

Property Rights, Globalisation and the Social Function of Property – “Towards a Re-Conceptualisation of Property Rights”

- Introduction to the debate: Property, a historical not a logical category;
- Corporate property – a separate category sui generis;
- Forms of property in relation to the sub-functions of property;
- Obligation of sustainability as property’s self-conserving function.

Compact course / Blockseminar:

5/6/9 ECTS / MES modules: ZB Wirtschaft, ZB Politik, ZB Recht, WPM 1, WPM 6 // IBA modules: S-Module (old SPO also E-Module); Faculty of Law: Master of German and Polish Law (Module 3); SPB 5 (European Law) (without ECTS)

Dates / Termine:

Introduction Tuesday 10 October, 15h-16h;

1st part Fri./Sat. 3 & 4 November, 10-13h & 14-17h, Room PG 271;

2nd part Fri./Sat. 17 & 18 November, 10-13h & 14-17h, Room PG 271.

3rd part (Presentation of results) Sat. 9 December 10-13h & 14-17h, Room PG 271.

The course is held in English language.

Sustainability and property ownership – Introduction to the debate

Property is a fundamental legal institution found in every economically developed society; it is also a key determinant of its economic, social and legal structures. A vital issue in the present discussion of a legislative enactment of a constitutional principle of sustainability is its compatibility with and integration into the prevailing definition and content of property.

As the conveyance of property rights becomes more and more abstract (e.g., share ownership in umbrella funds vs. sole proprietorship), the link between the owner and the object of ownership becomes more and more attenuated and the allocation of responsibility correspondingly tenuous and opaque. Given the social and environmental impact of the economic activities of the corporation this is of particular import. The discussion focuses on the question of whether, and if so, to what extent, the benefit owners of productive property derive through depleting natural resources and degrading the environment from reduced production costs (externalisation) assigns them the corresponding duty of preserving and restoring these natural foundations of life to compensate for their exploitation (internalisation).

The obligation of owners to use their property sustainably potentially conflicts with the owner’s constitutionally guaranteed sphere of protection. Imposing this obligation could affect the corporate property and that of business owners and shareholders. A functional analysis of the different forms of property allows assessing the intensity / degree of conflict with the owners’ constitutional rights when the legislator is determining the content and extent of property rights.

The challenge

From a legal point of view the main thesis of the seminar is that an obligation of sustainability can be introduced into property law as an extension of the social function of property. This proposal assumes that pursuant to the power of the legislator to determine the content and limits of property rights, a distinction must be made between different forms of property. Towards this end I am introducing the property of corporations into the functional context of property rights as a hybrid category distinct

from private and public property; we are also introducing the Commons / Environment as a fourth category to the existing.

In order to balance the conflicting interests of the parties involved, the legislator must take into account both the constitutionally guaranteed legal rights of the owner and the mandate regarding a socially just property system in accord with constitutional principles (e.g., Art. 14 Par. 2 of the German Basic Law). Based on the case law of the German Federal Constitutional Court (especially its landmark „co-determination“ decision), I further, argue on behalf of a general principle asserting that

- the legislative power to define contents and restrictions of property rights increases apace with the social relevance of the property owned,
- while the intensity of conflict decreases as the relationship between the owner and the object owned becomes more depersonalized and abstract.

Literature

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Registration until 17 October 2016 at kelso-professorship@europa-uni.de.

Performance test and credits: ECTS: 6/9. Regular attendance; term paper; oral presentation; first draft of the term paper by 5 December 2016, finalized term paper by the end of the semester.