



Rule of Law Challenges to Judicial Cooperation in the Field of European Asylum Law

ONLINE TRANSNATIONAL TRAINING WORKSHOP FOR JUDGES, PROSECUTORS AND LAWYERS

date 3 and 4 June 2021

time 2.30 pm - 5.30 pm, CET

Call for Participants

Framework

The training is offered within the European Commission's funded project *TRIAL - TRust, Independence, Impartiality and Accountability of judges and arbitrators safeguarding the rule of Law under the EU Charter* (Horizon 2020, project no. 853832, JUST-JTRA-EJTR-AG-2018). The TRIAL Project provides training activities and tools for judges, lawyers, prosecutors, and arbitrators on the European rule of law, mutual trust, judicial independence, impartiality and accountability (see the dedicated website [here](#)).

Background

Pursuant to Article 2 of the Treaty on the European Union (TEU), the Union is founded on a set of values, including the rule of law. The Union is based “*on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, the values under Article 2 TEU*” (Court of Justice, Opinion 2/13, point 168). In turn, “*this premiss implies and justifies the existence of mutual trust between the Member States*” (ibid.). The scrupulous observance of the Article 2 TEU's values is thus a precondition for the correct functioning of EU law instruments based on horizontal cooperation between judicial authorities across the Member States.

Respect for the rule of law requires that national judicial authorities can ensure, in cases pending before them, an effective judicial protection to the individuals concerned, in line with Article 47 of the EU Charter of Fundamental Rights (EU CFR). Since its judgment known as *LM or Celmer* (Case C-216/18, *Minister for Justice and Equality*), the Court of Justice acknowledged that the national court requested to execute a European Arrest Warrant (EAW) coming from a Member State where there are rule of law problems may be under a duty to refuse such an execution. Whilst the Court of Justice has inaugurated this approach with respect to the EAW mechanism, it can be extended also to other EU law instruments entailing horizontal judicial cooperation in the Area of Freedom Security and Justice. Notably, judicial cooperation under the Common European Asylum System (CEAS) constitutes another field where mutual trust and respect for the rule of law are cornerstones. Since its judgement in *N.S.* (Joined cases C-411/10 and C-493/10), the Court of Justice acknowledged that the presumption whereby the Member States comply with EU fundamental rights, which allows horizontal cooperation within the CEAS, is not an absolute one.

Under certain circumstances, which it is up to the national authorities to ascertain, cooperation within the asylum system can be suspended. The Court of Justice has then developed this approach in the following case law (see, notably, the judgements in *CK*, Case C-578/16 PPU; *Jawo*, Case C-163/17; *Ibrahim*, Case C- 310/08).

Interestingly, asylum and criminal judicial cooperation have informed each other on the standards for the application of mutual recognition. However, some divergences exist, in particular as regards the burden of proof requested to the person subject to a transfer under the Dublin Regulation and, consequently, the role of national authorities in assessing the relevant elements in order to suspend horizontal cooperation between Member States.

Provisional agenda

The training will consist of two afternoon sessions (2.30 pm – 5.30 pm, CET), on 3 and 4 June. It will host a combination of short lectures, followed by Q&A/debate sessions, and a group-exercise on a hypothetical case.

The following topics will be addressed by guest speakers:

- *The evolution of the Court of Justice's case law*
- *The implementation of the Court of Justice's case law at the national level*
- *The role of the ECHR and the Strasbourg Court*
- *End of mutual trust? Judicial cooperation with the UK and Northern Ireland after Brexit*

The group-exercise will focus on the application of the NS test before national courts, in situations where the Member State competent to address the request of asylum is experiencing rule of law challenges. Special attention will be devoted to the issue of the burden of proof and to the instruments of horizontal and vertical cooperation available. In order to promote active engagement, participants will be divided in small-groups, hosted in different online rooms, and will discuss the proposed case together with facilitators from the TRIAL project team.