

Observation file

Spain 1/Netherlands1

General overview

From the beginning, we would like to underline the overall quality of the debate, both teams being well prepared and showing to have a wide image on EU law, in criminal cooperation matters.

For the Spanish team we appreciated the presentation, especially the innovative approach on the subject. We consider that it was an ingenious idea to create a practical case to outline the legal problem at stake, *id est* the execution of the European Arrest Warrant. All the team members participated in the debate and each contributed with their own ideas.

For the Netherlands team, we appreciated the practical approach of their presentation, especially by way of giving examples from the prosecutors activity in their country. All the team members participated in the debate and each contributed with their own ideas. Their answers to the jury's questions were prompt and accurate.

Legal issues

In our opinion, both teams analysed the problem in a proper manner and with pertinent arguments. On one point of the case, the proportionality issue, we would have added one argument: irrespective of the grounds enumerated for refusal of the execution of the EAW, the direct application of human rights standards was possible on the ground that the FD has to be in conformity with those standards.

National Institute for the Magistracy

Romania 2

Themis team

Observation file

Spain 2/France 4

General overview

From the beginning, we were impressed by both teams' approach on the topic, the overall quality of the debate, their good understanding of the problems and their knowledge of the case-law.

For the Spanish team, we appreciated the wide approach on the matter and the way they presented their case with lots of references to the EU relevant legislation and EUCJ case-law. We consider that it was an ingenious idea to create a visual presentation of the practical case to outline the legal problem at stake, *id est* the refusal to execute the European Arrest Warrant. All the team members participated in the debate and each contributed with their own ideas.

For the French team, we appreciated the human rights approach of their presentation. All the team members participated in the debate and each contributed with their own ideas, continuously adding pertinent arguments. Their answers to the jury's questions were prompt and accurate.

Legal issues

In our opinion, the practical case gave few legally correct arguments for the French team. From this point of view, the debate was not balanced and it was more difficult for the French team to argue their case. Even so, a more practical approach would have been useful for their work.

In our opinion, both teams should have argued more on the applicability of Article 4 paragraph 2 from the EAW FD.

National Institute for the Magistracy

Romania 2

Themis team

Observation file

Italy/France

General overview

From the beginning, we would like to underline the overall quality of the debate, both teams being well prepared and showing to have a wide image on EU law, in criminal cooperation matters.

For the Italian team, we appreciated, within the presentation, the large amount of information that was all the time available on the screen, especially the Green Paper. The subject, related to a historical evolution, allowed such a presentation.

For the French team, we appreciated the dynamic and original presentation with well pointed arguments and the frequent changes among the members of the team, giving us, as a plus, a lot of practical examples. Their answers to the jury's questions were prompt and accurate.

Legal issues

In our opinion, both teams analysed the problem in a proper manner and with pertinent arguments. We would have favored a more specific presentation of the legal background and the way in which general principles of cooperation in criminal matters such as mutual trust and mutual recognition referred to the case which is the object of the debate.

In our view, flexibility, even though necessary in cooperation, may only be applied within the limits framed by the human rights. We consider that the way in which the problem of recognizing the evidence gathered in other countries has to be tackled step by step from the moment when the evidence is gathered in one country until the moment it is brought in front of the judge in the other country.

Our proposal is to have a harmonization regarding this entire process by categories of evidence, especially the gathering and the administration of the evidence. We do not support

the idea of reducing judicial decision to the ones made by a judge. Even though, European Court of Human Rights, in its case-law regarding article 5 paragraph 3 and article 6 paragraph 1 made a distinction between a judge and prosecutor, this decision refers on independence on each and not on the jurisdictional character of the decision.

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Romania 2

Themis team