

Preface to the Contributions Regarding ‘Crossroads of Codification: A Comparative Dialogue’

Professor Lajos Vékás, former Head of the Department of Civil Law and Ordinary Member of the Hungarian Academy of Sciences, celebrated his 85th birthday in November 2024. The Department of Civil Law at Eötvös Loránd University’s Faculty of Law, as well as iconic professors and researchers of European civil law whose careers have intersected with that of Professor Vékás’s at several points, solemnly greeted him on his birthday. The ceremonial event, where the speakers delivered their presentations,¹ took place at the Hungarian Academy of Sciences on 8 November 2024, as part of a full-day conference. The event, of course, provided an opportunity not only for heartwarming and friendly greetings,² but also for an intensive and thought-provoking legal exchange following the presentations.

The lectures gave an overview of several aspects of civil law codification, such as some evergreen and crucial issues concerning the connections and intersections between ‘common law’ and ‘civil law’. The audience could discover new details and had the chance to follow the lecturers on their exciting spiritual journey. The conference presentations had several dimensions, and while not all the lectures are published here, the reader may perceive the depth and comprehensiveness of the scientific impact of this international event.

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¹ Besides the presentations, which are published in the following – *CISG and Unforeseeable Events* by Ulrich Magnus, *Codifications at European Level* by Peter-Christian Müller-Graff, *Codification in the Common Law* by John Cartwright, *The Civil Law’s Common Law* by Christian von Bar and *Learning from the Common Law? The Binding Nature of the Hungarian Curia’s Judgments* by Péter Gárdos – other speakers also appeared at the conference: Helmut Koziol with the lecture *Learning from the Common Law? Caveats from the Civil Law’s Perspective*, Attila Menyhárd with the lecture *The Role of the Courts and Legislator in Shaping Private Law*, Ádám Fuglinszky with the lecture *One Last Time on Non-cumul* and Balázs Tőkey with the lecture *General Part of Civil Codes: Advantages and Disadvantages*. The conference closed with joyful words from the celebrant, Lajos Vékás.

² Alongside all speakers who expressed their best wishes, Pál Sonnevend, Dean of the Faculty and Orsolya Szeibert, Head of the Department of Civil Law, gave celebratory speeches on behalf of the Faculty and the Department, respectively.

The conference was enriched by presentations which reflected on several issues that are very significant today. The approaches the presentations (the texts of some of which are published below) took are diverse, but they build on each other. Diversity is reflected in the fact that different geographical, temporal and national/transnational approaches were chosen by authors who otherwise all dealt with issues of ‘civil law’, ‘common law’, and codification, whether national, international or supranational. We know that a huge pillar of law is based on words, phrases and their interpretations. A common feature of all the pieces of writing below (and all the contributions that are not published here) is that they also deal with fundamental issues regarding the essence of private law/civil law and interpretation – whether the CISG’s clause applicable to unforeseeable events in temporary and turbulent times, the connection between codification and the EU’s constitutional integration concept, the meanings of ‘codification’ and ‘codes’ in common law, the ‘common law of the civil law’ or the quasi precedent regime of the Hungarian Supreme Court (Kúria).

The paper by Ulrich Magnus reflects on very topical events regarding international sales transactions. He outlines the UN Convention on Contracts for the International Sale of Goods of 1980 (CISG) in a nutshell and describes the provisions of CISG applicable to unforeseeable events, such as the exceptional character of these rules. The issue of whether parties can be released from their contractual obligations with reference to the COVID-19 pandemic, Brexit or the Russo–Ukrainian war is dealt with in detail. Using the example of the ‘Sea Bass’ case, he shows that although the answer to the question of whether it is possible to be released from contractual obligations due to the COVID-19 pandemic seems to be ‘yes’, the situation is, in fact, not that simple. He guides us through solutions and possible choices by asking questions about the case. In relation to Brexit, the contribution analyses what emerged as the foreseeable consequence of international transactions in chronological order, following and addressing the successive steps of Brexit. The paper involves a thought-provoking journey through time that includes an overview of the legal ramifications of the Russian war against Ukraine. After drawing conclusions about the events, legal arguments and decisions related to the latter three topics, Art 79 of CISG, the provision under examination, is evaluated as well.

Peter-Christian Müller-Graff deals with the possibility of codification at the level of the European Union and poses a central question: to what extent are the objectives of the idea of codification compatible with the constitutional integration concept of the European Union. Regarding the main objectives of the codification, the following are identified upon the basis of an ELTE-Heidelberg-Partnership: legislative planfulness, concept-led consistent systematisation, substantive completeness, complexity-reducing abstraction and a law-transcending purpose. The author underlines and analyses both the substantive and organisational elements of the EU’s constitutional integration concept, as well as the undistorted market and the EU’s federal policy, respectively. The author deeply analyses and evaluates the effect of the purposes of the mentioned codification and the points of conflict between these and the constitutional integration concept, considering the Treaty

establishing a Constitution for Europe and the Proposal on a Common European Sales Law. In concluding, Müller-Graff derives lessons about EU-level future codification in light of the objectives of the idea of codification and goes into detail about the need for 'more sensitive' and more cautious codification.

John Cartwright's contribution focuses on the role of codification in English law and on private law, in particular contract law. In the introduction, the author provides the broad context about the main topic in a few sentences and mentions how the nature of codification can differ under different legal systems. It is exciting to read about how historic perceptions of 'codification' and 'codes' have been shaped, and how modern English law has responded since 1965 to the idea that it would be worthwhile promoting specific legal reforms through codification. In connection with the evaluation of codification efforts, Cartwright also raises the question of whether further codifications of English law may be expected in the future. In what follows, the author outlines a broad temporal and pan-European context in relation to the possible roles of codification, then dissects a question closer to the topic at length – namely, the debate that took place between Dame Mary Arden and Professor Burrows regarding the need for an English commercial code in the late 1990s. The presentation of arguments for and against codification is echoed in the last chapter, which deals with whether codification has a future in English contract law.

Christian von Bar discusses through a specific example how customary law and statutory law stand side by side and immediately raises the question of whether this approach – according to which only these two exist – is the correct one. After stating that he believes that the binary system is not sufficient, he invites the reader on a journey, the goal of which is to identify the 'common law of the civil law', namely the set of 'countless judicial legal developments' which are complicated to specify. He calls the 'common law of the civil law' a language game, and the reader understands that it is a challenge to determine the 'real name' of this very complex set of so many 'extras' which influence the law in operation. The author points out that the interpretation of common law also raises questions. Then, accepting the significance of the binding force of court decisions in a common law system, he deals with some special problems, one of which is the recently established 'precedent system' of the Hungarian Kúria. At the end of the 'journey', von Bar draws attention to the need for deeper knowledge of the legal matters we deal with and calls for recognition of the 'common law of civil law'.

The aim of the paper by Péter Gárdos is to present and evaluate the Hungarian 'quasi precedent system' or 'limited precedent system' that was introduced in 2019 by Act CXXVII of 2019, *amending certain acts in connection with the establishment of single-level district office procedures*. The author outlines and briefly explains the main legal steps which happened before the enactment of the 2019 Act. This Act represented a 'fundamental transformation' of the Hungarian legal system and judiciary. Gárdos paints a brief but complex picture of the changes this new regulation has brought to Hungarian judicial practice. Some of the changes are identified as changes to the rules on so-called extraordinary revision. The possibility of

this has been extended to further legal grounds, all of which are connected to the deviation from the precedents defined by the Hungarian Kúria. After mentioning all the significant novelties of the Act, the author compares the precedent system in Hungary to that in England and highlights the significant theoretical and practical differences that may be traced back to several reasons. In his closing remarks, the author assesses the potential benefits of the new system but also draws attention to its potential drawbacks.

I am certain that the reader will find the discussions and analyses presented here as interesting as the assembled audience did, who enjoyed the extremely thought-provoking atmosphere and charm of this international conference in the celebratory surroundings of the Hungarian Academy of Sciences.