EUROPE and the BALKANS
INTERNATIONAL NETWORK

A EUROPEAN SPACE OF JUSTICE

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FOREWORD

This book is the fruit of the experience gained by about a hundred judges, university professors, and jurists from Croatia, Albania, Macedonia, Serbia and Montenegro, Bosnia-Herzegovina, Spain and Italy in the course of the implementation of two projects funded by the European Commission within the framework of the Tempus programme. The main activities of the two projects consisted in the organization of two distance-learning courses for the judges of the countries of Southern Europe aimed at analyzing the fundamental principles on which the justice system of EU countries is based resulting in a CD-Rom related to each of the two projects. A special website was created in order to provide an ongoing debate among judges from Eastern and Western Europe on the issues addressed during the course. The common language was English. The distance learning activities were supported by face to face meetings with all project participants (*trainers* and *trainees*), so as to study the topics covered in the course in depth, thus allowing participants to get to know one another and exchange experiences, opinions and information.

Ad hoc didactic material was prepared especially for the purpose of teaching the online course and consisted of *papers* written by the teachers themselves (judges, university professors and jurists from the above-mentioned countries), which were inserted into the project website at regular intervals for the trainees' perusal. A selection of these papers has been revised and is contained in this book.

The book bears witness to and is the result of the two projects, respectively entitled "Towards a Model of European Judge" and "A European Space of Justice", which have successfully overcome a series of stereotypes and taboos.

The first consists in confining jurisdiction and judicial culture within strictly

national limits, regarding the state as a jealous monopolist and the watchful guardian of the function of law and order, the "rule of law" being the prerogative of the various sovereign powers.

The second – connected with the first – is to regard as useless, or at least whimsical, any attempt by experienced jurists to discuss things directly among themselves, on the basis of their needs and problems, without the wonted mediation of the bureaucratic power and academic dogmatism.

The third concerns the medium employed, online debate, regarded by many as unworthy of the dignity of the issues addressed, which are of institutional consequence and have a propensity for formalism: the means (as everybody knows) has a powerful impact on the "substance" conveyed, and affects its quality and respectability.

The fourth involves the necessity of a clear definition of roles in the pursuit of "formative" purposes: there must be someone transmitting knowledge, someone willing to acquire it and someone to take care of the logistics of the operation.

The fifth, working on the assumption of a basically stable hierarchy of roles, is the distinction between areas of more advanced juridical culture and areas that are less developed so to speak, whose culture will be brought into line with the former following a linear development.

The sixth (but the list is not exhaustive) is an absurd notion: the means that characterized the two projects – communication over the Internet – did not in any way replace traditional means of communication, nor did it prevent the exchange of knowledge and experience.

On the contrary, making things less conventional and formalistic (as this book demonstrates), e-learning did nothing but respond to the demand for an exchange based – on the one hand – on direct, personal relations between the participants, but also – on the other hand – on the translation into written "texts" of the material produced during the implementation of the projects. Both aspects emerge victorious from this complex experience.

Let us briefly examine the six points mentioned above.

Jurisdiction is vehemently and boldly breaking free of the old constraints of national sovereignty. This is the second wall to collapse after Berlin and, in part, is a consequence of the latter. European magistrates, while discovering they are such, have not only found unexpected connections with homologous professions in other countries (liberals, socialists, liberal-socialists, conservatives, liberal-conservatives and so on), but have come across, perhaps unexpectedly and in some cases unwillingly, a new way to practise their profession: more cosmopolitan, responsible, explicitly political and certainly a long way from the Jacobin picture of judges as *bouche de la loi*.

This made their role even more complex and the implementation of the projects was difficult, as they were in great measure inspired more by a hope and a wish than by facts, already known and formalized. Which model of judge for an emerg-

ing Europe and which principle of legality for which "European" space? It was not a matter of describing a situation (to some extent already consolidated), but of stimulating the debate and confrontation on questions that are still highly controversial, starting from subjects that had, so to speak, taken no part in the discussion up to that moment and exploiting some of the characteristics of those subjects, such as the fact that they have come out of a peculiar socialist experience and have suffered the tragic consequences of the explosion of nationalisms as well as of ethnic, religious, and cultural conflicts.

There are some conspicuous traces and echoes of this problematic approach in the book, both in the papers and in the contributions of the participants.

A direct discussion among "legal actors" is possible and very fruitful. The common language is the problem (often very similar, and sometimes even identical) encountered by judges, lawyers and prosecutors, wherever in Europe they have to perform their difficult functions. They have to grapple with uncertain and contradictory laws, inefficient and corrupt bureaucracies and with citizens that are more and more conscious of their rights, rights that often conflicting with the rights of others. The national judicial and legal systems certainly constitute a serious obstacle, but an increasingly greater number of judges are aware of the help they are offered in the independent fulfilment of their functions by the supremacy of Constitutional Charters and Rights, by the general principles of the system, and – first of all – of the European civilization understood as a common, shared interpretation of legality.

Judges can and must communicate in spite of the linguistic and legal barriers, which luckily are shrinking in number – and though it may appear banal, this is the exhortation that forcefully emerges from our experience.

In the course of the two projects the common language used in the meetings and discussion forums was English. Though sometimes it was not fully mastered, nevertheless – not least thanks to the flexibility of the language itself – the discussion took place without a hitch and was based on an autonomous vocabulary that made effective communication possible. Of course, the texts in this book have been corrected and thoroughly revised.

We regret that it was not possible to widen the circle of the debate to include other actors, whose contribution would have, no doubt, enriched the discussions. I refer in particular to the bar and legal professions in general.

The choice of the Internet and e-learning proved to be successful and satisfactory well beyond the economies it makes possible in the implementation of projects that would otherwise be impossible or terribly expensive: suffice it to think of the long seminars, slow communications and the burden of corrections and "questions-and-answers". The relative novelty of the medium, as said before, affected not only the style but also the contents of the "lectures": starting from the name and the substance of the course, which did not take place in the form of the usual lesson given by a teacher to students, but took on – from the

very beginning – the sense and the value of a discussion where all participants were on a par with each other.

The fourth point has already been largely covered when dealing with the peculiarities of the medium and of the people involved in the project, people who could not be set within a rigid hierarchy on account of their legal culture. From the very beginning there was general agreement on the substantially egalitarian character of the context in which they were to play their role. The differences were of course strongly felt, but in other fields: differences in culture, experience, and the way to conceive the crucial state-citizen relation.

The organizational aspect was not a separate moment of the course. We had to establish and constantly keep contact with government and university authorities and, above all, build special relationships with local institutions that can be defined as "high quality" in spite of the limited and precarious financial means at their disposal. The initiative received great and decisive support from entities like the Schools for Magistrates, Educational Centres for the Legal Professions and Magistrates' Associations. They were of help both in the difficult phase of the selection of participants and in the coordination and assistance activities.

The results obtained from this point of view are of no less importance than those obtained through the exchange of knowledge in the various fields of juridical practice.

The focus on the Balkan area was another good choice that proved extraordinarily fruitful both from the point of view of the specificity of the socialist experience that took place in that area and in which it played a leading role, and because the countries of former Yugoslavia are still deeply rooted in a previous juridical culture (influenced, in particular, by the French and German traditions), which is surprisingly well-preserved in spite of the subsequent experience which went in completely the opposite direction. Even the Balkan trend towards localization – instead of being an obstacle for the objectives of harmonisation, which are at the core of the idea of a larger Europe – has been useful in analyzing the difficult relationship between juridical traditionalism and the globalization of institutions and regulations.

While planning the book we chose to take into consideration this extremely important aspect of the experience, its positive bi-directionality so to speak, and to give more room and prominence to the contributions of the Balkan participants, contributions that will be useful even to jurists coming from environments with a better consolidated European juridical culture.

To conclude, let us go back to the book: it is not an epiphenomenon, an appendage with the purpose of denying the nature of the medium employed. The texts that follow do nothing but underline the complementarity of the electronic device with the more traditional forms of communication, namely the face-to-face and the paper mode.

Orality and immediacy have found their natural time and place in the regular

plenary meetings, where debate and dispute were able to unfold in a livelier and more direct way. So, since the choice to facilitate those meetings proved right, we deemed it also right to preserve a trace of that experience, not in the text itself, but in the fact that through the text we offer participants and the general public a further occasion, a pre-text, for new discussions.

The decision must have been a good one – though not originally included in the project, which came to an end with the release of the CD-Rom containing all the materials produced – because it has already aroused the participants' interest.

It is only to be hoped that this ambitious work, which is not merely a recapitulation, may trigger new experiences and initiatives in the wake of those that have just come to a conclusion.

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