

THE CIRCUMSTANCES OF THE CRIME AND THE ASSESSMENT OF PUNISHMENT: A COMPARATIVE ANALYSIS BETWEEN FRENCH AND BELGIAN CRIMINAL LAW IN THE CONTEXT OF EU LEGAL HARMONIZATION

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Abstract

The article examines the crime circumstances and punishment in French and Belgian criminal law within the context of European Union (EU) legal harmonization. It examines the historical foundations of both systems, their Napoleonic origins, and their sociopolitical divergences. The study focuses on crime classification, judicial discretion, and sentencing, highlighting principles like proportionality and individualization. It also assesses the impact of EU legal harmonization efforts on national criminal justice systems. Key points of convergence includes mutual recognition of judicial decisions and standardized legal definitions, but also significant divergences in restorative justice approaches and sentencing practices. The study highlights the challenges of balancing legal uniformity with national diversity in the evolving European legal landscape.

Keywords: criminal law harmonization, comparative criminal justice, mitigating and aggravating circumstances, judicial discretion, EU legal influence

1. Historical context of criminal law in France and Belgium

The criminal law systems of France and Belgium, influenced by the Napoleonic Code, have a complex history. Despite their shared origins, they have largely diverged due to sociopolitical changes, including governance, cultural identity, and federal structures, which have affected their modern legal traditions.

1.1. Napoleonic influence: Shared foundations

The Napoleonic Code, introduced in 1804 under Napoleon Bonaparte, was a significant legal framework in Europe, including Belgium. It aimed to provide clarity, predictability, and accessibility to laws, a departure from the fragmented and inconsistent practices of pre-revolutionary Europe.¹ The Code introduced principles like the presumption of innocence, equality of citizens, and codification of crimes and punishments, providing a standardized legal foundation that transcended regional disparities. For France, the Napoleonic Code became a cornerstone of its

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¹ MERRYMAN, J. H. – PEREZ-PERDOMO, R. (2007). *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* (3rd ed.). Stanford University Press.

legal system, reflecting post-revolutionary values and centralizing authority. Belgium, under French rule from 1795-1815, also adopted the Napoleonic Code, laying the groundwork for its legal system.² Despite independence in 1830, Belgium retained much of the French legal structure, including its approach to criminal law.³

1.2. Sociopolitical divergence and evolution

France and Belgium's legal systems have evolved due to their different sociopolitical contexts. France, a unitary state, maintained a centralized legal and administrative structure, reinforcing the Napoleonic Code and minimizing judges' discretionary power.⁴ Belgium, a federal state, gained autonomy in its regions, influencing its legal system, including criminal law. Despite retaining the core principles of the Napoleonic Code, Belgium's legal⁵ framework adapted to accommodate linguistic and cultural diversity and decentralization of governance.⁶ This led to regional variations in implementation and enforcement, reflecting federalism's influence. Belgium's sociopolitical climate also fostered a more pluralistic approach to criminal law, focusing on restorative justice approaches alongside traditional punitive measures. This pluralism is evident in Belgium's criminal justice policies,⁷ which are often shaped by regional considerations and emphasize restorative justice approaches alongside traditional punitive measures.⁸

1.3 Contrast in legal culture and application

France and Belgium's legal systems have evolved due to their different sociopolitical contexts. France maintains a centralized structure, reinforcing the Napoleonic Code and minimizing judges' discretionary power.⁹ Belgium, a federal state, gained autonomy in its regions, influencing its legal system, including criminal law.¹⁰ Despite retaining the Napoleonic Code, Belgium's legal framework adapts to accommodate linguistic and cultural diversity and decentralization of governance,¹¹ leading to regional variations in law implementation and enforcement.¹² Belgium's sociopolitical climate also fosters a more pluralistic approach to criminal law, emphasizing restorative justice alongside traditional punitive measures.¹³

France and Belgium's criminal law systems, rooted in the Napoleonic Code,¹⁴ share principles of justice, equality, and codification. However, their sociopolitical trajectories have led

² EMSLEY, C. (2007). *Crime and Society in England 1750–1900* (4th ed.). Pearson Education.

³ LANGER, M. (2004). „From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure.” *Harvard International Law Journal*, 45(1), 1–64.

⁴ HULLS, N., ADAMS, M. – BOMHOFF, J. (Eds.). (2009). *The Legitimacy of Highest Courts' Rulings: Judicial Deliberations and Beyond*. T.M.C. Asser Press.

⁵ Code pénal belge (2023). *Service Public Fédéral Justice*.

⁶ Code pénal français (2023). *Legifrance*.

⁷ DELMAS-MARTY, M. – Spencer, J. R. (2002). *European Criminal Procedures*. Cambridge University Press.

⁸ LANGER, M. (2004). „From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure.” *Harvard International Law Journal*, 45(1), 1–64.

⁹ VOGLER, R. (2008). *A World View of Criminal Justice*. Routledge.

¹⁰ Mitsilegas, V. (2016). *EU Criminal Law*. Oxford University Press.

¹¹ Peers, S. (2021). *Justice and Home Affairs Law in the European Union*. Bloomsbury Publishing.

¹² European Commission. (2023). *Victims' Rights Directive: Protecting Victims Across the EU*.

¹³ European Commission. (2023). *Victims' Rights Directive: Protecting Victims Across the EU*.

¹⁴ Directive (EU) 2011/36/EU on combating trafficking in human beings.

to significant differences in their legal frameworks.¹⁵ France's centralized approach contrasts with Belgium's federal and pluralistic system, highlighting the influence of governance structures and cultural diversity.¹⁶ Despite these differences, both systems remain interconnected through shared history and ongoing efforts to harmonize with European legal standards.¹⁷

2. Circumstances of crime in French and Belgian criminal law

The assessment of criminal responsibility and the imposition of penalties are crucial components of any legal system.¹⁸ France and Belgium, rooted in the Napoleonic tradition, classify crimes based on severity and use a nuanced approach to determine punishment. However, their methods vary due to differing legal cultures, governance structures, and evolving judicial priorities.

2.1. Definition and classification of crimes

2.1.1. The French legal system

In France,¹⁹ criminal offenses are classified into three categories, as outlined in the *Code pénal*:

1. *Contraventions (Infractions mineurs)*: These are minor offenses, such as traffic violations or public disturbances, which are punishable by fines or administrative sanctions rather than imprisonment.²⁰

2. *Délits (Infractions intermédiaires)*: These are mid-level offenses, including theft or assault, which are punishable by imprisonment of up to 10 years and/or fines.²¹

3. *Crimes (Infractions graves)*: These encompass the most serious offenses, such as murder, rape, and terrorism, and carry penalties of extended imprisonment, life sentences, or other severe measures.²²

In France,²³ criminal offenses are categorized into contraventions (minor offenses), délits (middle-level offenses), and crimes (graves offenses). Contraventions are punishable by fines or administrative sanctions, while délits can lead to imprisonment for up to 10 years. Crimes, like murder, rape, and terrorism, carry severe penalties. The classification determines court jurisdiction, procedural rules, and penalties.²⁴

¹⁵ Framework Decision 2002/584/JHA on the European Arrest Warrant.

¹⁶ FICHERA, M. (2011). „Mutual Trust in European Criminal Law.” *European Public Law*, 17(4), 530–551.

¹⁷ VOGLER, R. (2008). *A World View of Criminal Justice*. Routledge.

¹⁸ European Parliament. (2023). *Digitalization in Justice Systems in the EU*.

¹⁹ Code pénal français (2023). *Legifrance*.

²⁰ DELMAS-MARTY, M. – Spencer, J. R. (2002). *European Criminal Procedures*. Cambridge University Press.

²¹ LANGER, M. (2004). „From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure.” *Harvard International Law Journal*, 45(1), 1–64.

²² VOGLER, R. (2008). *A World View of Criminal Justice*. Routledge

²³ Code pénal français (2023). *Legifrance*.

²⁴ HUYSE, L. (1996). *Justice in a Federal Belgium: Historical and Contemporary Perspectives*. Leuven University Press.

2.1.2. The Belgian legal system

Belgium follows a similar tripartite classification of criminal offenses, as defined in the *Code pénal belge*.²⁵

1. Contraventions (*Overtredingen*): Minor infractions punishable by fines or short-term administrative penalties.²⁶

2. Délits (*wanbedrijven*): Mid-level offenses, such as burglary or fraud, can result in imprisonment of up to 5 or 10 years.²⁷

3. Crimes (*Misdaden*): Serious offenses, including homicide and sexual violence, which carry the harshest penalties, such as life imprisonment.²⁸

Belgium's federal structure²⁹ varies procedural aspects based on regional jurisdiction, language, and local judicial practices, but the classification of crimes closely aligns with the French model, influenced by the Napoleonic Code.

2.2. Evaluation of mitigating and aggravating circumstances

France and Belgium³⁰ use codified principles to evaluate mitigating and aggravating circumstances, ensuring proportionality and fairness in sentencing, while allowing judicial discretion within defined parameters.

2.2.1. Mitigating circumstances

Mitigating circumstances reduce offender culpability or offense severity, potentially leading to lighter penalties. Both legal systems consider similar factors,³¹ including:

1. Mental state of the offender: Psychological disorders, diminished responsibility, or emotional distress may lead to reduced sentences.

2. Age and maturity: Youthful offenders or those with limited understanding of their actions may benefit from mitigation.

3. First-time offenders: Individuals with no prior criminal record often receive leniency.

4. Voluntary repentance: Efforts to repair harm, such as restitution or apologies to victims, are considered mitigating factors.

In France and Belgium,³² mitigating circumstances are outlined in Article 132-1 of the *Code pénal*, allowing judges to adjust sentences based on the offender's personal circumstances, and

²⁵ Code pénal belge (2023). *Service Public Fédéral Justice*.

²⁶ DELMAS-MARTY, M. – SPENCER, J. R. (2002). *European Criminal Procedures*. Cambridge University Press.

²⁷ ANGER, M. (2004). „From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure.” *Harvard International Law Journal*, 45(1), 1–64.

²⁸ VOGLER, R. (2008). *A World View of Criminal Justice*. Routledge.

²⁹ Code pénal belge (2023). *Service Public Fédéral Justice*.

³⁰ HULS, N., ADAMS, M. – BOMHOFF, J. (Eds.). (2009). *The Legitimacy of Highest Courts' Rulings: Judicial Deliberations and Beyond*. T.M.C. Asser Press.

³¹ VOGLER, R. (2008). *A World View of Criminal Justice*. Routledge.

³² ANDERSON, M. R. (2005). *Napoleonic Codes and Their Influence on Modern Legal Systems*. Cambridge University Press.

judicial discretion allows for penalty reductions in cases involving mental health conditions or socioeconomic vulnerabilities.³³

2.2.2. Aggravating circumstances

Aggravating circumstances increase the severity of an offense or offender's culpability, often leading to harsher penalties, and are common in both systems,³⁴ including:

1. **Premeditation:** Crimes that are planned or deliberate are treated more severely.
2. **Recidivism:** Repeat offenders face stricter penalties under both French and Belgian law.
3. **Use of weapons:** The involvement of firearms or other dangerous instruments heightens the seriousness of the offense.
4. **Vulnerability of the victim:** Crimes committed against vulnerable individuals, such as children, elderly people, or individuals with disabilities, are subject to enhanced penalties.

France and Belgium have specific aggravating factors in their Code Penal,³⁵ with France's Article 221-4 increasing penalties for murder when the victim is a public official, and Belgium's Code Penal focusing on hate crimes, terrorism, and organized group offenses.³⁶

2.3. Judicial application and discretion

2.3.1. France

French judges maintain a codified framework but have significant discretion in evaluating circumstances.³⁷ They justify their decisions in written rulings, explaining how factors influence sentencing. Sentence guidelines ensure consistency, but judicial independence remains central to the French system.

2.3.2. Belgium

Belgium's³⁸ federal structure and pluralistic legal culture allow regional variation in evaluating circumstances. Judges consider codified factors and local norms, integrating restorative justice initiatives like mediation between offenders and victims to promote reconciliation and social reintegration.

³³ JOUTSEN, M. (1996). „Alternatives to Imprisonment in Europe.” *European Journal on Criminal Policy and Research*, 4(2), 83–97.

³⁴ FOBLETS, M.-C. – MARTYN, G. (2012). *Restorative Justice and Federalism in Belgium: A Comparative Perspective*. *Journal of Legal History*, 33(4), 415–435.

³⁵ DELMAS-MARTY, M. (2006). *The Contribution of French Criminal Law to the Principles of Justice in Europe*. Oxford University Press.

³⁶ FOBLETS, M.-C. – MARTYN, G. (2012). *Restorative Justice and Federalism in Belgium: A Comparative Perspective*. *Journal of Legal History*, 33(4), 415–435.

³⁷ Code pénal français (2023). *Legifrance*.

³⁸ Code pénal belge (2023). *Service Public Fédéral Justice*.

2.4. Comparative insights

France and Belgium,³⁹ both rooted in the Napoleonic tradition, have distinct approaches to evaluating mitigating and aggravating circumstances. France emphasizes centralized principles, while Belgium adopts a more flexible approach influenced by its federal structure.⁴⁰ Despite these differences, both systems aim to balance fairness and proportionality in sentencing, prioritizing justice for both offenders and victims.⁴¹ The evaluation of circumstances remains a vital mechanism for individualizing punishment and addressing the unique context of each criminal act. Both systems maintain a commitment to fairness and proportionality, ensuring sentencing reflects the gravity of the offense and the individual circumstances of the offender.⁴² These principles continue to evolve in response to societal changes and European harmonization efforts.

3. The assessment of punishment in French and Belgian criminal law

The assessment of punishment is a crucial aspect of the criminal justice system, reflecting the law's principles and societal values.⁴³ In France and Belgium, both rooted in the Napoleonic tradition, proportionality and individualization are the cornerstones of sentencing. However, these systems have notable differences due to variations in governance structures, legal traditions, and judicial practices.⁴⁴ This article examines the principles guiding punishment in France and Belgium, highlighting specific legal provisions and case studies.

3.1. Principles guiding punishment

3.1.1. Proportionality

The principle of proportionality is a fundamental aspect of French and Belgian criminal law, ensuring that punishments are proportionate to the severity of the offense. This principle, rooted in justice as fairness, aims to balance the rights of the offender with societal interests, preventing excessive or arbitrary punishments. In France, the Code pénal explicitly incorporates proportionality into its sentencing framework, while Belgium's Code pénal belge⁴⁵ requires judges to consider the nature of the offense, harm caused, and the offender's intent when determining penalties.

³⁹ JOUTSEN, M. (1996). „Alternatives to Imprisonment in Europe.” *European Journal on Criminal Policy and Research*, 4(2), 83–97.

⁴⁰ European Commission. (2023). *European Arrest Warrant (EAW)*.

⁴¹ Directive (EU) 2017/541 on combating terrorism.

⁴² Framework Decision 2002/584/JHA on the European Arrest Warrant.

⁴³ Directive 2012/29/EU establishes minimum standards on the rights, support, and protection of victims of crime.

⁴⁴ Directive 2011/36/EU on preventing and combating trafficking in human beings.

⁴⁵ Code pénal belge (2023). *Service Public Fédéral Justice*.

3.1.2. Individualization of punishment

Individualization in sentencing is a principle that focuses on addressing the unique circumstances of each case, including the offender's personal characteristics.⁴⁶ This approach allows for flexibility in law application, serving as both retribution and rehabilitation. In France,⁴⁷ individualization is codified in the Code pénal and reinforced by judicial practices. Judges have broad discretion to tailor sentences based on factors like the offender's age, criminal history, and potential rehabilitation.⁴⁸ Belgium also emphasizes individualization, particularly in its restorative justice framework, which often incorporates alternative sentencing measures like community service or mediation to promote social reintegration and address underlying criminal behavior.⁴⁹

3.2. *Legal provisions and case studies*

3.2.1. France: Emphasis on codification and judicial discretion

France's legal system is characterized by a codified approach to punishment, with clear guidelines for judges and discretionary adjustments.⁵⁰ Article 221-1 of the Code pénal prescribes a life imprisonment sentence for premeditated murder, but mitigating factors like mental illness or voluntary surrender can lead to reduced sentences. The trial of Jacqueline Sauvage, convicted of killing her abusive husband, exemplified these principles, with a 10-year sentence initially imposed. However, mitigating factors led to a public debate on proportionality and fairness, ultimately leading to a presidential pardon.⁵¹

3.2.2. Belgium: Flexibility and restorative justice

Belgium's federal structure and restorative justice approach to sentencing encourages non-custodial measures, especially for first-time offenders and juvenile delinquents.⁵² Article 2 of the Probation Act allows for conditional sentences, where offenders agree to meet specific requirements in exchange for reduced penalties.⁵³ Belgium's restorative approach is exemplified by the implementation of mediation in juvenile delinquency cases, where the offender met with the victim to discuss the crime's impact, leading to restitution and community service, and emphasizing reconciliation and rehabilitation over retribution.⁵⁴

⁴⁶ MITSILEGAS, V. (2016). *EU Criminal Law*. Oxford University Press.

⁴⁷ Code pénal français (2023). *Legifrance*.

⁴⁸ PEERS, S. (2021). *Justice and Home Affairs Law in the European Union*. Bloomsbury Publishing.

⁴⁹ FICHERA, M. (2011). „Mutual Trust in European Criminal Law.” *European Public Law*, 17(4), 530–551.

⁵⁰ European Commission. (2023). *European Arrest Warrant (EAW)*.

⁵¹ Directive (EU) 2017/541 on combating terrorism.

⁵² Framework Decision 2002/584/JHA on the European Arrest Warrant.

⁵³ Directive 2012/29/EU establishes minimum standards on the rights, support, and protection of victims of crime.

⁵⁴ Directive 2011/36/EU on preventing and combating trafficking in human beings.

3.3. *Comparative insights*

France and Belgium both prioritize proportionality and individualization in their criminal law, but their approaches differ due to their legal and cultural contexts.⁵⁵ France's centralized legal system emphasizes codified rules and judicial discretion, while Belgium's federal structure and restorative justice initiatives provide greater flexibility and focus on addressing the root causes of criminal behavior.⁵⁶ This is evident in the treatment of juvenile offenders and non-violent crimes, where France often subjected juvenile offenders to specialized courts and detention measures. Belgium's restorative justice programs offer innovative approaches to victim-offender reconciliation, which are less prominent in the French system.⁵⁷ These differences highlight the influence of sociopolitical factors and cultural values on the administration of justice, highlighting the diverse ways in which punishment can be assessed and implemented.

4. The role of EU law in criminal law harmonization

The article examines the role of EU law in criminal law harmonization, focusing on initiatives like the European Arrest Warrant (EAW) and Framework Decisions. It also examines the impact of EU law on national criminal justice systems, highlighting how it influences mitigating and aggravating factors, as well as punishment standards. The EU's aim is to ensure justice, facilitate cross-border cooperation, and uphold fundamental rights.

4.1. *EU Initiatives in criminal Law harmonization*

4.1.1. European Arrest Warrant (EAW)

The European Arrest Warrant (EAW), introduced by the 2002 Framework Decision, is a key part of the EU's criminal justice efforts. It streamlines the extradition process, replacing lengthy political and judicial procedures with a standardized system based on mutual recognition of judicial decisions.⁵⁸ This system enables swift transfer of individuals accused of serious offenses between jurisdictions, preventing national borders from hindering justice. The EAW emphasizes mutual trust among member states, ensuring fairness and human rights protection. It has proven effective in combating transnational crimes like terrorism, drug trafficking, and human trafficking.⁵⁹

4.1.2. Framework Decisions and directives

The EU uses Framework Decisions and directives as legislative tools to establish minimum criminal law standards, requiring transposition into national law, allowing for flexibility in implementation compared to regulations.⁶⁰

Prominent examples including:

⁵⁵ MITSILEGAS, V. (2016). *EU Criminal Law*. Oxford University Press.

⁵⁶ PEERS, S. (2021). *Justice and Home Affairs Law in the European Union*. Bloomsbury Publishing.

⁵⁷ FICHERA, M. (2011). „Mutual Trust in European Criminal Law.” *European Public Law*, 17(4), 530–551.

⁵⁸ European Commission. (2023). *European Arrest Warrant: Enhancing Judicial Cooperation in the EU*.

⁵⁹ Directive (EU) 2017/541 on combating terrorism.

⁶⁰ Code pénal français. (2023). *Legifrance*.

1. The 2008 Framework Decision on Combating Organized Crime (2008/841/JHA) provides definitions and penalties for criminal activities committed by organized groups.

2. The 2016 EU Directive on Combating Terrorism (Directive (EU) 2017/541) standardizes terrorist offense definitions and sets minimum penalties across the EU.

These initiatives aim to reduce discrepancies in criminal justice practices while respecting the diversity of legal traditions within the EU.

4.2. How EU Law affects national criminal justice systems

EU law significantly impacts member states' criminal justice systems, especially in areas requiring cross-border cooperation, through various manifestations.⁶¹

4.2.1. Standardization of legal definitions

EU initiatives aim to standardize criminal offense definitions, ensuring member states adopt consistent terminology and criteria. For instance, the combating terrorism directive provides a uniform definition of terrorist offenses, criminalizing recruitment, training, and financing in all states. This standardization promotes cooperation and prevents offenders from exploiting legal variations.

4.2.2. Coordination of penalties

EU law influences the severity and structure of penalties for specific crimes, with Directives and Framework Decisions setting minimum thresholds. For example, Directive 2019/713 mandates member states to impose penalties based on the gravity of offenses, including a minimum prison sentence of six months for serious cases.

4.2.3. Strengthening fundamental rights

EU law prioritizes protecting fundamental rights in criminal justice systems, ensuring fair trials, legal representation, and protection from inhumane treatment. These standards influence national practices, necessitating reforms in areas like pretrial detention, interpreter access, and treatment of vulnerable defendants.⁶²

4.2.4. Mitigating factors

EU law encourages mitigating factors in sentencing,⁶³ especially in cases involving vulnerable individuals or extraordinary circumstances. Directives like 2011/93/EU encourage member states to consider juvenile offenders' rehabilitation potential as a mitigating factor in sexual abuse and exploitation cases, and 2011/36/EU requires member states to reduce or waive penalties for

⁶¹ MITSILEGAS, V. (2016). *EU Criminal Law*. Oxford University Press.

⁶² FOBLETS, M.-C. – MARTYN, G. (2012). *Restorative Justice in Belgium: A Comparative Perspective*. Journal of Legal Studies.

⁶³ PEERS, S. (2021). *Justice and Home Affairs Law in the European Union*. Bloomsbury Publishing.

trafficking victims under duress. These provisions aim to balance retributive justice with rehabilitative goals, ensuring proportionate and humane sentences.⁶⁴

4.2.5. Aggravating factors

The EU standardizes aggravating factors in law to ensure consistent treatment of heinous crimes. The Directive on combating terrorism requires offenses causing widespread fear or destabilizing societal structures to be treated as aggravated.⁶⁵ The 2008 Framework Decision on combating racism and xenophobia mandates member states to consider racial, ethnic, or religious motives as aggravating factors in hate crime cases.

4.2.6. Punishment standards

The EU has significantly influenced the structure of punishment through alternative sentencing measures and restorative justice. Directives like 2016/800 and 2012/29/EU promote non-custodial measures for juvenile offenders and victim compensation, shaping national approaches to sentencing.⁶⁶ EU law plays a crucial role in criminal law harmonization, fostering legal coherence, ensuring justice, and upholding fundamental rights across member states. Initiatives like the European Arrest Warrant and Framework Decisions streamline cross-border cooperation and standardize definitions, penalties, and procedural safeguards. EU law has contributed to greater consistency in criminal justice while respecting national legal traditions. As the EU tackles emerging challenges like cybercrime and terrorism, its role in shaping criminal law across Europe will remain indispensable.⁶⁷

5. Comparative analysis: points of convergence and divergence in French and Belgian criminal Law

This section examines the historical and legal roots of the criminal justice systems of France and Belgium,⁶⁸ focusing on their shared Napoleonic influence and proximity. Both systems emphasize codification and systematic legal frameworks, but also display notable differences influenced by sociopolitical contexts, governance structures, and varying interpretations of European Union law. The article examines areas where EU influence has brought alignment and highlights the implications of their divergences.

⁶⁴ VOGLER, R. (2008). *A World View of Criminal Justice*. Routledge.

⁶⁵ European Commission. (2023). *European Arrest Warrant: Enhancing Judicial Cooperation in the EU*.

⁶⁶ Framework Decision 2002/584/JHA on the European Arrest Warrant.

⁶⁷ European Commission. (2023). *European Arrest Warrant (EAW)*.

⁶⁸ Code pénal belge. (2023). *Service Public Fédéral Justice*.

5.1. Points of convergence under EU influence

5.1.1. Mutual recognition of judicial decisions

France and Belgium are aligned with EU initiatives promoting mutual recognition of judicial decisions. They actively participate in the European Arrest Warrant system, which facilitates the extradition of suspects and convicts between EU member states.⁶⁹ This system has streamlined cross-border cooperation, particularly in cases of organized crime, terrorism, and human trafficking. This alignment reflects the EU principle of mutual trust, which requires member states to recognize each other's legal systems as fair and compliant with human rights standards.⁷⁰

5.1.2. Standardization of legal definitions

The EU has standardized the definitions of criminal offenses, ensuring consistency across member states like France and Belgium. The 2008 Framework Decision on combating organized crime and Directive on combating terrorism criminalize acts like recruitment, training, and financing for terrorist purposes.⁷¹ These standardized definitions have reduced legal ambiguities and enhanced cross-border judicial cooperation. France and Belgium have integrated EU-mandated safeguards for the protection of fundamental rights into their criminal justice systems, such as the EU Charter of Fundamental Rights guaranteeing fair trial rights and Directives like 2016/800 on procedural safeguards for children in criminal proceedings.⁷²

5.2. Key areas of divergence

France and Belgium differ significantly in governance structures. France's centralized legal system emphasizes uniformity and strict adherence to national codes, while Belgium's federal structure allows for regional autonomy, leading to variations in legal interpretation and implementation across its linguistic and cultural regions. This decentralization can complicate the implementation of EU directives, as it requires Belgium to reconcile regional practices with overarching EU standards.⁷³

5.2.1. Approach to restorative justice

Belgium and France have both embraced restorative justice, with Belgium focusing on victim-offender mediation and community-based alternatives. However, France's approach remains punitive, with a stronger focus on deterrence and incarceration. French juvenile courts are more likely to impose custodial sentences than Belgian counterparts, which prioritize educational measures and community service. Both countries aim to promote social reintegration and deterrence.⁷⁴

⁶⁹ FOGLETS, M.-C. – MARTYN, G. (2012). *Restorative Justice in Belgium: A Comparative Perspective*. Journal of Legal Studies.

⁷⁰ Framework Decision 2002/584/JHA on the European Arrest Warrant.

⁷¹ Directive 2012/29/EU establishes minimum standards on the rights, support, and protection of victims of crime.

⁷² Directive 2011/36/EU on preventing and combating trafficking in human beings.

⁷³ MITSILEGAS, V. (2016). *EU Criminal Law*. Oxford University Press.

⁷⁴ FICHERA, M. (2011). „Mutual Trust in European Criminal Law.” *European Public Law*, 17(4), 530–551.

5.2.2. Sentencing practices and judicial discretion

French sentencing practices are heavily influenced by codified rules, with judges expected to adhere to strict guidelines outlined in the Code pénal. While judicial discretion exists, it operates within a narrow framework. Belgian judges enjoy greater flexibility, particularly in cases involving mitigating or aggravating circumstances.⁷⁵ Belgian judges are more likely to consider alternative sentencing measures, such as suspended sentences or probation, even in cases where the offense would traditionally warrant imprisonment in France. Belgium places greater emphasis on rehabilitation. Both countries are bound by EU law, but their approaches to transposing directives into national legislation differ. France adopts a more centralized and uniform approach, ensuring EU mandates are integrated into its national legal framework with minimal variation. Belgium faces challenges in achieving consistent implementation across its regions, leading to delays and discrepancies.⁷⁶

5.3. Implications of divergence

The disparities in French and Belgian criminal law systems significantly impact domestic and EU-level justice.⁷⁷

1. Complexities in Cross-Border Cooperation: Sentence disparities and judicial discretion can hinder cross-border cooperation, especially in cases requiring mutual recognition of judgments, such as when a proportionate sentence in Belgium is perceived as excessively lenient in France.

2. Impact on Legal Harmonization: Belgium's decentralized structure challenges EU harmonization goals due to regional implementation variations, necessitating additional compliance mechanisms to ensure uniformity.⁷⁸

Balancing Uniformity with Diversity: The EU's criminal justice systems of France and Belgium show both convergence and divergence under EU law. While the EU aims to promote common standards, it must also accommodate the unique characteristics of each member state's legal system.⁷⁹ Differences in governance structures, restorative justice practices, and sentencing approaches highlight the enduring influence of national legal traditions. These points of divergence highlight the challenges of achieving legal harmonization in a union characterized by cultural and legal diversity. Despite these challenges, the continued alignment of France and Belgium under EU initiatives can foster greater coherence in European criminal justice.

⁷⁵ JOUTSEN, M. (1996). „Alternatives to Imprisonment in Europe.” *European Journal on Criminal Policy and Research*, 4(2), 83–97.

⁷⁶ Code pénal belge (2023). *Service Public Fédéral Justice*.

⁷⁷ FOGLETS, M.-C. – MARTYN, G. (2012). *Restorative Justice and Federalism in Belgium: A Comparative Perspective*. *Journal of Legal History*, 33(4), 415–435.

⁷⁸ DELMAS-MARTY, M. – Spencer, J. R. (2002). *European Criminal Procedures*. Cambridge University Press.

⁷⁹ VOGLER, R. (2008). *A World View of Criminal Justice*. Routledge.

6. Conclusion

Individualization in punishment is a principle that balances retribution with rehabilitation, tailoring sentences to each case's unique circumstances.⁸⁰ France and Belgium, both rooted in Napoleonic legal traditions, adopt distinct approaches influenced by their sociopolitical structures and cultural values. France emphasizes codified rules and proportionality, while Belgium focuses on restorative justice, particularly in juvenile and first-time offender cases. The European Union plays a pivotal role in harmonizing criminal law across member states, fostering mutual trust through initiatives like the European Arrest Warrant and standardizing legal definitions and sentencing practices.⁸¹ However, divergences in governance structures and penal philosophies highlight the challenge of balancing uniformity with national diversity. These differences highlight the strength of a pluralistic approach to justice within the EU framework, which upholds fundamental rights and promotes coherence in criminal justice.⁸²

⁸⁰ European Commission. (2023). *Victims' Rights Directive: Protecting Victims Across the EU*.

⁸¹ FICHERA, M. (2011). „Mutual Trust in European Criminal Law.” *European Public Law*, 17(4), 530–551.

⁸² Directive (EU) 2011/36/EU on combating trafficking in human beings.