

Judicial practices that serve a European area of justice

The second set of lectures in the series “Thinking about judicial practices serving an area of justice” was an opportunity for Bernard Stirn, honorary section president at the Conseil d’État (CE), member of the Institute, Karima Zouaoui, first vice-president at Evry court and Emmanuelle Fraysse, European Delegated Prosecutor at the European Public Prosecutor’s Office, to deepen understanding of “judicial practices that serve a European area of justice”.

Mr Stirn analyzed how the European perspective has been incorporated into the case law of the administrative courts since the 1980s, resulting in a transformation of the tools and resources used to serve a European area of justice. First, the CE gradually shared the methods and solutions found in European Community law, now EU law, in a movement that began with the *Alitalia* and *Nicolo* decisions and ended with *Arcelor* and *Mme Perreux*. Secondly, he noted the incorporation of the law of the European Convention on Human Rights, resulting in changes with regard to procedural law (in particular, concerning the dual consultative and judicial function of the CE and the role of the *commissaire du gouvernement* in presenting an impartial case). Thirdly, comparative law has played an increasingly important role and increased attention has been paid to developments in foreign law. This phase has been accompanied by tools and resources that have helped make the European area of justice, as conceived within the administrative court system, a reality. It is thanks to discussions between judges, including meetings with their foreign counterparts, that the European dimension of justice has been able to become a human experience for judges. Case-law networks are a further tangible element, with tools used to cross-reference case law and increased distribution providing an opportunity to adapt working methods. Finally, the renaissance of comparative law, in particular through the creation of a comparative law unit at the CE in 2008 and the increased attention paid to the activities of learned societies has proved a very fertile means of serving the European area of justice.

For Ms Zouaoui, civil justice was an illustration of the way in which European judicial culture is developed through dialogue between judges, who appropriate, develop and invent judicial practices. The creation of an area of freedom, security and justice and the Europeanization of civil justice are the starting point for a significant shift. The European judicial network and cooperation tools have allowed civil judges to play a part in the aim of European construction, namely building lasting peace by enshrining the principles of the rule of law. Mutual trust and recognition have allowed judges to demonstrate inventiveness and even innovation, to develop new judicial practices. This inventiveness implies overcoming constraints to serve litigants and defendants, and good practices have been able to spread between countries thanks to training between judges. The development of rules on automatic recognition has given rise to a “form culture” in the heart of the European network. Moreover, national judges also see themselves as European judges, as well as judges of European law. We have also seen the use of concepts of openness, a constant evaluation of tools and consideration given to the contribution made by judges to the judicial area by other European institutions. All these elements highlight continuous cooperation between judges, the emergence of a shared language, a European fraternity approach and the “miraculous dialogue”, which ensures the unity of the European area and makes it tangible and visible in the eyes of the citizen.

Ms Fraysse studies judicial practices from a European perspective, drawing on her experience at Eurojust and the European Public Prosecutor’s Office in her reflections. Eurojust, for example, allowed tools to be implemented within the cooperation area in criminal cases. Its headquarters in The Hague brought “the whole of the European Union together in a single building” and Eurojust is a key facilitator when it comes to judges sharing their views in cases with a transnational dimension. Two tools were very valuable in making the lives of national judges easier and in principle, resolving the complexity of an international case. Coordination meetings on the one hand, and joint investigation teams on the other, make it possible to go further than traditional mutual assistance, subject to the express consent of the countries concerned. While Eurojust thus emerged as a “miracle of cooperation”, it had its limitations, in particular the survival of an approach based on the defence of national interests. The European Public Prosecutor’s Office was created to overcome these limitations, following on from the expert group chaired by Mireille Delmas-Marty to develop a *Corpus juris* of criminal provisions to protect the European Union’s financial interests. Accordingly, the European Public Prosecutor’s Office has been able to take on innovative missions in leading investigations and instigating proceedings, which moves it to a position beyond simple cooperation. It thus forms the basis of a European judicial order which, within its area of

competence, enables the development of better strategies and practices and takes the European area of justice into a new dimension.

The discussion then showed the extent to which the European dimension of the area of justice now constitutes an essential compass of judicial practices, and also what the European area of justice brings to litigants and defendants, thanks to the active participation of national judges and the inventiveness of their actions.

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