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**Erik Werlauff**

# Common European Procedural Law

European Law requirements imposed on national  
administration of Justice



**DJØF Publishing  
Copenhagen**

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# Preface to English edition

The rules governing proceedings before national courts are no longer supremely national. To an increasing extent European law provisions are setting up requirements in respect of the administration of justice in the individual countries. These requirements are stemming from the EC Treaty, the Brussels Convention on mutual recognition of judgments and from the European Convention on Human Rights with its demand for a fair trial.

Common European Procedural Law aims at creating an overview, and demonstrating the interplay, of these rules which despite their varying sources are aimed at the same addressee: the courts and their users and they are also pursuing the same purpose: to create equality between parties, pleas and arguments, courts and judgments within Europe and at the same time to create a certain minimum of effective force of European law rules.

Any “doubting Thomas” fearful about the idea of successive development of procedural law into a common law should bear in mind that in a historical perspective “national law” is a relatively short-term and isolated concept; for long periods of time Europe was dominated i.a. by a *jus commune* (“common” law) exerting its influence on levels both mandatory and persuasive, and also for gap-filling purposes.

The common European procedural law described and analysed in the book may be divided into 7 summarising main statements as follows:

- That* (1) as a predominant starting point the procedural law is and remains a national matter, i.e. a retention of procedural autonomy for the states,
- That* (2) some procedural law areas are really co-ordinated by virtue of substantive provisions in the EC Treaty and their mirror effects on a procedural level (effectiveness consequences/equal treatment considerations),
- That* (3) a uniform interpretation of Community law is secured via referral rules in Art 177 of the Treaty,
- That* (4) the efficiency of Community law is moreover secured via requirements set up for national administration of justice in respect of interim remedies where such measure is necessary,

*That* (5) via a special Convention to such effect the free movement of writs and judgments has been secured so that the EU and EFTA are one huge area in regard to institution of proceedings, legal force and execution power, in addition to securing a uniform interpretation of said Convention via the ECJ so that we are giving “full faith and credit“ to judgments, etc. from the other countries with the reservation that the *lis pendens* concept needs to be settled via more definite terms.

*That* (6) via the ECHR we have secured a high standard of fair trial in both civil and criminal proceedings and a uniform interpretation of its provisions via the Court of Human Rights; and

*That* (7) procedural law in the European states is otherwise to develop via the maxim of following the “good example” rubbing off effects, etc.

The translation of my originally Danish manuscript has been carried out by government authorised, legal translator Hanne Grøn, MA(LSP).

University of Aalborg, October 1998

*Erik Werlauff*

# Abbreviations

BFH	(German) Bundesfinanzhof
BGB	(German) Bürgerliches Gesetzbuch
BGH	Bundesgerichtshof
CELEX	Data base of legal acts, etc. (Communitatis Europae Lex)
CMLR	Common Market Law Review
ECB	European Central Bank (3 <sup>rd</sup> phase of EMU)
EC	European Communities
ECHR	European Convention of Human Rights
ECHR Court	European Court of Human Rights
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Area
EU	European Union
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
GATT	General Agreement on Tariffs and Trade
ND	Nordisk Domssamling
NJW	Neue Juristische Wochenschrift
NFTK	Nordisk Tidsskrift for Kriminalvidenskab
OECD	Organisation for economic cooperation and development
OLG	Oberlandesgericht
SvJt	Svensk Juristtidning
TfR	Tidsskrift for Retsvidenskab (Scandinavian journal – original language versions of decisions)
ZIP	Zeitschrift für Wirtschaftsrecht
ZPO	Zivilprozessordnung

## **Danish abbreviations:**

H	Supreme Court judgment or interlocutory order
J	Juristen (law periodical)
J.U.	Juridisk Ugebrev (law periodical, weekly)

## Abbreviations

- L either: Danish parliamentary bills (followed by “No”), or in relation to the Danish EC journal “EF-Tidende”: Sect. L (legislatio)
- R & R Revision og Regnskabsvæsen (accountants’ monthly magazine)
- Rpl. Where this occurs in the English text, reference is to the Danish Administration of Justice Act
- Saml. The Danish language version of the compilation of ECJ decisions. English equivalent: ECR
- TfS Tidsskrift for skatter og afgifter (tax and duties periodical)
- TSN Told og Skat Nyt (newsbrief from the tax and customs Agency – now joined with TfS)
- UfR Ugeskrift for retsvæsen (weekly law reports of relevant or major Danish court decisions) Where a “B” is included in the reference, e.g. *UfR 1991 B etc.* – the indication is for the B-section containing comments on court decisions and articles of legal topical interest
- V Will signify that the judgment cited is given by the Western Division of the high court
- Ø Will signify that the judgment cited was given by the Eastern Division of the high court

### **Danish-language periodicals referred to, other than those mentioned in abbreviation list:**

- Advokaten: monthly journal for practising lawyers
- EU-ret & Menneskeret: (periodical of EU law and human rights law)

### **Danish courts, referred to throughout:**

1<sup>st</sup> instance: “*byret*”: town court (alternatively: city court or district court) civil and criminal jurisdiction, limited in amount only. One court for each judicial district (82 in number). Also functions as probate, bankruptcy and bailiff’s court.

1<sup>st</sup> instance and appellate: “*landsret*”: “high court”. This level consists of two high courts, one based in Jutland (Viborg) – the “Western Division of high court” with territorial jurisdiction over Jutland and adjacent islands, the other situated in Copenhagen – the “Eastern Division of high court” with territorial jurisdiction over the rest of the country. Hears cases exceeding DKK 1,000,000 in value and appeals from the town courts.

Appellate: “*Højesteret*” – the Danish Supreme Court, based in Copenhagen. Hears appeals from the high courts and the Maritime and Commercial Court. Third instance appeals access only on leave from the Process Licence Board.

**Special courts:**

*“Sø- og Handelsretten”*: the Maritime and Commercial Court, based in Copenhagen. Hears cases of particular complexity within commercial or maritime matters.

*Arbejdsretten*: the Labour Court (or “Industrial court”, jurisdiction in industrial relations law disputes).

