Victims and multiple competent jurisdictions

How to consider their interests in the forum choice?

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Introduction

• A ‘new’ perspective, beyond the Directive
• Where the trial takes place
• EU objective (Art. 82 TFEU)
• Concurring jurisdictions
  – “Positive conflicts”: parallel proceedings for the same facts
  – “Negative conflicts”: a ‘denial of jurisdiction’
• Ongoing research project on conflicts of jurisdiction
The problem…

EU

- **Negative conflicts**: security for EU citizens
- **Positive conflicts**: use of resources in a common area, good administration of justice

Defendant

- **Positive conflicts**: risk of *bis in idem*, or arbitrary decision on the forum
- **Negative conflicts**: …’t*ant mieux!’

Victims

- **Negative conflicts**: lack of protection
- **Positive conflicts**: …?
“cross-border victimisation can impose difficulties in many ways”

Attention to cross-border victims

Duty of cooperation

Harmonisation of national systems
...when several Member States are competent

Multiple investigations?
Multiple trials?

Multiple burdens
Choice of one forum
Denial of jurisdiction
How are conflicts of jurisdiction solved in the EU?

- No common rules on jurisdiction
- EU *ne bis in idem*
  
  (54 CISA and 50 CFR)
- No binding mechanisms
- Consensus between national authorities (prosecutors)
  
  (Possible support of Eurojust)
- No participation of defendants and victims
- No hierarchical criteria, but case-by-case approach
  
  (Only Eurojust guidelines)
Current scenario

A matter of international relations

Neglected position of defendants and victims

National approaches on victims and jurisdiction

Unclear role of victims in the forum choice
Current scenario *in practice*

- Eurojust guidelines

  “Prosecutors *must take into account the interests of victims* and whether they would be prejudiced if any prosecution were to take place in one jurisdiction rather than another”

- Field research at Eurojust
  - Different answers
  - Residence of victims
  - Victims as witnesses?
Future scenario?

- Victims’ interest should be better considered
  - Humane administration of justice
  - Autonomous position of victims
  - Also in the light of the EU citizenship:
    - Non-discrimination and free movement
    - A new position vis-à-vis the joint Member States?
How to include their interests in a future instrument?

1. What are the victims interests?

2. What active role of victims in the forum choice?
1. What interests?

- Multi-faceted interests
  - Higher compensation
  - Higher sentence
  - More participation rights
  - More ‘restorative justice services’
  - Better ‘negotiated justice’
  - Better protection from the offender
  - Better protection from secondary victimisation
  - Practical reasons…
  - ...better chance to obtain justice

(a) Should they prevail over defendants’ interests?
(b) Lesson from private law: ‘substance neutral’ criteria.
(a) Victims v. defendants?

• Interests to be weighed up against each other
  – Defendants (Art. 6 and 7 ECHR)

• Victims’ fundamental rights at stake in the forum choice? (i.e. is there a legitimate expectation on the choice of one jurisdiction?)
  – Positive obligations?
  – Right to a fair trial?
  – Right to a lawful judge (tribunal previously established by law)?
(b) any ‘objective’ criteria?

- Linked with territoriality
  - Member State of residence (not nationality)
  - Member state where the result occurred
- Number of victims
- Costs for the participation in the proceedings
- Availability of evidence
2. What active role in the decision?

- Same standing as defendants?
- Full participation?
- Right to effective remedy (47 CFR)
- …also for negative conflicts?
Conclusion

• Exercise of jurisdiction (in the EU) should not be only a ‘matter of international relations’ but part of the criminal process

• Victims should be part of this process...

• …and part of a common EU area
Thank you!

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