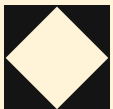


Loïc Cadiet/Burkhard Hess/Marta Requejo Isidro (eds.)

# Procedural Science at the Crossroads of Different Generations



**Nomos**



Max Planck Institute  
**LUXEMBOURG**  
for Procedural Law

<https://doi.org/10.5771/9783845266428-1>

Generiert durch IP '207.241.231.83' am 19.07.2018, 17:16:28

Das Erstellen und Weitergeben von Kopien dieses PDFs ist nicht zulässig.

**Studies of the Max Planck Institute Luxembourg for  
International, European and Regulatory Procedural Law**

**edited by  
Prof. Dr. Dr. h.c. Burkhard Hess  
Prof. Dr. Hélène Ruiz Fabri**

**Volume 4**

Prof. Dr. Loïc Cadiet/  
Prof. Dr. Dr. h.c. Burkhard Hess/  
Prof. Dr. Marta Requejo Isidro (eds.)

# Procedural Science at the Crossroads of Different Generations



**Nomos**



Max Planck Institute  
**LUXEMBOURG**  
for Procedural Law

**Die Deutsche Nationalbibliothek** verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

**Die Deutsche Nationalbibliothek** lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the Internet at <http://dnb.d-nb.de>

ISBN 978-3-8487-2497-0 (Print)  
978-3-8452-6642-8 (ePDF)

#### **British Library Cataloguing-in-Publication Data**

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-2497-0 (Print)  
978-3-8452-6642-8 (ePDF)

#### **Library of Congress Cataloging-in-Publication Data**

Cadiet, Loïc/Hess, Burkhard/Requejo Isidro, Marta  
Procedural Science at the Crossroads of Different Generations  
Loïc Cadiet/Burkhard Hess/Marta Requejo Isidro (eds.)  
417 p.

ISBN 978-3-8487-2497-0(Print)  
978-3-8452-6642-8 (ePDF)

1. Auflage 2015

© Nomos Verlagsgesellschaft, Baden-Baden 2015. Printed in Germany. Alle Rechte, auch die des Nachdrucks von Auszügen, der fotomechanischen Wiedergabe und der Übersetzung, vorbehalten. Gedruckt auf alterungsbeständigem Papier.

This work is subject to copyright. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to "Verwertungsgesellschaft Wort", Munich.

No responsibility for loss caused to any individual or organization acting on or refraining from action as a result of the material in this publication can be accepted by Nomos or the editors.

## Foreword

In July 2014, the first Post-doctoral Summer School in procedural law took place at the Max Planck Institute Luxembourg. Organized by the International Association of procedural Law and the Max Planck Institute, the school offered to young researchers specializing in procedural an opportunity to discuss their current research topics with fellow colleagues and law professors coming from different jurisdictions.

The idea to organize the summer school was inspired by two complementary reflections: on the one hand, modern procedural law is characterized by its opening to comparative and international perspectives. This development is triggered by the growing globalization, Europeanisation and similar developments of regional economic and judicial cooperation. Economization and constitutionalization of procedural law are equally trends which are more and more influenced by international standards. The financial crisis entailed a view on the justice systems as an important factor for the correct functioning of the economic systems. International actors as the World Bank, the IMF and the Council of Europe have become important facilitators of far reaching procedural reforms. On the other hand, the opening of procedural science also requires a new approach of research which has to be based on comparative methodology. Immediate discussion with colleagues coming from different jurisdictions is the best way to practice legal comparative research. Against this backdrop, the IAPL and the new Max Planck Institute for Procedural Law decided to support modern research in procedural law by organizing the school. This school implements the wish of the IAPL to diversify its activities towards young proceduralists.

After the announcement of the school many applications were filed to the Max Planck Institute; only a small percentage of them could be admitted. The participants of the school came from thirteen different legal and academic backgrounds like Argentina, Belgium, Bulgaria, China, France, Germany, Greece, Italy, Kyrgyzstan, Poland, Spain, Switzerland and the United Kingdom. This book collects most of the papers which were presented at the conference, Reviewed and reworked in the light of the discussions of last summer, they address many different areas of procedural law, ranging from regulatory approaches to procedural law, to compara-

tive procedural law, arbitration and ADR, as well as the Europeanisation of civil procedure. In this respect, the treatise demonstrates the current trends of scientific research in procedural law and the specific approach of an incoming generation of researchers.

The title of this book takes up another feature of the summer school. In July 2014 several generations of researches gathered in Luxembourg: *professores emeriti*, professors in the best age of their research careers and many young proceduralists. Different continents, different perspectives, different experiences and approaches came together and a stimulating scientific exchange took place. To accompany the young scholars the professors presented some major works of procedural and comparative law – each of them was asked to select a book or an author he or she considered worth to be read and discussed. Consequently, former generations of proceduralists were invited to the meeting of the different generations also. These presentations can also be found in this book.

All in all, the First post-doctoral summer school in procedural law, Luxembourg 2014, was an inspiring and exciting moment. It was organized with the help of many collaborators of the MPI to whom the editors of this book would like to express their outmost gratitude. It is our pleasure to announce that the preparations for the second IAPL/MPI Summer School in Procedural Law which shall take place in Luxembourg in summer 2016 are on their way. A call for applications will be launched in fall of this year.

Luxembourg and Paris April 2015

*Loïc Cadiet/Burkhard Hess/Marta Requejo Isidro*

# Contents

## Inaugural Lecture

Towards a New Model of Judicial Cooperation in the European Union	13
<i>Prof. Dr. Loïc Cadiet</i>	

## Legislative Perspectives

Time for a Meeting of the Generations – Is there a Need for a Uniform Recognition and Enforcement Regulation?	33
<i>Robert Magnus</i>	

Some Initial Steps towards a European Debate on Procedural Rulemaking	49
<i>Els Vandensande</i>	

New “Sources” of Civil Procedure Law: First Notes for a Study	73
<i>Alessandro Fabbri</i>	

The Right of Access to Information and Evidence and the Duty of Truthful Disclosure of Parties in Comparative Perspective	93
<i>Marco Gradi</i>	

## Arbitration and ADR

The Recast Brussels I Regulation and Arbitration	125
<i>Pietro Ortolani</i>	

Enforceability of Multi-Step Dispute Resolution Clauses. An Overview of Selected European Jurisdictions <i>Ewelina Kajkowska</i>	159
Interaction Between Litigation Procedures of State and Non State Courts: the Case of Aksakal Courts in Kyrgyzstan <i>Natalia Alenkina</i>	175
Comparative Procedural Law	
The Collective Redress Phenomenon in the European Context: the Spanish Case <i>Marta Otero Crespo</i>	193
On the Non-liquet Status of Factual Allegation in China <i>Zhixun Cao</i>	225
Legal Presumption as a Legislative Tool in National and European Legislation <i>Stefanos K. Karameros</i>	249
European Procedural Law	
The Service of Summons in Accordance with EU Law and the Case of the Defendant not Entering an Appearance in Light of the Fundamental Right to a Fair Hearing <i>Beatrice Armeli</i>	273
Protocols as Means of Coordination of Insolvency Proceedings of Cross-Border Banking Groups <i>Giulia Vallar</i>	313

International Competence As a Cooperation Tool: Jurisdiction, Sovereignty and Justice within the European Union <i>François Mailhé</i>	341
Major Treatises of Procedural and Comparative Theory	
A Masterpiece at a Glance. <i>Piero Calamandrei</i> , Introduzione allo Studio Sistematico dei Provvedimenti Cautelari <i>Prof. Dr. Remo Caponi</i>	373
Rolf Stürner, Die Aufklärungspflicht der Parteien des Zivilprozesses <i>Prof. Dr. Dr. h.c. Peter Gottwald</i>	379
Der Prozess als Rechtslage – James Goldschmidt 1925 Proceedings As a Sequence of Judicial Situations – A Critique of the Procedural Doctrine – <i>Prof. Dr. Dr. h.c. Burkhard Hess</i>	385
Linn Hammergren Envisioning Reform. Improving Judicial Performance in Latin America <i>Prof. Dr. Eduardo Oteiza</i>	393
Francisco Beceña González <i>Prof. Dr. Marta Requejo Isidro</i>	399
Einführung in die Rechtsvergleichung – Konrad Zweigert und Hein Kötz 3. Auflage 1996 Comparative Civil Procedure and Comparative Legal Thought <i>Prof. Dr. Dres. h.c. Rolf Stürner</i>	409
List of Contributors	413

