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**THE PROTECTION OF FUNDAMENTAL RIGHTS IN EUROPEAN CRIMINAL LAW AFTER LISBON**  
**The new secondary sources of EU law of the procedural criminal cooperation of the**  
**Member States and the case law of the European Court of Justice**

*Theses of the PhD Dissertation*



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## **I. Summary of the research task**

The dissertation showcases the development of European criminal law in terms of the protection of fundamental rights. European criminal law has gone through intensive development in the past three decades. It is important though that this development – for a long time – was primarily focused on the efficiency of criminal cooperation between the Member States rather than the protection of fundamental rights in said cooperation. Even though legislative institutions aimed for a higher standard of fundamental rights protection in this cooperation already in the 2000s, most of their initiatives failed. These failed attempts were accompanied by the ECJ's strict case law from 2007 until 2016 which gave absolute preference to the efficiency of cooperation contrary to the protection of fundamental rights. This approach of the ECJ turned over only in 2016 in its *Aranyosi* and *Căldăraru* joined cases. Ultimately, the protection of fundamental rights in European criminal law started to develop after the conclusion of the Lisbon Treaty which provided the necessary legal bases for the legislation concerning fundamental rights protection. This research focuses on the development of European criminal law after 2009 and the case law of the ECJ after 2016 as major turning points for a system of criminal cooperation in the EU which is more protective of fundamental rights.

## **II. Description of the examinations and analyses performed and of processing methods**

The dissertation is based on basic research which aims to provide a detailed analysis of the development of the protection of fundamental rights in the framework of European criminal law. In doing so, it sheds light on the role of the legislative institutions of the EU and the ECJ, while also highlighting the possibilities for the future development of European criminal law. In order to do so, I analyze primary and secondary sources, legal sources and various other documents of the EU institutions, and the academic literature about European criminal law. I use the latter for showcasing the development of European criminal law until the 2010s. I use the former to analyze the secondary sources of EU law which are relevant to the system of criminal cooperation to prove their protective nature. In addition, through the analysis of various cases that was adjudicated by the ECJ, I attempt to highlight the importance of the ECJ's jurisprudence on the protection of fundamental rights in the system of criminal cooperation in the EU. As such, the development of the protection of fundamental rights in the EU was primarily affected by two set of actors, the EU legislative institutions and the ECJ.

### **III. Summary of scientific results, their utilization or possibilities of utilization**

Based on the research, the protection of fundamental rights in European criminal law has gone through two phases of development in the past decades. The first phase of development started in the 2000s when the principle of mutual recognition had been implemented in the system of criminal cooperation. Based on the analysis of secondary sources of EU law and other documents, the legislative institutions realized that the protection of fundamental rights and the harmonization of the criminal justice systems of the Member States are of utmost importance for the sufficient operation of the quasi-automatic system of judicial cooperation that is based on the principle of mutual recognition. However, this first phase of development is very well described by the failed attempt of the European Commission for the adoption of a framework decision that would have harmonized the status of the suspect and the accused in the criminal procedure. The legislative proposal was turned down by the Council for various reasons. On the other hand, this proposal provided inspiration for the Council's 2009 Roadmap for strengthening the status of the individual in the criminal procedure. This Roadmap set out objectives that mostly realized the original proposal's aims, but it aimed for multiple secondary sources of EU law instead of a single source that incorporated all the objectives. The first phase of development finished with the conclusion of the Lisbon Treaty which provided new legal bases for the harmonization of the status of the suspect or the accused in the criminal procedure. As such, the second phase of the development started with a newly found political will for strengthening the protection of fundamental rights in the system of criminal cooperation. Accompanied by the necessary legal bases, this political will accelerated the development of the protective functions of European criminal law. As a result, the European Parliament and the Council adopted six directives which harmonize the status of the individual in the criminal procedure and an additional one that establishes the European Investigation Order. The latter introduced rules that can be viewed as realizing the idea of institutionalized distrust advocated for by scholars.

In addition, after 2016, the jurisprudence of the ECJ has also started to change for the better protection of fundamental rights. On the one hand, there was a change in its jurisprudence after its landmark decision in the *Aranyosi* and *Căldăraru* joined cases. In its judgement, the ECJ confirmed that the judicial decision that is subject to the principle of mutual recognition may be refused if its execution would result in the violation of fundamental rights of the concerned person. On the other hand, the directives adopted after the call of the Council's 2009 Roadmap opened certain aspects of the criminal procedure up for the ECJ's jurisprudence which was

effectively acted upon by the Luxembourg Court. It delivered landmark decisions in various preliminary ruling procedures. In certain cases, the ECJ went even further than its European counterpart, the ECtHR by providing higher standards for the procedural guarantees of the suspect or the accused.

Apart from the thorough analysis of the development of European criminal law and its protective functions, I also aimed to research the secondary sources of European criminal law which are at the heart of the development of the protection of fundamental rights. One of my objectives was to scrutinize whether the legal norms of these directives can be a model for strengthening the protection of fundamental rights in cooperation systems which originated from the 2000s. In terms of the EIO directive, it was confirmed that indeed its regulations which deviate from the standard technique of giving effect to the principle of mutual recognition in the criminal cooperation are fit for implementing in other cooperation systems. I have drafted suggestions for the method of their implementation. As such, the research outcome may be utilized for legislation which modifies the cooperation systems thus making the system of criminal cooperation more protective of fundamental rights. Another objective was to analyze the directives which were adopted for the call of the Council's 2009 Roadmap. I compared their rules with the ECHR and the standards of the ECtHR regarding the right to a fair trial. Even though the directives seem to achieve their goal, or in certain aspects, even overachieve their goal with introducing higher standards for the right to a fair trial, they failed to implement a harmonized system of legal remedies for cases when the procedural guarantees of the suspect or the accused are violated.

Moreover, the dissertation showcases a detailed analysis of the case law of the ECJ for highlighting its important role in formulating the system of criminal cooperation in the EU. This research could be utilized in more than one way. First and foremost, it may be used for analyzing the quality of the Hungarian implementation of the directives. The case law of the ECJ could provide guidance whether the Hungarian legislation and the case law of Hungarian courts are in line with the EU legislation. In addition, the ECJ has already worked out important standards which if codified would greatly enhance the clarity of the secondary sources of EU law regulating the procedural guarantees of the suspect or the accused. As such, this outcome of the research may also be utilized as legislation. However, the ECJ's case law also sheds light on the fact that the procedural autonomy of the Member States will not be abolished in terms of setting out the remedial rights of the suspect or the accused if it depends on the ECJ as it reiterated on multiple accounts that this right is secured for the Member States. This shows that

the directives should be modified for a truly harmonized system of judicial remedies, as the ECJ is not willing to narrow the procedural autonomy of Member States. In addition, the standards of application of the fundamental rights-based rejection ground worked out by the ECJ are also worth considering for codification. Apart from that, guidance for the regulation of detention conditions may also be drawn from this line of cases of the ECJ. As such, the extensive analysis of the ECJ's case law may be utilized for the thorough reform of the system of criminal cooperation in the EU.

#### **IV. List of publications written on the topic of the dissertation**

MOHAY Ágoston – SZIJÁRTÓ István: „Criminal procedures, preliminary references and judicial independence: A balancing act? Case C-564/19 IS” *Maastricht Journal of European and Comparative Law* 2022/5. 629-640.

SZIJÁRTÓ István: „A büntető anyagi jogot érintő jogharmonizáció, mint a szervezett bűnözés elleni uniós szintű küzdelem egyik elemének bemutatása, különös tekintettel a Stockholmi Program iránymutatásaira” *Scriptura* 2018/1. 110-127.

SZIJÁRTÓ István: „Az alapjogvédelem előtérbe kerülése az európai nyomozási határozat és a kölcsönös elismerés elve kontextusában” *Állam- és Jogtudomány* 2023/3. 52-70.

SZIJÁRTÓ István: „Az európai büntetőjog a szervezett bűnözés elleni küzdelem szolgálatában” *Jura* 2022/1. 122-134.

SZIJÁRTÓ István: „Az európai büntetőjog területi hatálya: az opt-out és a vészfékmechanizmus hatása az Európai Unió tagállamai büntető igazságügyi együttműködésére” *Scriptura* 2020/2. 70-83.

SZIJÁRTÓ István: „Az európai nyomozási határozat helye a büntető igazságügyi együttműködés uniós rendszerében – esetjogi elemzés” *Külügyi Műhely* 2021/2. 28-55.

SZIJÁRTÓ István: „Az Európai Unió Bírósága esetjogának az igazságügyi hatóság autonóm fogalmára gyakorolt hatása” in KÖHALMI László (szerk.): *PhD Tanulmányok 15.* (Pécs: Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Doktori Iskola 2021) 155-172.

SZIJÁRTÓ István: „Az Európai Unió Bíróságának ítélete az IS-ügyben: A fordításhoz és tolmácsoláshoz való jog és a tisztességes eljáráshoz való jog összefüggései a büntetőeljárásban” *Jogesetek Magyarázata* 2023/1-2. 47-52.

SZIJÁRTÓ István: „Az Európai Unió tagállamai büntetőjogának harmonizációja” in Rab Virág – Somogyi Bianka – Tuboly-Vincze Gabriella – Varga Tímea (szerk.): *XII. Nemzetközi és XIX. Országos Interdiszciplináris Grastyán Konferencia: lektorált tanulmánykötet* (Pécs: Pécsi Tudományegyetem Grastyán Endre Szakkollégium 2019) 197-207.

SZIJÁRTÓ István: „Az Europol és az Eurojust szerepe a közös nyomozócsoportokban” *Ügyészek lapja* 2019/6. 59-73.

SZIJÁRTÓ István: „Behind the Efficiency of Joint Investigation Teams” *Pécs Journal of International and European Law* 2020/1. 75-84.

SZIJÁRTÓ István: „The CJEU Partially Excludes Bulgaria from Taking Part in Judicial Cooperation – an Absolute Order or a Balancing Act? The Gavanozov II Case” *Pécs Journal of International and European Law* 2022/1. 45-50.

SZIJÁRTÓ István: „The implications of the European Investigation Order for the protection of fundamental rights in Europe and the role of the CJEU” *Pécs Journal of International and European Law* 2021/1. 66-72.

SZIJÁRTÓ István: „The Interplay Between the European Investigation Order and the Principle of Mutual Recognition” *European Papers* 2023/3. 1575-1597.

SZIJÁRTÓ István: „The right to translation in the criminal procedure and the meaning of essential documents – three recent cases of the European Court of Justice in the field of criminal cooperation between Member States” *Pécs Journal of International and European Law* 2023/1-2. 80-87.