

Abstract of the Habilitation Thesis by PD Dr. Elke Heinrich-Pendl

Collegial Bodies in Corporations *Kollegialorgane in Kapitalgesellschaften*

"Collegiality ensures greater 'thoroughness' of the administration's considerations. Where this is to be preferred at the expense of precision and speed, [...] it is still used today." With these words, *Max Weber* refers to the pros and cons of collegial governance structures in public administration. Considerations of this nature also shape the discourse on the optimal structure of management and supervisory bodies in corporations as the legal model for management boards follows the collegial principle. The same applies to the supervisory board.

Despite its great importance, legal provisions on the collegial principle are rare. The term itself is alien to German (corporate) law. Systematic assessments and more comprehensive treatises on collegiality in corporations also do not exist. The extensive literature on executive and supervisory bodies focuses rather on individual members as opposed to the collegial body as a whole. The present thesis addresses this academic gap: Its goal is to identify and illuminate the various facets of the collegial internal structure of executive and supervisory boards and to consider these aspects in a larger context. The two collegial bodies of stock corporations serve as *pars pro toto* illustrations for those problematic situations that arise specifically from a collegial organizational structure. In addition to a classic theoretical examination, the inquiry draws on a broad historical treatment, comparative legal observations and research findings made in the field of social psychology on groups and small groups in particular.

Collegiality in corporate law is shaped by three overarching characteristics: plurality, cooperation, and control. As such, they form the cornerstones of the present study. Their significance can be seen not only in the clear commitment to collegiality made by the legislators who adopted the German Stock Corporation Act in 1965; these attributes have also left distinct traces over the decades. This makes clear that collegial structures have been prevalent at all times and in a wide variety of fields. It also gives an initial indication that collegial organization may embody considerable value in its own right. This finding is supported and strengthened by small-group research in social psychology. Based on its underlying premises, this research facilitates a comparison with questions of corporate law and provides deeper insight into problems and solutions as to how groups work (e.g. with regard to the division of labor or the position of group leaders).

The value of collegiality also becomes apparent when one considers the specific problems associated with corporate law. It is true that collegial organizational structures harbor legal

conflict potential in a wide variety of areas – in, for example, the application of the business judgment rule in collegial bodies or questions of causality in collegial decisions. However, the positive aspects of the collegial principle easily outweigh the effort necessary to resolve these specific problems. After all, it is only a collegial staffing of bodies that makes cooperation – in the sense of a division of labor and the subsequent management of the resulting workload – possible in the first place. The same applies to control. If, on the other hand, a monocratic body is at the head of the corporation, unavoidable control deficits emerge. A hierarchy of individuals designed exclusively for vertical supervision is incapable of solving the problem of “who watches the watchers?” – whereas collegially organized management or supervisory bodies can realize this all-important intra-organ control.

If we turn to concrete legal issues, it is important to use the idea of collegiality as an interpretative maxim. This is realized in the prohibition of a casting vote in a two-person board, in the disallowance of the right of veto in the board, and in the prevalence of the principle of trust within the collegial body, to name just a few examples.

Finally, the idea of collegiality and its underlying values should also guide legal policy reform decisions. This applies, for example, to the optimal size of boards and to the debate on diversity, an issue which is likely to remain explosive in terms of legal policy in the future.