



VII THEMIS FINALS PARIS 2012

DEBATE TOPICS

SPAIN 1 vs. THE NETHERLANDS 1

While implementing Framework Decision 2002/584/JHA (*European Arrest Warrant*) into their national laws, a number of EU countries added some mandatory grounds of refusal to those already listed in article 3, e.g. that the executing authority should refuse execution in those cases where a death penalty may be applicable or whenever there is sufficient evidence that a person is being prosecuted in the requesting state for political reasons.

Others decided to transform optional grounds of refusal, indicated as such in article 4, into mandatory ones e.g. the request of a double criminality rule as stated in the first part of §1 or the recognition of an international *lis pendens* as stated in § 2, both of article 4.

On this basis:

*SPAIN 1 shall argue in support of such actions being taken while **THE NETHERLANDS 1** shall argue that those are contrary to the Framework Decision.*

SPAIN 2 vs. FRANCE 4

X, citizen of EU Member State A, his girlfriend Y and their common two year old' daughter Z, both citizens of EU Member State B, went on holidays to country B.

In a beach, X has drowned Y in the sea. He simulated an accident and left the beach taking Z with him. In addition, Z isn't seen by anyone since that occasion.

X has returned to Member State A where he is arrested later due to an EAW issued against him by the judicial authority of Member State B, in respect of the murder of Y.

As Member State A has jurisdiction for offences committed by her citizens abroad investigations against X were initiated and also a decision to arrest X was issued by the competent A's judicial authority for the murder of both Y and Z. In fact, it's supposed that X had killed both Y and Z to avoid the payment of maintenance for his child.

The evidence to prove the offence is as well in EU Member State A (witnesses concerning the relationship of X and Y and their personal background) as in EU Member State B (site of the offence, corpse of Y and autopsy, eye witnesses of the X and Y close in the water prior to the drowning).

On this basis:

SPAIN 2 should argue that the EAW issued by Member State B should be executed and X be surrendered, while FRANCE 4 should argue that the execution of the EAW should be refused and the criminal proceedings should continue in Member State A.

ITALY 2 vs. FRANCE 6

The Mutual Recognition principle has been defined in TAMPERE as the cornerstone of judicial cooperation in criminal matters in a legal area of Freedom Security and Justice within the European Union.

Some Framework Decisions have been already issued which implement this principle on what concerns preliminary and final judiciary decisions in criminal procedures.

Some voices are now claiming that this same principle should not apply only to the decisions of judicial authorities but that it should also constitute the main framework under which the evidence validly obtained in a criminal procedure in an EU country should be freely used as also valid in another criminal procedure of another EU country.

On this basis:

ITALY 2 shall sustain the above proposition while FRANCE 6 shall argue the inapplicability of the mutual recognition principle to evidence issues.

ROMANIA 2 vs. FRANCE 2

EU COUNTRY A and EU COUNTRY B have implemented the Council's Framework Decision 2002/465/JHA of 13 June 2002 on Joint Investigation Teams by reproducing its text in their national legislations while only adding the identification of the national authority competent to sign its constitution agreement.

In each of these countries, criminal procedures have been instituted against a group of people carrying on criminal activity in the territory of both States. Some of the facts and some of the suspects under investigation in these procedures are the same but others are different. Nevertheless, the judicial authorities of both States assumed the convenience and the need to constitute Joint Investigation Teams in order to properly coordinate investigations and to carry them out faster and easier in both their territories. However, due to the fact that both criminal procedures are in an initial phase, neither State decided to grant the other, for the time being, the sole competence to investigate and prosecute this criminal activity. In consequence, it has been jointly decided that these two procedures should continue to run in parallel until a clear picture of what is at stake is gathered by each one of the competent judicial authorities.

The time has come to put into writing the agreement of the constitution of the JIT but the negotiators are facing themselves with a question: how should evidence gathered by the JIT acting in and on the territory of EU COUNTRY B be transmitted to EU COUNTRY A if it is considered also relevant to COUNTRY A's investigation?

ROMANIA 2 shall argue that, in any case, a common Letter Rogatory should be issued to that effect, while FRANCE 2 shall sustain this as unnecessary.