

Ius Commune Conference 2018

Workshop: The Interplay between Legislative Provisions and Fundamental Rights in Ensuring Effective Judicial Protection & the Effectiveness of EU Law

Friday, 30 November (14.00 – 16.00)

Building: Aristo Amsterdam

Room: Teleportzaal (1.12)

Participants

Theme: The Interplay between Legislative Provisions and Fundamental Rights in Ensuring Effective Judicial Protection & the Effectiveness of EU Law

Over 40 years ago, the European Court of Justice decided on the *Rewe* case [Case 33/76, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland* ECLI:EU:C:1976:188], which is still referred to as the seminal judgement setting the minimum requirements for national procedural rules when national courts are adjudicating on cases falling within the scope of application of EU law. In a long line of subsequent case law, the Court of Justice refined its position with respect to national procedural rules and came to establish a system whereby ‘in the absence of EU rules governing the matter’ it is for the domestic legal systems of each Member State to establish the procedural rules applicable to enforcement of EU law, provided that provided that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness).

Next to these two principles, a third principle, that of effective judicial protection, has gradually emerged from the case law of the Court of Justice [Case 222/84, *Marguerite Johnston v. Chief Constable of the Royal Ulster Constabulary* ECLI:EU:C:1986:206]. This principle has been recognised by the Court of Justice as providing a different kind of standard than the one contained in the principle of effectiveness. However, the case law is not consistent on this point, nor is it clear whether both principles have been subsumed under the right to an effective remedy contained in Article 47 of the Charter of Fundamental Rights [Sacha Prechal and Rob Widdershoven, ‘Redefining the Relationship between ‘Rewe-effectiveness’ and Effective Judicial Protection’, *Review of European Administrative Law* (2011/2), pp. 31-50].

In parallel to this jurisprudential development, the EU legislator has increasingly ‘proceduralised’ secondary EU law, adding *ad hoc* rules of a procedural nature in various instruments and very diverse policy areas, such as environmental, competition, asylum and public procurement law [See for an overview of the phenomenon, M. Eliantonio and E. Muir, Special Issue of *Review of European Administrative Law* (2015/1)]. The rules thereby enshrined in EU legislation contribute to the effectiveness of the relevant instrument, may enhance judicial protection and facilitate the implementation of the right to an effective remedy.

How do the principles of effectiveness, effective judicial protection and the right to an effective remedy apply in conjunction or next to the related legislative provisions? How does legislative guidance feed into the definition of the fundamental principles and rights thereby identified at either EU or domestic level? The aim of the workshop is to explore the multifaceted relationship between the principle of effectiveness, the principle of effective judicial protection, the fundamental right to an effective remedy and EU secondary procedural rules. The topic will be explored through several policy areas, in order to examine whether a consistent attitude of the Court of Justice can be distilled vis-à-vis the issue at stake. Furthermore, the interactions between the European and national constitutional principles of effective judicial protection and right to an effective remedy will be examined.

Theme: **Panel III: The Interplay between Various Layers of Norms giving Flesh to the Principle of Effectiveness/Effective Judicial Protection/Right to Effective Judicial Protection in EU Law from a Domestic Perspective**

Chair & Discussant: **Monica Claes** (Maastricht University)

14.00 – 14.20 **Chiara Favilli** (University of Florence)
The Italian Example

14.20 – 14.40 **Angela Schwerdtfeger** (Humboldt University Berlin)
The German Example

14.40 – 15.00 **Discussion**

15.00 – 15.20 **Break**

Theme: **Panel IV: The Interplay between Constitutional and Legislative Norms in the Definition of Fundamental Rights in the EU**

15.20 – 15.40 **Elise Muir** (KU Leuven)
Concluding Remarks: Effective Judicial Protection, Effective Remedy, Effectiveness and Corresponding Legislative Provisions, an Example among Others?

15.40 – 16.00 **Discussion & Closing**