

**Christina Hermida del Lano, Anna-Rytel-Warzocha, Andrzej Smyt (eds.).
The 80th Anniversary of Professor Herbert Schambeck,
Gdańsk University Press, 2016, 102 pp.**

The book under review reflects 80th anniversary of Professor Herbert Schambeck, famous Austrian constitutional lawyer and former President of Federal Assembly of the Austrian Parliament, celebrated in 2014. His colleagues from Gdańsk University in Poland and from Universidad Rey Juan Carlos in Madrid Spain decided to present a compendium of contributions from conferences at both Universities dealing with Herbert Schambeck's recent books. It is worth noting that Herbert Schambeck is a top Central European expert in legacy of Hans Kelsen whom Schambeck met for the first time in 1967 in Kelsen's house in Berkley, California. Since then Schambeck has been developing Kelsen's idea in contemporary legal science, particularly with regard to European integration.

Presentation of Schambeck's book *Sein und Sollen*¹ was held in Madrid at Universidad Rey Juan Carlos on 15th October 2015. It pointed out that the philosophical importance of the work by Schambeck is to have brought from the inner point of view inside the historic Vienna school of legal theory, the idea of a legal order (*Sollen*) in its relation to the human being (*Sein*). Law does not make sense, for Schambeck, if its aim is not to the good of humanity. For this reason the definition of law is a social technique that simply imputes a sanction to an illegal act, takes back a seat, and seems significantly reductive to the thesis of Kelsen that brings legal validity back to the "sense of an act of will". According to Schambeck, a legal order requires, instead of the Kelsenian *Grund-Norm*, that says nothing about the content of that order, a *Grund-Wert*, i.e. a fundamental legal value that does not fail to recognize the obligation to obey the currently established and effective construction, but starting from the "fundamental values of humanity" (*Grundwerten der Menschlichkeit*) which can really give certainty and effectiveness to the same order.²

Presentation of the second monograph dealt with in the book under review - *Beiträge zum Verfassungs und Europarecht*, (editors: Andreas Janko, Boguslaw Banaszak, Damiano Nocilla, Walter Schmitt Glaeser, Michal Tomášek) of 2014, was held at the Gdańsk University on 28th September 2016. It has already been reviewed in *The Lawyer Quarterly* by Assoc. Professor Josef Blahož.³ *Beiträge zum Verfassungs und Europarecht* is a collection of Schambeck's studies, essays, articles, papers including questions of European unification and European law - i. e. basic principles of the European Constitutionalism, constitutional law of EU member states, the idea and problems of the European Constitution, the significance and basic aspects of the Treaty of Lisbon, European Union and direct democracy, European Union and the development of basic rights, the origin, contents, system and typology of the rights, freedoms and principles set out in the Charter of fundamental rights of the European Union, the road to social Europe and many other important questions of the unifying Europe. The most valuable is an Austrian approach influence by Austrian vision of "Union of States" (*Staatenverbund*).

A comparison of post-war European integration, the formation of European Communities and the European Union with the pre-war Austrian ideas is certainly worth pursuing. According to Kelsen, the League of Nations was in its time considered an attempt to form a superstate, *civitas maxima*, whose ideal for the future was to involve all states⁴. It is interesting to note that there were similar

¹ SCHAMBECK, H. *Sein und Sollen. Grundfragen der Philosophie des Rechts und Staates*. Heribert Franz Köck, Cristina Hermida de Llano, Antonio Incampo, Andrzej Smyt (Hrsgb.). Berlin: Duncker & Humblot, 2014.

² SCHAMBECK, H. *Ordnung und Geltung. Österreichische Zeitschrift für Öffentliches Recht*. Nr. 11/1961, p. 472.

³ BLAHOŽ, J. Schambeck, Herbert. *Beiträge zum Verfassungs und Europarecht* von Andreas Janko, Boguslaw Banaszak, Damiano Nocilla, Walter Schmitt Glaeser, Michal Tomášek. Wien: Verlag Österreich, 2014, 461 p. *The Lawyer Quarterly*. Vol. 5, No. 1, pp. 73–75.

⁴ KELSEN, H. *Allgemeine Staatslehre*. Berlin: Julius Springer, 1925 or KELSEN, H. *K reformě Společnosti národů*. Praha: Mezinárodní kulturní liga, 1938.

considerations of the theory of the state in connection with the League of Nations in the 1920's as those seventy years later in connection with the European Union. Kelsen's theory, for example, saw the League of Nations as an association of states (*Staatenbund*), as an international society that was distinguished from a federal state (*Bundesstaat*), formed by association as a new composite state, *civitas composita*, and superordinate to individual member states, where the new composite state has its sovereignty, legal personality of its own, and citizenship⁵. The League of Nations was not supposed to achieve such a phase. When at the beginning of the 1990's the German Federal Constitutional Court considered the actions for constitutionality of the Maastricht Treaty, it reiterated the above categories of *Staatenbund* and *Bundesstaat*, stating that the ideal of the European Union is to accentuate the features of the concept of *Staatenbund*.⁶ In a similar approach Herbert Schambeck points out the formation of Austrian state as an association (*Verbund*) of German- (and for a long time Czech-) speaking countries. The new Austrian state was formed after World War I through the association of German-speaking federation states. Similarly, the European Union was formed via an association of European states. This Austrian perspective of the EU as an entity created by the association of European states gives Austria the answer to the question of what, in fact, the European Union is. In this sense, the Austrian terminology uses the concept of *Staatenverbund*. However, these are not only concepts. The Austrian approach to the EU described by Schambeck assumes strong self-confident member states of the EU.

The editorial board of The Lawyer Quarterly is very proud having Professor Herbert Schambeck with us. We wish him good health and successful research activities in favour of European integration and Central European values.

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⁵ HOBZA, A. *Úvod do mezinárodního práva mírového*. Praha: published by the author, 1933, p. 169 and the works quoted there.

⁶ In more detail TOMÁŠEK, M. *Statě o Evropské unii*. Praha: Codex, 1994, p. 9 et seq.

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