

Fundamental Rights in the EU Area of Freedom, Security and Justice

The development of the Area of Freedom, Security and Justice has transformed the European Union and placed fundamental rights at the core of EU integration and its principles of mutual recognition and trust. The impact of the AFSJ in the development of an EU standard of fundamental rights, which has come to the fore since the Treaty of Lisbon, is a topic of great theoretical and practical importance. This is a uniquely comprehensive academic study of the AFSJ and its implications from the point of view of fundamental rights. The contributions to this collection examine the normative and jurisprudential development of the AFSJ in order to assess its effects on the overall construction of the scope and standards of protection of EU fundamental rights in this particularly complex and sensitive field of integration. The expert contributors systematically map and critically assess this area of EU law, together with the relevant case law.

Sara Iglesias Sánchez (PhD Universidad Complutense Madrid; LLM Yale Law School) holds the position of Legal Secretary at the Court of Justice of the European Union. She was previously a lecturer at the University of Cádiz, a doctoral researcher at the Universidad Complutense and a visiting researcher at several academic institutions. She has widely published on EU migration law, citizenship and fundamental rights.

Maribel González Pascual is Associate Professor at Pompeu Fabra University, Barcelona, and a member of the Cabinet of the Spanish Ministry on Regional Policies. She was previously a post-doctoral researcher at the Max Planck Institute in Heidelberg, a doctoral researcher at the Universidad de Salamanca and at the INAP (Madrid), and a visiting researcher at several academic institutions. She has widely published on fundamental rights protection in Europe and on federalism.

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Edited by Sara Iglesias Sánchez, Maribel González Pascual
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Edited by

Sara Iglesias Sánchez

Court of Justice of the European Union

Maribel González Pascual

Pompeu Fabra University



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*A nuestras hijas, Margarita, Irene y Julia
Hasta la luna, ida y vuelta*

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Contributors

- Coral Arangüena Fanego, Professor of Procedural Law, University of Valladolid, Spain
- Michal Bobek, Advocate General, Court of Justice of the European Union
- Bas van Bockel, Senior Specialist Advisor (EU law), Netherlands Council of State
- Evelien Brouwer, Senior Researcher/Lecturer, Amsterdam Centre for Migration and Refugee Law, Vrije Universiteit Amsterdam
- Nathan Cambien, Legal Secretary, Court of Justice of the European Union; Associate Professor, University of Antwerp
- Jacopo Della Torre, Post-Doctoral Research Fellow, University of Trieste
- Dominik Düsterhaus, Legal Secretary, Court of Justice of the European Union
- Agnieszka Frąckowiak-Adamska, Associate Professor, University of Wrocław, Poland
- Elsbeth Guild, Jean Monnet Professor *ad personam*, Queen Mary University of London; Emeritus Professor, Radboud University, Netherlands; Visiting Professor, College of Europe, Bruges; Partner, Kingsley Napley, London
- Francesca Ippolito, Associate Professor in International Law, University of Cagliari, Italy
- Vesna Lazić, Senior Researcher, TMC Asser Institute, The Hague; Associate Professor, Utrecht University, Netherlands
- Magdalena Ličková, Legal Secretary, Court of the European Union
- Luca Lupária, Professor of Criminal Procedure, Roma Tre University, Rome
- Leandro Mancano, Senior Lecturer in EU Law, Edinburgh Law School
- François-Xavier Millet, Professor of Public Law, University of the French Antilles (on leave), currently serving as Legal Secretary, Court of Justice of the European Union
- Valsamis Mitsilegas, Professor of European Criminal Law and Global Security, Queen Mary University of London
- Madalina Moraru, Senior Research Fellow, Law Faculty, Masaryk University, Brno, Czech Republic; Research Fellow, Centre for Judicial Cooperation, European University Institute, Florence, Italy
- Violeta Moreno-Lax, Reader in Law, Queen Mary University of London, and Visiting Professor, College of Europe
- Cristian Oró Martínez, Lawyer, Research and Documentation Directorate, Court of Justice of the European Union

Christina Peristeridou, Assistant Professor of Criminal Law and Procedure,
Maastricht University

Annette Schrauwen, Professor of European Integration, Amsterdam Centre for
European Law and Governance (ACELG), Law Faculty, University of Amsterdam

Ciara M Smyth, School of Law and Irish Centre for Human Rights, National
University of Ireland, Galway

Justine N Stefanelli, Director of Publications and Research, American Society of
International Law, Washington, DC

Foreword

KOEN LENAERTS*

When the European integration project was first conceived, it was quite clear in the minds of Europe's founding fathers that the new pan-European body envisaged was to be – initially at least – an economic grouping. As Jean Monnet put it, as early as 1943, '[t]he countries of Europe are not strong enough individually to be able to guarantee prosperity and social development for their peoples. The States of Europe must therefore form a federation or a European entity that would make them into a common economic unit.' Thus, when such a unit was first established, initially as the European Coal and Steel Community in 1952, soon followed by the European Economic Community and EURATOM in 1957, economic integration was the focus of the treaties that governed the operation of those Communities.

Today, the European Union has moved well beyond that purely economic paradigm and the internal market, important though it continues to be, has become just one of the building blocks on which European integration is based. Since 1 December 2009 – the date when the Lisbon Treaty entered into force – the European Union has been operating on the basis of new constitutional foundations. Those foundations are the Treaty on European Union, as modified by the Lisbon Treaty; the Treaty on the Functioning of the European Union; and the Charter of Fundamental Rights of the European Union, which is now fully binding and enjoys the same efficacy and force as those treaties. These are the texts that determine the competences and govern the functioning of the Union and that define the fundamental rights enjoyed by the Union's citizens and other subjects of Union law.

Through the Area of Freedom, Security and Justice, the Union has established a shared European space governed by common values such as respect for democracy, fundamental rights and the rule of law. In that European space without internal borders, citizens of the Union may move freely and safely, integrate into the society of the Member State of their choice and fulfil their ambitions free from all discrimination.

However, in an area without internal frontiers, the exercise of free movement should not undermine the jurisdiction of national courts and the effectiveness of national law operating on a territorial basis. The 'long arm of the law' should

* President of the Court of Justice of the European Union and Professor of European Union Law, Leuven University. All views expressed are personal to the author.

therefore acquire a transnational dimension, so that, for example, criminals are prevented from relying on free movement as a means of pursuing their activities with impunity. Accordingly, the authors of the EU Treaties reasoned that the free movement of persons should be accompanied by the free movement of judicial decisions. By virtue of the principle of mutual recognition, judicial decisions adopted in the Member State of origin are to be recognised and enforced in the Member State of enforcement as if they were its own.

In order for that principle to operate properly, national courts must trust that courts in other Member States are equally committed to upholding the values on which the EU is founded and, in particular, to protecting the fundamental rights of the persons concerned. Thus, in the light of the principle of mutual trust, ‘each of [the Member] States, save in exceptional circumstances, [is] to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law’.¹ This shows that, whilst the principle of mutual trust is of paramount importance for the creation and maintenance of the Area of Freedom, Security and Justice, mutual trust is not to be confused with blind trust.

As my friend and colleague Advocate General Michal Bobek points out in his excellent epilogue to this book, mutual trust is not the only reason why judges in the Member States give effect to EU law instruments that require the mutual recognition of judicial decisions, but it is nevertheless essential. As the Advocate General shrewdly observes, it is somewhat contradictory to regard law as being based on trust, since modern legal systems have to a large extent supplanted trust-based systems in ensuring respect for societal norms. I therefore agree with him that it is preferable to say rather, not least in the present context, that trust among judges *must be based on law*. That is why the role played by the Court of Justice through the preliminary ruling procedure provided for in Article 267 TFEU is so central in making mutual trust possible, and thus in making mutual recognition work. National judges know that where doubts arise as to the interpretation or validity of the EU norms that are applicable within the Area of Freedom, Security and Justice, the Court is there to act as an impartial, supranational arbiter in order to provide a definitive ruling on such questions, which, moreover, will be binding throughout the European Union.

In addition to describing in detail the operation of that system of mutual recognition and the Court of Justice’s case law on the subject of mutual trust, the present work provides a comprehensive guide to the ways in which fundamental rights, particularly those enshrined in the Charter of Fundamental Rights, have been given concrete expression, and indeed practical application, within the framework

¹ CJEU, Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, para 192.

of the Area of Freedom, Security and Justice, both in civil and criminal law contexts. As such, it is a valuable collection for professionals and researchers alike, focused on an important and fast-developing area of Union law, and I highly recommend it to those who are active within fields covered by the Area of Freedom, Security and Justice, as well as to those with an academic interest in those fields.

Preface

This book is the result of a passion shared by the editors, who have eagerly followed and discussed over the last decade the developments in the EU Area of Freedom, Security and Justice and in the field of EU fundamental rights. The idea of putting together such a collection of essays became urgent when, several years after the entry into force of the Lisbon Treaty, the body of case law and legislation in this field had grown to such an extent that it started fuelling heated debates about the essential role, the scope and the standards of EU fundamental rights in the fields covered by the AFSJ.

The editors had the chance to discuss the project underlying this book at a workshop at Pompeu Fabra University (Barcelona) in February 2017. This meeting enabled the authors to agree on the theoretical approach, to ensure the coherence of the volume and to include additional topics. Several authors joined the project afterwards, including a number from the Court of Justice of the European Union, greatly enriching the scientific team. We are extremely grateful for their support and openness and for all the valuable exchanges that took place during the preparation of the book.

Both the kick-start workshop and the book itself received the support of the Research Group on Constitutional European law and on Supranational Integration (2017 SGR 549). In particular, the editors are indebted to the head of this research group, Alejandro Saiz Arnaiz, for the invaluable support he has given to the project, and to Michal Bobek for always enriching our discussions (and for sharing with us a part of the brains of his team).

Common Abbreviations

AFSJ	Area of Freedom, Security and Justice
AG	Advocate General of the CJEU
CEAS	Common European Asylum System
CDE	Cahiers de Droit Européen
CFR	Charter of Fundamental Rights of the European Union
CISA	Convention implementing the Schengen Agreement
CJEU	Court of Justice of the European Union
CMLRev	Common Market Law Review
EAW	European arrest warrant
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EJML	European Journal of Migration and Law
ELJ	European Law Journal
ELRev	European Law Review
EP	European Parliament
EU	European Union
EuConst	European Constitutional Law Review
EYB	European Yearbook
FD	Framework Decision
FRA	European Union Agency for Fundamental Rights
GDPR	General Data Protection Regulation
IACtHR	Inter-American Court of Human Rights
LTR	long-term residents
MJ	Maastricht Journal of European and Comparative Law
OJ	Official Journal of the European Union
SIS	Schengen Information System
TCN	third-country national
TEC	Treaty establishing the European Community
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees,
YEL	Yearbook of European Law