/ПРИКАЗИ

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Collin, Peter (Hrsg.) 2021. *Konfliktlösung im 19. und 20. Jahrhundert*. *Handbuch zu Geschichte der Konfliktlösung in Europa, Band 4* (GHrsg. David von Mayenburg). Berlin: Springer, XXXVI + 738.

The monumental *Handbuch zur Geschichte der Konfliktlösung in Europa* (Handbook of the history of dispute resolution in Europe) is composed of four volumes, covering Antiquity, the Middle Ages, the Early Modern period, and the 19th and 20th centuries, respectively. All four volumes were published in 2021, as the result of a State Offensive for the Development of Scientific and Economic Excellence (LOEWE) project under the same name, initiated in October 2013, under the general editorial guidance of David von Mayenburg, professor at the Goethe-Universität Frankfurt am Main Faculty of Law. While all four volumes, beyond any doubt, merit scholarly attention and can be recommended to any reader interested in the subject for a given period,[1] this review will focus on the fourth and final book, dealing with dispute resolution in the 19th and 20th centuries, i.e. in modern legal

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[1] The editors of the volume on Antiquity are Nadine Grotkamp and Anna Seelentag, for the Middle Ages – David von Mayenburg, and for the Early Modern period – Wim Decock. More information can be found at *https://www.springer.com/series/16478* (last accessed 25 February, 2022.) The volume reviewed here is the longest in the series, despite covering the shortest period, obviously reflecting the disproportional abundance of available source material on modern legal systems compared to earlier periods.

systems. The editor of the volume, Peter Collin, is a long-time affiliate of the Max Planck Institute for Legal History and Legal Theory, and an expert on the history of public law, including judicial history.

The book opens with a brief Introduction, printed in all four volumes, explaining the methodological framework of the project, such as the concept of dispute resolution (*Konfliktlösung*) and the history of its research throughout the 20th century, a multidisciplinary approach to the problem in the series and its focus on European legal systems, with a few exceptions.

The first chapter, written by Peter Collin, gives the reader a general overview of the matter in this particular volume, pointing out the dominance and specific profiling of state courts in the dispute resolution of this period, yet underlining the insufficient state of research in the history of procedural law in most European countries (Germany, England and France are mentioned as exceptions), not to mention alternative modes of dispute resolution. He points out other common factors for the period, such as the professionalisation of judges, the courts' focus on state-made written law, as opposed to other social norms (with some exceptions), but also the spread of certain models of judicial organisation and procedural law (from Napoleon's conquest on), leading to increased uniformity in the area. Access to justice gradually expanded for all layers of society, as did the procedures' general openness to the public, while features such as judicial privileges of the nobility (and, to a large extent, of churches and religious communities) were relegated to history. The 20th century led to an increased specialisation of courts in particular areas of law and types of conflicts (e.g. labour law), but also to a gradual internationalisation of justice and proliferation of arbitration. In the final section of his text, Collin asks whether we are witnesses to a process of erosion of state judiciary, gradually being pushed out by various alternative institutions. However, he points out that similar processes have existed and waxed and waned in many periods, and that their significance and supposed radical character have regularly been overestimated by contemporaries. He admits that while such procedures often do not come with all the guarantees of due process before state courts, this is not necessarily a flaw in itself, as long as parties willingly consent to it. However, since no strict line can be drawn between free and forced consent, the state should insist on at least a minimum of guarantees in such procedures. He finishes by stating that these two modes of dispute resolution tend to influence each other: ADR methods are becoming more professionalised, while state courts are under pressure to become more efficient. One might say that a convergent tendency is visible.

The first part of the book deals with fundaments and fundamental problems (*Grundlagen und Grundprobleme*) and it contains five papers. The first three chapters, fairly short, do cover some basic topics relevant for the entire scope of the book: Access to Justice, by Pia Letto-Vanamo – a comprehensible text that explains the concept well, although it might be argued that its dominant focus on the period after the concept itself was invented in the 1960s overlooks an important part of the analysis;[2] two chapters by Heinz Mohnhaupt discuss the importance of the principle of publicity (*Medien der Konfliktlösung*) and legal certainty/security (*Rechtssicherheit*), including the methods of publication of verdicts and proceedings (as well as laws and their commentaries). The fourth paper, on places where courts sit (*Gerichtsorte*), by Pierre Friedrich, deals with a subject that one probably would not name as one of the main issues in the history of judiciary, but which is nevertheless interesting and relevant (although focused on Germany), showing an evolution from the baroque buildings of the 18th century and the grand palaces of justice of the early 19th, full of symbolism, to the modern glass-and-steel buildings of the 20th century.

However, the final chapter in this part, "Justice in National Socialism" (*Justiz im Nationalsozialismus*), by Annemone Christians, stands out. While it does cover the issue of this very delicate question fairly well (even without quoting the often-indispensable Gustav Radbruch), its position in the introductory part of the book, which is devoted to basic problems, seems misplaced. As dark and widespread as the influence of National Socialism had been, placing the chapter about it among the core issues of the judiciary in 19th and 20th century Europe, alongside chapters dealing with very general themes, creates a skewered perspective. It probably would have been better had this chapter been placed in the part providing country overviews, either as part of the existing chapter on Germany, or as a separate one (this approach could be defended for several reasons) but still describing the issue in a single state under a single regime.

The second part, "Actors in Dispute Resolution" (*Akteure der Konfliktlösung*), contains only three chapters, but they all deal with highly important aspects of modern judiciary: gender and the position of women, the professionalization of judges, and lay participation in dispute resolution. The chapter "*Frauen vor und im Gericht*", by Marion Röwekamp, deals with the evolution of women's access to justice and entry into the legal profession, focusing on such issues as married women's capacity to appear

[2] A good example of a broader historical approach to the subject can be seen in Rhode 2004, 47–78.

as parties before courts and the obstacles faced and gradually overcome by women aiming to appear as judges, jurors and attorneys. The chapter can be commended for providing a broad overview of countries involved, although some were inevitably reduced to short examples. The chapter on professional judges (*Berufsrichter*), co-authored by Peter Collin, Lena Foljanty and Zeynep Yazici Caglar, gives a very engaging and enlightening overview of the patterns in a professional judge's career, from social background, education and recruitment (an important step, not to be overlooked!), social position and reputation, to issues of judicial independence and organisation. While it could be criticized for limiting itself to the already fairly well-studied countries – Germany, England and France – it is clear that the authors sacrificed breadth for depth. Finally, the chapter on laymen as judges (*Laien als Richter*), by Peter Collin, gives an (again geographically broader) overview of various forms of participation of laymen in the workings of both ordinary courts and specialised courts and arbitrations. Collin shows a particularly interesting tendency towards professionalisation of the latter, particularly in the case of commercial and trade arbitrations, leading to the fact that one can only speak of lay judging there in a very limited sense ("*hier kann man nur noch eingeschränkt von Laiengerichtsbarkeit sprechen*", 134).

The third part discusses dispute resolution in various forms of procedure and institutions (*Konfliktlösung in Verfahren und Institutionen*). Two chapters are devoted to civil procedure (in continental Europe and in England), two to criminal procedure (in continental Europe and, more broadly, in the Common Law legal space), two to international dispute resolution (international arbitration and international criminal procedure), and a final chapter to justice in the EU. Different approaches have been taken in the chapters, to good effect. The chapter on civil procedure in continental Europe (*Der Zivilprozess in Kontinentaleuropa*), by Dirk Heirbaut, is commendable for an overview of main influences – dividing the period into the French 19th century, the Austrian 20th and – with an inevitable question mark – the European 21st century. On the other hand, the chapter on criminal procedure (*Der kontinentaleuropäische Strafprozess*), by Martin Heger, adopts a different, but equally useful approach to the main subjects that can be traced throughout the period, from the codification of criminal procedure law and its relation to material criminal law, to various important procedural principles and issues in practice.

Some avoidance of difficult and delicate subjects can be noticed: for example, the chapter on international criminal courts (*Internationale Strafgerichtsbarkeit*), by Daniel Segesser, fails to mention – except perhaps in the most indirect manner – the controversies surrounding the International Criminal Tribunal for the former Yugoslavia and, to a lesser extent, Rwanda.

While the author's main area of expertise lies in the first half of the 20th century, and thus his unwillingness to address politically sensitive subjects may be understandable, it could still be argued that this leaves the reader with incomplete information. The chapter on EU justice (*Justiz im EU-Raum*), by Alexander Thiele, does discuss the European Court for Human Rights and its relation to the EU Court of Justice, but given the ECtHR's significance in the European space, perhaps it would have merited a separate chapter – despite the fact that it does not solve cases between individuals – as individual disputes are at the heart of its decisions.

The fourth part of the book is dedicated to fields in which disputes arise (*Konfliktfelder*), showcasing specific environments of dispute resolution other than the regular civil and criminal procedure. Some speak of specific areas of law where special dispute resolution is a novelty of the Modern age – administrative disputes, individual and collective labour disputes. There are also chapters on dispute resolution related to rural areas, commerce, the military, and family matters. The specificities of these areas are by no means new, but major changes occurred during in this period. The chapter on rural areas (*Konfliktlösung auf dem Lande*), by Anette Schlimm, is particularly interesting, as it shows the impact of the abolishment of patrimonial courts – after the French Revolution – on the possibilities for dispute resolution in rural communities, that had for a millennium been under a drastically different form of judiciary, but also property relations, compared to urban communities. In the chapter on disputes in the family (*Formelle und informelle Regelung familiärer Konflikte*), Margareth Lanzinger briefly but poignantly shows the evolution from the patriarch's dominance, which included the right to punish his wife and children, to the modern approach to mediation in family disputes, showing not only the advances in gender equality, but also excellently illustrating the impact of material law on the procedural.

Of particular interest is the chapter on dispute resolution in European colonies (*Konfliktlösung in europäischen Kolonialgebieten*), by Harald Sippel, as it places European colonial powers in the necessary imperialist context, which would have been painfully absent had the volume focused only on their internal laws – but also as it draws attention to insufficient research in this field so far.

The final four chapters in this part are devoted to dispute resolution pertaining to major religious communities: the Catholic Church, the Protestant churches, Jewish communities, and Islamic (Shariah) law. Two things stand out in this section. Firstly, while the first three chapters discuss dispute resolution *within* a given religious community, the last chapter (*Rechtskulturkonflikte mit dem islamischen Recht*), by Raja Sakrani, discusses

legal culture conflicts *with* Islamic law, drawing heavily on the concept of the Other,and showcasing the status of Muslim communities and Shariah tribunals in the UK, France, and Germany. The approach is highly appropriate, given the expansion of parallel normative systems and means of dispute resolution, and the author's conclusion that a peaceful and balanced solution currently seems like a utopia is justified. Secondly, there is no chapter on dispute resolution related to the Orthodox Church(es), despite the fact that the Orthodox Church is the second largest single Christian denomination in the world, numbering over 220 million believers worldwide, most of them in Eastern Europe (O'Brien and Palmer 2007, 22).

The fifth, final and longest part, encompassing more than half of the volume, is devoted to research on dispute resolution in individual countries (*Länderforschungsberichte*). The order of the chapters is curious – an approximate geographical clockwise circle, starting with Germany, going to the south and east of Europe, and then gradually back to the west and north, thus ending in Scandinavia. As described by Collin in the introductory chapter (5–6), since the European landscape changed during the analysed period, some concessions had to be made in that regard relating to countries that ceased to exist or were formed during this period. Thus, Russia and the Soviet Union, or the Ottoman Empire and Turkey are covered in the same chapters, while, on the other hand, the chapter on Yugoslavia doesn't span beyond that country's existence. Collin also points out that no authors could be found to cover Albania and Bulgaria, although he does refer to several existing works covering the latter.

However, the picture is not as simple as it might seem. The smallest European countries have been omitted as a matter of course: there is no mention of, say, Andorra, Liechtenstein, Monaco, or Cyprus. Countries that were created for the first time as the result of the recent break-ups of larger ones were not included by design, due to their short existence, which could be justified in principle, but the treatment is nevertheless inequal. The chapter on Russia/the Soviet Union seems understandable, as Russia had existed as an independent country long before the USSR was created (unlike other successor states), and it had a judiciary drastically different from the subsequent Soviet one. However, a similar logic could be applied to Yugoslavia, as Serbia and Montenegro existed as independent countries prior to the Yugoslav unification, yet their history of dispute resolution in the 19th and early 20th centuries is not covered. On the other hand, the Czech and Slovak lands had a similar history under Habsburg rule, prior to the formation of Czechoslovakia, yet the chapter concerns only Czechia and Czechoslovakia. All five Scandinavian countries have been placed together

in a single chapter by Robert Kessel, although the length of the bibliography seems to indicate that it was not for a lack of material on the individual countries. On the other hand, there is a chapter on Great Britain and Ireland until the latter's independence – and a separate, albeit short one, on independent Ireland.

The matter of selection aside, the chapters are well-written, and provide comprehensive basic information on both the judiciary and alternative methods of dispute resolution in the countries covered. This is of particular importance for those countries for which the literature on this issue in major Western European languages is scarce, as these chapters are bound to become default reference works for some time to come. This is especially the case for the chapters on Romania (by Manuel Gutan) and on Portugal (by Miguel Lopes Romão), where all the references are in the local languages, but very few references in English, German and French are also noticeable in many other chapters: on Czechoslovakia/Czechia (by Jaromír Tauchen), on Poland (by Danuta Janicka), on Italy (by Bernardo Sordi), on Spain (by Fernando Martínez-Pérez), and the chapter on Yugoslavia (by Zoran Mirković and Zoran Pokrovac). The latter is particularly noteworthy since there has been little recent research on the subjects of judicial procedure and arbitration during this period even in the ex-Yugoslav languages, and thus it can be viewed as a part of a wave of renewal of interest in the history of procedural law.[3] On the other hand, a fairly negative example can be apparent in the chapter on Russia/the Soviet Union, by Sandra Dahlke. Despite an impressively long bibliography – over 7 pages in small print – only a handful of the references are in Russian, mostly articles on narrow subjects, while recent major reference works, such as Kolokolov 2009 (and later editions) have not been included.

To summarize, the fourth volume of the *Handbuch zur Geschichte der Konfliktlösung* is an impressive reference work, containing many high-quality texts by experts in the field. As such, it is bound to be indispensable for some time, especially given the scarcity of literature on such subjects for many countries and specific issues. However, it is not without its flaws. Not counting some peculiarities in the structure of the chapters, the main flaw seems to be the West-Eurocentrism of its contents, as less attention is devoted to subjects relevant to Eastern European countries. These countries form the majority of those omitted from the individual country reports. Most of the chapters focusing on common themes in the first four parts of the

[3] Notable recent exceptions, i.e. other parts of the wave, being Ilić 2020 and Davinić 2020, two papers published in a book on the law of the "First Yugoslavia", edited by Begović and Mirković, published after the *Konfliktlösung* was finalised.

book omit any reference to Eastern Europe, and even where it would have been logical to devote a chapter to a relevantly Eastern European subject (the Orthodox Church) – this was not done.

Naturally, such an approach is not at all unusual for Western European publishing houses; quite to the contrary, the number of books claiming in their title to deal with a certain subject in Europe – while in fact covering solely *Western* Europe – is likely beyond count. However, it is a shame that a worthwhile publishing effort, which seemingly aimed for an egalitarian perspective and the coverage of the entire continent, has nevertheless fallen prey to some of the usual traps. Still, a step was taken in the right direction. May the next one take us even further.

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