

Aspects Regarding the Judicial Cooperation in Civil and Commercial Matters

Costache Mirela

“Danubius” University of Galati, Faculty of Law, mirelacostache@univ-danubius.ro

Abstract: The reasons for which Europe is now committed more and more on the way to a unitary legal system are complex. Evolution dynamics creates necessary links and political, economic and social structures, of supranational nature, which have led, not only to actions taken at EU level, for the purposes of national law harmonization, but it also lead to initiatives towards unifying the European law system. From the substantial point of view, most of the national law domain has a community dimension. The European Union has set the objective for maintaining and developing as an area of freedom, security and justice, where it is guaranteed the free movement of people. Within the EU common judicial area, **the judicial cooperation** is conducted on the basis of some community instruments that are based on the principles of mutual recognition and confidence between the Member States' legal systems. The gradual establishment of this area and the proper functioning of the internal market need to improve, to simplify and to speed up the real judicial cooperation between Member States in civil and commercial matters. To achieve the set objectives, this cooperation is oriented towards establishing the means of harmonizing the laws of the Member States and it aims at the institutions' participation that have specific responsibilities in the domain of judicial cooperation in civil and commercial matters.

Keywords: judicial cooperation, community law, the national legal system legal proceedings, legislative harmonization

1. Introduction

The unprecedented development of the community, social and economic relations, requires close cooperation from the legal point of view, regarding the civil, criminal, commercial etc. matters, given the significant increase of legal relations between law subjects, from different Member States and the conflict between them. The dynamics of these relationships required a change in the point of view regarding the cooperation, so that there was mentioned in the doctrine, figuratively speaking, of an **“esperanto in the world of law”**. Its main and unique purpose is increasing the efficiency of the cooperation system in the community justice.

Numerous studies in this field have made possible the identification of the domain or domains, where the development of a judicial area and implicitly a judicial cooperation would necessarily impose. As such, the concepts of community judicial area and the judicial cooperation cover many aspects both common and independent; its only link may only be accomplished by the attitude of the Member States to begin the new challenges posed by the judicial cooperation.

Issues of cooperation in civil and commercial matters concern in particular issues such as notification and communicating the judicial and extrajudicial documents abroad, obtaining evidence abroad in civil and commercial matters, information on foreign law, the international access to justice, recognition and enforcement of legal decisions abroad, international protection of minors, authentication/applying the signature of the Romanian official documents to be effective abroad, etc.

2. Sources

Initially stipulated in the Treaty of Rome (art. 293 EC), the judicial cooperation began early in late 1960's in criminal matters, and later extending its applicability in civil domain also. The road to a common ground in the judicial area knows as landmark also the Brussels Convention of 27 September 1968, on the jurisdiction competence, the acknowledgement and enforcement of legal judgments in civil and commercial matter, also known as the Brussels Convention I.

With the adoption of the Single European Act of 1986, the European integration has made a significant progress: by the end of 1992 it was necessary that the European Internal Market, an “*economic territory without borders, which guaranteed free movement of goods, persons, services and capital*” to gradually become a reality. At the Maastricht Treaty (TEU) in 1992, which obtained the highest form of integration in the European history, “three pillars” of EU were built up; the third pillar aimed at “cooperation in the justice domain and internal business.

Starting with 1st May 1999, the Treaty of Amsterdam stated its desire to create a space of **freedom, security and justice**¹, becoming a real currency that would provide community needs. It was stated that to this treaty it was given an important impulse to the development of the concept of *European private law*²; so the judicial cooperation went from the third pillar of the Union to the first, in order to create a judicial area in which the access to justice in a foreign court would not be so difficult than its own court³. Thus, the IVth Title of the Treaty has provided preconditions to a real judicial and legal cooperation in civil matters⁴. Article 65 TEC refers to measures relating to judicial cooperation in civil matters with cross-border impact, aiming among others at improving and simplifying the cooperation in the taking evidence, having a easier compatibility of the rules of civil procedure applicable in the Member States⁵. Immediately, within months, there were adopted numerous regulations (rules, directives, decisions), in particular business commercial or community law.

The European Council met in Tampere (15-16 October 1999) marked its agreement on guidelines and priorities for a common policy for developing the EU as a space of liberty, freedom and justice, which include: creating a genuine area of justice through free access to justice for citizens of Member States, the fight against crime at EU level, establishing a common policy on migration and asylum law etc.

Subsequently, by the Treaty of Nice in 2001, it was agreed that the adoption of Community acts on judicial cooperation to follow the path of co-decision proceeding, except the aspects of family law. The deciding procedure, under the art. EC 67, has been changed after introducing paragraph. 5, so that, in matters of judicial cooperation, except the family law, will come into force the co-participation proceeding at delivering decisions, according to Art. 251 EC. Thus the unanimous vote principle of art. 67 EC is replaced by the principle of making decisions by qualified majority of votes.

Moreover, aiming at the same purpose, the Council adopted Regulation No. 743/2002/CE of 25 April 2002, establishing a general Community framework of activities in civil matters. Among the objectives of this regulation, there are also included: encouraging judicial cooperation,

¹ The fifth article of this treaty: “...to maintain and develop the Union as area of freedom, security and justice.

² Nourissat, Cyril, *Droit communautaire des affaires*, 2^e édition, Paris, Dalloz, 2005, p. 17; Moussis, Nicolas, *Accès à l'Union Européenne. Droit, économie, politique*, 12^e édition révisée, Paris, LGDJ, 2006, pp. 144-147.

³ Păncescu, Flavius George, *Spre un Cod Judiciar european?* in «Studii de drept românesc». Serie nouă, Anul 18 (51), nr. 1-2, ianuarie-iunie 2006, pp. 85-92.

⁴ Păncescu, Flavius George, *Spre un Cod Judiciar european?* in «Studii de drept românesc». Serie nouă, Anul 18 (51), nr. 1-2, ianuarie-iunie 2006, pp. 85-92.

⁵ Tudorel, Ștefan, Andreșan-Grigoriu, Beatrice, *Drept comunitar*, București, Editura C.H. Beck, 2007, p. 611.

facilitating mutual awareness of the judicial systems of Member States, providing legal means in this domain etc.⁶

Starting from these ambitious efforts, the European Council in Brussels (4-5 November 2004) adopted the so-called Hague Program⁷ on strengthening freedom, security and justice. This program established among the 10 priorities for the next five years the insurance of creating a genuine European judicial area.

Another major community act that raises issues of legal community harmonization is the Community Regulation no. 805/2004/CE of 21 April 2004⁸, creating a European Enforcement Order for uncontested claims. Its goal is to ensure free movement of judgments, of legal transactions and authentic documents, having eliminating the exequatur's procedure, which means the automatic recognition and exertion, without a prior procedure of judgments given by the Member States.⁹

In the Treaty establishing a Constitution for Europe (J. Of. C310/01 EC 2004), judicial cooperation in civil matters is referred to paragraph III, Article III-269. According to it, there must be taken some measures, as simple European rule or framework type; if it proves to be necessary for the proper functioning of the common European market, it must ensure the following:

- a) mutual recognition and exertion of judicial and extrajudicial decisions between Member States;
- b) notification of judicial and extrajudicial documents;
- c) the correlation of conflict norms and the applicable provisions in the Member States, in order to avoid conflicts of jurisdiction;
- d) cooperation in taking the evidence domain;
- e) direct access to justice;
- f) removing obstacles to the smooth conduct of civil proceedings, by correlating the norms of civil procedure law applicable in the Member States, when it is appropriate;
- g) development of some alternative methods for solving conflicts;
- h) promoting professional training of judges and employees in the justice domain.

This cooperation may also include the development of the harmonization means of the Member States' laws. However, the Project of the European Constitution was limited to the general framework, widely discussed before the need to develop a relevant judicial cooperation in the Community. There was only an attempt to encourage the Member States to adopt necessary measures that would allow an approximation, harmonization of the legal stipulations.¹⁰

The Treaty of Lisbon will have considerable influence on the current rules that govern the freedom, security and justice at the community level, proposing to facilitate the progress by the EU, of actions that are more complex, legitimate, transparent and democratic.

Also in civil and commercial matters it has been recently adopted the European Parliament Resolution of 18 December 2008 containing recommendations to the Commission regarding the authentic European document. The Commission highlighted among its priorities the need to

⁶ Păncescu, Flavius George, *op. cit.*, p. 88.

⁷ COM (2005) 184 final, not published in JOCE.

⁸ It was published in JOCE L 143 in 30 April 2004 and it was applied in 21 January 2005.

⁹ For more details visit: http://www.just.ro/Portals/0/CooperareJudiciara/Doc%201_Manual%20Civil.pdf.

¹⁰ Decizia nr. 470/2001/CE.

guarantee a genuine European area of justice within the civil justice, and, in particular, the recognition and enforcement of judgments; whereas in order to increase the mutual trust within the European Union, the program identifies as a key priority in the coming years to apply implement the principle of mutual recognition, which is a practical way to protect citizens' rights and to guarantee the possibility of exercising them in a Europe without borders.

Concluding on normative aspects that have developed in support of harmonization of law systems on a common line in civil and commercial domain, there is a huge initiative of Community institutions to establish progressively an overall legal framework, using the doctrine views of pros and cons about establishing civil and commercial community law.

3. European Law Network

In autumn 1999, the Council held a meeting in Tampere, Finland, dedicated to creating a freedom security and justice area within the European Union. The Heads of State or of Government wanted to take a series of initiatives by the Commission, regarding the improving access to justice for physical person and companies from Europe, one of which was referring to establish a network of national authorities with the responsibility over the civil and commercial law. Thus, in September 2000 the Commission presented a proposal for a decision on the establishment of the network, which the Council then adopted it in May 2001.

In this context, in order to simplify the problems on access to justice for citizens that had to face disputes in other Member States, it was created the European Judicial Network in civil and commercial matters by the Council Decision of 28 May 2001¹¹, which proposed that its main objective was to improve judicial cooperation between Member States and to facilitate access to justice of persons involved in cross border disputes.

The network is made up of representatives of legal and administrative authorities of the Member States and they meet several times a year to achieve an exchange of information and experience and to support cooperation between Member States as regards the civil and commercial law.

The main objective is to ease the lives of people who are involved in litigations of any kind which have a transnational element, specifically involving several Member States.

Nowadays, the European Union has a wide variety of national legal systems, and this diversity often creates problems when the litigation goes beyond the national borders.

The physical persons and companies, especially the legal professions will find it useful to have access to information on different national systems of civil and commercial law and to instruments of the European Union and other international organizations, including the United Nations, the Hague Conference and the Council of Europe.

In 2004 it was established the Romanian Judicial Network of Cooperation in Civil and Commercial matters, being composed of judges from courts of appeal and coordinated by national contact points for the European Judicial Network, designated at the level of Ministry of Justice. The National Contact Points and the members of Romanian Judicial Network of cooperation in civil and commercial matters attend to EJM the meetings.

¹¹ Article 6 of the above mentioned Decision: *“In order to improve, simplify and accelerate the real judicial cooperation between Member States in civil and commercial matters, it is necessary to establish at Community level a network cooperation structure - the European Judicial Network in civil and commercial matters”*

4. Conclusions

The Judicial cooperation in civil matters is therefore an important domain in the current and future development of the European Union, having as evidence the continuous concern over the harmonization opportunities and creation of a single direction in legal matters. From the substantial point of view, most of the national law domain has a community dimension.

The lately affirmed tendency is therefore to establish by law framework, particularly, if it is necessary for the proper functioning of the EU internal market, the measures designed to ensure communication and cross-border notification of judicial and extrajudicial documents.

For these reasons, knowledge and the proximity to national and Community depositions in the judicial cooperation domain in civil and commercial matters is likely to contribute to fulfilling the requirement for conducting with celerity the civil and commercial processes, which imply the existence of a participant on a territory of a Member State of the European Union.

This process of creating a true giant in the law world is and it will be for a long time the conditioned of many factors such as: the influence and the recovering of the political will, opportunities for legal harmonization etc.

The priority in this regard is the establishment of some fundamental principles, their harmonization with the legal procedure and the arbitration and creating a balance between them.

5. References

- Banciog, Aurel. (2003). *Drept privat comparat*, București: Editura Fundației „România de Măine”.
- Cartou, Louis (et collaborateurs). (2006). *L'Union Européenne*, 6^e édition, Paris, Dalloz.
- Ciobanu-Dordea, Aurel. (2007). *Legislație comunitară privind cooperarea judiciară în materie civilă și penală*, București: Editura C. H. Beck.
- Ferrari, Franco. (2005). *Contrat de vente internationale*, Paris: Helbing&Linchtenhahn, Bruylant.
- Kadner Graziano, Thomas (2006). *Le contrat en droit privé européen. Exercices de comparaison et d'harmonisation*, Bâle, Helbing&Lichtenhahn, Bruylant.
- Mladen, Carmen. (2006). *Drept privat comparat. Curs universitar*, Craiova: Editura Sitech.
- Moussis, Nicolas. (2006). *Accès à l'Union Européenne. Droit, économie, politique*, 12^e edition revisee, Paris, LGDJ,
- Nourissat, Cyril. (2005). *Droit communautaire des affaires*, 2^e édition, Paris: Dalloz.
- Tudorel, Ștefan, Andreșan-Grigoriu, Beatrice. (2007). *Drept comunitar*, București: Editura C.H. Beck.
- Teleagă, Constantin. (2004). *Armonizarea legislativă cu dreptul comunitar în domeniul dreptului civil. Cazul răspunderii pentru produsele defectuoase*, București: Editura Rosetti.
- Turianu, Corneliu. (2008). *Contracte civile speciale. Culegere de practică judiciară*, ediția a 2-a, București: Editura C. H. Beck.
- Turianu, Corneliu, Pătulea, Vasile. (2008). *Drept comercial. Culegere de practică judiciară*, București: Editura C. H. Beck.
- Zlătescu, Victor Dan. (1997). *Drept privat comparat*, București: Editura Oscar Print.
- http://www.observatoiredeleurope.com/Un-droit-civil-unique-pour-un-peuple-unique-_a302.html
- <http://eur-lex.europa.eu>
- http://www.just.ro/Portals/0/CooperareJudiciara/Doc%201_Manual%20Civil.pdf
- http://ec.europa.eu/civiljustice/legal_aid/legal_aid_ec_ro.htm
- http://ec.europa.eu/civiljustice/index_ro.htm
- www.storme.be/euroius.html