INTRODUCTION

The workshop “Liability of Judges in European and National Laws” focuses on the possibility to attribute liability to judges for infringement of Community law, and subsequently to claim damages from them. The workshop builds on the recent case law of the Court of Justice of the European Union which since Köbler (C-224/01) has been reshaping the principle of vicarious state liability of Member States of the European Union in order to accommodate the possible defiance on the part of the domestic courts of EU obligations.

The Köbler judgement can be considered landmark in this respect as it distilled three conditions of existence of liability from the previous case law of the EU CJ going back to Brasserie du pêcheur, Factortame and Dorsch Consult: i) the infringed EC rule shall entail the granting of rights to individuals; ii) the infringement is sufficiently serious; and iii) a direct casual link between the breach and the loss and damage suffered by the individual exists.

On the basis of the three above conditions, the EU CJ proceeded to establishment of the conditions of the liability being attributed to the last instance court and judges giving rise to compensation claims of individuals. The condition of the ‘manifest negligence’ on the part of the last instance court has been established. Thus, as it was announced, “the ECJ has watered down the Francovich liability”.

In its subsequent case law the EU CJ has confirmed the Köbler principle, yet not all the questions were answered in this context, especially as to the ways of determining the conditions when such liability may arise. The issue of the potential liability of last instance judges has been addressed by the Council of Europe networks as well as national authorities, yet again contributing to the discussions on the matter and to the extent of the phenomenon, making the picture more complicated.

The workshop aims at addressing those issues and in particular answering the following questions:

- what is the meaning of ‘manifest negligence’ on the part of the last instance court judge?
- how is the 'sufficiently serious' infringement established?
- how can the Köbler approach be reconciled with the independence of the judiciary?
- does the Köbler and subsequent case law give way to national legislature to codify the principle of direct civil judicial liability? Otherwise, should the State be responsible for damages, and then maybe recover from individual judges if domestic law so provides?

The Centre for Judicial Cooperation of the EUI Law Department has taken on board its usual methodology facilitating the answer to the above enlisted questions through the involvement of both academics working on the issue as well as judges – thus actors subject to principles at stake with power of shaping them.

PROGRAMME

Friday, 14th December 2012
SALA DEL CAPITOLO, BADIA FIESOLANA

10:00 Registration and Coffee

10.30 Welcome and Introduction

Fabrizio Cafaggi, Centre for Judicial Cooperation, European University Institute and the Research Team
Raffaele Sabato, Italian School for the Judiciary

10:45 PART I: INTERNATIONAL LAW PERSPECTIVE ON JUDICIAL LIABILITY

Chair: Raffaele Sabato, Scuola Superiore della Magistratura

Introductory Remarks:
Giuseppe Nesi, Trento University
Riccardo Pavoni, Siena University

11:30 GENERAL DISCUSSION

12:15 Lunch in Sala Rossa

13:45 ROUND TABLE 1: The ECtHR and the Council of Europe: beyond State Liability?

Chair: TBA

Giuseppe Martinico, Centro de Estudios Politicos y Constitucionales
Giovanni Guzzetta, University of Rome “Tor Vergata”
Bart van Lierop, Administrative High Court for Trade and Industry, Netherlands; Consultative Council of European Judges at the Council of Europe

15:00 GENERAL DISCUSSION

15:30 Coffee break
16:00  
**PART II: EUROPEAN LAW PERSPECTIVE ON JUDICIAL LIABILITY**

**Chair:**

TBA

**ROUND TABLE 2: Judicial Liability in the European Union Law and the Case Law of the Court of Justice of the European Union**

*Luis Maria Diez-Picazo Giménez*, *The Supreme Court of Spain*

*Raffaele Sabato*, *School for the Judiciary, Italy*

*Adelina Adinolfi*, *European University Institute and University of Florence*

*Massimo Confortini*, *University of Rome “Sapienza”*

17:15  
**GENERAL DISCUSSION**

17:45  
*End of the session*

19:00  
*dinner in Badia Fiesolana, Sala Rossa*

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**Saturday, 15th December 2012**

SALA DEL CAPITOLO, BADIA FIESOLANA

9:30  
**Part IV COMPARATIVE PERSPECTIVES**

**Chair:** *Giuseppe Nesi*, *University of Trento*

**PANEL I: Italy, France, Romania**

*Enrico Scoditti*, *Tribunale di Bari, Italy*

*Bernard Even*, *Conseil d’Etat, France*

*Daniela Valeria Iancu*, *Consiliul Superior al Magistraturii, Romania*

10:45  
*coffee-break*

11:15  
**PANEL II: Germany, Austria, Netherlands, Poland**

*Markus Thoma*, *Austrian Administrative Court*

*Wilbertus Adrianus Johannes van Lierop*, *Administrative High Court for Trade and Industry, Netherlands; Consultative Council of European Judges at the Council of Europe, Anna Dumas*, *Polish Supreme Administrative Court*

12:30  
**GENERAL DISCUSSION AND CONCLUSIONS**

13:15  
*lunch in Sala Rossa*
PARTICIPANTS

Adelina Adinolfi  Professor of European Law, University of Florence/European University Institute

Fabrizio Cafaggi  Professor of Comparative Law, Director of the Centre for Judicial Cooperation, European University Institute

Remo Caponi  Professor of Civil Procedure, University of Florence

Federica Casarosa  Expert of the Centre for Judicial Cooperation, European University Institute

Massimo Confortini  Professor of Private Law, University of Rome “Sapienza”

Anna Dumas  Judge, Supreme Administrative Court, Poland

Bernard Even  Conseil d’Etat, France

Luis María Díez-Picazo Giménez  Judge at the Supreme Court of Spain

Giovanni Guzzetta  Professor of Public Law, University of Rome “Tor Vergata”

Daniela Valeria Iancu  Consiliul Superior al Magistraturii, Romania

Wilbertus Adrianus Johannes van Lierop  Vice-President, Administrative High Court for Trade and Industry, Netherlands; Vice-President, Consultative Council of European Judges at the Council of Europe

Mislav Mataija  Expert of the Centre for Judicial Cooperation, European University Institute

Giuseppe Martinico  García Pelayo Fellow, Centro de Estudios Politicos y Constitucionales, Madrid

Juan Mayoral  Expert of the Centre for Judicial Cooperation, European University Institute

Madalina Moraru  Expert of the Centre for Judicial Cooperation, European University Institute
Giuseppe Nesi  Professor of International Law, University of Trento

Ricardo Pavoni  Professor of International Law, University of Siena

Karolina Podstawa  Project Manager, Centre for Judicial Cooperation, European University Institute

Raffaele Sabato  Member of the Board of Directors, Italian School for the Judiciary, Italy

Luigi Salvato  Corte Costituzionale, Italy

Enrico Scoditti  Judge, Tribunale di Bari

Markus Thoma  Judge, Austrian Administrative Court

Conference venue: EUI, Badia Fiesolana (Sala del Capitolo) - Via dei Roccettini 9, I-50014 San Domenico di Fiesole