

INTRODUCTION

It is my pleasure to introduce to you this first issue of the *Erasmus Law Review* (*ELR*), a peer-reviewed journal that seeks to foster independent critical scholarship relevant to the discipline of law. This first issue considers the theme of the evolving European *ordre public*. Subsequent issues will consider the following themes: ‘Multi- and interdisciplinarity: mere theory or just practice’, ‘Class, collective and group actions’, ‘Staying out of court’ and ‘The rule of law in the European Union’. *ELR* will be published electronically on a quarterly basis and is also available through the Social Science Research Network (SSRN). We of course hope that we may count you among our readership not only on this occasion but also in the future. We appreciate comments on the articles and on the journal as a whole. Comments can be sent to info@erasmuslawreview.nl.

We are glad to have found four distinguished scholars, including more experienced and younger individuals, who are willing to share with us their views on the developing European *ordre public* and the role of courts therein. What their contributions illustrates is that a dialogue between European courts: the European Court of Justice (ECJ), the European Court of Human Rights (ECHR) and national courts, definitely is in progress. That dialogue transpires through the case law of the various courts and finds its basis primarily in the substantive links that exist between European and national constitutional documents. The effect of this dialogue seems to be a certain degree of harmonisation of fundamental values at the European level.

At least four questions arise as a result of this harmonisation process. The first concerns the legitimacy of the ECJ and the ECHR in effecting such harmonisation; the second focuses on the role of fundamental values, especially human rights, in the process of developing the European *ordre public*; the third involves the role that state-specific contexts should play in this process; and the fourth deals with whether the significance of state-specific contexts should be determined at that level or at the European level. The authors provide different answers to these questions, as their assessments of the ECJ decision in *Omega* illustrates. However, the authors seem to agree that these are crucial questions that need to be debated in relationship to the developing European *ordre public*.

Roel de Lange asserts that comparative legal analysis should play an important role in understanding the multi-layered and multi-centred European constitutional order. This point is illustrated by his own contribution and by the comparative analyses of the role of human rights in European contract law contributed by Olha Cherednychenko and Chantal Mak. The different views presented in these latter two contributions also illustrate that more is at stake. Who should Europeans entrust with the further development of their European *ordre public*: the European legislator or European courts? As a matter of legal policy, Catherine Kessedjian suggests that in developing that order European institutions, including the ECJ, should leave more room for member states' cultures to express themselves, 'because public policy is the utmost symbol of culture' and 'the varied cultures of the different member states constitute a richness, not an impairment'. Moreover, she points to the link that may exist between the suppression of member states' cultures and anti-European sentiment.

Academic debate offers food for thought and in the process raises further questions; the contributions to this issue are no exception. One set of questions concerns the relationship between the ECJ and the ECHR in developing the European *ordre public*. Given that the states covered by these two courts do not overlap, how should their relationship be shaped? What are the limits of contextualisation as developed in the practice of the ECHR and illustrated in its decisions in *Refah Partisi v. Turkey* and *Ždanoka v. Latvia*? Will the ECJ, if a similar issue were to arise in a case before it, follow the route set out by the ECHR if, as in *Ždanoka v. Latvia*, a member state of the European Union is implicated in the case? These are just a few examples of the questions to which courts and academics are likely to turn their attention as the contours of a European *ordre public* are fleshed out. *ELR*, as a platform for independent critical scholarship as relevant to the discipline of law, will remain 'seized of the matter'.

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