Europeanization of Procedural Law and the
New Challenges to Fair Trial

Edited by Laura Ervo, Minna Gräns and Antti Jokela
CONTENTS

Abbreviations

CHAPTER 1

New European Methods of Legal Protection
Antti Jokela

1 European procedural law as a part of international procedural law

2 Recent developments in European procedural law

2.1 Council of Europe Recommendations

2.2 Civil procedure

2.3 Mediation and alternative dispute resolution

2.4 Criminal procedure

2.5 A view to the future

3 Forms of mediation and alternative dispute resolution in Finland

4 Court-annexed mediation

4.1 Finland

4.2 Norway

4.3 Sweden

5 Arbitration

6 Class action

6.1 The uses and scope of the class action

6.2 The new Finnish Act on Class Actions

CHAPTER 2

Party Autonomy and Access to Justice
Laura Ervo

1 State justice or private justice?

1.1 Nordic trends

1.2 Functions of proceedings

1.3 Freedom of the procedure

2 Two Finnish worlds of friendly settlements

2.1 Friendly settlements in civil litigation

2.1.1 The reform of 1993

2.1.2 The role of substantive law

2.1.3 The reform of 2005

2.2 Court mediation

3 The role of judges

3.1 In civil litigation

3.2 In court mediation

4 Problems and visions
CHAPTER 3

Duty of Loyal Interpretation; Theoretical Structures and Practical Solutions
Minna Grans

1 Introduction

2 The mechanisms of application of EC law in national courts

2.1 Direct applicability

2.2 Direct effect

2.3 Loyal interpretation

2.3.1 Content of loyal interpretation from an EC law perspective

2.3.2 When does the duty of loyal interpretation arise?

2.3.3 The consequences when loyal interpretation cannot be conducted

3 Loyal interpretation in Finnish legal theory and practice

3.1 The principles guiding loyal interpretation according to the Finnish legal doctrine

3.2 Incompatibility between EC law and national law

3.2.1 Introduction

3.2.2 The concept of incompatibility

3.2.3 Uncertainty about what constitutes legally relevant circumstances

3.2.4 Incompatibility of legal consequences

3.2.5 Contra legem situations

4 About some spill-over effects of the duty of loyal interpretation

5 Conclusions

CHAPTER 4

Procedural Autonomy: A Misnomer?
Pekka Haapaniemi

1 Genesis of the term of procedural autonomy

1.1 The scope and meaning of the notion of procedural autonomy

1.2 The backdrop of genesis of the term

2 Jurisprudence of the ECJ

2.1 The Rewe/Comet jurisprudence

2.1.1 The caveats of equivalence and effectiveness

2.1.2 The role of Article 10

2.1.3 The meaning of the procedural rule

2.1.4 Rewe/Comet jurisprudence and the doctrine of direct effect

2.1.5 Rewe/Comet jurisprudence and the doctrine of consistent interpretation

2.1.6 A balancing test
CHAPTER 5

'Burden of Proof' in Cases Concerning Free Movement
Kenneth Nordback

1 Introductory issues and outline
2 The ECJ's case law
3 Case law in Sweden and Finland
4 Terminological clash
5 The 'burden' – a closer look
5.1 The court's duty to investigate
5.2 The intensity of court control
5.3 The significance of the 'evidentiary requirement'
6 Concluding observations and final remarks

CHAPTER 6

Europeanization of Insolvency Law
Tuula Linna

1 Introduction
2 Insolvency law – what is it?
2.1 Insolvency and its regulation
Chapter 7

Prosecutors, the Objectives of Criminal Policy and the Situation in Finland

Mikko Vuorenpää

1. Introduction
2. Objectives of criminal policy and the means for achieving the objectives
3. Criminal procedure as a means for achieving the objectives of criminal policy
4. The prosecutor as promoter of the objectives of criminal law
   4.1 The prosecutor and issues of certainty of sanction in the pre-trial investigation of complainant offences
   4.2 Awareness of the parties and the legitimacy of the criminal justice system
      4.2.1 Introduction
      4.2.2 Example: the right to private prosecution
      4.2.3 Fulfilling the duty to provide advice and the disqualification of the prosecutor

Bibliography
Official Publications
Table of Cases
Index