

Conference

Judges in Utopia Civil Courts as European Courts

7-8 November 2019, Amsterdam, The Netherlands

This is the final conference of the NWO-funded 'Judges in Utopia' project. The aim of this conference is to present the project's results to an audience of legal scholars and practitioners and to engage in a critical debate about the role of civil courts as European (constitutional) courts.

The overall goal of the project is to contribute to a normative theory of judicial law-making in European private law. European private law is understood as the field of law regulating private legal relationships in Europe; a neither national nor European field but rather a hybrid between the two. The focus of the project lies on the role of civil courts in the light of theories of European constitutionalism and philosophical theories of deliberation as well as the potential of fundamental rights to deliberate value-choices in judicial reasoning in the field of private law.

Within this general framework, in-depth studies have been conducted of: the impact of Article 47 of the EU Charter of Fundamental Rights on civil procedure, the legitimacy of judicial law-making in climate change litigation, different conceptions of social justice, and the contribution of private law adjudication to polity-building in Europe. These studies contribute to the elaboration of a theoretical framework that (a) reconceptualises the role of judges in today's Europe, especially in their relation to the legislature, and (b) provides them with methodological guidance for the resolution of private legal disputes on the interface of national private law and European law.

The conference concentrates on fundamental rights' potential to serve as enabling tools for courts to open up space in deliberative processes regarding concepts of (transnational) justice in European private law. The judiciary's role can be reconstructed in the light of three interlinked dimensions, which are not analysed statically, but dynamically through time: an institutional, a procedural and a substantive dimension. The institutional dimension pertains to the question how to situate courts in relation to other branches of government in the European multi-level legal order. The procedural dimension is pronounced in the position of courts vis-à-vis the litigating parties and how their powers and duties are influenced by European and international law. The substantive dimension concerns the question whether and to what extent fundamental rights are able to reconcile different conceptions of justice.

Prominent examples are the *Aziz* case on mortgage enforcement and the *Urgenda* case on climate change. In *Aziz*, the three dimensions become visible in the dialogue between a Spanish civil court and the EU Court of Justice regarding shortfalls in the judicial protection of consumers that came to light during the financial crisis, and the legislator's lack of action in this respect. This raised concerns as to the right to an effective remedy and the right to housing, as well as the substantive and procedural imbalance between creditors and mortgage debtors in Spain. As for *Urgenda*, the State of the Netherlands was ordered to reduce a fixed percentage of greenhouse gasses on the basis of national tort law. The Dutch courts were criticised for encroaching on the primacy of politics, in determining that the claimants' human rights cover positive obligations for the State to prevent climate change.

We would like to ask the invited speakers to engage with the theme of this conference and reflect on the 'Judges in Utopia' project from the perspective of their own research. An expert panel will be composed for the specific purpose of providing feedback on the project's results. In addition, a call for papers will be issued to encourage the participation of academics in the early stages of their career. The organisers aim to publish some or all conference proceedings in a special issue of a reputable European law journal. More details will follow.

For more information about the project, visit <https://judgesinutopia.eu>.

The project team

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