

Course
in
Comparative Law and Legal Cultures
Spring 2009
Copenhagen/Lund

This particular course is directed towards Ph.D.-students/doctoral students engaged in comparative legal research and it is organized by teachers from the faculties of law at the University of Copenhagen and the University of Lund.

The course presupposes **preparation as well as active participation** by the students and their teachers. The course consists of three parts and runs over three separate rounds, including a two-days course staying the night at a hotel close to the Danish/Swedish border.

It is a **precondition** for admittance to the course that each Ph.D.-student/doctoral student delivers a half-page consisting of a description of the project and specifically its comparative aspects/problems – at the latest at the time of their enrollment.

Description

The aim of the course is to make the students better equipped to understand – and hence in their comparative work to take advantage of – the ongoing, at times very hectic, international scientific discourses about law and its legal as well as extra-legal sources which are inextricably bound up with the constant and rapid changes in law and society during an era of globalization.

The course will treat two fundamental issues: **the legal identities**, historically linked up to the well-known legal families, as of today situated in a national and international cross-current, and **the altered perspectives of legal knowledge** which are the consequences of the several post/late modern discourses about the world outlook on norms, traditions and cultures as being relevant, if not equal, sources of law, discourses which are further complicated by the transnational and transitional character of these new constructions of knowledge.

The pivot of the discussions during the course will thus be the emergence and the creation of 'new legal identities in new legal entities' as well as different constructions of ideas and theories, induced by the long-standing Kulturkampf in the area of comparative law. To legal systems originally contrived as causal, linear and

pyramidal today's legal reality is difficult and not least unpredictable. The chameleonic transitions of law and its interpretation, nationally as well as internationally, not only present themselves as paradoxes, but they actually do function through 'movable paradoxes', each demanding their own solution – and tomorrow a new one. Foreseeability seems to be replaced by justification.

Theoretically, to find one's right way, if only temporarily, necessitates to be endowed with an ability to read the building of **a mental 3D-terrain model** in which different pieces of knowledge about foreign law and foreign legal cultures, if only tentatively, are deposited as the work proceeds. Little by little different colours to the topographical details stemming from your increased learning about the legal area in question might be added.

The practical dilemma for students of comparative law in understanding and making use of foreign law is the following: is it really necessary intuitively 'to feel the other law', experiencing it from the inside only by living through all the cultural presuppositions as its national practitioners do? Or is it possible to perform an informed and enlightened analysis based on the presumption that legal systems are also normative constructions that can be thoroughly thought through and then contested in an open academic debate?

In the light of the erupted 'constitutional confusion' following the French and the Dutch rejection of the Treaty establishing a Constitution for Europe, although with an expected compensation through the ratification of the Lisbon Treaty and the solving of the so-called 'Irish problem' in 2010, the pressing issue is, how we as legal scholars theoretically and practically can handle 'the sliding constitutionalization' since WW2 of each and every European country and of 'The United Europe' comprising the members of the European Council and the European Union.

Adressed questions in this respect could be: What significance will this development have for our national legal cultures? What does the development mean to a possible common European constitutional culture? May such a culture exist without a constitution? Can one imagine a European federalism without a constitutional treaty? How and to what extent could the European values be policed by the European Court of Justice and/or the European Court of Human Rights? How will the contents of the values, e.g. the human dignity, be understood, interpreted and enforced by judges with a different linguistic, cultural and educational background in civil law, common law or the Nordic 'mélange à droit'? Is the judicial dialogue in Europe vertically and horizontally fact or fiction? In which way will the two European Courts in the exercise of their constitutional court-like functions be able to play in tune, if not key, with different member states' parliamentary and presidential traditions? What are the conditions of and the consequences for a national legal reception of community law and *acquis* in the areas of public law and private law respectively?

Language

Depending on the presence of students and/or teachers of a non-Nordic origin, the course language will be English – otherwise some sort of Nordic Interlingua!

Recommended literature:

Pierre Legrand and Roderick Munday (eds.): "**Comparative Legal Studies: Traditions and Transitions**", Cambridge University Press 2003

Jaakko Husa, Kimmo Nuotio, Heikki Pihlajamäki (eds.): "**Nordic Law - Between Tradition and Dynamism**", Intersentia, Antwerp - Oxford 2007

Anne Lise Kjær, Helle Krunke, Mikael Rask Madsen og Hanne Petersen (eds.): "**Paradoxes of European Legal Integration**", Ashgate 2008

Course sequence:

1. part:

The students are dispersed in 2-3 groups of mixed nationality. Among and by the students is appointed/elected a group leader, who will present at the seminar under part 2 a summary of the preliminary reflections and findings of the group based on the students' reading of relevant literature and their discussions of their individual research interests.

2. part:

A seminar of the duration of two full days with presentations and interventions by teachers from the two universities and prominent guest speakers from foreign universities as well as discussions in plenum.

3. part:

An offer to have a feed-back conversation with one of the permanent teachers of the course in order to receive "a second opinion" to the advice from the student's own tutor. This conversation will take place on the basis of a concrete draft to the comparative part of the dissertation, ideally as close as possible to the holding of the seminar under part 2 – at latest after half a year.