

TransEuropean Access to National Case Law: New Challenges in the Dissemination of Legal Information

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Abstract: Starting from the description of the reasons why the transnational access to case law is important especially in the context of European legal systems, some major information systems providing access to this type of data are presented, such as the Common Portal to Case Law, Dec.Nat, JuriFast and the EU Consumer Law Acquis Database. Finally Caselex (Case Law Exchange), a service equipped with a variety of semantic tools facilitating the transnational and multilingual access to national case law, is highlighted.

1. Introduction

Three different types of information are traditionally comprised in the concept of legal information: legislation, case law and legal authority. Each of these information types has its own specific features. Also their dissemination implies different and peculiar problems; such as identifying the text in force at a given time with reference to legislation or the relationship among different decisions with reference to case law in order to understand if a given decision is (or is not) in compliance with previous decisions on the same topic.

The first electronic legal information systems, which started in the seventies, were created to guarantee the widest and most appropriate dissemination of legal information within national contexts. Nowadays an ever increasing attention is given to the issue of transnational dissemination of national legal information; the focus is on the implementation of information systems allowing the researcher, the lawmaker, the judge and the citi-

zen of a given country to have access to the legal information of other countries by means of adequate supporting tools.

The interest for transnational access to legal information derives from different reasons connected with the different types of information described above. The recent development of globalization, consisting of a strict inter-relationship among markets, economic and legal systems, supports this ever increasing interest for transnational legal information access.

2. TransEuropean Access to National Case Law: Motivations and Tools

Our attention will be focused on transnational access to national case law. For which reasons is access to case law of other countries to be considered useful? First of all, it is to be pointed out that the globalization in the legal world affects also the administration of justice, at least with reference to two aspects. On the one hand, associations, conferences, seminars, experience exchanges involving courts and judges from different countries are organised with increasing frequency. On the other hand – and this is the most important for us – it is more and more frequent that judges from one country take into account the decisions made by judges of other countries when deciding on their cases. The more the legal comparison approach refers to domain areas where it has not been applied in the past (such as administrative law or constitutional justice) so these two aspects prove even more relevant. A recent case of the US Supreme Court [in *Knight v. Florida*, 528 U.S. 990 (1999)] is to be mentioned. In his dissenting opinion, Justice Breyer refers not only to the European Court of Human Rights but also to decisions of different courts including the Supreme Court of Zimbabwe.

The relevance of the distribution of decisions of national courts is still greater in the European Union, especially for decisions concerning the application of EU law (direct applicable EU law or the domestic law implementing EU law). The experience of the courts of other Member States could help the court of another country to better comprehend and interpret the same EU measure. The distribution of decisions made by national courts and the building of a sort of dialogue enhances their role as “*juges communautaires de droit commun*” and contributes to guaranteeing the uniform application of EU law in Member States.

Considering the specific supranational feature of the EU legal order, this relevance proves still more important in decisions concerning the exclusive application of domestic law. The knowledge of national jurisprudences is important in relation to two specific aspects being cross fertilization of legal systems and regulatory arbitrage.

The cross fertilization of legal systems consists of an harmonization process of legal orders of European countries by means of EC law: It usually acknowledges some principles of a given legal order of a Member State and exports them into another one (such as, for instance, the principle of proportionality which has been transferred from the German legal order into the Italian one, after having been recognised as a general principle within EC law).

The regulatory arbitrage is the action taken by market operators in selecting the best location for investment or economic activities depending on the local regulatory environment; for the selection process it is necessary to know not only the legislative regulations but also how they are interpreted and applied by national courts.

Legal information systems can meet the need for transnational access to national case law through different approaches. At least three of them can be identified.

The first approach refers to accessing national case law through specific tools for multilingual retrieval. The Italian ItalggiureWeb allows retrieving its case law databases containing the summaries and full texts of Italian court decisions also in languages other than Italian. The Eurovoc thesaurus is the support tool: The user, querying the system through the English interface, can utilise one of the English Eurovoc descriptors in order to make his search in the full text of summaries.

A second approach consists of developing a unified access point to different databases, by allowing stakeholders to search national information systems using a single uniform search engine template.

A third approach refers to the development of an information system consisting of case law from different countries that is enriched with rich semantic tools. This allows stakeholders who are not acquainted with the language or the legal system of the searched decision to still access the data. Concerning this approach, some essential issues for the development of such systems are to be pointed out:

- The content scope identification (parts of law and countries to be considered);
- The type of information selection (decisions references only or also full-texts);

- The definition of a metadata set offering different access paths to documents. These metadata can be multilingual (e.g. a summary) or neutral with respect to the language (e.g. the name of the parties or the Celex number of an EU measure cited in its decision by the national court). At least three types of metadata are relevant for this purpose:
 - *Content*: metadata relevant to the decision content; extracted or inferred by decision analysis (such as head notes and summary);
 - *Cross-referencing*: metadata relevant to cited or citing acts;
 - *Context*: added information providing instruments to better comprehend the decision (such as references to notes relating to the decision);
- The information display modalities (such as the linking between different documents);
- The supply of additional services (such as the translation of the decision full-text).

3. Some Transnational Systems for Accessing Case Law of European Countries

Some information systems meeting the need for transnational access to case law of European countries are presently accessible free of charge via the Web. Some institutional initiatives are to be mentioned here.

On the one hand, the Network of the Presidents of the Supreme Judicial Courts of the European Union has created the Common Portal of Case Law. On the other hand, the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union has developed two different information systems, Dec.Nat and JuriFast, utilising a different approach. The three information systems are characterized by a very wide content scope, with respect to the areas of law implemented. On the contrary, the case law database created within the framework of the EU Consumer Law Compendium project represents an information system restricted to a specific area of law (consumer law).

(a) The Common Portal to Case Law is a meta-search engine of national case law allowing to simultaneously query several search engines. A public simplified version has been available since May 2007. The user, after selecting the target databases on which to perform his queries, searches the decision by keywords, utilising any of the 23 official languages of the European Union. The system provides an automated translation of the searched terms by means of the Eurovoc thesaurus and Iate (that is the database

used by the EU's various institutions to collect, distribute and jointly manage EU-specific terminology). The translations of the searched terms can be reviewed and modified by the user through a page displaying the information retrieved from Iate and Eurovoc. It is also possible to select an alternative translation, or to enter a new translation (if the user has enough knowledge of the language). In the private version of the system accessible by the members of the Network, the decisions can be translated using an automated translation service provided by the European Institutions.

(b) Dec.Nat is a database collecting the documentation of the European Court of Justice's Research and Document Department on more than 19.000 decisions from national courts. The database contains the reference to national case law regarding Community law and related to EC Treaties and secondary legislation as well as the reference to annotations and comments in books and articles related to national decisions and judgments delivered under the preliminary rule procedure by the Court of Justice. The Association of the Councils of State has developed an interface allowing the public to consult the data using a number of search tools and has also managed to make all data available in both English and French. For each decision, Dec.Nat contains: national references (the names of the parties, an indication of the national provisions applied and the relevant doctrine); international or European references with an indication of the Community provisions applied; an analysis of the decision (strings of keywords referring to the points of law covered); finally, in some cases, a fourth section indicating the preliminary ruling of the Court of Justice. Searches can be performed by EU law provision, by subject, by keywords, by other fields (date of decision, names of the parties, name of the court, etc.).

(c) The JuriFast database aims at offering immediate access to the latest developments in case law, mainly linked to Community law. For each decision, the database contains: the date and a short description of the subject; the full text of the ruling or judgment; a summary in French and English; a link to the relevant provisions of European law. In the case of preliminary questions to European Court of Justice, additional information is added, namely: a link to the ECJ's response and the decision resulting from this response. Searches can be performed by different fields (State, date of the decision, subject, reference to Community act, one or more terms appearing in the title of the Community act). The distinctive feature of the system is that information is added directly by member courts.

(d) In order to develop a knowledge base for reviewing eight directives on Consumer law, the European Commission has assigned a comparative analysis on how the directives are applied in the Member States to the Univer-

sity of Bielefeld under the leadership of Hans Schulte-Nölke. A database has been developed containing the relevant case law from Member States. The full text of each decision has been inserted together with a head note and a summary subdivided into three sections (most relevant provisions, facts and reasons) available in three languages (English, French and German).

3.1 Evaluation Comments

Each of these systems has positive and negative aspects.

The Common Portal to Case Law allows retrieving the complete full texts of decisions, when they are provided by the national information systems, but offers the users only a single search tool (searching by keywords) and this is certainly a limitation. However, although the use of Eurovoc and late as retrieving tools of multilingual documents and the implementation of automated tools for translating the decision texts are very stimulating, the utilisation of these tools does not guarantee the translation quality; they are useful for gaining an idea of what the contents of the decision are, but they are not reliable for a deep comprehension of texts produced in languages other than the one of the user.

Dec.Nat does not allow retrieving the full text of national decisions, but certainly offers a wider set of search tools. Even if the semantic tool employed (keywords) is of high quality (ECJ's departments), missing full text may lead not perceiving all the grounds of the court decisions.

The data sources (i.e. the courts) of JuriFast present its main value and its defect at the same time. Courts can better guarantee a qualitative selection of relevant cases (even if the content scope of the database and the criteria followed for the selection are not so clear). However, an activity based on a voluntary participation cannot guarantee the necessary continuity in updating the database content.

The EU Consumer Law Acquis Database provides the decision full text as well as the head note and the summary which are very helpful to comprehend the relevance and the content of the decisions, but covers a very limited area of law.

4. New Perspectives in Transnational Access to National Case Law: Caselex

One recent and very advanced example of an information system allowing transnational access to national case law is Caselex, a service developed with the support of the EC Commission under the eContent and eTEN programmes.

Caselex is an Internet based “one-stop-shop” service for national case law linked to the common denominator of EU law. It collects decisions of Supreme and High Courts of Member States, within selected areas of law connected with the implementation and application of EU law. Therefore, it has built a platform that brings the public case law content from a disconnected set of national information sources to an integrated and distributed European knowledge service, enabled by semantic web tools. Its knowledge infrastructure is designed for facilitating its access through a semantic layer supporting the user to understand what the content is like and to link it with the knowledge already existing in his experience and skills. In this way it is possible to meet the needs and capabilities of different categories of stakeholders.

Cases are collected in Caselex only when: (i) a national court interprets a term mentioned in an EU rule; (ii) a national court says something about the ‘value’ of a certain EU rule; (iii) a national court *de facto* applies an EU rule in a new way.

Cases are offered in their native language full text, integrated with a head note, a summary and additional metadata in English. A typical Caselex summary is between 250–400 words long, and does not represent a legal analysis of a case but rather reflects key facts, holding, decision and results. This is meant to help the user to make up a qualified opinion about the merit of the case when reading its head note and summary.

Caselex focuses predominantly on commercial law, presently consisting of 14 areas of law, being: Company law; competition law; employment, health and safety, social security; intellectual property law; consumer protection law; public procurement law; environmental law; information technology law, including telecom law; media and entertainment law; banking, finance and capital markets law; transport law; insurance law; taxation law and freedom of movement law.

The system is provided with a variety of tools offering different ways to find the information stakeholders may need to search for solving their legal problems. Two main accesses – browsing and searching – are available.

Browsing can be applied through:

- *EU legislation*. All cases within the Caselex repository are connected to one or more core EU provisions which can be described as the main EU provision discussed in the case. Furthermore, other referred EU provisions are also added. Selecting one or more EU provisions will list the cases which have this/these provisions added as metadata.
- *National legislation*. The core national provision is the antipode to core EU provisions and is the provision which implements or otherwise equals the EU core provisions. In most cases the national judge starts with this national provision and then tracks it back to the EU provision. As well as for EU provisions, also other referred national provisions are added. Selecting one or more national provisions will list the cases which have this/these provisions added as metadata.
- *Legal area*. All cases are related to one or more legal areas, for instance competition law or labour law. One or more legal areas can be selected by the end user.
- *Jurisdiction*. The end user can select case law connected to one or more jurisdiction from which the decisions originate.
- *Thesaurus/subjects*. All cases have one or more subjects from the Caselex Thesaurus added as metadata. The end user can browse through these subjects and select one or more of them and the result list will display the cases with these subjects added to them.

Searching may be performed through *multilingual tools*. All cases have summaries in English. In addition, cases are classified via subjects from the Caselex thesaurus. The thesaurus is multilingual. This means that cases in different languages may be retrieved via the thesaurus. As mentioned, cases may also be searched via EU provisions which are not dependent of any language. In general: all metadata are multilingual – and searchable.

The various browsing options can be combined internally or with a free text search.

5. Conclusion

The transnational access to national case law is to be considered an obvious and relevant issue due to the widespread increasing development of globalization affecting all aspects of social and economic activities all over the world. Since this process implies that people living in a country entertain permanent relationships with people, enterprises and institutions of other

countries, the knowledge of national case law is essential for understanding the legal order of the different countries.

Many legal information systems in Europe provide this type of access. They prove themselves more useful when they are equipped with semantic tools supporting the stakeholders in their searching needs especially when they are lacking of those capabilities to manage multicultural and multilingual data.

The further development of these types of systems not only guarantees a widespread knowledge of different legal systems but has also an impact on the various social systems contributing to the harmonization of citizens rights and to a positive dialogue among different cultural backgrounds.

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