Criminal Suspects’ Rights and EU Law*
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I. Introduction
To what extent does EU law protect the rights of criminal suspects? In April 2004, the Commission proposed a Framework Decision on this issue, which is currently under negotiation in the Council. The multi-annual Hague Programme concerning Justice and Home Affairs issues calls upon the Council to agree on this proposal by the end of 2005, and following its adoption, EU law will obviously make a highly visible contribution to the protection of criminal suspects’ rights. But in the meantime, EU law already guarantees criminal suspects’ rights in two main areas: definitely in the context of EC internal market law, by means of the application of the principle of non-discrimination on grounds of nationality; and potentially also within the context of EU Framework Decisions on mutual recognition in criminal matters. Moreover, these two sources potentially interact in certain cases to ensure the protection of suspects’ rights.

II. EC internal market law
The non-discrimination principle set out in Article 12 EC requires that equal treatment on grounds of nationality is guaranteed within the scope of the EC Treaty, and the Court of Justice has made clear that this principle applies to criminal proceedings that have sufficient connection to EC internal market rights.

The case of Pastoors concerned a dispute between a German road transport company and one of its drivers, on the one hand, and the Belgian government on the other. Belgian rules required payment of a sum of money once it was discovered that certain road transport offences had been committed. This national requirement was set out in order to implement EC legislation concerning harmonisation of social rules in road transport and the enforcement of those rules by way of including recording equipment in lorries. A connected Resolution on implementation of the Regulations states that Member States should develop effective means of prosecuting non-resident drivers who commit breaches of the rule on their territory, and recover the fines imposed on the basis of the national or international law in force. Also, a subsequent Directive sets out rules on checking procedures to ensure implementation of the legislation.

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* The following is an updated version of seminar papers given at ERA seminars on the rights of suspects in EU law, given in London in November 2003 and Strasbourg in April 2004.
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2 The proposal is not further discussed in this paper, since it has not yet been adopted.
4 Regs. 3820/85 and 3821/85 (OJ 1985 L 370/1 and 8).
5 Point 2(b) of the Resolution (OJ 1985 C 348).
To implement the EC obligations, Belgian law required an offender to pay either 10,000 Belgian francs immediately or face prosecution. But where the offender has no official or permanent residence in Belgium and chooses the latter option, he or she had to lodge a deposit of 15,000 Belgian francs per breach, in default of which the vehicle would be impounded at the driver's risk and expense. Mr. Pastoors paid a deposit totalling 110,000 Belgian francs following a detection of eleven breaches of the EC rules by the Belgian authorities, then challenged the validity of the national rules in light of Article 6 ECHR and Article 6 EC (now Article 12 EC). The national court asked the Court of Justice whether Article 12 EC was violated by the national rules concerned.

The Court observed that "the national legislation in question does not directly discriminate on grounds of nationality, since the obligation to lodge a sum of money by way of security is imposed on any offender who is not resident in Belgium, irrespective of nationality."" However, the Court reiterated its prior case law that "the rules regarding equality of treatment between nationals and non-nationals forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead to the same result"." In particular, "a national rule which draws a distinction on the basis of residence, in that non-residents are denied certain benefits which are, conversely, granted to persons residing within national territory, is liable to operate mainly to the detriment of nationals of other Member States, since non-residents are in the majority of cases foreigners, and thus to constitute indirect discrimination by reason of nationality.""

The Belgian rules clearly amounted to discrimination on these criteria. But the Court also pointed out that such discrimination could be justified by objective circumstances. Therefore the Court accepted in principle the Belgian government's argument that the lack of EC-related measures or bilateral conventions on the issue of enforcement of criminal judgments raised "a real risk that enforcement of a judgment against a non-resident would be impossible or, at least, considerably more difficult and onerous", which "objectively justifies a difference in treatment between resident and non-resident offenders". Yet having conceded this, the Court then objected that the Belgian rules, which imposed a separate security requirement for each breach with the impounding of the vehicle in case of default, "appears to be excessive". It followed that "national legislation of the kind at issue in the main proceedings is manifestly disproportionate, and thus prohibited by Article 6 of the Treaty." It followed that there was no need to examine the issue from a human rights perspective.