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OF LAW



ACTIONES Workshop on the Techniques of Judicial Interactions in the Application of The EU Charter in the field of ASYLUM AND (IRREGULAR) MIGRATION

WORKSHOP ORGANISED BY THE CENTRE FOR JUDICIAL COOPERATION, DEPARTMENT OF LAW

IN THE FRAMEWORK OF THE PROJECT “ACTIVE CHARTER TRAINING THROUGH INTERACTION OF NATIONAL EXPERIENCES” (ACTIONES)



FUNDED BY THE EUROPEAN COMMISSION FUNDAMENTAL RIGHTS&CITIZENSHIP PROGRAMME

**EUROPEAN UNIVERSITY INSTITUTE
27 JUNE – 28 JUNE 2016**

REFECTORY, BADIA FIESOLANA, VIA ROCCETTINI 9, I-50014 SAN DOMENICO DI FIESOLE (FI), ITALY

INTRODUCTION

The workshop takes place in the framework of the Project entitled - ***Active Charter Training through Interaction Of National ExperienceS (ACTIONES)***, which is managed by the EUI Centre for Judicial Cooperation with the support of the European Commission, DG Justice. The *ACTIONES* Project includes 7 leading academic institutions, a European-wide association of judges, and 9 national institutions entrusted with the task of training judges and lawyers. It is a manifestation of the conviction that a high and coherent standard of fundamental rights protection within the EU requires way more than simple knowledge on the Charter. This must be complemented by deep social and political sensitivity, awareness and swiftness in adopting procedural solutions offered by various legal orders, openness to their products, and readiness to engage in exchanges of views. These qualities must be nurtured with the awareness of mundane time and resource limitations that judges and lawyers face in their everyday work. The

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Project aims at providing answers to all the above needs through the elaboration of an easy-to-use toolkit through which legal practitioners will become familiar with the techniques of vertical and horizontal judicial interaction, ensuring thus the effective implementation of the Charter and adequate remedies to its violations.

The current Workshop – the second organised in the framework of the ACTIONES Project – has been structured as a forum of exchange of experiences, practices and solutions on the current problems that European and national judges are facing on the application of the EU Charter in the field of asylum and (irregular) migration. The mandate of national judges is particularly difficult in this field for three main reasons. *Firstly*, due to the complexity surrounding the scope of application of the EU Charter both substantially (for instance the controversies surrounding the content of Article 18 – *the right to asylum*; difficulty of establishing the relevant EU secondary act applicable to the case, e.g. *Cela*), and personally (e.g. does Article 41 – *right to good administration* – does it apply to the Member States' authorities and courts when implementing the CEAS and Return Directive?). *Secondly*, the CEAS and Return Directive touch on a politically sensitive issue, that is the public security of the EU countries, placing national judges in the difficult position of controlling the executive in a field that has traditionally been considered as falling within the prerogative of the executive, and where the judiciary enjoyed until recently limited power of control. However, the EU Charter is changing this domestic legal tradition, empowering national judges to scrutinise the discretionary power of the executive and at times offering the tool to fill the legislative gaps in the domestic protection of fundamental rights (e.g. Case C-146/14 PPU *Mahdi*). *Thirdly*, the European mandate of national courts is becoming more and more demanding due to the occasional divergent jurisprudence of the Court of Justice of the EU and the European Court of Human Rights. Recent jurisprudence on the implementation of the Dublin II and III regulation, and asylum reception conditions show an increasing dissonance between the opinions of the two European Courts. For instance the ECtHR pursues 'individual examination of the circumstances' test when deciding on suspending Dublin transfers (e.g. *M.S.S. v Greece and Belgium* and *Tarakhel v Switzerland*), while the CJEU reaffirmed the test of 'systemic deficiencies' in the asylum and reception conditions, which must reach the threshold of violating 4 EU Charter in order to justify suspensions of Dublin transfers (e.g. Case C-394/12, *Shamso Abdullahi v Bundesasylamt*).

The Workshop aims to tackle these complex and multiple difficulties that national judges are facing in the application of the EU Charter, within the framework of the Centre for Judicial Cooperation format of events as forums where national judges directly interact between themselves and with academics for the purpose of encouraging judicial dialogue. The underlying premise of the ACTIONES Project is that techniques of judicial interaction (e.g., *preliminary reference, consistent interpretation, direct effect, proportionality test, and mutual recognition*) represent the entrance doors of the Charter in the practice of courts.

PROGRAMME

Monday, 27th June 2016

9.00 Registration Refectory

9.30 Welcome address – Fabrizio Cafaggi | Scientific Coordinator of the ACTIONES Project

9.45 *The application of the EU Charter in the field of asylum and immigration from the perspective of national courts*

Chair: Philippe de Bruycker | Professor, Migration Policy Centre, European University Institute and the Institute for European Studies, Université libre de Bruxelles

Presentation of the ACTIONES Module on asylum and migration– the opportunities of judicial dialogue in the application of the EU Charter in the fields of asylum and immigration

Madalina Moraru | Research Associate part of the ACTIONES Team, Centre for Judicial Cooperation and Migration Policy Centre

(Roundtable discussion) I

Presentation of landmark case-law, common issues and solutions on the application of the EU Charter in asylum and irregular migration by the participating judges and lawyers

11.15 *Coffee break*

11.45 *Session continued - The application of the EU Charter in CEAS and the Return Directive from the perspective of national courts – (Roundtable discussion) II*

13.00 *Lunch- Lower Loggia*

14.00 *Judicial Interaction on Credibility Assessment in Claims based on Persecution for Reasons of Religious Conversion and Homosexuality – Furthering compliance with Article 7 EU Charter (Hypothetical I)*

Harald Dörig | Judge at the Federal Administrative Court of Germany

14.15 Hypothetical I

Group 1 – Tutors: Harald Dörig and Madalina Moraru	Group 2 – Tutor: Stephen Coutts, Nicole Lazerini and Federica Casarosa
Hypothetical 1	Hypothetical 1

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15.15 Presentation of conclusions reached in the Working Groups in the plenary meeting

15.30 Coffee break

16.00 -17.00 SESSION – The application of the EU Charter and ECHR in Asylum and Migration Cases – A View From the top

Chair: Francesco Maiani | Associate Professor of Public and European Law at the Swiss Graduate School of Public Administration (IDHEAP) of the University of Lausanne, and Migration Policy Centre of the EUI

16.10 The role of the Charter in the CJEU jurisprudence on asylum and immigration cases

Sara Iglesias Sánchez | Référendaire at the Court of Justice of the European Union

16.30 Presentation of FRA Report on the application of the Charter in the field of asylum

Adriano Silvestri | Fundamental Rights Agency

17.00 – 18.30 SESSION - Judicial dialogue in action in asylum and irregular migration cases (Roundtable)

Chair: Fabrizio Cafaggi

17.00 Judicial Dialogue furthering the application of the EU Charter in asylum and migration – the UK perspective

Bernard Mc Closkey | High Court Judge, Belfast, Northern Ireland and President of the Upper Asylum Tribunal for the UK

17.30 How to organise vertical and judicial interaction in asylum cases - case studies from the the German BVerwG

Harald Dörig | Judge at the Federal Administrative Court of Germany

17.50 Judicial dialogue in the field of the right to good administration – the French perspective

Marc Clement | Judge at the Administrative Court of Appeal of Lyon

18.10 General discussion

18.30 End of the first day

19.00 Cocktail and finger food in Lower Loggia

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Tuesday, 28th June 2016

CASE STUDIES (continuation)

9.15 Legality of detention of asylum seekers and irregular migrants with Articles 6, 47 EU Charter and Articles 5 and 13 ECHR – introducing the ELI checklist

Boštjan Zalar | High Court Judge at the Administrative Court of the Republic of Slovenia

9.45 Hypothetical II based on the checklist

Group 1 – Tutors: Boštjan Zalar and Madalina Moraru	Group 2 – Tutors: Philippe de Bruycker and Geraldine Renaudiere
Hypothetical 2	Hypothetical 2

10.50 Presentation of the Conclusions reached within Working Groups in the Plenary session

11.15 *Coffee break*

11.30 Hypothetical III – presentation of the case in the plenary

11.50 Discussion of possible solutions in Working Groups

Group 1 – Tutor: Madalina Moraru and Nicole Lazzerini	Group 2 – Tutor: Sasa Zagorc and Federica Casarosa
Hypothetical 3	Hypothetical 3

12.40 Presentation of the conclusions in the plenary session

13.00 *Lunch - Sala Rossa ground floor*

14.00- 16.30 SESSION - The role of European Judiciaries in the migration crisis. Bringing the future into the present

Chair Prof. Fabrizio Cafaggi | Scientific Coordinator of the ACTIONES Project

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14.00 Roundtable

Adriano Silvestri | Fundamental Rights Agency

Bernard Mc Closkey | High Court Judge, Belfast, Northern Ireland and President of the Upper Asylum Tribunal for the UK

Boštjan Zalar | High Court Judge at the Administrative Court of the Republic of Slovenia

Harald Dörig | Judge at the Federal Administrative Court of Germany

Marc Clement | Judge at the Administrative Court of Appeal of Lyon

16.30 End of the conference

List of Participants

Working Group 1 - Refectory

Maria Bergström, Uppsala University

Rita de Brito Giáo Hanek, Centre for Judicial Cooperation (EUI)

Harald Dörig, Federal Administrative court, Germany

Đuro Druško, Administrative Court in Osijek, Croatia

Georghios Seraphim, Administrative Court of Cyprus, Cyprus

Martina Flamini, Tribunal Milano, Italy

Klaus Järvinen, Administrative Court of Helsinki, Finland

Reelika Kitsing, Tallinn Circuit Court, Estonia

Nicole Lazzerini, University of Parma and Centre for Judicial Cooperation (EUI)

Francesco Maiani, University of Lausanne

Bernard McCloskey, High Court Judge, Belfast, Northern Ireland and President of the Upper Asylum Tribunal for the UK

Daniela Valeria Iancu, Romanian Superior Council of Magistrates

Cristina Lobue, Tribunal of Caltagirone, Italy

Madalina Moraru, Centre for Judicial Cooperation (EUI) and Migration Policy Centre

Angeliki Papapanagiotou-Leza, Administrative Court Of Appeal of Athens, Greece

Juana Patricia Rivas Moreno, Administrative Tribunal n. 26 of Madrid, Spain

Ernestas Spruogis, Vilnius Regional Administrative Court, Lithuania

Sara Iglesias Sánchez, Court of Justice of European Union

Alina Ioana Szabo, Lawyer, Romania

Catherine van Boven-Hartogh, District Court of Zeeland-West-Brabant, Netherlands

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Alin Vasonan, Court of Appeals Oradea, Romania

Viorica Vita, Centre for Judicial Cooperation (EUI)

Boštjan Zalar, Administrative Court of the Republic of Slovenia

Working Group 2 – Sala del Capitolo

Philippe de Bruycker, Migration Policy Centre (EUI)

Fabrizio Cafaggi, Centre for Judicial Cooperation (EUI), Scientific Coordinator of the ACTIONES Project

Federica Casarosa, Centre for Judicial Cooperation (EUI)

Marc Clement, Court of Appeal of Lyon, France

Irina Nicoleta Elisabeta Cioponea, Court of Appeal of Ploiesti, Romania

Stephen Coutts, University of Dublin and Centre for Judicial Cooperation (EUI)

Lilla Farkas, Centre for Judicial Cooperation (EUI)

Tadeja Jelovšek, Judicial Training Centre, Slovenia

Villem Lapimaa, Tallinn Court of Appeal, Estonia

Aikaterini Lazana, European Court of Human Rights

Paweł Liberadzki, District Court in Torun, Poland

Elena Masetti Zannini, Tribunal of Busto Arsizio, Italy

Petre Matei, Lawyer, Bucharest, Romania,

Inmaculada Montalban Huertas, Supreme administrative Court, Spain

Karolina Podstawa, European Inter-University Centre for Human Rights and Democratisation

Luca Perilli, Scuola Superiore della Magistratura

Krystalenia Poulou, Court of First Instance of Mytilene, Greece

Geraldine Renaudiere, Migration Policy Centre (EUI)

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Chiara Salamone, *Tribunal of Siracusa, Italy*

Antonio Scalera, *Tribunal of Catanzaro, Italy*

Adriano Silvestri, *Fundamental Rights Agency*

Snježana Horvat-Paliska, *Administrative Court of Rijeka, Croatia*

Judit Szabó, *Budapest-Capital Administrative and Labour Court, Hungary*

Carmel Stewart, *Dublin High Court, Ireland*

Marlies Wolfrat, *Utrecht District Court, Netherlands*

Saša Zagorc, *University of Ljubljana, Slovenia*