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Background to the Project

The texts in this book are based on papers presented at a civil procedural colloquium in Uppsala 27–28 of April 2010: *Party Autonomy in Civil Procedure – a comparison of Austria, Slovenia and Sweden, in the light of the ideas of Franz Klein and with a view to the political contexts of the three countries*. The Uppsala event contained a number of presentations on the theme of party autonomy. Furthermore ongoing research by young scholars from Ljubljana, Zürich, Uppsala and Gothenburg was presented, since the colloquium was set up also for the purpose to develop and initiate research exchange and ditto collaboration between the four participating countries in the field of civil procedure.

The first step leading to the project was taken when Ales Galic, holding a position as guest professor in Uppsala in the spring of 2008, presented a paper on some recent developments in Slovenian civil procedure with focus on the principle of party autonomy. This was followed by a corresponding presentation on the same theme, but from a Swedish perspective, by Torbjörn Andersson, now in Ljubljana in the autumn of 2009. After the involvement of Paul Oberhammer, Zürich/Vienna, the colloquium was planned and arranged. We are grateful to Centrum för Tysklandsstudier Uppsala universitet (Centre of Germanic Studies of Uppsala university), due to the generous financial contribution. We are also grateful to Christina Andersson, making all the practical arrangements and to the Faculty of Law, Uppsala university, providing its premises. Without this support the colloquium would not have happened and this book would not exist.

As to the contents of the book: The principle of party autonomy regulates, or rather describes, the autonomy of the parties in relation to the court in civil procedure. The construction of the principle is connected to the constitutional relation between state (courts) and citizens (parties).

A liberalistic society is characterized by a high degree of party autonomy, while in a society characterized by strong state powers, the degree of party autonomy is low. At least that is the general presumption. The Austrian code of civil procedure is built from an ideology of procedure developed by Franz Klein and it is generally referred to as “social civil procedure”. The Austrian civil procedural order was the big source of inspiration for the Swedish code, which after decades of legislative work came into force in 1948. As Slovenia was a part of Austria in the days of Klein, his original impact is obvious; the maintained influence of social civil procedure is clear from the fact that the Austrian code of civil procedure with modifications continued to apply in Slovenia throughout the 20th century.

This book has as its overriding purpose the comparison of different civil procedural orders. These procedural orders share a common origin, but have been subject to cultivation in states with great differences in respect of political climate during the 20th century. The comparison is done in order to illustrate the connection between political ideology and civil procedural regulations, but also in order to check out whether the model of “social civil procedure” according to Klein is still valid today.