

*Fundamental rights
challenges and EU cross
border proceedings
right to health and litigation
experiences*

NICOLA CANESTRINI
JUSTICE FOR ALL 25.10.2022



AREA
FREEDOM, JUSTICE
SECURITY
POST TAMPERE 1999

*mutual
recognition*

trust

rights

*the rights of individuals in
criminal procedure (art 82 TFEU)
- fundamental rights (ECJ)*

EUROPE AND FUNDAMENTAL RIGHTS

Treaty of European Union

[6/3. FUNDAMENTAL RIGHTS, AS GUARANTEED BY THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND AS THEY RESULT FROM THE CONSTITUTIONAL TRADITIONS COMMON TO THE MEMBER STATES, SHALL CONSTITUTE GENERAL PRINCIPLES OF THE UNION'S LAW]

European Convention Human rights

EU Charta (binds institutions as well)

CJUE

ECtHR

(r 10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6 (1) of the Treaty on European Union, determined by the Council (..)

(r 12) This FD respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union

(art 1/3) this FD shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.



*“not rights that
are theoretical or
illusory but rights
that are practical
and effective”*

ECTHR, ARTICO V ITALY JUDGMENT (1980)

“FUNDAMENTAL RIGHTS RISK ASSESSMENT IN ISSUING STATE”

*EP 2014 motion to review of EAW with fundamental rights refusal
ground*

*CGUE, C-404/15 Aranyosi e Caldararu, 5
April 2016, GS*

2 STEPS APPROACH

- DETENTION CONDITIONS
- FAIR TRIAL RIGHTS (INDIPENDENCE)

- ..



HEALTH RISK?

art. 23 FD 584/02

The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health.



***Irreversible
psychiatric
disease?***



“IT IS PRIMARILY UP TO EU LAW TO ESTABLISH THE STANDARDS OF PROTECTION OF FUNDAMENTAL RIGHTS TO WHICH THE LEGITIMACY OF THE EUROPEAN ARREST WARRANT, AND ITS CONCRETE EXECUTION AT NATIONAL LEVEL, ARE SUBJECT, SINCE THIS IS A MATTER SUBJECT TO FULL HARMONISATION (,.)

UNION LAW ITSELF COULD NOT TOLERATE THAT THE EXECUTION OF THE EUROPEAN ARREST WARRANT RESULTS IN A VIOLATION OF THE FUNDAMENTAL RIGHTS OF THE PERSON RECOGNIZED BY THE CHARTER AND ARTICLE 6(3) TEU.”

ITA [CONSTITUTIONAL COURT DECISION 216/21](#)

CJEU GRAND CHAMBER HEARING (27.9.2022)



A conceptual image showing a man in a white shirt and a blue striped tie, with two large red boxing gloves positioned in front of his chest. The background is dark. A teal banner with white text is overlaid on the gloves.

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