

Biannual meeting of the Franco-British-Irish Judicial Cooperation Committee (FBICC) in Edinburgh

14/06/2024



From 6 to 8 June 2024, the Franco-British-Irish Judicial Cooperation Committee (FBICC) met in Edinburgh for its biannual colloquium. Bruno Cathala, Honorary President of Chamber, Jean-Guy Huglo, Elder Judge at the Social Chamber, Nicolas Michon, judge referee and Clémence Bourillon, judge and Head of the International Relations Department, represented the Cour de cassation.

The Franco-British-Irish Judicial Cooperation Committee was set up in 1994 to strengthen judicial cooperation between France and the United Kingdom. Ireland joined the committee in 2007, after having been an observer for several years. The aim of this organisation is to promote dialogue between judges, strengthen cooperation between magistrates, promote mutual understanding between legal systems and exchange judges through the organisation of training courses. The committee's French team includes the Conseil d'Etat (Council of State) and the Cour de cassation.

The Edinburgh colloquium began with a presentation of the international cooperation of each member. President Cathala described the Cour de cassation's international strategy, highlighting recent cooperation initiatives, such as the Cour de cassation's enhanced cooperation with the UK Supreme Court. He also underlined efforts to disseminate case law, reminding Committee members of the translation of rulings and certain press releases, and the publication of the

International Newsletter of the Cour de cassation.

The colloquium then continued with a description of the training reports of magistrates who had carried out an exchange within the framework of the FBICC during the previous year. Mr Paul Matthews, judge at the Court of Arbitration in London, and Mr Brian Cummings, judge at the Crown Court of Liverpool, shared their experiences during a two-week stay at the Cour de Cassation and in French judicial institutions. Judge referee Nicolas Michon also shared his experiences of his stay in Scotland and his discovery of the Scottish system, which is steeped in both common law and civil law.

The first round table, suggested by the Cour de cassation, focused on the Gig Economy and the judicial response to the legal issues raised by the use of platform-based work. Lord Hodge, Deputy President of the UK Supreme Court, outlined the various legal angles from which the issue of platform workers had come before the Supreme Court, namely the status of these workers, the applicable tax regime, the issue of trade union representation of workers (collective bargaining) and algorithmic management. As far as status is concerned, the United Kingdom has an intermediate status between employee and self-employed: the "worker". The British Supreme Court opted for the latter status in its decision in *Uber v. Aslam* in 2021. Lord Hodge then explained the legal reasoning at work in this decision, bringing it into line with that adopted in the *Independent Workers Union of Great Britain v Central Arbitration Committee* and another case (known as the "Deliveroo case") dealt with by the Supreme Court in 2023. In the latter decision, the Supreme Court upheld the decision not to recognise the possibility of bicycle couriers forming a trade union, considering that they were not in an "employee" relationship with the company, and that the decision was therefore not contrary to the fundamental right to trade union representation.

Mr Justice Brian Murray developed the Irish case through the *Karshan v Revenue Commissioners* case of October 2023 (concerning the tax regime for pizza delivery drivers) and in particular the five-stage reasoning used by the judges of the Irish Supreme Court to conclude that the delivery drivers were "employees". This reasoning, aimed at determining whether or not there is a relationship of subordination, is similar in several respects to the methodology applied by the Cour de cassation, notably in the *Take Eat Easy* ruling of 28 November 2018 (appeal no. 17-20.079), the first European case to deal with the recharacterization of a platform worker's employment contract. This case law, followed by the so-called "Uber" case of 4 March 2020 (appeal no. 19-13.316), was explained by Elder Judge Huglo, tracing the legal path of these decisions, and mentioning the litigation of the commercial and criminal chambers in relation to these issues, as well as the decisions handed down by the Italian Corte di cassazione and the Spanish Tribunal supremo.



This was followed by a wide-ranging discussion on the status of workers, the regulation of algorithms and artificial intelligence in general.

The second round table focused on climate justice. Sir Keith Lindblom explained the "Heathrow airport" case of the British Supreme Court, which overturned an appeal decision invalidating a project to extend the airport on environmental grounds, notably with regard to the Paris Agreements. The French Conseil d'Etat described the various disputes it has had to deal with in this area, notably in the "Grande Synthe" [name of a French city] case, highlighting the new difficulties faced by administrative judges in terms of the interest in taking action, the timeframe and the effectiveness of their decisions. The climate cases brought before the European Court of Human Rights were also the subject of lively discussion, in connection with the dissenting opinion of the British judge attached to the *KlimaSeniorinnen Schweiz and others v. Switzerland* case.

The discussions then moved on to various questions relating to the intelligibility of justice decisions and the role of the judge in social issues, as well as the appropriateness of international jurisdictions in environmental matters.

The final round table dealt with the abolition of juries in criminal cases of a sexual nature. By way of background, a commission was convened at the initiative of the Lord President and Lord Justice General of Scotland in 2019 to draw up

a plan for reforming the justice system for sexual offences, given their growing volume. The report, delivered in 2021, concluded with a proposal for a pilot experiment to remove juries and thus introduce a single professional judge for sexual offences. The report was presented by Lady Dorrian, Chair of the Commission. This was followed by a lively debate which enabled the differences in criminal procedure between France, the United Kingdom and Ireland to be assessed. Lord McCloskey reminded us of this in his presentation of the Northern Irish system, in which the presence of the jury is very much reduced compared with the British systems due to the introduction in the 1970s of 'Diplock courts' in terrorism cases. Judge Brian Cummings described the English system, in which criminal cases are divided between the Magistrates' Courts (which hear 94% of all cases) and the Crown Courts, which are composed of a judge and a jury. He also outlined the main arguments in favour or against this system of échevinage.

Nicolas Michon, judge referee at the Criminal Chamber, then described the French system, focusing on the mechanisms of "correctionalization" [classifying a criminal offence as a correctional offence for the proper administration of justice] and the establishment of the Departmental Criminal Courts. He also presented the conclusions of the experimental report on the departmental criminal courts, noting the difficulties of the non-jury system, particularly in terms of magistrate human resources, as criminal courts require a large number of professional magistrates.

The ensuing debates were fruitful and focused on the role of the victim, the consideration given to the role of jurors in the various member states of the committee and the specific nature of sexual litigation.

The initiatives of the Franco-British-Irish Judicial Cooperation Committee promote a pragmatic dialogue between judges, enabling all its members to better understand national legal systems and the practical consequences of their specific nature. The next meeting will take place in 2026 at the French Cour de Cassation and Conseil d'Etat.

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