

Autonomous concepts

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InAbsentieAW

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Structure of the presentation

- What are autonomous concepts in EU law?
- Theoretical question: what does it actually mean to refer to 'autonomy'?
- Some case law on trial in absentia and EU criminal law concepts

The autonomous European legal order

- An autonomous concept must be interpreted independently!
- The idea of autonomy in EU law is mainly created through CJEU case law. From ***Costa v Enel*** to the ***Kadi*** case.

Costa: “By contrast with ordinary international treaties , the EEC Treaty has created its own legal system, which , on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to”

Kadi: “constitutional principles of the EU”

An umbrella concept

- Member State autonomy, EU law autonomous concepts (a competence question)
- Not up to the individual MS to have their own idea of what EU law entails (from the EU perspective, it is, inter alia, a question of consistency, effectiveness and legal certainty)
- Autonomous concepts are also embedded in the very point of mutual recognition based on trust and in general principles of EU law

European Convention on Human Rights

- *Basic point:* The operation of fundamental human rights would be subordinated to their sovereign will of Member States if they were not autonomous. E.g. Engel case on the definition of a sanction.
- The EU itself does not always follow definition provided by the ECtHR regarding the notion of criminal law Article 6 ECHR
- ECHR are general principles of EU law. But no EU accession to the ECHR (Opinion 2/13) yet (According to the CJEU: trust would be undermined in the AFSJ?).

The idea of autonomy as a theoretical concept

Understanding the idea of autonomy was, in Kant's view, key to understanding and justifying the authority that moral requirements have over us.

The source of legitimate political authority is not external to its citizens, but internal to "the will of the people."



See e.g.: M Rohlf, "Immanuel Kant", *The Stanford Encyclopedia of Philosophy* (2018 Edition).

Autonomous concepts in EU criminal law

- Autonomous concepts of EU criminal law, has emerged rather slowly.
- Interesting connection between the development of mutual recognition, autonomous concepts and trust in EU criminal law.

Mutual recognition as an expression of flexibility?

- from effectiveness (e.g. **Melloni**: allowing a MS to avail itself of Article 53 Charter to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing MS would undermine the principles of mutual trust and would, therefore, compromise the effectiveness of that framework decision.)
-to limits to mutual recognition (dignity, prison conditions e.g. Aranyosi, LM etc). *The LM* case still suggests that the assumption of trust must be taking into consideration, but extra information may be requested without endangering 'trust'.

Trial in absentia

- *Consider: IB case*, the Court stressed the importance of allowing for some national discretion in this area and especially the importance of enabling particular weight to be given to the possibility of increasing the requested persons' chances of reintegrating into society which also include a sentence imposed **in absentia**.

Autonomous concepts

- ***Mantello***, the Court stated that the *ne bis in idem* principle should be given an autonomous interpretation in EU law. And whether a person has been 'finally' judged is determined by the law of the Member State in which the judgment was delivered.
- **Dworzecki** 'summoned in person' and 'by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial' in that provision constitute autonomous concepts of EU law and must be interpreted uniformly throughout the European Union.

Concluding remarks

- The idea of autonomous concepts of EU criminal law concepts is closely connected with the wider EU aspiration of creating trust.
- If EU law relies on autonomous concepts to develop EU criminal law, does it need to harmonize more (a common definition of trial in absentia/ what it means to be present in a hearing)? Less harmonization? Proportionality?
- Rights of the individual? Area autonomous concepts only about the EU-MS bond or also about the EU citizens and collective agency?