

The nature of mutual recognition in European Law : re-examining the notion from an individual rights perspective with a view to its further development in the criminal justice area

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PROPOSITIONS RELATING TO THE DISSERTATION

The nature of mutual recognition in European Law Re-examining the notion from an individual rights perspective with a view to its further development in the criminal justice area

by Wouter van Ballegooij – 9 July 2015

1. The core function of the principle of mutual recognition is to make sure that interests of European integration are taken into account;
2. Mutual recognition is best depicted as a wave, part of a virtual sea between Member States on which factual and legal situations established in other Member States are 'riding';
3. Assertions made by EU policy makers regarding the consequences of mutual recognition have obscured its core function, and have led to an academic debate in which mutual recognition is either defended, rejected, or in which conditions for and exceptions to its application are sought;
4. The lack of clarity concerning the aims of the Area of Freedom, Security and Justice undermines the status of mutual recognition as a principle of European Law;
5. The interpretation of mutual recognition of the Court of Justice is not in line with primary and even secondary EU law implementing mutual recognition, which does not make a choice in favour of free movement over other interests and in casu foresees a recognition procedure with exceptions;
6. The current identification of mutual recognition with the free movement of judicial decisions, leads to situations in which individuals lose the protections they enjoy under national criminal law;
7. The Court of Justice needs to develop a 'rule of reason' for surrender procedures based on primary EU law to fill the current gap in protection for individuals subject to a European Arrest Warrant;
8. Conflicts regarding supremacy of EU law, and responsibility for fundamental rights protection can only be avoided if EU criminal justice legislation is aimed at complying with the Charter, the ECHR as well as respecting national constitutional standards of a higher level than the common denominator;
9. Inter-institutional negotiations in the European criminal justice area need to be improved to ensure the quality and coherence of the resulting legislation;
10. The European Justice Agenda fails to meet the stated objective of offering citizens an Area in which they can feel secure and confident, and enjoy the same rights wherever they are; it still regards EU citizens as objects of judicial cooperation rather than rights holders;
11. This analysis of the nature of mutual recognition and the challenges posed by its application to specific fields of European law holds up a mirror for policy makers, administrative and judicial authorities at national and EU level to the benefit of individuals within the EU.