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# REFLECTIONS ON LEGAL HISTORICAL BACKGROUND OF EVOLUTION IN CROSS-BORDER CIVIL PROCEEDINGS

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**ABSTRACT:** *In the perspective of business and culture relations, we have created a world in which the boundaries disappear. The international market, communication and other cross-border activities have now become more of a rule than an exception. World markets and numerous transactions have provided us with a whole range of opportunities and advantages. It is no coincidence that minimizing business margins is followed by an increase in the number of disputes in the jurisdiction of different courts. Cross-border disputes have now turned into an extremely delicate topic, especially in the area of competition, intellectual property, producer responsibility and collective lawsuits. In this paper I will elaborate the historical background and evolution of cross-border civil proceedings.*

**KEYWORDS:** Legal Historical Background, Evolution, Cross-Border Civil Proceedings

## Harmonization of civil proceedings.

In the legal perspective, the borders of the states pose a problem. These boundaries tend to reinforce the distinction between legal systems and in particular the rules of civil procedure. While cross-border business activity has increased considerably, the civil procedure rules have not been unified, but have remained localized. The difference between legal practices and business reality has raised a whole range of issues in court proceedings, which significantly affects the rights and obligations of cross-border parties involved in a dispute. The parties may be present in different judicial proceedings in different countries; they may be required to provide information to a particular jurisdiction that is protected by privileges in a state of the road.

This paper is intended to show efforts to harmonize the rules of civil procedure and to determine expectations in cases where the dispute has cross-border elements. Despite these efforts, it appears that procedural rules will continue to create concerns for all parties in a dispute. Lawyers and their clients should be prepared for any uncertainty they may face in foreign proceedings. These uncertainties refer precisely to the legal changes between countries belonging to the continental and common law systems, and also to the states belonging to the same legal system. It is a disaster that so far the greatest efforts have been made towards harmonizing the substantive law rather than the rules of civil procedure, despite the inevitable and serious consequences of contradictory procedural rules. However, some efforts have been made to standardize the procedure, or at least to determine the laws that take precedence if differences exist. In general, international efforts to harmonize civil proceedings have focused on such issues as jurisdiction, service of documents, evidence and recognition and enforcement of foreign judicial decisions. Each of them is intended to be used in resolving international disputes in the civil and commercial arenas in order to increase the prediction and placement of parties in equal positions, despite being deployed in different jurisdictions that are not known.



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Pierre L. has maintained that changes in legal culture prevent domestic legal systems from growing together, despite referring to similar legal rules in different European Union countries. Other authors on the other hand, on the contrary, have confidence in the approximation of the domestic laws of the countries, believing that the creation of a set of legal rules for the European Union is an opportunity that can be realized. While Pierre L does not accept that the existence of common legal rules guarantees the interpretation and implementation of their uniform, he does not deny that the implementation of similar rules affects the approximation of legal systems more than they were before.

The civil procedure is an important branch of domestic law and as such is closely related to the organization of the court, an area that has traditionally been an exclusive part of the domestic legal regulation. Article 65 of the ECT stipulates that: *"Measures in the field of judicial cooperation in cross-border civil cases to be taken in accordance with Article 67 and moreover apparently necessary for the proper functioning of the internal market shall include:*

***c) the elimination of obstacles to the progress of civil proceedings, if necessary, the promotion of compliance with the applicable civil procedure rules in the Member States.***

In this context efforts to harmonize civil procedural law have started long ago. Here we can mention the efforts of the Storm Working Group on the efforts to harmonize the Civil Procedure in the European Union, which were further developed in the cooperation between UNIDROIT and ALI in drafting the principles and rules of international civil procedure.

Effort is more apparent in terms of the influence of the continental legal system on the common law system. This effort does not seem unreachable, while Jus Commune is already a goal to be achieved. Jus Commune is perceived today as a common law legal system of Europe, or as a set of rules pertaining to different states of the European Union. In the past, Jus Commune referred to the common legal doctrine based on the Roman law (*Corpus Juris Civilis*) and the Canon Law (*Corpus Juris Canouici*). Over time, civil proceedings developed as a separate subject. But the Roman Canonian procedure became popular throughout the European continent, but less successful in England, but influenced civil proceedings not a little. The interaction between the different procedures of the proceedings in Europe has begun since 800 years ago, and therefore the approximation of the procedural law in the European Union and worldwide is a viable option. Recognizing the history of civil procedure development will ease the way for those who feel that a fragmented Europe in the field of civil procedure distorts the functioning of the internal market, which is undesirable.

In Europe, important attention has been paid to the harmonization or unification of material laws, mainly in the commercial field, as trade legislation has a neutral character and the independence of the parties plays an important role in it.

The experience of the European Union has clearly shown that a common market can not function without common procedural rules. Harmonization of procedural law has made less progress than material law. This progress is hampered as the national procedural systems are very different from one another and their historical-political tradition hinders the reduction of differences and reconciliation between different legal systems. In addition, the psychological factor hinders the violation of the "sovereignty" of a state. Differences between the domestic legal systems of different states vary in uncertainty and make the laws less transparent.



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The exercise of judicial function is one of the expressions of sovereignty and, traditionally, the principle of territoriality imposes the application of the *lex fori* in domestic proceedings of a state. This affects the difficulty of drafting common procedural rules. In this framework, the distinction between the legal system of States applying continental law and those applying common law can not be overlooked. But another difficulty comes from cultural differences between different states.

Invoked, the obstacle that comes from the world of interns, where lawyers are not very flexible in reforming the procedural rules used by them in everyday practice. Taking into account the obstacles to the harmonization of civil proceedings, the general procedural rules must be aligned with each other. Basic procedural principles are part of international and domestic legislation.

In the 1980s, Prof. Marsel.S at the Ghent University created a working group whose ambition was to draft a European Civil Procedure Code. The working group consisted of experts in the field of civil proceedings from the twelve EU member states. He worked under a contract with the European Commission from mid-1988 until 1993 and was expected to draw up a "draft directive on the approximation of judicial law at the end of the period." Ambition seemed impossible and the result of this work was a comparative study of special procedural issues in the European Union. the proposals overruled in some cases the rules of the Brussels Convention. Above all, the comparative method used not only allowed the identification of changes, but also offered ways to overcome them.

Indeed, the idea of Europeanization of civil proceedings lies in the writings of many academics, who informed Storme's working group the need for harmonization of civil procedural legislation.

Compared with the first initiatives to establish a European civil procedural code, the rules set out in the draft directive concerned the establishment of general principles to bring about harmonization of procedural law in Europe, including in its 127 provisions some of the aspects such as reconciliation, obtaining evidence, court expenses, security measures, making a decision until the recognition and execution of judicial and extrajudicial decisions.

Out-of-court settlement through international arbitration has replaced the settlement of disputes in the commercial arena. However, international conventions on arbitration refer to aspects of the purpose, principles and general rules of recognition and enforcement of the arbitral award, without addressing in detail the procedural rules of international arbitration. Which, as the case may be, is decided by the body of independent arbitrators. In this way, prof. Storm sought to establish unique rules for using it during the trial of court and extra-judicial disputes.

In this project, prof. Storme was inspired by the American Law Institute (ALI) project and the efforts made in the United States half a century ago to unite various jurisdictions in a single system of procedural rules, such as the Federal Rules of Civil Procedure, which would were used in the Federal Court, while 48 different states had their own civil procedural law.

The Storme project aimed at the transparency and unification of the defense tools of the parties in a civil proceeding across Europe. The report was submitted to the Commission in 1993 but was not taken into account because it did not represent a prospect for the future. Storm's projects failed, and with it the ambitions for reform of the proceduralists. Though it was ambitious, the idea of a model of a civil procedural code for the whole world was not utterly



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utopian. Many elements can not be unified as they are unique to the culture of any particular state, such as the language used or the jury, etc., but this does not constitute an obstacle to the creation of a higher level court of a country, as well as of other courts that adjudicate international disputes.

According to prof. Kerameus, there are many differences between developed EU member states, which bear the values of developed countries with a long and rich legal tradition. Because of these changes, the unification of civil proceedings beyond what is contained in the Brussels and Lugano Conventions does not seem promising.

However, a European procedural code is not expected to be created, while there are drafts of intervention in certain areas. In 1997 prof. Geoffrey Hazard and Michele Taruffo began efforts to draft special procedural rules beyond the continental and common law system, considering that each of them belonged to one of the respective systems and had worked for years in terms of differences in laws civil procedures which should be subject to various procedural rules.

Since, prof. Storme determined that harmonization is possible in such procedural issues as the compilation of lawsuits, the process of proof and decision-making, in 2000, following a report by prof. Rolf Stumer, the International Institute for the Unification of Private Law (UNIDROIT), joined ALI in this project for the preparation of the principles of international civil procedure.

This project aimed precisely at setting common principles and rules of procedure throughout the world. These do not constitute a code as defined in the tradition of civil law as a corpus of laws aimed at completing the legal system. The objective of this project was to uniformly adjust these issues to all countries that adopt them.

The main obstacles in this regard were the lawyers belonging to the common taw system, who could not be familiar with such a situation.

The principles should serve as a basis for interpreting civil procedural codes of the respective countries, and the Rules should be considered as an improvement of the principles appropriate to be adopted by specific judicial jurisdictions. During May 22-26, 2000, the ALU UNIDROIT working group hosted the first meeting at UNIDROIT Center in Rome. In this meeting, three proposals were presented for the principles, which were discussed extensively. One was introduced by Hazard, Tarufno and Gidi, the second by Rolf Stumer and the third by prof. Neil Andrews.

## CONCLUSION

1. Harmonization of the procedural law has begun in the early years with the Brussels Convention, which is called differently, and judicial cooperation agreement. Its sole purpose was the free flow of judicial proceedings, including judicial jurisdiction and recognition of the execution of foreign judicial decisions.

2. In this respect, the recognition and enforcement of foreign judicial decisions are part of international judicial cooperation, which directly affects the creation of what is called "free space". Creating a European judicial area means that decisions given by a member



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state of the European Union are recognized and executed by other member states as soon as possible and in the simplest possible way.

3. Following the 1968 Brussels Convention, the Lugano Convention created a wider area of judicial cooperation, creating opportunities for other non-member countries of the EC and members of the EFTA to adhere to it. The throne was deepened in the Treaty of the European Union (the Maastricht Treaty) and was crowned with the Treaty of Amsterdam.

4. However, the effort in the field of harmonization of civil proceedings and moreover the recognition and enforcement of foreign decisions did not end there. Practice has shown that it is not enough to draft a convention if it has not been ratified by the signatory states.


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