

This year is the first time that the Ius Commune Prize is awarded, so the Jury did therefore not really know what to expect. But if there *were* any expectations on our side, they were in any event much too low. We were really impressed by the quantity *and* the quality of the submissions. Let me tell you something about these submissions. We have received a total of 31 papers, sent in by participants from the following countries: Scotland, Rumania, France, Austria, England, Canada, Hungary, South-Africa, the United States and also from Belgium and the Netherlands. The subjects were of a very wide range. There were papers on classic comparative law subjects in the field of private law, but also on European law, on international law and on legal history. many of these papers were of an outstanding quality.

## **Report of the Jury for the Ius Commune Prize 2001**

### **1. Members of the Jury**

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

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

### **2. In General**

The jury has received a total of 31 submissions for the Ius Commune Prize. These were sent in by participants from the Netherlands, Belgium, Roumania, Scotland, England, France, Austria, Canada, Hungary, South Africa and the United States. Having had previous contact by phone and email, the jury has deliberated on 15 en 22 oktober 2001.

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 is impressed by the large amount of submissions and by their high quality. The jury had to make a selection out of 31 articles on a great variety of subjects. These subjects ranged from classic comparative law subjects in the field of private law to strictly European law, international law and private international law themes. This has made it difficult to compare the various submissions.

The jury was impressed by several contributions, in particular because of their high quality or innovative approach. Thus, the submission by Geert van Calster (Leuven) on *Export Restrictions - A Watershed for Article 30* should be praised because of its outstanding description of the applicable EC law in this area. Likewise, the jury was impressed by the forceful argument made by David Grimeaud (Maastricht) in his article on *The Integration of Environmental Concerns into EC Policies: A Genuine Policy Development?* and by the innovative character of Balázs Sahin-Tóth (Budapest)' *Abuse of Rights in the Recent Case Law of the European Court of Justice*. Definitely worth mentioning is also the article in the field of arbitral law by Tigran Kurdiyanyan (Warwick) on *Enforcement of International Arbitral Awards that were set aside in the State of Origin: Evolution of the French Law and the International Perspective*. At the dividing line of public law and private law is the lengthy article by Hanri Mostert (Stellenbosch). Her *The Constitutional State, the Social State and the Constitutional Property Clause; Observations on the translation of German constitutional principles into South African law and their treatment by the Judiciary* is a well-written account of an important development in South African law. Despite the unquestionable scientific merits of the above submissions, they fall short in using the comparative law method in comparison with the winning papers. The jury was also convinced of the merits of the submissions by Christoph Jeloschek and Roland Lohnert (Utrecht/Tilburg) on *Ein (neues) Recht der Dienstleistungen jenseits von Werk- und Dienstvertrag* and by Ian Sumner, *Going Dutch? A Comparative Analysis and Assessment of the Gradual Recognition of Homosexuality with Respect to The Netherlands and England and Wales*. Especially mentioned needs to be the work by Louis Marquis, *International Commercial Uniform Law: Towards a Progressive Consciousness*, which is an original and well-written account of the philosophical foundations of harmonized law in the field of commerce.

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

In deciding who should be the winner of the prize, the jury has paid special attention to the quality of the comparative law research undertaken in the submission. In view of this criterion in particular and on the basis of the criteria mentioned sub 2, the following contributions have been qualified as the best:

- Petra Foubert, Does pregnancy/maternity legislation create equal opportunities for women in the EC labor market? The European court of justice's interpretation of the EC pregnancy directive in Boyle and Lewen.
- Vincent Sagaert, Ongerechtvaardigde verrijking en gewijzigde omstandigheden.
- Harriët Schelhaas, Waarheen met het boetebeding in Europa? Een analyse van het Engelse, Schotse, Belgische en Nederlandse recht en de Principles of European Contract law.

The jury has decided that the submissions by Vincent Sagaert and Harriët Schelhaas should *ex aequo* win the Ius Commune Prize 2001. The submission by Petra Foubert is honourably mentioned.

#### **Vincent Sagaert, Ongerechtvaardigde verrijking en gewijzigde omstandigheden.**

This submission is to be praised for its excellent comparative account of an original subject in

the field of private law. The author has written an excellent account of the relationship between unjust enrichment and change of position in Belgian, Dutch, Swiss, German and common law. The comparison is no sinecure but is founded in general considerations and illustrated by examples. The author thus shows what are the true benefits of comparative law. There is no doubt that this submission deserves to win the prize. The mere fact that the author (despite his young age) has shown his ability in this field already more than once, does not mean that he does not deserve encouragement to proceed on the way he has embarked upon.

**Harriët Schelhaas, Waarheen met het boetebeding in Europa? Een analyse van het Engelse, Schotse, Belgische en Nederlandse recht en de Principles of European Contract law.**

The subject of penalty clauses is of great importance for legal practice; Ms. Schelhaas does the necessary groundwork for harmonizing this field of the law. She does so in an outstanding article that could be upheld to any young researcher in the field of European private law as an example of how comparative law research should be practiced. Comparing Belgian, Dutch, English and Scots law as well as the Principles of European Contract Law lead the author to well-founded conclusions as to the future of penalty clauses in Europe. The jury concludes that this article also deserves to win the prize.

**Petra Foubert, Does pregnancy/maternity legislation create equal opportunities for women in the EC labor market? The European court of justice's interpretation of the EC pregnancy directive in Boyle and Lewen.**

The research done by Mrs. Foubert is important and of high quality. She has related the EC pregnancy directive and its outcomes in legal practice to more general theoretical concepts of the law in a wonderful way. The often only 'technically' described EC law is thus tied to the foundations of the law in a well-written analysis of the case law of the European Court of Justice. Mrs. Foubert deserves to be honourably mentioned for this outstanding paper.

## **5. Final remarks**

According to the jury, the measure of encouragement should be reflected in the amount that the prize is worth. It therefore decides that both Mr. Sagaert and Mrs. Schelhaas win the prize *ex aequo*.

The jury finds it indispensable that the two winning contributions will be disseminated internationally. It therefore suggests that the two authors have their contributions translated into English. The jury calls upon the board of the Ius Commune Research School to make this possible. The two contributions should in any event be placed on the website of the School.

Maastricht/Utrecht/Leuven, 29 October 2001