

# Report of the Jury for the Ius Commune Prize 2003

## 1. Members of the Jury

The jury has consisted of members of the three participating faculties in the Ius Commune Research School:

- Dr. J. Michael Milo (Utrecht University)
- Prof. dr. Jan M. Smits (Maastricht University) (Chairman)
- Prof. dr. Sophie Stijns (Catholic University of Leuven)
- Dr. Sander Jansen (Maastricht University)

With the selection of these members, it was guaranteed that expertise in both private law and public law was present in the Jury.

## 2. In General

The jury has received a total of 23 submissions for the Ius Commune Prize 2002. These were sent in by participants from the Netherlands, Belgium, Germany, Italy, Norway, the Czech Republic, Hungary, Canada and the United States. After having had previous contact by phone and email, the jury has made its decision in a meeting on 7 November 2003.

The jury has used the following criteria in making its decision:

1. The quality of the article. The contribution has to be of outstanding scholarly quality as to contents and the use of sources.
2. The original character of the contribution.
3. The contribution must have a direct link with the material scope of the ius commune research school. The degree to which the paper contributes to the debate on the feasibility, methodology and contents of a future ius commune Europaeum is taken into account. In addition, the contribution should make use of the comparative method.
4. The contribution justifies an encouragement of the author for further research in the field.

## 3. Assessment of the Submissions

The jury was impressed by the large amount of submissions and by their quality. The topics on which the papers were written ranged from classic comparative (private) law to European law, international law and private international law themes. However, this also implied that comparing the submissions with each other was not an easy job: many of the submitted papers were of high quality of their own. In deciding about the winning contributions, the Jury therefore laid special emphasis on the extent to which comparative law was an integrated part of the submission. Still, in doing so, the jury had to compare various high standing contributions.

The jury likes to mention several contributions as outstanding articles on the ius commune debate. The submission by Benoît Allemeersch (KU Leuven) on *Bemiddeling en verzoening in het burgerlijk proces* was found to be thorough overview on the possibilities and theoretical underpinning of mediation in several legal systems. Eric H. Reiter (McGill, Montreal) wrote an excellent article on *Imported Books, Imported Ideas: Reading European Jurisprudence in Mid-Nineteenth-Century Quebec*, a contribution that is full of details and shows the talent of the author, but that unfortunately was somewhat outside the scope of the ius commune debate.

The jury also wants to mention Felicitas M. Tadic (Utrecht), who submitted an article on *How harmonious can harmonisation be? A theoretical approach towards harmonization of (criminal) law*. This article is a beautiful theoretical contribution to the debate. Finally, the jury was struck by the original contribution of Marius Emberland on *The corporate veil in the jurisprudence of the European Court of Human Rights*, an article in which the comparative aspect could have been worked out in more detail.

#### **4. Winning and Honourably Mentioned Submissions**

In deciding who should be the winner of the prize, the jury has paid special attention to the extent to which comparative law was an integrated part of the submission. In view of this criterion in particular and on the basis of the other criteria mentioned sub 2, the following three contributions are qualified as the best:

- Mieke Olaerts, *De omzetting van vorderingen in aandelenkapitaal: een metamorfose in het licht van de tweede richtlijn*.
- Chantal Mak, *Personality Rights in the Dutch and German Law of Obligations*.
- Zdenek Kühn, *Central European Judges at the Onset of the European Enlargement: Overcoming the Concept of Limited Law?*

The jury has decided that the submissions by Chantal Mak and Zdenek Kühn are to be honourably mentioned. Mieke Olaerts wins the *Ius Commune Prize 2003*.

#### **Mieke Olaerts (Maastricht), De omzetting van vorderingen in aandelenkapitaal: een metamorfose in het licht van de tweede richtlijn**

This is a well-documented and excellent contribution to Dutch and comparative company law. Olaerts truly shows the virtues of comparative law by analysing a problem related to the second company law directive in a Dutch, Belgian and German perspective. The question how to characterise the conversion of debts and which interests should be taken into account here, is answered in a convincing way on the basis of technical arguments, comparative research and policy arguments. This is exactly the type of method the *Ius Commune Research School* wants to encourage. The contribution by Olaerts shows that she has a promising university career ahead of her. The jury advises the author to have the article translated into English.

#### **Chantal Mak (Amsterdam), Personality Rights in the Dutch and German Law of Obligations**

The Jury was impressed by the contribution of Chantal Mak. Her analysis of the interaction between human rights and private law is convincing and shows a big talent for research, not only in the area of private law but also in legal theory. Moreover, the topic of the article is innovative and important. However, the jury also found the ambitions she set herself in this article may have been too high: 14 pages is not enough to deal with the important questions Mak wants to discuss. This is not to be seen as criticism, but as encouragement: on basis of this article, the jury has no doubt that Mak is going to provide a highly valuable contribution to the theoretical and practical questions she raised in her submission.

**Zdenek Kühn (Prague/Ann Arbor, Michigan), Central European Judges at the Onset of the European Enlargement: Overcoming the Concept of Limited Law?**

This contribution is highly innovative. It describes methodological problems of post-communist legal reasoning. This is important from a scholarly point of view, but also from the viewpoint of the future enlargement of the European Union. Despite the 'sweeping' style of this article, the jury finds it important enough to give it a honourable mention.

The winning contribution will be available at the website of the School as of December 1st 2003.

Maastricht/Utrecht/Leuven, 7 November 2003