

University of Trento
Transnational Workshop for Judicial Training
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Towards Effective Justice in the fields of Asylum and Immigration

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In the framework of the EU project
**“Roadmap to European effective Justice (RE-Jus): judicial training
ensuring effective redress to fundamental rights violations”**,
co-funded by the Justice Programme of the European Union (2016-2018)



The “Re-Jus” Project

(2016-2018)

ROADMAP TO EUROPEAN EFFECTIVE JUSTICE (RE-Jus)

Judicial training ensuring effective redress to fundamental rights violations

Co-funded by the Justice Programme
of the European Union

JUST/2015/JTRA/AG/EJTR/8703

www.rejus.eu

The “Re-Jus” Project

(2016-2018)

ROADMAP TO EUROPEAN EFFECTIVE JUSTICE (RE-Jus)



The core subject

- ❧ A European judicial training project on effective protection of fundamental rights in the light of EU law, the general principles on enforcement developed by the CJEU and article 47, CFREU

The areas covered

- ❧ Consumer protection
 - ❧ Protection of migrants and asylum seekers
 - ❧ Data protection
-
- ❖ *Does art. 47 and the EU principles on enforcement play a different role, generating a different impact, in each area?*
 - ❖ *Which aspects can be generalized?*

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- *The partners* -



Academic Partners

- ☞ University of Trento (Italy) - *Leading Institution*
- ☞ Université de Versailles Saint Quentin-en-Yvelines (France)
- ☞ Instytut Nauk Prawnych - Polskiej Akademii Nauk / Institute of Law Studies - Polish Academia of Sciences (Poland)
- ☞ Universiteit van Amsterdam (The Netherlands)

Schools of Magistracy

- ☞ Scuola Superiore della Magistratura (Italy)
- ☞ Consejo General del Poder Judicial (Spain)
- ☞ Institutul National al Magistraturii (Romania)
- ☞ Pravosudna Akademija (Croatia)
- ☞ Ministrstvo za pravosodje Republika Slovenije (Slovenia)
- ☞ Judicial Studies Committee of the Irish Judiciary (Ireland)

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- *The context (i)* -



- ✓ The traditional divide:
 - ✓ the E.U. deals with **rights**, whereas
 - ✓ **enforcement** of E.U.-based rights is mainly dealt with by the Member States, both in the field of public and private enforcement.
- ✓ As a matter of principle, MSs enjoy **procedural autonomy**
- ✓ This may concern:
 - ✓ the choice between public and private enforcement mechanisms
 - ✓ the definition of rules affecting the enforcement procedures (administrative, judicial procedures)
 - ✓ the choice of remedies, their functioning, their effects
 - ✓ the recourse to alternative dispute resolution, their functioning and₅ their relation with judicial and administrative enforcement.

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- *The context (ii)* -



- ✓ The gradual erosion of the principle of procedural autonomy through application of general principles
- ✓ The role for the principles of equivalence and effectiveness
- ✓ Article 47, CFREU:
 - ✓ Everyone whose *rights and freedoms guaranteed by the law of the Union* are violated has the **right to an effective remedy before a tribunal** in compliance with the conditions laid down in this Article.
 - ✓ Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
 - ✓ Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

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- The main questions addressed -



- ⌘ How does the Charter impact on procedural autonomy? Powers and responsibility of national judges.
- ⌘ The rise of administrative enforcement and its interaction with civil and criminal adjudication. Does art. 47 influence the choice among enforcement mechanisms and/or their combination?
- ⌘ Does art. 47 broaden the judicial power to define remedies and sanctions? Does it contribute to
 - ⌘ broaden/limit the scope of existing remedies and sanctions
 - ⌘ create new remedies or sanctions
- ⌘ Does art. 47, CFREU, have an impact on the allocation of such power between the judge and the parties?
- ⌘ Does it modify (by means of consistent interpretation, disapplication or legislative reform) procedural rules, including rules on prescription periods, on allocation of the burden of proof, on ADR?

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- *The conceptual framework:*

(i) judicial dialogue -

- ⌘ The geometry of judicial dialogue: vertical and horizontal
- ⌘ The pathway of vertical judicial dialogue: conforming interpretation, disapplication, preliminary references
 - ⌘ Preliminary reference
 - ⌘ 1) framing the reference
 - ⌘ 2) providing an answer:
 - ⌘ I. defining detailed rules
 - ⌘ II. offering general guidance: setting the principles
 - ⌘ III. deferring to national courts
 - ⌘ 3) the application of the ruling
 - ⌘ I. by the referring court
 - ⌘ II. by other MS' courts

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- *The conceptual framework:*

(ii) the impact of judicial dialogue -



∞ Possible outcomes of judicial dialogue:

∞ Setting legislation aside / changing legislation

∞ Changing judicial interpretation of current legislation
implementing EU law

∞ Evaluating and measuring the impact of EU judgments
across MSs

∞ Adhesion, adaptation, resistance, failure to consider

∞ The challenges: how uniformly binding judgments may have
different impact on the MSs?

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The objectives and the methodology (i)



- ☞ Main objective: to examine the impact (both real and potential) of the Charter (mainly art. 47 and the principle of effectiveness) on EU and national caselaw on enforcement of consumer rights
- ☞ A work in progress resulting from cooperation between judges and scholars
- ☞ The “judicial dialogue” dimension and the application of the Charter within preliminary reference proceedings
- ☞ Judicial dialogue and life-cycle of the cases
- ☞ From targeting single cases to clustering them around horizontal key-issues
- ☞ Direct and indirect impact of CJEU decisions on national caselaw: distinguishing between MSs of the referring court and other MSs¹⁰

- *The methodology (ii)* -



- ❧ **Mutual learning process:** cooperation between Schools of Magistracy (and judges), Universities (and scholars); mixed thematic teams, involving different types of enforcers (e.g. civil and administrative judges).
 - ❧ The use of questionnaires and guidelines to identify relevant national caselaw
- ❧ The role for **comparative law** when addressing the impact of EU law on national caselaw in the analysis of both substantive and procedural matters
- ❧ Aiming at **project continuity:** link with other projects with similar characteristics and in similar areas of interest (part. JudCoop, Actiones)
 - ❧ Building instruments apt for future use

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- *Project Instruments* -



- ∞ Database on EU and national cases
- ∞ Case-books on access to effective protection
- ∞ Guidelines on effective procedures and remedies
- ∞ Guidance for trainers

See www.rejus.eu



*Enjoy the ReJus workshop on
Effective Protection in the fields of
Asylum and Immigration!*