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Editorial

After Our 30th Birthday

L.S.

We open this thirty-first year of our journal with the fourth Ole Lando Memorial lecture by Christina Ramberg on the interaction between soft law and caselaw, and how precedents fulfil Ole Lando's ambitions to harmonize European contract law. The question to what extent judges or legislators or professors should be able to lay down the law is no doubt a hot topic again today. The author defends development of the law by precedents and discusses the relation with legislation and the advantages and disadvantages of precedents compared to legislation, especially detailed regulation as found in EU law today. She stresses that the lecture deals with parts of the law that are less political and where the role of judges is thus less contested.

The other contributions in this issue touch again upon major fields of private law: contract, tort, family law, and enrichment combined with family property law and finally the relationship between private and public law. Emmanuela Truli gives us a critical analysis of the draft regulation on civil liability for artificial intelligence, proposing also alternatives for certain rules. You may also expect a special issue of our journal on Artificial Intelligence (AI) later this year.

Joelle Long discusses the case law of the European court of Human Rights concerning adoption, in which the court had tightened the grounds of adoptability and strengthened the position of the original family of the child. She prefers a more disenchanted approach.

In his article on the application of private law in the public sector, Rafal Szszepaniak designs a method to study this topic in a functional comparative perspective and elaborates it for some more specific topics.

In his contribution (in French) on the impossibility to exercise a contractual right, Jean van Zuylen tackles a topic which fascinated me already when writing my own Ph.D. The author rightly considers it relevant to analyse whether in the cases where the creditor is not able to enjoy performance there is objectively a non-performance by the debtor (not attributable to the debtor, but to either negligence or force majeure on the side of the creditor) because the object of the contract/ obligations of the parties have been widened by bringing the envisaged enjoyment within the contractual field. He refines on the basis of the doctrines of mora creditoris and creditor's force majeure, especially as developed in Dutch law, the French and Belgian law until now somewhat underdeveloped. Such an analysis does not yet solve other cases, where even widening the object of the contract does not lead to a qualification of non-performance by the debtor: here the full performance

is of no use to the creditor, who is in the impossibility to exercise his right or enjoy the performance according to its purpose. It seems that these cases can only be solved on the basis of doctrines of changed circumstances – a topic on which the last word is certainly not said (and to which we will devote more attention on one or our next issues, commenting on i.a. the judgment of the BGH of 12 January 2022).

The Case notes in this issue on the other hand concern a very different and socially very important topic, on the occasion of the judgment of the Portuguese *Supremo Tribunal de Justiça* of 14 January 2021 on compensation for domestic work in a long term de facto union after separation of the couple. It is always fascinating to read the different approaches to the same problem, found in this case in notes from Spanish, Belgian, Italian and Hungarian authors.

Finally, I would like to thank my co-editor André Janssen for organizing, at the occasion of thirty years European Review of Private Law, such an interesting conference on the Future of European Private Law and bringing the friends of our journal together in Nijmegen. The book containing the conference papers will be published soon. Enjoy reading !

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co-editor in chief