

Conference Report: Minimum Standards in European Procedural Law

As reported earlier on this blog, Matthias Weller (EBS Law School) and Christoph Althammer (University of Regensburg) hosted a conference on “Minimum Standards in European Procedural Law” in Wiesbaden on November 14 and 15. Here is a brief report.

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The European Area of Justice has developed dynamically in the last years through the implementation of a wide range of different legal instruments, and a core technique of these instruments is mutual recognition. The number of Member States has also increased. This leads to the fundamental question whether and to what extent there should be a (larger) core of harmonized European procedural law in the future as one cornerstone for strengthening the mutual trust in the judicial systems of the Member States in order to better justify mutual recognition. European Procedural law can only be (further) developed if there is some sort of common ground (*Leitbild*) amongst the Member States in procedural issues. Once such common ground is sufficiently established, national procedural laws can be measured against this standard, and the more a national law or rule departs from the common ground, the more it is put under pressure for justification. This approach mirrors the test applied by the European Court of Human Rights when it comes to controlling national rules for which there is not yet a clear autonomous standard apparent from the guarantees under the European Convention on Human Rights.

The conference, organized by *Prof. Matthias Weller* (EBS University Wiesbaden) and *Prof. Christoph Althammer* (University of Regensburg) and hosted by the Research Center for Transnational Commercial Dispute Resolution (<http://www.ebs-tcdr.de/>) at the EBS Law School in Wiesbaden, dealt with a number of perspectives for and on such common ground.

The conference started with three reports on the German (*Prof. Christoph Althammer*), French (*Prof. Frédérique Ferrand*, University Jean Moulin, Lyon) and English legal system (*Prof. Matthias Weller*) as to their various forms of minimum standards and guiding principles. As a starting point, *Christoph Althammer* gave some insights into the German traditional procedural standards (*Prozessmaximen*) as classic legislative driven requirements and how they are derived from superior rules of law. *Frédérique Ferrand*, on the other hand, discussed the particular role of the Court of Cassation (*Cour de Cassation*) in the French civil procedure system. *Matthias Weller* highlighted the strong pressure on the parties for going into mediation rather than litigating their claims at state courts and in general punitive elements. As a conclusion of the first day of the conference, *Prof. Thomas Pfeiffer* (University of Heidelberg) presented a synthesis on the various national reports.

On the second day of the conference, *Prof. Michael Kubiciel* (University of Cologne) and *Prof. Andreas Glaser* (University of Zurich) provided insights in minimum standards in criminal procedural and administrative law as a point of comparison. These presentations were followed by two reports on areas of strongly Europeanized procedural rules, first by *Prof. Friedemann Kainer* (University of Mannheim) on European influences and standards in competition law, in particular in private enforcement litigation, and *Prof. Mary-Rose McGuire* (also University of Mannheim) on litigation in intellectual property law. It became clear that a strong "effet utile" from

European substantive law influences in many ways procedural law but sometimes generates specific solutions that may not count as a general European standard.

As a final presentation, *Prof. Burkhard Hess* (Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law) summarized the outcome of the various perspectives during the second day of the conference by making reference *inter alia* to the *acquis communautaire* and he provided a far-reaching perspective on the future of European procedural law.

After the various sessions there were intense debates amongst many prominent international civil procedure law experts in the audience. All presentations will be published with Mohr Siebeck. A follow-up event is being planned.