Lopez-Tarruella, Aurelio

The Public Policy Clause in the System of Recognition and Enforcement of the Brussels Convention

The European Legal Forum (E) 2-2000/01, 122 - 129

© 2000/01 IPR Verlag GmbH München
The Public Policy Clause in the System of Recognition and Enforcement of the Brussels Convention

Aurelio Lopez-Tarruella*

1. Introduction

Two very recent decisions by the European Court of Justice – hereafter referred to as ECJ – have dealt with the interpretation of Article 27(1) of the Brussels Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters. In the Krombach case, the Court had to decide, for the first time, on the difficult issue concerning the content of the public policy clause. The decision reflects a new trend taken on the interpretation of public policy in Community law. In the past, the need to restrict the application of the clause to exceptional cases has led the Court to deny its use in all of the cases in which the question was raised. Maxicar, decided only forty days after Krombach, is the last of such cases. The new trend does not substitute this one, but it stands as an alternative. It aims to establish the existence of general principles that form part of an ordre public of a Community source, which every national judge has the obligation to preserve.

2. Ordre Public in the Community Legal Order

The concept of ordre public is used in several fields of Community law. It constitutes a safeguard to national sovereignties of the Member States. In fact, when the Treaty of the European Community – hereafter referred to as EC Treaty - establishes the Internal Market, it allows prohibitions or restrictions to the free movement of goods, services, capital and workers on the grounds of public policy. Furthermore, as the European Community has been given new objectives, the clause has always been present. The transfer of former third-pillar matters to the new Title IV of the EC Treaty has granted the Community competence for the adoption of measures for the establishment of an area of freedom, security and justice. Article 64 states that this title shall not affect the exercise of the responsibilities of the Member States in the maintenance of law and order. Community instruments which may find their legal basis in this Title or which cover subject-matters related to it also include a public policy clause. The Brussels Convention and the future Regulation on jurisdiction provide examples of this.

The present article aims to explain how the Court has interpreted the public policy clause in the framework of the Convention and to determine the future of the clause. Taken into account the new trend adopted by the Court of Justice and the progressive harmonisation of EC Law in the field of judicial co-operation in civil matters, there are enough arguments to sustain that the general clause will be substituted by specific grounds containing particular manifestations of the ordre public created at a Community level. At the same time, as harmonisation in procedural law is progressively attained, the number of these grounds will be reduced.

---

* Assistant of Private International Law University of Alicante (E).
1 OJ C 27/1, 26 January 1998 (consolidated version).
2 Judgment of the Court 28 March 2000, C-7/98, Krombach v Bamberski, not yet reported.
3 Judgment of the Court 11 May 2000, C-38/98, Regie nationale des Usines Renault v Maxicar and Orazio Formento, not yet reported.
4 See Article 30 (ex-Article 36) for free movement of goods, Article 39(3) (ex-Article 48(3)) for the free movement of workers, Article 46(1) (ex-Article 86) for the freedom of establishment, Article 55 (ex-Article 66) for the free movement of services, and Article 58(1)(b) (ex-Article 73 D) for free movement of capital.
5 “Visas, asylum, immigration and other policies related to the free movement of persons.”
and enforcement of judgments in civil and commercial matters are among those instruments.  

On the one hand, what the public policy clauses have in common, wherever they apply in one field or another, are their function and objective: they are safeguard clauses on which Member States can rely in order to protect certain national interests, which they understand as essential for the maintenance of their legal orders. These interests are affected by the social and religious conceptions of the Member States concerned. To the extent the clause constitutes an obstacle for the accomplishment of the internal market, it applies on very restricted occasions.

On the other hand, the content and the mechanism of application of the clause vary from one instrument to another. While Article 30 (ex Article 36) allows Member States to establish certain derogation to the free movement of goods on the grounds of public policy, Article 27(1) establishes what in Private International Law — hereafter PIL — is called *ordre public international*. It authorises national courts not to recognise any legal value in a foreign judgment that is in contradiction with public policy. * Ordre public international* is present in all international conventions of PIL. What makes Article 27(1) special, is that the Brussels Convention must not be considered in itself but in the framework of a whole institutional legal framework that is the European Union. This determines its content and its application.

### 3. Ordre Public in the Brussels Convention

#### 3.1. The System of Recognition and Enforcement of Judgments of the Convention

The Brussels Convention has a double objective. Firstly, it establishes a uniform set of rules to determine the jurisdiction of the national courts of the Contracting States and, secondly, it establishes a simplified system of recognition and enforcement of judgments in the EC. The six founding Member States considered that in order to establish such a system, a uniform set of rules on jurisdiction was needed; hence, they drafted Title II. However, the principal objective was the establishment of what has been called the fifth Community freedom: the free movement of judgments.

The Convention applies to civil and commercial matters. However, it excludes personal and family matters, whereas they are very sensible. It also excludes social security, bankruptcy and arbitration owing to the many differences among the legal systems.

The system of recognition and enforcement of the Convention is essentially founded on the principle of mutual recognition — also called the principle of mutual trust - among the respective judicial systems. This means that national courts must rely on the diligence of courts from other Member States to impose justice and they must respect and grant legal value to what they have done.

Article 26 provides for the automatic recognition of a judgment adopted by a national court in all the other contracting States. When it is not just recognition, but enforcement that is sought, the procedure of Articles 31-45 has to be followed. The role of the requested court is restricted to control whether the foreign decision falls under one of the grounds contained in Articles 27 or 28. One of such grounds is "if such a recognition is contrary to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; social security; arbitration."
to public policy in the State in which recognition is sought” (Article 27(1)). According to this, recognition or enforcement of judgment shall not be granted when it is incompatible to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes on a fundamental principle. Such assessment shall be done at the moment of recognition and it shall exclusively focus on the effects of the recognition in the requested State and not in the decision as such. 

Although it is for national courts to decide on the content of the ordre public, the ECJ also plays a role in its interpretation. It has competence to do so to the extent the public policy clause has its source in a convention adopted in the framework of the European Union and where the Contracting States decided to grant such competence to the Court. Furthermore, the interpretation by the Court is not only possible but necessary. It is the only way to ensure a uniform interpretation and application of the provisions of a Community Act. The principle of legal certainty in the Community legal order, and the respect for the principles and objectives in which the Convention is embedded, demand a uniform interpretation of the provisions of the Convention by the ECJ. Therefore, the interpretation of Article 27(1) by the Court has been guided by the objectives the Convention pursues: “to facilitate, to the greatest possible extent, the free movement of judgments by providing for a simple and rapid procedure of recognition and enforcement.” Having this in mind, it is not surprising that the ECJ case law has been traditionally devoted to restricting the use of the public policy clause in the Brussels Convention as in any other Community instrument concerning the four liberties. An abusive use of the clause must be avoided to the extent it would hinder the objectives of the Community Act concerned. In doing so, it has delimited the content of ordre public in a negative way: it has stated that certain situations do not fall under Article 27(1). 

However, in recent decisions, it seems the Court has adopted a new alternative approach. It has interpreted the content in a positive way by sustaining that certain rules of diverging evolution in the Member State, it is not surprising that judicial systems show important differences in substance and in their procedural rules.

14 See Krombach at 37.
16 See the Judgment of 5 December 1974, C-41/74, Van Duyn, ECR 1975, at 1351.
17 See Krombach at 22.
19 COM (1998) 459 final. On at 8 it is explained that due to the
law which are considered as essential in all the Member States are fundamental principles of Community law and thus they must be protected by any national courts on the basis of ordre public. This trend is reflected in the scope of the Convention in the Krombach case, but it is also present in the Swiss Eco Time case that deals with the refusal of recognition of an award in the Netherlands because it infringes on the principle of freedom to market.

The following chapter aims to explain these two approaches.

4. Interpretation of the Public Policy Clause by the ECJ

4.1. Restriction to the Application of the Public Policy Clause

There are many reasons for the ECJ to interpret the clause in a restrictive way. A clause of an open nature, like Article 27(1), whose content is not delimited, allows for the possibility that it be abused by the Contracting States. A restrictive interpretation is needed not only because these abuses would be a fraud to EC Legislation in themselves, but because they would be an obstacle to the recognition and enforcement of judgments in the Community. Furthermore, the habitual use of the clause would not be compatible with the principle of mutual recognition on which the Convention is founded.

This need to restrict the use of the ordre public clause to exceptional cases was already mentioned in the Jenard Report. However, the Court has developed this restrictive approach in several judgments. Restrictions to the application of the public policy clause must be made in three steps:

- the system of recognition and enforcement of the Brussels Convention impedes the use of the public policy clause for certain purposes (4.1.1);
- particular grounds for refusal prevail over the general public policy clause of Article 27(1) (4.1.2);
- finally, when there is no specific ground for refusal, public policy clause will only apply in very exceptional situations (4.1.3).

4.1.1. Restrictions Founded on the Basis of the System Itself

The obligation to respect the principle of mutual recognition prevents the courts where enforcement is sought to review the substance of the case and to control the jurisdiction of the court of origin.

According to Articles 29 and 34 of the Convention, “under no circumstances may a foreign judgment be reviewed as to its substance.” The procedure the Convention establishes restricts the role of the court where recognition or enforcement is sought to ensure that the foreign decision does not fall under any of the grounds of Article 27 or 28. The procedure is not a new appeal in which the accuracy of the findings of law or fact made by the court of origin can be reviewed.

Public policy cannot be pleaded if what is hidden behind it is to review the application of the substantive law by the court of origin. An error of the court of origin in applying the law cannot be considered a manifest breach of a fundamental principle of the legal order of the requested State. This restriction applies even when the clause is invoked on the basis of a misapplication of a Community rule. In the Maxicar case, the Court made this point clear. The ECJ had to deal with the recognition of a French judgment in Italy in which the Italian company, Maxicar, was condemned to compensate the French company, Renault, for the infringement of intellectual property rights. Maxicar had exported spare components of cars to France which were protected under French intellectual property legislation. Maxicar considered that this legislation was an illegal restriction to the introduction of its products in the French market. When Renault sought enforcement of the judgment in Italy, Maxicar invoked the public policy clause because it considered that the French judgment infringed fundamental principle of Community law: free movement of goods and freedom of competition. Otherwise, the ECJ understood that it was not a question of whether the recognition of the decision would infringe the economic public policy but it was a question of misapplication of a Community rule by the court of origin. The fact that the alleged error concerns rules of Community law did not alter the conditions for being able to rely on the clause of public policy. An error of law does not constitute a manifest breach of a rule of law regarded as essential in the legal order of the requested State. Furthermore, Maxicar could have relied on the system of legal remedies in France, together with the preliminary ruling procedure provided in Article 234 of the EC Treaty, and not, at this stage, on the public policy clause.

26 Maxicar at 31-34.
Pursuant to Article 28(1), national courts can only review the jurisdiction of the court of origin in those cases in which it declared its jurisdiction on the grounds of any provision in Sections 3, 4 and 5. In any other case, the requested court must trust the diligence of the court of origin in determining its jurisdiction on the basis of the Convention. According to Article 28(3), _ordre public_ cannot be applied to the rules relating to jurisdiction.

The Court had the opportunity to recall such restriction in the first question of the _Krombach_ case. It deals with the recognition in Germany of a decision delivered in default by a French court. Mr. Krombach was found guilty of a criminal offence for involuntary manslaughter and he was condemned to pay compensation to the father of the victim in the amount of FRF 350,000. The French court had declared its jurisdiction to try the criminal offence solely on the basis of the French nationality of the victim, and the jurisdiction to hear the civil compensation claim on Article 5(4) of the Convention. 

_Krombach_ considered this forum as being exorbitant and since the jurisdiction could not be controlled on the basis of Article 28(1), he tried to rely on the public policy clause. The Court however considered that Article 27(1) must be interpreted strictly, and that the public policy of the requested State could not be raised as a bar to recognition and enforcement of the foreign judgment solely on the ground that the court of origin failed to comply with the rules of jurisdiction of the Convention.

### 4.1.2. Specific Grounds Prevail over the Public Policy

**General Clause**

Public policy clause in Article 27(1) does not apply when a more specific ground for refusal of recognition is applicable to the case. Grounds 2 to 5 of Article 27 and Article II of the Protocol are considered specific manifestations of _ordre public_. The reason to include those specific grounds resides in the fact that it is commonly shared by the Member States that a judgment falling into one of their legal systems would be a manifest breach of a fundamental principle in all their legal orders. As a consequence, it can be sustained that Article 27(1) has a residual character.

The ECJ has given certain examples of the primacy of the specific grounds. In _Hoffmann_, the Court dealt with a case where Mr. Hoffmann wanted to block the recognition in the Netherlands of a judgment ordering him to make maintenance payments to his spouse. Although the judgment was not compatible with a Dutch judgment pronouncing the divorce of the spouses, Mr. Hoffmann was not sure whether the specific ground of Article 27(3) could be invoked. Therefore, he subsidiarily invoked the public policy clause. The Court sustained that, according to the system of the Convention, use of the public policy clause is, in any event, precluded, when the issue is whether a foreign judgment is compatible with a national judgment. The issue must exclusively be resolved on the basis of the specific provision under Article 27(3).

In another case, Mr. and Mrs. Hendrikmann tried to oppose the recognition of a German judgment in which, although it was not given in default, they had not been validly represented and had no knowledge of the proceedings. Indeed, during the proceedings, two lawyers chosen by the judge represented the couple. However, the Hendrikmanns had not given them any authority to do so. Since the judgment has not been given in default of appearance – thus the requirements of Article 27(2) were not met – Article 27(1) was invoked to oppose the recognition of the judgment in the Netherlands. The ECJ considered however that Article 27(2) should be given a broad interpretation to ensure that a judgment was not recognised or enforced under the Convention if the defendant had not had an opportunity of defending himself before the court first seised. In so far as the case at hand falls under this ground, the ECJ concluded that the public policy clause was not applicable because recourse to it is precluded when the issue must be resolved on the basis of a more specific provision.

Unfortunately, in the recent _Krombach_ case, the ECJ seems to abandon such a broad interpretation of Article 27(2). The second question on the case was about the infringement on the defendant’s right to be effectively defended by a lawyer. Mr. Krombach did not attend the proceeding in France because he feared being arrested once he would be in French territory. However, he sent two lawyers to defend him. In applying Article 630 of the _Code de Procedure Penal_, the Court denied the lawyers’ authorisation to represent their client, and Mr Krombach was judged without any defence counsel being heard. Although, for given the similarities with the _Hendrikmann_
case, it seems that the Court could have expanded the application of Article 27(2) to this situation, but it preferred to declare the application of the public policy clause instead. It is a very arguable solution that will be discussed in the following chapter.

4.1.3. Restrictive Interpretation of Article 27(1)

Once it has been established that the public policy clause cannot be applied for certain purposes and its residual character has been determined, it must be recalled that Article 27(1) must still be applied in a very restricted way. First, because it is an exception to the general principles and objectives of the Convention: the principle of mutual recognition and the free movement of judgments in the EC. Second, because the residual and open character of the clause constitutes a danger in so far as national courts can make an abusive use of it. National courts must have these parameters in mind when applying the clause to specific cases. The following Section explains those specific cases.

4.2. Scope of Application of the Ordre Public Clause in the Brussels Convention

The restrictions show that the doctrine was right in admitting the small role the public policy clause can play in the Convention. In fact, as it has already been said, the Krombach case is the first time the Court has sustained that a rule of law falls under Article 27(1). It relates to the protection of the right to be effectively defended in court. However, even in that case, the application of Article 27(1) could have been avoided. At the end of the day, harmonisation in the fields of law affected by the Convention and the development by the Court of a set of principles, which are considered as fundamental at a Community level, will bring an end to public policy clauses of an open nature.

In Krombach, the ECJ sustained that national courts can take into account, in relation to the public policy clause in Article 27(1), the fact that the court of origin refused to allow the defendant to have his defence presented unless he appeared in person. Although the French government argued the defendant’s right of defence was not infringed upon in so far as he could benefit from it just by appearing before the court, the ECJ finally held that it was a case in which the ordre public clause applies.

This is based on the fact that fundamental rights form an integral part of the general principles of law whose observance the Court and the rest of the Community institutions must ensure. Taking into account the European Convention of Human Rights and other international conventions, the Court sustains that the right to a fair legal process is a general principle of Community law whose observance must be ensured. An essential element of this right is the possibility of every person charged with an offence to be effectively defended by a lawyer. A defendant should not be deprived of this right on the sole basis that he is not present at the hearing. Furthermore, the right to defence occupies a prominent position in the organisation and conduct of a fair trial and is one of the fundamental rights deriving from the constitutional traditions common to the Member States. The infringement on this right constitutes a manifest breach of a fundamental right which forms part of the ordre public.

By interpreting that Article 27(1) applies when this right is infringed upon, the Court is ensuring the observance of a general principle of Community law. The decision constitutes a mandate to the national courts to refuse the recognition of a judgment when the right to be effectively defended has not been respected. Although it is for the courts themselves to determine the content of ordre public, this right must always be protected by the clause.

The decision also reflects the interaction between the work done at the Court of Strasbourg and that of the Court of Justice in so far as the second takes the jurisprudence of the first to determine those fundamental rights which should be preserved in the European Community context. In the Commission Communication “Towards an area of freedom, security and justice” and in some contributions of academics the term ordre public européen is used to designate such body of principles.

While the substance of the Krombach decision shall be welcomed, it is the argumentation of the Court that is to be criticised. The specificity of cases in which public policy can be applied does not justify the existence of a general clause as that in Article 27(1). The Court missed a great opportunity to definitively state that there is no possible option for the application of ordre public in the framework of the Brussels Convention. There are two possible alternative arguments the Court could have made use of for that purpose.

---

34 Krombach at 25-27 and Article 6 EC Treaty.
35 Krombach at 38-39.
37 There is a third argumentation sustained by the Commission, but it only applies to the particular situation of the Krombach case. Before being prosecuted in France, Mr. Krombach had been judged in Germany for the same crime and the court dismissed the case. The ECJ could have avoided the question of the application of Article 27(1) by considering that the national court should refuse the enforcement of the French judgment solely on the basis of Article 27(3).
The first is Article II of the First Protocol to the Brussels Convention. It establishes the possibility for national courts to deny the recognition of a judgment concerning the unintentional commission of an offence when the defendant did not have the opportunity to arrange for his defence. This provision was constructed as meaning that the Convention clearly seeks to deny the right to be defended without appearing in person to those who are being prosecuted for offences which are sufficiently serious to justify this privilege. In Krombach, the defendant had been charged with a sufficiently serious offence to the extent it (concerning the physical injury) was an intentional one. Notwithstanding this, the Court understands that the right to a fair trial is a fundamental principle of Community law in all proceedings initiated against a person. This argument suffices to justify an extension of the provision of Article II of the Protocol, in an eventual legislative reform, to all kinds of offences so that the situation in Krombach would have been covered.

The second option was to follow the interpretation on the Hendrikmann case and to broaden the scope of application of Article 27(2) - “when the judgment was given in default of appearance, if the defendant was not duly served [...] in sufficient time to enable him to arrange for his defence”. The Court considered that the provision was applicable even in those cases in which the judgment was not given in default of appearance because someone purporting to represent the defendant appeared before the court. One of the arguments for such a decision was that the purpose of Article 27(2) is to ensure that a judgment is not recognised or enforced if the defendant has not had an opportunity of defending himself before the court. In Krombach, the same argumentation could have been made and, on the grounds of the similarities between the cases and the purpose of the provision, the Court could have sustained that Article 27(2) also covers judgments given in default of appearance, when the defendant has been duly served in sufficient time but he was denied of his right to be effectively defended in court.

Both options would have avoided the need to invoke Article 27(1). In doing so, the case law of the Court does not seem to leave any room for other possible cases where the public policy clause can be applied. In Maxicar, the Court seems to close the door to any other cases. It states that Article 27(1) is not applicable when a foreign decision infringes upon a fundamental principle of Community law such as the four freedoms of movement or freedom of market. First, because misapplication of a Community rule does not constitute the breach of a fundamental principle in the sense of the public policy clause. Second, because the procedure of recognition of the Convention is not the appropriate instrument with which to review the application of Community law.

This assertion can be shocking because the Court had previously admitted that freedom of market is part of the ordre public for the purpose of the New York Convention of 1958 and that national courts are obliged to control it. Indeed, in Eco Swiss it was asked whether the recognition of an arbitral award could be denied on the basis of an infringement on freedom of market as a component of ordre public. The Court sustained that freedom of market forms part of the ordre public to the extent it is an indispensable provision for the accomplishment of the objectives of the Community and, in particular, the functioning of the internal market. However, freedom of market cannot be invoked on the basis of Article 27(1) to refuse the recognition of a judicial decision. The reason lies in the fact that while the misapplication of a Community rule by judicial courts can be appealed or reviewed, arbitral bodies are not bound by Community law. It is at the stage of recognition of the award by judicial courts that the control has to be exercised.

Eco Swiss is also an example of the new approach on the interpretation of the Court as far as it obliges national courts to refuse the recognition of an award which is in contradiction with a fundamental Community principle on the basis of ordre public.

5. Conclusions: Public Policy Clause and the Area of Freedom, Security and Justice

It shall be concluded from these judgments that, at the end of the day, the public policy clause in Article 27 should be substituted by a close list of grounds for refusal.

39 Krombach at 41-42.
40 Unfortunately, the Commission Proposal for a Brussels I Regulation does not include such an amendment.
41 Hendrikmann at 15.
43 Eco Swiss at 39.
44 Eco Swiss at 36.
A clause of an open nature always presents the danger of an abusive use by national courts which would hinder the recognition of judgments from one State to another. It is the will of the European Union to enhance the principle of mutual recognition as the cornerstone of judicial cooperation in civil matters. This implies a reduction in the intermediate measures required to enable the recognition and enforcement of foreign decisions. Substitution of the public policy general clause by a close list of grounds for refusal will be coherent with this approach. Of course such a list should contain all the manifestations of a Community ordre public.

As Krombach has shown, such specific grounds should have a sufficient scope as to effectively protect the right of defence of the defendant through the whole trial. This has been called ordre public procedural. Discussion must focus on the extension of that ground that, at this moment, is included in Article 27(2). It is not only the notification or service that has to be controlled but other violations of the right of defence, which can be envisaged, should be protected. In this sense, the case law of the Court of Strasbourg should be taken into account.

As a consequence of this, the ordre public will acquire a Community dimension. This means, firstly, that since the specific grounds for refusal will be determined in each specific Community Act, national courts will lose their competence to determine the scope of the public policy clause. Secondly, it will shape the notion of ordre public européen on the basis of the interests which are common to all the Member States.

Finally, the number of specific grounds for refusal will also decrease as the space of freedom, security and justice is progressively established and the procedural laws of the Member States are harmonised. In fact, the Commission Proposal of Brussels Regulation already restricts the grounds of refusal to four and the word “manifestly” has been newly included in new Article 41(1) so as to mean that recognition shall not be given if it is manifestly contrary to public policy. It is a step ahead but not the last stop in the derogation of the clause from the Brussels Convention system.

---

**ECJ 28 March 2000**

**– C-7/98 – Krombach v Bamber-ski**

**Brussels Convention**

**Article 27, point 1 – Ordre public – Jurisdiction based on nationality – Refusal to allow defence**

Article 27, point 1 of the Brussels Convention must be so interpreted that the court of the State in which enforcement is sought cannot, with respect to a defendant domiciled in that State, take account, for the purposes of the public policy clause in Article 27, point 1, of that Convention, of the fact, without more, that the court of the State of origin based its jurisdiction on the nationality of the victim of an offence.

The court of the State in which enforcement is sought can, with respect to a defendant domiciled in that State and prosecuted for an intentional offence, take account, in relation to the public policy clause in Article 27, point 1, of that Convention, of the fact that the court of the State of origin refused to allow that person to have his defence presented unless he appeared in person.

**Facts:** The defendant, a German doctor, was the subject of a preliminary investigation in Germany following the death in Germany of a 14-year-old girl of French nationality in the course of medical treatment. That preliminary investigation was subsequently discontinued. In response to a complaint by the father of the young girl, a preliminary investigation was opened in France, the French courts declaring that they had jurisdiction by virtue of the fact that the victim was a French national. That judgment and notice of the introduction of a civil claim by the victim’s father were served on the defendant. Although the defendant was ordered to appear in person, he did not attend the hearing. The defendant did, however, instruct defence counsel to represent him before the court. The Cour d’assises de Paris thereupon applied the contempt procedure governed by Article 627 et seq. of the French Code of Criminal Procedure. Pursuant to Article 630 of that Code, under which no

---


49 This adverb is usually present in those international conventions where the clause is present.

50 Cf. the judgment rendered by the BGH (D) of 29 June 2000 – IX ZB 23/97 after the referral question was answered. The BGH based the violation of the public order with reference to Article 103 of the German Grundgesetz (GG). According to this article, before a German court, everyone shall be entitled to a hearing in accordance with the law. Regularly, one may exercise this right through an attorney.