



**Centre for the Study of
International Governance**

Workshop Report

Central and Eastern Europe and the European Union Court System

Loughborough University

14 November 2009

This one-day workshop, which took place on Saturday 14 November 2009 at the department of Politics, History and International Relations, Loughborough University, was made possible by generous financial support provided by the Centre for the Study of International Governance (CSIG) and Assessing Accession (www.assessingaccession.eu), a collaborative research network sponsored by UACES (University Association for Contemporary European Studies, www.uaces.org), BASEES (British Association for Slavic East European Studies, www.basees.org) and CRCEES (Centre for Russian, Central and East European Studies, www.gla.ac.uk/crcees).

On the occasion of the fifth anniversary of the 2004 enlargement, this workshop provided a forum for scholars focusing on the study of the impact of EU enlargement to the Central and East European (CEE) countries on the European Union court system and vice versa. Papers focusing on either aspect of the relationship between the EU court system and CEE EU member states, whether considering the CEE as a bloc or concentrating on one CEE country as a study, were invited.

Papers presented considered the experience/role of domestic courts of EU CEE member states as part of the European Union court system; the impact direct access to the ECJ has had on the CEE member states' domestic court systems in terms of institutional change and changes to intra-state balance of power; interaction between the EU and Central and East European legal cultures and traditions; position of national constitutional courts vis-à-vis the EU court system; attitudes of CEE EU member states in actions before the ECJ; challenges faced by candidate countries in the area of justice and lessons to be learnt in this respect from the 2004 & 2007 enlargements; and the impact of ECJ/CFI judgements on CEE EU member states. Seven papers were presented in two panels, framed by two key-note speeches. Participants came from the Czech Republic, Hungary, Italy, Luxembourg, the Netherlands, Ukraine and the United Kingdom, presenting papers covering the Czech Republic, Estonia, Hungary, Poland, Slovakia, Ukraine, or the CEE EU member states as a bloc.

The workshop was opened with a key-note speech from **Michal Bobek** (European University Institute), exploring Central European judicial history. Central-East European judges have often been criticised for being formalistic and textual, and hence not being well placed for applying the teleological interpretation of the European Court of Justice. Bobek showed how textual interpretation in totalitarian regimes (Nazi, Fascist or Communist) helped the judges to survive and why it therefore is so deeply embedded (not only) in Central European judicial systems. This helps to explain the potential reservations against the ECJ's teleological interpretation in some of the new Member States' courts, whereby national laws often have to be set aside due to open-ended principles of Community law such as indirect effect and *effet utile*.

Panel I, chaired by **Dr Anneli Albi** (University of Kent), opened with a presentation by **Lukasz Gorywoda** (European University Institute) on the role of domestic courts in the context of Europeanisation of consumer law in CEE EU member states. Using Poland as a case study, Gorywoda highlighted several issues common to other presentations of the day: problems national judges face with the amount of Community legislation already in force and new additions to it; relative lack of judicial activism; limited use of the preliminary reference procedure in the area of consumer law (however, compatible with levels seen in previous enlargements); attempts by domestic courts to use the

preliminary reference procedure not to clarify a point of Community law, but rather to boost their judgements. Gorywoda also pointed to the differences in activity of ordinary and supreme courts in this context.

Dmytro Tupchiienko (University of Westminster) focused his presentation on a reform of the legal order as a pre-accession condition. Using the example of Ukraine, Tupchiienko's presentation generated a discussion in which the experience of CEE EU member states in this particular area was used to propose possible solutions. Similarities in attitudes of judges and court staff towards preparation for the accession in Ukraine and in the new EU member states were identified. Ukraine, like many other CEE countries has to address the issue of judges educated and professionally formed under the Communist regime, facing the demands of extensive catalogue of Community law. Apart from these specific aspects of the EU enlargement conditionality, Tupchiienko also touched upon broader issues when asking about the limits to the EU enlargement.

Dr Márton Varju (The University of Debrecen) considered the post-accession compliance of the CEE EU member states in his presentation, pointing out that the behaviour of settlement, i.e. attempts to resolve infringement procedures initiated by the European Commission, is the preferred behaviour of the CEE EU member states. CEECs are indeed successful in limiting the number of cases progressing from formal notification to reasoned opinion stage and further to the judicial stage, especially in comparison with the EU15. Varju's findings were linked to the 'four worlds of compliance' referring to the different attitudes present among EU member states, pointing out that of 'dead letters', also known as 'the Eastern problem', which indicates formal compliance, but problematic substantive compliance is the most common for the CEECs. Very small number of cases is characterised by the behaviour of non-settlement. These are cases where a member state has no reason to attempt settlement with the Commission and is prepared to challenge it in court. Varju's presentation also touched upon the capacity of smaller member states to bear cost implications of Community legislation and potential problems stemming from this issue.

The afternoon panel, chaired by **Michal Bobek** (European University Institute), commenced with **Dr Agata Capik** (University of Luxembourg), who considered the question of the urgent preliminary ruling procedure by commenting on a February 2009 judgement of the Polish Constitutional Court regarding the jurisdiction of the ECJ under Article 35 TEU. Capik first addressed the case itself, its political background and commented on the court's decision. The urgent preliminary ruling procedure, its current status and possible changes once the Treaty of Lisbon comes into force were then discussed, including implications for the ECJ in terms of increased workload and possible remedies of this problem in the future.

Urszula Jaremba (Erasmus University Rotterdam) divided her presentation into two parts. The first part focused on the attitude of the Polish Supreme Court towards Community law and concluded that the court is a true 'agent of the Community legal system'. However, the same conclusion cannot be applied to Polish courts in general. In the second part of her presentation, Jaremba introduced preliminary findings of her research project, which focuses on the attitudes of ordinary courts towards Community law, their experience and training. Jaremba drew interesting links between the situation in

Polish and Dutch judiciaries, suggesting that judiciaries in both 'old' and 'new' member states are facing similar problems, regardless of different length of EU membership.

Dr Václav Stehlík (Palacky University in Olomouc) commented on a recent judgement by the Constitutional Court of the Czech Republic, in which the court addressed the obligation to initiate the preliminary ruling procedure under Art. 234 TEC. In the ruling, the court stated that Community law does not form part of the Czech constitutional order and is primarily the area for ordinary courts, namely the Supreme and Supreme Administrative courts. Stehlík pointed out the fact the Constitutional Court declared that failure to make a reference to the ECJ might constitute a violation of Constitution-given right to a statutory judge. Two issues were highlighted in this context: first, matters preceding the accession cannot be referred. Secondly, parties to a case play a key role in referring matters to the ECJ for preliminary ruling.

Allan Tatham (Péter Pázmány Catholic University) concluded panel II with a presentation on judicial response to EC law and ECJ case-law in Hungary. Drawing on his experience training Hungarian judges in Community law matters, Allan reviewed the existing system of training in place and the position of Community law courses in it. Linking to the presentation by Gorywoda in the morning panel and Jaremba earlier in the afternoon, Tatham confirmed similar attitudes and problems judges are facing in Hungary, namely enormous workloads, which do not allow spare time to study Community law. Tatham also brought up the 'language issue', particular for the Hungarian case. Translations (or lack thereof) of legislation and documentation as well as its quality were discussed.

The workshop was concluded by a key-note speech from **Dr Anneli Albi**, who explored CEE and EU Courts' case-law on a 'sugar saga' which raises issues similar to the German 'banana saga' in the 1990s. Focusing on a recent CFI judgement (*case T-324/05 Estonia v. Commission*), where without a legal base or any prior warning a retroactive fine was imposed on Estonia for sugar stocks bought by private individuals and households before accession, she posed the question whether the EU ought to learn a lesson from the recent post-communist reforms in the field of rule of law. Presentation of this controversial judgement triggered yet another discussion among the workshop participants and provided for a perfect conclusion of the event.

The participants decided to attempt and organise a follow-up meeting in 2010, which would facilitate continuation of the discussions started in Loughborough on the topic of Central and Eastern Europe and the European Union Court System.

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Martin Mík
Workshop Convenor