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Course: Law of the European Union

[10] Judicial cooperation in civil and criminal matters and police cooperation, asylum and immigration.

Judicial cooperation in civil matters

Amsterdam Treaty (1997) brought judicial cooperation in civil matters from the 3rd pillar to the 1st pillar. regulations and directive gradually replace conventions and 3rd pillar pieces of legislation. There is no EU court system for civil matters (exception: the Court of the First Instance hears claims involving EC or labour disputes of EC employees). The EC provides only for cooperation of judiciary and other relevant authorities.

Jurisdiction, recognition and enforcement of judgements Two regulations set jurisdiction of member states (and national legislation their courts), recognition and enforcement of judgements in civil and commercial matters (44/2001) and in matrimonial matters and paternal responsibility (2201/2003). The first one replaced the Brussels Convention. In general, the jurisdiction is exercised by the member state in which defendant is domiciled, regardless his/her/its nationality. There are also several special jurisdictions. Recognition of judgements is simplified. In general, it is automatic, special enforceability procedure if judgement contested. Special national courts or authorities are charged with check of the documents delivered with the application for enforcement. No discrimination of foreign nationals or entities is allowed, the judgements are enforced by authorities (entitled individuals or institutions) by relevant national laws. The second regulation applies for divorce, separation, marriage annulment and all decisions regarding parental responsibility. Other issues of personal and family law are excluded. The regulation sets rules on jurisdiction for both matrimonial and parental matters.

Insolvency proceedings Special regulation (1 provides for efficient judicial cooperation in insolvency proceedings. National insolvency laws are retained, however their rules about cross-border aspects of insolvency (property or debts, cooperation in proceedings) are governed by the EC law. Efficient Europe-wide insolvency proceedings are necessary because individuals and companies or other legal entities can do Europe-wide bussiness: it can be unsuccessful. The EC law defines national proceedings covered by EC coordination and cooperation. EC law designated competent state and thereby applicable insolvency legislation (courts are assigned by national legislation). Secondary proceedings are introduced in all other member states where some obligation, property etc. situated.

Other EC/EU measures for efficient judicial proceedings and equality in proceedings Several regulations and directives provide for service (delivery) of documents required for civil and proceedings, minimum standards for legal aid for cross-border disputes or taking of evidence in cross-border cooperation of courts.

Judicial cooperation in criminal matters

In general, member states regard criminal (penal) law as an excellent example of their own power. They are not prepared to vest EC or EU with greater competences in area of criminal law. The only generally shared value, now expressly mentioned in primary law, is abolition of death penalty. However, other aspect of criminal law in Europe differ. Certainly, there are many crimes punishable in all member states. However, penalties imposed (including different terms of imprisonment) can be different and it is very difficult to joint legal definitions.

Now there is no proper EC/EU criminal law (compare with the U.S.). There are no European crimes, European courts or European prisons. The EU law (criminal matters remained in the 3rd pillar) provides for more efficient cooperation among member states. The most important tools are European cooperation in investigation and prosecution, including taking evidence. The most controversial tool is the European arrest warrant. Many member states have no tradition of extradition of their own citizens for trial in other member states: terms of imprisonment shall be served in home country.

Police cooperation

Member states of the EU have established „European Police Office“ (Europol) as separate international organisation. Europol is no independent police unit, its officers are not empowered and equipped for their own police operations. It mainly serves as liaison center (significant part of its personnel are liaison officers of police forces of member states). It operates databases of fugitive criminals, kidnapped persons, stolen valuables etc. Europol contributes to coordination of large-scale police operations of police forces of member states. However, it is not authorised to manage these operations.

Asylum and immigration

The EU started gradual harmonisation of asylum and immigration laws of member states. It is necessary to combat illegal immigration mainly from Africa and Asia: only one member state (detailed rules for its determination) is responsible for examination of application of asylum seekers, multiple applications in other member states (resulting in long-term stay) are excluded. Immigration policy is gradually harmonised too. However, member states retain their competences to decide about numbers and origin of immigrants (many member states have closer ties with various non-member states).

Removal of internal border controls („Schengen“)

In 1980ties, several member states decided to remove gradually controls on internal borders while adjusting the protection of external borders (Schengen treaty). The law was subsequently taken over by (adopted) the EU. Almost all member states belong or shall belong in near future to Schengen system. Regular controls of persons and goods crossing internal borders have been eliminated. Temporary controls can be re-introduced if necessary. Schengen states are required to maintain efficient controls of external borders (including

seas). Schengen treaty allows - in described circumstances - searches and pursuits for fugitive criminals abroad by the police forces of member state crossing internal border (it needs to be is impossible to inform and engage the police of neighbour member state).