CyECLI

University of Cyprus
Department of Law

The Cyprus ECLI Conference:
Access to – and organization of – legal information across legal traditions in the digital age

University of Cyprus, 18-19 October 2019

CALL FOR PAPERS

As the national implementation of ECLI is reaching its final stage in Cyprus, which is a mixed jurisdiction with strong common-law characteristics, the University of Cyprus is bringing together a number of experts on information law, legal information, comparative law and legal theory for a conference aimed at evaluating the implementation of ECLI and the potential to alter/improve/fulfill.

The Cyprus ECLI Conference will consider how the new digital environment ushered in by ECLI is shaped by – and shapes back in turn – the legal traditions of the Member States, the EU itself and the broader world that interacts with Europe.

The idea is to see the big picture, by locating the technical aspects and problems of legal information to a broader context, with comparative and theoretical undertones: namely, to think in terms of legal systems and especially the operation of administration of justice systems.

The conference aims to address the following themes:

Case law in the modern European legal tradition: The role of case law in modern legal systems is paramount. In all legal systems of the European Legal Tradition, as

CyECLI is co-funded by the e-Justice Programme of the European Union

JUSTICE ACROSS EUROPE

well as in EU law – regardless of whether one accords or not case law a place in the formal hierarchy of sources or law – case law constitutes an *authority* employed in shaping, mapping and interpreting the law. The role of national judges in the implementation and development of EU law has led to increased appreciation of the role of case law and the need for effective access by lawyers and citizens to the case law of EU courts, national and other Member State courts. This underlying policy informs, on the one hand, the EU support of case law databases and interconnection initiatives and, on the other hand, the adoption of the ECLI standards by the Council. But how do these initiatives actually impact the practice and concept of law?

Traditions of legal reporting and publishing of case law: Court decisions are an important source of legal authority in all European jurisdictions, but there is a difference as to the medium, between legal traditions – and this difference impacts content and relates to legal thinking.

Common law jurisdictions have developed a longstanding tradition of wholesale publication ("reporting") of appellate case law (and, increasingly, important decisions at the trial level). The common law tradition is grounded upon a constellation of both official and commercial *law reports*. It is probably no coincidence that most of the Legal Information Institutes that open-access databases of case law have originated in common-law or mixed jurisdictions.

In contrast to this, the Continental European legal tradition has relied on the publication of selected court decisions in edited form. In the Continental legal tradition, the principal medium for publication of court decisions has been law journals (*Zeitschriften*) and digests (although some important courts do publish their own decisions in Law Reports). Online digital databases have originated from these media and are normally created by commercial legal publishers.

These traditions have come together in the European Courts – especially the Court of Justice of the European Union, but also the European Court of Human Rights, where

even though the influence of the continental legal tradition may be overall stronger, a vigorous and open tradition of law reporting has been embraced.

The European Union is also pushing towards convergence of these legal traditions and traditions of case law publication) via the promotion of the interconnection of national case law and the assignment of a unique case identifier.

Stakeholders of digital legal information: ECLI has taken various forms in the various Member States. Some countries, like the Netherlands, have adopted very simple systems similar to medium neutral citation standards, whereas some other countries, like Germany, have adopted longform systems containing a multitude of information about the case and its progress. National legal traditions are an important factor in explaining this regard, but another factor appears to be the relative power – and input – of diverse groups of stakeholders. First, information technology specialists, both lawyers and non-lawyers tend to promote simplified case law identifiers that can be easily read by machine (and humans). Second, judicial bureaucracies are often more interested in including as much data as possible in the ECLI; this may help with case management but not necessarily with providing an easy-to-use uniform citation system. Third, lawyers – practitioners, academic lawyers and judges – are primarily interested in having an easy-to-use citation system that provides immediately the principal information they have been used to expect. As ECLI becomes the dominant standard, it raises the stakes for other legal information players, including academia and commercial publishers.

Medium neutral citation and ECLI as a medium-neutral citation system. A *medium neutral citation* "allows cases to be cited in a consistent manner, regardless of whether it has been published in print or online, in reported or unreported format." A unique identifier is assigned to each court decision. This is one of the principal functions of ECLI, as outlined in the Council Conclusions. Considering, however, that

it is not the sole function of ECLI, it raises the question of how to best combine the objective of a common case law identification system with objectives pursued in the process of – or parallel to – ECLI implementation. Another important question concerns the relation between ECLI and the Medium Neutral Citation project as first elaborated and pursued in non-EU common-law jurisdictions.

Access to case law and data protection: The coming into force of the General Data Protection Regulation (GDPR) has brought to light concerns about the problems that publication of – and publicity regarding – court decisions might entail for the personality rights of individuals and even legal entities. Advances in information technology raise the stakes, as more information can be more easily accessible to more people for longer time. But the same spirit of technological development might also make a certain degree of anonymization possible.

At present, anonymization of some content of court decisions is being promoted in certain jurisdictions, in varying degrees. But important questions are only now beginning to be asked.

Should there be a uniform standard of anonymization or should we allow full freedom to each national legal tradition? It is being argued that the common law depends on names and cases as much as Continental jurisdictions depend on numbers and statutes. Whether one agrees or disagrees with this statement, it is high time to view anonymization in the context of comparative law and with a view to optimizing the administration of justice at both the EU and Member-State level.

What impact may anonymization have on the circulation of – and access to – European case law? We must consider on the one hand how case law is being researched and used at present and on the other hand how case law is perceived and used in each legal system: is the lawyers' emphasis placed on the phrasing of the ruling? On the facts that led to the ruling? On the number of cases supporting a certain rule? Or on the judges' argumentation in elaborating a rule? Is case law perceived as

impersonal or even anonymous, or on the contrary is emphasis placed on the personality of the individual judge?

Should there be a different standard for different legal areas, or different court instances? Should the facts and data of higher court decisions be subjected to a lower threshold of privacy, due to their importance for case law? Or, conversely, should we be more tolerant with trial-level decisions because this is the level where full consideration of facts must be made, whereas a court of cassation will by definition produce a much more abstract judgment?

Which purposes are served by data protection – and the publication of judgments? What data are necessary? Where does public interest stop and informational self-determination begin? Is there a "status quo bias" and if so can it be justified in terms of policy objectives and values? Is the right to be forgotten relevant to legal information? What about the need to maintain full records for the eventual use of historians or social scientists? Are there technical means at our disposal capable of meeting all these contradictory demands and expectations?

Please email proposals for papers (20 mins) to cyecli@ucy.ac.cy or nhatzimi@ucy.ac.cy (inquiries are also welcome at these addresses). Proposals should include an abstract (no more than 300 words) and a biographical statement (no more than 100 words) for each speaker.

Proposals should be received by the 9th of September, so as to make a decision by the 15th. The organizing committee shall endeavor to make a pre-selection among papers submitted by the end of August.

Limited funding of costs may be available for selected speakers. Graduate students and early-career researchers are especially welcome.

Additional information about the conference program and guidance as to accommodation and travel arrangements will become available on the CyECLI website: http://www.ucy.ac.cy/cyecli/en/conference.

CyECLI is co-funded by the e-Justice Programme of the European Union