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Lorena Bachmaier

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Editorial

EDITORIAL

AUTHOR

Lorena Bachmaier

Full Professor of Law
Universidad Complutense Madrid

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Dear Readers,

Since the launch of the project to establish a European Public Prosecutor's Office, concerns have continuously been voiced over the standard of protection of fundamental rights in criminal proceedings. The criticism is directed at the European Union firmly moving towards a more efficient prosecution, but disregarding the need for strengthening the protection of fundamental rights in transnational criminal proceedings. It has been constant during the past decades, gaining momentum after implementation of the 2002 Framework Decision on the European Arrest Warrant (FD EAW). The Commission could no longer ignore the critical voices being raised by academics, human rights associations, and practising lawyers. This led to approval of the 2009 Roadmap on procedural safeguards in criminal proceedings, which finally crystallized in a series of directives on the minimum rights to be guaranteed to suspects and accused persons.

It is no longer true that the EU has ignored the need to protect the fundamental rights of suspects and defendants. The results achieved so far cannot be overlooked. Recognizing the achievements should not, however, lead to complacency. Despite the important progress made in terms of human rights, more can certainly be done. A vigilant attitude is necessary to reject self-satisfaction and continue moving forward in improving the protection of fundamental rights in the Area of Freedom, Security and Justice (ASFJ).

This being said, there are certainly areas – precisely regarding detention conditions in some Member States – where the desired balance between the need for effective cooperation and the protection of fundamental rights is far from being achieved, as shown by the *Aranyosi and Căldăraru* case before the CJEU. However, the highly sensitive case involving the EAW against Carles Puigdemont, who is accused of rebellion and embezzlement in Spain, has brought the topic of judicial cooperation in criminal matters to the forefront of the public debate – both legally and politically. This is certainly an exceptional case without precedent at the EU level, and it could even be considered negligible if one looks at the quantity of effectively executed EAWs. Its impact – not only on the media and on general public opinion – raises important questions that should lead to rethinking the principles of the AFSJ. The EAW issued by a Spanish judicial authority for surrender of a person detained in Germany shows how interpretation of the double criminality requirement can erode the principle of mutual recognition set out in Art. 82 TFEU, and Art. 1(2) FD EAW.

The judges in Luxembourg have repeatedly emphasised that the aim of the EAW is to facilitate cooperation, that Member States have a primary obligation to cooperate, and that the grounds for refusal – except those provided for under Art. 3 FD EAW – should not as a rule be mandatory. Moreover, in the *Gundza* case – although it is not a EAW case –, the Court already stated that the double criminality condition is an exception to the general rule of recognition of judgments, and it did not exclude a flexible approach by the competent authority of the executing State. A strict legal interpretation of the requirement of double criminality might be technically correct, but it appears to contradict the general rule, i.e., the obligation to cooperate. In the end, the condition of double criminality is based less on the protection of fundamental rights than on a deeply rooted concept of national sovereignty. The *Puigdemont* case has again shown that the debate on the main principles that should govern a legal area built upon mutual recognition and mutual trust is not over yet. Instead, one should discuss the meaning of the principles and the main refusal grounds, including the double criminality requirement and its "cousin," the speciality rule. The CJEU will be called upon to play a crucial role in settling the "right balance" when building a single judicial space.

Prof. Dr. Lorena Bachmaier

Full Professor of Law, Complutense University Madrid (UCM)

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