

National Supreme Courts and European Private Law

**Florence, 23-24 May 2008
The Theatre, Badia Fiesolana, San Domenico di Fiesole**

Workshop organized by
Fabrizio Cafaggi
in collaboration with the Robert Schuman Centre for Advanced Studies
in the framework of the New Modes of Governance project (NEWGOV)

NEWGOV is financially supported by the EU's 6th Framework Programme

Restricted attendance
Please register with Anna.Coda@eui.eu

Programme

Friday 23 May

European Private Law between positive and negative integration: an assessment of the impact of the case law of the European Court of Justice on national private law

- 09.30 Introduction to the theme and agenda setting by
Professor **Stephen Weatherill** (Oxford University)
- 09.45 Debate with initial comments by
Judge **Luís Miguel Poiares Maduro** (ECJ) and
Judge **Luciano Panzani** (Supreme Court of Italy)
- 10.45 Concluding remarks
- 11.00 *Break*

Judicial governance in European Private Law

- 11.30 Introduction to the theme and agenda setting by
Professor **Fabrizio Cafaggi** (EUI)
- 11.45 Debate with initial comments by
Judge **Tadeusz Erciński** (Supreme Court of Poland) and
Judge **Encarnacion Roca i Trias** (Supreme Court of Spain)
- 12.45 Concluding remarks
- 13.15 *Lunch*

Judicial cooperation in civil matters

- 14.30 Introduction to the theme and agenda setting by
Professor **Hans-W. Micklitz** (EUI)
- 14.45 Debate with initial comments by
Judge **André Potocki** (Supreme Court of France) and
Lord **Jonathan H. Mance** (House of Lords UK)
- 15.45 Concluding remarks
- 16.00 *Break*

The allocation of tasks between national courts and the European Court of Justice in a post-enlargement context

- 16.30 Introduction to the theme and agenda setting by
Professor **Norbert Reich** (University of Bremen)
- 16.45 Debate with initial comments by
Judge **Valentinas Mikėlėnas** (Supreme Court of Lithuania) and
Judge **Marko Ilešić** (ECJ)
- 17.45 Concluding remarks

Saturday 24 May

- Introduction by
Marco Del Panta (EUI Secretary General) and
Stefano Bartolini (RSCAS Director)
- 09.30 Round table coordinated by
Professor **Walter Van Gerven** (Catholic University of Leuven) and
Professor **Bruno de Witte** (EUI)
- 12.30 Conclusions

A conference with national Supreme Courts and the European Court of Justice

The scope of the initiative and the broader project

The EUI, in particular professors Cafaggi and Poiares Maduro, together with the Robert Schuman Center would like to promote a more active role of the judiciary in the debate concerning the modes and scope of European legal integration. The conference is the first step towards a more structured cooperation with both national judiciaries and the European Court of Justice.

The debate on European legal integration has focused mainly on constitutional reform, which also plays a relevant role for the harmonisation of European private law. But a more specific focus on European private law is needed given that in 2008 important deliveries are expected. The Common frame of references and the Acquis principles, which have

already partially come out, will trigger further debate. While the effort made by the Commission to involve stakeholders has certainly improved quality and effectiveness, the impression is that the judiciary, and in particular national judiciaries, have played a relatively minor role compared to their strategic function concerning implementation.

The role of the judiciary is also very relevant in relation to international trade and harmonization of international commerce. The creation of the internal market, especially in the field of private law, can not be decoupled from the processes of growing interdependence at international level. Harmonization of European contract law cannot develop without considering international conventions and the development of *lex mercatoria*. The example of private international law is perhaps the most illustrative of the interaction between the European and the international dimension, but the role of fundamental rights in private law domains also constitute an important aspect of this correlation.

The necessity to couple legislative harmonization, whichever form it will take, with judicial governance to implement private law legislation has become clear.

Furthermore the improvement of coordination among the national judiciaries and the ECJ given the emerging data about persistent divergences should become a priority in the institutional agenda.

Harmonisation of rules without institutional coordination is bound to fail. In this framework judicial governance is certainly not the only institutional response but contributes to play a significant role. In particular the European judicial network and different form of judicial cooperation in civil matters are developing and could contribute to define a new architecture

For this reason we would like to debate with members of the national and EU judiciaries the past, present and future role of judicial governance in the process of legal integration.

Particular attention should be also devoted to the processes currently taking place in new Member States and the desirability of particular forms of judicial cooperation in those regions.

The conference will be structured over two days. The first day will be devoted to a discussion of the role of National Supreme Courts and the ECJ in the creation of European private law. The second half a day should debate the potential for improvements in judicial dialogue between State Supreme Courts, the ECJ and academics.

The medium term goal is to establish a stable dialogue between academics and the judiciary on the strategic issues concerning European legal integration and the relationships with third countries and international organisations.

The initial conference focuses specifically on the broad issue of European private law, in particular addressing the following questions:

- a) Negative integration in European private law and the role of the judiciary both at national and European level
- b) Judicial Governance, positive integration and the different legislative strategies for harmonization of European Private Law
- c) The different ways to structure judicial cooperation in civil matters, including permanent the European judicial network, judicial for a judicial conferences organised around specific areas
- d) The specific issues related to the role of national judiciaries in new Member States after enlargement

Medium term goals

Judicial cooperation in civil matters and European legal integration

The background

The steps that have led to the current situation date back to 1968, when the original six Member States agreed on common rules on jurisdiction and enforcement of judgments in civil and commercial matters (the Brussels Convention), then in 1993, the Maastricht Treaty identified Judicial co-operation in civil matters as an area of common interest for EU Member States, the Treaty of Amsterdam went even further making Judicial co-operation in civil matters a European Community policy linked to the free circulation of people. Afterwards, at the **Tampere European Council** in October 1999, EU leaders acknowledged three priorities for action in this field: mutual recognition of judicial decisions, better crime victims compensation and increased convergence in the field of civil law.

The basic principle underlying judicial cooperation is mutual recognition that is applied to decisions in civil and commercial matters, the final objective is that judicial decisions should be recognised and enforced in other Member States without any additional intermediate step.

In the specific field of cooperation between member states the legislative instruments already in force are:

- Regulation relating to the service of documents in cross-border cases¹
- Regulation concerning the taking of evidence in civil and commercial matters²

Moreover the Council adopted a decision³ establishing a European judicial network in civil and commercial matters. This network has the task of setting up an information system that would be differentiated for members of the network and for the public. This would smooth procedures that have cross-border implications; facilitate requests for cooperation between Member States, especially when no Community act or international instrument is applicable, and finally apply Community acts or conventions in force between the Member States. Each member State provides a contact point that provides all the necessary information, facilitates the processing of requests for judicial cooperation, seeks solutions to any difficulties that arise and assist with the preparation and updating of the information system for the public⁴.

The Supreme Courts judicial network

In 2004, the Presidents of the Supreme Judicial Courts of the Member States of the European Union decided to form an Association. This was the basis for the constitution of a network that has two main objectives: to provide a forum through which European Institutions are given an opportunity to request the opinions of Supreme Courts; to bring Supreme Courts closer by encouraging discussion and the exchange of ideas.

Since 2005, stages are organized for the Members of the Supreme Courts, as part of the Exchange Programme of European judicial authorities with the support of the European Judicial Training Network.

Since 2006, the Network has, with the financial support of the European Commission, developed a Common Portal of jurisprudence which will allow its members to question all the national case law databases.

1 Council Regulation (EC) No [1348/2000](#) of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

2 Council Regulation (EC) No [1206/2001](#) of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters.

3 Council Decision [2001/470/EC](#) of 28 May 2001 establishing a European Judicial Network in civil and commercial matters [OJ L 174 of 27.6.2001]

4 The contact points meet at least once every six months to exchange information and experiences, to identify problems and best practices, and to determine guidelines for establishing the information system. The number of representatives attending these meetings cannot exceed four per Member State.

The potential initiatives of EUI

The EUI can promote the creation of a center, possibly associated to the Florence School of Regulation and with the Robert Schuman Center, that would concentrate on the role of the national judiciaries in the promotion of European legal and institutional integration

Potential areas for intervention

The European University Institute may play an important role in relation to four areas

- a) to contribute to judicial cooperation in civil matters by establishing permanent judicial conferences organised about specific subject matters among State Supreme and Constitutional Courts and ECJ, to interact with the European judicial network and the network of Constitutional Courts
- b) To foster the collaboration between ECJ and national Courts by contributing to the creation of databases and glossaries
- c) To foster dialogue between the judiciary and national regulators. In particular to compare judicial review systems in each Member state concerning European legislation implemented at national level. Given the proliferation of European committees of regulators and their growing importance for regulated sectors, it might be appropriate to generate links between these networks and the judicial networks. EUI can be the ideal place if a Florence school of regulation and a Florence school of judicial governance will develop within the Robert Schuman Center
- d) to promote a training program for judges in MS with specific attention devoted to the judiciary in new Member States. This program should focus on European law and can be potentially associated to initiatives undertaken by the Academy of European Law

These goals can be achieved by cooperating with the European Commission but also with national judiciaries involved in the creation of networks.

