
The European Union and National Civil Procedure

Editors:
Anna Nylund and
Bart Krans

The European Union and National Civil Procedure

Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

Distribution for the UK and Ireland:
NBN International
Airport Business Centre, 10 Thornbury Road
Plymouth, PL6 7 PP
United Kingdom
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for Europe and all other countries:
Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21
Email: mail@intersentia.be

Distribution for the USA and Canada:
International Specialized Book Services
920 NE 58th Ave. Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free) | Fax: +1 503 280 8832
Email: info@isbs.com

The European Union and National Civil Procedure

© Anna Nylund and Bart Krans (eds.) 2016

The editors have asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Cover image: © Sergey Nivens - Shutterstock

ISBN 978-1-78068-380-5
D/2016/7849/91
NUR 822

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

CONTENTS

<i>About the Authors</i>	ix
<i>List of Abbreviations</i>	xi

The European Union and National Civil Procedure – A Rocky Road or a Smooth Process?

Anna Nylund and Bart Krans	1
----------------------------------	---

Some European Challenges for Belgian Civil Procedure

Piet Taelman	5
1. The Invisible Pillar Raises Serious Compatibility Issues between EU (Case) Law and Belgian Civil Procedure Law	5
2. A New Legal Instrument Inspired by European Legislation does not seem to be in Sync with its European Counterparts	11
3. To Conclude	15

Danish Civil Procedure and the Internal Market: Impact and Challenges of Sectoral Harmonisation

Clement Salung Petersen	17
1. Introduction	17
2. Sectoral Harmonisation and Danish Civil Procedure Law: Impact	18
2.1. Disclosure of Evidence	19
2.2. Measures for Preserving Evidence	20
2.3. Right to Information	22
2.4. Legal Costs	23
2.5. Interpretation of Civil Procedure Rules	24
2.6. Civil and Criminal Procedure Law	25
2.7. Conclusion	26
3. Sectoral Harmonisation and Danish Civil Procedure Law: Challenges	26
4. Danish Civil Procedure and the Internal Market	27
5. Concluding Remarks	29

European Influences upon English Civil Justice: Tempests or Gentle Breezes?	
Neil Andrews	31
1. Introduction	31
2. European Statutory Changes to English Civil Procedure	31
3. The EU Ban on Anti-suit Injunctions Concerning Litigation Conducted before Member States	33
4. European Account Preservation Order	35
5. Cross-Border Mediation within the EU	35
6. Opt-in and Opt-out Collective Proceedings within Competition Law	36
7. Separation of Powers and the European Convention on Human Rights	39
8. Other Tentacles of European Human Rights Law	42
9. Concluding Remarks	45
European Union and National Civil Procedure: The French Paradox	
Isabelle Després	47
1. Introduction	47
2. The Private International Law Approach	49
3. The Consumer Law Approach	52
4. The Approach Through Civil Procedure Itself	55
5. Conclusion	58
The European Union and Civil Procedure from a German Perspective	
Wolfgang Hau	59
1. Background	59
2. EU Law and Civil Procedure: Cross-border Cases	62
2.1. EU Primary Law	62
2.2. EU Secondary Law	62
2.2.1. Overview	62
2.2.2. German Reactions	64
3. EU Law and Civil Procedure: Domestic Cases	65
3.1. European Procedural Standards	65
3.2. EU Law as Model for National Rules	68
4. Outlook	70
Interaction between European Law and Hungarian Civil Procedure Law	
Viktória Harsági	73
1. Introduction	73
2. Directions of the Research	75
3. Court Structure	76
4. The Impact of the Norms of European Civil Procedure Law on Hungarian Legislation	77
4.1. General Remarks	77
4.2. Regulation Brussels I (Old and New) and Brussels IIa	78

4.3.	European Enforcement Order	79
4.4.	Matters Relating to Maintenance or Succession	80
4.5.	Legal Assistance (Service of Documents, Taking of Evidence)	80
4.6.	The European Order for Payment Procedure and the European Small Claims Procedure	82
4.7.	Legal Aid	83
4.8.	Mediation	84
5.	Case Law	85
5.1.	Hungarian Case Law Relating to European Civil Procedure Law	85
5.2.	The Impact of the Case Law of the Court of Justice of the European Union on Hungarian Legislation and the Application of Law	85
6.	Main Tasks to be Carried out during the Codification of the New Code of Civil Procedure	88
 The Impact of EU Law on Dutch Civil Procedure Law		
	Bart Krans	89
1.	A Growing Interplay	89
2.	New Questions about a Long-running Subject	91
3.	New Rules	92
3.1.	Some Examples	93
3.2.	New Rules with Impact	95
3.3.	New Rules with Lesser Impact	97
3.4.	New Rules: Always at Least Some Impact	97
4.	Spontaneous Harmonisation	98
5.	Conclusions	100
 Norway: An Insider Outside – or an Outsider Inside – European Civil Justice		
	Anna Nylund	101
1.	The EU, the EEA Agreement and Norwegian Law	101
2.	The Lugano Convention	103
3.	Impact of EEA Law on Norwegian Civil Procedure	106
4.	The Norwegian Supreme Court and the EFTA Court: A Turf War or Dialogue?	109
4.1.	Advisory Opinions	109
4.2.	The Nature of the EEA Agreement – Dynamic or Static?	112
5.	Consequences of a Janus-faced Approach to the EU and EEA	114
 Polish Civil Proceedings: How Much Europeanised?		
	Anna Piszcz	115
1.	Introductory Ideas	115
2.	EU Europeanisation through ‘Soft’ Measures	116
3.	EU Europeanisation through ‘Hard’ Measures	120
4.	Judicial EU Europeanisation	124
5.	Concluding Remarks	128

Slovenian Civil Procedure and the Transformative Power of the EU	
Aleš Galič	131
1. Introduction	131
2. European Civil Procedure and Changes in National Legislation	132
2.1. The ‘Minimalistic Approach’	132
2.2. Cross Border Regulations as a ‘Model Law’ for National Legislation? ...	132
2.3. Effects of the CJEU’s Understanding of Indirect Discrimination	134
3. European Civil Procedure and Changes in National Case Law.	135
3.1. General Considerations	135
3.2. Fictitious Domestic Service instead of Service Abroad	136
4. European Civil Procedure beyond the Judicial Co-operation in Civil Matters: Disclosure of Evidence in the Antitrust Damages Directive	139
5. The Right to have a Matter Submitted to the CJEU for a Preliminary Ruling as a Part of the Guarantee of Access to a Court, Established by Law	141
6. The Impact of the European Civil Procedure on the Legal Method and Mentality of National Judges	142
The Curious Incident of the Dog in the Night-Time: Europeanisation of Civil Procedure in Sweden	
Anna Wallerman	147
1. Introduction	147
2. EU-induced Legal Developments	148
3. ‘There Appears to Be No Need for Special Rules’	151
4. Swedish References for Preliminary Rulings.	152
5. <i>Ex Officio</i> Powers of the Courts	155
6. Grass Root Harmonisation: The Way Forward?	157
7. Of Barking and Biting.	159
Conclusions and Outlook	
Bart Krans and Anna Nylund	161
1. Impact, in Various Ways	161
2. General Conclusions from the Papers	161
3. Differences between Member States	163
4. Level of Knowledge and Understanding of EU Law amongst Judges	165
5. Attitudes towards Europeanisation	166
6. Methods of Implementation	167
7. Enforcement, Coherence and Fragmentation	168
8. Outlooks	169
<i>Index</i>	171

ABOUT THE AUTHORS

Neil Andrews is professor of Civil Justice and Private Law, University of Cambridge. His works include *Andrews on Civil Processes* (2 volumes, Intersentia, Cambridge, 2013; *Contract Law* (2nd edn, Cambridge University Press, 2015). Nha1000@cam.ac.uk

Isabelle Després is a full professor at the University of Nantes. She studied in Saarbrücken and Strasbourg, where she defended her thesis on French pre-trial discovery. She specializes in civil procedure and edited the French civil procedure code commentaries for Dalloz for 10 years. Isabelle.despres@univ-nantes.fr

Aleš Galič is a professor of civil procedure, private international law and arbitration at the University of Ljubljana, Faculty of Law, Slovenia. He is also a senior legal advisor to the Slovenian Constitutional Court. Ales.galic@pf.uni-lj.si

Viktória Harsági is professor and Head of Department at Pázmány Péter Catholic University Faculty of Law, Department of Civil Procedure Law in Budapest, and lecturer at the Andrásy Gyula German Speaking University in Budapest. Harsagi.viktoria@jak.ppke.hu

Wolfgang Hau, Dr., is a full professor at the University of Passau (chair for private law, civil procedure, and private international law) and part-time judge at the Higher Regional Court of Munich. hau@uni-passau.de

Bart Krans is a full professor at the University of Leiden (chair for Private Law and Civil Procedure Law). Among his publications are books on the influence of EU law on Dutch civil procedure law, on the law of evidence and on the law of obligations. He is a member of several editorial boards in his fields. Previously he was a full professor at the University of Groningen. h.b.krans@law.leidenuniv.nl

Anna Nylund is professor at University of Tromsø – the Arctic University of Norway. Her teaching and research includes issues in national and comparative civil procedure, and issues in alternative dispute resolution, with emphasis on mediation. She studied law at the University of Helsinki and defended her doctoral thesis on access to second

courts there. She is a member of several international scholarly associations in her fields. Anna.nylund@uit.no

Clement Salung Petersen (PH.D., LL.M.) is an Associate Professor at the University of Copenhagen, Faculty of Law. His main areas of research are civil procedure and enforcement of intellectual property rights. Clement.petersen@jur.ku.dk

Anna Piszcz Dr. Hab., is professor at the University of Białystok (Poland), Faculty of Law, Temporary on Duty of Chairman of the Department of Public Economic Law; member of the Advisory Board to the President of the Office for Competition and Consumer Protection. piszcz@uwb.edu.pl

Piet Taelman is a senior full professor at Ghent University Law School (Belgium). He teaches courses on Civil Procedure and has written on a wide variety of topics on civil procedural law in national and international journals and book chapters. He has been admitted to the Ghent Bar in 1982 and has practised as a lawyer and arbitrator during almost the whole of his academic career. Piet Taelman served as dean of the Ghent Law School from October 2008 till September 2014. Piet.taelman@ugent.be

Anna Wallerman received her LL.D. degree in 2015 from the University of Gothenburg, where she is currently an associate senior lecturer. She has previously been a visiting scholar at the universities of Oxford and Zürich. Her research interests are civil procedure and EU law. Anna.wallerman@law.gu.se

LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
APC	Polish Act on the Pursuit of Claims in Group Proceedings
BGBI	Bundesgesetzblatt
CJEU	Court of Justice of the European Union
CJP	Code of Judicial Procedure (Sweden)
CJQ	Civil Justice Quarterly
CMLR	Common Market Law Review
CPA	Civil Procedure Act (Slovenia)
CPC	Civil Procedure Code (Netherlands), (Poland)
DG	Directorate General
EC	European Community
EC-Treaty	Treaty Establishing the European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ECR	European Court Reports
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
ERPL	European Review of Private Law
ERT	Europarättslig tidskrift
EU	European Union
EUCFR	European Union Charter of Fundamental Rights
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
GPR	GPR – Zeitschrift für das Privatrecht der Europäischen Union
HCCP	Hungaria Code of Civil Procedure
IIC	International Review of Intellectual Property and Competition Law
IP	Intellectual Property
IPrax	Praxis des Internationalen Privat- und Verfahrensrechts
JT	Juridisk tidskrift
JZ	JuristenZeitung
LGDJ	Librairie générale de droit et de jurisprudence
NIR	Nordiskt immateriellt rättskydd

List of Abbreviations

NJA	Nytt juridiskt arkiv
NJW	Neue Juristische Wochenschrift
ODR	Online Dispute Resolution
OJ	Official Journal
OSP	Orzecznictwo Sadów Polskich
PIL	Private International Law
Rt.	Retstidende
RÅ	Regeringsrättens årsbok
TFEU	Treaty on the Functioning of the European Union
TRIPS	The Agreement on Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organisation
ZEuP	Zeitschrift für Europäisches Privatrecht
ZPO	Zivilprozessordnung (German Code of Civil Procedure)
ZZP	Zeitschrift für Zivilprozess