

**POSITION PAPER OF TEAM SPAIN 2 REGARDING THE DEBATE**  
**BETWEEN SPAIN 2 AND THE NETHERLANDS 1**

We really appreciated that our colleagues from Spain and The Netherlands raised the issues of human rights and proportionality, since none of them is expressly mentioned in the FDEAW but both of them could be taken into account when issuing and executing an EAW. However, we would like to focus on some relevant aspects regarding human rights that have not been mentioned by our colleagues.

It is apparent from the case-law of the Court of Human Rights that not every breach of the Convention will justify a refusal to implement an extradition order<sup>1</sup>. Therefore, we need to precise that, on the basis of the presumption of compliance with human rights, it shall be determined in which cases the infringement of human rights may be considered as relevant as to undermine the principles of mutual trust and mutual recognition.

Advocate General Eleanor Sharpston considers that in cases of **future breaches** of fundamental rights, deficiencies in the trial process should be such as fundamentally to destroy its fairness<sup>2</sup> and that in cases of **past breaches** “*the appropriate test is that the requested person must persuade the decision-maker that his objections to the transfer are substantially well founded*”<sup>3</sup>.

In the light of the foregoing, we shall not forget that in the area of civil cooperation the European Court of Human Rights (hereinafter the ECHR) has already given a ruling on the possible violation of human rights when acting on the basis of the principle of mutual recognition. We would consider as an option for our colleague María to lodge an application before the ECHR<sup>4</sup>.

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<sup>1</sup> See Conclusions of Advocate General Eleanor Sharpston in C-396/11 *Ministerul Public - Parchetul de pe lângă Curtea de Apel Constanta v. Ciprian Vasile Radu*, paragraph 74

<sup>2</sup> *Idem*, paragraph 83

<sup>3</sup> *Idem*, paragraph 85

<sup>4</sup> See *Neulinger and Shuruk vs. Switzerland*, App. 41615/05