

FWF project: Argumentation Analysis in the Field of the Transfer of Movable

The international discourse regarding the transfer of ownership of movable property and additional forms of “original” acquisition, like *bona fide* acquisition from a non-owner and acquisitive prescription, has been intensified enormously throughout the recent years, in terms of comparative legal research as well as, partly, with a perspective towards a possible harmonisation in the EU area.

Background

The solutions provided in the various national legal systems differ to a great extent. Due to these different traditions and the complexity of a transfer of ownership – which affects the parties’ as well as third parties’ interests – a wide range of arguments may be (and is) put forward for different solutions, but these arguments often address totally different levels and are related to different interests and do not attack each other directly. A closer look also reveals that argumentation partly remains incomplete and non-transparent, which complicates weighing the arguments against each other. Therefore, accepting the standpoint of other arguers is impeded and a consensus is hardly achieved.

The project’s aims

This project will, on the one hand, establish a detailed comparative legal survey of relevant argumentation put forward in Austrian, Belgian, Dutch, English, French, German, Swedish, and US-American legal literature and court practice and in the current harmonisation debate. The main aim, on the other hand, will be to structure, analyse and evaluate this argumentation in order to make the international property law discourse more complete and more transparent. This will be achieved by employing methods and tools developed in the discipline of argumentation theory. Based on approaches mainly developed by *Kopperschmidt*, *Toulmin* and *Naess*, argumentation will be reconstructed and analysed in a five-step process of macro and micro analysis and evaluation. One of the basic methodological choices is to dissect the question of “the passing of ownership” into single typical “conflict situations” (e.g. the buyer’s protection against the seller’s general creditors; the seller’s protection against the buyer’s general creditors; sold goods being stolen or damaged by a third party between the time of the conclusion of the contract and delivery; entitlement to use sold goods within this period, etc.), as already practiced in Scandinavian and US law, which employ a so called “functional approach” in personal property law (in contrast to the “unitary approaches” followed in continental European countries, which provide rules for determining one specific moment in time for the “passing of ownership” with all consequences). This shall ensure to identify and take into account (only) those arguments which are of particular relevance in the respective conflict.

The goal is to create a detailed and comprehensive survey and analysis of relevant argumentation in the international discourse, which may, apart from its academic value, be of immediate relevance for law makers, courts and practicing lawyers. The project’s innovative methodological implications may also make a contribution to argumentation theory as such.

Team and organisational background

The research group, established at the Department of Private Law at the University of Salzburg, consists of Ass.-Prof. Dr. Wolfgang Faber (project leader) and the two assisting doctoral students Martine Costa (from Belgium) and Martin Lilja (from Sweden). The project is financed by the Austrian Funds for Scientific Research (FWF).