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Aims

The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Taru Spronken, *An EU-Wide Letter of Rights*. Antwerp: Intersentia, 2010. 526 pages. ISBN: 978-94-0000-163-3. EUR 75.

As from the earliest stage of criminal proceedings, suspected and accused persons enjoy several rights; these rights should guarantee the fairness of criminal proceedings and protect people – when they are in the vulnerable position of being suspected or accused – against arbitrary,

disproportionate, and abusive actions of public authorities. But, are suspects and accused persons aware of these rights? At the Union level, this question has become increasingly urgent because cooperation in criminal matters between the Member States has intensified significantly in the past decade, mainly as a result of the implementation of the mutual recognition principle.

As described in the first chapter of the book in hand, the need for EU-wide minimum standards on procedural rights was already felt years ago. However, the failure to create a comprehensive instrument between 2004–2007 resulted in the decision to follow a step-by-step approach, as appears from the “roadmap for strengthening the procedural rights of suspected and accused persons in criminal proceedings” which was presented and adopted in 2009. To develop minimum norms with regard to information on rights was the second step to take (preceded by the first measure on the right to interpretation and translation in criminal proceedings). With a view to developing such minimum common standards on the right to be informed, the very aim of the research conducted by Spronken and the team of researchers behind this publication, is twofold. The first aim is to provide up-to-date information concerning the way suspects in criminal proceedings are informed of their rights in the various EU Member States, on the basis of which the second goal of this research can be achieved: the development of a model for an EU-wide Letter of Rights.

In my view, the researchers have certainly succeeded. The second chapter of the book as well as annexes 3–5 give an elaborate overview of whether and to what extent suspects and accused persons are informed of their rights in the respective Member States. Apart from the fact that this overview must have been very useful in designing the minimum norms as proposed in the current draft Directive on this issue (the first proposal dates from 20 July 2010, COM(2010)392 final), it contains detailed information with regard to the position of suspected and accused persons in the earliest stage of criminal proceedings in the different States. This information might serve the EU legislature to develop other harmonization measures, as well as helping researchers, but, probably more important, also practitioners at the national level. For prosecutors, defence lawyers, and judges, it is not so easy to get an insight in the specific position of suspected and accused persons in a certain Member State during the pre-trial stage, for instance because time is too short to examine the relevant legislation, or because the information sought is not available in an understandable language. At least for the period in which an EU-wide Letter of Rights does not exist yet, I am sure the information provided in this book might serve a wider audience than probably addressed.

It appears that notable differences exist among Member States on whether suspected or accused persons are at all provided with written information on their rights (either by means of a standardized Letter of Rights or otherwise in a written form) and if so, on which rights specifically. This might be considered a signal that action at the EU level is needed in order to facilitate mutual cooperation in criminal matters between the Member States. Though this sounds quite reasonable, I would like to raise the question whether an EU-wide Letter of Rights will indeed serve mutual recognition and legal assistance in practice. Is it not true that in the sphere of criminal matters in the EU, harmonization *is* minimum harmonization, as a result of which differences will always remain? The positive effects of this harmonizing instrument should not be overestimated. Of course, this leaves unaffected the fact that, in my opinion, independent reasons exist to raise the current level of procedural rights throughout the EU.

A second critical note relates to the use in practice of national Letters of Rights which apparently exist in 12 Member States. The outcomes of 20 interviews conducted with defence lawyers in these Member States suggest that the effect of these Letters of Rights is in practice limited. Various reasons have been given such as the level of understanding of the language used in the Letter of Rights, or the adequacy of (ad hoc) translation in case a Letter of Rights is not available in a language the suspect understands. However, most pivotal seems to be the reluctance of investigative authorities to provide suspects with sufficient time and opportunity to read and understand their rights. Though it is true that the researchers admitted that general conclusions cannot be drawn on the basis of such a small survey (20 interviews in 12 Member States), the outcomes do raise the question how an EU-wide Letter of Rights could prevent such

a (in my view) mentality problem occurring. The researchers seem to suggest that the key reason why investigative authorities in the relevant Member States can still have a negative influence on the effectiveness and value of the Letter of Rights is the lack of “adequate instructions as to how and when to make the Letter of Rights available to the person deprived of his liberty”. However, whether by providing such instructions a reluctant approach of investigative authorities can be avoided is in my view questionable, irrespective of the positive impulse such instructions *may* have. The fact remains that such instructions need to be followed in daily practice.

On the basis of the up-to-date information concerning the way suspects in criminal proceedings are informed of their rights in the various Member States of the EU, the researchers undertook the challenge of developing a model for an EU-wide Letter of Rights. Chapter 3 describes how this was done and which choices were made. A first choice was which rights the suspects should be informed of. It was decided that the “core basic rights” that apply as from the first contact between the suspect and the police in the context of a criminal investigation should be part of the model Letter of Rights, with the rights contained in the ECHR and the jurisprudence of the European Court of Human Rights (ECtHR) as a minimum. A thorough examination of what the right to information rooted in the ECHR and the case law of the ECtHR encompasses, combined with an examination of other human rights catalogues on this issue, resulted in a list of rights that should at least be part of an EU-wide Letter of Rights (pp. 65–67, it would go too far to sum them up here). I can fully agree with this list. However, I still have no answer to one important question that I already had from the very first moment I started reading this book: it concerns the question whether or not the obligations entailed in the future EU-wide Letter of Rights should exceed the minimum level established by the ECHR and ECtHR’s case law. That this question has not been given particular attention in the context of the conducted research seems to be a missed opportunity, because in my view the EU constitutes a beautiful platform to undertake the challenge to go beyond the minimum level required by the ECHR and the Strasbourg Court. It remains somewhat unclear whether this issue was taken into consideration by the researchers.

The Model EU-Letter of Rights for suspects and defendants in criminal proceedings that has been developed by the authors is presented in Chapter 4, including an explanatory memorandum. In addition, annex 7 contains translations of the Model in the 23 official languages of the EU. In comparison to several national Letter(s) of Rights, the researchers certainly succeeded in summing up the suspects’ rights in very clear terms, which must be understandable to a maximum amount of people. In this regard, the summary of rights presented on the first page of the Model Letter of Rights must be very useful too. The rights listed in this Model apply to suspects and defendants as from the moment they are deprived of their liberty.

At the moment this book was published, a Directive on the Right to Information in Criminal Proceedings had been proposed, including two Model Letters of Rights which were clearly based on the Model presented by Spronken and her team (one of these models has an indicative and additional character; it addresses persons who are deprived of their liberty on the basis of a European Arrest Warrant). As mentioned in the fourth chapter, there were some differences between the various Models: several rights listed in the authors’ proposal were not addressed in the Model presented in the draft Directive. These were the right to remain silent, the right to notify somebody of the deprivation of liberty, the right to consular assistance, and the right to medical care. It must gladden the authors of the book in hand that in the final compromise text of 11 November 2011 (Council document 16342/11), these rights are addressed. The right to remain silent is mentioned under D, the right to notify somebody (e.g. a family member or an employer) of the deprivation of liberty is mentioned under F. This draft provision F also mentions the right to notify consular authorities – which of course means less than being entitled to consular assistance. The right to medical care is also listed in the most recent version (under G), although restricted to situations of urgency, whereas the right to medical care formulated by the authors of this book applies irrespective of urgency.

The book deals with a very topical issue and provides enlightenment that might serve a wider audience than directly addressed. It is a rich source of information, not only on how suspects and

defendants at the national level of the Member States are informed of their rights, but also on the minimum level of rights that suspects and defendants in the earliest stage of criminal proceedings already have on the basis of the ECHR and Strasbourg case law. This has been translated by the authors into a Model Letter of Rights, which has influenced and must still influence the development of an EU-wide Letter of Rights. Despite the fact that some critical reflections are lacking, for instance with regard to the certain impact of an EU-wide Letter of Rights on mutual trust and mutual recognition, or with regard to the likeliness of a widespread and correct use in practice, the book offers a valuable tool not only for national and European legislatures, but also for practitioners, possibly when – in the future – an EU-wide Letter of Rights actually applies.

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