



Spain 2 vs France 4

-A murder case-



# WHY TO EXECUTE

1. Reasons relating to the OBJECTIVES OF FD 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States;
2. Reasons regarding the ABSENCE IN OUR CASE OF GROUNDS FOR NON-EXECUTION;
3. Reasons regarding the POSSIBILITY OF CONDITIONING THE SURRENDER
4. Reasons regarding the purpose of THE VICTIM'S PROTECTION.

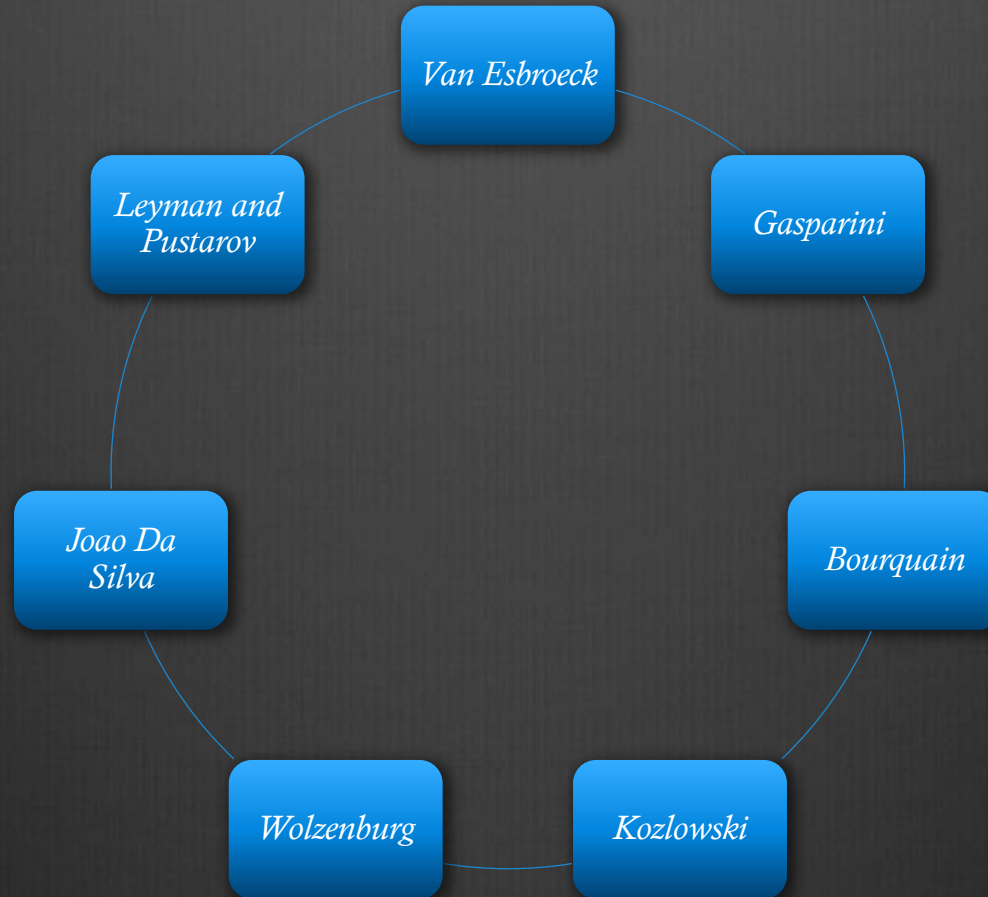
# To a new way of cooperation

Treaty of  
Amsterdam

Tampere  
European  
Council

FD  
2002/584  
EAW

# Execution does not depend on the executing MS legal system



# MANDATORY GROUNDS (ARTICLE 3 FD)

- ⊗ Article 3.1: If the offence on which the arrest warrant is based is covered by **amnesty** in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
- ⊗ Article 3.2: If the executing judicial authority is informed that the requested person has been **finally judged** by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;
- ⊗ Article 3.3: if the person who is the subject of the European arrest warrant **may not, owing to his age, be held criminally responsible** for the acts on which the arrest warrant is based under the law of the executing State.

# NON-MANDATORY GROUNDS (ARTICLE 4 FD)

- ⊗ Article 4.1: If, in one of the cases referred to in Article 2(4), the **act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State;**
- ⊗ Article 4.2: Where the person who is the subject of the European arrest warrant **is being prosecuted in the executing Member State for the same act** as that on which the European arrest warrant is based;
- ⊗ Article 4.3: Where the **judicial authorities of the executing Member State have decided either not to prosecute** for the offence on which the European arrest warrant is based or to halt **proceedings**, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

# NON-MANDATORY GROUNDS (ARTICLE 4 FD)

- ⊗ Article 4.4: Where the criminal prosecution or punishment of the requested person is **statute-barred** according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
- ⊗ Article 4.5: If the executing judicial authority is informed that the requested **person has been finally judged by a third State in respect of the same acts** provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
- ⊗ Article 4.6 : If the European arrest warrant has been **issued for the purposes of execution** of a custodial sentence or detention order, **where the requested person is staying in, or is a national or a resident of the executing Member State** and that State undertakes to execute the sentence or detention order in accordance with its domestic law;



# NON-MANDATORY GROUNDS (ARTICLE 4 FD)

- ⊗ Article 4.7: Where the European arrest warrant relates to offences which:
  - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
  - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.
- ⊗ Article 4 bis) refers exclusively to **judgments in absentia and is therefore not applicable**

# CONDITIONING SURRENDER (art. 5.3 FD)

1. Rather than denying surrender:
  - ⊗ Conduct prosecution in State B
  - ⊗ Serve custodial sentence in State A
2. Aim: increasing the requested person's chances of reintegrating into society
3. A real balance is struck between:
  - ⊗ The aims of prosecution
  - ⊗ X's social reintegration

# VICTIM'S PROTECTION

- ⊗ FD 15 March 2001 on the Standing of victims in criminal proceedings
- ⊗ Council of Europe Recommendation 2006
- ⊗ 1985 UN Declaration on Basic Principles of Justice for victims of Crime and Abuse of Power.
- ⊗ 15 March 2001 FD:
  - ⊗ Article 2 FD: enhances the importance of giving the victims a real and appropriate role in the criminal legal system.
  - ⊗ Article 3 FD: right to be heard during proceedings and to supply evidence.
- ⊗ Prosecuting crimes in State B: positive

# CONCLUSIONS

- ⊗ **Mutual recognition:** ECJ Case *Leymann and Pustovarov*
- ⊗ **Exclusion of the dual criminality test:** Article 2.2 FD
- ⊗ **None of the non-execution grounds is applicable:** Articles 3 and 4 FD.
- ⊗ **Location of evidence**
- ⊗ **Possibility to condition the surrender:** article 5.3 FD
- ⊗ **Protection of victims**

X HAS TO BE  
SURRENDERED