Vorlesung / Course
Introduction to Comparative Law
Einführung in die Rechtsvergleichung

Winter term 2018-2019

http://www.eastlaw.uni-kiel.de
17.10.2018: Basic questions and structures of comparative law
24.10.2018  Structures and methods of comparative law
31.10.2018: Holiday
07.11.2018: Structures (cont’d). Methods of comparative law
14.11.2018: Methods (fin.). Legal families (overview)
21.11.2018: German legal family (deutscher Rechtskreis)
28.11.2018: French legal family
05.12.2018: Anglo-American legal family

12.12.2018: The legal systems in Northern and Eastern Europe
19.12.2018: Legal systems in Asia
09.01.2019: Religious laws, in particular Islamic law
16.01.2019: Contract law I (Vertragsrecht)
23.01.2019: Contract law II
30.01.2019: Torts law (Deliktsrecht)
06.02.2019: Property law (Sachenrecht)
13.02.2019: Civil procedure
Legal families based on a territorial approach?

- Nordic legal family
- Laws (legal families?) in Eastern Europe
- Laws (legal families?) in Asia
Northern Europe

„Scandinavia“

**Denmark**: 5.2 mio. inh., 43.000 km², capital Copenhagen (1.6 mio inh.), constitutional monarchy.

**Finland**: 5.1 mio. inh., 338.000 km², capital Helsinki (560.000 inh.), republic (independence since 1918, from Russia)

**Iceland**: 329.000 inh., 102 km², capital Reykjavik, republic (since 1944, before part of Denmark).

**Norway**: 4.6 mio. inh., 338.000 km², capital Oslo (540.000 inh.), constitutional monarchy (1814 from Denmark to Sweden, 1905 independence from Sweden).

**Sweden**: 8.8 million inh., 449.000 km², capital Stockholm (770.000 inh.), constitutional monarchy.
Nordic laws

• Distinguish subregions Western and Eastern Scandinavia: Denmark/Norway, Sweden/Finland

• Constitutions: constitutional monarchies in Denmark, Norway, Sweden, republican system in Finland and Iceland. Norway not a EU member, but in the EEA. Particular position of Denmark in the EU.

• Legal history: Danske Lov 1683, Sveriges Rikes Lag 1734

• Texts of legislation and (some) court practice http://www.retsinfo.dk, http://www.notisum.se. „KARNOV“.

• Ring/Olsen-Ring, Einführung in das skandinav. Recht (1999)

• Nordisk Tidsskrift for international Ret, Scandinavian Studies in Law
What is Scandinavian Law?
Concept, Characteristics, Future

Ulf Bernitz

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Nordic laws – some characteristics

• In some aspects between English and Continental European law:
  - No overall codification of civil law, but fundamental specific statutes.
  - No formal doctrine of precedent, but important practical relevance of case law.
  - Great relevance given to analogies.

• Nordic cooperation also in the field of law: Nordic Council (since 1951). Treaties, model laws, informal cooperation made easy by similarities of language and social structures.

• See also: Council of Baltic Sea States (CBSS) and „Northern Dimension“
Anders Sandøe Ørsted (21 December 1778 – 1 May 1860)
He is considered one of the most important jurists in 19th century Danish legal history. He was a pioneer of connecting jurisprudence and practice, and both as a judge and as an author, he successfully worked on making practice the foundation of legislation.
Throughout his career Ørsted was a prolific writer. Among other things he wrote on Kantian and Hegelian philosophy, on Danish and Norwegian law, on Scandinavian politics (1857) and left an autobiography (1856). He was also the editor of several journals, most notable Juridisk Arkiv (1804-1812), Nyt Juridisk Arkiv (1812-1830) and Juridisk Tidsskrift (1820-1840)
Alf Niels Christian Ross (June 10, 1899 – August 17, 1979) was a Danish legal and moral philosopher and scholar of international law. He is best known as one of the leading exponents of Scandinavian Legal Realism. Born in Copenhagen, Alf Ross graduated from high school in 1917. He studied law, graduating in 1922. He consequently worked in a barrister’s office. In 1923, he commenced a study tour, which would last for two and a half years, visiting France, England and Austria. He spent 1928–1929 in Uppsala, receiving a degree in philosophy in 1929 from the university. In 1935, he was appointed to teach at the University of Copenhagen in Constitutional Law. In 1953, Ross published *Om Ret og Retfærdighed* (which he would later publish in English, under the title *On Law and Justice*).
Ole Lando, 1922 –

Education:
Dr.jur. (Lld), 1963, International Private Law, University of Copenhagen, Denmark
Ekon dr. (h.c.) 1988, Stockholm School of Economics, Sweden
Dr.jur. (h.c.) 1997, University of Osnabrück, Germany
Dr.jur. (h.c.) 1998, University of Fribourg, Switzerland

Academic positions - previous:
Heather Grierson, visiting professor, Oxford University, England
Professor, College of Europe, Belgium
Professor, Erasmus University of Rotterdam, The Netherlands
Professor, University of Kiel, Germany
Professor, European University Institute at Fiesole, Italy

Membership of boards, etc.:
Chairman of Commission on European Contract Law
Member of UNIDROIT Working Group on International Commercial Contracts
Member of the Royal Swedish Academy of Sciences, Uppsala
Member of Groupe européen de droit international privé
Titular member of the International Academy of Comparative Law

Teaching:
At Copenhagen Business School, Tulane University Summer School in Greece and Universiteit of Gent: Comparative Law, Comparative Contract Law
Laws in Eastern Europe
Law in Eastern Europe - Subregions

- CEE (German: MOE) states (today EU member states), including Baltic states
- SEE (German: SOE) states (Ex-Yugoslavia); among them Slovenia and Croatia EU members
- Post-Soviet countries, in particular Russia. Further differentiation according to CIS, EU „Eastern Partnership“, Caucasus, Central Asia …
- Greece? Turkey?
Legal systems in Eastern Europe - some characteristics

- Some common historical traditions, in particular with German legal family. But also differences (e.g. Habsburg tradition, Russian Empire/USSR). Special case Romania.
- Common elements of social, economic and legal transition (former „socialist law“). Particular topic Law in practice.
- New Constitutions, new Civil Codes, in most post-Soviet countries „specific Codes“
Compare the laws of Romania and Moldova:
- General and legal history: Ottoman background, socialist background, influence of French law in Romania, USSR past of Moldova, Transnistrian conflict/legal aspects
- EU membership of Romania, EU-Moldova Association Agreement 2014
The legal system

08.02.2013

Broadly, the Romanian legal system stems from the Roman branch of law, but it is also partly influenced by the Anglo-Saxon branch. Romanian legislation has mostly been brought into line with EU law, as part of the EU accession procedure.

The Constitution

The Romanian Constitution took effect in December 1991 and was revised in 2003, in preparation for EU accession. The Constitution provides strong support for the fundamental principles of private property and free market exchange, as well as explicit limitation and control of powers vested in public authorities. The amendments made in 2003 include the guarantee of private property as well as recognition of the rights of foreign citizens and stateless persons to privately own land in Romania under certain conditions, as well as by way of lawful inheritance.

Citizens' rights and duties set out in the Constitution are generally typical of those applying in democratic countries, such as freedom of speech, freedom of religion and movement as well as protection against arbitrary arrest and imprisonment. The Constitution states that citizens of national minorities with a significant population in local administrative units are entitled, under special circumstances, to use their mother tongue in their relations with local public administration authorities and local public service providers. The constitutionality of parliamentary legislation (i.e. laws, parliamentary regulations and government ordinances) and international treaties and/or agreements is subject to control by the Constitutional Court.

Body of Laws

Civil Law

The New Civil Code came into force on 1 October 2011, replacing the former code that was adopted in 1864, based on Napoleon’s Civil Code of 1804. The current Civil Code is based on multiple sources of inspiration from many systems of law, e.g., civil codes of France, Italy, Quebec, Switzerland. The New Civil Code regulates for the first time certain institutions, such as trusts, parties’ permission to set prescription terms for their obligations, etc., and modifies the effects of certain legal actions.
Laws in Eastern Europe - further information

• Offers in Kiel:
  - Specialisation in „SP 5“, classes and seminars,
  - Study abroad and internships.
  - Research projects, e.g. current project on law of international trade in the region of Caucasus/Central Asia (including Russia).

• Literature:
  - Journal: Review of Central and East European Law (Brill)
  - Series of monographs: Law in Eastern Europe (Brill)
  - Library of the Institute of East European Law