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THE UNIFICATION OF THE PROCEDURAL LAW OF THE EU MEMBER STATES IN THE LIGHT OF THE INTERPRETATION OF THE EUROPEAN PROCEDURAL LAW

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Diagram

1. The "primordial" roots

1.1. Since the vision of a wider and deeper institutional European Union started to materialize, in particular with the Treaty establishing the European Economic Community (25.3.1957) and subsequently with the Single European Act (17/28.2.1986), the road followed was extremely interesting. Member States, in order to build a new European legal order, via an autonomous and primary source of law- i.e. the founding Treaty- were practically bound to waive a part of their State sovereignty in favor of the EC institutions. So, the State sovereignty, faced with the historic necessity of the Union phenomenon, transformed and was inevitably relativized. In this course, law played the role of an indispensable companion and pillar of the procedure of European integration. This basic and fundamental necessity

led to the establishment of the legal foundation of direct effect, direct implementation[1] and supremacy of European law, as a separate and superior legal order, on the issues of its regulatory scope, in respect of the separate, but subject to it, national legal systems of Member States. Here, the critical issue is to achieve the delicate balance between the common European vision and the divergent propensities of Member States to defend their own ideals or interests.

1.2. In this course, the EC Treaties of Maastricht (7.2.1992) and Amsterdam (2.10.1997) qualify as critical milestones; to the extent that European Procedural Law is concerned, the impact of the Treaty of Amsterdam is definitely paramount, providing for the progressive development of the Union's territory as an area of freedom, security and justice, in order to facilitate free movement of citizens and the exercise of their rights under the equality guarantee in each member country[2]. The Amsterdam Treaty of 1997 vested legislative competence in the European Community in the areas of International Civil Procedure and Private International Law by transferring the title of visas, asylum, immigration and other policies related to free movement of persons in to the Treaty of European Community. In 2009 the Lisbon Treaties, the Treaty on European Union (TEU) and the Functioning of the European Union (TFEU), have inherited this competence and even enlarged it to a certain degree in Title V Chapter 3 of the TFEU on judicial cooperation in Civil Matters. To achieve this objective, measures were implemented, especially in the area of judicial cooperation in civil matters, based on former article 65 TEC – now article 81 TFEU – the EC began legislating in 2000. The European legislative production in this area, over the last decade, was literally exponential. Some Regulations replaced and modified preexisting Member State Conventions, some replaced and modified Haag Conventions among Member States and some were entirely new. So, to the

[1] Although theory often conceives uniformly the issues on direct implementation and direct effect, these two principles should not be confused. L.-J.Constantinesco, L'applicabilité directe dans le droit de la C.E.E., , Brussels, 2006, ps 10-11. So, direct effect is produced by EE rules, which create direct rights and obligations for individuals, whereas the EE rules, considered of direct implementation are those, which fully produce their legal effects within the internal legal order, without the need of internal measures of enforcement.

[2] C.Blumann, «Le traité d'Amsterdam: aspects institutionneles», RTD eur. [Revue trimestrielle de droit européen] 1977, p. 721

extent that it is reasonably argued that the general procedural law might be described as "postlaw" per comparison to the substantive law, it might be equally advocated that international procedural law should be characterized as "postlaw" per comparison to procedural law[3].

At the same time, however, this evolution has been aggravated by some – perhaps inherent- drawbacks, as the fragmentary and abstractive scope of adopted legislative measures aiming to achieve unification of law in fields, selected as priority areas for the pilot implementation of the adopted adjustments. Once, in this legislative course, we may see unprecedented steps. For example, the European payment order, through regulation 1896/2006, establishes a uniform European procedure for the issue of a European payment order, so this title, as congenital European, can circulate freely, and without intermediate declaration of enforceability (exequatur) in all Member States; with this step, the relativization of State sovereignty of member countries is even more evident and the, almost complete, permeation of State boundaries, in this field, becomes immediately noticeable[4]. As a result, in the field of Civil Procedure, the European legislator has to confront a double challenge: on the one hand, promote the ideal of European integration and, on the other hand, to demonstrate respect to the variety of divergent legal systems and traditions of the Member States (article 67 § 1 of the Treaty on the Functioning of the European Union). How may we achieve this? by finding a method, so that all national judges interpret independently and autonomously the EU law, without their judgements being influenced by the provisions of national law. And how may we achieve this last one? either providing for uniform definitions, binding for all national judges, or by the composition, to the extent possible, of uniform principles combining the essentialia of European Legal Culture; so that we can exclude the apparent danger of interpretation of uniform rules in a national spirit, which would result to uncertainty, insecurity and different treatment of comparable cases. It is the authors' firm belief that the most reasonable course to avoid this possibility is the establishment of a uniform, teleological system of interpretation. At this point we have to mention the crucial role of the European Court of Justice (ECJ) and its contribution to the interpretation of

[3] Pfeiffer, Internationale Zuständigkeit und prozessuale Gerechtigkeit, p. 206

[4]This prediction constitutes the precursor step, in the field of recognition and enforcement of judgements, within the Union, through the universal abolition of exequatur

European Law. In general, the ECJ has the exclusive competence to set out the rules of interpretation of secondary law. The preliminary ruling procedure pursuant to Art. 267 FEU-Treaty is the main instrument for that purpose. Any national court is obliged to resort to the ECJ if a pending case raises a question concerning the interpretation of European Law. In such cases, the decision of the ECJ is *de jure* only binding for the appealing court, but factually it is binding for all European courts, as of course the ECJ would decide in a case with similar facts in the same way. Furthermore there is the possibility to appeal to the ECJ not only in cases concerning substantive law but also in issues relating to abstract principles of interpretation.

2. The course towards a single procedure as a single teleological system = Foundation of unity of European procedural law methodology

2.1. Starting from

The fundamental idea, both of the Brussels Convention in 1968 and Regulations 44/2001 and (now) no 1215/2012, as well as others' similar Community originated legislative texts, lies with the principles of their "uniform" and "autonomous" interpretation. According to the latter, the terms found in the provisions of the regulations should be interpreted independently, by reference mainly to the system and to the purpose of the critical whenever regulation; so that their uniform application in all the Member States can be ensured. It should be stressed from the outset, that albeit, both terms (as well as the respective principles) tend towards the same goal, still they should not be treated as identical. To the adverse, it is easily conceivable that an autonomous rule may be interpreted towards different results depending on the context of national procedural rules with which it interacts, while the application of a uniform rule may easily result to non uniform and different conclusions, depending on the interpretational method and criteria applied.

2.2. The elements of the problem

2.2.1. The provisions of Regulations 44/2001, 1215/2012 and other Regulations, do not constitute a single, coherent corpus of procedural rules, regulating uniformly and exhaustively the diagnostic trial course, from bringing an action until the execution. In fact, their scope is limited to the following issues: (a) jurisdiction as a procedural condition, (b) international lis pendens and the contiguous construction of relevance

and (c) the conditions under which the winner party obtains a title of execution in the host country. The exceptions are: (i) Regulations 1896/2006 for the European payment order and 861/2007 for the European small claims procedure, which introduce uniform procedural rules and (ii) the provisions of regulations 44/2001 etc., which regulate the exequatur procedure in the host country and introduce a closed system of procedural law, which supersede, within their scope, the respective national procedural rules.

2.2.2. Because of the limited field of regulations, uniform and autonomous interpretation confronts with the practical obstacle, that the bulk of procedural rules applied during the proceedings, is necessarily regulated by the national procedural law of the Member States. If anyone tried to quantify the dimension of this problem, under Greek law, the matters regulated by regulations correspond only to articles 3, 4, 22-45, 221, 222, 249, 611, 612, 622, 904 and 905 CCP. All other issues, therefore, must be resolved on the basis of the Greek Code of Civil Procedure. Similar problems arise because of the differences of substantive law, in the EU Member States, when concepts of substantive law are included as elements of the rules of Regulation (e.g. "tort", "consumer" etc.). Therefore it has been created a dual procedural system which is consisted of european and national norms. We could say that it is a sui generis european procedural frame which raises many issues to the work of national judges.

2.3. Expected dimensions of the problem

As a result, these parameters that define relations between EU law and national procedural laws, lead, inevitably, to the following possibilities:

(a) In the field of diagnostic trial, the uniform and autonomous interpretation of the provisions of regulations combined with the application, as to the remainder, of the rules of national procedural law is conceivable but also expected to lead to manifestly different results and

(b) In the field of exequatur, deviations of procedural law rules, are also expected, to rescind judicial protection due to opposition to the national procedural public order of each Member State.

2.4. Emerging case studies from the past

(i) *Lis Pendens*: under the Brussels Convention prevailed the opinion that the computation that a Court should be deemed as “seized” fall within the scope of

national procedural law. In the context of practical application of the Convention, it was eventually determined that albeit in the procedural laws of all member states the filing of a lawsuit involved the combined execution of two acts i.e. the filing of the document of the lawsuit before the Court and the service of it to the opposing party, still national laws were split in equal halves on the sequence of the two acts; thus a group of procedural laws required for the filing of the document to be executed first and then to be serviced to the opposing parties (p.e. Netherlands), while the second group of Member States provided for the adverse sequence (p.e. Greece). Depending on the formula adopted by each national law the Court would be deemed seized either at the time of the filing of the lawsuit (in the first group, including Greece) or at the time of service. Legal practice did not hesitate to take advantage of the resulting confusion, developing dilatory tactics as the so called "Italian torpedo". So, the critical question arises, when the court seised. The Community legislature sought to tackle the problem by adopting a uniform prediction in article 30 of Regulation 44/2001.

(ii) *Relevance*: The concept or relevance raises critical problems, as well, considering the fact that the relevance or not between more than one actions, pending in several courts of the Member States, must inevitably be regulated under the substantive law, which obviously is not identical, either due to a different trial object or due to differences in applicable conflict of laws rules.

(iii) *Place of performance of the contract*: under the Brussels Convention, the interpretative version prevailed that the place of performance of the contract, for the implementation needs of article 5 § 1 of the Convention, should be judged on the basis of the applicable substantive law[5]. The raised implementation problems have imposed on the Community legislature to establish a uniform rule of article 5 §1 (a) Regulation 44/2001 concerning the sales and service contracts.

(iv) *Subjective accumulation of actions*: the Regulation 44/2001 sets for the jurisdiction of joinder, but under strict conditions (6 § 1), while the scope of the provision itself is limited in the scope of this regulation. Therefore, in cases of subjective accumulation, when, for some of the defendants, the difference isn't international or when it comes to joinder parties outside EU, the admissibility of

[5] Tessili/Dunlop, 1976

subjective accumulation is judged separately for the joinder parties that fall within the scope of the regulation and under national procedural law for the others, resulting to the parallel existence of two systems in force, regulating the admissibility of joinder.

(v) *Objective accumulation of actions*: Regulations 44/2001 and 1215/2012 do not provide for the jurisdiction of relevance as a basis of jurisdiction in the cases of objective accumulation of actions. So, in the cases of objective accumulation of actions, the following contradiction may be observed: on the one hand, it is necessary to recourse to more courts (since no jurisdiction is evidenced for all accumulated claims), even if, under internal procedural law, accumulation is entirely conceivable and, on the other hand, articles 28 and 29 impose the suspension of certain actions due to relevancy. The internal contradiction of articles 6 and 28 of Regulation 44/2001 ends at the pointless proliferation of proceedings and as a result the trial economy is affected. E.g. suppose that the same event may establish responsibility by contract as well as by tort. The injured party may not accumulate his claims in the same application, unless there is, for each one of them, an independent basis of jurisdiction under the Regulation (e.g. the 5 § 1 for the contract and the 5 § 3 for the tort). If this is not the case, then each claim should be brought to a court, whose jurisdiction is based on the rules of Regulation. However, due to the fact that these actions are related, within the meaning of article 28, should the second court suspend either potentially or mandatory (according to the data of circumstance) the second lawsuit.

(vi) *The range of effects that can be identified in the country of origin*: Under the force of Brussels Convention, it has already been accepted that the range of legal consequences of a foreign decision, is determined in accordance with the law of the State of issue[6]. This interpretation sets the problem, for example, that it ends up on the effect of imposing recognition of a judgement's legal effects, that are possibly unknown in the host country[7]. Under Regulation No 1215/2012 the problem would

[6] Hoffman/Krieg, 1988.

[7] A typical example could be considered the Gothaer Allgemeine Versicherung AG/Samskip GmbH, when the State Court ruled that lacks jurisdiction, basing his judgment on an awarding jurisdiction clause, on the grounds that this clause is valid, binding for the courts of other Member States, as to that Court's jurisdiction, which is included in its dictum, as well as to the validity of the clause, contained in its reasons, which constitute the necessary background of this dictum. This interpretation leads, for example under the rules of greek law, to the recognition of positive action of res judicata to this foreign decision, whereas, under Greek law, the opposite version is accepted).

accelerate, given the abolition of exequatur and automated extension process of enforceability that is inserted there.

(vii) *Interim relief under article 31 of Regulation 44/2001*: The interim measures, the qualification of a certain procedural measure as "interim" and the conditions for its obtaining, are judged according to internal procedural law. As a result, the rule of article 31 shows in advance with disparate legal consequences, as it ends in a different range of interim legal protection per Member State.

(viii) *Declaration of enforceability*: the differences between procedural laws of the Member States is also likely to raise problems and at the exequatur stage (or, now, of the objections against the Declaration of enforceability under Regulation No 1215/2012[8]).

2.5. The future development

Despite the attempts made to introduce uniform and autonomous rules on procedural law, which has been effectively supplemented through the incorporation of uniform Conflict of Laws rules (Reg. Rome I, II, III) within the last decade, still practice and the requirement of an ever more complicated business, social and legal environment still pose significant challenges to the effort of ensuring a uniform application of the uniform and autonomous rules.

Some issues that may arise based on the court experience are the following:

(a) Delimitation of the time wherein the cognizance of a case ceases. The practical significance of this matter arises especially in cases where the proceedings before the court first seised were not terminated by any of the traditional ways of completion of a trial, but the trial has been suspended or an event, which under the law of the host

[8] A similar case has been encountered in the decision OLG Schlesswig (19.5.2008, Cefalu), which accepted, during the exequatur procedure of a decision ordering the return of an abducted child, that the Italian decision opposed to German public order, because it had been issued without prior hearing of the children. This case highlights a particularly interesting interpretative question, since the party had fully complied with the procedural laws of the State of issue, without being able to prejudge its compatibility with that of the host country and, moreover, without being able to do otherwise. It is to be examined whether the reservation of public policy may finally lead to the obligation of the party to comply with the procedural laws of the host country, that might not be known to him, in order to prevent the risk of its future denial , due to an opposition to its procedural public order.

state results in the completion of the trial, has taken place (e.g. settlement before the court); whereas the same event under the law of the origin state would have resulted in suspension of the trial.

(b) The objective limits of the authority of the court first seised as a problem of demarcating the authorities provided by articles 28 and 29 of the 44/2001 Regulation, especially regarding the alterations as to the object of the trial occurring in the procedural handling of a case (e.g. in the event of joinder of two or more cases).

(c) The problems arising regarding the delimitation of the place of a certain tort in cases of offences that combine more than one perpetrators and more than one crime scenes. This problem, which only now has begun to concern European case law[9], is expected to worsen in the coming years, particularly in cases where some of the perpetrators are established outside the EU or acted outside the EU.

(d) Defining the limits between judgments deciding on a substantial matter and judgments issued regarding a procedural matter or in the case of absence of a procedural requirement in the light of delimitating the procedural legal consequences that can be attributed to them in the host state.

To highlight some plausible examples of successful application of the principles of teleological interpretation by the European Institutions, one may quote the ruling of the ECJ in the Blijdenstein case[10] in the context of interpretation of art. 5 (2) of Brussels Convention on the jurisdictional base for maintenance claims; the Court relied to the ratio legis of the said provision, i.e. the legislator's intention to facilitate the beneficiary of maintenance as the weaker party to file the claims, to reach the conclusion that there was no ground to apply the provision in the case of claims filed by Social Security organizations as special successors of the initial beneficiary, since in this particular case Claimant, did not qualify practically as a "weak party" anymore. Similar conclusions were drawn as well later on WGV-Schwäbische Allgemeine Versicherungs AG, in the context of interpretation of arts. 9 and 11 of Regulation 44/2001 and even more recently in the joined cases Sanders v. Verhaegen (C‑400/13) and Huber v. Huber (C‑408/13). Literal interpretation in the said case would obviously result to a different conclusion, i.e. that the said grounds of

[9] Melzer,2014
[10] ECJ, 15.1.2004, Freistaat Bayern v. Blijdenstein; §§ 29-32.

jurisdiction are indeed applicable in the case of all special successors, including inter alios the Social Security organizations. Still, as aptly highlighted by ECJ Jurisprudence, it is arguable whether this would comply with the ratio legis of the respective provisions. To the adverse, teleological interpretation, in the examined case, affords the interpreter to restrict the ratione personae scope of application of the critical provisions, only in those particular cases where it is really necessary.

3. Methodology of the European procedural law

3.1. The world is changing

Which is, therefore, the method to solve the above problems until common definitions, binding for all national judges, will be established – when indeed, in countries like ours reasoning and justification of the judgment is constitutionally requisite? Especially in view of the fact that internationally, the procedural science, in particular the one that follows the central european tradition, like the Greek one does, meets new stimuli in pivotal issues, on which experts used to believe that almost every opinion, as well as every opposing opinion, has already been discussed; the notion of international lis pendens, which is being reviewed with the groundbreaking provision of article 19 of the 2201/2003 Regulation, is the living example. New vocabularies are replacing the old ones and are being imposed, in order to achieve understanding with other procedural traditions as well. New simpler settings violently delete the complexity of a certain point within the system (e.g. lis pendens) so that the system can withstand the complexity elsewhere (multiple jurisdictional bases, divergent provisions on conflict rules but also completely opposing substantial settings). Within the context of the expanded EU territory, political programs, national – and other – prejudices, as well as random situations participate in the creation of the new common law; however a coherent doctrinal concept does not – or at least participates less. The final legislative outcome is quite a few times the product of political compromises on the basis of what is currently achievable. An eminent European procedural law specialist ascribes the fact that the issues laid down above (the abovementioned issues) are several times obscure[11] by aptly saying: “If one asks today a hundred specialists on procedural law, as developed in the European area,

[11] G. Gaumm, Flucht aus der Kategorie. Die Positivierung des Unbestimmten als Ausgang aus der Moderne, Frankfurt am Main, 1994, p. 8

certain questions, most of them will frankly confess (and I believe accurately) that they are not in a position to respond"[12]. And for the European jurist, especially one inspired by the logic of the continental law, a response or an assertion does not only connote a solution of this problem, but (and mostly) conceptualization of the decision making process[13]. However, the European jurist is unable to conceptualize and experiences the absence of what is called institutionelles Rechsdenken, since there are no uniform institutions to create the new rules[14]. Therefore it is more likely for the European jurist to witness the current situation not as a redemptive exodus but rather as a perilous divergence from classification and scientific accuracy[15]; uniform rules may be interpreted in a non-uniform way depending on the legal environment they are expected to be applied and of course depending the legal background, experience and culture of the interpreter.

3.2. The uniformity of procedure as a progressively structured teleological system = foundation of unity of the methodology of European procedural law

According to our opinion, the transcendence (exceedance) of this perceived deadlock can be achieved by capturing the legislative work – and the European legislator – as a single, progressively structured, teleological system. This system is structured teleologically and interpreted teleologically. Teleology is an everywhere indispensable method of thinking, where the object of research is human acts, i.e. the whole history and therefore the law. Certainly teleology, in the field of law, takes on its most thorough form. As it is the necessary logical form of legal thinking, at the same time it establishes the unity of the methodology of the law; particularly herein it establishes the unity of the methodology of the European law, including procedural law.

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[12] K. Kerameus, Final observations - assessments (Thessaloniki Bar Association Two-Day Conference: Recent developments on international procedural law of the European Union) Armenopoulos 2001, p. 1175, 1176

[13] Forgo/Somek, Nachpositivstisches Rechtsdenken, in Buckel/Christensen/Fischer- Lescano (Hrsg.), Neue Theorien des Rechts, Stuttgart, 2006, p. 263, 276

[14] C. Fischer, Europaisierung der nationalen Zivilrechte – Renaissance des institutionellen Rechtsdenkens? in www.eucken.de [Europaisierung der nationalen Zivilrechte], p. 17

[15] G. Gaumm, Flucht aus der Kategorie. Die Positivierung des Unbestimmten als Ausgang aus der Moderne, Frankfurt am Main, 1994, p. 100

Hence in the highest tier of the teleological scale lie the primary sources of the European law, i.e. the Treaties. Following, at the lower tier, lie the international agreements concluded between the Union and third countries. The secondary sources of European law (secondary legislation) succeed: Regulations, Directives, Decisions. Finally when the provisions of secondary law explicitly refer to national legislations or authorize national institutions for the entry of national rules into force, the relevant national provisions become part of the European legal order, becoming supplementary European law and are immediately hierarchically classified under the secondary legislation, which referred to them or by delegation of which were issued.

The notions (aims) of all of the above mentioned rules compose a teleological unity. They are all reduced in one ultimate common cause, which constitutes the content of the main or primary rule, in which the system is culminated and on which its unity is founded. The primary norm is being gradually specialized, through the aims of the more and more specialized rules at the lower tiers of the hierarchy, until this specializing scale reaches the very specialized legal fact, which is the ultimate object of the interpretative judgment. This conceptualization of all rules of law as a teleological, progressively structured system, provides, primarily, the logical method of specialization of rules of law. Furthermore, in terms of its substantial content, this specializing path is not typological, but eminently teleological. That is because every rule of law is being understood as a means of realizing the purpose of the immediate more general rule and at the same time (the same rule of law is being understood) as the purpose of the immediate more specific rule of law until the lower scale of the tier, i.e. the individual legal act. During this process of specialization, tending, on the one hand, to the conceptualization of the objective notion of the rules of law and, on the other hand, to their connection with the case under judgment, the work of the interpreter and implementer of the law is not free and is not determined by subjective perceptions. This is a mental work completely bounded by the tier of aims of the teleologically structured legal system. Thus it can be said that in every given historic moment solely one is the existing, true interpretative notion of the applicable rules and this is determined purely based on objective teleological criteria. Indeed this whole process of specialization, integrated into the logical framework of the teleological legal reasoning, becomes completely manageable and ensures an objective (rational) teleological foundation to the verity of the ethical assessment as to

the legal notion, which ought to be adjusted to a certain individual case. The subsisting system of European procedural law, as part of the field of judicial cooperation in civil matters, imposes the incorporation of all Regulations' provisions therein, so that by that incorporation the true hermeneutic meaning of all individual provisions may be derived. Additionally, and critical for our presentation, the interpretation of domestic law provisions in line with the Regulation, to the extent that the Regulation refers to the domestic law, is being sought, so as to ensure its most effective application in each national legal system.

3.3 The ECJ's case-law: confirmation of the methodology

The CJEU follows the same methodological route in many of its judgements. Among the latest, one can distinguish the following:

3.3.1. *JUDGEMENT OF THE COURT of the 28th January 2015, in case C-375/13 Harald Kolassa v. Barclays Bank plc*, where it is held that: *"...* the concepts used in Regulation No 44/2001, in particular those which appear in Article 5(1) of the regulation, must be interpreted independently, by reference principally to the general scheme and objectives of the regulation, in order to ensure that it is applied uniformly in all the Member States…" *[paragraph 22]*, then clarifying that *"...* the concept of 'matters relating to a contract', within the meaning of Article 5(1) of Regulation No 44/2001, cannot be taken to refer to the classification under the relevant national law of the legal relationship in question before the national court. That concept must, on the contrary, be interpreted independently, regard being had to the general scheme and objectives of the regulation, in order to ensure that it is applied uniformly in all the Member States…" [paragraph 37]. Also, the court follows the same route, when wondering whether it is necessary *"... in the context of the determination of international jurisdiction under Regulation No 44/2001, to conduct a comprehensive taking of evidence in relation to disputed facts that are of relevance both for the question of jurisdiction and for the existence of the claim or whether it is, instead, to be considered that the allegations of the applicant in the main proceedings alone are correct for the purposes of the decision on jurisdiction.."* [paragraph 58], then concluding in that *" It is common ground that Regulation No 44/2001 does not explicitly define the extent of the verification obligations to which national courts are*

subject in the course of determining their international jurisdiction. [paragraph 59]. *Although that is an aspect of national procedural law that the regulation is not intended to unify … the application of the relevant national laws must not, nevertheless, impair the effectiveness of Regulation No 44/2001 …"* [paragraph 60].

3.3.2. JUDGEMENT OF THE COURT of the 11th September 2014, in case C-112/13, where it held that *"*…the Court has held that a national court that is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such a provision by legislative or other constitutional means ... "[paragraph 36]. Specifically, *"*Any provision of a national legal system and any legislative, administrative or judicial practice that might impair the effectiveness of EU law by withholding from the national court with jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions that might prevent EU rules from having full force and effect are incompatible with those requirements, which are the very essence of EU law ... [paragraph 37] … *Also, where EU law allows Member States a measure of discretion in the implementation of an act of EU law, national authorities and courts remain free to protect fundamental rights under the national constitution, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised* … [paragraph 44]. *In relation to the principle of equivalence, to which the referring court refers in its request for a preliminary ruling, it should be borne in mind that, according to that principle, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions … Reliance on the principle of equivalence may not relieve the national courts, in the application of domestic procedural rules, of their duty to observe in full the requirements flowing from Article 267 TFEU''* [paragraph 45].

3.3.3. JUDGEMENT *OF THE COURT of the 3rd April 2014 in case C-438/12, Irmengard Weber v. Mechthilde Weber*, which held that, " *In its case-law on Article 16(1)(a) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36) ('the Brussels Convention'), which is also applicable for the interpretation of Article 22(1), the Court has already observed that, in order to ensure that the rights and obligations arising out of the Convention for the Contracting States and for the individuals concerned are as equal and as uniform as possible, an independent definition must be given in EU law to the phrase 'in proceedings which have as their object rights in rem in immovable property' (see, to that effect case C115/88 Reichert and Kockler [1990] ECR I27, paragraph 8 and the case-law cited)"* [paragraph 40].

3.3.4 *JUDGEMENT OF THE COURT of the 13th March 2014 in case C – 548/12, Marc Brogsitter v. Fabrication de Montres Normandes EURL, Karsten Fräßdorf*, which held that *"... It should also be pointed out that it is settled case-law that the concepts 'matters relating to a contract' and 'matters relating to tort, delict or quasi-delict' within the meaning, respectively, of Article 5(1)(a) and (3) of Regulation No 44/2001, must be interpreted independently, by reference to the regulation's scheme and purpose, in order to ensure that it is applied uniformly in all the Member States ... Those concepts cannot therefore be taken to refer to how the legal relationship in question before the national court is classified by the relevant national law"* [paragraph 18] *"... In order to determine the nature of the civil liability claims brought before the referring court, it is important first to check whether they are, regardless of their classification under national law, contractual in nature (see, to that effect, Case C167/00 Henkel [2002] ECR I8111, paragraph 37)...."* [paragraph 21]. "*Therefore, the answer to the question referred is that civil liability claims such as those at issue in the main proceedings, which are made in tort under national law, must nonetheless be considered as concerning 'matters relating to a contract' within the meaning of Article 5(1)(a) of Regulation No 44/2001, where the conduct complained of may be considered a breach of the terms of the contract, which may be established by taking into account the purpose of the contract"* [paragraph 29].

3.3.5. *JUDGEMENT OF THE COURT of the 19th December 2013 in case C-452/12, Nipponkoa Insurance Co. (Europe) Ltd v. Inter – Zuid Transport BV*, which ruled that "*...the relevant provisions of the CMR can be applied in the European Union only if*

they enable the objectives of the free movement of judgments in civil and commercial matters and of mutual trust in the administration of justice in the European Union to be achieved under conditions at least as favourable as those resulting from the application of Regulation No 44/2001 (see, to that effect, TNT Express Nederland, paragraph 55)" [paragraph 38]. " *By its second question, the referring court wishes to know whether Article 71 of Regulation No 44/2001 must be interpreted as meaning that it precludes an interpretation of Article 31(2) of the CMR according to which an action for a negative declaration or a negative declaratory judgment in a Member State does not have the same cause of action as an action for indemnity brought in respect of the same damage and against the same parties or the successors to their rights in another Member State* [paragraph 40]. *In order to answer that question it is necessary, having regard to the answer to the first question, to examine whether such an interpretation of Article 31(2) of the CMR would ensure, in conditions at least as favourable as those laid down in Article 27 or by other provisions of Regulation No 44/2001, that its underlying objectives and principles are observed.* [paragraph 41*]. As the Court has already held, rules laid down by the special conventions referred to in Article 71 of Regulation No 44/2001, such as those deriving from Article 31(2) of the CMR, can be applied within the European Union only in so far as the principles of free movement of judgments and mutual trust in the administration of justice are observed (see, to that effect, TNT Express Nederland, paragraph 54 and the case-law cited)"* [paragraph 47].

3.3.6. *JUDGEMENT OF THE COURT of the 13th June 2013 in case C – 144/12, Goldbet Sportwetten GmbH v. Massimo Sperindeo*, which judged that "*For the purposes of this Regulation the concept of ordinary civil proceedings should not necessarily be interpreted within the meaning of national law"* [paragraph 3].

3.3.7. *JUDGEMENT OF THE COURT of the 15th November 2012 in case C- 456/11, Gothaer Allgemeine Versicherung AG etc v. Samskip GmbH,* which held as following: "*One of the objectives of Regulation No 44/2001, as evidenced by recital 2 in the preamble thereto, is to 'simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from [the] Member States' bound by that regulation, which also tends to support an interpretation of the concept of 'judgment' which does not take into account the categorization under a Member State's law of a decision by a court of that Member State, be it the law of the Member State of origin*

or that of the Member State in which recognition is sought. An interpretation of that concept based on the particularities of each national legal order would give rise to considerable obstacles in the achievement of that objective" [paragraph 26]. " *Thus … rules on the recognition and enforcement of judgments in that regulation do not constitute distinct and autonomous systems but are closely linked …"* [paragraph 35] [16].

3.3.8. *JUDGEMENT OF THE COURT of the 19th July 2012 in case C – 154/11, Ahmed Mahamdia v. People's Democratic Republic of Algeria* which ruled as following: " *To ensure the full effectiveness of that regulation, in particular Article 18, the legal concepts it uses must be given an independent interpretation common to all the States …* [paragraph 42]. *In particular, to determine the elements which characterize the concepts of 'branch', 'agency' and 'other establishment' in Article 18(2) of Regulation No 44/2001, in the absence of any indication in the wording of the regulation, the purpose of the provision must be taken into account"*[paragraph 43].

3.3.9. *JUDGEMENT OF THE COURT of the 12th May 2011 in case C – 144/10, Berliner Verkehrsbetriebe (BVG) v. JPMorgan Chase Bank NA, Frankfurt Branch*, which held that *"Recital 11 in the preamble to Regulation No 44/2001 states:"The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must*

[16]"As observed by the Advocate General in point 82 of his Opinion, the exclusion of review of the jurisdiction of the court of the Member State of origin implies, as a correlation, a restriction of the power of the court of the Member State in which recognition is sought to ascertain its own jurisdiction because the latter is bound by what was decided by the court of the Member State of origin. The requirement of the uniform application of European Union law means that the specific scope of that restriction must be defined at European Union level rather than vary according to different national rules on res judicata.[paragraph 39] Moreover, the concept of res judicata under European Union law does not attach only to the operative part of the judgment in question, but also attaches to the ratio decidendi of that judgment, which provides the necessary underpinning for the operative part and is inseparable from it … As observed in paragraph 35 above, given that the common rules of jurisdiction applied by the courts of the Member States have their source in European Union law, more specifically in Regulation No 44/2001, and given the requirement of uniform application referred to in paragraph 39 above, the concept of res judicata under European Union law is relevant for determining the effects produced by a judgment by which a court of a Member State has declined jurisdiction on the basis of a jurisdiction clause" [paragraph 40].

always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the […] rules more transparent …" [paragraph 3].

3.3.10. *JUDGEMENT OF THE COURT of 12th April 2011 in case C – 235/09, DHL Express France SAS, formerly DHL International SA, v. Chronopost SA*, which ruled that *" …Where the national law of one of those other Member States does not contain a coercive measure similar to that ordered by the Community trade mark court, the objective pursued by that measure must be attained by the competent court of that other Member State by having recourse to the relevant provisions of its national law which are such as to ensure that the prohibition is complied with in an equivalent manner*" [paragraph 59].

3.3.11. *JUDGEMENT OF THE COURT of 23th April 2009 in case C – 167/08, Draka NK Cables Ltd, etc v. Omnipol Ltd*, which held that *"…the Court has made clear that the principal objective of the Brussels Convention is to simplify the procedures in the State where enforcement is sought by laying down a very summary, simple and rapid enforcement procedure, whilst at the same time giving the party against whom enforcement is sought an opportunity to bring an appeal …* [paragraph 26]. *That procedure constitutes an autonomous and complete system, independent of the legal systems of the Contracting States, including the matter of appeals … The rules relating to it must be interpreted strictly … It follows that Article 36 of the Brussels Convention excludes procedures whereby interested third parties may challenge an enforcement order under domestic law …"* [paragraph 27].

4. Conclusion

By the previous dogmatic analysis and the citation of representative and recent rulings of the CJEU emerges the only method by which the uniform as long as the autonomous interpretation and application of the european procedural law can be achieved. Otherwise, the procedural science will stare in amazement before the new[17]

[17]If of course it is new, given that notably the issues regarding the conflict of laws were always considered as complex and hard to solve.

phenomenon, unable to predict with a relevant security the solution of various issues. This solution would appear as accidental, in the sense of the unpredictable. Also, as aptly observed[18]," accidental is not only the uncontrolled [i.e. what we are not able to control or dispose] as well as the symptomatic, the one that slips from the programming, but also the one that is recognized as uncontrolled for the first time by the programming". Moreover, Gamm presents the further argument[19]that the abovementioned two elements of the concept of the accidental are in the modern societies completed by a third: the accidental, which for the first time results by the programming or as a consequence of the modern era's volition for objectivity[20].

These new problems are aftereffects of the european development, the very fast market integration and the slower unification of the law which is applied in the member – states of the European Union. Finally, they are results of the unification of the social systems, or in other words, of the social unification. Because it is rather a fact that "the core of the law's evolution in our era, unlikely to what used to happen in earlier times, is not the legislation, nor the science of law or jurisprudence, but the

[18]G.Gaumm, Flucht aus der Kategorie. Die Positivierung des Unbestimmten als Ausgang aus der Moderne op.cit. p.37, with reference to Makropoulos, Modernität als ontologisher Ausnahmezustand?, W. Benjamins Theorie der Moderne, München, 1989, p.26. The title itself of the forementioned work of Makropoulos, is the – sociological – response to the - sociological – view that the law regulates what happens usually.

[19] Op.cit. p.37.

[20]G.Gaumm, Flucht aus der Kategorie. Die Positivierung des Unbestimmten als Ausgang aus der Moderne op.cit. p.37: "*the accidental is, in this context, directly connected with the ability of the modern societies for analysis, coordination, computing, programming and production of highly complex systems, which, from a certain level of complexity, slip from the control: the indefinable as a result of a large number of analytical definitions – regulations. Just like Athena from the Zeus' head, the indefinable springs by the progress of modern era's rationalization". Thus, symptomatic is no more the one that happens accidentally, but the one that "results from the programming, which wants to define everything …, the side effect of a rationalization with excessive regulations, a coincidence due to the regulations' opacity. Infinity is no more something inconceivable, without limits, something beyond the world of regulations, but something indefinable because of the many, exceedingly many system's components".*

society itself"[21] , with this mainly being a fact about the european procedural law, it is up to the judges during its interpretation and application via the uniformity and autonomy, to achieve the consolidation of the legal certainty for all the citizens of the European Union, without exception.

The burning issue in modern european procedural law is the preservation of the identity and the uniqueness of the spiritual (and the legal as well) civilization of every people in Europe within the european integration. Otherwise, according to the always topical and well – timed speech of the great european poet and thinker T.S.Eliot[22], «… we may be clear about the distinction between the material organization of Europe and the spiritual organism of Europe. If the latter dies, then what you organize will not be Europe, but merely a mass of human beings speaking several different languages. And there will be no longer any justification for their continuing to speak different languages, for they will no longer have anything to say which cannot be said equally well in any other language: they will, in short, have no longer anything to say in poetry. I have already affirmed that there can be no European culture if the several countries are isolated from each other: I add now that there can be no European culture if these countries are reduced to identity. We need variety in unity …»[23]. Time will show whether the european judge will manage to verify the observation that the law of the E.U. confirms the institutional and procedural autonomy of the member states[24], in the sense that the application of the community law in general takes place with the foundations of the procedural system not being affected[25].

[21]E.Ehrlich, Grundlegung der Soziologie des Rechts, durchgesehen und herausgegeben von Manfred Rehbinder, 4. Aufl. Schriftenreihe zur Rechtssoziologie und Rechtstatsachenforschung Bd. 69, Berlin, 1989, Vorrede, p. 12.

[22]T.S.Eliot, The Unity of European Culture, in the collection of studies titled: Notes towards the Definition of Culture, 1948, p. 110 et seq.

[23]III p.. 119/120

[24]P.Girerd, «Les principes d'équivalence et d'éffectivité: encadrement ou désencadrement de l'autonomie procedural des Etats membres?» RTD eur. [Revue trimestrielle de droit européen] 2002, p. 75 et seq.

[25]ECJ , ruling of 14th December 1995, van Schijndel, joinder of cases. C-430/93 and C-431/93, Collection, p. I-4705.