



### PRACTICAL CASE MODULE III

At approximately 0.30 am on 13-5-09, as a result of a routine police check, in Poble Nou park, in Barcelona, the *Mossos d'Esquadra* (Catalan regional police force) arrested the Ukrainian citizen Miroslav R., who was driving a Lamborghini Murciélago LP640 Roadster, with German registration no..... Once they had carried out the pertinent checks, the police officers ascertained that, in actual fact, the registration number that corresponded to the vehicle had been substituted by one which was false and the vehicle had been stolen in Italy, where its owner, Francesca M., had reported to the police that it had been stolen outside her home, located at Via Ciovassino, 2, Milan, on 06-03-09.

During the course of investigations, the Security Forces request the Examining Magistrate's Court (judicial authority in charge of the criminal investigation in Spain) of Barcelona which has been assigned to pre-trial proceedings, to tap a telephone under contract with the company Orange by a French citizen, Jacques S., with residence in Perpignan, Rue Claude Bernard, 23, France. The Police indicate that no external technical assistance would be necessary to go ahead with tapping and duly account for the possible involvement of Jacques S. in the case brought against Miroslav, as an intermediary in a network dedicated to theft, registration plate changing and the sale of luxury vehicles. The Examining Magistrate's Court also agrees on the statement of the person identified by Miroslav as the alleged seller of the vehicle, a Moroccan citizen, Mohammed L., who works in BHU Automobilhandels, Neumarkter Str. 27, Munich, Germany.

When the case reaches the trial stage, the State Public Prosecution proposes and the Criminal Court (judicial body responsible for the trial) admits, by means of a ruling dated 23-06-09, the taking of evidence from Francesca M., only her complaint being on record in the actions, with her details, it being in the interests of the State Public Prosecution that her statement be taken by videoconference. On the other hand, in light of the release of Miroslav R, who is accused of an offence of receiving stolen goods and for whom a sentence not greater than two years is requested, which would allow the trial to be held in Spain in his absence, if he were summoned in person, it would be necessary to summon the defendant at his place of residence in the Ukraine, Kiev, Zolotovoris'ka 36. The scheduled date for the trial is 12-12-09.

#### IMPORTANT NOTES FOR NON-SPANISH PARTICIPANTS:

- Answer the questions posed, always substituting references to authorities or Spanish towns or cities with other equivalents, but corresponding to your own country.

- At the same time, if it is necessary (German, French or Italian participants), substitute the references that there may be in the case to your own country (Germany, France, Italy), with references to Spain.

### **QUESTIONS ABOUT THE CASE**

1. How were the *Mossos d'Esquadra* able to ascertain that the vehicle had been reported stolen in Italy?
2. What should the Examining Magistrate (or the authority responsible for the investigation in their country, if it were not Spain) do in relation to the request for telephone tapping, accepting that it is duly justified and that the technical assistance of another State is necessary? To whom should the request be made?
3. How could the Examining Magistrate (or authority responsible for the investigation in their country, if it were not Spain) examine Mohammed L.? Assess the advantages and disadvantages of the different possibilities, explaining your reasons for deciding on the option which you choose and determine to whom and how the request for assistance (authority to which to send it, means of transmission, language, essential content) should be sent.
4. What possibilities would the Criminal Court Judge have (or the authority responsible for carrying out criminal proceedings, in their country, if it were not Spain), in relation to the defendant and the witness? Assess the advantages and disadvantages of the different possibilities, explaining your reasons for deciding on the option which you choose in each case and determine to whom and how the request for assistance (authority to which to send it, means of transmission, language, essential content) should be sent. Take into account the possibilities of holding the trial in the absence of the defendant according to his own national legislation.

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