

Giovanni Chiapponi

Interfaces between National and EU Law

Time Limits in Cross-Border Civil Proceedings and
Their Impact on the Free Circulation of Judgments



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Acronyms and abbreviations

AG	Advocate General
Am. J. Comp. L.	The American Journal of Comparative Law
Art.	Article
AVAG	Anerkennungs- und Vollstreckungsausführungsgesetz (Recognition and Enforcement Act)
BGB	Buergerliches Gesetzbuch (German Civil Code)
Brussels Convention	1968 Brussels Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (1972) OJ L 299.
Brussels I Regulation	Council Regulation (EC) 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (2001) OJ L 12.
Brussels Ibis Regulation	Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast) (2012) OJ L 351.
Bull. Civ.	Bulletin Civil de la Cour de Cassation
Camb. Yearb. Eur. Leg. Stud.	Cambridge Yearbook of European Legal Studies
CFR	Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
CMLR	Common Market Law Review
Cor. giur.	Il Corriere Giuridico
Cuad. der. trans.	Cuadernos de Derecho Transnacional
C.J.Q.	Civil Justice Quarterly
c.p.c.	Codice di Procedura Civile (Italian Code of Civil Procedure)

Acronyms and abbreviations

CPC	Code de Procédure Civile (French Code of Civil Procedure)
CPP	Κώδικας Πολιτικής Δικονομίας (Greek Code of Civil Procedure)
disp. att.	Disposizioni di Attuazione del Codice di Procedura Civile (Preliminary Rules of the Italian Code of Civil Procedure)
Droit et procédures	Droit et Procédures: La Revue des Huissiers de Justice
EC	European Community Treaty
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EAPO Regulation	Regulation (EU) 655/2014 of the European Parliament and of the Council of 15 May 2014 Establishing a European Account Preservation Order Procedure to Facilitate Cross-Border Debt Recovery in Civil and Commercial Matters (2014) OJ L 189.
EEC	European Economic Community Treaty
EEO Regulation	Regulation 805/2004 Regulation (EC) 805/2004 of the European Parliament and of the Council of 21 April 2004 Creating a European Enforcement Order for Uncontested Claims (2004) OJ L 143.
E.L. Rev.	European Law Review
EPO Regulation	Regulation (EC) 1896/2006 of the European Parliament and of the Council of 12 December 2006 Creating a European Order for Payment Procedure (2006) OJ L 399.
ESCP Regulation	Regulation (EC) 861/2007 of the European Parliament and of the Council of 11 July 2007 Establishing a European Small Claims Procedure (2007) OJ L 199.
Eur. Rev.	Private Law European Review of Private Law
Foro it.	Il Foro Italiano
Gaz. Pal.	Gazette du Palais
Giur. it.	Giurisprudenza Italiana

Giust. civ.	Giustizia Civile
Giusto proc. civ.	Il Giusto Processo Civile
IJPL	International Journal of Procedural Law
INT'L LIS	Rivista di Diritto Processuale Internazionale e Arbitrato Internazionale
IPRax	Praxis des Internationalen Privat- und Verfahrensrechts
JCER	Journal of Contemporary European Research
J-CL Droit International	JurisClasseur Droit international
J-CL Europe Traité	JurisClasseur Europe Traité
JCMS	Journal of Common Market Studies
JDI	Journal du Droit International (Clunet)
JPIL	Journal of Private International Law
JPE	Journal of Political Economy
Judicium	Judicium Il Processo Civile in Italia e in Europa
LEC	Ley de Enjuiciamiento Civil (Spanish Code of Civil Procedure)
MJ	Maastricht Journal of European and Comparative Law
MLR	The Modern Law Review
NCPC	Nouveau Code de Procédure Civile (Luxembourgish Code of Civil Procedure)
NIPR	Nederlands Internationaal Privaatrecht
Unif. L. Rev.	Uniform Law Review
RCDIP	Revue Critique de Droit International Privé
RDIPP	Rivista di Diritto Internazionale Privato e Processuale
RIDC	La Revue Internationale de Droit Compare
Riv. es. forz.	Rivista dell'Esecuzione Forzata

Acronyms and abbreviations

Riv. trim. dir. e proc. civ.	Rivista Trimestrale di Diritto e Procedura Civile
Riv. dir. eu.	Rivista di Diritto Europeo
Riv. dir. proc.	Rivista di Diritto Processuale
RIW	Recht der Internationalen Wirtschaft
RTD civ.	Revue Trimestrielle de Droit Civil
RTD eur.	Revue Trimestrielle de Droit Européen
TFEU	Treaty on the Functioning of the European Union
Yb. PIL	Yearbook of Private International Law
ZIZ	Zakon o izvršbi in zavarovanju (Slovenian Code of Civil Procedure)
ZPO	Zivilprozessordnung (German Code of Civil Procedure)

Foreign legal terms

Bundesgerichtshof	German Supreme Court
Cancelleria	Registry of the Court (Italy)
Corte di Appello	Italian Court of Appeal
Cour d'Appel	French Court of Appeal
Corte di Cassazione	Italian Supreme Court
Cour de Cassation	French Supreme Court
Grefe	Registry of the Court (France)
Huissier de justice	French Bailiff
Landsgericht	German First Instance Court
Oberlandesgericht	Higher Regional Court (Germany)
Tribunal Judiciaire	French First Instance Court
Tribunale	Italian First Instance Court
Tribunal Supremo	Spanish Supreme Court
Ufficiale giudiziario	Italian Bailiff

Introduction

This research deals with time limits in cross-border civil proceedings at the EU level. The legal issues that arise are particularly insightful to study the interplay between national and EU law, an issue that has caught the attention of the EU legislator in recent years.

The interaction between time, more precisely time limits, and civil proceedings is a topical issue for all legislations. Time is indeed an absolute fixture that dictates the pace at which the procedures must unfold within a specific procedural framework where parties and judges must accomplish their activities in a logical and chronological order. Time limits are thus an essential tool that provide structure at the procedure. In practice, time limits impact the effective exercise of the procedural rights of the parties and determine the management of cases, the fairness of the proceedings, the prevention of delays, the efficiency of justice and the effect of *res judicata*. Against this background, the failure to comply with time limits entails irreversible consequences for the protection of parties' procedural rights that are even more far-reaching in cross-border cases.

In light of their fundamental role within civil proceedings, time limits figure prominently in the assessment carried out by national and EU legislators when attempting to strike a balance between legal certainty and parties' rights in every legal order. Domestic laws are deemed to grant parties fixed parameters for litigating at national level. These criteria generally provide litigants with a high degree of legal certainty with a view to effectively exercising their procedural rights. However, the scenario becomes much more complex when introducing a cross-border element to the dispute. Even within a harmonised legal system such as the one set up by the EU, time limits still differ from one country to another. To this date, time limits remain indeed mainly set by national law and this introduces elements of unclarity and legal uncertainty. In a philosophical dimension adapted to the object of this research, the above view might be interpreted as endorsing St. Augustine of Hippo's thought about time: *quid est ergo*

tempus? Si nemo ex me quaerat, scio (time limits in a national setting); *si quaerenti explicare velim, nescio* (time limits in a cross-border setting)¹.

Against this backdrop, it should be noted that the lack of uniformity regarding the regulation of time limits at the EU level raise challenges, as we will see, to the judicial cooperation in civil matters (Art. 81 TFEU). The divergent rules lead to an unequal exercise of rights in cross-border cases, and ultimately jeopardises the free circulation of judgments across the Member States. Time thus becomes relative. The absolute and fixed order of civil proceedings collapses and turns (as Salvador Dali perfectly represented in his masterpiece ‘The Persistence of Memory’) into limp watches, soft as cheese melting in the sun (‘the camembert of time’).



1 This sentence can be translated as follows: ‘What then is time? If no one asks me, I know, if I want to explain it to someone who asks, I do not know’.

Under these circumstances, litigants in cross-border cases do not enjoy the same level of protection, as guaranteed by Art. 6 ECHR and Art. 47 CFR, as litigants in national proceedings. In order to strengthen at EU level both the effective recognition and enforcement of judgments and the protection of parties' procedural rights, this research will explore possible EU legal solutions based on uniform standards which aim at promoting an objective interpretation of time limits in cross-border civil proceedings. The EU legislator could thus envisage some 'common foundations' –what in Claude Monet's painting 'the Rouen Cathedral' is represented by the absolute nature of the cathedral's architecture – for challenging the fragmentation between domestic time limits, which vary widely between the Member States, as the Rouen cathedral does in Monet's view depending on the light throughout the different hours of the day.

