

Summary

The duty of consistent interpretation in relation to framework decisions – on foundation and extent of the duty in the field of police and judicial cooperation in criminal matters

In its judgement in case C-105/03 *Criminal proceedings against Maria Pupino*, the European Court of Justice (hereinafter the Court) was called upon for the first time to interpret a framework decision adopted under the former so-called third pillar of the European Union (police and judicial cooperation in criminal matters). According to the former Art. 34 para. 2 sentence 2 lit. b TEU the Council may adopt framework decisions for the purpose of approximation of laws and regulations of Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect.

The Court (in para. 43) held that “the principle of interpretation in conformity with Community law is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34 (2) (b) EU.” By stating so, the Court transferred the principle of harmonious interpretation or indirect effect known from the former European Community to the field of police and judicial cooperation in criminal law.

The obligation to interpret national law in conformity with framework decisions has not become irrelevant after the entry into force of the Lisbon Reform Treaty on 1 December 2009 as long as decisions made under the former “third pillar” of the European Union continue to apply. Although new framework decisions since the enactment of the treaty can no longer be adopted, the duty of consistent interpretation remains scientifically interesting. Introduced by the Treaty of

Amsterdam and inspired by the directive of the European Community, the framework decision differs from the latter significantly.

This work analyses foundation and scope of the national courts' duty to interpret national law in accordance to framework decisions. The Court's reasoning is controversially discussed among legal scholars. One focus of interest is the derivation of the duty itself. Criticism particularly aims at the different legal classification of first and third pillar and thus of framework decisions and directives. Furthermore the details of the application of the duty raise a variety of problems. The dissertation substantiates the need for a concept of harmonious interpretation in relation to framework decisions independent from the known principle of interpretation in conformity with directives.

This concept is elaborated in five sub-questions. Part 1 places framework decisions into EU primary law and provides for the legal basis of the study. Part 2 examines the foundation of the duty of consistent interpretation in relation to framework decisions. Thereafter part 3 raises the complementary question of a parallel derivation of the duty from German law. Part 4 sheds light on basic questions of the field of police and judicial cooperation in criminal matters before part 5 determines content and limits of the duty of consistent interpretation in relation to framework decisions. Lastly an outlook analyses the status of framework decisions and the principle of harmonious interpretation after the enactment of the Treaty of Lisbon.

The structure of the former "third pillar" is characterized by an inclusion in the temple structure of the Union on the one hand and an isolation in an own column on the other. The Member States' commitment to promoting cooperation on European level goes along with caveats against a broad European character of the area police and judiciary. In this tension between the desire for integration on the one hand and restrictions of sovereignty on the other, the field of police and judicial cooperation in criminal matters – and thus the framework decision itself – is to be classified.

Regarding the legal foundation of the duty of consistent interpretation in relation to framework decisions two approaches are pursued. Firstly, an analysis of whether the duty can be derived from a possible existing approximation of the "third pillar" to the "first pillar" is answered in the negative. A deduction of the duty on "derivative grounds" fails due to the lack of synchronisation of the two fields. While an approximation to Community structures has taken place since the introduction of the field of police and judicial cooperation in criminal matters, there are still basic peculiarities to be listed due to a lacking

willingness to reach the same level of integration as in Community law. The second approach follows the idea of a foundation of the duty in the “third pillar” independent of an approximation of the area to Community law. The legal basis of the duty of consistent interpretation in relation to framework decisions is to be found in their binding nature stated by Art. 34 para. 2 sentence 2 lit. b TEU. The mandatory nature of framework decisions binds Member States not only in terms of legislative measures, but requires all domestic actors to fully comply with their objectives. For national courts it entails a duty to include the provisions of framework decisions in the course of justice. The explicit exclusion of direct effect can not be held against this obligation. The doctrinal differences between direct and indirect effect in terms of justification, methodology and impact result in a denial of a broad interpretation of the exclusion of direct effect. The principle of loyal cooperation and the existence and practical importance of the preliminary ruling procedure in the “third pillar”, however, offer no legal basis for a duty to interpret national law in conformity with framework decisions.

Concerning basic questions of the field of police and judicial cooperation in criminal matters, reference is made to the question of democratic legitimacy, the legal system and the peculiarities of criminal law as a subject of indirect effect.

Content and limits of the duty can only be studied from a national law perspective as only national methodology is of relevance in this respect. The work thus analyses the concept of harmonious interpretation from a German law perspective. The study shows that some – by far not all – aspects of the duty to interpret national law in conformity with framework decisions are actually answered concurrently to the duty in relation to directives. National courts are obliged to interpret the whole of national law in conformity with framework decisions irrespective of the date of adoption. Subject of the duty is not only national implementing legislation. Regarding the extent of the duty, harmonious interpretation is not to be regarded as an independent new method of interpretation, but to be integrated into the conventional canons. The controversial question of priority of consistent interpretation is responded negatively when it comes to framework decisions. The peculiarities of the “third pillar” contradict a preference of the concept of harmonious interpretation to the detriment of conventional canones. The question of when the duty begins to apply is not answered according to indirect effect of directives. When it comes to framework decisions, the obligation to interpret harmoniously does not apply with

the entry into force of the relevant act. Rather, the moment of legislative transformation is relevant for the duty to set in.

As to the limits of the duty to interpret national law in conformity with framework decisions, those deriving from national law are to be distinct from those evolving out of Union law. Limits under German law follow from general methodology and the regulatory area of criminal law. Union law generally limits the obligation to the scope of the relevant framework decision. Peculiarities of the “third pillar” establish limits national judges have to take into account when interpreting national law in conformity with framework decisions. In particular the protection of legitimate expectations obliges to limit the duty to the interpretation of national implementing legislation when it comes to negative consequences for the legal position of individuals.

The enactment of the Lisbon Treaty led to the abolition of the framework decision as an instrument of Union law. As mentioned, existing ones remain in force. Yet, the field of police and judicial cooperation in criminal matters has only formally been integrated into the standard method of Union law. Due to still existing restraints to fully integrate the field, various characteristics remain. This special status conflicts with an unreflected application of the methodology of consistent interpretation regarding directives enacted in this area.

The study states that the duty of consistent interpretation in relation to framework decisions follows rules different from those established in connection with the indirect effect of Community law directives. Correspondent to the independence of the field of police and judicial cooperation in criminal matters, indirect effect of framework decisions also follows its independent methods. As criminal matters are at the core of Member State sovereignty, national reservations toward a comprehensive integration prove to be the key element for the shape of indirect effect in the former “third pillar”. Harmonious interpretation in relation to framework decisions is thus characterised by a far-reaching protection and only careful influence of the Member States’ legal order.