

The role of the national judge in the European judicial system

European Parliament resolution of 9 July 2008 on the role of the national judge in the European judicial system (2007/2027(INI))

The European Parliament,

- having regard to Article 61 of the EC Treaty, which provides for the progressive establishment of an area of freedom, security and justice including measures in the field of judicial cooperation in civil and criminal matters,
 - having regard to the Hague Programme for strengthening freedom, security and justice in the European Union¹, adopted by the Brussels European Council on 5 November 2004, and to the Commission's communication of 10 May 2005 on "The Hague Programme: Ten priorities for the next five years" (COM(2005)0184),
 - having regard to the call, made on 14-15 December 2001 by the Laeken European Council, for the rapid setting-up of a European network to encourage training for the judiciary, with a view to helping to develop trust between those involved in judicial cooperation,
 - having regard to its resolutions of 10 September 1991 on the establishment of a European Law Academy² and of 24 September 2002 on the European Judicial Training Network³ (EJTN),
 - having regard to the Commission's communications of 29 June 2006 on judicial training in the European Union (COM(2006)0356), of 5 September 2007 on a Europe of results: applying Community law (COM(2007)0502), and of 4 February 2008 on the creation of a Forum for discussing EU justice policies and practice (COM(2008)0038),
 - having regard to Council Decision 2008/79/EC, Euratom of 20 December 2007 amending the Protocol on the Statute of the Court of Justice⁴, and the consequent modifications of the Court of Justice's Rules of Procedure introducing an urgent preliminary ruling procedure,
 - having regard to Articles 81(2)(h) and 82(1)(c) of the future Treaty on the Functioning of the Union, as inserted by the Treaty of Lisbon, which would provide a legal basis for measures aimed at providing support for the training of the judiciary and judicial staff,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0224/2008),
- A. whereas a survey carried out for the purposes of this resolution during the second half of 2007 highlighted:

¹ OJ C 53, 3.3.2005, p. 1.

² OJ C 267, 14.10.1991, p. 33.

³ OJ C 273 E, 14.11.2003, p. 99.

⁴ OJ L 24, 29.1.2008, p. 42.

- significant disparities in national judges' knowledge of Community law¹ across the European Union, with awareness of it being sometimes very limited,
 - the urgent need to enhance the overall foreign language skills of national judges,
 - the difficulties experienced by national judges in accessing specific and up-to-date information on Community law,
 - the need to improve and intensify the initial and life-long training of national judges in Community law,
 - the judges' relative lack of familiarity with the preliminary ruling procedure, and the need to reinforce the dialogue between national judges and the Court of Justice,
 - the fact that Community law is perceived by many judges as excessively complex and opaque,
 - the need to ensure that Community law lends itself better to application by national judges,
- B. whereas the primary responsibility for judicial training, including its European dimension, rests with the Member States; whereas the above-mentioned Hague programme contains a statement by the European Council that "an EU component should be systematically included in the training of judicial authorities"², and whereas the training of the judiciary in each Member State is nevertheless a matter of common concern for the EU institutions and every Member State,
- C. whereas Community law must not be perceived as an area reserved for an elite body of specialists, and whereas training opportunities in this area must not be confined to judges of the higher courts, but rather extended equally to judges at all levels of the judicial system,
- D. whereas certain bodies supported financially by the Community are increasingly successful, and already train judges and state prosecutors in large numbers,
- E. whereas knowledge of foreign languages is crucial in ensuring proper judicial cooperation, in particular in civil and commercial matters, in areas where direct contact between judges is provided for, and in ensuring access to exchange programmes for judges,
- F. whereas the current average duration of the preliminary ruling procedure, despite constant efforts on the part of the Court of Justice, remains excessively long and considerably reduces the attractiveness of this procedure for national judges,
- G. whereas the Court of Justice has held that it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection of rights derived from Community law³,
- H. whereas nothing in this resolution should be taken as affecting the independence of judges and of the national legal systems, in accordance with Recommendation No. R(94)12 of the Committee of Ministers of the Council of Europe and the 1998 European Charter on the statute for judges,

The national judge as first judge of Community law

¹ For the purposes of this resolution, references to Community law should be understood as also including Union law.

² OJ C 53, 3.3.2005, p. 1, at p. 12.

³ Case C-50/00 P *UPA* [2002] ECR I-6677, at paragraph 41.

1. Notes that the European Community is a community based on the rule of law¹; notes that Community law remains a dead letter if it is not properly applied in the Member States, including by national judges, who are therefore the keystone of the European Union judicial system and who play a central and indispensable role in the establishment of a single European legal order, not least in the light of the recent achievements by the Community legislature² to involve them more actively in, and accord them greater responsibility for, the implementation of Community law;
2. Welcomes the Commission's acknowledgment that national judges play an essential role in ensuring respect for Community law, for example through the principles of the primacy of Community law, direct effect, consistency of interpretation and state liability for breaches of Community law; calls on the Commission to pursue its efforts in this direction in addition to sectoral initiatives already in place; furthermore, calls on the Commission to proceed without delay with the publication of an information note on actions for damages for breaches of Community law by national authorities;

Issues relating to language

3. Considers that language is the main tool of practitioners of justice; considers that the current level of foreign language training for national judges, in conjunction with the actual level of knowledge of Community law, limits not only possibilities for judicial cooperation on specific instruments, but also the development of mutual trust, proper use of the *acte clair* doctrine, and participation in exchange programmes; calls on all players involved in judicial training to give specific attention to the training of judges in foreign languages;
4. Notes that the application of Community law by national judges is a complex challenge for national judges, particularly for those in the Member States which joined the European Union in May 2004 and subsequently, making it necessary to step up measures to promote professional training for judges in those Member States;
5. Is, moreover, of the opinion that, by enacting a series of regulations containing conflict-of-law rules, the Community legislature has made a policy choice which involves the likely application of foreign law by national judges, possibly also entailing the use of a comparative approach; considers that these elements, taken together, further strengthen the case for increasing foreign language training;
6. Considers that it is in the public interest to enhance the language skills of the judiciary in the Member States; calls on the Member States, therefore, to ensure that such training is free of charge and easily accessible, and to explore the possibility of judges being able to study a foreign language in a Member State where it is spoken, for example in conjunction with participation in a judicial exchange;
7. Considers access to academic literature in the judge's mother tongue to be important for a better understanding of Community law, and notes the apparent scarcity of specialised literature on Community law in certain official languages of the EU, for example concerning private international law issues, and the grave potential consequences this has for the construction of a common legal order reflecting a diversity of legal traditions;

¹ Case 294/83 '*Les Verts*' v *European Parliament* [1986] ECR 1339, at paragraph 23.

² See for example Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

therefore calls on the Commission to support the development of such literature, particularly in the less-spoken official languages;

Access to relevant sources of law

8. Notes that complete and up-to-date information on Community law is not available in a systematic and proper manner to many national judges, and that Community law is sometimes poorly represented in domestic official journals, codes, commentaries, periodicals and textbooks and based on translations of uneven quality; calls on the Member States to renew efforts in this area;
9. Is of the opinion that a true European judicial area in which effective judicial cooperation can take place requires not only knowledge of European law, but also mutual general knowledge of the legal systems of the other Member States; highlights the inconsistencies in the treatment of foreign law throughout the European Union and considers that this important issue should be addressed in the future; takes note in that respect of the Commission's forthcoming horizontal study on the treatment of foreign law in civil and commercial matters, and of the ongoing studies within the framework of the Hague Conference on Private International Law;
10. Welcomes the Commission's intention to support the improved availability of national databases on national court rulings concerning Community law; considers that these databases should be as complete and user-friendly as possible; considers, moreover, that the Conventions and Regulation on jurisdiction and enforcement of judgments in civil and commercial matters would be a case in point for a European database, given their frequent use by national judges;
11. Is of the opinion that all national judges should have access to databases containing pending references for preliminary rulings from all Member States; considers it equally useful for judgments of referring courts applying a preliminary ruling to be further publicised, as is already touched upon in the Court of Justice's information note on references from national courts for a preliminary ruling¹;
12. Considers, given the wealth of online information available on Community law, that judges must be trained not only in the substance of the law, but also in how to access up-to-date legal sources efficiently;
13. Welcomes the Commission's commitment to publish citizens' summaries of Community legal acts, and considers that such non-legalistic summaries would also help legal practitioners to access relevant information more quickly;
14. Encourages the development of online tools and initiatives in the field of e-learning, which, whilst not being a complete answer to training, should be seen as complementary to face-to-face contact between judges and trainers;

Towards a more structured framework for judicial training in the European Union

15. Calls for the EU component in the training at national level of all members of the judiciary:

¹ OJ C 143, 11.6.2005, p. 1, at paragraph 31.

- to be systematically incorporated into training for, and examinations to enter, the judicial professions,
 - to be further strengthened from the earliest possible stage onwards, with an increased focus on practical aspects,
 - to cover methods of interpretation and legal principles which may be unknown to the domestic legal order, but which play an important role in Community law;
16. Takes note of the growing success of the exchange programme for members of the judiciary; encourages the EJTN to make it accessible to the widest number of judges, and to ensure an adequate inclusion of judges from civil, commercial and administrative backgrounds; welcomes the EJTN's activities in the field of language training and the extension of the exchange programme to the Court of Justice, Eurojust and the European Court of Human Rights;
 17. Regards the availability of national judges to participate in basic and advanced training as a major logistical and financial issue for Member States; considers, in principle, that judges should not have to bear any of the costs related to their training in Community law; requests the Commission to provide Parliament with estimates for each Member State of the cost involved in temporarily replacing judges who participate in exchange programmes;
 18. Taking into account the Commission's recognition that the EJTN enjoys a de facto monopoly for operating the Exchange Programme for Judicial Authorities, calls on the Commission to ensure that the procedures by which the EJTN applies for funds for that Exchange Programme reflect that monopoly situation; calls, in particular, for those procedures to be streamlined in order to ensure that funds are made available timeously so as to enable the EJTN to organise and run an efficient programme which meets the expectations of, and commitments made to, participating national schools, international bodies and judges and prosecutors; considers that, if this is not the case, the credibility of the Exchange Programme may be called into question, to the detriment of national judges and prosecutors interested in taking part and the advancement of mutual confidence across European judiciaries;
 19. Takes note of the Commission's assessment that the most appropriate option for promoting training in the European judicial area is currently financial support to various bodies through the Fundamental Rights and Justice Framework Programme for 2007-2013, and that the question of developing European judicial training structures towards other forms could be raised again when that programme comes to an end;
 20. Calls on the Commission to evaluate rigorously the results of this framework programme, in the light of this resolution, and to formulate new proposals for the development and diversification of measures to promote professional training for judges;
 21. Considers, however, that the time is ripe for a pragmatic institutional solution to the question of judicial training at EU level which makes full use of existing structures whilst avoiding unnecessary duplication of programmes and structures; calls, therefore, for the creation of a European Judicial Academy composed of the EJTN and the Academy of European Law; calls for this institutional solution to take account of relevant experience gained in running the European Police College;

22. Considers that national judges cannot adopt a passive attitude to Community law, as made clear by the Court of Justice's case-law on national courts raising Community law issues of their own motion¹;
23. Calls for the training of candidates for judicial appointment to be strengthened from the earliest point onwards and by analogy with the above suggestions and proposals concerning national judges;

A reinforced dialogue between national judges and the Court of Justice

24. Considers that the preliminary ruling procedure is an essential guarantee of the coherence of the Community legal order and the uniform application of Community law;
25. Calls on the Court of Justice and all parties concerned to further reduce the average length of the preliminary ruling procedure, thus making this crucial opportunity for dialogue more attractive to national judges;
26. Urges the Commission to investigate whether any national procedural rules constitute an actual or potential hindrance to the possibility for any court or tribunal of a Member State to make a preliminary reference, as provided for in the second paragraph of Article 234 of the EC Treaty, and to pursue vigorously the infringements which such hindrances represent;
27. Considers that limitations on the Court of Justice's jurisdiction, particularly those concerning Title IV of the EC Treaty, unnecessarily prejudice the uniform application of Community law in those areas, and send a negative message to the vast majority of judges dealing with such matters, making it impossible for them to establish direct contact with the Court of Justice and creating unnecessary delays;
28. Regrets that, under Article 10 of the Protocol on transitional provisions annexed to the Treaty of Lisbon, the powers of the Court of Justice with respect to acts in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of that Treaty are to remain the same as they are under the present EU Treaty for a transitional period of five years; welcomes, however, the declaration made by the Intergovernmental Conference concerning that article of the Protocol and accordingly urges the Council and the Commission to join with Parliament in re-adopting those acts in the field of police cooperation and judicial cooperation in criminal matters which were adopted before the entry into force of the Treaty of Lisbon;
29. In view of the introduction of an urgent preliminary ruling procedure, agrees with the Council that it is important for the Court of Justice to provide guidance to which national judges could refer when deciding whether to request the urgent procedure;
30. Calls on the Court of Justice to consider all possible improvements to the preliminary ruling procedure which would involve the referring judge more closely in its proceedings, including enhanced possibilities for clarifying the reference and participating in the oral procedure;

¹ Cases C-312/93 *Peterbroeck* [1995] ECR I-4599, C-473/00 *Cofidis* [2002] ECR I-10875 and C-168/05 *Mostaza Claro* [2006] ECR I-10421.

31. Considers that, in a decentralised and mature Community legal order, national judges should not be marginalised but rather given more responsibility and further encouraged in their role as first judges of Community law; therefore urges consideration of a "green light" system whereby national judges could include their proposed answers to the questions they refer to the Court of Justice, which could then decide within a given period whether to accept the proposed judgment or whether to rule itself in the manner of an appellate court;

Laws better tailored to application by national judges

32. Takes note of the creation of a Forum for discussing EU justice policies and practice, and calls on the Commission to ensure that the Forum carries out its deliberations in a transparent manner; notes the Commission's commitment to report on a regular basis both to Parliament and to the Council;
33. Insists on the need for clearer language in Community legislation, and greater terminological coherence between legal instruments; supports in particular the use of the projected Common Frame of Reference in European contract law as a better law-making instrument;
34. Strongly supports the Commission's insistence that the Member States systematically provide correlation tables setting out how Community directives are applied in national regulations; agrees that such tables provide valuable information at minimal cost and burden; considers, moreover, that correlation tables increase transparency in the implementation of Community law and give national judges and parties before them a realistic opportunity to see whether Community law lies behind a particular national rule and to check for themselves whether, and if so how, transposition has been properly carried out;

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35. Instructs its President to forward this resolution and the report of the committee responsible to the Council, the Commission, the Court of Justice, and the European Ombudsman.