The ECJ and cooperation in civil matters

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General remarks

- Cooperation in civil matters = civil matters having **cross-border** implications

- = Private international Law?

- Communitarization of Private international law
  - Uniformity in the interpretation - ECJ
Role of the ECJ

- Preliminary ruling - art. 267 TFEU

- The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
  - ......
  - (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;
Dual character of judicial protection in the EU

- The national judge is the first judge of the European Union

- He decides any question of EU law save where he decides that the outcome of a case depends on a point of EU law to which the answer is not clear

  - Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
  - Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.
Preliminary ruling procedure

- The cornerstone of EU law
- Dialogue between national courts and the ECJ
- Role of National courts
  
  a) initiate the procedure
  - Important variations between the MS as regards the number of references and the level of courts from which they originate

  b) give effect to preliminary rulings.
  - Ruling directed to all national courts.
    - In cases in which national courts disagree they may refer again the same or similar questions asking the court to reconsider. Ex. Art. 5.1 R 44/2001- the place of performance of the obligation in question
Role of the ECJ

- ECJ – Wide discretion as to the specificity of the judgment-
  - Outcome cases
  - Guidance cases
  - Deference cases

- Main aim: to give guidance in order to promote uniformity of interpretation
Culture of interpretation

Guiding principles: CILFIT (Case 283/81)

- Comparison of the **different language versions** Community legislation is drafted in several languages -the different language versions are all equally authentic.
- Community law uses **terminology** which is peculiar to it. Legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.
- Every provision of Community law must be placed in its **context** and interpreted in the light of the provisions of Community law as a whole, regard being had to the **objectives** thereof and to its state of evolution at the date on which the provision in question is to be applied.
Culture of interpretation

- Other tools of interpretation
  - Explanatory reports/Preambles
  - Fundamental rights and freedoms