis of the primary system of universal living conditions and the secondary system of corrective "social benefits". And it is evidence of the great extent to which the creation of "social conditions" depends on both systems – i.e. on the thesis of the primary system and on the antithesis of the secondary system.

Double Dialectic: Normality Versus Correction – Society Versus State

The secondary system of "social benefits" as a corrective to inequality essentially depends on the polity for its configuration and guaranteed provision. This, however, does not mean that the dialectic between the normality of universal living conditions and its correction through "social benefits" is restricted to affairs governed by the polity. Wherever autonomous social life is possible, it is not only the normality of living conditions that is essentially also a phenomenon of autonomous social life. It is also corrective measures and institutions aimed at balancing out inequalities that come into consideration as actions immanent in society, e.g. financial support or active help (provided by the extended family, neighbours, friends, self-help groups, cooperative societies etc.), alms, donations, service offers, beneficial associations, foundations, but also insurances, only to name a few. On the whole, the *social quality of living conditions* is thus the result of a *double dialectic*: *of a dialectic between the primary living conditions and a secondary "social" correction,* as well as of a *dialectic between society and the state.*

Desideratum: The Role of Law – the Necessary Issue of Legal Doctrine

Amidst the abundance of "social" phenomena, their being as such and their developments, one aspect has been pushed into the background: the significance of law for the "social"; the issue of law and its potential as a control tool and a tool to impart values; and the matter of the various manifestations and of the perceptibility of law. One substantial reason for neglecting law as a configurative element of the "social" is the multitude of differences in national legal cultures and media through which the national configuration of the "social" is essentially portrayed and projected. Information on two different countries and their effective practices of providing "social benefits" can be offered by way of descriptions that comply with "the letter of the law"; it can be obtained by way of descriptions which may be slightly based on positive law; and it can be obtained by way of descriptions that are unconcerned with positive law or lack reference to the latter entirely. And often there is no choice between one way or the other. And yet, positive law is a versatile and pivotal configurative element of the "social". The subject position of those involved in legal matters depends on law and on the efficiency of law; it is at the same time the most elementary precondition for "social benefits and services" to effect "more equality".

The very discipline of legal science that investigates the entirety of applicable law – the positive and the practised norm, as well as the verification of their mutual compliance; the individual norm and the context in which it is applied, as well as the significance of this correlation for the meaning of each single norm; maybe even the previous history of a norm,

the reasons for its specific form, the scopes for a new interpretation or the consequences of an explicit amendment – , is the very science of legal doctrine. Thus, the very discipline to be introduced to social law is legal doctrine. Only with the aid of legal doctrine will social law become accessible in such a way that it can be applied in country comparisons. And it is only on this understanding that a comparison can be made of the actual impact of law for the "social" in the individually examined polities.

Hans F. Zacher

4.2. Legal Doctrine and Legal Comparison in Social Law

On the occasion of Hans F. Zacher's 80th birthday, the Institute hosted a symposium on 3 and 4 July 2008 regarding legal doctrine and legal comparison in social law ["*Rechtsdogmatik und Rechtsvergleich im Sozialrecht*"], hereby referring to a topic the jubilarian had focused on in numerous scientific papers. The four main topics were discussed in one keynote address for each topic and two further lectures commenting and complementing each address. In their lectures, the speakers elaborated on prevailing socio-legal conditions and on the impact of the family in social law.

After a welcome by the general secretary of the Max Planck Society (*Bludau*), *Ulrich Becker* delivered a lecture containing fundamental deliberations on the topic of legal doctrine and legal comparison. He started his lecture by examining the question as to what was to be understood by the term "legal doctrine", whose objective was, after all, to explain the functioning of law. For one thing, the systematisation of the law was emphasised as the essential tool for gaining dogmatic conclusions, with dogmatics, i.e. doctrine, not merely meaning systematisation as such, but also system utilisation and system formation. For another thing, the relation between positive law and legal doctrine was analysed. Against the background of these fundamental deliberations on legal doctrine the question was pursued whether legal comparison (i.e. the comparison of different legal systems) could be utilised for gaining doctrinal knowledge. In this context, emphasis was put on the method and evaluation of comparative law analysis. Based on the deliberations regarding legal comparison, the knowledge gained and difficulties encountered in the context of comparative socio-legal doctrine were described. Finally, conclusions with regard to legal doctrine were drawn from the legal comparison; for this purpose, the presenter introduced the various approaches to a comparative socio-legal doctrine and, in this context, particularly emphasised the significance of differentiating legal relationships according to benefits systems and persons involved.

Rainer Pitschas introduced the topic of the provision relationship ["*Das Vorsorgeverhältnis*"] and in his lecture pursued the issue of social security through provision. Based on constitutional principles, he elaborated, among other things, on the impact and content of provision relationships and expanded on the distribution of responsibility between the state and private providers, in order to demonstrate existing shortcomings in provision. Furthermore, he outlined the modernisation process of conventional provision systems, using the example of the statutory health and pension insurance; in this context, he illustrated the change in the statutory health insurance system brought about by the 2007 health reform, as well as the conceptual approaches to a modernisation of the statutory pension insurance system. Emphasising the growing significance of responsibility for private provision, he presented the structural and functional change in the provision relationship under public law, including the inherent responsibility of the state to absorb risks and to perform supervisory tasks. In a comparative context, he finally addressed the issue of social provision.
Following this, *Ingwer Ebsen* explained the function of social provision. He delineated the provision relationship as a legal category from other legal relationships pertaining to social provision.
Raising the legal issue of assessing the term "provision" in the context of legal comparison, *Peter A. Köhler* subsequently provided a historical overview of the evolution of the provision principle, including – for reasons of comparison – the concept of provision in Swedish law.
The discussion dealt with the significance of systematisations, the impact of demographic and economic change, the relationship between public and private security systems, and terminology in social law.

Prof. Dr. Dr. h.c. mult. Hans F. Zacher in conversation with Dr. Felix Schmid (St. Gallen), Prof. Dr. Herbert Szurgacz (Wroclaw University), Advisory Board member Prof. Dr. Dagmar Coester-Waltjen (Göttingen University) and chairman of the Scientific Advisory Board Prof. Dr. Franz Ruland (Munich), Prof. Dr. Bernd Baron von Maydell and Prof. Dr. Dr. h.c. Heinrich Scholler (Munich University), Prof. Dr. Maximilian Fuchs (University of Eichstätt-Ingolstadt), Prof. Dr. Pasquale Sandulli (University of Rome) and Prof. Dr. Maximilian Wallerath (Greifswald University), Dr. Edda Blenk-Knocke, Prof. Dr. Friedrich Buttler (Pommelsbrunn), Prof. Dr. Ingwer Ebsen (University of Frankfurt/Main) and wife, Prof. Dr. Peter Udsching (presiding judge at the Federal Social Court and chairman of DSRV), Prof. Dr. Heinrich Reiter (president of the Federal Social Court, retired), Advisory Board member Prof. Dr. Petr Tröster (Prague University), Prof. Dr. Ulrich Becker, Prof. Dr. Dr. h.c. Eberhard Eichenhofer (Jena University) (top left to bottom right).

The second subject area focused on the social benefit relationship within promotion and assistance schemes ["*Das Leistungsverhältnis in Förderungs- und Hilfesystemen*"]. In his comparative lecture, *Karl-Jürgen Bieback* presented the development of *social assistance*, often viewed under the aspect of a transformation from "*welfare*" to "*workfare*", by analysing the provision of social security to persons capable of work, particularly persons who are permanently unemployed, through means-tested, subsidiary benefits that secure the livelihood of these persons in Germany, France and the United Kingdom.

Prof. Dr. Dr. h.c. mult. Hans F. Zacher and Dr. Barbara Bludau (general secretary of the Max Planck Society), Prof. Dr. Dagmar Coester-Waltjen (Göttingen University), Prof. Dr. Theodor Tomandl (University of Vienna), Prof. Dr. Ferdinand Kirchhof (vice president of the Federal Constitutional Court), Prof. Dr. Gerhard Igl (Kiel University), Prof. Dr. Franz Ruland (Munich), Prof. Dr. Jef van Langendonck (Leuven University) (top left to bottom right).

To complement the elaborations of *Karl-Jürgen Bieback*, *Gerhard Igl* portrayed the topic of social assistance and social programmes in the context of the *action sociale* in France, pointing out that the French concept of *action sociale* did not exist in German social policy.

Bernd Schulte dedicated his comparative lecture to the topic of activation in the labour markets of Germany and Great Britain, with a historical account of social security in the two countries.

The subsequent discussion first exposed the problem of the legal nature of the "integration agreement" [*Eingliederungsvereinbarung*] under German law. Later on, the changing justice paradigm, among other things, was addressed; further, to complement the comparative examination of the development of *social assistance* in Germany, France and the United Kingdom, the *workfare* approaches in Australia and the USA were described and, with respect to the *action sociale* in France, emphasis was placed on the fact that the relationship between law and the implementation of law was of importance as a specific category for comparative social law, yet that it had not been comprehensively examined in the German system of social law so far.

Maximilian Fuchs introduced the topic of the "benefit delivery relationship" [*Das Leistungserbringungsverhältnis*], giving a survey of the current situation of the in-kind benefits and cost reimbursement principle in statutory health insurance. Based on the finding that the legislator regards the in-kind benefit model and the cost reimbursement model as alternatives of equal value as regards benefit delivery, *Maximilian Fuchs* explained in detail the purposes and functions of the in-kind benefit and cost reimbursement principle and drew a legal comparison with the cost reimbursement system in France.

The personal budget as a new means of benefits provision was a topic addressed by *Peter Trenk-Hinterberger*. By referring to Art. 17 Para. 2 – 6 SGB IX [Social Code Book IX], he explained the legal relationships between budget recipients and funding agencies, between budget recipients and benefit providers, and between funding agencies and benefit providers. With respect to comparative law, he demonstrated that the paragons of the personal budget model can be found in the Netherlands, in Great Britain and in Sweden.
With reference to *Maximilian Fuchs*' lecture, *Andreas Hänlein* examined the issue pertaining to the codification of service provision law in the Social Code; in this regard, he found out that it was necessary to improve codification in the field of service provision law.
The following discussion dealt with the significance and function of social law doctrine, the different aspects of cost reimbursement and of the personal budget, as well as with the codification of the principles of service provision law.

In a lecture related to the topic of social benefits and services and the family ["*Sozialleistungen und Familie*"], *Eberhard Eichenhofer* portrayed the modes of family support and the related transformation in social law. He emphasised that family support through the state was not to entail any pressure for families to conform; rather, any mode of family life whatsoever was to be accepted and thus also to be supported according to the principles of social law.
Based on the functional understanding of social law, *Alexander Graser* subsequently presented, in his lecture on family within the framework of solidarity groups, an approach by which the role of the family might be examined in terms of comparative social law. In this context he elaborated, among other things, on the position of the family in social law and drew a comparison with US American law.
Ursula Köbl's presentation focused on the topic of easing the burden of the social state through greater family solidarity. She analysed, inter alia, existing maintenance obligations between parents and children, and showed up changes in inheritance law which aim at contributing to the containment of public expenses. According to the presenter, the call for strict neutrality on the part of the state was quite unrealistic, given the wide range of practised or aspired family models.

The subsequent discussion mainly focused on the functions and perspectives of social benefits as family support, and on the ambiguities of the sociological empirical structure of what is understood by the term "family", as well as on the interrelation of family law and social law.

The closing remarks to the symposium were given by the jubilarian himself. The collection of lectures, inclusive of the respective discussion reports on each topic, were compiled in the conference proceedings and have been published (*Becker* (ed.), Rechtsdogmatik und Rechtsvergleich im Sozialrecht I, 2010).

Yasemin Körtek

Prof. Dr. Dr. h.c. mult. Gerhard A. Ritter.

4.3. The German Welfare State – Structure, Differentiation and Further Development

On the occasion of Gerhard A. Ritter's 80th birthday, a celebratory colloquium on the German welfare state ["*Der deutsche Sozialstaat*"] was organised in collaboration with the Department of History of Ludwig Maximilian University Munich. This interdisciplinary collaboration particularly suited the research spirit of *Gerhard A. Ritter* who, as a welfare state historian, had not only worked on numerous publications pertaining to social law, but also cooperated with members of our very Institute on many occasions. He continues to have cordial relations with *Hans F. Zacher*, emeritus director of the Institute and former president of the Max Planck Society, who therefore took upon himself the honour of delivering the laudatory speech courtesy of *Gerhard A. Ritter.*

Following Hans Zacher's laudatory speech, *Hans Günter Hockerts* delivered a keynote speech on the challenges put to the welfare state by demographic change, which in turn was followed by the related debate regarding intergenerational justice. To exemplify this debate he quoted the so-called Riester pension, which had in fact been introduced against any probability; after all, in the previous history of pension insurance, path dependency had proved dominant. But just as the loss of pension insurance capital after the war had compelled a conversion to the pay-as-you-go system, a "renaissance of capital funding from the spirit of demography" had taken place through the Riester reform.

The subsequent retrospect on the formation and development of the welfare state emphasised the political, social and cultural workings of the latter. Each section embraced a dimension of interactions between the welfare state and other forces in the field of politics and society.

Constructing the Welfare State

Welfare state regulations are not to be understood as simple reactions to particular social problems. Between problems and their socio-political solutions there exists a process of societal cognition, interpretation and action that is necessary to serve as the very catalyser for certain problems to be put on the political agenda and for the political process to be set in motion. This was explained in this section by *Ulrike Haerendel* who took the first Pension Insurance Law of 1889 and its gender-related configurations as an example, and by *Friederike Föcking* who showed in another example that the Federal Social Welfare Act of 1961 was subject to particularly strong influences from welfare associations.

Hans-Jürgen Puhle modified the concept of a "construction" of the welfare state, however, by using the example of transnational learning processes and transfers. He quoted that welfare states had not usually been "constructed", but had been formed by way of partial incorporation and selective adoption of individual elements from older welfare state models, with the result being mixed welfare regimes.

Dr. Christiane Reuter-Boysen (Bundeswehr University, Munich), Dr. Ulrike Haerendel (Evangelische Akademie Tutzing), Prof. Dr. Dr. h.c. mult. Gerhard A. Ritter and his wife Gisela, Prof. Dr. Lothar Gall (Historisches Kolleg).

The Welfare State and its "Clients"

The evolvement of the German welfare state was characterised by the circumstance that until about the 1970s it continued to cover more and more risks and thus also increasingly more sections of the population. The second part was dedicated to the client relationships of the welfare state and to the issue as to how they determined the further configuration of social policy. *Winfried Süß* explained this by using the example of the poverty debates which, in the form of a discussion on the "new social question", shaped the social policy of the 1970s, while *Wilfried Rudloff,* by using the example of disability policy, outlined the organisation of interests among involved persons in the socio-political arena. Finally, *Franz Ruland* aired a few concerns on the federal German welfare state and its capacity to reform, as well as on its potential to extend its coverage to new groups of clients. He underlined that there were valid reasons for integrating the self-employed (that are not covered by insurance through any professional organisations) in statutory pension insurance. Their need for social protection, comparable to that of employees, was the most decisive factor. In these times of fewer standard employment relationships the welfare state should, by all means, extend its coverage in this context; he argued, however, that there were no grounds for turning away from the specific civil service pensions.

Prof. Dr. Ulrich Becker.

Welfare State and Participation

Participation in the sense of self-determined activities with the aim to influence decisions at various levels of the political and, likewise, socio-political systems requires the modern welfare state to be based on the rule of law and democracy. This also includes the possibility to participate in socio-political practice. By commenting on former pre- and non-democratic conditions, the papers of this section made obvious that the above requirements were not always fulfilled. The fact that, for instance, the opportunity for citizens of the GDR to submit petitions to their state leadership merely served to give an illusion of political participation was illustrated by *Christiane Reuter-Boysen* in her example of the pension discussion in the former GDR with regard to the content of petitions submitted by women. Yet, in the long or longer term, it was probably the potential of protest contained in the petitions that led to improvements, if unsatisfactory ones, in matters pertaining to social policy.

In his perspective paper, *Jürgen Kocka* expanded on the conflicting relationship between civil society and the social state. In this

Prof. Dr. Hans Günter Hockerts.

context, he argued, the welfare state was often accused of *crowding out*, i.e. of stifling individual initiative. In contrast, Kocka stressed that it was precisely this German welfare state model that facilitated the inclusion of forms of civil society, with it being corporatist to some extent and less state-based than, for instance, the British or the French model. Social security through the welfare state was, in some cases, even a requirement for social commitment on the part of civil society or volunteers, e.g. as regards the involvement of older persons in childcare or in their support of children.

Welfare State and Nation State

The last section was dedicated to the classical welfare state in its national orientation and the challenges it has encountered through transnational and global developments that render a purely national orientation impossible. In this section, focus was therefore mainly placed on foreign countries.
Peter A. Köhler presented the Swedish concept of "the people's home/*folkhemmet*". He concluded that *folkhemmet* had, both in terms of its symbolic significance and in its actual configuration particularly through Swedish social democracy become part of the national identity of Sweden. He stated that this specific model was to explore new strategies in the face of challenges such as Sweden's accession to the EU or ongoing demographic change, but that it was indeed sustainable.

Bernd Schulte's analysis of the "European Social Model" revealed the following:

(1) The European integration process has resulted in a wide gap between market-oriented, competitive policies at European level on the one hand, and socially oriented policies at national level on the other.
(2) Thus, it is particularly the international challenges posed to the welfare state that must be tackled within the member states, and with regard to the European Social Model.
(3) Accordingly, despite all socio-political path dependencies and related national traditions, more and more common solutions have been found to deal with these challenges.
(4) The European Social Model is becoming a reality that has increasing normative value in its function as a socio-political guideline.

Following this genetic derivation of the European Social Model, *Ulrich Becker* elaborated on current issues and challenges in his perspective paper. He explained the extension of traditional national social rights with a view to territory, persons involved and markets to be explored. While this process was well advanced in economic law and in employment structures, it was still a crucial issue with regard to social assistance and support systems. The concept of the welfare state could not be understood in terms of a static system, however, but as a reciprocal learning process that was directed towards convergence by way of instruments like the Open Method of Coordination.

Prof. Dr. Klaus Tenfelde.

Dr. Peter A. Köhler and Dr. Bernd Schulte.

Gerhard A. Ritter's closing words concluded this very intensive and productive conference. He thanked the organisers and speakers, but also expressed his great appreciation to the Association for the Promotion of Sciences and Humanities in Germany [*Stifterverband für die Deutsche Wissenschaft*] for their generous support of the conference and related issues. Publication of the conference proceedings by Dietz Verlag (Berlin): *Becker/Hockerts/Tenfelde*, Sozialstaat Deutschland. Geschichte und Gegenwart, 2010.

Ulrike Haerendel

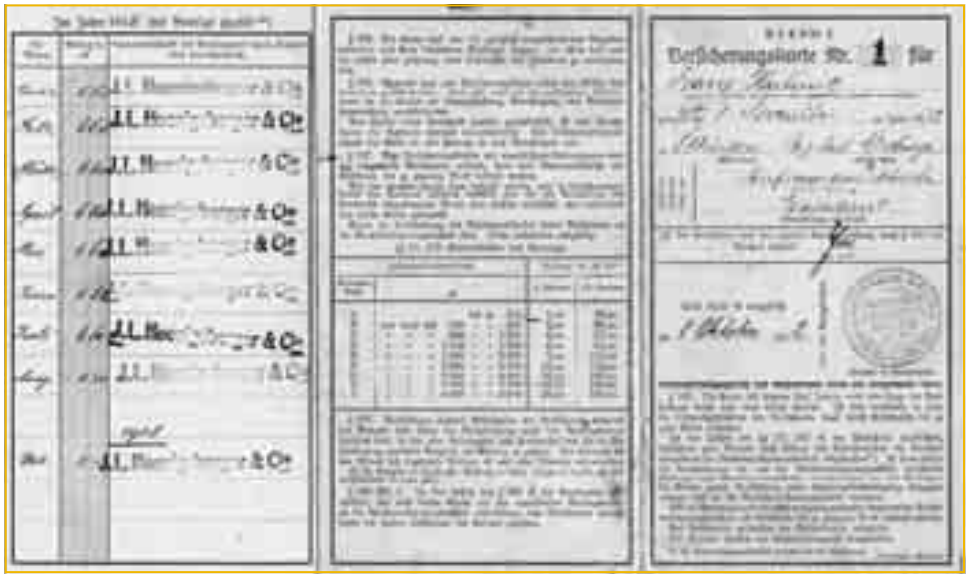
4.4. The Social History of Pension Insurance in the German Empire: 1871 – 1914

Starting Point

The historical research project on the "Social History of Pension Insurance in the German Empire: 1871 – 1914" is closely related to the social sciences and particularly to social law research. The project was developed in cooperation with the Max Planck Institute for European Legal History (*Stolleis*). It was carried out by a historian at our Institute (*Haerendel*). During the research period, further cooperation has developed, particularly with the junior research group focusing on "Age and Law" at the Max Planck Institute for European Legal History.

Findings

Previous research has strongly concentrated on legislation or, respectively, the political process regarding the first Pension Insurance Law of 1889. In contrast, the project examined the relationship between this insurance legislation regarding provision for old age and the directly or indirectly affected population groups. First publications, for instance, showed the impact of female employment and of the social discourse about gender role models on the specific configuration of statutory pension insurance. It also became a tangible subject in the debate on appropriate retirement age limits for women and men.



Pension insurance card dating from the German Empire (1912).

This topic was discussed with colleagues at a research colloquium organised by the junior research group focusing on "Age and Law" and was elaborated on in a subsequent publication. A separate publication was dedicated to the question as to how contemporary notions of justice were reflected in the debates of the Reichstag in 1888/1889 regarding the first Pension Insurance Law. Examples show that efforts had been made to integrate some sort of social compensation in the insurance scheme to match the longing for justice.

Current Research Projects

The abovementioned project has been completed. The person in charge left the Institute on 1 March 2009. She has published several parts of her research findings and is currently working on a historical overview of the history of German pension insurance from its very beginnings up to 1945. This overview, too, is based on research work carried out at the Institute. It will be published in a new edition of the guide to statutory pension insurance ["*Handbuch der gesetzlichen Rentenversicherung*"] commissioned by the German Federal Pension Fund [*Deutsche Rentenversicherung Bund*].

Ulrike Haerendel

4.5. The Activities of Players' Agents in National and International Sports Law

The successful symposium on the "Reform of the World Anti-Doping Code (WADC)" held at the MPI for Comparative and International Private Law in Hamburg in 2007 was followed by a further joint symposium on sports law in Hamburg on 8 December 2008 organised by the above-mentioned MPI, the Forum on International Sports Law and the MPI for Foreign and International Social Law. The focus was on national and international regulations and the regulations on the activities of players' agents adopted by the sports associations.

Public opinion, the officials of the associations and the player representatives often take a very sceptical attitude toward players' agents. Players' agents have been criticised particularly for neglecting players' rights and for frequent dubious business conduct due to financial incentives. Although FIFA has for years made the activities of players' agents contingent on holding a license, there are far more agents bustling around the football grounds than licenses have been issued. Licensing requirement is frequently and effortlessly avoided by involving a lawyer for whom a license requirement does not exist. Moreover, a player's marriage partner, parents and brothers or sisters are also exempted from licensing requirements as their activities do not lie within the competencies of FIFA, the German Football Association (DFB) or the German Football League (DFL).

In an attempt to counter this state of affairs, FIFA adopted a new set of regulations for players' agents at the close of 2007. A requirement that players' agents hold a special license remains the key component of FIFA's regulations in this area. The DFL constituted a working group on the development of players' agents regulations in order to meet with FIFA's aim of implementing such regulations at the national level. Finally even the European Commission has been involved with the activities of players' agents. In its White Paper on Sport the EU Commission goes into the problems caused by the transfer of players in professional sports and stresses the need for action regarding a uniform, effective legal framework.

In his introductory presentation *Reinhard Zimmermann* addressed the major legal issues that are raised along with political and ethical questions. FIFA and the DFB or DFL are private law organisations that act as "law-making bodies". One must consequently ask where the regulations are to be classified in the scheme of existing law and how far their reach of application is. Standing at odds here are the constitutionally protected autonomy afforded associations and the law-making functions reserved to the state. Furthermore, the FIFA regulations feature the peculiarity that its provisions – through the license requirements – could also impact players' agents who are not members of the association. This throws up new questions. How much autonomy do sports associations enjoy? What is the relationship shared by international and national sports association regulations and state law? Do the new regulations conflict with European and national law? How can this problem be resolved?

Prof. Dr. Ulrich Becker and Prof. Dr. Dr. h.c. mult. Reinhard Zimmermann (MPI for Comparative and International Private Law, Hamburg).

The keynote address was delivered by *Johannes Wertenbruch* (Philipps-Universität Marburg), who dealt with the legal framework regarding the activities of players' agents. He began with a look at the social law concept of labour placement and explained that the German Social Code (SGB III) does not set licensing requirements for the transfer of players. Yet, negotiating a player's contract with the club, which forms an essential part of a players' agent's activity, comes under the Legal Services Act (RDG). Since the *Bosman* case there has been an upward tendency to extend the duration of player contracts, thus also leading to more demand for legal advice. Consequently, it must be assumed that advising a player during contract negotiations also includes legal services and cannot only be regarded as a mere application of the laws. In this context opinions differ on whether the model contract provided by the DFL involves legal advice or only a mere application of the laws. The model contract offers a standard agreement, which points to a simple application of the laws. When negotiating a contract it is, however, necessary to explore and harness the full legal scope in order to draw up contracts that are to the players' best advantage. Therefore it was retained that even in the case of a standard contract legal advice is to be involved and not just a mere application of the laws.

When transferring a football player, the players' agent is subject to the provisions of the new FIFA regulations for players' agents of 2007. These regulations have been supplemented by the implementation rules elaborated by the DFB and DFL. Here, two problems arise: For one thing, according to the regulations, only those players' agents can act for players and clubs who hold a FIFA license. This means that the FIFA regulations set higher requirements for the transfer of football players than national law, which makes no licensing requirement. The restriction was regarded as legitimate considering the freedom of contract. If the freedom of contract permits clubs to exclusively negotiate player contracts with players' agents holding a license, this can also be stipulated by regulations adopted by institutions like FIFA or the DFB who have a higher-ranking position in the association hierarchy. As FIFA regulations in the case of an infringement only impose sanctions against players and clubs, the regulations do not directly address the players' agents, who are not members of the association. Here, antitrust law remains applicable. With respect to antitrust law, the admissibility of the FIFA regulations followed the ECJ's appraisal of the Piau judgement. For another thing, the question was asked as to whether FIFA's regulations were compatible with national law and in particular with the provisions of the RDG according to which contract negotiations involve legal services. Art. 2, No. 1, Sent. 3 of the regulations contains a clause in favour of national laws indicating that a possible conflict of a national law with the regulations be solved for the benefit of the national law. A FIFA license does therefore not release a players' agent from observing the RDG. Hence FIFA regulations do not conflict with national law.

Finally, *Johannes Wertenbruch* elaborated on the cross-national transfer of players. According to the "principles of the country of destination" the RDG (Section 15) also applies to foreign players' agents who are in charge of a transfer of players in Germany. Even if a foreign players' agent is free to negotiate con-

tracts according to the law of his home country due to there being no regulation similar to the RDG, the application of the RDG to foreign players' agents does not violate the EU Services Directive. Offering legal advice does not come under the Services Directive but under the Lawyers Directive. According to this directive, persons who offer legal advice in a foreign member state must, with a few exceptions, have similar qualifications.

Dr. Matthias Knecht with Florian Bruder and Dominik Moser (both from the MPI for Comparative and International Private Law, Hamburg).

Following the key presentation, representatives from the respective interest groups, associations and institutions commented on legal issues: *Gregor Reiter*, executive director of the German Football Agents Association (DFVV), *Mathias Hain,* member of the Players' Council of the German Union of Contracted Footballers (VDV) and goalkeeper of FC St. Pauli 1910 e.V., as well as *Holger Hieronymus*, chief executive officer of the DFL.

A point of criticism was the exception FIFA regulations make for lawyers (*Reiter*). If uniform quality standards are to be assured, lawyers must likewise be subjected to a licensing examination. Moreover, quality cannot be assured by reissuing a license every five years; further, fault on the part of the players' agent is not to be assumed and would represent an excessively stringent requirement if it is the player who breaches his contract when being transferred (Art. 22 No. 2, FIFA regulations). Finally, the White Paper on Sport, after the publication of which the DFVV and an international lobby of players' agents were founded, was accused of misrepresenting the actual situation with a whole profession coming under general suspicion (*Reiter*).

Emphasis was put on the fact that especially young players or players who do not belong to the regular team members of their clubs, depend on players' agents (*Hain*). The players place great trust in their advisors and agents. Hence, reliability and fairness must be ensured, a stipulation which is only to some extent guaranteed by the FIFA regulations (*Hain*).

The clubs are highly interested in establishing solid contractual relationships with their players through reliable cooperation with the players' agents and lawyers (*Hieronymus*). Short-term contracts and the possibility for players of opting for a quick change are of no avail to football clubs, as this might significantly affect their season schedules. Regulating the activities of players' agents is of major importance for the clubs. In the 2008 transfer period the clubs paid commission amounting to 40 million euros to players' agents for their activities (*Hieronymus*). Tax authorities do not apply uniform standards as to the issue who is the recipient of such commission payments and thus has to pay the tax. Even if commission has been paid by the club, some tax authorities consider the payments to have been made in favour of the player, who will thus have received a pecuniary advantage (*Hieronymus*). The national implementation rules supplementing the FIFA regulations must aim for an integration of players' agents into the association hierarchy.

During the subsequent discussion chaired by *Ulrich Becker* the above issues were a matter of considerable debate. They were enlarged upon and additional aspects were addressed. One of the questions raised was why football clubs needed players' agents at all despite heavy scouting. Moreover, some participants declared that there was a lack of reciprocity regarding the high commissions paid by the clubs, and expressed their ethical and legal concerns about the activities of players' agents.

These concerns were, however, countered with the postulation that the activities of players' agents should not be condemned in general, but that regulations had to be created and systematically implemented to exclude the black sheep from the market (*Reiter*).

Matthias Knecht

4.6. The Ban on Majority Ownership: German Football's "50 + 1 Rule" Under National and International Law

The comment in the German weekly newspaper *Die Zeit* that football "moves millions" (*Zeit* online 26 January 2007), did not allude to the millions of enthralled spectators, but rather to the many millions of euros that flow through the highest echelons of the sport. It is an accepted fact that professional sport has meanwhile become an important branch of the economy, with many teams being run as businesses. What is not clear, however, is where the boundaries lie in the governing law – the extent to which the laws of the market or the laws of sport should apply where the two perspectives collide. This question forms the background of a discussion regarding majority ownership of football clubs, a topic which has resurfaced recently in Germany. At the centre of the debate was Germany's "50 +1 rule", which prohibits majority ownership by investors rather than the clubs themselves in the professional sector.

The complex and difficult, as well as very current, legal questions relating to the "50+1 rule" were dealt with in the 2009 symposium on sports law held on 30 November 2009 in Hamburg and organised by the Forum on International Sports Law, the Hamburg-based MPI for Comparative and International Private Law and this Institute.

In his introductory presentation, *Dirk Verse,* head of the chair of civil law, corporate and commercial law, business law and comparative law at the University of Osnabrück, reported on the "50+1 rule" and its compatibility with national and European law, while the commentators particularly focussed on legal policy issues.
Dirk Verse's presentation was commented on by *Tobias Kollmann*, economist and manager of the BSC, who reviewed the topic from an economic perspective, *Hans-Joachim Watzke*, manager of Borussia Dortmund GmbH, *Christian Müller*, board member of both the German Football League (DFL) and the German Football Association (DFB), and *Jan Räker*, counsel for Hamburg SV. The most prominent critic of the "50+1 rule" who spearheaded the dispute about the abrogation of the rule was *Martin Kind*, president of the Bundesliga team Hannover 96. He pointed to the restrictions the rule imposed in practice in his view. *Ulrich Becker* held the chair of the concluding discussion.

The introductory paper (*Verse*) first dealt with the origin and content of the "50+1 rule". The rule was included in the German Football League's (DFL) statute as Sec. 8 Para. 2 in 1998 and stipulates that a club which has spun off its professional team to form a stock company must retain majority voting rights to allow the company to obtain a license for the first and second division of the German Bundesliga (Lizenzliga). An exception to the rule is the so-called "Lex Leverkusen" (Sec. 8 Para. 5 and 6). According to this rule, exceptions to a club's majority ownership only apply in cases where the football club had been substantially supported by a company for over 20 years before January 1, 1999. To this day, the only two clubs complying with the requirements of this exemption have been Bayer Leverkusen and VfL Wolfsburg.
In a second step, *Verse* addressed the assessment standards that have to be considered. First, the compatibility of the "50+1 rule" with antitrust law (Art. 101, 102 TFEU) has to be considered. Furthermore, the assessment standards also apply to the freedom of establishment (Art. 49 TFEU) and the free movement of capital (Art. 63 TFEU), with free movement of capital coming after the freedom of establishment when controlling shares are concerned. Consequently, exceptions such as the "Lex Leverkusen" must be examined with a special view to the principle of equality.
The legal assessment mainly focussed on the justification of the above-stated limitations to Art. 101, 102, and 49 TFEU. To this end the goals pursued by the "50+1 rule" were determined and the question was dealt with as to whether the "50+1 rule" was appropriate, necessary and adequate to achieve these goals. In a further step it was discussed whether there was sufficient reason for a differentiating approach in the case of "Lex Leverkusen".

According to *Verse's* paper, the "50+1 rule" has two primary goals. The first one is to guarantee equal opportunities and equality under the licensing process, and the second one is to protect sporting interests as against merely commercial interests. Guaranteeing equality is legitimate as otherwise the gap between rich and poor Bundesliga teams would increase even more, a fact which is also in accord with the concept of the ECJ and the European Commission. One of the reasons why the second aim can be recognised as legitimate is that the values of sport and its social function have meanwhile also been introduced into Art. 165 TFEU.
Dirk Verse deemed the "50+1 rule" appropriate to both goals. While the relevant literature accuses the rule of solidifying the existing "three-class society", the majority of the clubs put forward that its abrogation would open the gap still further, and would aggravate the current situation in practice. This assessment could also be seen as appropriate if one considered the "assessment prerogative" of the league association. Moreover the rule is adequate to protect the clubs' sporting interests as the mandatory majority voting rights the clubs have to retain make it considerably more difficult to pursue merely commercial interests – with Hoffenheim being an exception to the rule.
Regarding the necessity, *Verse* concluded that there are no equally effective measures to achieve the above-mentioned goals. Salary caps, for example, would involve a number of additional, far-reaching restrictions. Delegating the responsibility for the decision to the individual clubs has been rejected, for this might lead to a "domino effect", whereby the clubs would finally be forced to place themselves in the hands of investors in order to remain competitive. According to the speaker, the proposed Statement of Requirements (SOR) applicable to investors with a majority ownership (*Kind*) is not similarly effective either. An SOR would require various individual corrections offering less reliable protection than a preventive control which remains in the hands of the clubs. In summary, observing the "50+1 rule" is easier than implementing an SOR which, in addition, does not sufficiently allow for the protection of licensing equality and hence ensure the acceptance of the fans.
The rule is also appropriate with the measures taken being not disproportionate to the goals it pursues – and investment by investors being not completely prohibited.

Dirk Verse found that the unequal treatment between those clubs to whom the exceptions of "Lex Leverkusen" apply and all the other clubs was not sufficiently justifiable. Both Bayer and Volkswagen could have continued their commitment while observing the "50+1 rule". As a result it is, however, not the "50+1 rule" that is to be contested but rather the exceptional rule that should either comply with the principle of equality or be completely dispensed with.

The commentaries and the discussion following *Verse's* presentation primarily concentrated on legal policy issues. It was emphasised that football clubs were meanwhile run like commercial enterprises with the capital market wielding such an influence on them that limiting shares on a percentage basis had become absurd. The abrogation of the "50+1 rule" would notably lead to a more equal playing field on the international level (*Kollmann*). This point was, however, heavily contested with respect to the extremely unequal income from television rights. As long as in other countries much larger amounts of money were being paid to the leading clubs, German top teams would hardly be able to clear their backlog even if the "50+1 rule" was abolished (*Watzke, Räker*).

Alongside the international level, the attention was yet concentrated on national comparison. On the one hand it was argued that opening up the clubs entirely to investor involvement would lead to a more equal playing field on the national level and would offer the clubs greater opportunities to develop. Accordingly, Hannover 96 was, for instance, not able to compete and develop because no profits could be made. To retain the "50+1 rule" would mean to exclusively administer the status quo, which is not satisfactory from a business perspective (*Kind*). On the other hand it was argued that the "50+1 rule" did not prohibit external fundraising activities. Registered societies were indeed capable of raising third-party funds, and with a bit of luck and by doing a good job every club would be able to develop (*Räker*). The suggestion that capital should be raised through bonds or loans was rejected on the grounds that this would be capital at risk and would lack secu-

rity (*Kind*). This was, however, countered with the argument that external funding could be secured via company agreements, a fact which made clear that shares only constitute one of many different ways to make it possible for investors to wield influence (*Müller*).
Opinions were divided over the argument that the abrogation of the "50+1 rule" would possibly create a domino effect. Bearing in mind the differences in infrastructure and in the clubs' investment suitability, such an effect was disputed (*Kollmann*). However, in the majority of cases, the commentators agreed with the above argument. The creation of a domino effect would even lead to a solidification of the existing "three-class society" because investors would show a favourable attitude towards success-oriented clubs (*Watzke*). Admitting majority ownerships would lead to an arms race between the clubs, thus aggravating the current situation (*Müller*).
Moreover, the commentators repeated time and again that, in German society, the importance of football should not be underestimated. One of the arguments against the removal of the "50+1 rule" was that the fans – as clients – just did not want an abrogation which would lead to a heavy loss of identification (*Watzke*) – for the existing rule backs the fact that football, which is almost a public good, is well established in society (*Müller*). Compared to other European leagues the soul of German football is still intact. This is why other countries look upon Germany where solidarity-based, economic competitiveness still exists (*Räker*). But it was also argued that foreign regulations must not necessarily be inferior to German regulations as it was not conceivable that other countries got things wrong while Germany always got things right (*Kind*).

Moreover the question was raised during the discussion as to how the commentators would resolve the dispute about the abrogation of the "50+1 rule". It was advocated that the problem be solved by the football sector itself, and that going to court could not be a satisfactory solution for the parties involved (*Kollmann, Kind*). As to the content it was suggested that a compromise be agreed on in order to be able to account for the peculiarities of the football sector (*Kollmann*). Unfortunately, the first opportunity to work out such a compromise model was passed up when the DFL voted on a consensus for the first time at its general meeting on 10 November 2009. But there should be a second chance to come to a compromise with a mediator being of help in the context of an extrajudicial procedure (*Kind*). However, the so-called "Lex Leverkusen" would certainly not withstand a judicial review with respect to the date that was arbitrarily chosen. It was also countered that elaborating a special SOR for the investors would not solve the problem in terms of content because this model was not mature enough yet (*Räker*).

In conclusion, it was emphasised that the Bundesliga had to unanimously support the majority decision taken, and that a judicial assessment would put an end to solidarity (*Watzke*). After all, the overwhelming voting results had proved the appropriateness of the "50+1 rule" (*Räker*).

Katharina Liebe

Prof. Dr. Tobias Kollmann (University of Duisburg-Essen), Prof. Dr. Dirk A. Verse (University of Osnabrück), Prof. Dr. Ulrich Becker, Prof. Dr. Dr. h.c. mult. Reinhard Zimmermann (MPI for Comparative and International Private Law, Hamburg) and Martin Kind (president of Hannover 96).

III. Promotion of Junior Researchers

1. Doctoral Group: "Impact of Constitutional Law and International Law on the Configuration of Social Security"

The formation of the doctoral group focusing on the "Impact of Constitutional Law and International Law on the Configuration of Social Security" at the beginning of 2006 was based on two core considerations. For one thing, increased focus was to be put on countries whose social law systems had, as yet, not been intensively examined in Institute research. It was therefore particularly the transition countries that were to form one main focus. The second relevant consideration in regard to the formation of the doctoral group was the realisation that, as regards research, the normative principles of the systems of social security are often undervalued and thus also neglected, since it is their socio-economic parameters, whose significance appears to be manifest, that are in the centre of the discussions. Already at the time of its launch, i.e. at a time of worldwide economic recovery and of seemingly inexorably progressing globalisation, the objective of the doctoral group was to contribute to a better understanding of the normative principles by way of examining the latter.

The members of the doctoral group were *Viktória Fülöp, Anna Olechna, Dongmei Liu* and *Quirin Vergho*. The countries examined by the doctoral group with regard to the research topic were Hungary (*Fülöp*), Poland (*Olechna*), the People's Republic of China (*Liu*) and Portugal (*Vergho*).

Following its launch, the doctoral group met for an initial retreat in February 2006 in order to first elaborate common methodological and subject-related foundations. The group then met for doctoral discussions at least once a month and was joined by *Ulrich Becker* on these occasions; this start-up phase lasted until about the end of 2006. The second phase involved the presentation of the group members' first research findings in the form of lectures; these presentations were first held and discussed at the Institute. Within the context of a workshop in May 2007, organised in cooperation with *Ingwer Ebsen* (University of Frankfurt) and his doctoral students, the

Daniela Schweigler, Ilona Vilaclara, Magdalena Neueder, Kyung A Choi (front left to right), Michael Schlegelmilch, Markus Schön, Luise Lauerer, Iris Meeßen and Nikola Wilman (background left to right).

members of our doctoral group finally had the opportunity to present their concepts and general ideas to a larger external audience. Following this workshop, there were further monthly doctoral discussions until, as of about mid-2008, the individual and final revisions of the respective dissertations gained centre stage. One dissertation has meanwhile been completed and is about to be published. Two further dissertations are also likely to be finished in the near future and shall be published shortly afterwards.

Quirin Vergho

1.1. Social Security in Portugal and its Constitutional Principles

The examination of social security and its constitutional principles in Portugal follows two objectives of a priori equal importance: for one thing, the systematic assessment and organisation of Portuguese social law in the German language and, for another, the analysis of constitutional influence on this system. Portugal was selected as an object of examination particularly because the Portuguese Constitution contains a detailed catalogue of fundamental social rights, and since Portugal has a constitutional court that is entrusted with the appropriate competences. Hence, a profound pervasion of social law by these constitutional aspects could be expected. Furthermore, historical developments and the socio-economic framework conditions suggested that certain changes regarding social security would become noticeable. The *Carnation Revolution* (25 April 1974), Portugal's accession to the European Union and its delayed economic development since the beginning of the millennium are key reference points in this context. Methodologically, this study is a form of foreign law study; yet, it required systematic groundwork in order to provide the German reader with a basis for comparison with his or her own legal system.

The objectives of the study are also reflected in the structure of the study. While the first main part deals with the analysis of social security in Portugal, the second part of the study is dedicated to the constitutional principles of social security. For methodological reasons, the two main parts were each preceded by an elementary part which examines the essential terms of the study.

The first part therefore begins with a definition and a systematisation of the term "social security"; in doing so, the term is abstracted from the solutions offered by 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. The analysis starts by portraying the system's institutional and financial structures, and then gives detailed descriptions of its component parts. In accordance with the abovementioned systematisation, a distinction is made between the various provision systems which, apart from the dominant general regime (*regime geral*), also and particularly comprise the alternative or supplementary regimes (for civil servants and bank employees, among others), the non-contributory, yet risk-specific schemes (non-contributory system and the health service, among others), the family protection system and the social assistance regime (providing so-called reintegration income).

The second part starts with some fundamental points on the concept and structure of the Constitution, supplemented by several observations on the constitutional norms relevant for social security and on the concept of the fundamental social rights. This is followed by an analysis of the Portuguese Constitution as the basis for the system of social security, with initial reference made also here to the historical context; a detailed description of the Constitution is given thereafter. The focus of the second part is on the examination of the interrelation between the Constitution on the one hand and the configuration of social security on the other hand. In this regard, two essential levels of influence, i.e. norm-setting and judicial review, are distinguished and investigated in terms of their functionality. Finally, the specific influence of the Constitution on social security is traced on the basis of various legislative measures and constitutional procedures.

The concluding part of the study presents the essential findings of the investigation in a transverse order, thus subsuming them by the use of other distinction criteria in a form differing from the systematisation of the two main parts. One of the core findings of this study is the fact that the influence of the Constitution is noticeable almost exclusively at judicial review level, except in matters regarding the establishment of the health ser-

vice. This, in turn, leads to the conclusion that any constitutional influence on social security can only be ensured by means of a fully functioning, independent constitutional court that is endowed with the necessary competences. The study closes with an outlook on the further development of the social security system and the future significance of the Portuguese Constitution.

Quirin Vergho

1.2. The Influence of Constitutional Law on the Configuration of Social Security in the Republic of Poland

This dissertation deals with the influence of constitutional law and international law on the configuration of social security in the Republic of Poland. The investigation of this topic raises a very wide range of legal questions due to numerous fundamental reforms and to relevant changes in Polish jurisdiction. The first part of the dissertation provides a detailed account and discussion of the Polish social security system. Due to the transformation, many decisive reforms were carried out, some of which have not yet been completed. Worth particular mention in this context are the big reforms regarding pension insurance (transition to the three pillar model) and health insurance, as well as reforms pertaining to family benefits, unemployment allowance and social assistance. The scattered legislative provisions of social security in the Republic of Poland are systematically merged in this process.

The second part focuses on the Constitution of the Republic of Poland, which entered into force in 1997. First, a brief introduction to the constitutional system is provided, along with a historical overview. The core topics of the second part are the principles of social justice (Art. 2 of the Polish Constitution) and of equal treatment (Art. 32, 33 of the Polish Constitution), as well as the fundamental social rights that are explicitly mentioned in the Polish Constitution: the right to social security (Art. 67), the right to the protection of health (Art. 68), as well as the right to the protection of the family (Art. 71). The configuration of these social rights by means of law-making and jurisdiction is extensively examined. In this regard, the jurisdiction of the Polish Constitutional Court is under particular investigation, since it plays a remarkable role in the field of the aforementioned principles and of the fundamental social rights. The Polish Constitutional Court has, for instance, derived further principles on pension entitlements from the principle of social justice. The largely controversial health reform was also examined by the Constitutional Court, a procedure which subsequently put the entire reform into question. The principle of equal treatment, too, arising in the context of the regulation of social security, was repeatedly subject to interpretation by the Constitutional Court. Further formative decisions on the part of the Constitutional Court include decisions on the recently introduced bridging pensions, on social insurance contributions, on family benefits, as well as on welfare benefits and institutions providing social services. Finally, mention must also be made of the fundamental jurisdiction of the Constitutional Court regarding the systematisation and the scope of protection of the right to social security.
Apart from the jurisdiction of the Constitutional Court, law-making on the part of parliament is included in the study with regard to the influence of principles and fundamental social rights on the system of social security. The study also investigates the fundamental social rights established by international organisations, particularly by the ILO, the UNO and the Council of Europe, and examines their influence on the configuration of the system of social security.

The objective of the dissertation is thus, on the one hand, to contribute to the systematisation of social law and, on the other hand, to illustrate and assess the impact of constitutional and international law on the configuration of social security in the Republic of Poland.

Anna Karina Olechna

1.3. The Impact of Constitutional Law and International Law on the Configuration of the Social Security System in Hungary

Even though the changeover of the social security system in Hungary to the new economic order has, twenty years after the political turnaround, not yet been entirely completed, long-term goals have become discernible af-

ter decades of scientific and political debates on the configuration of social security. The picture of a caring, yet less generous state is becoming established.
The gradually introduced reforms have, in some areas, resulted in structural changes, e.g. in the areas of pension insurance or family benefits. In other areas, only superficial "cosmetic" procedures have been carried out, as the necessary structural change could, unfortunately, not be implemented politically. A good example of this is the failed health insurance reform of 2008.

20 – 21 June 2008

Doctoral Seminar held by Deutscher Sozialrechtsverband e.V.
Friedrich Schiller University, Jena.

Markus Schön: Systeme der Leistungserbringung individueller Hilfen und allgemeiner Förderung der Entwicklung junger Menschen in Deutschland und Österreich [Benefit schemes for the provision of individual assistance and for the general advancement of young people in Germany and Austria]
Magdalena Neueder: Das Leistungserbringungsverhältnis bei der beruflichen Rehabilitation Behinderter in Deutschland und der Schweiz im Rechtsvergleich [The benefit delivery relationship in the occupational rehabilitation of persons with disabilities in Germany and Switzerland in a legal comparison]
Angela Smessaert: Das Selbstbeschaffungsrecht – einzig wirkungsvoller Ausweg bei Untätigkeit der Behörden nach Anträgen auf Sozialleistungen? [Is self-provision the only effective alternative if authorities fail to act upon a social benefits application?]
Heike Krüger: Rechtsmissbrauch im Sozialrecht [The abuse of legal rights in social law]
Jan Martin Horn: Entsendung im Binnenmarkt: Zusammenwirken von Arbeits- und Sozialrecht [Posting workers in the single market: The interaction of labour law and social law]
Andreas Jenak: Rechtsstellung von Teilnehmern an Arbeitsgelegenheiten (§ 16 Abs. 3 S. 2 SGB II) [The legal status of persons taking up employment opportunities according to Art. 16 Para. 3 Sent. 2 of Social Code Book (SGB) II]
Sven Wolf: Solidarität, Eigenverantwortlichkeit und moralisches Risiko nach dem GKV-WSG [Solidarity, self-responsibility and moral risk according to the Act to Strengthen Competition in Statutory Health Insurance (GKV-WSG)]
Kathrin Heldt: Tarifwahlmöglichkeiten in der deutschen Krankenversicherung – das Gesundheitssystem auf dem Weg zur Konvergenz von gesetzlicher und privater Krankenversicherung? [Optional rates in German health insurance – Health care on its way towards a convergence of statutory and private health insurance?]
Andreas Ludwig: Die Wirtschaftlichkeitsprüfung beim Vertragsarzt im System der gesetzlichen Krankenversicherung [Efficiency audit concerning SHI-accredited physicians in statutory health insurance]
Annegret Litz: Der Off-Label-Use von Arzneimitteln – von der Produkt- zur Dienstleistungssicherheit? [Off-label use of drugs – From product security to service provision security?]
Michael Schlegelmilch: Das Leistungserbringungsverhältnis in der Arzneimittelversorgung in der deutschen gesetzlichen Krankenversicherung und im spanischen Gesundheitssystem, dem Sistema Nacional de Salud – ein Rechtsvergleich [The benefit delivery relationship regarding the supply of drugs in German statutory health insurance and in the Spanish Sistema Nacional de Salud (SNS) – A legal comparison]
Ingo Seitz: Die Erbringung ambulanter Leistungen durch Krankenhäuser [The provision of hospital-based ambulatory services]
Ilona Vilaclara: Das Leistungserbringungsverhältnis im Recht der gesetzlichen Krankenversicherung – eine rechtsvergleichende Untersuchung der Versorgung mit medizinischen Sachmitteln in Deutschland und Frankreich [The benefit delivery relationship in statutory health insurance law – A comparative investigation into the provision of medical devices in Germany and France]

The objective of the study is to find out which roles were played by the highest-ranking legal norms, the Constitution and international law in regard to the development of these reforms. The impact of the fundamental social rights is of particular interest, since they were, as a legacy of socialism, retained in the Constitution after the turnaround.

The first part of the dissertation provides a detailed analysis of the Hungarian system of social security. Great emphasis is put on the definition of the term "social security" and on a systematisation that corresponds with the objective target. The analysis emphasises the possibilities an individual is offered by the state if the former finds himself in a particular life situation where social law may become relevant, such as old age, illness, invalidity or the like. Findings show that after the political turnaround the diversity of social benefits was retained, and despite the fact that the "escape from unemployment" could not be entirely excluded as a basis for applications for particular family and health insurance benefits, these cases were in the past years limited through the legislator to the greatest possible extent. A further general problem is the low level of benefit payments that can be observed both with pensions and social assistance.

The second part examines the influence exerted on the Hungarian system of social security by constitutional and international law. This part, too, deals with relevant concepts such as constitutional and international law. Following this, the influence of these highest norms on the legislative procedure and on judicial decisions is examined.
In view of the legislative procedure the legal text, its explanatory memorandum and the minuted statements by the legislative bodies (parliamentary committees, plenary sessions) are analysed. The examined legal texts usually contain – at least in the preamble – a general reference to higher standards. In the explanatory memoranda and minutes these references to connecting factors pertaining to constitutional and international law are further explained. Accordingly, a significant role in the development of pension benefits, for instance, is played by the preservation of the principle of equal treatment and of the right to property. In view of employment promotion and unemployment benefits, the protection of equal treatment is crucial. Occasionally, specific decisions by the Constitutional Court are cited in the minutes of the meetings (e.g. regarding the obligation for entrepreneurs to pay contributions after dividend declared), which in several cases facilitates the documentation of constitutional court decisions retroacting on legislation.
Within the context of investigating the impact on judicial decisions created by constitutional and international law, the decisions of the Hungarian Constitutional Court are analysed. In numerous decisions, the Court intensively concentrated on the question as to which legal requirements could be derived from the fundamental social rights and what impact the protection of human dignity, the prohibition of discrimination, the constitutional demand for equal opportunities and the right to property had on the individual areas of social security. The following examples may provide some insight: The Constitutional Court stated that the obligatory character of social insurance did not infringe the right to social security stipulated in section 70/E of the Constitution, since with respect to social insurance neither any voluntary nor obligatory character could be derived from the wording. As regards the stipulation of social insurance contributions, the Court held that it was unconstitutional only in cases where it contained discriminating regulations and where contributions were so exceedingly high that this obvious exaggeration already per se represented a qualitative category, namely exorbitance. On the occasion of the reform of family benefits, the Constitutional Court explained that – despite the fact that, in view of the economic situation of the country, the state had significant powers as regards the transformation and restructuring of social benefits, these powers were not unrestrictable. The social rights only played a role in regard to the requirement that the entirety of social benefits was not to fall below a minimum level. Furthermore, the constitutionality of the transformations also depended on the question to which extent these changes offended against other constitutional principles or fundamental rights. Neither the benefits nor the entitlements connected to them were to be changed fundamentally from one day to the next without constitutional justification.

Viktória Fülöp

14 December 2009

Scientific Dialogue on the Principles of Service Provision Law
Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Introduction
Iris Meeßen, Magdalena Neueder, Michael Schlegelmilch, Markus Schön, Ingo Seitz, Ilona Vilaclara, Nikola Wilman: Grundstrukturen der Einbindung Dritter bei der Erbringung von Sozialleistungen und der dabei relevanten Fragen der Qualitätssicherung und Finanzierung [Basic structures concerning the involvement of third parties in the provision of social benefits and services and relevant issues of quality assurance and financing]
Stephan Rixen: Grundstrukturen, Prinzipien und Defizite des deutschen Leistungserbringungsrechts [Basic structures, principles and deficits of German service provision law]
Thorsten Kingreen: Commentary

1.4. Influence of the International Institutions on the Configuration of Social Security in P. R. China

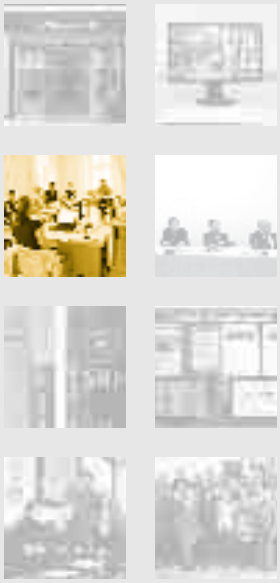
The principle of the sovereignty of states, which has since the 17th century been institutionalised through the Westphalian System, has since the end of World War II been increasingly supplemented and weakened due to the foundation of international institutions – particularly the United Nations. This tendency is reinforced through economic globalisation. The international institutions and organisations intervene in various ways in the shaping of internal state policy by way of norm-setting and particular activities and also play a significant role in regard to the enhancement of interdependence among the relevant states. In the field of social security they have been exerting equally great influence on the political decisions and legislative measures of the member states.

The transformation of the Chinese system of social security, starting in the 1980s in parallel with the implementation of the opening-up policy, was during that period influenced by external factors. In this process, the international organisations played a very active role as norm-setters and as a platform for knowledge transfer and cooperation. Since the description and analysis of the influence exerted by the international institutions require an understanding of the current Chinese system and of its development, this study discusses the questions as to how and to what extent the Chinese system of social security is influenced by the international institutions.

The study examines international organisations, their standards and regulations, as well as their activities regarding the fulfilment of tasks and attainment of goals. It is mainly the United Nations Organisation (UNO), the International Labour Organisation (ILO) and the World Bank that are described along with their agreements as well as their activities, since they have been influencing China's practical policy-making in the fields of social policy and social law by means of their modes of action – starting from the elaboration of legal regulations and political decisions through to pilot projects in particular areas, as well as technical cooperation.

Special focus is given to the ratification and implementation of norms and regulations enacted by the UNO and the ILO since the end of World War I, as well as to the fundamental principles of social security. Due to the international norms pertaining to social law, various activities are carried out by the international organisations. This issue also takes centre stage in this research paper.

Potential incompatibilities of Chinese standards with international law are identified and changes in Chinese law attributable to international law are delineated. The difficulty lies in finding out whether these changes have truly been brought about by international factors or whether they were actually caused by internal factors; further, whether they genuinely comply with the current international system or whether they merely represent a superficial concession in response to international pressure. A further problem is the instability of the Chinese system. The



Iris Meeßen, Ilona Vilaclara, Michael Schlegelmilch and Prof. Dr. Stephan Rixen at the Scientific Dialogue on 14 December 2009.

system of social security has since the 1980s changed rapidly and constantly, and this transformation process has still not come to an end. At this stage, it is impossible to say precisely which of the imported doctrines, concepts and measures will eventually take root in the Chinese system, and which will be deemed unsuitable and be discarded. Accordingly, it is difficult to specify the scope and extent of international influence.

The examination shows that cooperation between the Chinese government and the international organisations is determined by China's foreign policy and by changes in international relations. It is also closely linked to governmental development plans and to the strategic goals of the international organisations. Due to historical, cultural and ideological differences, however, conflicting interests and enormous differences still exist between the two sides. The implementation of conventions on human rights and of social standards has so far been limited to a superficial level. The understanding of the human rights concept shows a clash of values between the Chinese and the international system; problems in regard to the ratification of ILO conventions, however, are mainly due to the high performance level of social standards. On the other hand, cooperation at political and technical level has been crowned with success. Despite the fact that conflicting opinions are as yet inevitable in such cooperation, it is a positive experience for both sides to promote through dialogue, common research projects and knowledge transfer the mutual approach between the two cultures.
The international organisations have come up with different approaches regarding the configuration of social security. They have developed various primary areas of responsibility and models for China. Their former main areas of work can essentially be distinguished, yet it is hard to say which provisions are more successful in China. The acceptance of particular models or approaches stands in direct connection with governmental development targets and strategies, which in turn are continuously adjusted in accordance with economic and societal changes. In the 1980s and 1990s, a liberal economic policy used to be the main tendency in China; accordingly, the government then favoured the three pillar pension insurance model advertised by the World Bank. The market-oriented health reform was also strongly influenced by liberal ideas. Yet,

these reforms encountered difficulties and resulted in a number of social problems. Hence, the "people-oriented" development strategies played by the UNO and the ideas of the ILO on the expansion of social security, as well as the promotion of employment attracted a great deal of interest in China in the first decade of the 21st century.

Dongmei Liu

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

The second doctoral group is devoted to the topic of "The Triangular Benefit Delivery Relationship in Social Law". A multiple legal relationship of this sort is formed in cases where third parties are included in the delivery of services or benefits in kind that are not delivered by the public funding agency. The involvement of third parties raises questions and issues, which are examined by the doctoral group from various perspectives.

The inclusion of the provider is effected in several phases. The general provision of services through the provider is followed by the actual provision of services, as well as a phase of control and of potential liability in the event of deficient provision. In the selection procedure, governmental influence can be exerted during the various phases of service provision on cost control and quality assurance, and thus also on economic efficiency. This is effected by way of unilaterally sovereign instruments such as administrative acts or common recommendations, as well as cooperative instruments like framework contracts, provision contracts and individual contracts. These issues are discussed via group work and by means of combining the individual findings from the different individual projects; further, overarching structures and principles of service provision law are elaborated in regard to social law. The project also explores the question to what extent the knowledge acquired through this research can be utilized for current discussions concerning general administrative law.
The members of the doctoral group are *Iris Meeßen, Magdalena Neueder, Michael Schlegelmilch, Markus Schön* and *Ilona Vilaclara*, who started their research work at the Institute between October 2007 and March 2008. They are engaged in various areas of social benefit provision that cover both provident provision systems as well as relief and support systems. The comparative law projects respectively use Germany as a basis for comparison with the European countries Sweden (*Meeßen*), Switzerland (*Neueder*), Spain (*Schlegelmilch*), Austria (*Schön*), and France (*Vilaclara*).
In regular monthly group meetings, the doctoral students developed fundamental concepts and the methodology, and clarified individual issues. These meetings were supplemented by intensive seminars, where the current status of each project was presented and related topics could be discussed.

The startup of the doctoral group was marked by a several days' retreat that took place in Gerating near Traunstein in January 2008 in order to define the fundamental requirements for the dissertations, as well as to discuss the methodology for the legal comparisons and to specify the individual research topics. Two doctoral students (*Neueder, Vilaclara*) took part in the PhD Workshop for Young Researches on the topic of "Comparison of Social Protection" offered by the European Institute of Social Security in Graz. At the doctoral seminar of *Deutscher Sozialrechtsverband e.V.* [the German association for social law], held in Jena in June 2008 and organised by *Ulrich Becker* and *Eberhard Eichenhofer* (Jena University), as well as at two further doctoral seminars held in Benediktbeuren in February 2009 and at Frauenchiemsee in July 2009, the members of the doctoral group were, together with the remaining doctoral students of the Institute, given the opportunity to present the current status of their dissertations and to discuss fundamental questions. On this occasion the idea was formed to join the preliminary findings and to discuss them in dialogue with scientific experts from the field of service provision law. Such a dialogue was held with *Stephan Rixen* (Kassel University) and *Thorsten Kingreen* (Regensburg University) on 14 December 2009. The findings gathered in the preparatory phase and in the dialogue shall be published shortly in a joint article.

Ilona Vilaclara

Michael Schlegelmilch, Magdalena Neueder, Ilona Vilaclara and Kyung A Choi (front), Markus Schön, Nikola Wilman, Iris Meeßen, Dongmei Liu (back) and Prof. Dr. Ulrich Becker during the doctoral seminar at Abtei Frauenwörth (29 – 31 July 2009).

2.1. The Provision of Further Education Programmes for Employment Promotion Through Third Parties

Both in politics and in the involved areas of the humanities, the importance of being able to boast a good education has been repeatedly emphasised; further, it has been prognosticated that educational law will develop further – it remains questionable, however, if this is the case. A particularly ignored area in this context is further education. Its significance is not only justified in the light of technological progress, the latter of which renders the further training of employees necessary in regard to software programs even in non-technical professions. Demographic developments, too, result in the requirement to focus on retaining the employability of individuals by means of further training. This is aggravated by the fact that in the industrialised countries the economic and socio-cultural development requires people to demonstrate more and more competencies, particularly in working life.

Methodically, the dissertation draws a functional comparison between German and Swedish law on the basis of a factual starting position. This starting position is made up of two components: the first refers to an employee, i.e. a person who is able to work, who has received initial training, yet who is unemployed or at risk of becoming unemployed or who wishes to improve his or her occupational status. In order to solve this problem, or to change the situation, he/she will participate in a further education programme. The second part of this basic situation involves the inclusion of a third party in the provision of such a further education programme. Further education programmes can in principle be provided by tertiary institutions, vocational colleges, adult education centres, associations, private third parties, local authorities or by employers. However, the comparison merely considers programmes that are provided on an external basis, i.e. by third parties as opposed to a funding and financing governmental agency.

This second part of the basic situation results in a triangular benefit delivery relationship, since there are three (main) actors involved in the programme: The participant, the governmental (financing, funding) agency and the provider of the further education programme. In the area of (further) education law there are not only tripartite legal relationships as regards the regulation and promotion of further education programmes, but to a great extent also bipartite legal relationships, for instance in the context of subsidies granted for the mere financial support of further education programmes. Yet, in such cases, too, a purely factual tripartite relationship exists between the provider, the participant and the state or, respectively, the intermediary agency. The latter could be the Federal Employment Agency (*Bundesagentur für Arbeit*) in the case of employment promotion law or, if subsidies are involved, the respective funding foundation or agency.

The dissertation describes the regulation network typifying the provision of such further education programmes, focusing on the main aspects of benefit and service delivery (access/inclusion, financing, quality assurance). Thus, a "tool box" is generated for the regulation options available to the state. Against this background, it can be assumed that in the course of a general political advance towards a liberalisation of steering instruments, and thus towards an enabling state, the self-regulating capabilities of society and/or the market are utilized, in order to extend the scopes of action of the parties involved. The Swedish system is to be compared to ours along the same lines: Swedish law is characterised by a different legal culture, meaning that the degree of regulation is lower than in Germany. Taking thus an overall look at the regulatory instruments, the retention of norms must also be seen as a steering tool; a comprehensive legal superimposition as is common in Germany is not mandatory. Sweden is also particularly interesting as a comparative country, because further education measures are to a much greater extent than in Germany incorporated in an overall educational system and are also evaluated and operated accordingly as part of an overall concept.

Iris Meeßen

2.2. Occupational Rehabilitation of Persons with Disabilities. Normative Framework and Significance of the Right to Self-Determination in the Delivery of Social Services via Third Parties – A Comparison of Laws in Germany and Switzerland

At the end of 2007, there were 6.9 million severely disabled persons living in Germany. As of May 2003, only 2.2 million out of the 8.4 million disabled persons were part of the working population. This is also to be viewed against the general unemployment rate which rose from 5.3% in the year 1991 to 8.3% in 2007. Social welfare expenditures spent on the inclusion of disabled persons amounted to 11.9 billion euros in 2007. Moreover, all those persons are excluded from the statistics who are disabled, yet not severely disabled, and those at risk of unemployment, who are in the context of the prevention of unemployment often included in the group of recipients of benefits for occupational rehabilitation.

State regulation is required if third parties are involved in the performance of public tasks: formally, in regard to the cooperation between administration and private providers, the regulation of the allocation of responsibilities between the state and third parties and in regard to governmental selection decisions; substantively, in regard to the assurance of the objectives aimed at by means of the governmental measures. Public welfare is thus ensured by way of regulation, i.e. by creating a normative framework for the involvement of third parties. It can be assumed that the exposed position of the disabled citizen who is entitled to benefits – exposed through the right of self-determination, which was upgraded only through the 2006 UN Disability Convention – plays a relevant role in this organisation of social benefit delivery. When delivering state benefits via third parties, the state or, respectively, administrative entities that have become independent and who are responsible for the delivery of social benefits, entrust(s) private agencies with responsibilities. Consequently, it makes sure that the position of the disabled person as a recipient of benefits is not affected in a negative way. Self-determination also implies the necessity for choice, both in regard to the measure and to the provider. For one thing, particular regulations can thus be expected in the examination of the legal framework, and for another, areas of conflict may be assumed where the right of self-determination – despite or precisely because of these standardisations of the right of self-determination – stand in the way of the general social welfare interest, of cost stability and cost cutting, of legitimisation, effectiveness or of the efficiency of measures.

The dissertation is to contribute to the understanding of the legal system in regard to German service provision law. For one thing, it reviews the largely untapped field of service provision in German Social Code Book IX (SGB IX) by putting it into the context of general issues regarding the involvement of third parties in the provision of social benefits, thus describing this field in a comprehensive and systematic way. For another thing, it explores the particularities of service provision in regard to disabled persons with a view to self-determination and the plurality of benefits systems. Beyond this independent aim of providing a systematisation, i.e. of identifying principles in specific legal matters that can be

distinguished especially in terms of their objectives, the dissertation seeks to draw conclusions within the meaning of legal doctrine for the delivery of benefits under social law in Social Code Book IX (SGB IX).

Reflections on the judicial system are typically marked by comparative studies, and thus the matter is approached within the framework of comparative law. Auxiliaries utilised for the systematisation and organisation of the German legal system are the comparison of different legal regulations reacting to the same task posed by the realities of life, as well as the principles that are to be filtered out in this regard. In this process, the functionally comparable legal norms are identified by way of putting them into relation with the social circumstances, i.e. the lack of integration into the labour market or the impending loss of a job on the one hand, and disability on the other. First, there is the issue of measures on the part of the state with respect to the occupational rehabilitation of disabled persons and their disability-specific requirements. This issue is linked to the question concerning the involvement of a private provider in the provision of social services for the occupational rehabilitation of disabled persons. In this regard, the question is how the law responds to a political decision facilitating the involvement of private providers in the fulfilment of public tasks. The next step discusses the actual service provision in regard to the occupational rehabilitation of disabled persons.

Switzerland represents an appropriate country for comparison, since on the one hand the common roots in administrative law give rise to the assumption that organisational principles concerning the involvement of third parties can be identified relatively easily, but also that the differences that are to be expected will yield findings relevant for German principles pertaining to service provision law. On the other hand, since the inclusion of an anti-discrimination norm in the Swiss Constitution and the commencement of the Act on Equality for People with Disabilities (BehiG) in 2002, which introduced the concept of disability into the Swiss legal system for the first time, an increasingly important role has also been played by issues regarding disability policy. In view of the constantly rising expenses for disability pensions on the part of disability insurers, and due to the unlikelihood of pensioners terminating their insurance contracts, the focus is, above all, on occupational integration and thus on the implementation of the principle termed 'integration before pension' [*Eingliederung vor Rente*].

Magdalena Neueder

2.3. Pricing Regulation for Pharmaceuticals and Legal Limits – A Comparison of the Legal Situation in Germany and Spain

The provision of medication is one of the core tasks of every health system. However, medical provision is becoming more and more expensive. This development is not solely restricted to the German statutory health insurance. The national legislators and social benefit institutions therefore undertake constant efforts to effect, by means of relevant measures, a decrease in or, respectively, stabilisation of medical expenditures in the health systems. A central approach is pricing regulation for pharmaceuticals through the state or public agencies. The conceptual meaning of pricing regulation for pharmaceuticals forming the basis of the examination includes measures on the part of public agencies which exert specific influence on the price formation of recoverable pharmaceuticals borne by the health system. If the production, distribution and dispensing of pharmaceutical products is carried out by private third parties, as is the case with the legal systems of the countries in question, the following drug prices are to be distinguished at the various points of the distribution chain for pharmaceutical products: the manufacturer's price, the price of the wholesale traders and the pharmacy retail price.

The aim of the study is to describe the instruments used in the pricing regulation of pharmaceuticals in Germany and Spain, and to measure their limitations on the basis of the provisions defined by national constitutional law and Community law. In this context, findings are to be gathered on the question to what extent the actual contributions of pharmaceutical entrepreneurs, wholesale traders and pharmacists – who all participate in the provision of pharmaceuticals as a social benefit – represent an administrative activity carried out by private agencies, and how these contributions are to be qualified in terms of doctrines of social law and administrative law.

Spain has been selected for the legal comparison, because Spanish law contains a variety of instruments of direct or indirect price regulation. Unlike in Germany, for instance, the manufacturers' selling prices for pharmaceuticals are in Spain predefined by the state. However, there are also fixed price controls and a sales regulation effected by the manufacturers. The Spanish health service operates at (regional) state level and has, so far, not often been the subject of investigations in comparative law. In view of the countries selected for the comparison, the supranational level of European law must be included in the study.

The general part of the dissertation elaborates on fundamental concepts, as well as on the various forms and functions of drug supply and of pricing regulation of pharmaceutical products. In this regard, the study explores the role of the entrepreneurs and wholesale traders, as well as that of the pharmacists, in the context of their service provision in the field of drug supply. Pricing regulation is to be included in the concept of social benefit delivery via third parties. Further, it is vital to address the economic contexts of the pharmaceutical market.

By means of the investigation framework defined in the general part, the country reports provide an analysis of national price regulation instruments and their constitutional limitations, particularly in regard to the affected fundamental rights held by the individual elements in the distribution chain for pharmaceutical products. In order to evaluate these limits, the relevant aspects are examined, for instance the relationship between the claim to social benefits and pricing regulations, or the ways for pharmaceutical businesses, wholesale traders and pharmacists to access the health market. It can be noted that price control regulations are multifunctional. The intended purposes are not restricted solely to the health system and its financial stability. There are instruments, for instance the German regulation of uniform pharmacy retail prices, that are (beyond the confines of social benefits law) aimed at the maintenance of an extensive supply infrastructure.

The comparative part examines the found solutions, among other things, in terms of the following aspects: compatibility of price regulation instruments with Community law, organisation of drug supply and infringement of the rights of manufacturers, wholesale traders and pharmacists involved. The dissertation also explores the question as to what extent particular regulatory instruments are system-specific.

Michael Schlegelmilch

2.4. Individual Cooperation for Young People – Service Provision Law in the Area of Child and Youth Services in Germany and Austria

Governmental action that contributes to the successful raising of children and young people has in recent years received increased public attention again. Within the triad of measures pertaining to family policy (monetary benefits, infrastructural services, time policy), particular focus currently lies on the provision of infrastructure facilities, which is illustrated particularly well by the massive expansion of daycare facilities for children.

From a functional perspective, these establishments count among the services under public responsibility which support, apart from the family and the educational system, the development of the young person into an independent and socially competent personality, and which can be summarised in terms of their entirety of general funding programmes and individual assistance under the heading of child and youth services.

Due to their varying objectives ranging from family supplementation and support schemes to family replacement schemes, youth welfare services vary in the quality of their legislation between objective legal responsibilities and individual legal claims, and yet they are linked via overarching structures and principles in terms of their actual service delivery. This is shown by a comparison of the legal systems of Germany and Austria, which brings out and analyses these structures and principles, focusing on the particularly cost-intensive establishments of child daycare, centre-based educational support, and of centre-based open youth work.

Traditionally, these establishments are in both countries largely operated by non-profit

agencies (associations of voluntary welfare, churches, self-help initiatives etc.). But also the public funding institutions (mostly local authorities) often provide their own establishments and thus act as funding bodies taking responsibility both for the fulfilment and guarantee of services, which may lead to certain tensions as regards the inclusion of private providers. However, this arrangement between the state and specific social actors is about to be dissolved. After all, more and more private commercial providers are participating in "market developments" pertaining to child and youth services, rendering the financial privileges of non-profit agencies increasingly questionable especially in the light of European economic and competition law, which serves as the normative benchmark in the two reference countries.

Furthermore, it can be prognosticated that traditional subsidy funding for private providers will decline to the benefit of financing methods based on reciprocal service contracts. It is not only European state aid law that acts as a cog in this development cycle, but also quality disputes currently held mainly for reasons of child protection.

Moreover, in times of deficient municipal budgets, economic considerations factor in the obligation for cost-cutting financing strategies. Such measures are limited where they inadmissibly restrict the rights of choice on the part of the beneficiaries, as well as the imperative to facilitate a plurality of funding agencies on the provider side. Both originate in the so-called individualisation principle pertaining to child and youth services, which is based on the assumption that the care and education of young people is to be effected on a highly individual basis. Accordingly targeted personal services are characterised by the fact that beneficiaries serve as co-producers of these services. Therefore, the concept of cooperation is particularly emphasised in child and youth services. The cooperation principle connected to youth welfare law provides that all actors involved in the service delivery process cooperate voluntarily and on equal terms; that is why both in the service provision relationship between the funding agency and the beneficiary (support plan), and in the procurement relationship between the service provider and the funding agency (provision and service contracts) various forms of cooperative action can be found. While these cooperative instruments were standardised in Germany in the 1990s with the introduction of Social Code Book (SGB) VIII and due to some amendments to the latter, they are presently only gradually making their way into Austrian legislation. The introduction of the support plan is therefore one of the main objectives of a currently scheduled revision of the Austrian youth welfare law, which in this process is to be renamed to "Child and Youth Welfare Act" – thus representing an interesting example of legal import; this import can be determined in the comparative part of the study at hand.

Contracts under public law have up to date not been subjected to any positive-legal standardisation in Austrian general administrative law, a fact attributable also to the highly formalistic instrument of legal protection against administrative action. Even though, at first glance, there appear to be great similarities between the two countries, the differences concerning the details of legal doctrine starkly stand out, a fact that is rooted in the different administrative traditions.

Markus Schön

2.5. Steering Mechanisms Regarding the Efficiency of Medical Devices Provision – A Comparison of Laws in Germany and France

Due to changes in demography, the provision of medical devices for health insured persons has in recent years become more and more important in the European health systems, because the number of chronically ill individuals dependent on medical devices has been growing. Benefits for medical devices in statutory health insurance are therefore of great significance, to an increasing extent also in financial terms. Technical innovations and further developments are also bound to lead to a sharp rise in costs in the field of medical devices provision in statutory health insurance. However, the expenses of the statutory health insurances must be limited due to restricted financial means. In this regard, it is important to prevent cost savings at the expense of service quality. This area of tension between cost pressure and quality assurance must be kept in balance via governmental regulation.

Doctoral Seminars

10 – 12 January 2008
Introductory Seminar to the doctoral group on the "Triangular Benefit Delivery Relationship in Social Law", Gerating near Traunstein.

Ulrich Becker, Martin Landauer, Iris Meeßen, Magdalena Neueder, Michael Schlegelmilch, Markus Schön, Ilona Vilaclara

The introductory seminar concentrated on the basic dissertation requirements, the precise definition of the topics, the methodology of comparative law analysis, as well as on the concept of the "benefit delivery relationship".

9 – 11 February 2009
Doctoral Seminar, Kloster Benediktbeuern.

Ulrich Becker, Kyung A Choi, Iris Meeßen, Magdalena Neueder, Michael Schlegelmilch, Markus Schön, Daniela Schweigler

29 – 31 July 2009
Doctoral Seminar, Abtei Frauenwörth, Frauenchiemsee.

Ulrich Becker, Kyung A Choi, Dongmei Liu, Iris Meeßen, Magdalena Neueder, Michael Schlegelmilch, Markus Schön, Daniela Schweigler, Ilona Vilaclara, Nikola Wilman

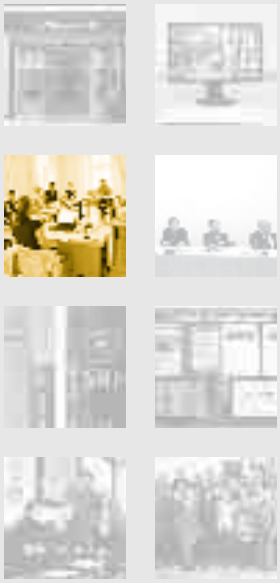
The main focus of both seminars was on the presentation and discussion of the progress of the individual dissertation projects.

In order to raise the efficiency of medical devices provision in German statutory health insurance, the year 2007 saw a significant legal amendment. With the Act to Strengthen Competition in Statutory Health Insurance (GKV-WSG) entering into force on 1 April 2007, the approval procedure for service providers was abolished and replaced by a meanwhile exclusively contract-based system. Sickness funds in Germany can now call for tenders and conclude selective contracts with the best bidders. The legislator justified this reform stating that it wanted to promote contract competition and price competition. In order to prevent savings from being detrimental to the quality of medical devices and services, it has been stipulated as an expediency requirement for the conclusion of contracts that the provision of medical devices must be qualitatively guaranteed.

However, the issue regarding this conflict between quality and efficiency is not a specifically German problem. Due to limited resources, many European health systems are faced with the problem of having to cut costs and observe sufficient quality standards at the same time. The objective of this dissertation is to describe and compare the steering mechanisms intended for ensuring sufficient quality and financial feasibility in the provision of medical devices in statutory health insurance, with findings based on the most recent changes in German Medical Devices Law. This is to be effected by way of comparing German and French service provision law.

Contrary to German Medical Devices Law, its French counterpart is characterised by a uniformly sovereign and centralised system of regulations. The reimbursement tariffs for medical devices are negotiated between a central committee, i.e. the Economic Committee for Health Products (*Comité économique des produits de santé – CEPS*), and the manufacturer or trader of a product, and subsequently fixed by ministerial order. Contrary to the competitively organised and decentralised selective German system, the French medical devices system is organised in terms of sovereign, centralised and integrative structures. The comparison of these contrasting systems shall provide information on the question as to which legal steering instruments are utilised in order to influence the costs and quality of the respective service.

Ilona Vilaclara



3. Individual Dissertation Projects

3.1. Social Security Contributions

Many changes in today's society, for instance the increase in life expectancy and globalisation, raise the question as to how long the concept of the welfare state can be maintained. Most states are trying to find solutions to the issue as to how to gradually improve their national systems of social security and to counteract financially adverse effects. One potential solution could be to make the requirements for claims to social security benefits more stringent and to lower the level of social security benefits. With this in mind, the national (statutory) pension insurance in the Republic of Korea has recently been limited to basic pension, and further steps have been taken in order to reduce individual claims to social benefits.

As for basic pension, the question arises whether the redistribution function of the pension insurance should deserve more attention. If national (statutory) pension insurance only assures a basic pension, meaning that further provision is to be ensured individually, the estimation could be correct that national pension insurance should focus more on the redistribution function. There is also the question whether social security contributions could be calculated on a progressive basis. A decisive factor in this regard is the question whether the redistribution function can be defined as an essential objective and criterion of social insurance. Furthermore, an answer to the constitutional limits of such redistribution through social security contributions is to be found, because this redistribution consequently leads to an interference with the fundamental rights of the party obligated to pay redistributed contributions.
The question of the redistribution function of social security contributions also arises in connection with the calculation method for health insurance contributions, which also requires constitutional justification. Due to the principle of benefits in kind and the principle of services, all persons insured with the Korean health insurance will, without exception, be granted the same services; contributions are, however, to be paid according to income. That is why the redistribution function in this area is remarkable. Beyond that, it needs to be clarified whether it is constitutional to make such a configuration along the lines of social security contributions.
Furthermore, the protection of the claim to social security benefits is to be discussed. In Korean pension insurance, the individual claims to social security benefits can be limited under certain circumstances.
Pension payments are to be restricted or fully cut, for instance, if the income of the person claiming benefits exceeds a certain limit. Even though this compensation option can be regarded as a necessary way out from the momentary threat of financial adversity, it will have to be decided from a constitutional perspective whether pension payments can be reduced for this purpose. If this is the case, the question is how the nature of social insurance and social security contributions limits these restrictions.
What is more, pension payments are reduced in accordance with the Government Employee's Pension Act if a (former) government employee has received at least one custodial sentence during his period in office. However, reductions can only be effected for the part of the pension contributed to by the state. Therefore, the essential differences are to be determined between the part solely formed by way of state contributions and that which is generated by pension contributions on the part of the individual government employee.
Since there is no corresponding restrictive regulation in the National Pension Act, it may be interesting to investigate the significant discrepancies concerning employer-related contributions between the National Pension Act and the Government Employee's Pension Act. In this context, the question as to the constitutional limits, restrictions and the protection of property guarantee should be resolved.

The dissertation shows the mentioned problem areas in the context of a comparison between the legal systems of Germany and Korea. A comparison of these two legal systems is appropriate, because German social insurance had served as a model for the establishment of the Korean social insurance system. At the same time, an attempt shall be made to transfer to Korean law the legal solutions offered by German social law.

Kyung A Choi

3.2. The Rationing of Public Health Services from a Legal Perspective with Regard to the English and German Health Care Systems

In view of the shortage of resources every society must make fundamental decisions regarding the question as to which funds it intends to make available to the system of public health care and how these funds are to be implemented within the system. In these times of demographic change and of continuous medical and technological progress this need for decisions is becoming all the more urgent. Although the impact of developments in demography and medical technology on the cost structure of the German statutory health insurance (GKV) is, as yet, largely unclear, it can be assumed that not all things that are medically sensible and feasible can also be financed through solidarity-based contributions in an aging society, unless compulsory public health care contributions were to be inflated. The statutory sickness funds have announced further levies to be paid by the insured already as of 2010. At the 112th German Medical Assembly the President of the German Medical Association [*Bundesärztekammer*] initiated a debate on the necessity of explicit prioritisation (in terms of a – time-based – ranking of illnesses and treatment options as a basis for allocation decisions) and rationing (in terms of a restriction of medically necessary or useful health services for financial reasons) of health services in German statutory health insurance. This debate has been present in other countries and in science, particularly in health economics and health ethics, since the 1980s. In Germany, no health-political discussion on the topic of explicit rationing in statutory health insurance, i.e. of rationing according to explicitly stipulated, generally binding criteria on a level higher than the doctor-patient-relationship, has so far taken place due to it (understandably) being politically unpopular. This unpopularity also stems from the possibility of private acquisitions of medical care leading to a generally feared "two-tier medical system". The alternative, i.e. hidden limitations of services and benefits, where any necessary allocation decisions are left to the respective physician due to a shortage of resources, is to some extent already considered to be a reality in the German health system. Implicit rationing raises a range of ethical and legal issues and puts a strain on the mutual trust between physicians and their patients. The political debate on health issues in Germany has so far focused on the revenue side, on corresponding changes in financing structures and on the activation of profitability reserves (rationalisation). There is, however, much indication that these measures may delay the necessity of (explicit) rationing, but that the latter cannot be prevented on a permanent basis. Based on this premise, it is imperative to discuss potential criteria and limits in regard to a prioritisation of health services in statutory health insurance and to service limitations (rationing) necessarily associated therewith. In this regard, it must be determined which services are to be made available primarily and which measures are to be eliminated altogether from the service catalogue of statutory health insurance. However, apart from these subject-related criteria relating to rationing decisions, formal criteria in terms of decision procedures and competences must also be determined.

Against this background, the dissertation provides an analysis of potential rationing criteria and assesses them from a juridical perspective. To that end, the rationing criteria (e.g. medical urgency, cost-benefit ratio etc.) developed in the different disciplines (ethics, medicine, economics) are described systematically in a theoretical part at the beginning of the dissertation. Furthermore, this part investigates which rationing criteria follow from (constitutional) law itself.

Apart from the rationing criteria, the different types (e.g. explicit versus implicit) and methods of rationing (guidelines based on benefits evaluation, waiting lists, "*gatekeeping*", budgeting etc.) are also commented on. On the basis of two country reports, a comparative analysis is provided of the English National Health Service (NHS) and of the German statutory health insurance. Rationing is an omnipresent feature in the English NHS, and it comes in multifarious types and forms. However, in Germany too, rationing in the statutory health insurance system is becoming an increasingly discussed topic. The country reports are to systematically describe, where applicable, the rationing criteria, methods and procedures in the English NHS and in German statutory health insurance.

Subsequently, it shall be determined to what extent these criteria and methods comply with the legal provisions in Germany and whether measures of (explicit) rationing, which in the NHS are already generally applied, can already be noticed in the system of the German statutory health insurance, too, or respectively, whether they can be transferred to that system.

The objective of the dissertation is to determine by means of the analysis, classification and legal evaluation of the individual rationing criteria and methods based on the country reports what scope the German legislator has in regard to a rationing of services/benefits in statutory health insurance. Particular focus in this context is to be given to the respective decision-making competences and procedures.

Nikola Wilman

3.3. State Responsibility for Inpatient Long-Term Care Services – A Comparative Legal Analysis Between England and Germany

The aging of society anticipated for the member states of the European Union will in the decades to come lead to a significant increase in demand for long-term care services. Despite all efforts to find other appropriate forms of accommodation, inpatient care services will, in view of the expected increase particularly in very old long-term care patients, continue to play a significant role.

The responses to current and future challenges in inpatient long-term care are multifaceted. Germany has, by means of the most recent amendments to Social Code Book XI, at federal level enshrined in service provision law the development and implementation of so-called expert standards for quality assurance. At state level, the legislative competences transferred through the reform of federalism give rise to new supervisory care home regulations, with often innovative approaches regarding the exertion of influence on the quality of care. In England, too, efforts have recently been increased to assure the quality of long-term care, and for this purpose a new central regulatory authority – the *Care Quality Commission* – has been created.

These developments are taken as a starting point in this dissertation to examine the more general issue regarding the question which instruments public authorities use to exert influence on inpatient long-term care, thus assuming responsibility for this area. These measures initiated by public bodies are systematised in the dissertation and classified with a view to their legal mechanisms. For one thing, they concern the ways to access inpatient long-term care services, i.e. through the relevant social benefits regimes, as well as through infrastructure measures in general. For another thing, they refer to those governmental instruments that are used in the effort to create a regulatory impact on service provision for the purpose of improvements in quality.
To begin with, a detailed description of these measures is provided with relevance to the English legal system, to be followed by an evaluative legal comparison to the instruments applied in Germany. The focus of the dissertation is on the identification, description, analysis and classification of the different regulatory instruments in order to demonstrate in what way the state assumes responsibility in the area of inpatient long-term care and which responsibilities it in turn leaves to the respective private actors, i.e. particularly to the service providers and persons in need of care.

Given the historical differences in social benefits regimes that provide for inpatient long-term care services, different service provision systems, too, have developed in the two jurisdictions. Against this background, differences are also found in the instruments used in governmental attempts to create a regulatory impact on the inpatient long-term care sector. Especially in England, where the task of quality steering has been centralised and entrusted to a national regulatory body, traditional and hierarchical command & control approaches to regulation seem to be dominant. The dissertation shows, however, that for one thing these sovereign regulation approaches are limited where it is no longer merely the structural requirements of service provision that are to be regulated, but where aspects regarding the process and outcome of care services are also increasingly focused on in governmental steering efforts. For another thing, the dissertation shows that the hierarchical command & control instruments

are supplemented through a multitude of measures that are based on completely different impact mechanisms.

The comparison with the German legal system finally shows that particularly the supplementation of command & control instruments, for instance through information-related or competition-based approaches to influence the long-term care sector, is very common in Germany, too. The analysis of steering instruments shows at the same time that the so-called "enabling state" is not restricted in a particular way as regards the regulatory impact on the private sector, but that it uses a highly complex package of measures in order to attain its objectives.
Since the dissertation describes and analyses the legal configuration of the regulatory impact on the inpatient long-term care sector, it follows a primarily normative approach. This, however, is not possible without at the same time drawing on the findings of empirically operating related disciplines, such as sociological research in particular, or the health care sciences.

Martin Landauer

3.4. Social Security Status of Migrants with Irregular Resident Status in Germany and Spain – A Comparison with Regard to Aspects of International and European Law

One central aim of the study is to find out whether migrants with irregular resident status in two EU member states are essentially entitled to claim social benefits and to what extent they can make use of this right. Claiming benefits can often pose practical problems to beneficiaries, because the latter are required to file an application with the competent authority. This, however, may result in their being reported to the foreigners' registration office, which in turn may lead to their expulsion; therefore, contact with public authorities is often avoided. Although many migrants with irregular resident status are entitled to benefits, they do not avail themselves of their rights – a contradiction which results in a "*de facto* lawlessness".

These interrelations between aliens law and social law and their effects on the social security status of irregularly residing migrants are examined in this comparative legal study via country reports on two important immigration countries within the EU, namely Germany and Spain. As regards the topic of irregular immigration in Europe, these two member states differ especially in terms of their immigration policies. While Germany was known in the 1950s and 1960s as a recruitment country for foreign labour particularly from Southern Europe and Turkey, Spain has in more recent times evolved from an emigration country to the most important immigration country in the entire EU. According to Eurostat, at last count at the end of 2009, the percentage of foreigners among the Spanish population was at 11.6%; ten years earlier the respective percentage was at a mere 1.9%. By contrast, the percentage of foreign citizens in Germany has remained relatively stable for years. In both member states the issue of irregular migration poses new challenges especially for the social benefits systems.

Particularly in two important areas of this study, namely in European law and international law, new insights have been gained. By means of the Amsterdam Treaty of 1999 new competences were created in the field of immigration and asylum policy within the EU, which specifically respond to rising migration to Southern European countries. These new legislative competences are still limited. Yet, particularly with respect to the group of migrants with irregular resident status and their claims to social security, it is remarkable that this group has been considered only to a small extent by the directives in this harmonisation process. As regards migration, the new competences merely facilitate the Council to enact minimum standards for the reception of asylum seekers, as well as for the recognition of refugees and their social protection. Rights to social benefits are, if at all, derived from Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence, as well as from Council Directive 2004/81/EC on human traffic victims. Minimum rights can also be granted to some extent until the actual date of expulsion in compliance with Directive 2008/115/EC on returning illegally staying third-country nationals. This is the first directive to stipulate regulations on the provision of medical emergency treatment and strictly necessary treatment to ill migrants with irregular resident status.

Beyond that, there now exist internationally recognised minimum standards which are also known as "everyman's rights." The study includes particular treaties pertaining to international law that deal with the question whether the state is only obliged to fulfil its negative obligations towards persons with irregular resident status, e.g. in the form of protection against deportation, or whether such persons are also entitled to positive obligations in accordance with these contracts, for instance to basic medical care. In this regard, the Grand Chamber of the ECHR has in its decision on *case N. vs United Kingdom*, more than ten years after its judgment on *case D vs United Kingdom*, once more confirmed its negative stance on the matter.

In sum, it can be said that competence in the field of social protection still lies primarily with the national legislator.

Janire Mimentza

3.5. The Right to Hear a Specific Physician (Section 109 SGG) in Social Court Practice

The dissertation project, initiated and funded by crime victim organisation Weißer Ring e.V. is to make a contribution to the debate on the sense and purpose, as well as the practical significance, of the right to hear a specific physician in social court procedures. This right has been established in Section 109 of the law concerning social security tribunals and their procedure (SGG). Since its introduction in the year 1911, this procedural instrument has been under constant discussion regarding its sense and purpose. The abolition of Section 109 SGG has also been repeatedly urged.
One part of the study, which deals with legal doctrine, examines which purposes are pursued by the right to hear a specific physician and how these purposes correlate. An empirical investigation of the implementation and impact in social court practice is to show to what extent the right of application fulfils its objectives. In this regard, descriptive statistical methods are applied and hypotheses are tested. Thus, it shall be examined how persons involved rate the quality and evidentiary value of expert opinions according to Section 109 SGG on the one hand, and of officially commissioned expert opinions on the other. Furthermore, a range of comparisons is carried out between procedures where claimants used their right to hear a physician of their choice and obtained an expert opinion from the latter, and procedures where no such expert opinion was requested by the claimant. In this context it will be interesting to see if or, respectively, how the right to hear a specific physician actually affects the duration of the proceedings, the result or the acceptability of a negative result in the proceedings on the part of the claimant. The part of the dissertation pertaining to legal doctrine and the findings of the empirical study are to yield an answer to the question as to what extent the right to hear a specific physician in social court practice promotes the attainment of goals pursued by it.

After defining a structure for the empirical examination, questionnaires were designed for judges and claimants representatives. Every social court in the German Federal Republic was then introduced to the research project and at the same time asked for support. The courts play a major role in the success of the survey. For reasons of anonymity, the courts have sole authority to select random procedures on which judges and representatives of claimants are questioned. Beyond that, the task of distributing the questionnaires also lies with the courts. At the end of 2009, the pretest at the Social Court in Munich was completed. On the whole, the results give reason to expect the survey to be successful nationwide. The survey will take place in the first half of 2010.

Daniela Schweigler

Daniela Schweigler.

3.6. Mediation in Social Jurisdiction

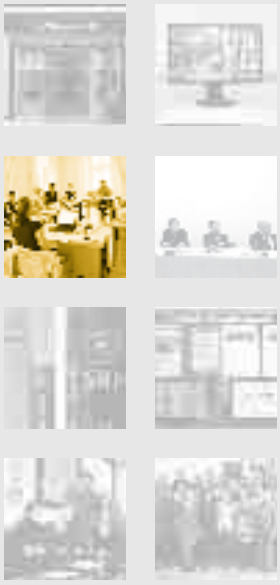
Nikola Friedrich, state secretary Markus Sackmann and Prof. Dr. Ulrich Becker (front), together with 20 judges who trained as mediators, at the Bavarian State Ministry of Labour and Social Affairs, Family and Women in order to present the evaluation report on mediation (23 March 2009).

The pilot project "Mediation in Social Jurisdiction" in Bavaria, which started on 1 September 2006, relates to a new conflict management procedure that has been introduced into social court proceedings. Alongside judicial conciliation negotiations and litigation negotiations, there now also exist court-based mediation procedures that deal with the solving of conflicts in disputes pertaining to social law. Due to the great success of the pilot project, mediation continues to be offered at Bavarian social courts. In other German states, too, mediation procedures are carried out at social courts. Court-based mediation assists the amicable resolution of conflicts in social court proceedings.

If state legal protection is extended by a further conflict management procedure, it must be made sure that the constitutionally granted protective rights are not illegitimately limited. This also raises the question concerning the (future) configuration of mediation within social courts. One reason namely, why mediation within German courts has so far only been offered in the context of projects is due to the fact that no legal framework conditions have been created yet by the federal legislator.

The dissertation examines mediation within social courts with respect to its constitutional and procedural significance and determines its need for regulation within the law concerning social security tribunals and their procedure (SGG). For one thing, the mediation procedure itself must be regulated, i.e. for instance as regards the interplay of mediation procedures and court proceedings. For another thing, it needs to be examined how specific pending proceedings can be referred to court-based mediation. After all, mediation procedures can only lead to an effective settlement of a conflict if mediation is the appropriate measure in the actual case. Therefore, the dissertation does not only focus on the question how mediation within the court can be integrated into the legal procedure system and which conditions apply in this regard, but also on the development of a reference system. The reference system lays down the reference criteria by which the suitability for mediation of a specific conflict can be assessed, and determines the way they are to be applied.

The determination of the reference criteria is based on a conflict theory which facilitates a look at the *conflict* phenomenon not exclusively under the aspect of a particular settlement procedure, for instance the court procedure and its conflict matter (e.g. a pension claim). The conflict history, for instance, is also included, as well as the stages of conflict awareness on the part of the conflicting parties and the objectives pursued by them. However, it is not only findings concerning the theory of conflict that are incorporated in the examination of the reference criteria. In addition, findings from the empirical studies on the pilot projects regarding court-based mediation are also used. The reference criteria are introduced in the form of a list of



questions, by means of which the legally competent judge can determine the suitability of court proceedings for mediation.

At the end of the dissertation, a personal legislative proposal suggests the integration of court-based mediation in SGG; this proposal is, above all, based on the developed reference system. The creation of an explicitly defined legal basis for mediation within the social courts may help reinforce the aspect of conciliation in social court proceedings.

Nikola Friedrich

4. Doctorates

Supervision:
Ulrich BECKER

2008: Dimitrios KREMALIS, "Die neueste Rechtsprechung des EuGH zur grenzüberschreitenden Inanspruchnahme von Gesundheitsleistungen", Ludwig Maximilian University (LMU), Munich.

2008: Benno QUADE, "Das Grundrecht auf Gewährleistung der Vertraulichkeit und Integrität informationstechnischer Systeme – Genese, Inhalt und Schranken", University of Regensburg.

2009: Maria GRIENBERGER-ZINGERLE, "Die Gewährung des sozio-kulturellen Existenzminimums durch die Regelleistung im SGB II und den Regelsatz im SGB VII", Ludwig Maximilian University (LMU), Munich.

5. Professorships

2009: Dr. Friso ROSS accepted a professorship of "Recht der Sozialen Arbeit" [social work law] at the University of Applied Sciences, Erfurt, Faculty of Social Studies.

IV. Events Organised by the Institute

1. Symposia, Conferences and Workshops

8 May 2008:
Information meeting: **"Fördermöglichkeiten im 7. EU Forschungsrahmenprogramm und Europäischer Forschungsrat"** [Possibilities of Research Promotion within the 7th Research Framework Programme and the European Research Council], Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome address
Werner Klotzbücher: Research and scholarships funded by "Brussels"
Christiane Wehle: Der Europäische Forschungsrat [The European Research Council]
Reinhard Kienberger: ERC Starting Grants: Personal account

12 – 13 June 2008:
Conference: **"Qualitätssicherung in der Pflege"** [Quality Assurance in Long-Term Care], in cooperation with the Institute of Social Law and Social Policy in Europe of Christian Albrecht University (CAU) Kiel, Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome and introduction
Gerhard Igl: Rechtlicher Rahmen für die Qualitätssicherung in Deutschland [Legal framework for quality assurance in Germany]
Bernd Schulte: Europäische Vorgaben für die Qualitätssicherung [European provisions for quality assurance]
Friso Ross: Qualitätssicherung und Pflegegeld in Österreich [Quality assurance and care allowance in Austria]
Christina Walser: Qualitätssicherung und persönliches Budget in den Niederlanden [Quality assurance and personal budget in the Netherlands]
Martin Landauer: Zentralisierungstendenzen in der Qualitätssicherung in England [The trend towards centralisation of quality assurance in England]
Thomas Klie: Entwicklungen von Standards für die Qualitätssicherung [Developing quality assurance standards]
Peter Pick: Qualitätssicherung in der Pflege aus medizinischer Perspektive [Quality assurance in long-term care from a medical perspective]
Ingrid Hendlmeier: Beispiele anhand der Qualitätsniveaus der BUKO-QS [Examples referring to the quality level of BUKO-QS]
Mona Frommelt: Implementierung von Qualitätsstandards in Einrichtungen der Altenpflege [Implementing quality standards in elder care institutions]
Harry Fuchs: Qualitätssicherung in der Pflege – kritisch reflektiert (Quality assurance in long-term care – A critical appraisal]
Ulrich Becker, Gerhard Igl: Conclusion

30 June – 1 July 2008:
Austrian-German seminar: **"Sozialrechtskoordination in der Europäischen Union"** [The European Coordination of Social Security Legislation] (trESS seminar 2008), Bernd Schulte in cooperation with the University of Salzburg, Salzburg.

Jörg Tagger, Rob Cornelissen: Jüngste Entwicklungen im Bereich der Verordnung 883/2004 einschließlich neuer Gesetzesvorhaben [Recent developments in the realm of the provisions of Regulation (EC) No. 883/2004 including the latest legislative projects]
Bernd Schulte: Aktuelle Rechtsprechung des EuGH zum Europäischen koordinierenden Sozialrecht und zu verwandten Rechtsfragen [The current jurisdiction of the European Court of Justice concerning European social security coordination law and related legal questions.
Rolf Schuler: Aktuelle Rechtsprechung Deutschland [Current jurisdiction in Germany]
Walter J. Pfeil: Österreichische Judikatur zur VO (EWG) 1408/71 [Austrian case law relating to Regulation (EEC) No. 1408/71]
Bernhard Spiegel: trESS European report 2007 – Überblick über einige Querschnittsprobleme und ausgewählte Anwendungsfragen [The trESS European report 2007 – An overview of several cross-section problems and

selected questions regarding implementation]
Stamatia Devetzi: Koordinationsrechtliche Fragen bei Familienleistungen aus deutscher Sicht [Problems of coordination law with regard to family benefits from a German perspective]
Silvia Holzmann-Windhofer: Koordinationsrechtliche Probleme bei Familienleistungen aus österreichischer Sicht [Problems of coordination law with regard to family benefits from an Austrian perspective]
Anne Lenze: Koordinationsrechtliche Probleme bei Pflegebedürftigkeit aus deutscher Sicht [Problems of coordination law with regard to long-term care needs from a German perspective]
Walter J. Pfeil: Koordinationsrechtliche Probleme bei Pflegebedürftigkeit aus österreichischer Sicht [Problems of coordination law with regard to long-term care needs from an Austrian perspective]

3 – 4 July 2008:
Symposium: **"Rechtsdogmatik und Rechtsvergleich im Sozialrecht"** [Legal Doctrine and Legal Comparison in Social Law] on the occasion of Hans F. Zacher's 80th birthday, Kardinal-Wendel-Haus, Munich.

Barbara Bludau: Welcome address

Introduction:
Ulrich Becker: Rechtsdogmatik und Rechtsvergleich im Sozialrecht [Legal doctrine and legal comparison in social law]

Das Vorsorgeverhältnis [The provision relationship]
Rainer Pitschas: Soziale Sicherheit durch Vorsorge – Sicherheit als Verfassungsprinzip des Sozialstaats und das "Vorsorgeverhältnis" als rechtliches Gehäuse ihrer Vorsorgestandards [Social security via provision – Security as a constitutional principle of the social state with the "provision relationship" setting the legal framework for provident provision standards]
Ingwer Ebsen: Soziale Vorsorge als Funktion [The function of social provision]
Peter A. Köhler: Das Vorsorgeverhältnis – die richtige Frage für einen Rechtsvergleich? [The provision relationship – The right question for a comparative law approach?]

Das Leistungsverhältnis in Förderungs- und Hilfesystemen [The social benefit relationship in promotion and assistance schemes]
Karl-Jürgen Bieback: Die Entwicklung der "social assistance" in Deutschland, Frankreich und im Vereinigten Königreich – von den "armen Armen" zu den "berechtigten Armen" [The development of "social assistance" in Germany, France and the UK – From the "poorest poor" to the "legitimate poor"]
Gerhard Igl: Soziale Hilfe und soziale Förderung in Frankreich im Rahmen der "action sociale" [Social assistance and social advancement in France in terms of the "action sociale"]
Bernd Schulte: "Fördern und Fordern" – Aktivierung am Arbeitsmarkt in Deutschland und Großbritannien ["Promoting and demanding" – Labour market activation in Germany and the United Kingdom]

Das Leistungserbringungsverhältnis [The benefit delivery relationship]
Maximilian Fuchs: Sachleistungs- und Kostenerstattungsprinzip – eine aktuelle Bestandsaufnahme [In-kind benefits and cost reimbursement principle – A current appraisal]
Peter Trenk-Hinterberger: Das Persönliche Budget – eine neue Leistungsform [The personal budget – A new form of benefits]
Andreas Hänlein: Leistungserbringungsrecht als Kodifikationsproblem [Service provision law as a problem of codification]

Sozialleistungen und Familie [Social benefits and services and the family]
Eberhard Eichenhofer: Sozialleistungen und Familie [Social benefits and services and the family]
Ursula Köbl: Sozialstaatsentlastung durch mehr Familiensolidarität [Relieving the social state through greater family solidarity]
Alexander Graser: Die Familie im Ge-

füge der Solidargemeinschaften – ein Ansatz soziologisch orientierter Rechtsvergleichung [The family within the framework of solidarity groups – A sociology-based comparative law approach]

Bernd Baron von Maydell: Laudatory speech
Franz Ruland: Dinner speech
Hans F. Zacher: Concluding words – vote of thanks

12 – 13 September 2008:
Alumni Meeting, Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome address; report on the most recent developments of the Institute and its current research projects
Bernd Baron von Maydell: Internationale Kooperationen des Max-Planck-Instituts für Sozialrecht [International collaboration of the Max Planck Institute for Social Law]
Hans F. Zacher: Entwicklung der Max-Planck-Gesellschaft [Development of the Max Planck Society]

Maria Grienberger-Zingerle: Vom MPI in die Ministerialverwaltung – die Tätigkeit einer juristischen Referentin [From the Max Planck Institute to ministerial administration – The activities of a legal advisor]
Angelika Schmidt: Vom MPI zum Sozialgericht – berufliche Praxis einer Richterin [From the Max Planck Institute to the social court – The practical experience of a judge]
Alpay Hekimler: Forschungspraxis an einer türkischen Universität [Research practice at a Turkish university]
Gerhard Gross: Guided tour of the exhibition "city / building / plan [stadt / bau / plan] – 850 years of urban development in Munich", followed by a guided walk through the city centre

20 – 22 October 2008:
Interdisciplinary workshop: **"Rollenleitbilder und -realitäten in Europa: Rechtliche, ökonomische und kulturelle Dimensionen"** [Gender Role Models in Europe: Legal, Economic, and Cultural Dimensions], in cooperation with the German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio/Como, Italy.

Ulrich Becker, Eva Maria Welskop-Deffaa: Welcome addresses

Keynote Speeches:
Martina Kessel: Historische Dimensionen der Persistenz von Geschlechterrollen und -leitbildern [Persistence of gender role models – historical dimensions]
Paul Zulehner: Männerrollen im Wandel – Ergebnisse einer aktuellen wissenschaftlichen Untersuchung 1998/2008 [Male role models under change – Current findings of research 1998/2008]

I. Auswertung der Konferenz "Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich" (2007) [Evaluation of the conference on "Self-Responsibility, Private and Public Solidarity – A Comparative View of Gender Role Models in Family Law and Social Law in Europe" (2007)]

Eva Maria Hohnerlein, Edda Blenk-Knocke: Ergebnisse des europäischen Vergleichs aus rechtlicher und soziologischer Perspektive [Legal and sociological findings from a comparative European perspective]
Dieter Martiny: Eigenverantwortung und Solidarität im Scheidungsunterhaltsrecht: Familienrechtliche Ergebnisse und Best-Practice-Beispiele aus Europa [Self-responsibility and solidarity in maintenance law after divorce: Conclusions from a comparative family law perspective – Best practices in Europe]
Ulrich Becker: Chair of discussion

II. Vertiefung und Ergänzung ausgewählter Themen der Konferenz 2007 [Focusing on selected topics of the conference of 2007]

1. Rollenleitbilder im Ehegüterrecht [Gender role models in marital property law]
Walter Pintens: Unterschiedliche Modelle der Teilhabe im Ehegüterrecht in Europa – Entwicklungen und Reformdiskussion [Towards equal sharing in marital property law across Europe – Trends and reform discussions]
Stephan Meder: Eigenverantwortung und Solidarität im deutschen Ehegüterrecht [Self-responsibility and solidarity in German marital property law]
Ulrich Becker: Chair of discussion

2. Rollenleitbilder in der sozialen Realität und im Recht [Gender role models in social reality and law]
Hans-Peter Blossfeld: Die Entwicklung der Aufgabenteilung im Eheverlauf in Deutschland [Changes in task allocation during marriage in Germany]
Ute Klammer: Weibliche Familienernährerinnen in West- und Ostdeutschland – Wunschmodell oder neue Prekarität? [Female breadwinners in West and East Germany – A desired model or new precarity?]
Kirsten Scheiwe: Einer zahlt und eine betreut? Rollenleitbilder im Kindesunterhaltsrecht und ihre Geschlechterdimensionen [The "payer" and the "carer" – Asymmetrical gender role assumptions in German child support law]
Marianne Heimbach-Steins: Chair of discussion

Podiumsdiskussion "Eigenverantwortung von Frauen und Männern während und nach einer Ehe/Partnerschaft mit asymmetrischer Arbeitsteilung – Recht und Realität" [Panel discussion: "Self-responsibility of men and women during and after marriage/partnership marked by asymmetrical task allocation: Law and reality"]
Heinz Hausheer, Trudi Knijn, Jens M. Scherpe: Panel
Eva Maria Welskop-Deffaa: Chair

Fireside chat with members of the German Parliament
Hermann Kues: Chair

3. Rollenleitbilder in der Pflege: Sozialrechtliche und ökonomische Perspektiven [Gender role models and long-term care: Socio-legal and economic perspectives]
Ursula Rust: Rollenleitbilder bei der Pflege durch Angehörige und nahestehende Personen in Deutschland [Gender role models and long-term care provision through family caregivers in Germany]
Jeanne Fagnani, Trudie Knijn: Rollenleitbilder in der häuslichen Pflege durch Angehörige und nahestehende Personen in Europa: Sozialpolitische und ökonomische Perspektiven (Kurzbeiträge) [Gender role models and family caregiving in Europe: Social policy approach and economic perspectives (short reports)]
Margarete Schuler-Harms: Chair of discussion

III. Abschlussworkshop: Parallele Arbeitsgruppen zur Erarbeitung von Handlungserfordernissen und Präsentation der Empfehlungen aus den Arbeitsgruppen [Final workshop: Parallel elaboration of required actions in working groups – Presentation of recommendations prepared by the working groups]

Group 1
Reform des Ehegüterrechts: Können Erfahrungen aus dem Ausland für Deutschland nutzbar gemacht werden? [Marital property law reform: What can Germany learn from other European countries?]
Dieter Martiny: Chair
Group 2
Die Rolle des "Ernährers" im Familienrecht – Rechtslage und Lebensrealitäten [The role of the "breadwinner" in the context of family law: Legal framework versus social reality]
Kirsten Schweiwe, Christina Klenner: Chair
Group 3
Überlegungen zur aktiven Förderung einer eigenständigen Existenzsicherung im Alter von Männern und Frauen [How can financial autonomy in old age be actively promoted for men and women?]
Reinhold Thiede: Chair
Eva Maria Welskop-Deffaa, Eva Maria Hohnerlein: Closing of the conference

4 December 2008:
Expert meeting: **"Project on General Principles of Social Security Law in Europe (GPSoc)"**, co-organised with Bertelsmann Stiftung, Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome and introduction
Friso Ross: Project presentation
Ulrich Becker, Jörg Habich, Matthias Knecht, Oliver Liedtke, Friso Ross, Nikola Wilman: Future opportunities to cooperate with Bertelsmann Stiftung

8 December 2008:
Symposium: **"Die Tätigkeit von Spielervermittlern im nationalen und internationalen Sportrecht"** [The Activities of Players' Agents in National and International Sports Law], co-organised with the Max Planck Institute for Comparative and International Private Law and the Forum on International Sports Law, Hamburg.

Reinhard Zimmermann: Welcome and introduction
Johannes Wertenbruch: Die Tätigkeit von Spielervermittlern im nationalen und internationalen Sportrecht [The activites of players' agents in national and international sports law]
Gregor Reiter: Commentary: "Rechtsfragen der Spielervermittlung aus der Sicht der Deutschen Fußballspieler-Vermittler Vereinigung" [Legal issues regarding the transfer of players – The perspective of the German Football Agents Association (DFVV)]
Mathias Hain: Commentary: "Spielervermittlung aus der Sicht eines Sportlers und Spielervertreters" [The transfer of players from the perspective of a sportsman and player representative]
Holger Hieronymus: Commentary: "Rechtliche Fragen des Handelns von Spielervermittlern aus der Sicht der Deutschen Fußball-Liga" [Legal questions concerning the actions of players' agents from the perspective of the German Football League (DFL)]
Ulrich Becker: Chair of discussion

20 April 2009:
Conference: **"Entsendung von Arbeitnehmern in der Europäischen Union – Probleme aus der sozialrechtlichen Praxis"** [Posting of Employees in the European Union – Problems Experienced in the Practice of Social Law], in collaboration with the Bavarian Higher Social Court, Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker: Welcome and introduction
Bernd Schulte: Die Entsendung von Arbeitnehmern nach Europäischem Gemeinschaftsrecht – VO 1408/71 und VO 883/04 [The posting of workers and European Community law – Regulation (EEC) No. 1408/71 and Regulation (EC) No. 883/04]
Stephan Rittweger: Die Entsendung von Arbeitnehmern nach deutschem Recht [The posting of workers under German law]
Monika Jansen: Probleme der Arbeitnehmerentsendung in nichteuropäische Länder am Beispiel von Australien [Problems of posting employees to non-European countries, taking Australia as an example]
Ulrike Kraus: Praktische Probleme mit der EU-Entsendung, insbesondere die elektronische Abwicklung [Practical problems regarding the posting of employees within the EU, especially with regard to electronic processing]
Bernhard Pabst: "Das Haftungsprivileg folgt dem Sozialversicherungsstatut" – Haftungsfragen bei der Beschäftigung von EG-Ausländern im Inland ["The liability privilege depends on the relevant social security statute" – Problems of liability regarding the employment of non-German EU citizens in Germany]
Christian Lahnstein: Überlegungen zum Haftungsprivileg aus deutscher und internationaler Sicht [Reflections on the liability privilege – The German and the international perspective]
Stephan Rittweger: Closing of the conference

23 – 24 April 2009:
Research colloquium: **"Der deutsche Sozialstaat: Konstruktion, Ausdifferenzierung und Weiterentwicklung"** [The German Welfare State: Structure, Differentiation and Further Development] held on the occasion of Gerhard A. Ritter's 80th birthday in collaboration with the Department of History of Ludwig Maximilian University (LMU) Munich, Historisches Kolleg, Munich

Lothar Gall: Welcome address on behalf of Historisches Kolleg
Klaus Tenfelde: Welcome address on behalf of former students
Hans F. Zacher: Formal address
Hans Günter Hockerts: Neue Herausforderungen des Sozialstaats: Demographie und "Generationengerechtigkeit" [New challenges to the welfare state: Demographic aspects and "intergenerational justice"]

I. "Konstruktion" des Sozialstaats: Die Deutung sozialer Problemlagen und die Antworten der Sozialpolitik [The "construction" of the welfare state: Analysis of social problems and answers offered by social policy]
Margit Szöllösi-Janze: Introduction and chair of section
Ulrike Haerendel: "Gender Roles" und die Konstruktion der Rentenversicherung im Kaiserreich ["Gender roles" and the structure of pension insurance in the German Empire]
Friederike Föcking: Expertenwissen, Politikberatung und die Entstehung des Bundessozialhilfegesetzes [Expert knowledge, policy advice and the development of the German Federal Social Assistance Act]
Hans-Jürgen Puhle: Die "Konstruktion" neuer Sozialstaaten in der Auseinandersetzung mit alten Modellen: "Pfadabhängigkeiten", Entscheidungen und Lernprozesse ["Constructing" new welfare states by looking into old models: "Path dependencies", decisions, learning processes]
Martin Geyer: Perspektive: Im Zeichen wirtschaftlicher Rezessionen: Debatten um die Zukunft der Wohlfahrtsstaaten in den 1970er und 1980er Jahren [Perspective: Under the banner of economic recessions: Debates conducted in the 1970s and 1980s on the future of the welfare states]

II. Der Sozialstaat und seine "Klienten" [The welfare state and its "clients"]
Gerhard A. Ritter: Introduction and chair of section
Winfried Süß: Die vielen Gesichter der Bedürftigkeit – Perspektiven auf die Geschichte der Armut in der Bundesrepublik [The many faces of need – Viewing the history of poverty in Germany]
Wilfried Rudloff: Akteurssysteme, organisierte Betroffeneninteressen und sozialpolitische Innovationspfade: Modelle aus der Behindertenpolitik [Actors' systems, the organisation of interests of the people concerned and the paths to socio-political innovation: Models in disability policy]
Ulrike Lindner: Gesundheitssysteme und Geschlecht: Die Versorgung von Patientinnen und Patienten in Großbritannien und der Bundesrepublik Deutschland [Health care systems and gender: Health care provision for patients in the UK and in the FRG]
Franz Ruland: Perspektive: Soll die Rentenversicherung zur allgemeinen Erwerbstätigenversicherung ausgebaut werden? [Perspective: Is pension insurance to be extended to become a general employees insurance?]

III. Sozialstaat und Partizipation [Welfare state and participation]
Merith Niehuss: Introduction and chair of section
Wolfgang Ayaß: Arbeiterbewegung und Sozialversicherung bis zur Jahrhundertwende [Labour movement and social insurance until 1900]
Klaus Tenfelde: Arbeiterschaft, Unternehmer und Mitbestimmung in der Weimarer Republik [Workforce, employers and co-determination in the Weimar Republic]
Christiane Reuter-Boysen: Die Rentendiskussion in der frühen DDR und die Artikulation von Fraueninteressen [Pension debate in the early years of the GDR and the articulation of women's interests]
Jürgen Kocka: Perspektive: Zivilgesellschaft und Sozialstaat [Perspective: Civil society and the welfare state]

IV. Sozialstaat und Nationalstaat [Welfare state and nation state]
Hartmut Kaelble: Introduction and chair of section
Johannes Paulmann: Jenseits der Grenzen des deutschen Sozialstaats: Entwicklung – Hilfe – Solidarität [Beyond the boundaries of the German welfare state: Development – support – solidarity]
Peter A. Köhler: Das Ende des schwedischen "Volksheims"? [The Swedish "people's home" at its end?]
Bernd Schulte: Das "europäische Sozialmodell" vor neuen Herausforderungen [New challenges for the "European Social Model"]
Ulrich Becker: Perspektive: Der Sozialstaat in der Europäischen Union [Perspective: The welfare state in the European Union]

Gerhard A. Ritter: Final remarks
Ulrike Haerendel, Christiane Reuter-Boysen: Farewell

28 – 29 May 2009:
Conference: **"Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?"** [Governance of Occupational Pensions in Europe: Guaranteed Security?] in collaboration with Hans-Böckler-Stiftung, the Western Institute of Law and European Studies (IODE) of the University of Rennes I and Friedrich-Ebert-Stiftung, Berlin.

Bedeutung der betrieblichen Altersversorgung [Significance of occupational pension schemes]
Gabrielle Clotuche: Chair
Otto Kaufmann: Herausforderungen an die betrieblichen Altersversorgungssysteme: vergleichender Ansatz [Challenges faced by occupational pension schemes – A comparative approach]
Sylvie Hennion: Betriebliche Altersversorgung und wirtschaftliche Freiheit [Occupational pensions and economic liberty]
Dieter Döring: Sozioökonomische Steuerung der betrieblichen Altersversorgung [The socio-economic governance of occupational pension schemes]
Philippe Pierre: Die vertraglich begründeten Garantien in der betrieblichen Altersversorgung [Contractual guarantees in occupational pensions]
Peter A. Köhler: Die finanzielle Sicherheit der betrieblichen Altersversorgung in Schweden: Vorbild für Europa? [The financial security of occupational pension schemes in Sweden: A model for Europe?]

Die finanzielle Sicherheit an Beispielen [Financial security explained by way of selected examples]
Hans-Joachim Reinhard: Spain, Germany
Friso Ross: Switzerland
Eva Maria Hohnerlein: Italy

Steuerungsformen und -Steuerungselemente, sozialer Dialog und Entwicklung der betrieblichen Altersversorgung [Forms and elements of governance, the social dialogue and the development of occupational pension schemes]
Renate Hornung-Draus: Chair
Erik Lutjens: Die Steuerungsmöglichkeiten des Arbeitgebers in der betrieblichen Altersversorgung [Governance options open to employers regarding occupational pensions]
Francis Kessler: Die Steuerungsmöglichkeiten der Arbeitnehmervertreter in der betrieblichen Altersversorgung [Governance options open to employees' representatives regarding occupational pensions]
Hans-Joachim Reinhard: Die Rechte der Arbeitnehmer in der betrieblichen Altersversorgung [Employees' rights in occupational pension schemes]
Samuel Jubé: Internationale Buchungsstandards: Beitrag zu sicherer Steuerung betrieblicher Altersversorgung? [International Accounting Standards: Contributing to a more secure governance of occupational pensions?]
Ulrich Becker: Perspektiven für die betriebliche Altersversorgung [Perspectives on occupational pension schemes]

Panel discussion: Betriebliche Altersversorgung aus der Sicht der Akteure [Occupational pensions from the actors' perspective]
Gert Nachtigall, Heinz Stapf-Finé,

Dominique Boucher, Klaus Stiefermann: Panel
Jean-Philippe Lhernoud: Chair

5 June 2009:
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], Bernd Schulte in collaboration with the German Federal Ministry of Health, Berlin.

14 – 16 October 2009:
Workshop: **"International Setting of Standards and Innovation in Social Protection in Low Income Countries"**, Abtei Frauenwörth, Frauenchiemsee.

Ulrich Becker, Frans Pennings: Introduction
Laura Pautassi: Human rights and social security

I. New and uncovered risks
1. Uncovered risks
James Midgley: Poverty policy of developing countries
Kari Tapiola: The fight against poverty in the policy of the ILO
2. New risks
Ockert Dupper: Need for the integration of migrants into social security systems: South Africa
Ling Li: Migration and health services in P. R. China
Letlhokwa George Mpedi: HIV/Aids in South Africa: Towards comprehensive social protection
Tulia Ackson: Disability benefits and workers with HIV/Aids: Coverage issues and challenges in the United Republic of Tanzania

II. Extending the coverage
Marius Olivier: The extension of social protection to non-formal sector workers: Some developing country experiences
Angel Guillermo Ruiz Moreno: Social security for the informal sector: The case of Mexico
Markus Loewe: The potential of micro-insurance schemes for social security in the informal sector
Felician Tungaraza: Experiences with micro-insurance in the health sector in Tanzania

III. Methods and tools
Lutz Leisering: Social cash transfers in the developing world
Edwell Kaseke: Basic pension system in South Africa
Lorena Ossio: Flat pension system in Bolivia

IV. Perspectives
Ulrich Becker, Frans Pennings: Compatibility of existing up-to-date ILO social security standards with new social policy trends

19 – 20 October 2009:
Working group: **"Soziale Sicherung von pflegenden Angehörigen"** [Social Security for Family Caregivers], Max Planck Institute for Foreign and International Social Law, Munich.

30 – 31 October 2009:
Conference: **"Deutsch-türkisches Sozialrecht und Erbrecht"** [German and Turkish Social Law and Inheritance Law] in collaboration with Deutsch-Türkische Juristenvereinigung e.V. [German-Turkish Lawyers Association], Max Planck Institute for Foreign and International Social Law, Munich.

Ulrich Becker, Tankut Centel: Welcome address
Hediye Ergin: Die sozialversicherungsrechtliche Entwicklung in der Türkei [Development of social insurance law in Turkey]
Andreas Hänlein: Die neuesten Entwicklungen im deutschen Sozialrecht [The most recent trends in German social law]
Yasemin Körtek: Die Einführung der allgemeinen Krankenversicherung in der Türkei und aktuelle Entwicklungen in der deutschen Krankenversicherung [Introduction of general health insurance in Turkey and current trends in German health insurance]
Rona Serozan: Die Besonderheiten des türkischen Erbrechts [Special features of Turkish inheritance law]

Rona Serozan: Verfügung von Todes wegen nach türkischem Recht (das Erbrecht der Ehegatten) [The testamentary disposition according to Turkish law]
Hilmar Krüger: Erbrechtliche Probleme in den deutsch-türkischen Beziehungen [Problems relating to inheritance law in German-Turkish relationships]

30 November 2009
Symposium: **"Das Verbot von Mehrheitsbeteiligungen an Fußballklubs im nationalen und internationalen Recht"** [The Ban on Majority Ownership in German Football under National and International Law], co-organised with the Max Planck Institute for Comparative and International Private Law and the Forum on International Sports Law, Hamburg.

Reinhard Zimmermann: Welcome
Dirk Verse: Die "50+1 Regel" im Licht des nationalen und europäischen Rechts [The "50+1 rule" in the light of national and European law]
Tobias Kollmann, Peter Peters, Martin Kind, Hans-Joachim Watzke: Commentaries
Ulrich Becker: Chair of discussion

18 December 2009:
Symposium: **"Die Bekämpfung der Arbeitslosigkeit in der Türkei im Lichte der gegenwärtigen wirtschaftlichen Rahmenbedingungen"** [The Fight Against Unemployment in Turkey in the Context of the Current Economic Conditions], Max Planck Institute for Foreign and International Social Law, Munich.

Ali Nazim Sözer: Maßnahmen zur Bekämpfung der Arbeitslosigkeit: Eine Bewertung aus sozialversicherungsrechtlicher Sicht [Measures to combat unemployment: An appraisal from the perspective of social insurance law]
Tankut Centel: Vorgaben des Arbeitsrechts zur Vermeidung von Arbeitslosigkeit und Beschäftigungsförderung [Labour law provisions for the prevention of unemployment and the promotion of employment]

2. Guest Lectures

23 January 2008:
Prof. Dr. Lutz LEISERING, Faculty of Sociology, Bielefeld University: "Vom Wohlfahrtsstaat zum Wohlfahrtsmarkt? Neue Tendenzen sozialpolitischer Regulierung" [From the welfare state to the welfare market? Recent regulatory tendencies in social policy].

12 March 2008:
Dr. Tulia ACKSON, University of Dar es Salaam, Tanzania: "Coordination of Social Security in the Southern African Development Community (SADC) and the East African Community (EAC)".

2 June 2008:
Prof. Dr. Günter NEUBAUER, Institut für Volkswirtschaftslehre [Institute of Macroeconomics], Bundeswehr University, Munich: "Choice and Competition in Hospital Health Care – eine gesundheitsökonomische Sicht" [Choice and competition in hospital health care from the perspective of health economics].

3 June 2008:
Dr. Stefan RUPPERT, Max Planck Institute for European Legal History, Frankfurt am Main: "Lebensalter und Recht – zur Segmentierung des menschlichen Lebenslaufs im 19. Jahrhundert am Beispiel der Lebensphase Jugend" [Age and law – On the segmentation of the human lifespan in the 19th century, exemplified by the age group of adolescent people].

18 June 2008:
Dr. Hans H. Th. SENDLER, European Strategy Consulting, Berlin: "Europäische Sozialverfassung – der aktuelle Gestaltungsbedarf in der Wissenschaft im Spannungsfeld zwischen europäischem Binnenmarkt und den Sozialmodellen der Mitgliedstaaten" [The European Social Constitution – Current academic configuration requirements regarding the conflicting demands between the European single market and the social models of the EU member states].

9 July 2008:
Justine LASSANSAA, Montesquieu University – Bordeaux IV, Pessac, France: "Die Hinterbliebenenrente" [Surviving dependants' pension].

24 July 2008:
Dr. Peter HERRMANN, University College Cork, Ireland: "Grundfragen bei der Entwicklung eines globalen Ansatzes zum Sozialrecht – zwischen Relativismus und deterministischem Modernismus" [Fundamental questions as to developing a global approach to social law – Between relativism and deterministic modernism].

24 October 2008:
Prof. Dr. Carmelo MESA-LAGO, University of Pittsburgh, USA: "Transformations of the Labor Market and Social Insurance Coverage on Pensions and Health Care in Latin America".

18 November 2008:
Dr. Ann-Christine HAMISCH, Munich: "Aktuelle Entwicklungen im Recht der betrieblichen Altersversorgung" [Current developments in occupational pensions law].

18 November 2008:
Dr. Markus ROTH, Max Planck Institute for Comparative and International Private Law, Hamburg: "Private Altersvorsorge: Betriebsrentenrecht und das Recht der individuellen Vorsorge aus rechtsvergleichender Sicht" [Private retirement provision: Occupational pensions law and the law relating to individual pension provision – A legal comparison].

19 November 2008:
Dr. Gerrit LINDBERG, Alexander von Humboldt-Stiftung, Bonn: "Mangel an Nachwuchs-Juristen in der Alexander von Humboldt-Stiftung" [The lack of junior law scholars at the Alexander von Humboldt Foundation].

17 December 2008:
Dr. Quan LU, Renmin University of China, Beijing, P. R. China: "Intergovernmental Relationship in the Old Age Pension Reform of China".

13 May 2009:
Yifan YANG, Southwest University of Finance and Economics, Chongqing, P. R. China: "Implementation of the National Social Security System for Rural China's Land-Expropriated Peasants".

19 May 2009:
Prof. Dr. Gloria Inés SÁNCHEZ, University of Antioquia, Medellín, Columbia: "The Social Security System in Colombia: Benefits and Financing".

9 June 2009:
Susanne HENCK, Lehrstuhl für Öffentliches Recht, Sozialrecht und Gesundheitsrecht [Department of public law, social law and health care law], University of Regensburg: "Kosten-Nutzen-Analyse in der gesetzlichen Krankenversicherung" [Cost-benefit analysis in statutory health insurance].

7 July 2009:
Prof. Neville HARRIS, University of Manchester, UK: "Reducing Dependency? Social Security, Drug Addiction and Work".

23 July 2009:
Prof. Jia LIN, Renmin University of China, Beijing, P. R. China: "Social Law Initiatives Taken by the P. R. China in these Times of Economic Crisis".

22 September 2008:
Eri KASAGI, Kyushu University, Fukuoka, Japan: "The Boundary of Social Health Insurance (assurance maladie complémentaire) in France".

22 September 2008:
Justine LASSANSAA, Montesquieu University – Bordeaux IV, Pessac, France: "Diskussion um den Familienleistungsausgleich im französischen Alterssicherungssystem" [The discussion about the equalisation of family benefits in French old age social security].

13 October 2009:
Dr. Elsa Marina ÁLVAREZ GONZÁLEZ, Malaga University, Spain: "European Observatory on Emigration of Elder People (Gerontomigrations) – A Multidisciplinary Excellent Research Project by the Andalusian Regional Government".

16 December 2009:
Margit PALZENBERGER, Max Planck Digital Library, Munich, and Hermann SCHIER, Max Planck Society (IVS-CPT), Stuttgart (in cooperation with Henning FRANKENBERGER): "Bibliometrie in der Forschungsevaluierung – kann man Wissenschaft messen? Teil 1:Praxis und Erfahrun-

gen aus den Naturwissenschaften" [Bibliometrics in research evaluation – Is scientific research measurable? Part 1: Practical experience gained from the natural sciences].

3. Visitors and Delegations

8 February 2008:
Information meeting for the Managing Board of the "Japan Adult Guardianship Law Association" and its president Prof. Dr. Makoto Arai, Tokyo, Japan.
Support: *Bernd Schulte*.

9 May 2008:
Information meeting for a delegation of the "Legal Advisory Committee (LAC)" from P. R. China.
Support: *Ulrich Becker, Barbara Darimont*.

8 July 2008:
Information meeting for thirty international students within the framework of the MUST (Munich University Summer Training) Programme of the Faculty of Law of Ludwig Maximilian University (LMU) Munich.
Support: *Eva Maria Hohnerlein, Melanie Jackenkroll*.

12 – 13 January 2009:
Elaboration of a visitors' programme on quality development in institutional day-care facilities for children for a delegation from the Japanese children's charity organisation "The Foundation for Children's Future", Tokyo, Japan.
Support: *Markus Schön, Eva Maria Hohnerlein*.

23 July 2009:
Information meeting for thirty international students within the framework of the MUST (Munich University Summer Training) Programme of the Faculty of Law of Ludwig Maximilian University (LMU) Munich.
Support: *Eva Maria Hohnerlein, Michael Schlegelmilch*.

4 September 2009:
Briefing with Prof. Lee One-Seok, Seoul, Ministry of Justice of the Republic of Korea, on the foundation of a research institute and the required administrative procedures.
Support: *Josef Kastner*.

21 October 2009:
Information meeting for a group of Japanese health insurance experts headed by Prof. Mitsuya Ichien, Kansai University, Osaka.
Support: *Bernd Schulte*.

2 – 5 November 2009:
Information meeting on the German social insurance system for a Chinese delegation from the "National Audit Office of the People's Republic of China".
Support: *Barbara Darimont, Ulrich Becker i.a.*

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. 41:* Müntefering, Franz; Becker, Ulrich (eds.): 50 Jahre EU – 50 Jahre Rechtsprechung des Europäischen Gerichtshofs zum Arbeits- und Sozialrecht. Baden-Baden 2008.

– *Vol. 42:* Matthäus, Claudia: Schadensminderungspflichten im Haftpflicht- und Sozialrecht Deutschlands, Österreichs und der Schweiz. Baden-Baden 2008.

– *Vol. 43:* Becker, Ulrich; Nishimura, Kenichiro; Walser, Christina (eds.): Perspektiven der Unfallversicherung in Japan und Deutschland. Baden-Baden 2009.

– *Vol. 44:* von Maydell, Bernd, Pitschas, Rainer; Pörtner, Peter; Schulte, Bernd (eds.): Politik und Recht für Menschen mit Behinderungen in Europa und Asien. Baden-Baden 2009.

– *Vol. 45:* Quade, Benno: Verantwortung und ihre Zuschreibung im Recht der Arbeitsförderung. Baden-Baden 2009.

– *Vol. 46:* Scholz, Olaf; Becker, Ulrich (eds.): Die Auswirkungen der Rechtsprechung des Europäischen Gerichtshofs auf das Arbeitsrecht der Mitgliedsstaaten. Baden-Baden 2009.

– *Vol. 47:* Grienberger-Zingerle, Maria: Kooperative Instrumente der Arbeitsverwaltungen in England und Deutschland. Baden-Baden 2009.

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

– *Vol. 3:* Mediation in der bayerischen Sozialgerichtsbarkeit – Abschlussbericht zur Evaluation eines Modellprojekts. Munich 2009. 133 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. 22. 2008.
Vol. 23. 2009.

2. Publications by the Institute Staff

Ulrich BECKER

— Anmerkung zu EuGH, Urteil v. 3.4.2008 – C-346/06 Rüffert ./. Niedersachsen. In: Juristenzeitung (JZ) 63 (2008) 18. pp. 891-893.

— Entwicklung der Rechtsprechung des EuGH zum Sozialrecht. In: Franz Müntefering/Ulrich Becker (eds.), 50 Jahre EU – 50 Jahre Rechtsprechung des Europäischen Gerichtshofes zum Arbeits- und Sozialrecht. Baden-Baden 2008. pp. 95-105.

— Hans F. Zacher zum 80. Geburtstag. In: Neue Juristische Wochenschrift (NJW) 61 (2008) 27. pp. 1932-1933.

— Organisation und Selbstverwaltung der Sozialversicherung. In: Bernd von Maydell/Franz Ruland/Ulrich Becker (eds.), Sozialrechtshandbuch. SRH. 4th ed. Baden-Baden 2008. pp. 645-664.

— Sozialmodell und Menschenbild in der Hartz-IV-Gesetzgebung. In: Okko Behrends/Eva Schumann (eds.), Gesetzgebung, Menschenbild und Sozialmodell im Familien- und Sozialrecht. Berlin 2008. pp. 39-76.

— Verfassungsrechtliche Bindungen der Krankenkassen bei Kooperationsvereinbarungen. In: Wolfgang Voit (ed.), Gesundheitsreform 2007. Rechtliche Bewertung und Handlungsoptionen. 10. Symposium von Wissenschaft und Praxis. Baden-Baden 2008. pp. 136-150.

— §§ 39, 107-110, 112-118, 120-121a, 135a, 137-137c, 306, 307 SGB V. In: Ulrich Becker/Thorsten Kingreen (eds.), SGB V. Gesetzliche Krankenversicherung. Kommentar. Munich 2008.

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—; Kingreen, Thorsten: Einführung. In: Ulrich Becker/Thorsten Kingreen (eds.), SGB V. Recht des öffentlichen Gesundheitswesens. 15th ed. Munich 2008. pp. VII-XXXII.

—; Kingreen, Thorsten (eds.): SGB V. Recht des öffentlichen Gesundheitswesens. 15th ed. Munich 2008.

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—; Kingreen, Thorsten: §§ 1, 11, 69 SGB V. In: Ulrich Becker/Thorsten Kingreen (eds.), SGB V. Gesetzliche Krankenversicherung. Kommentar. Munich 2008.

—; Olivier, Marius (eds.): Access to Social Security for non-Citizens and Informal Sector Workers. An International, South African and German Perspective. Stellenbosch 2008.

—; Ruland, Franz (eds.): Abhandlungen zum Sozialrecht II. Heidelberg 2008.

—; Ruland, Franz: Einleitung. In: Ulrich Becker/Franz Ruland (eds.), Abhandlungen zum Sozialrecht II. Heidelberg 2008. pp. 7-12.

Buchner, Herbert; — (eds.): Mutterschutzgesetz und Bundeselterngeld- und Elternzeitgesetz. Kommentar. 8th ed. Munich 2008.

von Maydell, Bernd; Ruland, Franz; — (eds.): Sozialrechtshandbuch. SRH. 4th ed. Baden-Baden 2008.

Müntefering, Franz; — (eds.): 50 Jahre EU – 50 Jahre Rechtsprechung des Europäischen Gerichtshofes zum Arbeits- und Sozialrecht. Baden-Baden 2008.

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— Anmerkung zu EuGH, Urteil v. 18.11.2008. In: Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR) 8 (2009) 5/6. pp. 233-236.

— Arbeitnehmerfreizügigkeit. In: Dirk Ehlers (eds.), Europäische Grundrechte und Grundfreiheiten. 3th ed. Berlin 2009. pp. 305-331.

— Das neue Elterngeld. In: Jobst-Hubertus Bauer/Michael Kort/Thomas M. J. Möllers/Bernd Sandmann (eds.), Festschrift für Herbert Buchner zum 70. Geburtstag. Munich 2009. pp. 67-80.

— Das Recht auf Gesundheitsleistungen. In: Gerrit Manssen/Monika Jachmann/Christoph Gröpl (eds.), Nach geltendem Verfassungsrecht. Festschrift für Udo Steiner zum 70. Geburtstag. Stuttgart 2009. pp. 50-76.

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— Der Stand des europäischen Sozialrechts. In: Peter Brandt (ed.), Soziales Europa? Berlin 2009. pp. 63-87.

— Die Finanzierung der gesetzlichen Unfallversicherung: Chancen und Risiken bei Einführung von Kapitaldeckungselementen. In: Ulrich Becker/Kenichiro Nishimura/Christina Walser (eds.), Perspektiven der Unfallversicherung in Japan und Deutschland. Baden-Baden 2009. pp. 79-96.

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— Rechtsfragen der Erwachsenenbildung. In: Ursula Staudinger/Heike Heidemeier (eds.), Altern, Bildung und lebenslanges Lernen. Stuttgart 2009. pp. 83-94.

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— Art. 28-30, 42, 282, 291, 292, 299, 311, 312 EGV. In: Jürgen Schwarze/Ulrich Becker/Armin Hatje/Johann Schoo (eds.), EU-Kommentar. 2nd ed.. Baden-Baden 2009.

— Art. 52, 53 GRC. In: Jürgen Schwarze/Ulrich Becker/Armin Hatje/Johann Schoo (eds.), EU-Kommentar. 2nd ed. Baden-Baden 2009.

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Hohnerlein, Eva Maria; —: Einführung. In: Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder im Familien- und Sozialrecht im europäischen Vergleich. Baden-Baden 2008. pp. 17-20.

Hohnerlein, Eva Maria; —: Ergebnisse der vergleichenden Auswertung, Problemfelder und Forschungsbedarf. In: Bundesministerium für Familie, Senioren, Frauen und Jugend (ed.), Eigenverantwortung, private und öffentliche Solidarität – Rollenleitbilder

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Barbara DARIMONT

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— 社会保险法中的国家责任 [State's Responsibility in Social Security in Law in Germany]. In: Social Security Studies 8 (2008) 2. pp. 56-65.

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— 德国的残疾人社会保障 [Social Security for Disabled Persons in Germany]. In: Social Security Studies 9 (2009) 1. pp. 173-179.

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Ulrike HAERENDEL

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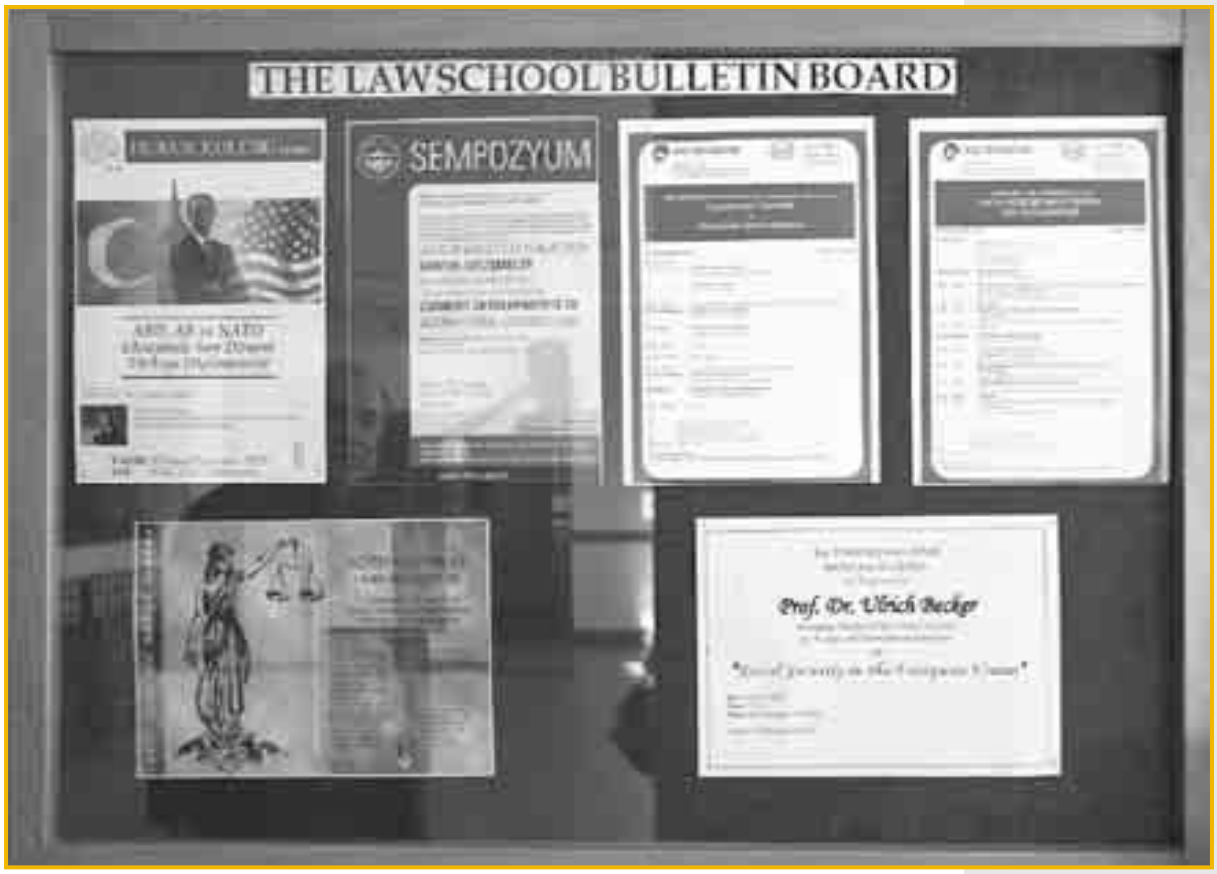
VI. Papers and Lectures



1. Papers

Ulrich BECKER

"Aging and Social Security", Max Planck Institute for Demographic Research, Rostock (24 January 2008).

"Familiale Generationenbeziehungen im Wohlfahrtsstaat". Conference: "Altern, Familie, Zivilgesellschaft und Politik", Akademiegruppe Altern in Deutschland, Dresden (1 February 2008).

Contribution to discussion. Expert meeting: "Common Elements of European Labour Law". Kick-off workshop on European labour law, Bertelsmann Stiftung, Cologne (10 March 2008).

"Einführung in das deutsche Sozialversicherungssystem". Chinese-German symposium on social insurance law, Legal Affairs Commission (LAC) of the Standing Committee of the National People's Congress (NPC), Beijing, P. R. China (31 March 2008).

"Koordinierung von Sozialleistungssystemen in der EU". Chinese-German symposium on social insurance law, Legal Affairs Commission (LAC) of the Standing Committee of the National People's Congress (NPC), Beijing, P. R. China (1 April 2008).

Introduction and **conclusion**. Conference: "Qualitätssicherung in der Pflege", Institute of Social Law and Social Policy in Europe of Christian Albrecht University (CAU) Kiel and Max Planck Institute for Foreign and International Social Law, Munich (12/13 June 2008).

Chair, part 1: "Analyse der aktuellen Rechtsprechung des EuGH". Symposium: "Die Auswirkungen der Rechtsprechung des Europäischen Gerichtshofes auf das Arbeitsrecht der Mitgliedstaaten", German Federal Ministry of Labour and Social Affairs, Berlin (26 June 2008).

"Einführung und Grundlagen". Symposium: "Rechtsdogmatik und Rechtsvergleich im Sozialrecht", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (3 July 2008).

"EU Perspectives on Migration and Social Protection: Social Rights of Non-Citizens". Conference: "Social Protection Perspectives on Migration in South and Southern Africa", Friedrich-Ebert-Stiftung, South Africa Office and Centre for International and Comparative Labour and Social Security Law (CICLASS), University of Johannesburg, South Africa (27 August 2008).

"Legal Analysis". Workshop: "New Pension Schemes", European Patent Office, Munich (12 September 2008).

"Bericht über jüngste Entwicklungen des Instituts und aktuelle Forschungsprojekte". Alumni meeting, Max Planck Institute for Foreign and International Social Law, Munich (12 September 2008).

"**Rentenreform und Arbeitsmarktreformen in Deutschland"**, Council of Labor Affairs, Taipei, Taiwan, R. O. C. (15 October 2008).

"Rentenreformen in Deutschland und der Europäischen Union sowie die mögliche Bedeutung für Asien". International Symposium on Pension Reform in East Asia, Chengchi University, Taipei, Taiwan, R. O. C. (16 October 2008).

"Die Pflegeversicherung in Deutschland", Kainan University, Luchu, Taiwan, R. O. C. (17 October 2008).

Chair of discussion. Interdisciplinary workshop: "Gender Role Models in Europe: Legal, Economic, and Cultural Dimensions", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio/Como, Italy (21 October 2008).

Contribution to discussion: **"Sterbehilfe und Geriatrie"**. 36th conference, Fachausschuss Betriebswirtschft [Committee of experts on business administration], Bundesverband Geriatrie (BVG) [Federal Association of Geriatric Organisations in Germany], Berlin (29 October 2008).

"Von der Unionsbürgerschaft zu sozialen Grundrechten? Eine juristische Analyse". European conference 2008: "Unionsbürgerschaft, Freizügigkeit und Sozialschutz", European Social Insurance Platform (ESIP), Brussels, Belgium (20 November 2008).

Introduction. Expert meeting: "Project on General Principles of Social Security Law in Europe (GPSoc)", Bertelsmann Stiftung and Max Planck Institute for Foreign and International Social Law, Munich (4 December 2008).

Chair of discussion. Symposium: "Die Tätigkeit von Spielervermittlern im nationalen und internationalen Sportrecht", Max Planck Institute for Foreign and International Social Law and Max Planck Institute for Comparative and International Private Law, Hamburg (8 December 2008).

"Standards und Prinzipien des Europäischen Sozialrechts". 11th annual conference of the German social law teachers: "Sozialrecht in Europa", Deutscher Sozialrechtsverband e.V., University of Cologne (31 March 2009).

"Einführung in die Tagungsthematik". Conference: "Entsendung von Arbeitnehmern in der Europäischen Union – Probleme aus der sozialrechtlichen Praxis", Bavarian Higher Social Court and Max Planck Institute for Foreign and International Social Law, Munich (20 April 2009).

"Der Sozialstaat in der Europäischen Union". Research colloquium on the occasion of Gerhard A. Ritter's 80th birthday: "Der deutsche Sozialstaat: Konstruktion, Ausdifferenzierung und Weiterentwicklung", Department of History of Ludwig Maximilian University (LMU) Munich and Max Planck Institute for Foreign and International Social Law, Historisches Kolleg, Munich (24 April 2009).

"Aufgaben und Leistungen der gesetzlichen Rentenversicherung in Deutschland". 9th symposium of the German-Chinese Dialogue on the Rule of Law: "Das Recht der Rentenversicherung im Rechtsstaat", Shenzhen, P. R. China (27 April 2009).

"Perspektiven für die betriebliche Altersversorgung". Conference: "Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?", Hans-Böckler-Stiftung, Max Planck Institute for Foreign and International Social Law, The Western Institute of Law and European Studies (IODE) of the University of Rennes I, and Friedrich-Ebert-Stiftung, Berlin (29 May 2009).

"Cultural Background of Social Security in Germany". The Fifth International Conference on Social Security, Friedrich-Ebert-Stiftung, China Social Insurance Association, and Renmin University of China, Beijing, P. R. China (12 September 2009).

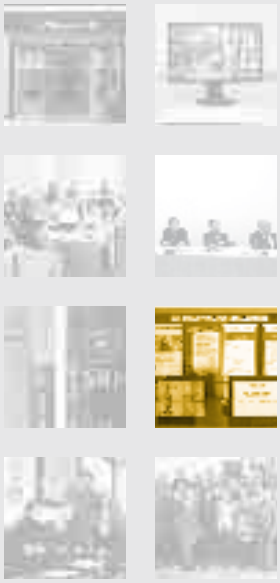
"20 Jahre Sozialrecht in Mittel- und Osteuropa – Überlegungen zur Transformation sozialer Sicherungssysteme". Conference: "A New Welfare Model? – Social Security in Central and Eastern Europe 20 Years after Democratisation", Charles University, Faculty of Law and Friedrich-Ebert-Stiftung, Prague, Czech Republic (1 October 2009).

"Perspectives: Compatibility of Existing Up-to-date ILO Social Security Standards with New Social Policy Trends". Workshop: "International Setting of Standards and Innovation in Social Protection in Low Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (16 October 2009).

"Die deutsche Krankenversicherung unter besonderer Berücksichtigung des Gesundheitsfonds". Information meeting: "Das deutsche Sozialversicherungssystem", Max Planck Institute for Foreign and International Social Law, Munich (5 November 2009).

"Age Limits and Social Security". Workshop: "Extending the Working Life – Empirical Analyses of Legal Regulations and their Enforcement", Institute for Labour Law and Industrial Relations in the European Community (IAAEG), Trier (13 November 2009).

Chair of discussion on "Rationierung von Sozialleistungen". Federal Congress,



Deutscher Sozialrechtsverband e.V.: "60 Jahre Grundgesetz und Sozialverfassung – Gesundheit und Verfassung", Federal Social Court (BSG) Kassel (26 November 2009).

Chair of discussion. Symposium: "Das Verbot von Mehrheitsbeteiligungen an Fußballklubs im nationalen und internationalen Recht", Max Planck Institute for Foreign and International Social Law and Max Planck Institute for Comparative and International Private Law, Hamburg (30 November 2009).

Laudatory speech at the conferral of the research award of the research network on social security in old age (FNA) to Jörg Adam on the occasion of his dissertation: "Eigentumsschutz in der gesetzlichen Rentenversicherung". Meeting of the federal representatives, Deutsche Rentenversicherung Bund, Berlin (3 December 2009).

"Soziale Sicherheit in der Europäischen Union – zur Rolle der Rechtsprechung des EuGH im europäischen Integrationsprozess", Gesellschaft für Versicherungswissenschaft und -gestaltung (GVG), Berlin (3 December 2009).

"Staatsangehörigkeit und Aufenthalt als Anknüpfungspunkt für die Zuständigkeit und das anwendbare Recht – Sozialrecht", 3rd Luxembourg expert forum on the development of Community law, ECJ, Luxembourg (8 December 2009).

Edda BLENK-KNOCKE

"Ergebnisse des europäischen Vergleichs aus rechtlicher und soziologischer Perspektive" (Evaluation of the conference: "Self-Responsibility, Private and Public Solidarity – A Comparative View of Gender Role Models in Family Law and Social Law in Europe" (2007) in cooperation with Eva Maria Hohnerlein). Interdisciplinary workshop: "Gender Role Models in Europe: Legal, Economic, and Cultural Dimensions", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio/Como, Italy (21 October 2008).

"Rollenleitbilder in europäischen Ländern im Vergleich – empirische Dimensionen". Conference: "Frauen in Europa", Evangelische Akademie Tutzing (23 May 2009).

Olga CHESALINA

"Das Recht des Mutterschutzes und des Erziehungsurlaubs in der Russischen Föderation". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (6 May 2008).

Barbara DARIMONT

"Welche Verantwortung trägt die Regierung in der Sozialversicherungsrechtsordnung?". Chinese-German symposium on social insurance law, Legal Affairs Commission (LAC) of the Standing Committee of the National People's Congress (NPC), Beijing, P. R. China (1 April 2008).

"Soziale Sicherheit in Entwicklungsländern". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (24 April 2008).

"Anmerkungen zum Entwurf des Sozialversicherungsgesetzes der V. R. China". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (6 May 2008).

"Concluding remarks". The Fifth International Conference on Social Security, Friedrich-Ebert-Stiftung, China Social Insurance Association, and Renmin University of China, Beijing, P. R. China, (13 September 2009).

Commentary on "Migration and Health Services in P. R. China" (Ling Li). Workshop: "International Setting of Standards and Innovation in Social Protection in Low Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (15 October 2009).

Commentary on "The Extension of Social Protection to Non-Formal Sector Workers:

Some Developing Country Experiences" (Marius Olivier). Workshop: "International Setting of Standards and Innovation in Social Protection in Low Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (16 October 2009).

"Überblick über die deutsche Sozialversicherung". Information meeting: "Das deutsche Sozialversicherungssystem", Max Planck Institute for Foreign and International Social Law, Munich (2 November 2009).

"Vergleich der Gesundheitssicherungsmodelle für Migranten in chinesischen Städten". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (18 November 2009).

Henning FRANKENBERGER

"FaMI-Ausbildung in der Max-Planck-Gesellschaft". Trainers' meeting, Max Planck Institute for Mathematics in the Sciences, Leipzig (21 October 2008).

"RFID – Best Practice in der Bibliothek des Max-Planck-Instituts für ausländisches und internationales Sozialrecht in München". Librarians' meeting of the Humanities and Social Sciences Section (GSHS) of the Max Planck Society, Max Planck Institute for Comparative and International Private Law, Hamburg (18 November 2008).

"Bericht der Arbeitsgruppe Open-Access in der MPG". Librarians' meeting of the Humanities and Social Sciences Section (GSHS) of the Max Planck Society, Max Planck Institute for the Study of Societies, Cologne (13 November 2009).

"Bibliometrie in der Forschungsevaluierung – Kann man Wissenschaft messen? Teil 1: Praxis und Erfahrungen aus den Naturwissenschaften" (in cooperation with Margit PALZENBERGER, Max Planck Digital Library, Munich, and Hermann SCHIER, Max Planck Society (IVS-CPT)). Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (16 December 2009).

Nikola FRIEDRICH

"Mediation in der Sozialgerichtsbarkeit". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (24 April 2008).

"Wissenschaftliche Begleitforschung des Modellprojekts 'Mediation in der Sozialgerichtsbarkeit' in Bayern – erste Ergebnisse". Conference: "Bundesweiter Erfahrungsaustausch zur gerichtsinternen Mediation in der Sozialgerichtsbarkeit", Bildungszentrum der Bayerischen Staatsregierung St. Quirin, Gmund (14 May 2008).

"Evaluation der Begleitforschung des Projekts Gerichtsinterne Mediation in der Bayerischen Sozialgerichtsbarkeit". Conference: "Gerichtsinterne Mediation in der Sozialgerichtsbarkeit. Deutsch-Österreichischer Erfahrungsaustausch", Bildungszentrum Kloster Banz, Staffelstein (15 June 2009).

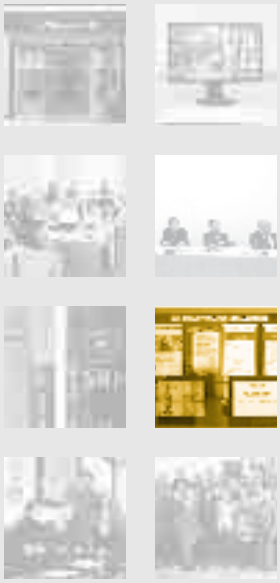
"Mediation in der Sozialgerichtsbarkeit". Kick-off meeting to introduce court-based mediation in North Rhine-Westphalian social jurisdiction, Haus der Technik, Essen (1 September 2009).

Viktoria FÜLÖP

"Einfluss von Verfassung und internationalem Recht auf die Ausgestaltung der sozialen Sicherheit". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (25 April 2008).

Maria GRIENBERGER-ZINGERLE

"Vom MPI in die Ministerialverwaltung – die Tätigkeit einer juristischen Referentin". Alumni meeting, Max Planck Institute for Foreign and International Social Law, Munich (12 September 2008).



Ulrike HAERENDEL

"Arbeiterschaft, Arbeiterbewegung und Arbeiterversicherung 1871 – 1881". Oberseminar (graduate class) Prof. Dr. Michael Stolleis, Max Planck Institute for European Legal History, Frankfurt am Main (15 January 2008).

"Die 'Machtergreifung' im Jahr 1933: Im Reich, in Bayern und in München". Lecture held on the Day of Remembrance for the Victims of National Socialism, Bavarian State Library (BSB), Munich (27 January 2008).

"Soziale und wirtschaftliche Verhältnisse im Königreich Sachsen 1871 – 1914". School lecture within the scope of the General Meeting of the Max Planck Society held before secondary school students from Glückauf-Gymnasium Dippoldiswalde, Bernhard-von-Cotta-Gymnasium Brand-Erbisdorf, and Julius-Ambrosius-Hülße-Gymnasium Dresden (24 – 26 June 2008).

"Historische Legitimierung des Sozialstaats". Conference: "Macht, Ohnmacht und Eigenlogik des Sozialstaates", Hanns-Seidel-Stiftung, Wildbad Kreuth (11 November 2008).

"Gender Disparities in Social Law: The Treatment of Male and Female Pensioners by the Pension Insurance Institutions of the German 'Kaiserreich' ". Colloquium: "New Perspectives on Gender and Legal History", Historisches Seminar, Goethe University Frankfurt am Main (3 April 2009).

"Gender Roles und die Konstruktion der Rentenversicherung im Kaiserreich". Research colloquium on the occasion of Gerhard A. Ritter's 80th birthday: "Der deutsche Sozialstaat: Konstruktion, Ausdifferenzierung und Weiterentwicklung", Department of History of Ludwig Maximilian University (LMU) Munich and Max Planck Institute for Foreign and International Social Law, Historisches Kolleg, Munich (23 April 2009).

"Die 'Väter' des deutschen Sozialstaats und ihr Gerechtigkeitsdenken". Conference: "Eine Frage der Gerechtigkeit. Verteilung im Sozialstaat", Evangelische Akademie Tutzing (11 December 2009).

Eva Maria HOHNERLEIN

"Regionalgesetzliche Regelung von Arbeitslosigkeit vor dem italienischen Verfassungsgericht – Anmerkungen zum Urteil Nr. 268 vom 4.7.2007". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (4 June 2008).

"Ergebnisse des europäischen Vergleichs aus rechtlicher und soziologischer Perspektive" (Evaluation of the conference: "Self-Responsibility, Private and Public Solidarity – A Comparative View of Gender Role Models in Family Law and Social Law in Europe" (2007), in cooperation with Edda Blenk-Knocke) and **concluding remarks** at the interdisciplinary workshop: "Gender Role Models in Europe: Legal, Economic, and Cultural Dimensions", German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Centro Italo-Tedesco Villa Vigoni, Loveno di Menaggio/Como, Italy (21 October 2008).

"Familienpolitik als Wirtschaftspolitik in Deutschland: Das neue Bundesgesetz über Elterngeld und Elternzeit – eine erste Bilanz". Conference: "Familienpolitik in Deutschland und Japan", University of Tsukuba, Japan (13 November 2008).

"Die finanzielle Sicherheit der betrieblichen Altersversorgung in Italien". Conference: "Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?", Hans-Böckler-Stiftung, Max Planck Institute for Foreign and International Social Law, The Western Institute of Law and European Studies (IODE) of the University of Rennes I, and Friedrich-Ebert-Stiftung, Berlin (28 May 2009).

Commentary on "Social Cash Transfers in the Developing World" (Lutz Leisering). Workshop: "International Setting of Standards and Innovation in Social Protection in Low Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (16 October 2009).

Otto KAUFMANN

"L'assurance maladie allemande et ses réformes permanentes. Protection sociale et mutualité en Europe. Quelle voie pour une approche solidaire de la santé?". Sixième Journée d'Etude, Groupe d'Histoire Sociale and Mutuelle Générale de l'Education Nationale (MGEN), Paris, France (30 January 2008).

"Aktivierung und Beschäftigungsförderung im Vergleich". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (24 April 2008).

"Gesetzliche Regulierung der Leiharbeit in Frankreich". Expert meeting: "Atypische Beschäftigung und prekäre Arbeitsformen im europäischen Vergleich", Hans-Böckler-Stiftung, the Managing Federal Board of the Confederation of German Trade Unions (DGB), and Friedrich-Ebert-Stiftung, Berlin (20 June 2008).

"Introductory Remarks: De la fléxibilité par la sécurité à la fléxicurité". XXXIII[ième] Rencontre IPSE [Institute for European Social Protection] "Social Protection: Safeguarding Employment Flexibility in Europe", European Parliament, Strasbourg, France (4 July 2008).

"Leiharbeit gleich Prekarität? Am Beispiel des französischen Rechts". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (10 September 2008).

"Une expérience de la vulnérabilité en Allemagne: la précarité dans l'emploi". Seminar: "Productions sociales, juridiques et politiques des situations de vulnérabilité", Maison des Sciences de l'Homme en Bretagne (MSHB), Rennes, France (26 September 2008).

"Le système de prévention des risques en Allemagne dans le contexte de l'emploi". International colloquium: "La santé au travail à l'epreuve des nouveaux risques", Université de Bretagne Sud, Lorient, France (9 October 2008).

"Soziale Situation in der Medien- und Unterhaltungsindustrie: La protection sociale des artistes et assimilés – soziale Sicherung der Künstler und Journalisten". AUDIENS – Le groupe de protection sociale de l'audivisuel, de la communication, de la presse et du spectacle, Brussels, Belgium (13 November 2008).

"L'intérêt général et la protection sociale". VII[ième] Colloque professionnel IPSE, [Institute for European Social Protection]: "L'intérêt général: mission affirmée des organismes mutualistes et paritaires de protection sociale", Paris, France (5 December 2008).

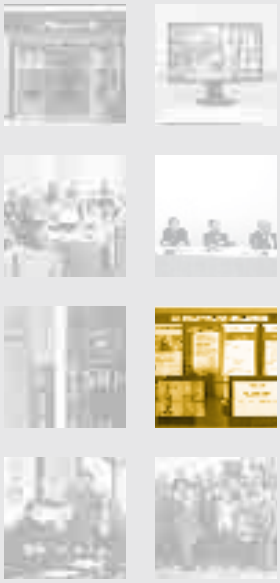
Chair and **presentation: "La protection sociale et les moyens juridiques de la réaliser en Europe"**. Colloquium: "L'Europe sociale", IPSE [Institute for European Social Protection], and Charles University in Prague, Czech Republic (3/4 April 2009).

"Herausforderungen an die betrieblichen Altersversorgungssysteme: vergleichender Ansatz". Conference: "Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?", Hans-Böckler-Stiftung, Max Planck Institute for Foreign and International Social Law, The Western Institute of Law and European Studies (IODE) of the University of Rennes I, and Friedrich-Ebert-Stiftung, Berlin (28 May 2009).

"L'économie sociale de marché et la protection sociale" and **introduction to the debates**: "Adaptation, continuité ou rupture?". XXXIV[ième] Rencontre IPSE [Institute for European Social Protection]: "Le devenir de la protection sociale complémentaire solidaire dans le marché des assurances de personnes", Folksam, Stockholm, Sweden (1 September 2009).

"L'assurance dépendance en Allemagne". Seminar: "La dépendance: Emergence et construction juridique d'un risque social en Europe", Montesquieu University – Bordeaux IV, Pessac, France (11 September 2009).

"Die deutsche Arbeitslosenversicherung". Information meeting: "Das deutsche Sozialversicherungssystem", Max Planck



Institute for Foreign and International Social Law, Munich (4 November 2009).

Matthias KNECHT

"Rechtsfragen der Dopingbekämpfung im Sport". School lecture within the scope of the General Meeting of the Max Planck Society, held at Sportgymnasium Dresden (26 June 2008).

"Recht im Nationalsozialismus". School lecture within the scope of the General Meeting of the Max Planck Society, held at Julius-Ambrosius-Hülße-Gymnasium, Dresden (26 June 2008).

"Von den Römischen Verträgen zum Reformvertrag von Lissabon – die Entwicklung des europäischen Rechts". School lecture within the scope of the General Meeting of the Max Planck Society, held at Julius-Ambrosius-Hülße-Gymnasium, Dresden (26 June 2008).

"Soziale Rechte vor dem Hintergrund des Reformvertrags – insbesondere Soziale Rechte der Charta der Grundrechte der Europäischen Union". International conference: "Soziale Rechte als Grundrechte", Hanns-Seidel-Stiftung and Faculty of Law of the University of Rijeka, Rijeka, Croatia (26 September 2008).

Peter A. KÖHLER

" 'Sanktionsabgaben' für Gemeinden im Bereich sozialer Dienste – ein wirksames Mittel zur schnellen Umsetzung von Gesetzen und Gerichtsurteilen im Spannungsfeld von kommunaler Selbstverwaltung und der Garantie der landesweiten Gleichheit der Lebensbedingungen". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (16 April 2008).

"Das Vorsorgeverhältnis – die richtige Frage für einen Rechtsvergleich?". Symposium: "Rechtsdogmatik und Rechtsvergleich im Sozialrecht", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (3 July 2008).

"Das Ende des schwedischen 'Volksheims'?". Research colloquium on the occasion of Gerhard A. Ritter's 80th birthday: "Der deutsche Sozialstaat: Konstruktion, Ausdifferenzierung und Weiterentwicklung", Department of History of Ludwig Maximilian University (LMU) Munich and Max Planck Institute for Foreign and International Social Law, Historisches Kolleg, Munich (24 April 2009).

"Frauen in Politik und Öffentlichkeit europäischer Länder – Schweden". Conference: "Frauen in Europa", Evangelische Akademie Tutzing (22 May 2009).

"Die finanzielle Sicherheit der betrieblichen Altersversorgung in Schweden: Vorbild für Europa?". Conference: "Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?", Hans-Böckler-Stiftung, Max Planck Institute for Foreign and International Social Law, The Western Institute of Law and European Studies (IODE) of the University of Rennes I, and Friedrich-Ebert-Stiftung, Berlin (28 May 2009).

"Das dänische Modell 'Flexicurity' ". Conference: "Spannungsverhältnis zwischen koordinierendem Europarecht und nationalem Sozialrecht", German Judicial Academy, Trier (2 June 2009).

"Kapitalgedeckte Altersvorsorge in Zeiten der Finanzkrise – das Beispiel Schweden". Conference: "Alterssicherung im internationalen Vergleich", Deutsche Rentenversicherung Bund, Erkner (15 October 2009).

"Versicherter Personenkreis in der deutschen Sozialversicherung". Information meeting: "Das deutsche Sozialversicherungssystem", Max Planck Institute for Foreign and International Social Law, Munich (2 November 2009).

Yasemin KÖRTEK

"Sozialhilfe und soziale Fürsorge in der Türkei". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (13 February 2008).

"Crime Victim Compensation and the Social Welfare System". International Conference for Victims Support, Ministry of Justice, Taiwan, and Association for Victims of Crime Taiwan, Taipei, Taiwan, R. O. C. (14 November 2008).

"Sozial(versicherungs)rechtliche Stellung türkischer Staatsangehöriger in Deutschland". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (14 January 2009).

"Soziales und Islam". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (22 July 2009).

Commentary on "Experiences with Micro-Insurance in the Health Sector in India". Workshop: "International Setting of Standards and Innovation in Social Protection in Low Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (16 October 2009).

"Die Einführung der allgemeinen Krankenversicherung in der Türkei und aktuelle Entwicklungen in der deutschen Krankenversicherung". Conference: "Deutsch-türkisches Sozialrecht und Erbrecht" in cooperation with Deutsch-Türkische Juristenvereinigung e.V. [German-Turkish Lawyers Association], Max Planck Institute for Foreign and International Social Law, Munich (30 October 2009).

Martin LANDAUER

"Zentralisierungstendenzen in der Qualitätssicherung in England". Conference: "Qualitätssicherung in der Pflege", Institute of Social Law and Social Policy in Europe of Christian Albrecht University (CAU) Kiel and Max Planck Institute for Foreign and International Social Law, Munich (12 June 2008).

"Zentralisierungstendenzen in der Qualitätssicherung in England". Meeting of the Board of Trustees, Max Planck Institute for Foreign and International Social Law, Munich (14 June 2008).

Bernd BARON VON MAYDELL

"Die demographische Entwicklung. Schicksal – Herausforderung – Chance?". Rotary Club Bonn-Rheinbrücke, Bonn (25 January 2008).

"Die Erfassung von Lebensqualität demenzkranker Menschen in ihrer rechtlichen Dimension". Congress: "Lebensqualität bei Demenzerkrankung", Institute of Gerontology (IfG), Heidelberg University (19 May 2008).

Laudatory speech in honour of Hans F. Zacher. Symposium: "Rechtsdogmatik und Rechtsvergleich im Sozialrecht", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (3 July 2008).

"Alter als Verteilungsnorm im Gesundheitswesen – juristische Aspekte". Philosophisches Seminar Prof. Quante, University of Cologne (11 July 2008).

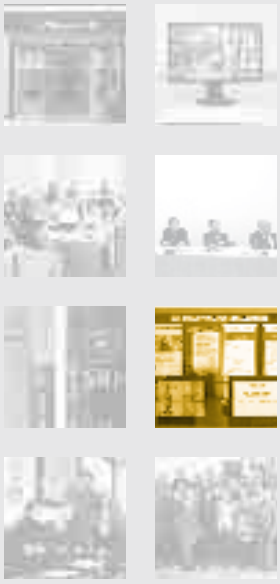
"Internationale Kooperationen des Max-Planck-Instituts für Sozialrecht". Alumni meeting, Max Planck Institute for Foreign and International Social Law, Munich (12 September 2008).

"Soziale Rechte als grundlegende Menschenrechte und das Völkerrecht". International conference: "Soziale Rechte als Grundrechte", Hanns-Seidel-Stiftung and Faculty of Law of the University of Rijeka, Rijeka, Croatia (26 September 2008).

"Reform der Finanzierung der Krankenversicherung in Deutschland". KEMPOREN (Umbrella organisation of the health insurance carriers in Japan), Cologne (14 October 2008).

"Familienpolitik als Gesellschaftspolitik". Conference: "Familienpolitik in Deutschland und Japan", University of Tsukuba, Japan (13 November 2008).

"Der Versorgungsausgleich. Grundstruktur, Weiterentwicklung, Reformen". Faculty of Law, Kyoto University, Japan (21 November 2008).



"Gewährleistung sozialer Grundrechte durch nationale, internationale und supranationale Rechtsetzung". Colloquium: "Gewährleistung und Schutz sozialer Grundrechte der Bürger", German Foundation for International Legal Cooperation (IRZ) and Legal Academy of the Ministry of Justice of the Russian Federation, St. Petersburg, Russian Federation (27 November 2008).

"Sozialpolitik in Japan – auch für Deutschland von Interesse?". Rotary Club Bonn-Rheinbrücke, Bonn (18 September 2009).

"Offene Methode der Koordinierung und Sozialrechtsvergleichung". International Scientific Jean Monnet Conference: "Open Methods of Coordination", Hanns-Seidel-Stiftung and University of Rijeka, Rijeka, Croatia (2 October 2009).

"Übergreifende sozialpolitische Entwicklungen seit dem Ende des 2. Weltkriegs". German-Japanese workshop: "Rückblicke und Ausblick auf die Sozialpolitik in Japan und Deutschland mit Schwerpunkt auf Krankenversicherung und Rentenversicherung", Tokyo, Japan (12 November 2009).

"Normierung sozialer Rechte durch nationales, internationales und supranationales Recht" and **"System der Garantien der sozialen Rechte: Garantien des Staates und Aufgabe der Zivilgesellschaft"**. Seminar: "Soziale Rechte der Bürger im 21. Jahrhundert", German Foundation for International Legal Cooperation (IRZ) and Institute of Legislation and Comparative Law under the Russian Federation Government, Moscow, Russian Federation (30 November 2009).

"KSPW und die Folgen". Symposium: "20 Jahre Mauerfall – arbeits- und sozialrechtliche Entwicklung", Zentrum für Unternehmensumstrukturierung und Unternehmenssanierung, Leipzig (11 December 2009).

Magdalena NEUEDER

"The Benefit Delivery Relationship for the Vocational Rehabilitation of Disabled Persons in Germany and in Switzerland". Workshop for Young Researchers, European Institute of Social Security, Graz (27 May 2008).

"Das Leistungserbringungsverhältnis bei der beruflichen Rehabilitation behinderter Menschen in Deutschland und der Schweiz". Doctoral seminar held by Deutscher Sozialrechtsverband e.V., Jena (21 June 2008).

"Selbstbestimmung und Gemeinwohlinteressen – die Erbringung von Leistungen zur beruflichen Rehabilitation von Menschen mit Behinderungen in Deutschland und der Schweiz (durch Dritte)". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (28 October 2009).

Lorena B. OSSIO

"Desarrollo institucional y dimensión social de la CAN". Conference: "Estudios constitucionales sobre integración política y económica. El caso de América Latina", Universitat Pompeu Fabra, Barcelona, Spain (24 November 2008).

"Rechtsgleichheit und Rechtspluralismus". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (21 April 2009).

"Mögliche Arbeitsstrategien für die Entwicklungszusammenarbeit im Themenfeld Rechtspluralismus". Strategy workshop on international law for the managers of the Rule of Law Programmes for Africa, Asia, Latin America, and Southeast Europe, Konrad-Adenauer-Stiftung, Berlin (28. April 2009).

"Mediation und Verwaltungsrechtsschutz in Lateinamerika". Symposium: "Verwaltungsrechtsschutz in Lateinamerika und Europa", German University of Administrative Sciences, Speyer (13 August 2009).

Commentary on "Social Security for the Informal Sector: The Case of Mexico" (Angel Guillermo Ruiz Moreno). Workshop: "International Setting of Standards and Innovation in Social Protection in Low

Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (15 October 2009).

"Flat Pension System in Bolivia". Workshop: "International Setting of Standards and Innovation in Social Protection in Low Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (16 October 2009).

Hans-Joachim REINHARD

"Ausländische Anwartschaften im Versorgungsausgleich". Darmstädter Kreis, Mainz (11 April 2008).

"Neuere Entwicklungen im spanischen Sozialrecht". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (9 July 2008).

"Versorgungsausgleich bei Auslandsberührung". Rechtsanwaltskammer München (22 October 2008).

"El Pacto de Toledo". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (11 March 2009).

"Erwerbstätigensicherung in Europa im Vergleich". Bayreuther Sozialrechtstage, 6th conference on social law, University of Bayreuth (26 March 2009).

"Betriebliche Alterssicherung in Deutschland und ihre finanzielle Absicherung – Planes y Fondos de Pensiones in Spanien". Conference: "Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?", Hans-Böckler-Stiftung, Max Planck Institute for Foreign and International Social Law, The Western Institute of Law and European Studies (IODE) of the University of Rennes I, and Friedrich-Ebert-Stiftung, Berlin (28 May 2009).

"Die Rechte der Arbeitnehmer in der betrieblichen Altersversorgung". Conference: "Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?", Hans-Böckler-Stiftung, Max Planck Institute for Foreign and International Social Law, The Western Institute of Law and European Studies (IODE) of the University of Rennes I, and Friedrich-Ebert-Stiftung, Berlin (29 May 2009).

"Asistencia sanitaria para immigrantes ilegales en Alemania", University of Seville, Spain (17 September 2009).

"Soziale Sicherung der Erwerbstätigen in Europa und ihre mögliche Fortentwicklung in Deutschland", Deutsche Rentenversicherung Bund, Erkner (22 September 2009).

"Das deutsche Sozialhilfesystem anhand von konkreten Fallbeispielen – Grundzüge des SGB II". Information meeting: "Das deutsche Sozialversicherungssystem", Max Planck Institute for Foreign and International Social Law, Munich (3 November 2009).

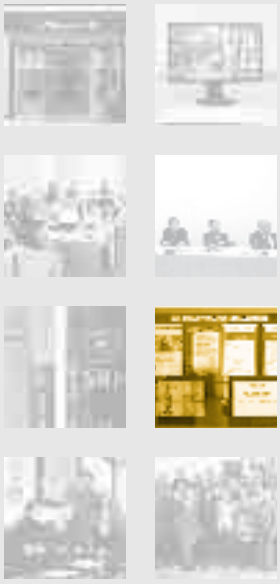
"Grundzüge des deutschen Sozialrechts". Lecture delivered to a delegation of Chinese judges from Nanjing (P. R. China), Fulda University of Applied Sciences, Fulda (21 December 2009).

Friso ROSS

"Das schweizerische Modell der gesetzlichen Unfallrente: Grundzüge, Rentenbemessung, Koordination". Workshop: "Reformbedarf bei der Versichertenrente aus der gesetzlichen Unfallversicherung", Deutscher Sozialgerichtstag e.V., Deutsche Rentenversicherung Braunschweig-Hannover, Laatzen (30 May 2008).

"Qualitätssicherung und Pflegegeld in Österreich". Conference: "Qualitätssicherung in der Pflege", Institute of Social Law and Social Policy in Europe of the Christian Albrecht University (CAU) Kiel and Max Planck Institute for Foreign and International Social Law, Munich (12 June 2008).

"Qualitätssicherung und Pflegegeld in Österreich". Meeting of the Board of Trustees, Max Planck Institute for Foreign and International Social Law, Munich (14 June 2008).



"Weiterentwicklung oder Reformstau? Die 1. Revision des schweizerischen Unfallversicherungsgesetzes". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (7 October 2008).

"Die Autonomie der freien Träger und Vereinbarungen nach § 8a Abs. 2 SGB VIII", Faculty of Social Studies, Erfurt University of Applied Sciences, Erfurt (9 December 2008).

"Die berufliche Vorsorge in der Schweiz und die Sicherstellung ihrer verfassungsrechtlichen Funktion". Conference: "Steuerung der betrieblichen Altersversorgung in Europa: garantierte Sicherheit?", Hans-Böckler-Stiftung, Max Planck Institute for Foreign and International Social Law, The Western Institute of Law and European Studies (IODE) of the University of Rennes I, and Friedrich-Ebert-Stiftung, Berlin (28 May 2009).

Markus SCHÖN

Systeme der Leistungserbringung individueller Hilfen und allgemeiner Förderung der Entwicklung junger Menschen in Deutschland und Österreich. Doctoral seminar held by Deutscher Sozialrechtsverband e.V., Jena (20 June 2008).

"Gelingende und leistungsfähige Jugendhilfe – ein Garant für die Zukunftsfähigkeit der Gesellschaft". Junior reseachers' workshop organised within the scope of the symposium "Familienpolitik in Deutschland und Japan", Japanese-German Center Berlin, University of Tsukuba and Max Planck Institute for Foreign and International Social Law under the patronage of the German Embassy in Tokyo, University of Tsukuba, Japan (13 November 2008).

"Die Finanzierung sozialer Dienstleistungen in Trägerschaft der Landeshauptstadt München und Europäisches Beihilfenrecht". Sozialpolitischer Diskurs München: "Partizipation – wir gestalten die soziale Stadt", Munich (23 November 2009).

Bernd SCHULTE

"Gesundheitsleistungen und Europäisches Gemeinschaftsrecht". General meeting of ECCLESIA Versicherung für soziale Einrichtungen, Detmold (21 January 2008).

"Die rechtlichen Rahmenbedingungen der offenen Koordinierungsmethode und ihr Einsatz in den unterschiedlichen Aktionsfeldern". Expert meeting: "Die Offene Methode der Koordinierung und das Europäische Sozialmodell: Perspektiven der Akteure und wissenschaftliche Diagnosen", Centre for Intercultural Communication and European Studies (CINTEUS), Department of Social and Cultural Studies of the University of Applied Sciences Fulda and Friedrich-Ebert-Stiftung, University of Applied Sciences Fulda (25 January 2008).

"EC Coordination of Social Security Systems – the New Regulation (EC) 883/04". Development seminar for members of ministries and social benefit institutions, European Commission, Bucharest, Romania (18 March 2008).

"Recent Developments in EU Labour and Social Security Law". Seminar for members of the Romanian Ministry of Labour and Social Solidarity, Hanns-Seidel-Stiftung, Mangalia, Romania (19/20 May 2008).

"Discrimination on Grounds of Race in Brazil, South Africa and Europe", Pontifical Catholic University of Porto Alegre, Brazil (27 May 2008).

"Recent Developments in Social Security Law in the Member States of the European Union", School for Management and Administration, Brasilia, Brazil (29 May 2008).

"Equal Treatment of Men and Women in European Community Law as an Example for European Anti-Discrimination Law", Foundation for Human Well-Being, Rio de Janeiro, Brazil (2 June 2008).

"Europäische Vorgaben für die Qualitätssicherung – vergleichende Per-

spektiven". Conference: "Qualitätssicherung in der Pflege", Institute of Social Law and Social Policy in Europe of Christian Albrecht University (CAU) Kiel and Max Planck Institute for Foreign and International Social Law, Munich (12 June 2008).

"Die Stellung der Wohlfahrtsverbände in Europa – Chancen und Risiken sozialer Dienstleistungserbringung". Expert conference on European policy: "Die Zukunft des Sozialen in Europa?", Paritätischer Gesamtverband e.V., Representation of the European Commission, Berlin (16 June 2008).

"Aktuelle Rechtsprechung des EuGH zum Europäischen koordinierenden Sozialrecht und zu verwandten Rechtsfragen". Austrian-German seminar: "Sozialrechtskoordination in der Europäischen Union" (trESS seminar 2008), Faculty of Law, University of Salzburg, Austria (30 June 2008).

"Die aktuelle Rechtsprechung des Europäischen Gerichtshofs zum Europäischen Koordinierenden Sozialrecht". German-Austrian seminar on EC coordination law, University of Salzburg, Austria (2 July 2008).

Commentary on the legal doctrine regarding the comparison of the German-British system and European law, on "Das Leistungsverhältnis in Förderungs- und Hilfesystemen (Karl-Jürgen Bieback): Die Entwicklung der Social Assistance im Vergleich zwischen Deutschland, Frankreich und dem Vereinigten Königreich. Von 'Welfare' zu 'Workfare', von den 'armen Armen' zu den 'berechtigten Armen' ". Symposium: "Rechtsdogmatik und Rechtsvergleich im Sozialrecht", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (3 July 2008).

"EG-Beihilfenkontrolle in der deutschen Krankenhausfinanzierung – ein Résumé". Workshop: "Krankenhausfinanzierung und Europäisches Beihilfenrecht", German Federal Ministry of Health, Berlin (26 August 2008).

Résumé. Annual meeting of the European Institute of Social Security (EISS): "50 Jahre nach dem Anfang – neue Regeln über die Koordination sozialer Sicherheit", Berlin (27 September 2008).

"Der Vorschlag für eine Richtlinie über Patientenrechte bei der grenzüberschreitenden Inanspruchnahme von Gesundheitsleistungen – eine rechtliche Analyse". Expert conference: "Chancen und Risiken einer EU-Richtlinie über die Ausübung der Patientenrechte bei der grenzüberschreitenden Gesundheitsversorgung", German Federal Ministry of Health, Berlin (29 September 2008).

"Erwerbsminderungsrenten in europäischen Nachbarländern". Workshop: "Reform der Erwerbsminderungsrente", The Confederation of German Trade Unions (DGB), Berlin (29 September 2008).

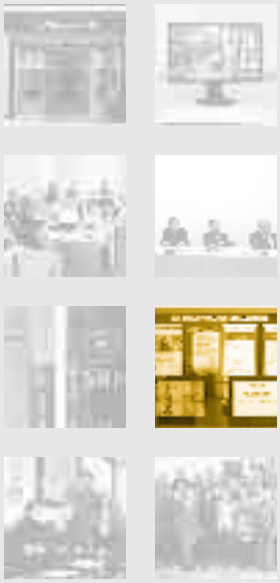
"50 Jahre Europäisches Koordinierungsrecht". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (12 November 2008).

"Die neue Europäische Sozialrechtskoordinierung: Die Verordnung (EG) Nr. 883/2004". Annual judges meeting of the North Rhine-Westphalian social courts, Justizakademie Nordrhein-Westfalen, Recklinghausen (17 November 2008).

"Patientenrechte und grenzüberschreitende Gesundheitsversorgung: Herausforderungen für die nationalen Gesundheitssysteme – zum Vorschlag der Europäischen Kommission für eine Richtlinie über Patientenrechte bei der grenzüberschreitenden Gesundheitsversorgung vom 2. Juli 2008". Annual meeting, Association Internationale de la Mutualité (AIM), Dresden (20 November 2008).

"Die Auswirkungen der Europäisierung auf die sozialen Dienste". 15th Forum, Caritas München: "Global engagiert – regional verwurzelt. Sozialwirtschaft im Aufbruch", Schloss Fürstenried, Munich (21 November 2008).

"Europäische Behindertenpolitik – Auswirkungen auf das deutsche Recht", Arbeitsgemeinschaft der Schwerbehindertenvertretungen bei den obersten Landesbehörden des Freistaates Bayern (AGSV) [Working group of the representa-



tive bodies for disabled persons of the responsible Bavarian state authorities], Bavarian State Ministry of Education, Munich (27 November 2008).

"Aktuelle Rechtsprechung des Europäischen Gerichtshofs zum Europäischen koordinierenden Sozialrecht und zu verwandten Rechtsfragen". International conference: "Aktuelle Entwicklungen der Freizügigkeit und sozialen Sicherheit", Academy of European Law (ERA), Trier (1 December 2008).

"Arbeitsmobilität in EU/EWR: Besteuerung bei Auslandstätigkeit – Telearbeit und Sozialversicherung – Aufenthalt von Familienmitgliedern aus Drittstaaten". Expert conference: "Arbeitsmobilität in Europa", European Job Network (EURES) and Raphaels-Werk, Würzburg (5 March 2009).

"Pflegeleistungen im Europäischen Recht". Workshop: "Pflegedienstleistungen im Europäischen Recht", Ministry of Labour, Health and Social Affairs of North Rhine-Westphalia, Düsseldorf (10 March 2009).

"Die Entsendung von Arbeitnehmern nach Europäischem Gemeinschaftsrecht – VO 1408/71 und VO 883/04". Conference: "Entsendung von Arbeitnehmern in der Europäischen Union – Probleme aus der sozialrechtlichen Praxis", Bavarian Higher Social Court and Max Planck Institute for Foreign and International Social Law, Munich (20 April 2009).

"Das 'europäische Sozialmodell' vor neuen Herausforderungen". Research colloquium on the occasion of Gerhard A. Ritter's 80th birthday: "Der deutsche Sozialstaat: Konstruktion, Ausdifferenzierung und Weiterentwicklung", Department of History of Ludwig Maximilian University (LMU) Munich and Max Planck Institute for Foreign and International Social Law, Historisches Kolleg, Munich (24 April 2009).

"Die soziale Sicherung Selbstständiger in den EU-Staaten". Workshop: "Sozialversicherung von Selbständigen", German Federal Ministry of Economics and Technology, Berlin (29 April 2009).

"Probleme der grenzüberschreitenden Erbringung und Inanspruchnahme von Gesundheitsleistungen in der Europäischen Union". International symposium: "Krankenversicherung und grenzüberschreitende Inanspruchnahme von Gesundheitsleistungen in Europa", Hessian Higher Social Court, Darmstadt (4 May 2009).

"Pflegepolitik im Wandel: Europäische Perspektiven". Lectures and discussions on "Pflegepolitik im Wandel", Gesellschaft für Sozialen Fortschritt e. V. [Association for Social Progress] and German Center of Gerontology (DZA), Deutsche Rentenversicherung Bund, Berlin (6 May 2009).

"The Reform of EC Coordination Law: Unemployment Benefits and Activation Measures. A Response to Professor Maximilian Fuchs". International conference on the reform of EC coordination law, Czech EU Presidency and European Commission, Prague, Czech Republic (10 May 2009).

"Wie sich Rechtsnormen lebensnah realisieren lassen. Grundrechte und deren Konkretion". Expert conference: "Rechte haben – Rechte verwirklichen", German Society for Social Psychiatry (DGSP), Vormundschaftsgerichtstag e.V. (VGT) and Faculty of Applied Social Sciences (F01) of Cologne University of Applied Sciences, Cologne (15 May 2009).

"Alterssicherung von Männern und Frauen im Europäischen Gemeinschaftsrecht und in der Rechtsprechung des Europäischen Gerichtshofes". Conference: "Frauen in Europa", Evangelische Akademie Tutzing (23 May 2009).

"Konzernentwicklung und Arbeitnehmerrechte in Europa". Fortbildungsforum für Betriebsräte im Konzern (FFB) 1/2009, FRAPORT AG/Frankfurt Airport Services Worldwide, Frankfurt am Main (4 June 2009).

Introduction. trESS seminar: "Die gemeinschaftsrechtliche Koordinierung der Systeme der sozialen Sicherheit in der Europäischen Union", German Federal Ministry of Health, Berlin (5 June 2009).

"Das Übereinkommen über die Rechte von Behinderten der Vereinten Nationen vom 6. Dezember 2006 – Herausforderungen für das deutsche Sozialrecht". Development seminar for members of the Bavarian State Ministry for Labour and Social Affairs, Family and Women, Munich (10 June 2009).

"Europäisches Wettbewerbsrecht und die sozialen Dienste". Expert conference: "Die Lage der sozialen Dienste in Deutschland im Kontext der aktuellen Europapolitik", Deutscher Verein für öffentliche und private Fürsorge e.V., Berlin (15 June 2009).

"Entwicklung und aktuelle Probleme der Alterssicherung in Europa". Comparative law symposium: "Rechtliche Probleme und Perspektiven der Alterssicherung in Deutschland, Europa und Japan", Doshisha University Law School, Kyoto, Japan (11 July 2009).

"Cross-Border Health Care for Pensioners in the European Union". Workshop: "Actual Problems of EC Coordination Law", Department of Social Law, Ghent University, Belgium (16 September 2009).

"Arbeitsmarktpolitische Instrumente und EU-Beihilfenproblematik". Annual meeting of Evangelischer Fachverband für Arbeit und soziale Integration e. V. (EFAS): "Beschäftigung schafft gesellschaftliche und soziale Stabilität. Ansätze für mehr öffentlich geförderte Beschäftigung", Rothenburg ob der Tauber (24 September 2009).

"Ein Blick über den Tellerrand: Aktivierung auf dem Arbeitsmarkt in Europa". Conference in honour of Prof. Dr. Karl-Jürgen Bieback: "Arbeitsmarktpolitik in der Krise – reicht die Hartz-Gesetzgebung?", German Federal Social Court, Bremen University and DAK Hamburg, Hamburg (28 September 2009).

Commentary on "Need for the Integration of Migrants into Social Security Systems: South Africa" (Ockert Dupper). Workshop: "International Setting of Standards and Innovation in Social Protection in Low Income Countries", Max Planck Institute for Foreign and International Social Law, Abtei Frauenwörth, Frauenchiemsee (15 October 2009).

"Inhalt und Grenzen externer Qualitätssicherung durch Gerichte und Betreuungsbehörden". Expert conference: "Qualitätssicherung in der rechtlichen Betreuung",Sozialreferat, City of Munich (22 October 2009).

"Erwerbsminderungsrenten in europäischen Nachbarländern". 7th European colloquium: "Wege zur Vermeidung von Erwerbsminderung", Deutsche Rentenversicherung Bund, Berlin (29 October 2009).

"Leistungen und Leistungsempfänger in der deutschen Sozialhilfe". Symposium: "Das deutsche Sozialversicherungssystem", Max Planck Institute for Foreign and International Social Law, Munich (3 November 2009).

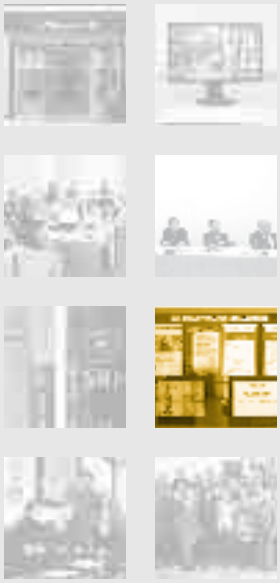
"Der EuGH: Entscheiden zwischen Grundfreiheiten und sozialen Rechten". Workshop: "Europäische Gesundheitspolitik als nationale Aufgabe", Workshop I of Deutsche Krankenversicherung (DKV), European Representation of German Social Insurance, Brussels (9 November 2009).

"Arbeitsmarkt und Europäisches Beihilfenrecht". Workshop: "Beschäftigung", Evangelische Kirche and Diakonisches Werk (DW) Baden-Württemberg, Stuttgart (10 November 2009).

"Soziale Arbeit – Freie Wohlfahrtspflege – Europäisches Beihilfenrecht. Auf der Suche nach praktischer Konkordanz". Sozialpolitischer Diskurs München [Social policy discourse]: "Partizipation – wir gestalten die soziale Stadt", Munich (23 November 2009).

"Introduction into the German Social Security System". Executive training programme: "A Forecast on the Development of the German Welfare State", Hertie School of Governance, Berlin (27 November 2009).

"Auf dem Weg zu mehr Gerechtigkeit: Soziale Inklusion in Deutschland und Europa". Conference: "Eine Frage der Gerechtigkeit. Verteilung im Sozialstaat", Evangelische Akademie Tutzing (13 December 2009).



Quirin Vergho

"Reform des portugiesischen Alterssicherungssystems". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (16 January 2008).

Ilona VILACLARA

"Das Leistungserbringungsverhältnis im Sozialrecht". Scientific Advisory Board meeting, Max Planck Institute for Foreign and International Social Law, Munich (25 April 2008).

"The Triangular Relations in the Provision of Social Services by Public Health Insurances. A Law Comparison of the Provision of Medical Aids and Devices in Germany and France". Workshop for Young Researchers, European Institute of Social Security, Graz, Austria (27 May 2008).

"Das Leistungserbringungsverhältnis im Recht der gesetzlichen Krankenversicherung – eine rechtsvergleichende Untersuchung der Versorgung mit medizinischen Sachmitteln in Deutschland und Frankreich". Doctoral seminar held by Deutscher Sozialrechtsverband e.V., Jena (21 June 2008).

Christina WALSER

"Qualitätssicherung und persönliches Budget in den Niederlanden". Conference: "Qualitätssicherung in der Pflege", Institute of Social Law and Social Policy in Europe of Christian Albrecht University (CAU) Kiel and Max Planck Institute for Foreign and International Social Law, Munich (12 June 2008).

"Qualitätssicherung und persönliches Budget in den Niederlanden". Meeting of the Board of Trustees, Max Planck Institute for Foreign and International Social Law, Munich (14 June 2008).

"Wettbewerb im niederländischen Krankenversicherungsmarkt". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (11 February 2009).

Nikola WILMAN

"10 Jahre National Institute for Health and Clinical Excellence (NICE)". Internal lecture, Max Planck Institute for Foreign and International Social Law, Munich (24 June 2009).

Hans F. ZACHER

Conluding words. Symposium: "Rechtsdogmatik und Rechtsvergleich im Sozialrecht", Max Planck Institute for Foreign and International Social Law, Kardinal-Wendel-Haus, Munich (4 July 2008).

"Entwicklung der Max-Planck-Gesellschaft". Alumni meeting, Max Planck Institute for Foreign and International Social Law, Munich (12 September 2008).

"Einschluss, Ausschluss und Öffnung im Wandel". Symposium: "Geschichte der Sozialpolitik in Deutschland seit 1945", German Federal Ministry of Labour and Social Affairs, Berlin (27 November 2008).

Keynote address. Symposium on the occasion of the 70th birthday of Prof. em. Dr. Manfred E. Streit: "Wirtschaftspolitik im institutionellen Umfeld", Max Planck Institute of Economics, Jena (26 February 2009).

Laudatory speech. Research colloquium on the occasion of Gerhard A. Ritter's 80th birthday: "Der deutsche Sozialstaat: Konstruktion, Ausdifferenzierung und Weiterentwicklung", Department of History of Ludwig Maximilian University (LMU) Munich and Max Planck Institute for Foreign and International Social Law, Historisches Kolleg, Munich (24 April 2009).

Welcome address (on behalf of the president). International research colloquium in honour of Prof. Dr. rer. nat. Ulrich Gösele, Max Planck Institute of Microstructure Physics, Halle (15 May 2009).

2. Lectures and Courses

Ulrich BECKER

Ludwig Maximilian University (LMU) Munich

WS 2007/2008: Lecture (focal subject 5): "Grundlagen des Sozialversicherungsrechts" (2 hrs.).

SS 2008: Public law seminar: "Sport und Recht" (with Dirk-Reiner Martens) (2 hrs.).

WS 2008/2009: Social law seminar (with Thorsten Kingreen) (2hrs.).

WS 2008/2009: Lecture (focal subject 5): "Grundlagen des Sozialversicherungsrechts" (2hrs.).

SS 2008: Public law seminar: "Sport und 60 Jahre Grundgesetz" (with Dirk-Reiner Martens) (2 hrs.).

WS 2009/2010: Social law seminar (with Thorsten Kingreen) (2hrs.).

WS 2009/2010: Lecture (focal subject 5): "Grundlagen des Sozialversicherungsrechts" (2hrs.).

Guest Lectures

24/25 January 2008: Seminar: "Social Security in an Aging Society", MaxNet Aging, Max Planck Institute for Demographic Research, Rostock.

9 June 2008: "Reformen sozialer Sicherungssysteme in Deutschland unter besonderer Berücksichtigung der Rentenversicherung", Faculty of Law Administration and Economics, University of Wroclaw, Poland.

28 August 2008: "Introduction to the EC Coordination of Social Security Systems", Centre for International and Comparative Labour and Social Security Law (CICLASS), Faculty of Law, University of Johannesburg, South Africa.

29 August 2008: "Legal Research", Young Researchers' Workshop, Centre for International and Comparative Labour and Social Security Law (CICLASS), Faculty of Law, University of Johannesburg, South Africa.

10 November 2008: "Modernisation of the German Social Security System", Faculty of Law, Department of Labour Law and Social Security Law, University of Ljubljana, Slovenia.

15 April 2009: "Social Security Law in the European Union", Law School, Koç University, Istanbul, Turkey.

1 September 2009: "Legal Research", Law School, University of Sydney, Australia.

10 September 2009: "The Development and Reform of Social Security: On the Background of Globalization", Renmin University, Beijing, P. R. China.

Barbara DARIMONT

1 December 2008: "Social Policy, Social Law and Developing Countries", University College Cork, School of Applied Social Studies, Cork, Ireland.

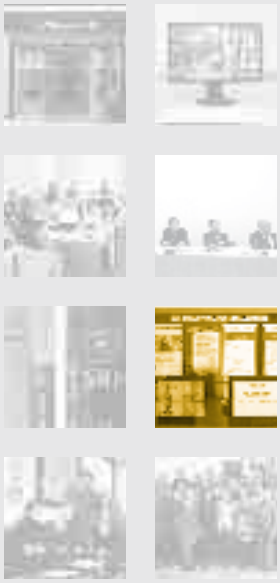
Otto KAUFMANN

Lectures and Seminars Delivered at Universities

2008/2009: Lecture: "Droit social communautaire – deutsches, französisches und europäisches Arbeits- und Sozialrecht" within the scope of "Master 2 Droit Social", Faculté de Droit, Robert Schuman University, Strasbourg, France.

2008/2009: Seminars: "Droit social communautaire – deutsches, französisches und europäisches Arbeits- und Sozialrecht", Labour Institute (IDT), Robert Schuman University, Strasbourg, France.

2008/2009: University training course: "La protection sociale – Comparaisons internationales, droit allemand", Institut de Gestion, IGR, Licence MOPS, University of Rennes I, France.



2008/2009: Training course for lawyers (Centre de formation des avocats – CRFPA) "Droit du travail – Arbeitsrecht", Faculté de Droit, Institut d'Etudes Judiciares, University of Poitiers, France.

2009/2010: Training course for lawyers (Centre de formation des avocats – CRFPA) "Droit du travail – Arbeitsrecht", Institut d'Etudes Judiciares, University of Poitiers, France.

2009/2010: Lecture: "Einführung in das Deutsche Recht", Faculté de Droit, University of Rennes I, France.

Professeur invité

2008/2009: Course Master 1: "Introduction au droit allemand – Einführung in das deutsche Recht", Faculté de Droit et de Sciences Politiques, Laboratoire d'Etude du Droit Public, University of Rennes I, France.

2009/2010: Lecture: "Droit social communautaire: Droit comparé", Faculté de Droit, University of Poitiers, France.

Other

14 February 2008: Development seminar: "Les bases du droit international. La coordination communautaire, du R 1408/71 au R 883/2004. L'accès aux soins à l'étranger", Société Mutuelle de l'Industrie (SMI), Paris, France.

8 December 2008: Rapporteur, thesis Hélène Gaftoniuc Cadinot-Mantion: "L'influence de la concurrence sur le droit social au sein de l'Union européenne", Faculté de Droit, University of Poitiers, France.

19 June 2009: Rapporteur, thesis Gilbert Dijols "Evolution de la santé et du travail vers une nouvelle épistémé: la société et le droit corrélativement revisités", University of Paris I Panthéon-Sorbonne, France.

Matthias KNECHT

WS 2007/2008: Lecture: "Sozialwirtschaftliche Gestaltungsformen im internationalen Rahmen", Fakultät Betriebs-, Sozial- und Tourismuswirtschaft, Kempten University of Applied Sciences (2 hrs.).

SS 2008: Lecture: "Internationale Sozialwirtschaft", Fakultät Betriebs-, Sozial- und Tourismuswirtschaft, Kempten University of Applied Sciences (2 hrs.).

WS 2008/2009: Lecture: "Recht I: Öffentliches Recht", Fakultät Betriebs-, Sozial- und Tourismuswirtschaft, Kempten University of Applied Sciences (2 hrs.).

SS 2009: Lecture: "Internationale Sozialwirtschaft", Fakultät Betriebs-, Sozial- und Tourismuswirtschaft, Kempten University of Applied Sciences (2 hrs.).

WS 2008/2009: Lecture: "Recht I: Öffentliches Recht", Fakultät Betriebs-, Sozial- und Tourismuswirtschaft, Kempten University of Applied Sciences (2 hrs.).

Lorena OSSIO

WS 2008/2009: Colloquium: "Derechos Sociales y Administración Pública en América Latina – Nivel Avanzado", German University of Administrative Sciences, Speyer.

VII. Grantees and Guests

1. Grantees

29 October 2007 – 29 March 2008: Dr. Tulia ACKSON, University of Dar es Salaam, Tanzania: "Coordination of Social Security in the Southern African Development Community (SADC) and the East African Community (EAC)".

11 December 2007 – 10 May 2008: Yue FU, University of Tsukuba, Japan: "The Effects and Challenges of the Integration Policy for Migrants in the EU – The German Experiences and the Harmonization at EU Level".

1 March 2008 – 31 August 2008: Justine LASSANSAA, Montesquieu University – Bordeaux IV, Pessac, France: "L'accès à une retraite décente en France et en Allemagne: l'exemple des femmes".

13 March 2008 – 31 August 2008: Zhiming LI, Renmin University of China, Beijing, P. R. China: "Social Insurance in Germany: Studies on the Ideas, Principles, and Autonomy Authority, as well as the Implications and Applications to China".

4 July 2008 – 4 August 2008: Dr. Peter HERRMANN, University College Cork, Ireland: "Personenbezogene Dienstleistungen und soziale Einrichtungen in vergleichender und europäischer Perspektive".

10 September 2008 – 28 February 2009: Dr. Quan LU, Renmin University of China, Beijing, P. R. China: "The Intergovernmental Relations in the Pension System of Germany".

1 March 2009 – 31 March 2010: Justine LASSANSAA, Montesquieu University – Bordeaux IV, Pessac, France, "Die Vereinbarkeit des Berufslebens und des Familienlebens in Frankreich und in Deutschland".

1 July 2009 – 31 August 2009: Nóra JAKAB, University of Miskolc, Hungary: "Beschäftigungsfähigkeit von geistig behinderten Menschen".

21 September 2009 – 25 September 2009: Prof. Eri KASAGI, Kyushu University, Fukuoka, Japan: "Private Complementary Medical Insurance – The Legal Control of Private Insurance".

2. Guests

1 April 2008 – 31 March 2009: Prof. Dr. Takeshi TSUCHIDA, Waseda University, Tokyo, Japan: "The Reform of Medical Insurance in Germany".

1 April 2008 – 31 August 2008: Dr. Matteo BORZAGA, Università degli Studi di Trento, Italy: "Arbeits- und sozialrechtliche Fragen der sogenannten 'lavoratori a progetto' in Italien und der arbeitnehmerähnlichen Personen in Deutschland".

12 June 2008 – 15 August 2008: Núria PUMAR BELTRAN, Universitat Pompeu Fabra, Barcelona, Spain: "Vereinbarkeit von Familie und Beruf".

16 June 2008 – 28 June 2008: Prof. Dr. Brahim BADAOUI, University of Mentouri, Constantine, Algeria: "Sozial- und Krankenversicherung in Algerien: Geschichte, aktuelle Situation, Entwicklung und Perspektiven".

10 September 2008 – 30 June 2009: Yifan YANG, Southwest University of Finance and Economics, Chongqing, P. R. China: "Social Security Reform for an Integrated Scheme in Urban and Rural China: A Historical and Comparative Institutional Analysis of Developing and Developed Countries".

1 July 2009 – 25 September 2009: Prof. Dr. Francis KESSLER, University Paris I, France: "Le droit social en Allemagne – L'année de l'elargissement et du réaménagement du rôle de l'État".

5 July 2009 – 7 August 2009: Dr. Albertjan TOLLENAAR, Rijksuniversiteit Groningen, Netherlands: "Public Governance in the Welfare State".

13 July 2009 – 21 August 2009: A. M. P. RIJPKEMA, Rijksuniversiteit Groningen, Netherlands: "Public Governance in the Welfare State".

1 August 2009 – 31 August 2009: Prof. Dr. Makoto ARAI, University of Tsukuba, Japan: "Entwicklungen des Betreuungsrechts in Europa".

11 August 2009 – 23 August 2009: Prof. Dr. Miyoko MOTOZAWA, University of Tsukuba, Japan: "Familienpolitik in der Gesellschaft".

1 September 2009 – 30 September 2009: Nóra JAKAB, University of Miskolc, Hungary: "Beschäftigungsfähigkeit von geistig behinderten Menschen".

1 September 2009 – 31 March 2010: Justine LASSANSAA, Montesquieu University – Bordeaux IV, Pessac, France: "L'accès à une retraite décente en France et en Allemagne: l'exemple des femmes".

1 September 2009 – 28 February 2010: Zhaiwen PENG, Renmin University of China, Beijing, P. R. China: "Decentralization and the Delivery of Healthcare Services – The German Experience and its Implication for China".

12 September 2009 – 27 September 2009: Dr. Edit MARSI, University of Debrecen, Hungary: "Sozialrechtliche Aspekte der Arzthaftung in der ungarischen Regelung".

28 September 2009 – 4 December 2009: Hongbo WANG, Chinese Academy of Social Sciences (CASS), Beijing, P. R. China: "German Social Policy".

2 October 2009 – 15 October 2009: Dr. Elsa Marina ÁLVAREZ GONZÁLEZ, University of Málaga, Spain: "European Observatory on Emigration of Elder People (Gerontomigrations)".

VIII. The Institute

1. Personalia

Scientific Members

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

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Dr. Eva Maria Hohnerlein
Dr. habil. (HDR) Otto Kaufmann
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Dr. Peter A. Köhler
Dr. Yasemin Körtek
Lorena Ossio (from 9/2008)
Prof. Dr. Hans-Joachim Reinhard
Dr. Friso Ross (until 6/2009)
Dr. Bernd Schulte
Dr. Christina Walser (until 2/2009)
Nikola Wilman, LL.M., M.Jur.
(Durham, UK) (from 8/2008)

Doctoral Candidates

Kyung A Choi (from 10/2008)
Nikola Friedrich (until 2/2009)
Viktória Fülöp (until 12/2008)
Martin Landauer, M.Jur. (Oxon)
(until 4/2009)
Dongmei Liu
Iris Meeßen (from 1/2008)
Janire Mimentza (until 12/2009)
Magdalena Neueder
Anna Karina Olechna (until 12/2009)
Michael Schlegelmilch (from 3/2008)
Markus Schön
Daniela Schweigler (from 11/2008)
Quirin Vergho (until 3/2008)
Ilona Vilaclara

Academic Assistants

Dr. Edda Blenk-Knocke
Martin Breuer (until 1/2009)
Olga Chesalina (from 2/2008)
Mathias Enzler (until 7/2008)
Felix Grollmann (3/2008 to 6/2008)
Dr. Ulrike Haerendel (until 2/2009)
Yasmin Holm (2/2009 to 3/2009)
Doreen Knöfel (until 5/2008)
Luise Lauerer (until 1/2009; from 11/2009)
Katharina Liebe (from 12/2008)
Thomas Neumair (from 7/2009)
Oxana Rimmer (from 5/2008)
Melanie Schmidt (until 5/2008)
Ingo Seitz (until 3/2009; from 8/2009)
Karen von Berg (from 5/2008)
Dr. Simone Gräfin von Hardenberg
(9/2008 to 8/2009)
Sandro Wendnagel (from 5/2009)

Student Assistants

Annemarie Aumann (from 5/2008)
Katharina Blepp (from 9/2009)
Anne Lilli Breitkreuz (from 11/2009)
Ellen Buschuew (from 11/2009)
Sandra Carter (5/2008 to 10/2008)
Alexandra Dietzen (from 11/2009)
Lea Grohmann (from 11/2009)
Felix Grollmann (1/2008 to 2/2008)
Yasmin Holm (1/2008 to 1/2009)
Katharina Huber (from 9/2008)
Lukasz Kokot
Phillip Lammers (7/2008 to 12/2008)
Katharina Liebe (until 11/2008)
Si Liu (from 3/2008)
Katharina Mayer (from 7/2008)
Sara Michalelis
Philine Nau (until 6/2008)
Thomas Neumair (until 6/2009)
Joan Mwende Nguku (from 5/2009)
Michelle Regiani Bertenbreiter (5/2008
to 12/2009)
Oxana Rimmer (until 4/2008)
Florian Ruhs (from 11/2008)
Gianna Schlichte (until 8/2009)
Miriam Schmid (until 9/2008)

Sarah Scholl (until 2/2009)
Sandrine Schwertler (from 11/2009)
Mathias Skironi (until 10/2008)
Stefan Stegner (from 5/2008)
Ralf Suhre (12/2008)
Eva Ulbrich (from 4/2008)
Markus Vordermayer (from 12/2009)
Sandro Wendnagel (11/2008 to 5/2009)

Library

Henning Frankenberger (Head)
Stefan Götz (from 7/2009)
Melanie Jackenkroll (until 5/2009)
Kathrin Merker (until 9/2008)
Alexandra Müller (from 9/2008)
Irina Neumann
Nadja Rudoba (from 8/2009)
Andrea Scalisi

Secretriats

Roswitha Ellwanger (until 3/2008)
Anna Fenzl (until 8/2008)
Andrea Feucht
Hertha Fricke
Mareike Kiy (from 5/2009)
Heike Wunderlich

Translation Services

Esther Ihle (until 6/2008)
Eva Lutz, M.A.
Christina McAllister, M.A. (from 11/2008)

Public Relations and Reporting

Dr. Monika Nißlein
(until 9/2008; from 2/2009)

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(jointly with the Max Planck Digital Library)

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Brigitte Albrecht
Annemarie Batzek
Adriana Exner (from 9/2008)
Marlin Freise (until 7/2009)
Annemarie Huber (from 8/2009)
Karl-Heinz Katzbach
Sylvia Klemm
Heidrun Kohnle-Koitzsch
Eva Kraatz
Christine Moser
Claudia Pethke
Werner Pfaffenzeller
Michael Reinert
Andreas Schmidt
Andrea Then (from 7/2009)

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(jointly with the Max Planck Digital Library)

Dr. Andreas Wohlschläger (Head, on leave since 9/2009)
Oliver Janitza
Axel Römmelmayer

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Councillor, German Association of Cities, Cologne

3. Institute Library

The library of the Max Planck Institute for Foreign and International Social Law offers a unique collection of specialised literature on German and foreign social law and the bordering fields of political and social sciences. In addition to the pertinent country-based social law literature, the library's holdings also cover European Community law, constitutional and administrative law, family and inheritance law, economic and public procurement law, consumer protection law, social insurance and labour law, as well as some very area-specific collective fields concerning individual research projects of the Institute's researchers. Basic literature on complementary fields of law is also available. The holdings comprise monographs, printed statutory material, periodicals, loose-leaf editions, as well as published and "grey" literature from over 100 countries. Also, access is provided to diverse specialist databases (JURIS, Beck-Online, Westlaw, LexisNexis, Source OECD, etc.) and other electronic research options (like VLib, EZB [Electronic Journals Library] or the eBooks Catalog of the Max Planck Society). Since 2008, the Institute's researchers have had ubiquitous remote access to these e-resources, except where the licence terms object to these conditions. Researchers thus have unlimited availability of the e-resources of the library and the Institute.

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, as well as other academically interested users.

The library is a reference library and is committed to the academic work of the Institute. The library ranks among the leading research libraries and has the largest holdings of social law literature worldwide.

The library team: Andrea Scalisi, Alexandra Müller, Nadja Rudoba, Stefan Götz, Henning Frankenberger and Irina Neumann (left to right).

It currently comprises more than 100,000 volumes, consisting of some 8,500 bound journals and continuing sets. Serial issues embrace 244 periodicals, 125 German and 119 foreign; 187 loose-leaf collections, 144 German and 43 foreign; and 13 newspapers, 5 German and 8 foreign. In the past two years, the library's stock of volumes increased by nearly 10,000. The number of acquisitions is on a par with the high level reached in the period of 2006 – 2007.

Publications by the Institute are collected by the library staff, who record and archive them and make them accessible on the central electronic eDoc-Server of the Max Planck Society. Along with the print archives and the Institute's in-house database AMALIE (here: publication module), an electronic repository is being set up which is to allow the members of the Institute to do literature search by means of a novel, comprehensive search tool using OCR [*Optical Character Recognition*). Moreover, a multimedia server will be provided making the use of electronic resources still more convenient.

During a general refurbishment, the basement stacks of the library were reorganised and provided with state-of-the-art technical equipment that is easy to use. Each of the stacks is now furnished with a research terminal, a photocopier with scan and e-mail functions, and a self-service terminal for borrowing literature. In addition to the entire stock, also all ordered media as well as works currently in processing can be searched via WebOPAC.

With the introduction of the RFID system to the library in the beginning of 2008 the usability of the library holdings has considerably improved. Researchers can borrow any media they need by using the self-service terminals in the reading room and the stacks. Borrowing is recorded electronically and registered on the users' personal accounts. Staff members will be able to tell from the catalogue entry whether the volume is located in the library or in a colleague's office. According to the library regulations, the entire Institute building counts as a reference library in the broader sense. Urgently required literature may, for example, be taken from a colleague's

The Radio Frequency Identification (RFID) shelf automatically identifies returned media.

office and booked onto the current user's personal account via the barcode label. For this purpose, every workplace is equipped with a personal hand-held scanner so that it is always possible to ascertain the precise location of every book. Unnecessary trips to the library and the stacks can therefore be avoided. Passing on loans to fellow staff by way of immediate reassignment to the current user's account is part of the library's comprehensive new RFID concept. Every Institute staff member is provided with a user card enabling him/her to borrow media via self-service registration. From spring 2010, these ID cards will also assure access control to the stacks. Literature that is no longer needed must be returned to the reading room and placed in the RFID shelf. The RFID shelf is an innovation that has been designed specifically for the particular requirements of the Institute library. Via integrated RFID antennae the shelf identifies the books placed in it and reassigns them to the library system as available items. The electronic catalogue immediately shows that the required item is now located on the library premises in the narrower sense.

In spring 2008, the adaptation to ExLibris Version 18 of the integrated Aleph 500 library system was completed. As expected, this alteration required less additional efforts than the previous conversion to Version 16. However, the conversion brought about some major changes with regard to the WebOPAC user interface. Google Book Search was implemented together with Yahoo Spell Check, with the latter correcting erroneous data entries, while the former refers to additional information about the required literature like tables of contents, extracts or cover images.

The library staff were also committed to the Aleph Digital Asset Management (ADAM) Project of the Max Planck Libraries, a tool that makes more and more ancillary information available in the catalogue on the media presented there.
First, the tables of contents of all commemorative publications available at the Institute were inserted in the system on the basis of catalogue enrichment. In a second step, tables of contents and other information will be entered electronically in the case of especially relevant new acquisitions. This makes it possible for the researchers at the Institute to start preparing for a subject and to read extracts at their workplaces, without having to visit the library.

The Aleph project of the MPI libraries has successfully developed further. Meanwhile 38 libraries use the Aleph software manufactured by ExLibris; another two institutes are planning to do so. The entire system and therefore also the libraries' catalogues are maintained and administered by the *Gesellschaft für wissenschaftliche Datenverarbeitung* on a central server in Göttingen. The various libraries have access to the specific adaptations designed by them to meet their particular needs. Via the VLib information portal (Virtual Library) the holdings of nearly all MPI libraries and many other key local resources can be accessed.
Literature not available in the Institute library can be borrowed from the Bavarian State Library or other libraries near the Institute, or can be quickly acquired for the Institute library. The purposeful and structured expansion of library holdings contributes to the rapid growth of the library. Urgently needed literature that is not otherwise available can be supplied by document delivery services.

The library's excellent collection of works has also attracted increasing interest from other academic circles. To meet the attendant needs, the number of guest workplaces available has been extended to a total of eleven.

Since the summer of 2008, the library has been able to offer two research terminals, two workstations with high quality scanners, which are actively used, and seven ordinary library workplaces. All workplaces are equipped with modern electronic data processing facilities.

In 2009, internet access was made available to guests in the library through a W-LAN hotspot. During the reporting period it was possible to welcome some 750 visitors to the library to conduct research – in addition to the longer-term guest researchers already working at the Institute. A special management system (a module of AMALIE, the internal database of the Institute) helps library guests to immediately retrieve their personal settings (like language selection, search results, etc.) when they revisit the library to continue their research. A multilingual function will soon provide Institute guests with user interfaces and keyboards in their native languages.

There have been some staff changes, and the library team has gained some new members. Particular mention must be made of the fact that, since September 2008 an apprenticeship training position has been offered at the library for the first time. After a regular training period of three years, the first trainee will complete her apprenticeship to be a qualified assistant in media and information services [FaMI – Fachangestellte/r für Medien- und Informationsdienste]. This requires additional commitment from the library staff. However, the experience gained during the training period has been so rewarding that we hope to continue this initiative in future.

Henning Frankenberger

4. The AMALIE Database Project

Like other research institutions, the Institute usually allocates data from various application fields to separate systems. Of course, there are software systems that allow for an integrated administration of personnel, inventory and bookkeeping, for example. An integration with other systems (like access control, borrowing media via RFID, e-mail accounts, etc.) usually requires a great number of staff as well as manual work and is hence associated with systematic data inconsistency. This is why data synchronisation between the individual systems is in some parts completely dispensed with. The individual systems must be administered separately, and this, in turn, involves high personnel expenditure.
From the technical perspective, integration cannot be effected, above all, due to the heterogeneous (not uniformly represented) database technologies. Furthermore, different database technologies go along with different application technologies. The AMALIE database project developed at the Institute strives for a complete integration of all relevant data irrespective of whether they belong to research activities or administrative operations. Meanwhile a number of IT-data, library data as well as publication data have been integrated into this system. Subject to their competence and their eligibility, Institute members can now administer these data autonomously. The website of the Institute and the list of publications drawn up for this report are largely based on information contained in AMALIE.

Oliver Janitza

5. 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)

Memberships of Steering Committees, Executive Boards, Research Associations

- Steering Committee, Gesellschaft für Versicherungswissenschaft und -gestaltung e.V. (GVG)
- Executive Board of the Social Insurance Division of Deutscher Verein für Versicherungswissenschaft
- Executive Board, Gesellschaft für Rechtsvergleichung
- Executive Board of the German Section of the International Society of Labour and Social Security Law (ISLSSL)
- Executive Board (vice president), Deutscher Sozialrechtsverband e.V.

Memberships of Advisory Boards, Boards of Trustees, Committees, Research Organisations

- Advisory Board of the research network on old age pensions (FNA), Deutsche Rentenversicherung Bund
- Research Advisory Board of the journal "ZFSH/SGB – Sozialrecht in Deutschland und Europa"
- Advisory Board, Bremen International Graduate School of Social Sciences (BIGSSS, the former GSSS), 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 yanjin)
- Board of Trustees of the Institute for Labour Law and Industrial Relations in the European Community (IAAEG)
- Board of Trustees, Institut für europäische Verfassungswissenschaften, FernUniversität Hagen
- Selection Committee of Alexander von Humboldt-Stiftung for the promotion of institute partnerships

Other Memberships

- Disciplinary Committee of the German Athletics Association (DLV)
- Selection Committee for the conferral of the dissertation award of Gesellschaft zur Förderung der sozialrechtlichen Forschung e.V.
- Arbitrator at the German Court of Arbitration for Sport of Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)

Barbara DARIMONT

- Preparatory Committee of the German Federal Ministry of Justice for the 9th symposium of the German-Chinese Dialogue on the Rule of Law: "Rentenversicherung im Rechtsstaat" [Pension insurance law in the constitutional state], Shenzhen, P. R. China (27 – 28 April 2009)

Henning FRANKENBERGER

- Executive Board (first deputy chairman), Arbeitsgemeinschaft der Spezialbibliotheken e.V. (AspB)
- Executive Board BID – Bibliothek & Information Deutschland
- Deputy chairman of the Vocational Training Committee of FaMI-Ausbildung in Bayern
- Deputy chairman of the Examination Board of FaMI-Ausbildung in Bayern

Otto KAUFMANN

- Working Group "Zukunft der Sozialpolitik", Hans-Böckler-Stiftung
- Expert Committee/Advisory Board on occupational pension schemes, Hans-Böckler-Stiftung
- Conseil Scientifique, Bulletin de Droit Comparé du Travail de la Securité Sociale
- Commission "Europe", Institut de la Protection Sociale Européenne (IPSE)
- Conseil d'Orientation, Institut de la Protection Sociale Européenne (IPSE)

Bernd BARON VON MAYDELL

- Independent member and chairman of the Board of Arbitration pursuant to § 129 (8) SGB V (registered pharmacies)
- Independent member of Bundesschiedsamt für Kassenzahnärztliche Versorgung
- Group of Consultants for the Application of Article 76 of the European Code of Social Security, Council of Europe
- Board of Trustees of the Foundation for Liberal Arts and Science, Domus Dorpatensis, Tartu, Estonia
- Editorial Advisory Board of DGUV-Kompakt
- Board of Trustees (chairman) of Thomas Berberich-Stiftung

Hans-Joachim REINHARD

- Research Advisory Board of the journal Revista Internacional de Direito Tributario

Bernd SCHULTE

- Expert Committee "Internationale Zusammenarbeit und europäische Integration" and Steering Committee of Deutscher Verein für öffentliche und private Fürsorge e.V.
- International Advisory Committee, The European Journal of Social Quality
- Editorial Board, European Journal of Social Security
- Editorial Board, Revue Belge de Securité Sociale (RBSS)
- Project Advisory Board "Fortentwicklung der gesetzlichen Rentenversicherung zu einer Erwerbstätigenversicherung. Konsequenzen bei Einkommensverteilung, Beitragssatz und Gesamtwirtschaft", Hans-Böckler-Stiftung
- Project Advisory Board "Erwerbstätigenversicherung – Splittung des Gesamteffekts auf einzelne Personengruppen", Hans-Böckler-Stiftung
- Reflection Group of the Economic and Social Council (CES), Luxembourg, on the "Analysis of the Implications of the Lisbon Treaty on Services of General Interest and Proposals for Implementation"

Hans F. ZACHER
(Selection)

- Honorary chairman of the Executive Board of Deutscher Sozialrechtsverband e.V.
- Member of the European Institute of Social Security
- Member of the Research Advisory Board "Geschichte der Sozialpolitik in Deutschland seit 1945", German Federal Ministry of Labour and Social Affairs and German Federal Archives (BArch)
- Member of the Research Advisory Board at the German Federal Ministry of Economics and Technology
- Bayerische Akademie der Wissenschaften [Bavarian Academy of Sciences and Humanities]
- Academia Europaea
- Member of the Pontifical Academy of Social Sciences
- Member of the International Board of the Weizmann Institute of Sciences

6. Collaborations

German Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, Berlin
Eva Maria WELSKOP-DEFFAA

and Eva-Maria HOHNERLEIN,
Edda BLENCK-KNOCKE

Changing Gender Role Models and Independent Income Security for Women in Europe
Starting in 2006, the project has continued to examine gender role models in the context of family law and social law (with a main focus on marital property law, maintenance law, social security for family caregivers, and women as the family's main or sole breadwinners).

Consejo Nacional de Ciencia y Técnica (CONICET), Buenos Aires
Laura PAUTASSI

and Eva Maria HOHNERLEIN

Social Rights, Social Policy and Social Indicators
The project looks into the function and use of social indicators in the context of social policy interventions and social rights (serving especially as a benchmark both in the control procedures regarding regional human rights pacts on economic, social and cultural rights through national reports, and in the context of supranational cooperation aiming at the modernisation of social security systems).

German University of Administrative Sciences, Speyer
Rainer PITSCHAS
Ludwig Maximilian University (LMU) Munich, Japanese Centre
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 worked out strategies to solve particular problems of old age disability. Focusing primarily on inclusion, it investigated the forms of disability in an aging society, the impacts of disability on 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).

Ghent University
Yves JORENS

and Bernd SCHULTE

Social Security for Migrant Workers
Reform of European Coordination Law: From Regulations (EEC) No. 1408/71 and No. 574/72 to Regulations (EC) No. 883/04 and No. 987/09.

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

Activation Strategies in Labour Market Policy – A Comparison
This international and interdisciplinary project investigated the labour market policy measures of "activation" with a special focus on the implementation of new approaches for the reintegration or initial integration of jobseekers or simply unemployed persons. 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.

International Institute for Social Law and Policy, Clarkson, Australia and Pretoria, South Africa
Marius OLIVIER

and Ulrich BECKER

Social Law and Social Policy in Southern Africa
Research is conducted 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.

Katholieke Universiteit Leuven, Research Unit European Social Security (RUESS)
Danny PIETERS, Paul SCHOUKENS

and Ulrich BECKER, Yasemin KÖRTEK, 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 co-operation partners and will be examined by the country correspondents with regard to the respective legal systems and incorporated into the country reports.

Pontifícia Universidade Católica de Porto Alegre
Ingo SARLET

and Ulrich BECKER, Lorena OSSIO

Right to Health
The project investigates the tense relationship between collective rights and individual rights from a comparative law perspective, taking Brazil and Columbia as examples. The basic question is whether a right to health care benefits does in fact exist and what roles are played by the courts, especially the constitutional courts, regarding its concretisation.

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 Society
MaxNetAging conducts interdisciplinary, transnational research into the causes, patterns, processes and consequences of human aging and is part of the comprehensive research activities carried out in this field by the Max Planck Society. MNARS grants scholarships and offers research opportunities at institutions participating in the project in order to assist junior researchers in dealing with the subject of human aging.

Max Planck Institute for European Legal History, Frankfurt am Main
Michael STOLLEIS
Stefan RUPPERT

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 German Empire. The project was carried out by Ulrike Haerendel, who left the Institute on 1 March 2009.

Renmin University of China,
Department of Social Security, Beijing
Gongcheng ZHENG

and Ulrich BECKER, Barbara DARIMONT

Basic Issues of Social Insurance – A Comparison between China and Germany
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 College Cork
Peter HERRMANN
European Centre for Social Welfare Policy and Research
Manfred HUBER

and Bernd SCHULTE

Social Services in Europe (including Health Care Services)
This study looks into the social services and health care services provided by the EU member states against the background of intensifying European integration until the Treaty of Lisbon came into effect in 2009.

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 both by social law experts and economists.

University of Utrecht
Frans PENNINGS

and Ulrich BECKER, Barbara DARIMONT

International Standard Setting and Innovation in Social Security (ISSISS)
The project investigates and discusses tensions between international social security standards and new approaches to national social security systems. Thus, new developments of social security in both industrialised states and developing countries are identified and analysed for their compatibility with international social standards. In case of incompatibility it must be investigated whether the problem can be solved by changing the existing international social security standards.

University of Tsukuba
Makoto ARAI

and Bernd SCHULTE

Adult Guardianship Law in an International Perspective
A comparative law project on Guardianship Law for Adult Persons in Germany, Japan, Austria, the United Kingdom, Canada and the United States, with current focus on Germany and Japan.

University of Tsukuba, Graduate School of Humanities and Social Sciences
Miyoko MOTOZAWA

and Bernd BARON VON MAYDELL, Eva Maria HOHNERLEIN, Markus SCHÖN

Family Policy in the Aging 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.

7. Legal Opinions

Ulrich BECKER

4 May 2009: Expert opinion for the hearing on a draft law on the suspension of the law governing the benefits for asylum seekers, German Bundestag, Committee on Labour and Social Affairs, Berlin.

Eva Maria HOHNERLEIN

20 March 2008: Expert opinion on the legal conditions for the development of intergenerational relations in an international comparison on behalf of AG LeoTech Alter, represented by the German Academy of Sciences Leopoldina, Halle.

Yasemin KÖRTEK

26 January 2009: Expert opinion for a public hearing of experts on a draft law relating to the extension of compensation for victims of violence and for persons who became victims of terrorism abroad, German Bundestag, Committee on Labour and Social Affairs, Berlin.

8. Alumni Meeting 2008

On 12 and 13 September 2008 the alumni of the Institute met for a second time to exchange information within the alumni circle or with the staff of the Institute in larger or smaller groups. This time a two-day event had been scheduled. On the first day the managing director, *Ulrich Becker*, reported on the Institute's most recent developments and current research projects while the former directors, *Bernd von Maydell* and *Hans F. Zacher*, in their reports focused on the Institute's international cooperation and the development of the Max Planck Society in general.

On the second day, former Institute members commented on their professional activities. *Maria Grienberger-Zingerle* elaborated on her work as a legal advisor within the ministerial administration and on the manifold opportunities that opened up to her there. *Angelika Schmid* reported on her activity as a judge at the Munich Social Court and on work/life balance in her profession. Finally *Alpay Hekimler* spoke about the sometimes difficult research practice at a Turkish university.

The alumni meeting concluded with a guided tour of the exhibition "city / building / plan (stadt / bau / plan) – 850 years of urban development in Munich".

Alumni Network

Building up an alumni network at the Institute offers colleagues, ex-colleagues and guest researchers the opportunity to correspond with one another and keep in touch with the Institute. In addition, the Institute is currently setting up an electronic platform which is to allow for a direct and worldwide transfer of information wherever the alumnus or alumna may be located.

Since as early as 1980 there has been a vivid exchange of knowledge and information due to the alumni who conducted research at the Institute and who have always felt associated with the research community. The alumni network provides ex-colleagues with the opportunity to get informed about current scientific events, conferences and publications of the Institute and creates a communication portal for them. Furthermore, dedicated alumni are planning to found an alumni association that will help to organize the alumni meetings of the Institute. For further information please turn to the alumni representative at the following e-mail address:
alumni-beauftragte@mpisoc.mpg.de.

Lorena Ossio/Christina Walser

Dr. Maria Grienberger-Zingerle (Bavarian State Ministry for Labour and Social Affairs, Family and Women) at the alumni meeting 2008.








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