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VIENNA WORKSHOP ON LEGAL SYSTEMS IN THE SOUTH-EASTERN EUROPEAN COUNTRIES AFTER THE END OF THE OTTOMAN REIGN

The Max Planck Institute in Frankfurt am Main and the University of Vienna (Department of Legal and Constitutional History) are developing a joint project which focuses on the formation of new legal systems in the South-eastern European countries after the end of the Ottoman rule. At the same time the project seeks to envisage the previous situation, that is to say the legal order within the Ottoman Empire itself. Shortly, the main focus of the project is transition from the Ottoman to the “national” legal systems. Aim of this project is to bring together a number of single case studies contained within the general topic. As the project is quite huge, it is divided into sections. The Vienna workshop was held on February 25–26, 2011 and got together a number of selected scholars from the region, together with the organizers, to expose their initial research goals and coordinate the efforts. Contributions are expected to consist of about 50 pages concerning the topic outlined, and to be finished until June 2012. They will be published in a separate edition by the Max Planck Institute.

The Max Planck Institute was represented at the workshop by one of the most prestigious German legal historians, Michael Stolleis, from the Johann Wolfgang Goethe-Universität Frankfurt am Main, who was nearly twenty years Director of the *Max-Planck-Institut für europäische Rechtsgeschichte* (1991–2009). Also, Zoran Pokrovac, professor at the University of Split Faculty of Law, took part as a coordinator of the project and associate of the Max Planck Institute. The session was presided by Thomas Simon from the University of Vienna Faculty of Law, who is a distinguished professor and authority in Comparative Constitu-

tional History, while the meeting was greeted by Wilhelm Brauner, Head of the Department of Legal and Constitutional History at the University of Vienna Faculty of Law.

As it was rightly observed within the project description, the region of Southeast Europe is characterised by an exceptional diversity of normative systems. The legal landscape of Southeast Europe shows a highly differentiated picture. Therefore, at this junction of Catholic West and Orthodox East – where Christianity and Islam meet at the same time – various directions of legal development can be found. Favoured by a very late transition to the “nation state” and a delayed modernisation towards Occidental capitalism, a colourful mosaic of effective norms of diverse origin, which often overlapped regionally, influencing each other, emerged in Southeast Europe. One of the focal points of this project lies in this “poly-normativity”. Spatial frames of reference will be primarily today’s Bosnia and Serbia, which were both part of the Ottoman Empire in the first half of the 19th century. After the decline of the Ottoman Empire South-eastern Europe enters a phase of accelerated change. The post-Ottoman era – marked by the division of the Balkans between emerging national states and the expanding Austro-Hungarian monarchy – is distinguished by a mingling of old and new law. The older layer of traditional norms is joined by another of newer norms from the west, consisting predominantly of law absorbed from Austria. Old and new law interfere with each other in complex ways. This change in the legal systems will be exemplified on the basis of the developments in Serbia and Bosnia-Herzegovina. In Serbia, this change ties into the birth of the nation state, while in Bosnia it is jumpstarted through the occupation and annexation of the country by Austria-Hungary.

The project combines question from Austrian legal history with those of the history of the Balkans, namely those of constitutional as well as civil and criminal law history. It covers two areas of questions: On one hand there is the Ottoman law effective in the aforementioned countries. A central aspect will be the “poly-normativity” of the legal system. What role did the Ottoman law play in these countries and how did it tie into the regional and local legal tradition? Another focus will be the transformation of legal systems in Serbia and Bosnia-Herzegovina after the end of Ottoman rule. These transformation processes shall be reconstructed in the field of constitutional and civil and criminal law. How do the process of enacting a constitution and the construction of a modern civil and criminal law work? What is the role of Austrian legal models? Under what circumstances does this “intended legal transfer” happen and in what way is this new law implemented and legitimized? In what way are the Austrian models adapted to the new context, into which they are implanted? And finally: Does the Ottoman heritage remain present in the post-Ottoman legal order?

The “Serbian team” selected by the Max Planck Institute has encompassed in Vienna Dragoljub Popović, former professor of the University of Belgrade Faculty of Law, now the Serbian judge at the European Court of Human Rights, who will research “Human Rights Developments (1835–51) – An Outline of Serbian Constitutional History”. Srđan Šarkić, professor of legal history from the University of Novi Sad Faculty of Law has selected “The beginnings of Serbian Constitutionality and Constitutional acts promulgated during the First Uprising 1804–1813” as his topic. Sima Avramović from the Faculty of Law in Belgrade, actually President of the University of Belgrade Council, researches “Serbian Civil Code of 1844 and Legal Transplants”, posing the question if is it more or less a copy of the Austrian Civil Code (ABGB), as usually perceived, or a bit more original modern codification, and announced a possibility to finish his translation of the Serbian Civil Code in English until June 2012, as he is working on it for many years. The remaining two Serbian professors are also coming from the University of Belgrade Faculty of Law: Žika Bujuklić will explore “The Doctrinary Reception of the Roman Law Tradition in Modern Serbia”, while Zoran Mirković will focus on “The Penal System in Serbia until Criminal Code of 1860”. Finally, the youngest member is an assistant from the University of Novi Sad Faculty of Law, Uroš Stanković, who will examine “Criminal Procedure in Serbia from 1815 to Code of Criminal Procedure (1865)”.

Scholars from Bosnia and Herzegovina will mainly focus upon issues of sharia law and its influence. Fikret Karcic, professor of Comparative Legal History and Islamic Law at the University of Sarajevo Faculty of Law, who acquired his PhD from the University of Belgrade Faculty of Law many years ago, will research “Survival of the Ottoman laws in post-Ottoman times in Bosnia and Herzegovina” Prof. Enes Durmišević from the same Faculty explores “Sharia courts in Bosnia and Hercegovina in the second half of the nineteenth century” with a review about the experts on sharia law in Bosnia and Herzegovina during the Austro-Hungarian rule. Also, Harun Karčić, who is basically an international lawyer and graduate researcher at the Bologna Roberto Ruffili Faculty of Political Science, deals with a bit more actual topic “Islamic norms in a secular state: the case of Bosnia and Herzegovina between 1946–1990”. Finally, assistant Mehmed Bečić from the University of Sarajevo Faculty of Law is working on “Private Law in Bosnia and Herzegovina under the Austro-Hungarian rule”.

Expected research results are multifaceted. This project can and will contribute more than a national legal history of Serbia and Bosnia and Herzegovina, which is not very well recognized to the wider academic and scholarly public in Europe. Nevertheless, among the first important goals the project aims is to get closer to them the historical background of legal development of those turbulent regions, contributing in

that way to a more proper understanding of actual challenges in their European integration processes. In addition, the project seeks to follow up on the discussions led primarily in comparative law, legal theory and legal anthropology on the problem of the adoption of foreign law in a culturally and structurally new context. The issue of legal transplants, diffusion of law and legal cultures is in the very core of the project, having much more general significance. In view of legal pluralism, the confined space of Southeast Europe has a lot in common with the new global “world society”. It is therefore a very promising task with, hopefully, expected fruitful results that the Max Plank Institute and the University of Vienna seek to achieve.