

The Pan-European General Principles on Transnational Mutual Assistance and Participation in Administrative Procedures and Transfrontier Cooperation between Administrative Authorities

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Abstract: The pan-European general principles on transnational mutual assistance and participation in administrative procedures deal with ad hoc cooperation between administrative authorities of different CoE Member States in relation with a specific administrative procedure to be carried out by an administrative authority of one of these states. The pan-European general principles on transfrontier cooperation deal with forms of institutionalised cross-border cooperation between administrative authorities of different CoE Member States usually based on an agreement between these administrative authorities with the aim of jointly to providing public services together or coordinating administrative actions (especially in the field of regional spatial planning).

The question of the paper is whether effective transnational administrative mutual assistance and cooperation between the administrative authorities of the CoE Member States can also have an 'individual rights dimension'. May there be a positive obligations on CoE Member States for transnational mutual assistance and transfrontier cooperation arising from pan-European individual rights?

The paper will address several specific questions relating to cross border cooperation between public authorities:

1. Can the non-recognition of documents issued by another CoE Member State or the failure to obtain information from another CoE Member State in the course of an administrative procedure conducted by that administrative authority be regarded as an interference by the authority with individual rights if that results in disadvantages or procedural complications for the person concerned (such as a certain "presumption of fraud") which are not suffered by persons who are not the subject of cross-border administrative investigations?
2. Under what conditions can such an interference can be justified? Would it be conceivable to recognise a principle of mutual trust between CoE Member States "based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values" on which the CoE is founded, as stated in Article 3 SCoE" (cf. the wording of ECJ [Full Court], Opinion 2/13 of 18 December 2014 at [168]), at least to the effect that there is a certain obligation for effective (not too cumbersome) transnational administrative cooperation where this is helpful for the realisation of individual rights of commuters, people living in border areas or people who live or have lived abroad?
3. Do people living in border areas between CoE Member States have a right to expect the respective neighbouring states to promote cross-border cooperation between administrative authorities and collectivities in order to reduce the disadvantages associated with the border-area-situation and to take account of real cross-border commuting situations including the need to keep local border traffic open and as smooth as possible?