

## Building EU civil justice: challenges of procedural innovations bridging access to justice

**Access to civil justice is of paramount importance for enforcing the rights of consumers and businesses and protecting fundamental rights. How can we ensure that consumers and businesses have access to civil justice and that their fundamental rights are protected and enforced? These questions are researched and answered in the ERC project 'Building EU civil justice'.**

The project 'Building EU civil justice' uses a unique combination of legal-normative, legal comparative, and empirical research to study four key trends in contemporary European civil procedures, including digitalisation of procedures, further privatisation of civil justice (ADR), increased self-representation, and specialisation of courts and procedures. Correspondingly, researchers are working on four interrelated sub-projects, including:

- (1) Digitalization (subproject 1a by Erlis Themeli and 1b by Emma van Gelder),
- (2) Privatization (subproject 2 by Betül Kas and Alexandre Briard),
- (3) Self-representation (subproject 3 by Jos Hoevenaars), and
- (4) Specialization (subproject 4 by Georgia Antonopoulou).

The focus lies on answering the question how these contemporary trends influence access to justice and what are the repercussions for the emerging EU civil justice system.

The project is funded by the ERC program of the European Commission (ERC-Consolidator Grant n° 726032) and runs from 1 September 2017 till 1 September 2022. It is coordinated by Professor Xandra Kramer and the core team of the project consists of seven researchers.

The project has operated on the interface between academic research, legal practice, and policy. By combining legal-normative analysis with empirical analysis of how policies work out in practice, conclusions could be drawn on their influence on access to justice and policy recommendations were made. For instance, for subproject 1, experiments were conducted in a multidisciplinary team to investigate the public perception of algorithmic judges to support further digitalisation, and the researchers investigated how online tools and procedures can further access to justice, and how the Covid-19 pandemic has influenced digitisation. For subproject 2, surveys were conducted to assess how quality criteria in the ADR directive are actually being implemented and monitored in several Member States, resulting in policy recommendations. For subproject 3, interviews with judges have revealed how they deal with unrepresented parties. Comparative research and interviews with lawyers for subproject 4 enabled assessing how new specialized commercial courts affect access to justice.

To further the integration between academia, practice and policy, conferences, workshops and (online) seminars have been organized, where renowned international researchers and stakeholders from legal practice (lawyers, judges, consumer, and business associations) and policy makers (Ministries of Justice, European Commission, European Parliament) shared knowledge and views. Learning from practical experience has supported academic findings, and the research conducted in this research has contributed to new EU legislative proposals (e.g. Prof. Kramer was an invited expert for the European Commission proposal on digitalisation, COM (2021)759 final and anti-SLAPPs, COM(2022/177 final). Project members are also involved in the evaluation of existing

legislation (e.g. Biard, Kramer and Van Gelder are experts for the evaluation of the EU ADR and ODR instruments and the Digital Services Act).

The project researchers have continued their work in different settings; in academia (in England and the Netherlands), at the European Consumer Organisation BEUC (Brussels), and at the Council for the Judiciary. Furthermore, in 2019 Kramer received a Vici grant by the Dutch Research Council (NWO) for a five-year project on costs and funding of civil justice, complementing and building on this ERC project. In 2022, Kramer and Hoevenaars won a tender from the WODC/Ministry of Justice to investigate the feasibility of a public fund for collective actions to support access to justice.

The ERC research project has yielded over 50 scholarly publications (including 3 edited books and 1 journal issue), two PhD manuscripts (to be defended in 2022), and around 40 other pieces of output (short papers, online blogposts, and media appearances). Members of the research group have organised 5 international conferences and 12 well-attended (online) seminars, have presented their work extensively at international conferences, and have provided trainings for EU judges and practitioners in different Member States.

**Website:** [www.euciviljustice.eu](http://www.euciviljustice.eu)

### **Researchers**

Core:

Prof. mr. Dr. X.E. (Xandra) Kramer

Dr. J. (Jos) Hoevenaars

Mr. E.M. (Emma) van Gelder

Dr. E. (Erlis) Themeli

Dr. B. (Betül) Kas

Dr. A. (Alexandre) Biard

G. (Georgia) Antonopoulou LLM

### **Associated professors and visiting researchers:**

Prof. dr. S. (Stefaan) Voet (Leuven University); co-promotor Emma van Gelder

Prof. dr. mr. E. (Eddy Bauw) (Utrecht University, director Montaigne Institute), co-promotor Georgia Antonopoulou.

Dr. A. (Anna) Wysocka-Bar (Jagiellonian University), postdoc visitor/senior lecturer

Dr. J.C. (José) Catalan (University of Cádiz), guest researcher, associate professor

Dr. C. (Christoph) Wendelstein (University of Konstanz), guest researcher, interim professor

T. (Tommaso) Ferrario LLM (University of Ferrara), visiting PhD researcher

V. (Veronica) Autorini LLM, University of Milan, visiting PhD researcher

K. (Kleopatra) Koutouzi LLM, (University of Athens/attorney), visiting PhD researcher

### **Selected publications:**

Edited books:

- X.E. Kramer, J. Hoevenaars, B. Kas & E. Themeli (Eds), *Frontiers in Civil Justice: Privatisation, Monetisation and Digitisation*, Edward Elgar 2022
- X.E. Kramer, A. Biard, J. Hoevenaars & E. Themeli (Eds), *New Pathways to Civil Justice in Europe: Challenges of Access to Justice*, Springer 2021
- X.E. Kramer & J. Sorabji (eds.), *International Business Courts: A European and Global Perspective*, Eleven International Publishing 2019

### **Journals and book chapters:**

- J. Hoevenaars, EU Law Mobilization: Lessons from a Bottom-Up Approach, in M. R. Madsen, F. Nicola & A. Vauchez (ed), *Researching the European Court of Justice Methodological Shifts and Law's Embeddedness*, Cambridge University Press 2022
- G. Antonopoulou, Procedure before international commercial courts and ordinary courts: A comparative perspective, in S. Brekoulakis and G. Dimitropoulos (Eds), *International Commercial Courts: The Future of Transnational Adjudication*, Cambridge University Press 2022
- Yalcin, Gizem, Erilis Themeli, Evert Stamhuis, Stefano Puntoni, Stefan Philipsen, 'Perceptions of justice by algorithms', *Artificial Intelligence and Law* 2022
- J. Hoevenaars & J. Krommendijk, Black box in Luxembourg: the bewildering experience of national court judges and lawyers in the context of the preliminary ruling procedure, *European Law Review*, 46 (1) 2021, 61-80
- E.M. van Gelder, The European approach to Consumer ODR, *International Journal of Online Dispute Resolution* 2019/2, p. 219-226
- A. Biard, Impact of Directive 2013/11/EU on Consumer ADR: Evidence from France and the UK, *Journal of Consumer Policy* 2018, p. 1-39

### **Workshops and seminars**

- Seminar on Innovating International Business Courts on 10 July 2018. The seminar on Innovating International Business Courts was organised in collaboration with the Max Planck Institute Luxembourg and the Montaigne Institute of Utrecht University.
- Two expert roundtables on the 'The Use of AI in Legal Decision-making' in May 2018 and a follow-up meeting in April 2019, involving academics, policy makers, judges, lawyers and experts from tech industry.
- On Friday 21 February 2020, seminar on European Cross-Border Procedures. Guests of this seminar were nine students from the Sigmund Freud University Vienna. The aim of this event was to create an international outlet where students would discuss topics related to the theme of the seminar and receive feedback from senior academics.
- Webinar ELI-Unidroit Model European Rules of Civil Procedure on the 6 November 2020, the ERC group organized a webinar on the occasion of adoption of the ELI-Unidroit Model Rules.
- Six online seminars between May and July 2021. The series covered a variety of topics in the field of European civil justice and zoom in on the key topics our group has been working on over the past four years. These include the privatization and digitalization of civil justice, cross-border judicial co-operation, international business courts, and self-representation. Each session brought together invited speakers and our own researchers. The webinars gathered participants from all over the world per session and resulted in lively and fruitful debates<sup>1</sup>.
- Online seminar and book launch on 15 December 2021, on pathways to civil justice and costs and funding of civil justice.

### **Conferences**

- On 19-20 November 2018, the Challenge Accepted! Exploring Pathways to Civil conference was held. Approximately 100 participants, including judges, practicing lawyers, academics, policy makers and business representatives, actively took part in the discussions. These discussions continued during the drinks and lunch where four selected PhD researchers presented their poster on a topic relating to civil justice issues<sup>2</sup>.

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<sup>1</sup> <http://www.euciviljustice.eu/en/news/seminar-series-eu-civil-justice>

<sup>2</sup> <http://www.euciviljustice.eu/en/news/successful-two-day-conference-on-pathways-to-civil-justice-in-europe>

- On 2-3 May 2019, the Conference ‘e’ meets justice was organized, together with the Dutch Ministry of Justice and taking place in Lisbon. IT and legal professionals discussed how to improve the collaboration between these communities in cross-border civil procedures.
- On the 16<sup>th</sup> and 17<sup>th</sup> of November 2020 the Conference: Frontiers in Civil Justice<sup>3</sup> was organized. The conference addressed four key issues in civil justice, which require a deeper and renewed reflection in light of their contribution of facilitating access to justice. Those trends concern the shaping of the interaction between formal and informal justice, the digitalization of consumer dispute resolution, the collectivizing and monetizing of civil litigation and efforts of bringing justice closer to citizens.
- On 1 and 2 April 2021, ERC project members Eris Themeli and Emma van Gelder co-organized the conference ‘Digital and Intelligent Europe: EU Citizens and the Challenges of New Technologies for Civil Justice’, together with Anna van Duin and Rachel Rietveld (University of Amsterdam). The two-day conference revolved around EU citizens in their search for justice in an increasingly digitized world. Digital technologies can reduce barriers to access to justice by offering more affordable, swifter and simpler solutions<sup>4</sup>.
- Conference Taking Stock: International Commercial Courts in Europe and Asia, organized with the British Institute of International and Comparative Law and the University of Lausanne, taking place in London on 17 December 2021<sup>5</sup>. The one-day conference discussed new developments in international commercial courts, including practitioners perspectives, the interface with arbitration and the influence of Covid-19, digitalisation and AI.

#### **Additional grants and awards**

- 2019: ACES research grant, Emma van Gelder (sub-project 1B) and Eris Themeli (sub-project 1a)
- 2021: VICI grant, Xandra Kramer
- 2022: Contract research on a possible process fund for collective action in the Netherlands, commissioned by the WODC (Research and Documentation Centre), the research centre of the Dutch Ministry of Justice and Security, Xandra Kramer & Jos Hoevenaars

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<sup>3</sup> <http://www.euciviljustice.eu/en/news/conference-frontiers-in-civil-justice>

<sup>4</sup> <http://www.euciviljustice.eu/en/news/conference-digital-and-intelligent-europe-eu-citizens-and-the-challenges-of>

<sup>5</sup> <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fconflictflaws.net%2FNews%2F2021%2F08%2FProgram-Taking-Stock-ICC-Europe-Asia-BIICL-EUR-website-2.docx&wdOrigin=BROWSELINK>