ABSTRACTS
2014 LEGAL RESEARCH NETWORK ACADEMIC CONFERENCE
BRISTOL 3-4 SEPTEMBER 2014

Bristol, Budapest (ELTE), Ghent, Göttingen, Groningen,
Lille – Nord de France, Turku and Uppsala

"The Interface of European and National Law"

SESSION ONE: 10.00 – 11.30 (Chair: Prof. Ken Oliphant, Bristol)

The Interface of European Law and Private Law

Prof. Attila Menyhárd (ELTE Budapest)

European law clearly influences the private law of the Member States not only on the level of consumer protection, environmental protection or protection of weaker parties but with setting limits for freedom of contract, preventing discrimination, protecting human dignity etc. it touches upon the structure and basic principles of private law too. From the point of view of private law, one of the most important characteristics of EU legislation is its fragmentation and another is that it is built up much more on compromises than on innovation and development. Process of legal harmonization is about finding compromises which typically does not present a progress. The basis of harmonization is built upon solutions already existing in national laws and the products of it are much more common denominators of dominating legal systems in Europe than improvement of existing law. The implementation of fragmented harmonized legislation does not fit into the logically closed system of private law which rests on provisions and regulation formulated on a highly abstract level. Private law is a system of open rules which allow great power to the courts and permit them to establish and to apply the proper guidelines to assess the cases. As a result of this system a great part of the private law is shaped by the courts, which apply a complex system of criteria to assess and decide the cases. Private law as a law in action is a flexible system where the decision of the court is a result of weighing different elements in each of the cases. Fundamental values („elements") have varying degree of influence on changing factual settings. The elements are to be considered in context of their specific interaction and the choice of attributing more or less weight to one of them has to be justified on the basis of balancing all interests involved. The leading guideline is equal treatment of equal situations. Thus, regulation as legal method does not fit into the structure of private law, where the most important decisions are the result of evaluations in the flexible system and application of standards and general clauses like good faith and fair dealing or reasonableness. A further problem is that values as the protection of weaker parties, the prohibition of discrimination with compulsory contracting or producers' liability were not new in private law, but the policy underlying them was completely different to that underlying similar rules of European law. The consequence of this is uncertainty in interpreting law which is increased by the fact that national law cannot be switched off in the course of deciding each case. This is clearly presented in company law where harmonization is presenting more questions than answers and where partial harmonization has created considerable uncertainty in interpreting national law.

Improving European private law through regulatory impact assessments

Dr Esther van Schagen (Groningen)

(coming soon)

The Double Horizontal Effect of Fundamental Rights between EU and National Law
Prof. Aurelia Colombi Ciacchi (Groningen)

Fundamental rights are often applied by courts in adjudicating private litigations at both the EU and the national level. This type of adjudication is the most frequent manifestation of the phenomenon known as 'horizontal effect of fundamental rights': the application of fundamental rights to determine the rights and duties of private parties in their mutual relationships. This paper proposes a new doctrine: the 'double indirect horizontal effect' of fundamental rights. This doctrine helps explain the impact of fundamental rights on private relationships in the European multi-level system of court adjudication (for example in the ECJ/CJEU cases *Promusicae, Scarlet Extended* and *SABAM v Netlog*). This paper pleads for a more frequent and more accurate horizontal application of EU fundamental rights at both the EU and the national level. It also encourages the Court of Justice to develop its jurisprudence towards a better consideration of the non-economic human interests protected by European fundamental rights.

Coffee break 11.30-12.00

SESSION TWO: 12.00-1.00 (Chair: Dr Sujitha Subramanian, Bristol)

The right to know one's donor: symbolic, instrumental or something in between?
(Ass Prof Heleen Weyers , Groningen)

Children's rights are taken very seriously in the European Union, as they are declared as a main theme of the Union (Commission 2006; Parliament 2009, Treaty of Lisbon 2009). This paper focuses on one of these rights: the right to know one's genetic origins.

Since the eighties, several European countries have adopted, inter alia Austria, Finland, the Netherlands, Sweden and the United Kingdom, the position that the right to know one's genetic origins implies that anonymous sperm donation in clinics are illegal. This paper compares three of these countries namely Austria, Sweden and the Netherlands. The first two countries are chosen because they adopted the laws many years ago. Therefore, they know children who have reached the age to use the right to know one's donor. The Netherlands is added since it is the only country, until now, in which a national research into the effectiveness of the law has been conducted.

The research question is: Does striving for the best interest of the child by making sperm registries mandatory, lead to the same kinds of laws and to the same effects in Austria, Sweden, and the Netherlands?

To answer this question, I will inquire into the goals of mandatory sperm donation registries and the adopted mechanisms. That latter means recording the way information on being conceived by artificial reproduction can be obtained, the possibilities to obtain more information on the donor, and the ways in which this information can be attained.

To determine the effectiveness of the law, I will answer questions as: Do parents inform their children on their conception? If not, are there other ways for the child to find this out? How many children feel the need to know something about the donor? What is it exactly that they want (e.g. knowing a name, having a picture, or ongoing contact)? Do the children succeed in accomplishing their goal? And according to whose judgment is this in their best interest?

My provisional answer is that these three legal systems, although inspired by the same right, namely the right to know one's genetic origins, differ considerably in the way they came into being, the rules that have been adopted and their effectiveness.

The Netherlands, UK, France, Belgium and Sweden: A Comparative study on smoking bans
Willem Bantema (Groningen)

For many years the European Union has tried to decrease the use of tobacco. This has led to the European Parliament, the European Council and the European Commission agreeing on a new policy. This new policy is aimed at reducing the selling and advertising of tobacco and at making smoking less attractive especially for young persons. Next to selling limitations, advertisement prohibitions, scary warnings and policies regarding preventing minors to start smoking, smoking bans have been coming into force to decrease the amount of smokers and to promote public health. In my PhD-project I examine the effects of one anti-smoking measure: the smoking bans in bars. The next step I would like to take is to widen this research into an international comparative one. The aim of this comparison is to research whether a European framework leads to harmonization in the different countries in this respect.

In my opinion this comparison should cover three themes: the law in the books, the law in context and the law in action. With respect to the law I will take a non-formalistic approach. I will not only look at legal texts but also at forms of self-regulation. With respect to the context of the law I take the position that rules are embedded in a historical, institutional, political, cultural and social environment, without which their meaning cannot be understood. With respect to the law in action I will study whether the law makes a difference in daily life, asking if people use the law and in what way do they use it.

I do not intend to carry out the whole comparison by myself but I will look for scholars in different countries who can write a country report. I hope some scholars of the legal network conference will join me. To make a start I will present some comparative findings: findings regarding differences in law in the UK, Belgium, France, the Netherlands and Sweden (first theme); findings on the support for smoking bans (second theme) and figures on compliance (third theme).
Lunch

SESSION THREE: 2.00-3.00 (Chair: Prof Tonia Novitz, Bristol)

From the "Democratic Deficit" to a "Democratic Surplus": Constructing Administrative Democracy in Europe
Dr Athanasios (Akis) Psygkas (Bristol)

When academics, policymakers, media commentators and citizens talk about a European Union "democratic deficit," they often miss part of the story. That conventional narrative paints the picture of an opaque center that assumes more and more executive powers while remaining distant from the European citizens. This paper argues instead that member-state regulatory processes operating under EU mandates or influence may have become more democratically accountable, not less. It shows that EU law creates entry points for stakeholder participation in the operation of national regulatory agencies; these avenues for public participation were formerly not available or institutionalized to this degree. In these cases, we see not a democratic deficit but a democratic surplus generated within the member states by EU law.

The paper discusses case studies detailing how EU law and policy have influenced telecommunications regulation in France, Greece, and the United Kingdom. It further assesses how accountability processes have operated on the ground by drawing on a compilation of more than 1,000 public consultations carried out by telecommunications regulatory agencies since the beginning of their operation, as well as coding some 8,000 consultation responses over a five-year period. My analysis is complemented by interviews with agency officials, industry and consumer

group representatives in Paris, Athens, Brussels, and London. I find increased participation by actors other than the traditional powerful firms, as well as significant transparency gains compared to the prior regime. Nonetheless, the three countries studied did not respond to EU pressures in an identical fashion. The paper compares how the same EU mandates have translated into divergent institutional practices as a result of different administrative traditions, bureaucratic cultures, and public law history in these countries. It also documents roadblocks and difficulties along the way. In some cases, adjustment to the new accountability paradigm was particularly challenging; in other cases, administrative agencies moved beyond what I call the "EU floor" (namely, the baseline participatory requirements imposed by the EU) to experiment with other accountability tools. These good governance rules and practices may, in turn, ultimately be generalized across the national administration or be diffused across borders in the EU.

Does a composite administration necessitate a composite constitution? The question of access to information

Prof. Jane Reichel (Uppsala)

Realising the Internal Market of the European Union (EU) has brought about an increasingly closer collaboration between European and national administrative organs. They work together in all phases of the regulatory circle, from policy-making, rule-making at EU level, implementation at national level, to decision-making in individual cases. The relationship between the organs involved is horizontal and non-hierarchal, and the developing cooperation has therefore been referred to as an integrated or composite administration.

There are two obstacles to openness. The lack of transparency that is inherent in this administrative environment may in itself render access to information difficult. Even though access to information is considered to be of fundamental value to the EU and to its Member States, the realisation of the right may be significantly hampered by the constitutional setting and the division of competence between the EU and its Member States.

Further, the division of competence may in itself lead to an uneven push towards secrecy. Whilst the sharing of administrative information within the Internal Market and the right to privacy in data protection is regulated in European secondary acts, access to public documents and access to files are governed in a distributed fashion, each legal order by itself. The Member States have not been willing to relinquish decision-making power in areas that are seen as particularly important. However, this one-sided defense of the national constitutional principles of access of public documents in the long run likely to be counterproductive. After all, it is often copies of the same documents that appear in EU organs and in national authorities. Member States can find themselves restricted in their ambitions to uphold a wide understanding of the right to access to information, if the ambition differs too much from that of others participants in the composite administration.

Coffee break 3.00-3.30

SESSION FOUR: 3.30-5.00 (Chair: Prof Paula Giliker, Bristol)

Harmonization of Private International Law in the EU and its Impact in Hungary

Prof. Miklós Király (ELTE Budapest)

Hungarian PIL Code

- Law Decree 13 of 1979
- Scope
- Chapters
- Impact of modern legal development

PIL and negotiations on accession
Amsterdam Treaty: new competences, new impetus
Regulations Rome I to IV and VI – on the applicable law -– an overview
Impact of EU accession: A three layer PIL system for contracts

- Hungarian PIL Code
- Rome Convention
- Rome I Regulation

Contracts – Hungarian PIL Code (before EU accession)
Rome Convention – 1980
Rome I Regulation – structure (Articles 3-4)
Contracts – Hungarian PIL Code (after the accession)
Change of the provisions on choice of law – Hungarian PIL
Difficulties - material scope of Rome I
Conclusion

The protection of collective labour conditions under the Transfer of Undertaking Directive

Isabelle Van Hiel (Ghent)

EU Directive 2001/23/EG[1] aims at the protection of the employees' rights in case of transfer of undertaking. It distinguishes between rights and obligations arising from a contract of employment or an employment relationship and terms and conditions agreed in collective agreements. The rights and obligations arising from a contract of employment or an employment relationship shall, pursuant to article 3 § 1 of the Directive, be transferred from the transferor to the transferee. For the terms and conditions agreed in collective agreements, article 3 § 3 of the Directive provides that the transferee shall continue to observe them on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement. However, § 3, unlike § 1, stipulates that Member States may limit the period for observing such terms and conditions with the proviso that it shall not be less than one year.

Starting from the idea that the wording of the article 3 § 3 of the Directive is intentionally left vague because of differences between the national systems, one cannot pass over the difficulties in inter-

[1] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, busi-nesses or parts of undertakings or businesses, *OJ* L 82, 22 May 2001, p. 16-20 (replaces Directive 77/187/EEG, modified by Directive 98/50/EG).

preting and applying this § 3. A first difficulty results from the relation between § 3 en § 1. In many national systems terms and conditions agreed in collective agreements will also be rights arising from a contract of employment or an employment relationship, which are protected by § 1. Similar problems arise regarding the clause "on the same terms applicable to the transferor under that agreement". While it may indicate that the terms and conditions agreed in collective agreements continue to keep this status (and will not be downgraded to terms and conditions of the contract of employment), it might also be read as an obligation to respect not only existing but even future terms and conditions.

Assuming that the Directive does not enlarge the employees' protection to this extent, is the national state allowed to do so? Article 8 of the Directive which states that the Directive shall not affect the right of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to employees or to promote or permit collective agreements or agreements between social partners more favourable to employees, might be an indication for this position. One may argue against such an expansion that it would affect employers' rights. Can they be disregarded? The Directive does not contain an explicit reference to employers' rights: preamble (3) only mentions employees' rights. Maybe the employer can rely on other instruments, like the EU Charter of Fundamental Rights[2], the ECHR[3] or the ESC[4]? On the other hand, would a comprehensive protection of employers' rights not jeopardise the employees' rights?

In my presentation I will discuss those questions and the consequences of their answers for the different national systems, taking into account the recent case law of the EU Court of Justice in *Werhof*[5] and *Parkwood*[6].

Climate change politics in Europe: Examining the EU's "MAC" Directive

Dr Sujitha Subramanian (Bristol)

The work-in-progress paper deals with the role of intellectual property law in the climate change debate and focuses in particular on the development, access and politics relating to patented green technologies. It examines the European Union Mobile Air Conditioning (MAC) Directive that aims to reduce greenhouse gas emission by regulating the use of refrigerant gases, and places this issue within the context of European Commission's potential antitrust proceeding against refrigerant gas companies for abuse of dominant position. In the first instance, the paper seeks to explore the potential to use competition legislation to deal with issues relating to misuse or abuse of intellectual property rights connected to refrigerant gas technology. Futhermore, the paper examines the reluctance of a German company to follow the MAC Directive that requires it to use a specific refrigerant gas in its automobiles, and the resulting dispute between Member States of the EU in this regard. The paper argues that the refrigerant gas politics and debate within the EU provides conclusions that are relevant to the issue of access to green technology patents at a global level. In this regard, the paper suggests that the international debate on access to green technologies must not be viewed from the perspective of an activist-discourse as being limited to the confines of territorial Global North-South configurations. Potential solutions to the debate on access could be explored by shifting the discussion longitudinally whereby the interest of the IP owner is squarely placed against those of the public.

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[2] Charter of Fundamental Rights of the European Union, *OJ* 18 December 2000, C 364, p. 1-22.

[3] Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.

[4] Revisited European Social Charter, Strasbourg, 3 May 1996.

[5] CoJEU 9 Mars 2006, C-499/04, *Hans Werhof v. Freeway Traffic Systems*.

[6] CoJEU 18 July 2013, C-426/11, *Mark Alemo-Herron and others v. Parkwood Leisure*.

SESSION FIVE: 9.30-11.00 (Chair: Dr Ardavan Arzandeh, Bristol)

Comparative Approach on Cross-Border Insolvency Proceedings Within the European Union

Dr Myriam Mailly (Lille)

The topic of my research provides a general overview of the application of the Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings in France and in England & Wales. This comparative research will particularly highlight how these countries have a different approach on cross-border insolvencies within the EU.

The rules contained in the EC Regulation No 1346/2000 are important as the text codifies how French and English courts exercise jurisdiction in respect of a debtor whose assets are dispersed in more than one Member State. The text also codifies how these courts must recognize any judgment opening insolvency proceedings handed down by a court of a EU Member State which has jurisdiction. In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings with cross-border effects, provisions on jurisdiction, recognition and applicable law are then contained in a Community law measure which is binding and directly applicable in all Member States.

As EU Member States have adopted a uniform set of provisions regarding EU crossborder insolvency matters since 2002, the application of the EC Regulation N° 1346/2000 should therefore promote the idea of a 'European legal area', although it is (still currently) not possible to introduce insolvency proceedings with universal scope (in other words, to unify national insolvency laws) as a result of widely differing substantive laws. However, my research will try to show that as the rules of jurisdiction set out in the EC Regulation establish only international jurisdiction, one of its key goals, namely the harmonisation of national insolvency laws within the EU, is likely to prove elusive as long as uncertainty continues to surround the interpretation of the European Union's concept of the debtor's '*centre of main interests*' (COMI). The aim of the EC Regulation is the unification of the procedural rules at EU level which should have indirectly led to the harmonisation of concepts in national insolvency laws. However, as national judges do not agree on the same interpretation of the EU concept of COMI, no indirect harmonisation has therefore occurred. My research will suggest that this concept needs to be reformulated on the occasion of the forthcoming reform of the EC Regulation No 1346/2000.

I will enlarge the comparative dimension of my research by examining whether it would be better first to clarify the meaning of the concepts which might make the harmonisation of laws possible and ensure efficiency in EU cross-border insolvency proceedings. The debate surrounding the COMI is mainly a question of national interpretations. The attempts to harmonise national insolvency laws raise important questions about the differences between legal cultures and mentalités which have attracted much attention in recent years from comparative lawyers. Do these cultural differences render unattainable the conceptual harmonisation which an effective body of transnational insolvency law seems to require? In face of the absence of conceptual harmonisation in EU cross-border insolvency matters, an unseemly competition between jurisdictions has arisen, preventing the emergence of an agreed European approach to these matters. States have sought to compete with their neighbours and to anticipate how they might apply insolvency laws. However, legitimate (legal or economic) expectations are widely different depending on whether the debtor is insolvent or not in the legal sense of the word. Far from generating efficient and effective insolvency laws, my research will suggest that national legislators seem to have forgotten what 'insolvency' means and what the legitimate legal expectations of interested parties might be. I will also explore how forum shopping – the process consisting whereby parties seek to their own advantage to select the legal system governing their transactions or businesses - re-entered the debate. If forum shopping basically excludes any automatic idea of fraud as more legal entities are engaged in cross-

border activities, the more they will have an effective choice of legal regime. Clearly, fraudulent forum shopping by companies operating within the EU Internal Market should be condemned.

In short, the European Law in a large extent has itself its responsibility in the increasing legal and judicial competition between national insolvency laws which created a form of a European market of insolvency laws. My research not only provides a great opportunity to examine and enlarge the EU debate on insolvency, it could not be more timely as the issues surrounding insolvency have attracted considerable attention as a result of the effects of the global financial crisis.

The challenging issue of institutional shareholder engagement in EU corporate law: perfectible solutions and perspectives for reform

Dr Konstantinos Sergakis (Bristol)

Shareholder engagement seems to be the ultimate means for steady improvement in corporate governance standards, as well as a powerful tool for refocusing short-term strategies towards more sustainable and viable business projects. Although EU institutions have endeavoured over the past decade to facilitate the exercise of a wide range of shareholder rights, the impact of such regulatory initiatives remains to be seen. This paper challenges the current EU regulatory approach by supporting the idea that, while it has touched upon important topics, such as companies or financial intermediaries, hoping that the investor community will make full use of its discretion and evaluation of these actors, it has avoided resolving another crucial issue, namely that of investor behaviour. In fact, institutional investors have been partially accused of apathy and contributing indirectly to the EU capital markets crisis. EU law thus needs to find new ways to nurture and maintain an effective willingness to engage in long-term dialogue with companies.

The current paper aims to critically analyse some important EU initiatives in the area of corporate governance which, although trying to achieve harmonisation in how corporate compliance is conceived and applied, still remain disconnected from the investors who are the ultimate beneficiaries of these efforts. Moreover, the paper will aim to project a possible new regulatory pathway affecting financial intermediation and institutional shareholder groups in order to propose an alternative that would have greater potential to drive much more responsible investor behaviour. **Part 1** will give a critical review of the current European developments in the area of investee companies and will indicate the problematic issues that have arisen from the use of the 'comply or explain' principle in corporate governance statements. **Part 2** will focus on the regulatory efforts to enhance shareholder activism and will critically assess the latest trends in the 'Stewardship' movement in the EU, analysing the UK Stewardship Code as a forerunner in the field and proposing its potential adoption at the EU level. **Part 3** will touch upon other EU regulatory initiatives that aim to better control some other types of financial intermediaries that are closely linked to shareholder activism, such as the proxy advisory industry, whose role requires it to be more transparent and more thoroughly examined. **Part 4** will defend a holistic conception of shareholder engagement with investee companies and the need to adopt an EU regulatory path of wider applicability that would link various market actors in an optimal way. **Part 5** will draw conclusions from the abovementioned issues and reflect upon future EU policies.

Matters of attribution. Are independent central banks independent according to European State aid law?

Dr Tamás Kende (ELTE Budapest)

Article 10 of the TFEU provides that „…any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between

Member States, be incompatible with the internal market." Based on the above, it is well established in European Union state aid law that five conditions need to be cumulatively met in order for an advantage provided by a state to a business as state aid: the aid

- originates from the state,
- is selective,
- constitute an advantage,
- distorts the competition and
- affects intra-community trade.

The practices of the European Commission and the European Court have clarified these criteria. Since the mid-1990s the European Commission has published a number of communications clarifying in particular the question of what constitutes an advantage. Some of these communications are extremely detailed and complex. Some of these communications have evolved into regulation, others have been further improved. The definition of an advantage has heated up around financial and other transactions between state entities and public service providers. The European Commission also published around 2006 a number of tentative position papers on the effect to intra-community trade. The Commission elaborated the position papers in an effort to find ways to decrease its workload by qualifying certain forms of advantage as aid that is below the EU-threshold.

Since the early 90s and the Maribel 2 and 3 cases we know that the criterion of selectivity is the least clear of all four criteria.

In the past few years attention has shifted to the meaning of the term „granted by a Member State or through State resources". This matter has already been examined since the Firma Sloman Neptun Schiffahrts AG v Seebetriebsrat Bodo Ziesemer der Sloman Neptun Schiffahrts AG, Stradust Marine and Pearle BV. cases in general. Since Ferring and other cases the attribution of the deeds of statutorily established funds has also been examined. Funding through state entities has also been recently examined.

Since 2008 and global recession a new and potentially detrimental development for state aid law has occurred. Formally independent central banks started to fund and restructure banks. In the UK the Bank of England has started programs such as "funding for lending" (FLS). The FLS is designed to boost lending to the real economy. Banks and building societies that increase lending to UK households and businesses are able to borrow more in the FLS, and do so at lower cost than those that scale back lending. Hungary's National Bank (Central Bank) has also started a program expressly referring back to FLS as its inspirator when launching its program called National Lending Program (Nemzeti Hitelprogram, - NHP). Hungary also has had tax incentives similar to FLS. FLS and NHP have involved very considerable amounts of money that was funneled through the central banks to the real economy.

The paper will deal with attribution to the state of financial advantages and in particular whether the actions and programs of independent central banks are attributable to the state or not.

SESSION SIX: 11.30-1.00 (Chair: Prof Paula Giliker, Bristol)

The requirements of EU law on the independence of national regulatory authorities and autonomous bodies, with special regards to the legal status of personnel

Dr János Fazekas (ELTE Budapest)

Regulatory authorities and autonomous bodies (or agencies) are special bodies of central government in the USA, Europe and other countries, which are mostly independent from the Government (or the Cabinet) and other state bodies. They usually exercise supervision over various fields, e. g. telecommunication, gas, electricity, banks sector, public health, consumer protection, media etc. Their main specialty is that they make and enforce regulation at once: they can adopt decrees, regulations, policies, recommendations and other norms, and on the other hand, they can impose fines, give licenses to companies, market actors and make other certain measures. Under the regulation of the European Union, the Member States must establish independent regulatory authorities, e. g. in the field of media.

The main reason for the regulatory authorities' emergence is the complexity of the economic and technical background of the concerned sectors. These sectors develop very rapidly, so regulatory and supervisory tasks need special knowledge and expertise, and therefore traditional sources of law (e. g. acts) are not appropriate legal instruments in these areas.

Although regulatory authorities and other independent agencies are parts of the executive branch, direct political impact from the Government and other state bodies must be driven back as well as other external interferences, mainly from the supervised sectors themselves.

The personnel of regulatory agencies and autonomous bodies have special legal status. The civil servants of these bodies need special professional background (degree or practice), e. g. in the field of telecommunications or other sectors. Their knowledge and public sector practices usually make them popular amongst private companies of the regulated market, so there is some kind of pervasion between the authorities and the concerned market actors (revolving door phenomenon). This situation needs obvious rules on the conflict of interests. Moreover, these civil servants are generally better paid than employees of average central bodies (e. g. ministries), which can cause dislike amongst the personnel of other central government bodies.

These agencies are commonly regulated by national law: not in the general Civil Service Act but in the particular Acts on the regulatory and autonomous bodies. Some regulations are even adopted by the head of the agency (e. g. rules on revolving door phenomenon). However, EU law also contains requirements in connection with the independence of agencies. These provisions are usually not too detailed and do not apply to the legal status of the personnel, but mainly in relation to the institutional autonomy of the agencies. Nevertheless, the above mentioned requirements can be derived from main principles of EU law and constitutionality. My presentation focuses on these principles and the methods by which the Member States' legislature tries to fulfill these requirements.

Has the Court of Justice overstepped its boundaries in the *VLK* case, putting the final nail in the coffin of procedural autonomy?

M.J. van Wolferen (Groningen)

Has the Court of Justice overstepped its boundaries in the *VLK* case, putting the final nail in the coffin of procedural autonomy? This paper aims to explore this thesis.

It is a popular academic statement: Procedural autonomy is dead. Proponents of this statement will cite the importance of the principles of effectiveness and equivalence and their effect on national legal orders. Indeed, these concepts have given rise to a large body of case law by the Court of Justice which has progressively added to the procedural law of the Member States. Interim Relief, State Liability, *Ex Officio* application of EU law, all seem logical extensions of these principles.

One part of national procedural law was however left relatively untarnished. The rules of standing were deemed by the Court to be a national affair. Effectiveness has been the only limit to standing requirements. When a party cannot reach a court she will not be able to invoke European Law at all. Yet the Court has not been clear on the extent to which it allows the particularities of Member States systems to interfere in this. That interference is due to the fact that one of the most used systems in the EU for determining standing in administrative procedures is one where a party needs to show she has an interest, either a right infringed or damage suffered, in relation to the act that she want to have annulled. Different Member States have different ways to limit the concepts of damages and rights.

This approach can be restrictive when it comes to ensuring the effectiveness of European Law. Member States often make use of the concept of the *Schutznorm*. In short, if the law invoked does not aim to protect the applicant's individualised interests, she will not be granted standing. It is clear that certain rights or principles of European Law are not easily individualised. The CJEU has however accepted this situation as long as it does not undermine the possibility to effectuate rights granted under EU law. Considering the sensitivity of this issue in certain States, a fragile balance appears to have been found. However, recently the CJEU used the Aarhus Convention to force Slovakia to change its standing regime in the *VLK* case. The reasoning behind the Court's power to do so is Byzantine. Although the rules regarding the EU's authority in mixed agreements are well known, the Union has authority for the areas where it has already taken action, standing requirements are decidedly not covered by EU action. Indeed, a proposed Directive to resolve this problem has failed be adopted. This paper aims to research the situation in which the CJEU positions itself as the enforcer of an international agreement, forcing Member States to relax their restrictions on standing, where this may not have been evident from the agreement itself. It also aims to discuss the effects of such a judgment on the procedural autonomy of Member States, even when its merits may be highly debatable.

EU law and national civil procedure law

Prof. Bart Krans (Groningen)

(coming soon)