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INTERNATIONAL AND EUROPEAN CIVIL PROCEDURE

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Introduction: Interrelation of National and EU Civil Procedure

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The Introduction

- Rules and principles of civil procedure in any national legal system embody important values and principles
- Vary as between legal systems
- Important for the resolution of both national and cross-border disputes
- The EU concerned with the unification of the rules of Civil procedure

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- The approach in this lectures will be both:
- „INTERNAL“ – from the perspective of the EU legal sources (**Regulations**)
- „EXTERNAL“ – from the perspective of national legislation (Croatian, Hungarian legal sources)

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- European private international law
- limits of competence
 - legislative competence according to art. 81 (2) lit. c), (3) TFEU
 - principles of conferral, subsidiarity and proportionality
- limits of substantive law
 - constitutional limits of MS
 - public policy exception

- limits of conflict of laws
 - Recent intensive legislative activity
- limits of procedural law
 - traditionally a public law not applied extraterritorialy
- How is the applicable law is actually applied in courts depends on
 - procedural treatment of conflict-of-law rules
 - rules on the proof of foreign law

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- The goal of the EU legislation:
- **Transnational procedural regulation**
- National procedural rules on:
jurisdiction, choice of law, service of documents, obtaining evidence abroad and enforcement of foreign judgements differ among Member States
- Obstacle for cross-border trade and civil or commercial dispute resolution
- The fundamental EC law principle requires uniform application and equality of procedural rules
- Important for uniform application of substantive EU norms (ECJ/ECHR)

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- 1. The right to a fair trial and access to justice (the EU Convention (ECHR))
- 2. The rights of economically and socially weaker parties (consumers, small and medium-sized companies, victims of discrimination) (the legal aid, the small claims procedure, the collective disputes)
- 3. The right to an effective remedy and the right to a fair trial (the European Courts ECJ; ECHR, judicial cooperation, collecting evidence, service of documents, ADR, judicial training)

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The European Courts (ECHR)

- Council of Europe 1950
- the European Convention on Human Rights (ECHR)
- European Court of Human Rights – individuals seek redress against Member States for human rights violations
- **Article 6 of the ECHR** on the right to **fair trial** and its doctrine in judgements of the Court is perceived as the **basis** for the procedural unification

- **The Court of Justice of the European Union**
- Conventional system of unification
 - MS empowered the ECJ to decide on this issue with Protocols on interpenetration.
- From Treaty of Amsterdam PIL is part of *acquis*
 - normal preliminary ruling procedure applies, art. 234
- From Lisbon Treaty TFEU
 - preliminary ruling procedure, art. 267
 - urgent preliminary procedure available for measures under Title V.

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The relationship between the right to a fair trial and the judicial cooperation

- 1. **Judicial cooperation** aims to achieve procedural simplification
- However, it is not permissible if it *undermines* the right to a **fair trial**
- 2. The recognition of the **right to a fair trial** can be seen as making a *positive* contribution to the development of **judicial cooperation**
- Procedural reform in the field of judicial cooperation in civil matters *should* also include higher standards of **human rights protection**

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- This requirement is highlighted in both:
- **Individual** (traditional) legal protection:
- The ***Krombach*** case (ECJ) / Case of **Airey v. Ireland** (ECHR)
- **Collective** legal protection:
- Case of **Hirsi Jaama and Others v. Italy** (ECHR)

- The Service Regulation
- The Evidence Regulation
- The Brussels I Regulation
- The Enforcement Order Regulation
- The Legal Aid Directive
- The „Code of Conduct for mediators and the proposed“
ADR Directive
- The Payment Order Regulation
- The Small Claims Regulation
- The European Judicial Network
- The European judicial training initiative and other
measures
- Brussels II *bis* Regulation
- Maintenance Regulation

- Council Regulation (EC) No. 1348/2000 of 29 May 2000 on the Service in the Member States of judicial and extrajudicial documents in civil and commercial matters OJ L160, 30 June 2000.
- Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters OJ L174, 27 June 2001.
- Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters OJ L12, 16 January 2001.
- Council and Parliament Regulation (EC) No. 805/2004 creating a European Enforcement Order of uncontested claims OJ L143, 30 April 2004.

- Council Directive (EC) No. 8/2003 of 27 January 2003. to improve access to justice in cross-border disputes establishing minimum common rules relating to legal aid for such disputes OJ L26, 31 January 2003.
- Council and Parliament Regulation (EC) No. 1896/2006 of 12 December 2006 creating a European order for payment procedure OJ L399, 30.12.2006.
- Council and Parliament Regulation (EC) No. 861/2007 of 11 July 2007 establishing a European Small Claims Procedure, OJ L199, 31.7.2007.
- Council Decision 470/2001 of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, OJ L174, 27 June 2001.

- Council Regulation (EC) no. 2201/2003 of 27 November 2003 on Jurisdiction and the Recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility which revokes Regulation (EC) no. 1347/2000, *OJ L 338*.
- Council Regulation (EC) no. 4/2009 of 18 December 2008 on Jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, referring to both children and spouses *OJ L 7, 10.1.2009*.

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