

Workshop Public Law

Ius Commune Conference 2005

Thursday, 1 December (14.15 - 18.00)

Location: Pollock Halls of Residence

Buildings: St. Leonard's Hall

Room: St Trinian's

Overview participants workshop

Theme: Enforcing European rights against national authorities: the impact of recent developments in the case law of the Court of Justice

Community law obliges the member States to ensure the full effect of Community law, *inter alia*, by providing citizens with effective remedies to enforce "European" rights against national authorities. In a long line of cases, starting with Case 33/76 (*Rewe*), the ECJ has held that, on the one hand, the exact rules governing these remedies are for the member States to determine ("national procedural autonomy"), provided that, on the other hand, these rules meet certain minimum requirements. Increasingly, this line of case-law ties in with the case law on the principle of state liability for breaches of community law (starting with Cases 6/90 and 9/90, *Francovich and Bonifaci*), which of course, implies the availability of an action to enforce that liability in court.

Recently, while some cases have confirmed the ECJ's position on domestic remedies in terms of national procedural autonomy subject to the principle of non-discrimination and effectiveness (e.g. C-327/00, *Santex*), in some other instances the ECJ has moved further. This can be detected in cases like *Köbler* (C-224/01), which establishes state liability for erroneous judgment of the highest national courts, and *Kühne & Heitz* (C-453/00), in which the Court ruled that in certain circumstances, administrative authorities must reassess decisions that have already become final, if these decisions have become final as a result of a national judgment that interpreted Community law incorrectly. Both cases seek to achieve a balance between the need for legal certainty on the one hand and the full effect of Community law on the other hand. However, there is also recent case law which seems to imply that certain national limitations on state liability are acceptable (C-222/02, *Peter Paul*).

Panelists

M. Eliantonio (Maastricht) - The impact on Italian administrative law;

E. Chevalier (Limoges) - The impact on French administrative law;

N. Verheij (Maastricht) - The impact on Dutch administrative law.

The panelists welcome critical questions and comparative remarks from participants from other jurisdictions, as well as comparisons with the influence of the European Court of Human Rights case law on national administrative law.

The workshop will be chaired by Prof. N. Verheij.