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The Legal Position of Framework Decisions

Abstract. The framework decisions, as the central legal act under the “third pillar” are some of the most significant non-typical documents from a dogmatic point of view within the EU law. The differences and specialities of this legislative act, correlated with the EC Treaty are available not only in the lawmaking process, but in juridical supervision as well. The main goal of this paper is to show the dogmatic and practical aspects of these two perspectives. First of all it is necessary to predict, why the framework decisions are not products of classic public international law (according to the position of the German Federal Constitutional Court), rather than special documents, and do they consequently belong to a supranational system. The missing infringement procedure within the police and judicial cooperation in criminal matters makes the judicial control of the Member State’s effective enlargement extremely difficult. Secondly it is important to demonstrate the alternative methods of the ECJ, which is based on case law from the Court of Luxembourg, in the field of the directives. In this context the study will analyze the consequences of the important “Pupino” Judgment.

Keywords: third pillar, EC Treaty, framework decision, ECJ

Introduction

The free movement of persons, and the fall of the physical borders within the EU caused a harmonization needs in the field of the judicial cooperation.¹ In the matter of these the position of the criminal matter has been converted, from a field as a part of the Member State’s sovereignty to a flexible cooperation based on a common interest.²

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¹ Huseman, R. C.: Die Beeinflussung des deutschen Wirtschaftsrechts durch Rahmenbeschlüsse der Europäischen Union. *Zeitschrift für Wirtschafts- und Steuerstrafrecht* (2004) 454.

² von Bubnoff, E.: Legislative Gestaltung des europäischen Rechtsraums und deren Umsetzung in den Mitgliedstaaten. In: Pache, E. (ed.): *Die Europäische Union – Ein Raum der Freiheit, der Sicherheit und des Rechts?* Baden-Baden, 2005. 105.

The political heart of this idea was based on the institutional revision involving the Maastricht Treaty. The variations were leading to leave the single economic perspective of the integration, and to expand it with other policies. This expansion resulted the establishing of the so called “third pillar”, nowadays with the official term police and judicial cooperation in criminal matters.

The main goal of this area of EU law is to create a team work within criminal policy, which is able to guarantee the highest level of safety for peoples within the EU. The rules concerning the third pillar were created not within the usual contractual frameworks of the EC, but in the in 1992 newly launched EU Treaty. But the Member States separated with the Treaty-revision of Amsterdam the identity of the regulation and it was putting every judicial cooperation concerning the visa, the asylum, the immigration and the public matters in the deeply integrated EC Treaty.

The reasonable proof according this paper that the framework decisions left the category of the rule made by the classic international public law, but arose to the level of a supranational system, and it made the ultimate valuation of the framework decisions very difficult and controversial.³ The obvious contrasts and specialities of this legislative act, correlated with the EC Treaty are available not only in the lawmaking process, but in the juridical supervision as well. The main goal of this paper is to remarkably present the dogmatic and functional aspects of these two attitudes, and to prove an enthusiastic proper place for the framework decisions within the EU law.

Legislation Mechanism

The procedure

The EU Treaty doesn't create a new institutional framework for the new policies introduced by the Maastricht Treaty. The EU Treaty “shall be founded on the European Communities”, which has been “supplemented” by the Member States.⁴ For this purpose there wasn't any need for establishing a new institutional body. The EU Treaty tried to strive towards an uniform legal system.⁵ That's why the well known institutions are the key players in the Provisions on Police and Judicial Cooperation in Criminal Matters, as well.

³ Kraus-Vonjar, M.: *Der Aufbau eines Raums der Freiheit, der Sicherheit und des Rechts in Europa*. Frankfurt a. M., 2002. 7.

⁴ Article 1 sec 3 TEU.

⁵ Article 3 sec 1 TEU.

The legislation procedure contains previously in its first step an attribute, which is rather an additional attribute for the public international law. The Commission's initiative monopoly, well known from the first pillar,⁶ is impaired. Beside the Commission the member states won the right to propose a subject for a framework decision.⁷ Before the reconciliation within the European Council a discussion is taking place in the supporting bodies under the Council, which consisted of officials delegated by the Member States.⁸ After it a coordination panel⁹ deals with the draft to clear legal questions elaborated by the supporting bodies under the Council.

It is a legitimate question, how the role of the European Parliament looks like. The maximum contribution of the European Parliament is limited under the legislation procedure to the consultation.¹⁰ It is statutory for the Member States to carry out the consultation procedure, otherwise the ECJ void the framework decision due to a formal injury.¹¹ However to follow the relevant opinion of the European Parliament is absolutely not binding for the Council. This weak role of the European Parliament shows the problem of the democracy deficit within the third pillar.

The Council makes the final decision about the framework decision with acting unanimously.¹² The sensitive character of the regulation field and the criminal sovereignty of states purposely avoided establishing a qualified majority decision within the third pillar. To acting unanimously needs a higher level of cooperation from the part of the Member States. The Members of the Commission are entitled only to be present at the debate.¹³ This clearly reflects that the main decision power is in the hand of the Member States.¹⁴

⁶ Article 251 TEC.

⁷ Article 34 sec 2 TEU.

⁸ Huseman: *op. cit.* 448.

⁹ Article 41 sec 1 TEU.

¹⁰ Article 39 sec 1 TEU.

¹¹ Case 138/79 *Roquette Frères* [1980] *European Court Reports* 3333, para. 33.

¹² Article 34 sec 2 TEU.

¹³ Article 36 sec 2 TEU.

¹⁴ Müller-Graf, P.-C.: Europäische Zusammenarbeit in den Bereichen Justiz und Inneres. In: Müller-Graf, P.-C. (ed.): *Europäische Zusammenarbeit in den Bereichen Justiz und Inneres*. Baden-Baden, 1996. 32.

The distinguishing nature of the Member State's obligation generated by the framework decision

The result of the legislation procedure is the framework decision, which causes a real obligation for the Member States. According the Treaty “the 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 method”. It means, Member States can choose free the tools from the constitutional instruments, which are suitable for an effective implementation, but the implementation itself is obligatory. To achieve an effective implementation, the Member States should concentrate to the central task set up by the framework decision. Therefore the freedom of the Member States is limited to the “effet utile” of the judicial rule. This result focused mentality of the ECJ means not only a positive legislative action from the part of the Member States, but a negative as well. A negative action basically causes in this context on the one hand the avoidance of recent legislation actions being not coherent with the main task of the framework decisions, and on the other hand annulment of former inconsistent law.

Juridical Control

After representing the specialities of the legislative procedure the study deals with the modified juridical control within the third pillar. With the Treaty of Amsterdam won the ECJ a stronger competence within the third pillar, but in a comparison with the Community law it is still poor. The competence of the ECJ is defined by Article 46 EU. However this Article doesn't create the real competence, just points out Article 35 EU. Thereby the ECJ's jurisdiction in the third pillar is limited to processes described Article 35 EU.

Preliminary rulings

The rules about the preliminary decision contain specialities compared with the procedures described in 234 EC. The formal divergence is recognizable in the double competence ruling. Firstly, the Member States can declare the competence of the ECJ concerning this particular procedure at all.¹⁵ If the competence is given, secondly the Member States can decide which Courts can take part in the procedure. There are two alternatives. The Member States can

¹⁵ Article 35 sec 2 TEU.

actively enable to any courts or tribunals, or just for those, whose decisions there is no judicial remedy under national law, to request the Court of Justice to give a preliminary ruling on a question rose in a case pending before it.¹⁶ To make any restriction involving the subject of questions is not possible.¹⁷ It is also not possible to recall the declaration made by the Member States.¹⁸

The interpretation of the Articles describing this special juridical procedure by the ECJ is an interesting academic question. The Treaty allowed just the interpretation of legal documents based on these articles of the Treaty, but there isn't any relevant information about the interpretation of this section of the Treaty itself.¹⁹ The Court answered this question positively.²⁰

The legality procedure

The legality procedure has also specific items. The number of the applicants is limited to the Commission and to the Member States. In this context it is missing, by contrast to the Community law, the right to apply for individuals and for the European Parliament. According to the language of the Treaty the framework decisions have no direct effect to individuals, so that's why they have also no right to complain directly against it. The underprivileged position of the European Parliament was already mentioned. The missing right to apply for individuals and for the Member States is a political symbol, which is characteristic for the inter-governmental cooperation, and not for a supranational system.

If during the legislation procedure the Parliament is not been consulted, cause a typical formal procedure failure.²¹ An example for an important substance item is the correct legal basis. If the judicial review shows the Community act has an incorrect legal basis the ECJ will repeal the measure.²² In this context it is relevant, to which pillar a legal act belongs passed by the EU, to the first or to the third?²³

¹⁶ Article 36 sec 3 TEU.

¹⁷ Röben, V.: in *Grabitz/Hilf* Article 35 Rn. 10.

¹⁸ Brechmann, W.: in *Calliess/Ruffert* Article 35 EUV Rn. 4.

¹⁹ Borchardt, K-D.: in *Lenz/Borchardt* Article 36 Rn. 4.

²⁰ Case C-105/03 *Pupino* [2005] *European Court Reports* 5285, para. 37.

²¹ Case 138/79 *Roquette Frères* [1980] *European Court Reports* 3333, para. 33.

²² Case 45/86 *APS I* [1987] *European Court Reports* 1493 para. 12.

²³ Case C-170/96 [1998] *European Court Reports* 2763, para. 16.

An example: Case C-176/03 Commission vs. Council

Because of the continuous marine pollution the EU decided, to create a legal document against this special criminal offence. The Council adopted a framework decision under the third pillar. The main task of the framework decision was to control the so called “forum shopping effect”, and to realize a same level of punishment for the entire offender. It is also possible to enact legal documents with criminal competence for policies under the first pillar too, if the effective implementation of this policy is just in this way realizable.²⁴ The ECJ created two key presuppositions for documents with criminal regulation within the first pillar. For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.²⁵

In contrast there is not to find any regulation concerning the environmental protection in the title IV of the TEU. On account of this, and because of the possibility to create legal acts concerning in criminal matter, the ECJ repealed the measure.²⁶ It is also not to forget, according to Article 47 TEU “nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them”.

The missing infringement procedure

The essential difference to the juridical procedure for directives is the missing infringement procedure within the third pillar. There is no possibility to exert a direct pressure on the Member States for the sake of the complete implementation. Because of the special regulation about the legitimacy of the Court according to Article 35 TEU in combination with Article 46 TEU, the ECJ has not the right for this special procedure.

Nevertheless the infringement procedure is not the only way to protect immediately the rights of the individuals. Therefore the ECJ devised the doctrine of the direct effect of EC directives, because of the false implantation into the

²⁴ Case C-2/88 *Zwartweld* [1990] *European Court Reports* 4405, para. 17.

²⁵ Case 68/88 [1989] *European Court Reports* 2965, para. 24.

²⁶ Case C-176/03 [2005] *European Court Reports* 7879, para. 51.

legal system of the Member States. However the TEU excluded obviously this option by the framework decisions.²⁷

Furthermore the rule about the framework decisions has a *lex imperfecta* character. Because this weak control the alternative methods remained for the ECJ to protect the rights of the individuals. This ambitious approach was the EU framework decision conformity interpretation of the applicable national law.

The EC Directive-conformity interpretation of the applicable national law, as a dogmatically prototype

The EC-Directive conformity interpretation of the law made by the Member States as an alternative protection mechanism for the rights of the individuals was made by the ECJ and belongs since 1984 to its permanent jurisdiction.²⁸ According to Article 249 sec 3 there is freedom for the Member States to choose the method of the implementation of directives into the particular legal system. Pursuant to the Court this independence means just a freedom concerning the formal implementation. In the matter of that the ECJ has the right to supervise the implementation from the substantially point of view. In this context the Member States required to do any general and concrete steps for the effective implementation. The grade of the juridical supervision is the result of the implementation compared with the central task ruled by the framework decision. If the implementation by the Member States was not effective enough, the ECJ obliged the Member States to interpret directive conformity the applicable domestic law.²⁹ This obligation is based on the loyalty of the Member States according to Article 10 ECJ.

The imperative for the conform interpretation is definitely provided, as a special protection mechanism in favor of the individuals, if the implementation made by the Member States is unable to realize the rights regulated by the EC directive. On the other hands there is a fundamental need for the possibility of the interpretation. In this context it has to be a general possibility of interpretation within the Member State's legal order. Otherwise there is a need for the possible interpretation in the special context created by the Member State's law as well.³⁰

²⁷ Article 34 sec 2 TEU.

²⁸ Case 14/83 *Colson* [1984] *European Court Reports* 1891 para. 15, Case 79/83 [1984] *European Court Reports* 1921, para 15.

²⁹ Case 14/83 *Colson* [1984] *European Court Reports* 1891 para. 26.

³⁰ Case 14/83 *Colson* [1984] *European Court Reports* 1891 para. 28.

Furthermore the interpretation by the Member State's Court has its own limits. The obligation on the national courts refer to the substance of the directive, when interpreting the applicable rules of its national law and is limited by the general principles of the community law, such as the principles of legal certainty and non-retroactivity of law.³¹

The obligation on the framework decisions conformity interpretation of the applicable domestic law

The form of the obligation on the directive conformity interpretation of the national law was transported to the third pillar by the ECJ.³² This figure based on the EC-loyalty according to Article 10 TEC. However such a regulation is missing from the TEU. Nevertheless the ECJ argued that with the Maastricht Treaty was presented a new level of integration. In this context the EU developed not only concerning the number of policies, but the deepness of the integration as well. In the matter of that, it is possible to bring the juridical mechanism made by the ECJ from the area of the first pillar to the equivalent fields of the third one. Otherwise the TEU is not "a new stage in the process of creating an ever closer union among the peoples of Europe" according Article 1 sec 2 TEU.³³

The qualification of the framework decisions as a document of the classic public international law does not make any different in this context. As Advocate General Kokott mentioned, the Member States are obligated on the directive-conformity interpretation too, if this is an instrument of the classic public international law.³⁴ In the matter of that, the qualification of the framework decisions as a document of the public international law is not suitable to isolate absolutely the Member State's legal order.³⁵

The constitutional limitations of the obligation on the framework decisions conformity interpretation of the domestic law

It is important to point out that; the Court transported not only the figure of the obligation on the framework decisions conformity interpretation of the applicable national law, but the limits of this obligation as well.

³¹ Case 80/86 *Kolpinghuis Nijmegen* [1987] *European Court Reports* 3969 para. 13.

³² C-105/03 *Pupino*, [2005] *European Court Reports* 5285.

³³ Case C-105/03 *Pupino*, [2005] *European Court Reports* 5285, para. 42.

³⁴ Opinion of Advocate General Kokott, Case C-105/03 *Pupino* [2005] *European Court Reports*, 5285 para. 37.

³⁵ Adam M.: Die Wirkung von EU-Rahmenbeschlüssen im mitgliedstaatlichen Recht. *Europäische Zeitschrift für Wirtschaftsrecht* (2005), 560.

Firstly, it is initially prohibited to exceed the border between the so called *contra legem* judge made law and acceptable juridical interpretation. There is three main form of the juridical interpretation.³⁶ The first named *prater legem* basically suggests the legal text immanent interpretation, which is limited to the minor corrections or completions of the written law by judges. During the second art of interpretation named *extra legem–intra ius* the judge leaves the field of the written law, because it doesn't give a proper answer in a special question. But the judge's interpretation is staying within the law. The third category named *contra legem* means a legal interpretation against the written law, which is only allowed in a legal emergency situation.

In the matter of that, it is forbidden to realize so the interpretation of the applicable national law by the domestic court that the interpretation will be equivalent with the directive effect of the framework decisions. In other way such an interpretation a typical form of the *contra legem* interpretation,³⁷ because according the TEU it is absolutely prohibited the direct effect of framework decisions.³⁸

Secondly, the obligation on the framework decisions conformity interpretation of the domestic law is a tool created by the ECJ to protect effectively the rights of individuals. It is also forbidden to use this protection mechanism against the individuals. Because of the special character of the framework decisions, as a rule in the field of the criminal matters, such a constitutional restriction is very important. So any interpretation is forbidden in the third pillar too, which creates a criminal responsibility or makes the adjudication the position of the individuals more difficult.³⁹

Thirdly, the ECJ pointed out that, the domestic courts must follow the fundamental rights of the EU, consisted of the constitutional tradition of the Member States on the one hand, and the Convention of Fundamental Rights signed in Rome 1950 on the other hand. The direct addressees of the EU's fundamental rights are the organs of the EU.⁴⁰ However the Member States are indirectly obliged to follow the EU's fundamental right as far as they apply EU law. So during the interpretation the national judge must follow not only to the

³⁶ Ukrow, J.: *Richterliche Rechtsfortbildung durch den EuGH*. Baden-Baden, 1995. 70.

³⁷ Wasmeier, M.: *Der Europäische Haftbefehl vor dem Bundesverfassungsgericht*. *Zeitschrift für Europäische Studien* (2006) 5.

³⁸ Article 34 sec 2 b.

³⁹ Case C-105/03 *Pupino* [2005] *European Court Reports* 5285, para. 45.

⁴⁰ Article 6 sec 2 TEU.

conformity with the framework decisions, but must follow at the same time the fundamental rights of the EU.⁴¹

The protection of the individual rights: alternative methods

The direct effect of the framework decisions as an alternative mechanism protecting the individual rights is missing under the third pillar. Furthermore the infringement procedure is also missing, as an indirect possibility to protect the rights of the individuals. So the one possibility to put pressure on the Member States due to the effective implementation of the framework decisions is the obligation on the framework decisions conformity interpretation of the national law created by the ECJ. However there is another protection mechanism according the case law, the liability of the State for loss and damage resulting from breach of its obligations under EU law.⁴²

The liability of the State for loss and damage resulting from breach of its obligations under EU law was created by the ECJ because of the following reasons. Firstly, the direct effect of directives was ineligible due to exist of the legal relationship between individuals. The directives create a legal obligation just for the Member States, so a horizontal direct effect of directives is prohibited.⁴³ Secondly, the infringement procedure was also not able to protect the right of the individuals, because the directive was not implemented, however the deadline for the implementation ended more years ago.

It has been consistently held that the national courts, whose task is to apply the provisions of Community law in areas within their jurisdiction must ensure that those rules take full effect and must protect the rights which they confer on individuals.⁴⁴ The obligation of Member States to make good such loss and damage is based on Article 10 of the EC Treaty, under which the Member States are required to take all appropriate measures, whether general or particular, to ensure fulfillment of their obligations under Community law.⁴⁵

So if the infringement procedure is missing, the direct effect is forbidden according the Treaty, it is allowed any other mechanisms to secure the protection

⁴¹ Egger A.: Die Bindung der Mitgliedstaaten an die Grundrechte in der III. Säule. *Europäische Zeitschrift für Wirtschaftsrecht* (2005), 665.

⁴² Case 6/90 *Francovich* [1991] *European Court Reports* 5357.

⁴³ Case C-188/89 *Marshall* [1990] *European Court Reports* 3313, para. 47.

⁴⁴ Case 106/77 *Simmmenthal* [1978] *European Court Reports* 629, para. 16, and Case C-213/89 *Factortame* [1990] ECR I-2433, para. 19.

⁴⁵ Case 6/90 *Francovich* [1991] *European Court Reports* 5357, para. 36.

of individual's rights. In this context the ECJ transported on the "bridge", set up between EC directives and EU framework decisions with the Pupino Case, the obligation of the framework decision conformity interpretation of the domestic law. Nevertheless it seems well possible to transport the liability of the State for loss and damage resulting from breach of its obligations under EU law as well. However the state loyalty according to Article 10 EC is missing under the third pillar,⁴⁶ in a hypothetical case where the protection of individuals and the realization of the EU law's effectiveness with other ways not possible, the ECJ will introduce the state responsibility in the field of the criminal matters as well.

The state liability has also additional criteria, which must be fulfilled. Firstly, the result prescribed by the directive should entail the grant of rights to individuals. Secondly, it should be possible to identify the content of those rights on the basis of the provisions of the directive. Finally, the third condition is the existence of a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties.⁴⁷

The Legal Position of the Framework Decisions

After presenting the special regulation in the area of the legislation and juridical supervision of the framework decisions by contrast to the directives, as a typical legal act within the first pillar, the study will focus to the legal position of it. The main question in this area is to find the right position of the framework decisions between a legal act made by the classic international law, and a supranational legal act.

Cyber crime Convention of the Council of Europe vs. Framework decision

To point out the differences between documents that belonged to the classic public international law, and a framework decision, there is a need to compare it from the analytical point of view. In the matter of that the research tries to compare two documents made in the same subject, but one is a Convention under the classic public international law, and the other is a framework decision.

⁴⁶ In the case Pupino was the missing of Article 10 EC not enough to avoid the European Court of Justice to introduce the obligation on the framework decisions conformity interpretation of the national law.

⁴⁷ Case 6/90 *Francovich* [1991] European Court Reports 5357, para. 40.

The Convention was purposely created sooner, so several Member States regarded an own ruling within the EU as unnecessary.⁴⁸ However the Council stayed by the original idea to make an own EU ruling.⁴⁹

There is not to find a difference in the terminology of the two documents.⁵⁰ The differences are available on the one hand in the perspectives, on the other hand the above mentioned nature of the international liability of the States caused by the documents.

Due to the global dimension of the cyber crimes the Council of Europe decided to make a comprehensive regulation, to stop the expansion of cyber crime without border. In this context the Convention regulated not only substance, and procedure law, but divers form of international cooperation as well.⁵¹ In the matter of that the Convention obviously presented a real wide horizontal perspective. However in the field of the vertical perspective the Convention is limited to a general level. By contrast the framework decision is concentrated to three essential matter of fact in the horizontal level, but in the vertical perspective tries to create a precise regulation.

To understand this difference it is important to consider the other main difference, the substantive nature of the liability created by the documents. The Convention made by the Council of Europe is legally binding for states, which state ratified it. In the reason of that it was possible a really wide horizontal perspective. Currently Cyprus, Denmark, Hungary, Estonia, France, Lithuania, Romania, Netherlands and Slovenia ratified the Convention, the other 18 EU Member-States not.⁵² For these 18 EU Member States the Convention is not legally bound. In contrast the legal binding by the framework decision started immediately after coming into force.

Arguments of the national constitutional courts about the legal position

In 2005 two national constitutional courts decided about national legal act, implemented the arrest warrant framework decision, and declared it incompatible with the constitution. However this study did not focus on the material aspects

⁴⁸ Sanchez-Hermansilla F.: Neues Strafrecht für den Kampf gegen Computerkriminalität. *Computer und Recht* (2003), 778.

⁴⁹ Gercke M.: Der Rahmenbeschluss über Angriffe auf Informationssysteme. *Computer und Recht* (2005), 468.

⁵⁰ Sanchez-Hermansilla: *op. cit.* 778.

⁵¹ Gercke: *op. cit.* 472.

⁵² Simplified Chart of signatures and ratifications is available under (Date of downloading: 13/03/2007). <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp>

of the arrest warrant framework decision, the decisions of the national constitutional courts include key aspects concerning the legal position of the framework decisions.

The German Federal Constitutional Court (BVerfG) surprisingly pointed out that, the legal characteristic of the third pillar is a simply intergovernmental cooperation,⁵³ and the area belongs despite of the development to the public international law.⁵⁴ Firstly, the decision procedure based according to the BVerfG on consensus, as representing a typical character for decision making within the intergovernmental cooperation. Secondly, the active participation of the European Parliament within the legislation procedure is limited to the consultation. However these two involved characteristics are available in the decision making within the supranational first pillar as well.⁵⁵ Meanwhile last the persuasive argument supported by the BVerfG is applicable, which pointed out the missing juridical supervision the implementation actions of the framework decisions made by the Member States. Nevertheless this single argument makes the arrangement of framework decisions to act of the classic international law not clear.⁵⁶ The Polish Constitutional Tribunal's decision has the same opinion concerning the legal position of the framework decisions. According to the Tribunal this measure has the nature of a regular international agreement, as a result of cooperation between the Member States.⁵⁷

However the conclusion of these two decisions made by national constitutional courts was the same, the reaction of the national legal orders was absolutely different. In Germany the legislator designed a new national legal act to implement the arrest warrant framework decision considering the criteria of the compatibility with the German Constitution pointed out by the German Federal Constitutional Court. However this criterion does not strictly fulfill the anti-discriminating regulation of the EU.⁵⁸ By contrast the President of the Republic of Poland introduced a bill to the Marshal of the Sejm proposing to change the constitution.⁵⁹ As a result of this change of the Polish Constitution now it fulfills now the criteria of the compatibility with the arrest warrant framework decision. With other words expressed, Germany purposely made a

⁵³ *Bundesverfassungsgerichts* Decision 18. 07. 2005. para. 73.

⁵⁴ *Ibid.* para. 81.

⁵⁵ For example: Articles 61, 93, 175 sec 2, 308 TEC.

⁵⁶ Wasmeier: *op. cit.* 28.

⁵⁷ Leczykiewicz, D.: Note to the Trybunał Konstytucyjny (Polish Constitutional Tribunal), Judgment of 27 April 2005, *Common Market Law Review* (2006) 1183.

⁵⁸ Reinhardt J./Düsterhaus D.: *Verfassungsgemäß, aber gemeinschaftswidrig. Neue Zeitschrift für Verwaltungsrecht* (2006) 432.

⁵⁹ Leczykiewicz: *op. cit.* 1191.

new regulation which is now compatible with the German Constitution, and not consistent with the EU law, nevertheless Poland has changed the own Constitution to make it compatible with the arrest warrant framework decision.

Conclusion

The framework decisions, as the central legal act under the “third pillar” are some of the most significant non-typical documents from a dogmatic point of view, within the EU law. The obvious contrasts and specialties of this legislative act, correlated with the EC Treaty are available not only in the lawmaking process, but in juridical supervision as well.

The legislation procedure is different from conventional form of the law-making under the supranational law. However there are examples within the first pillar, where the main decisions form is to acting unanimously and the participation of the European Parliament is limited to the consultation.⁶⁰ Framework decisions are not document of classic public international law (according to the position of the German Federal Constitutional Court), and they consequently do belong to a supranational system.

The main argument, beside the qualification of these legal acts in the Constitutional Treaty, the existing legal “bridge” set up between EC directives and EU framework decisions made by the ECJ. On this connection was so far transported the obligation of the framework decision conform interpretation of the national law. However the establishment of state liability by the ECJ within the criminal matters is not to be prohibited. This method is not only a possibility to protect the rights of the individuals, but also a method to exert a pressure on the Member States due to an effective implementation.

⁶⁰ For example: Articles 61, 93, 175 sec 2, 308 EC.