Jean Monnet Chair "EU Institutions, Rights and Judicial Integration"

EU Law Digest

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-Alexandros Tsadiras, Associate Professor
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Research

Working Paper
The theoretical justification for the existence of children's special rights for child offenders and their practical application

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The paper examines the justifications for the existence and the application of special children's rights in the field of the criminal justice system, giving special focus to the UK, because it is a country that has often been criticized for not having adequate special procedures for its child offenders. The first section of the paper analyses the concept of what a child is, grouping various characteristics together to form four distinct profiles of the child, the Adult Child, the Unformed Child, the Romantic Child and the Savage Child. It is explained that that these profiles exist either at different points in time or simultaneously and they are expressions of what children are according to the beliefs of different societies, cultures and times. Their validity is not questioned as they are expressions of beliefs and social norms and not scientific data related to the biology of children.

The second part of the paper addresses the question why special children's rights exist for child offenders. It starts with an examination of various analyses of justifications for their existence, coming from the fields of legislation, politics and academia, which demonstrate an array of different, perhaps even conflicting, approaches. It is concluded that the explanation of these variations is situated in the assumptions upon which the justifications are founded, namely the different concepts of childhood discussed in the first part of the paper. When the input is different, it is a logical consequence that the output will vary. Accordingly, it is accepted that the different justifications offered for the existence of children's special rights are all valid and depend upon what characteristics a child is assumed to have. The significance of this, is that it determines that there is no one correct answer to the debate on which approach is more correct, simply because there is no one single correct definition of what a child is.

The third and last part of the paper first observes that the adoption of different concepts of the child affects the application of the rights involved in the criminal justice process related to child offenders, causing a number of variations over time. Consequently, a rights approach, similar to the one followed by the European Court of Human Rights (ECtHR) in civil and family law cases, which considers children's special rights and balances them against the rest of the rights involved in the criminal proceedings against children, is examined as a potential alternative. The section concludes that this approach, in which all rights involved are given weights and balanced against each other in a special preliminary hearing, is an alternative worthy of consideration.

Full paper available at:
https://www.ouc.ac.cy/index.php/el/the-university-4/jeanmonnetchair/research/working-papers

Events

Hybrid Conference: Human Rights and European Union Law

21 October 2023

Professor Paul Craig (University of Oxford)
The EU, Human Rights and Administrative Law: A Temporal Perspective

Professor Valsamis Mitsilegas (University of Liverpool)
The Evolution of Human Rights Protection in Europe's Area of Criminal Justice

Professor Nicola Countouris (University College of London - UCL)
The Human and Labour Rights Dimensions of the European Pillar of Social Rights

The Conflict of Fundamental Rights with Fundamental Union Principles: The Example of the European Arrest Warrant

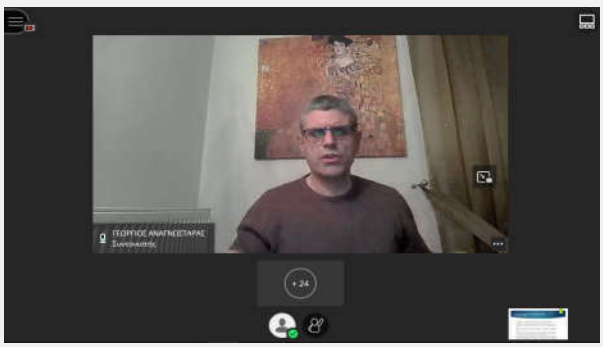
31 January 2024

The fundamental rights enshrined in the Charter of Fundamental Rights of the European Union often come into conflict with other fundamental principles of Union law, especially with the principle of mutual trust among Member States and the consequent principle of mutual recognition. This conflict is particularly evident in the area of the European Arrest Warrant. The issue was discussed in an open webinar titled "**The Conflict of Fundamental Rights with Fundamental Union Principles: The Example of the European Arrest Warrant**" on Wednesday, January 31, 2024, at 6:00 p.m. **by Dr. Georgios Anagnostaras, Legal Specialist at the National Council for Radio and Television of Greece.**

The webinar is organized by the Bachelor's Program (BA) in Law (distance learning) of the Open University of Cyprus (OUCY) and the Jean Monnet Chair on "Institutions of the European Union, Rights, and Judicial Integration," held by Associate Professor of European Administrative Law at OUC, Alexandros Tsadiras.

The conflict of fundamental rights with fundamental Union principles is particularly apparent in the field of the European Arrest Warrant and sometimes leads to friction with the Constitutional Courts of some Member States. These frictions stem from questioning the absolute nature of the supremacy of Union rules and the consequent prohibition imposed by them on Member States to provide a higher level of protection of Fundamental Rights than that offered by the Charter.

The Court of Justice of the European Union has developed an extremely interesting jurisprudence on the matter, which attempts to reconcile the protection of Fundamental Rights with fundamental Union principles, while also defending the autonomy of Union law and the supremacy of its rules.



Dr. Georgios Anagnostaras, Lawyer, PhD in European Union Law, Legal Specialist at the National Council for Radio and Television, Teaching Staff at the Athens University of Economics and Business and Collaborating Member of the Teaching Staff at the Hellenic Open University, will addressed this issue.

Dr. Anagnostaras graduated from the Law School of Aristotle University of Thessaloniki and continued his studies at the University of Bristol, at postgraduate and doctoral levels. He has authored over 60 original scientific studies on topics of European Union Law and Media Law, most of which have been published in top European legal journals. His work has received widespread scientific recognition, with hundreds of citations.

News – Legislation - Case Law

Media Freedom

Commission welcomes political agreement on European Media Freedom Act

15 December 2023

The Commission welcomes the political agreement reached today between the European Parliament and the Council on the European Media Freedom Act, proposed by the Commission in September 2022.

These new rules will better protect editorial independence, media pluralism, ensure transparency and fairness and bring better cooperation of media authorities through a new European media Board. It includes unprecedented safeguards for journalists to perform their job freely and safely. This novel set of rules will also ensure that media – public and private – can operate more easily across borders in the EU internal market, without undue pressure and taking into account the digital transformation of the media space.

Concretely, the European Media Freedom Act will:

Protect **editorial independence**

Ensure the **independent functioning of public service media**

Guarantee the **transparency of media ownership**

Provide **safeguards against the unwarranted removal by Very Large Online Platforms (designated under the Digital Services Act)**

Introduce a **right of customisation** of the media offer on devices and interfaces

Ensure Member States provide an assessment of the impact of key media market concentrations on **media pluralism and editorial independence through media pluralism tests**

Ensure more **transparent audience measurement methodology** for media service providers and advertisers

Establish requirements for the **allocation of state advertising** to media service providers and online platforms,

A new independent **European Board for Media Services** will be set up under the European Media Freedom Act. The Board will be comprised of national media authorities or bodies and be assisted by a Commission secretariat. It will promote the effective and consistent application of the EU media law framework by, among others, issuing opinions on the impact of media market concentrations likely to affect the functioning of the internal market for media services, as well as supporting the Commission in preparing guidelines on media regulatory matters. The Board will also coordinate measures regarding non-EU media that present a risk to public security, and it will organise a structured dialogue between Very Large Online Platforms, the media and the civil society.

Source:
https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6635

Consumers

New measures to simplify the resolution of disputes out of court and boost consumer rights

17 October 2023

The Commission proposed to modernise and simplify rules on out-of-court dispute resolution to adapt them to digital markets. This proposal will expand the range of issues that can be resolved through the **Alternative Dispute Resolution (ADR) Directive** out-of-court, including matters related to misleading advertising, access to services and unjustified geoblocking.

The Commission also adopted today a Recommendation to align online marketplaces dispute resolution systems with the European standards for fair and efficient Alternative Dispute Resolution. For example, a fair and efficient ADR needs to be transparent about the different steps of the procedure, or ensure that mediators are independent, with no financial conflict of interest. It also outlines best practices to resolve crossborder disputes for EU-wide trade associations to implement.

Improvements brought by the new rules

Expanding the scope of the Directive: The Directive will encompass all aspects of EU consumer law and extend its reach to non-EU traders, addressing unfair practices like manipulative interfaces, manipulative advertising, or geo-blocking rules. Under the revised Directive, ADR will be able to address such practices, that are currently not in scope.
Incentivising the participation of businesses: Under this proposal, unless specific EU law or national legislation imposes trader participation in out-of-court dispute resolution, businesses will continue to be free to decide whether to participate in alternative dispute resolution or not. However, if a consumer asks for ADR intervention, the business will be obliged to reply within 20 working days. This approach will speed up the overall process and encourage traders to participate in the process. Additionally, it reduces information obligations for traders.
Improving Consumer Assistance: Customised support will be provided to consumers, especially vulnerable ones, to launch their case, from translation, to explanations on the procedure, fees, or physical documentation. Member States will designate contact points to facilitate communication between consumers and traders, assist with the process, and provide general information on EU consumer rights and means of redress.

Next steps
The Commission's proposal has to be adopted by the European Parliament and the Council.
Background
According to the 2023 **Consumer scoreboard**, a quarter of consumers experienced a problem worthy of complaint but a third of them did not act due to lengthy procedure times, small amounts involved, or low confidence in a satisfactory solution to the problem. This results in only 300,000 eligible disputes annually in the EU.
According to the impact assessment caried out by the Commission, the extension of the scope envisaged by the proposed Directive could bring 100,000 new eligible disputes. It also mandates businesses to respond, potentially bringing another 100,000 disputes.
The Commission proposal maintains the minimum harmonisation approach. Member States will remain free to decide on the architecture and governance of ADR at national level whilst ensuring full coverage of disputes with a consumer protection angle. The Commission will maintain the current multi-lingual list of quality ADR entities.
The Commission has been awarding yearly grants to ADR entities to improve awareness raising and case management. Nevertheless, the proposal flags that parties should be made aware if automated means are used in the process and inclusive tools are to be used to ensure that digitally unskilled consumers are not at a disadvantage.

Source: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5049

Procedural Rights

The European Commission decides to refer Poland to the Court of Justice of the European Union for failing to fully transpose EU rules on procedural rights

16 November 2023

the European Commission decided to refer **Poland** to the Court of Justice of the European Union for failure to communicate the measures transposing into national legislation the Directive on the right of access to a lawyer and to communicate upon arrest (Directive 2013/48/EU).

The deadline for Member States to transpose the Directive was 27 November 2016.

On 15 July 2021, the Commission sent a letter of formal notice to Poland, urging it to fully transpose the Directive, considering that Poland failed to transpose specific measures related to minors. Those measures ensure that, if children are deprived of liberty in criminal proceedings, an appropriate adult is informed of their deprivation of liberty and of the reasons behind it. After examining Poland's reply to the letter, the Commission determined that the transposition was still not satisfactory.

In February 2023, the Commission decided to send Poland a reasoned opinion. In particular, the Commission did not agree with Poland's assessment that certain legislation concerning minors under the age of 17 (the Act of 9 June 2022 on the support and social rehabilitation of minors) are not criminal proceedings.

Since Poland's reply to the reasoned opinion did not provide proof of complete transposition of the directive, the Commission has decided to refer Poland to the Court of Justice of the European Union.
Since this case concerns the failure to communicate transposition measures of a legislative directive, the Commission will ask the Court of Justice of the European Union to impose financial sanctions on Poland.

Background

EU rules ensure that the basic rights of suspects and accused persons are protected. Common minimum standards are necessary for judicial decisions taken by one Member State to be recognised by the others. The EU has adopted 6 directives on procedural rights for suspects and accused persons: on the right to interpretation and translation, with the Directive 2010/64/EU; on the right to information with the Directive 2012/13/EU; on the right to have a lawyer with Directive 2013/48/EU; on the right to be presumed innocent and to be present in a trial with the Directive 2016/343/EU; and with the Directive (EU) 2016/800 on special safeguards for children who are suspects or accused in criminal proceedings and on legal aid with Directive 2016/1919.

Source: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5369

Judgment of the Court in Case C-333/22

Processing of personal data: decisions taken by a supervisory authority in the context of the indirect exercise of the rights of the data subject are legally binding

A citizen requests the Belgian autorité nationale de sécurité (National Security Authority) to issue him, for professional purposes, security clearance. He is refused that document on the ground that he had participated in demonstrations. Relying on his right of access to his data, that citizen makes a request to the Organe de contrôle de l'information policière (the Supervisory Body for Police Information), which informs him that he has only indirect access and that it will itself verify the lawfulness of the processing of his data. However, at the end of that verification, as allowed under Belgian law, that body merely replied to him that it had carried out the necessary verifications. That citizen then brought court proceedings before the first instance court, which declared that it had no substantive jurisdiction.

Seised by the person concerned and Ligue des droits humains, the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) asks the Court of Justice whether EU law requires Member States to provide for the possibility for the data subject to be able to challenge the decision of the supervisory authority where the latter exercises the rights of that data subject with regard to the processing at issue.

The Court of Justice takes the view that, in informing the data subject of the result of the verifications made, the competent supervisory authority adopts a legally binding decision. **That decision must be amenable to judicial review** in order for the data subject to be able to challenge the assessment made by the supervisory authority concerning the lawfulness of the data processing and the decision as to whether or not to adopt corrective measures.

The Court observes that EU law requires the supervisory authority to inform the data subject, 'at least that all necessary verifications or a review by the supervisory authority have taken place' and of 'his or her right to seek a judicial remedy'. Where this is not precluded by public interest purposes, Member States must nevertheless provide that the information disclosed to the data subject may go **beyond that minimum information** so that the data subject is in a position to defend his or her rights and to decide whether or not to apply to the court with jurisdiction.

In addition, in cases where the information thus disclosed to the data subject was limited to the bare minimum, Member States must ensure that the court with jurisdiction, in order to check whether the reasons which warranted such a limitation on that information are well founded, may **weigh up the public interest purposes pursued** (State security, prevention, investigation, detection or prosecution of criminal offences) and the need to **guarantee citizens compliance with their procedural rights**. In the context of that judicial review, the national rules must enable the court to examine the grounds and the evidence behind the supervisory authority's decision, as well as the conclusions which that authority drew from that decision.

Source: Court of justice of the European Union, PRESS RELEASE No 174/23 Luxembourg, 16 November 2023

Judgment of the Court of Justice in Joined Cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21| Ministero dell'Interno

Information concerning the asylum procedure must be provided to the applicant even when a second asylum application is made. Hearing an action challenging the transfer to the Member State of the first application, the courts of the second Member State cannot, in principle, examine the risk of refoulement to the applicant's country of origin.

Several persons originally from, inter alia, Afghanistan, Iraq and Pakistan applied for asylum in Italy. They had previously made similar applications in other Member States (Slovenia, Sweden, Germany and Finland). Since those other Member States agreed, in accordance with the Dublin III Regulation 1, to take back those applicants, Italy adopted transfer decisions in respect of those applicants. As a rule, it is for the first Member State seised to examine whether international protection is to be granted.

The applicants objected to the transfer. The Italian courts hearing those disputes ask whether an applicant who makes a second asylum application must, as for the first application, be given the 'common leaflet' (that is to say, that it is uniform throughout the European Union), which contains information about the procedure and the rights and obligations of the applicant and, in addition, be entitled to a personal interview. Moreover, they ask whether it is possible to take into account, in the context of the examination of the transfer decision, the risk of refoulement of the applicant to his or her country of origin. Those courts therefore sought clarification from the Court of Justice 2.

The Court finds that the provision of the common leaflet and the conduct of a personal interview are required both upon a first asylum application and upon a subsequent application. The applicant is thus put in a position to be able to inform the authorities of the second Member State about anything that might prevent his or her transfer and might justify the latter Member State becoming the one responsible for examining his or her asylum application. A failure to comply with those obligations may, under certain conditions, justify the annulment of the transfer decision.

By contrast, the courts of the second Member State cannot examine whether the applicant, after the transfer to the first Member State, risks being returned to his or her country of origin. It cannot be otherwise unless the courts find that there are systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in the first Member State. Differences of opinion between the Member State as regards the interpretation of the conditions for international protection do not establish the existence of systemic deficiencies. Each Member State must, save in exceptional circumstances, consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.

Source: Court of justice of the European Union, PRESS RELEASE No 182/23 Luxembourg, 30 November 2023

Judgment of the Court in Case C-261/22 | GN (Ground for refusal based on the best interests of the child)

European arrest warrant: the surrender of a requested person cannot be refused on the sole ground that she is the mother of young children.

It is only where there are systemic or generalised deficiencies in the issuing Member State and where there is a risk of breach of the fundamental rights of the persons concerned that such a surrender may exceptionally be refused.

A woman was convicted in absentia in Belgium to a term of imprisonment of five years for the offences of trafficking in human beings and facilitating illegal immigration. A Belgian court issued an EAW in respect of her for the purpose of enforcing that sentence. Several months later, that woman was arrested in Bologna (Italy). At the time of her arrest, she was pregnant and in the company of her son who was almost three years old.

The Italian court responsible for the execution of the EAW did not receive any information from the Belgian court regarding the detailed arrangements for enforcement, in Belgium, of sentences imposed on mothers living with their minor children. It refused the surrender.

The Italian Court of Cassation, before which the case was brought, has asked the Court of Justice whether and, as the case may be, under what conditions the Italian court may refuse to execute an EAW in a situation such as the one at hand, to which the framework decision on the EAW does not make any reference as one of the grounds for non-execution of an EAW 1.

The Court of Justice answers that the court cannot refuse to execute an EAW on the sole ground that the requested person is the mother of young children living with her. Having regard to the principle of mutual trust between the Member States, there is a presumption that the conditions of detention of a mother of young children in the Member State issuing the EAW are appropriate to such a situation.

The surrender of the person concerned may nevertheless be exceptionally refused where there is information that serves to demonstrate that:

A) there is a real risk of breach of the mother's fundamental right to respect for her private and family life and of disregard for the best interests of her children, on account of systemic or generalised deficiencies in the conditions of detention of mothers of young children and of the care of their children in the Member State issuing the EAW, and

B) there are substantial grounds for believing that, in the light of their personal situation, the persons concerned will run that risk on account of those conditions.

Source: Court of justice of the European Union, PRESS RELEASE No 207/23, Luxembourg, 21 December 2023