

Fundamental rights and judicial cooperation

Brake or driver of interstate approximation?

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MR and the role of the individual

- ‘Motor’ of EU integration in criminal matters (Mitsilegas)
- Tampere programme 1999: MR as ‘cornerstone’ of EU jud. coop. in criminal matters – a compensatory logic



- FD on EAW first ‘embodiment’ of MR within EU secondary law: limited space for fundamental rights (Art. 1.3. FD)
- Automaticity: law enforcement needs, premised on Mut. Trust



- Interpretation of FD EAW: emblematic (ECJ, Melloni, 2013)
- Opinion 2/13: presumption of mutual trust, compliance with FR, duty to trust, exceptional circumstances

MR and the role of the individual

First stage of EU criminal law development (2002-2015)

Mutual recognition, duty of mutual trust...



...no space for the interests of the individual

MR and the role of the individual

- The Lisbon Treaty: Article 6 TEU, Charter, new legal basis
- The Commission shifting position on the role of FR in the EAW system: latest Reports on implementation of FD
- EIO and further post-Lisbon MR instruments (e.g. Reg. seizure and confiscation)



- The new emphasis of the ECJ on fundamental rights (*Aranyosi/Caldararu*, *Bob-Dogi*, *OG/PI*), a new dawn?
- Which derogations to FR in EAW proceedings? a) additional grounds for refusal; b) invalidity due to lack of essential components (Art. 6 or Art. 8)
- EIO: *Gavanozov I & II*, right to effective remedy and the Charter

MR and the role of the individual

Second stage of EU criminal law development (2015-2022)

Mutual trust as a relative concept...



...greater role for interests of the individual

Legislating fundamental rights

- Roadmap on procedural rights 2009:
 - right to interpretation and translation,
 - right to information
 - right of access to a lawyer
 - legal aid
 - procedural safeguards for children
 - presumption of innocence right to be present at the trial
- Art. 82(2)(b): improving ‘mutual trust’
- Impact on national law:
 - non-regression clause (Melloni?)
 - direct effect
 - increased review on compliance

Legislating fundamental rights

- Issues in the implementation of EU rights directives:
 - lack of effective judicial protection
 - broad concepts
 - margin of appreciation to national legislators
 - lack of political will to implement (notion of ‘suspect’ in PL)
 - excessive reliance on indirect implementation (overstating compliance)
 - lack of references to EU defence rights within national case law
- Areas where approximation is missing
 - detention conditions (see *Dorobantu, ML*)
 - pre-trial detention (time limits, grounds, judicial review on continued det.) – Green Paper 2011

Conclusion

- Reversible nature of the ‘mutual trust/mutual recognition argument’
- Building mutual trust through judicial dialogue (*Aranyosi, OG & PI*) and via EU harmonization of procedural rights: rights are effectively drivers of approximation (case law + legislation)
- Blind spots in the current architecture of EU criminal justice cooperation: lack of standards on (pre-trial) detention; lack of effective judicial protection (see procedural rights); lack of political will (sabotaging cooperation and implementation)