

## TOWARD A EUROPEAN JUSTICE

*Robert Badinter at Central European University*

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### *Abstract*

The conference held treats the problem of establishing a common European justice. The legal basis of a democratic European community lies in the ancient Greek and Roman times. To be able to cooperate and be efficient in nowadays, all member countries should recognize and trust each other concerning the legal system and competences of the other.

It turned out through the centuries that a mutual agreement and pacific way of communicating is the only solution to fight against the threats which are endangering the European citizens' life.

In the 20th century, after the Second World War, there were many efforts made to establish institutions, which guarantee to people the respect of their rights in Europe.

In the 21st century, the member states must start to approach each other and put theory in practice as there was no previous example before in history how to create a union which is able to harmonize its legal and jurisdictional organizations.

*Keywords:* European Union, European justice, law, legislation, jurisdiction, international cooperation, human rights

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On 10th November 2011, Robert Badinter held the conference entitled *Toward a European Justice: The 7th Annual Marek Nowicki Memorial Lecture* - with the opening remarks of John Shattuck, President and Rector of CEU - in the Central European University in Budapest.

Mr. Badinter resumed the history of European legal systems starting with the ancient Greeks and Romans arriving to nowadays, to the European Union.

The introduction began with his personal experiences during the Occupation in the 1940'. The young European generation must respect and realize its youth and the advantages of not living in the time of wars. He explains this by speaking about crime in our life. The solution for these crimes is the European Union, of which he is a "Truly militant", as he declared. It protects us by its legal system, which is, however, a point of discussion still nowadays.

The European Union has no previous ancestors in the history of Europe. It is the mutual agreement of people living on this continent and not an empire born by the force of the sword. The Europeans themselves wanted this community to come into being and, in this way, the members must cooperate and recognize each other mutually, all of this based on the law.

This union's aim is to establish a common European justice based on three pillars:

- the first is the Greek philosophy
- the second is the Christianity including Judaism
- the third one is the Roman law ; we can add a fourth one, the Enlightenment, the 18th century.

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Robert Badinter, born 1928 in Paris. Professor Emeritus at Université Paris-I Panthéon-Sorbonne. Former French Minister of Justice (June 1981 to February 1986). He was President of the Constitutional Council (March 1986 - March 1995) and President of the Arbitration Commission for the former Yugoslavia (1992 - 1995). Senator of Hauts-de-Seine: 1995-2011. He was appointed as President of the OSCE Court of Conciliation and Arbitration in May 1995. He has since been re-elected for two further six-year terms, beginning in 2001 and 2007.

Robert Badinter serves as an Honorary Co-Chair for the World Justice Project.

He was elected a Foreign Honorary Member of the American Academy of Arts and Sciences in 2006.

According to him, the first one is the most important as the European Union's legislation has its ancestor in the ancient communism. At that time the common language of education, administration and legislation was the Latin. The professors held their conferences in Latin on the universities all over Europe, and this had the advantage of mutual comprehension. Nowadays, this language is English, which is used in all of the Union's institutions.

The first state applying common legal basis to their procedures was the Holy Roman Empire despite of its weak institutions.

The European Union (EU) lies on treaties and common legislation where sovereign states cooperate.

The EU has two main jurisdictional bases:

1. The European Court of Human Rights (Cour Européenne des Droits de l'Homme) in Strasbourg, which is not part of the EU,
2. European Court of Justice in Luxembourg.

Thanks to the first, the European international jurisdiction has come into being, have done a lot in the domain of the human rights. But we, Europeans, still not have European justice, just common institutions. This fact can be traced back to two main reasons: external and internal conflicts.

The first reason is the constant conflict among the member states because previously the sword, the political force was allowed to give justice. Justice is the expression of sovereignty, the judges are conservative on the courts and therefore there exist a large scale of differences among the states' judicial system.

Here we have to mention the threats concerning European citizens: terrorism, organized crime – mafia, transnational enterprises doing human and drug trafficking, international corruption. The national legal system characterizing a state protects, with its laws and courts, the existence of this mafia who can continue their work, defended by courts.

The second reason, which is an obstacle in front of the European justice, is the conflicts among one nation's people. Mr. Badinter's examples are the family, the professional life and also the international marriages which cause a lot of issues when the couples decide to separate and one to raise their children far away from the other parent. In these special cases we have to be aware of the exact procedures.

The heart of the EU is the common market which is divided among several economical units, e.g. the states and this is the reason why we need to have same laws and European justice.

Terrorism is a current threat the EU since 11th September 2001. In the 1970's, the French president Valéry Giscard d'Estaing made a proposition of European common mutual assistance in criminal situations but this system was not realized.

Before this, in 1952, an almost same proposition was made in Luxembourg - the European criminal court – whose main aim was to judge those criminals who weren't judged in their own country for a crime. At that time, this project was too innovative and was refused.

In 1996 there were magistrates chosen from a country – a member of the Ministry of Justice - delegated to another's court to increase cooperation.

In 1997, by the treaty of Amsterdam, they created a common area of security, freedom and justice in the EU.

In 1999 it became evident that a mutual recognition of the other member states' decisions has to be accepted to create a real European area of justice. In this year the EuroJuste was established which is a cooperation among the public ministers and prosecutors of the EU.

The other important step was the creation of European arrest warrant which was presented in autumn 2011 and against terrorism, by recognition and cooperation with another EU state in terms of a decision made in one of the countries. This means that without any political intervention a criminal can be arrested in any of the EU countries, independently from the fact in which EU state he committed the crime he was judged for. The control is only legal.

The treaty of Lisbon was another point to come closer to European justice.

What are the steps to take next?

First, the EU has to put the theories in practice. The states have their own legal system which should be harmonized by satisfying three main conditions:

1. Same fundamental democratic values. The treaty of Lisbon contains the chart of fundamental rights but the above mentioned problem is a big obstacle.

2. The citizens should have the same guarantee of their rights' respect and there should be procedures which provide the non-violation of the fundamental values. For this the member states have to harmonize their system but it's not unification.

3. The third condition is that one has to accept the other countries' judges as a competent, well-formed experts, as they were his own, and who are not corrupt. This can be executed as Europe has very eminent and competent law education on the universities all over the continent. There should be an institute and an ethic code established.

### *Conclusion*

In the forthcoming years, according to Mr. Badinter, we need to attain this level of respect and trust in the EU starting with founding a judicial cooperation, including 10-12 countries from all over Europe, having reunions. In this way, the European legislation against crime could be soon realized and applied.

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Thank you for your kind collaboration. *Editor-in-Chief*