

The third chapter, named *The principle of supremacy of European law* in the decision-making of the constitutional courts of the Member States, is – in contrast to the previous two – mostly practical and focused on application. The first two sub-chapters are devoted to practice of constitutional and supreme courts in the Member States, the next section focuses on lower courts and their acceptance of the principle advantages and implications of that for their decision. The beginning of the chapter shows an analysis of the key arguments of the constitutional courts of the Member States. It must be said that this analysis is very engaging. The examples relating to the protection of fundamental rights show the evolution of how constitutional courts of the Member States were to gradually accept the principle of supremacy of Community law. The situation in the various countries of the *European Union* within the review of the *Maastricht Treaty* is analysed, i.e. issues related to the transfer of powers are discussed. A separate sub-chapter is dedicated to the case law of the *Constitutional Court of the Czech Republic*. The most important decisions connected to the principle of primacy are presented as well as the relation between the Czech and European law is pointed out. The last part of the whole chapter deals with the other factors which have or might have influence on the courts' decisions over the principle of primacy. The objective limitations are discussed, such as political and legal framework, institutional arrangement of the judiciary, the process of judge selection, but also subjective factors related to judges are shown, as well as other factors. This part of the book is one of the highlights.

Last, the fourth chapter, *Doctrinal problem solving of the relation of European and national law*, summarizes a variety of theories dealing with the issue, including their critical assessment. Readers are offered with quite challenging sample of different doctrinal approaches; these approaches are discussed individually. Models by *Neil MacCormick*, *Paul Kirchhof*, *Mattias Kumm* and many more are presented. The chapter is a nice culmination of the book when, after the presentation of practical matters, the author tries to find a theoretical grounds.

Finally, it fits to add, who should grab the book in a library or in a book shop. Given that the theme of the book is very specifically targeted, it is expected that readers will be particularly interested in the area of European law. Very informative reading is also presented for fans of constitutional law, legal theory or political science. Provided that the theme of European law is consciously or unconsciously connected to each and every citizen of the *European Union* it would be more than reasonable if the book found its way to all lawyers or political scientists who are interested in what is hidden behind the principle of primacy of the European Law.

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**Wagner Gerhard. Das geht auf keine Kuhhaut, Redewendungen aus dem Mittelalter. WBG - Wissenschaftliche Buchgesellschaft, Darmstadt: 1. Auflage 2011, Stuttgart: Konrad Theiss Verlag, 2. Auflage 2012, 160 pp.**

G. Wagner in his book, full of historical illustrations, explains the meaning and use of proverbs that survived until the present day and are still used by many without knowing their origins. An important group of proverbs are proverbs with legal theme.

The publication is an addition to a category of books with similar focus, such as *Co to je když se řekne...* [What does it mean when we say...] (Prague 1968). However, the author in this publication pays only very little attention to legal aspects of the proverbs it presents. Perhaps the only sayings from the book that touch the legal aspects of the lives of our ancestors are: “Za krále Holce

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byla za groš ovce”, literally translated “During the reign of king Holec<sup>1</sup> a sheep was for a penny”, meaning “Things are not what they used to be” and “Někoho pranýřovat”, literally translated “Tie someone to the whipping post or pillory”, meaning “Publicly shame somebody”. German expression “An der Pranger stellen” corresponds to the Czech “Někoho pranýřovat” and English “Publicly shame somebody”.

Originally persons who committed petty offenses, such as minor theft, would be put in the pillory. Also adulteresses were often put in the pillory and exposed to public ridicule. However, according to J. Klabouch<sup>2</sup>, sometimes after such shaming these women enjoyed even more attention from men. They were attracting attention by screaming and misbehaving. In the end they actually appreciated the pillory because their clientele grew.

Gerhard Wagner titled his book *Das geht auf keine Kuhhaut*, which means “That is unheard of” or “That is too much”. Yes, sometimes outrageous things are said. But the meanings of these things were well understood by our ancestors.

Wagner looks at proverbs with jural meanings in the second chapter (pages 39–62), presenting in total 44 examples here. The author first introduces in the proverb: “Nach Jahr und Tag”, which means “After a year and a day”. This proverb comes from the Middle Ages when it referred to, for example, the deadline for requesting a rectification. The Czech reader will surely recall the exclamation of Kozina, who was sentenced to death: “Lomikar, I summon you to face God’s judgment in a year and a day”.

Another saying: “Ein Auge zudrücken” means “to shut an eye”. Often we hear the expression “Snad můžeme přivřít oko”, literally translated “Perhaps, we can shut an eye”, meaning: from a position of authority we leave a minor offence without punishment. The origins of this saying trace back to the medieval legal principles. It meant that the judge preferred to show mercy rather than strictly follow the law. Or in other words, in judge’s mind the extenuating circumstances exceeded the seriousness of the offense.

Many expressions refer to the rich symbolism of medieval legal proceedings. For example, when selling land the seller gave to a buyer a green twig, which meant that the buyer became the real owner of the land. If the twig was not handed over, the full ownership was not transferred.

In Czech lands a handful of soil was used to confirm that the transfer has really taken place.

“Hinter die Ohren schreiben”, literally translated: “Write something down behind one’s ears”, meaning “Keep something in mind” is another proverb with originally jural meaning. There was a habit practiced when concluding agreements; the witnesses, usually young people, received a painful lecture from the clerks – they would pull their ears. The reason for this habit was, that should the contract ever be questioned, these young people would be good witnesses. The contract was in their minds connected with the pain they experienced and therefore they were able to recall the circumstances of the concluded contract very well.

In this context we mention a tract written by Menšík of Menštejn at the end of 16<sup>th</sup> century on the law of land borders and conflicts over land. While measuring land and defining borders between plots young men received beating, the so-called *pardus*, for the same reason as in the above example with pulling ears. If later there was a conflict over land, the witnesses were able to find the border, since they received beating on the very place years ago.

Menšík’s tract became a supplement of thoroughly revised Vladislav’s Code of Law, which contained Czech laws. Czech land assembly passed it in 1500.

“Mit Fug und Recht”, means “entirely lawful and just”. This saying clearly has legal origins. Law must be always enforced according to the legislation.

<sup>1</sup> Translator’s note: King Holec is usually considered to be Czech king Ladislav Pohrobek (1440–1458). The nickname “Holec” signified “holý král”, i.e. “beardless king”, because he died before coming of age.

<sup>2</sup> KLABOUCH, J. *Staré české soudnictví (jak se dříve soudovalo)*. Praha 1967, p. 358.

“Den Gnadenstoss geben”, literally “to give a blow of mercy”, meaning to end someone’s suffering. Today this saying is used metaphorically. Originally it was used in combat, when a seriously harmed man was given the last blow of mercy. It was also used during torture, when the tortured person nearing his death was killed with the last blow of mercy.

There is another saying: “Das Tischtuch zerschneiden”, meaning “to cut a tablecloth”. The meaning of this saying is that the friendship is definitely over. It is also related to the marriage law. As a sign of divorce in bed, and at the table, the bed sheet and the tablecloth were cut.

Another well-known saying is “Für etwas den Kopf hinhalten”, literally “to risk a head for something”. It was possible, for example, to give guarantee on someone’s behalf, become his guarantor. Wagner fails to mention that this saying reflected also the fact, that during an ordeal<sup>3</sup> in the form of a combat a person standing on one side of the conflict could be replaced by a *campio* – substitute.

Another saying referring to the practice of trial by ordeal is: “Die Hand ins Feuer legen”, literally translated “Put a hand in the fire”. Sometimes we may hear someone say “I will put my hand into the fire for someone”, which means, “I fully trust this person”. Originally, when people believed that God decides whether the accused is guilty or innocent, a common way of finding out the will of God was an ordeal using hot iron or hot water. The defendant had to put his hand in boiling water or grab a piece of hot iron and take it out of the water. Similar method involved walking on red-hot plowshare. If the accused did not get burned, or just a little, or if his burn marks were cured quickly, he was considered to be innocent. This is related to another saying: “Dobrého nepálí”, meaning “Good people do not get burnt”.

We may also recall the opera *Lohengrin* written by Richard Wagner, in which Elsa’s dream knight Lohengrin fights in an ordeal encounter with Telramund instead of her. Lohengrin is victorious and Elsa of Brabant thus becomes the victor in God’s eyes and therefore she is in the right.

The saying “To brand somebody”, in German “Jemanden brandmarken”, is used until the present day. A criminal sentenced to death was sometimes branded, so that everybody could see the he was sentenced to death. Also cheating players were often branded and to be branded thus signified a loss of honor. The brand punishment was still mentioned in Joseph’s Criminal Code in Austria in 1787.

Also animals were frequently branded as means of simple identification of the owner. Wagner points out that brands, burn marks on the skin, were used also, for example, in Africa for beauty reasons.

The proverb “Auf die Folter spannen” means “to put to the rack”, which means “to torment someone for a long time”. It refers to a torture technique used during trials as an irrational piece of evidence. It was abolished in Prussia as recently as 1740. In Austria racking was still incorporated in the *Constitutio Criminalis Theresiana* of 1768 and only abolished in 1776.

The authors of this review will not torture the reader on the rack anymore. In conclusion we only wish to say that the reviewed book extends the lexis of legal history and it will certainly satisfy every reader, who wants to discover the origins and meaning of a specific saying.

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<sup>3</sup> Translator’s note: A test of guilt or innocence by subjection of the accused to severe pain, survival of which was taken as a divine proof of innocence.

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