

CASE STUDY MODULE IV

I.- BACKGROUND

1.- On 4 March 2002, Aurelio Z. X., in the company of Benigno C. V., Carlos B. N. and Dionisio M. L., acting in unison and armed with semiautomatic weapons, “raided” the main branch of BHSV Bank in Santander (Spain).

During the raid, one of the security guards at the branch attempted to pull out his gun, but the four robbers noticed and shot the guard simultaneously, who died instantly. Moreover, as a result of the gunfire, three customers were caught in the firing line and received bullet wounds.

Following this, faced with no resistance, they accessed the safe, took 50,000 euros and fled the scene.

The three injured customers recovered after receiving medical and surgical care, 100, 160 and 173 days after the raid, respectively.

2.- The police investigations soon bore fruit and the raiders were identified thanks to the footage of the security cameras. They also discovered the whereabouts of Aurelio Z. X. in the French town of Pau.

His extradition was immediately requested in the month of May 2002, but was refused by France as Aurelio held French nationality by marriage. Nevertheless, this made it possible to ascertain his address in France and the cooperation of the police authorities was requested in order to monitor Aurelio’s movements and to find out whether he was still in contact with his accomplices in the raid and ascertain their whereabouts and movements.

3.- Early in 2003, it was discovered that Benigno C. V., had been arrested in Bordeaux for counterfeiting credit cards and, after a fast-track trial, was sentenced to 2 years’ imprisonment, which he was serving at “maison d’arrêt” in Biarritz (France).

4.- In 2005, the Santander Court received a police report indicating that the investigations had born fruit and that Carlos B. N. was living in the city of Bordeaux (Rue Pasteur 32, 1st floor, left) and Dionisio M. L., was living with a relative in Italy, in the city of Parma (Via Verdi 24, ground floor, right)

5.- On the basis of this information, it was decided to issue a European arrest warrant for:

- Carlos B. N.
- Dionisio M. L.
- Also for Aurelio Z. X., as the current rules on the European arrest warrant do not exclude nationals.
- It was decided to issue an international arrest warrant via INTERPOL so that Benigno C. V. would be arrested upon his release, with a view to subsequently issuing the corresponding warrant for his surrender.

II.- MATTERS TO BE RESOLVED

1.- How do we ascertain what judicial authorities in France and Italy should receive the European arrest warrants for Aurelio Z. X., Carlos B. N. and Dionisio M. L., respectively?

2.- If we cannot find out which the appropriate authorities are, where should the warrants be sent?

3.- Are there *res judicata* issues in relation to the previous, rejected extradition request in relation to Aurelio Z. X.?

4.- Is the timeframe a problem, given the fact that the offences predate the publication of the Framework Decision?

5.- Are there other grounds for refusing to process the arrest warrants?

6.- In the case of Benigno C. V., who is serving time in France, is it necessary to wait until his sentence in France concludes before issuing the arrest warrant?

7.- Given that Biarritz is close to the Spanish border and that the arrest of Benigno C. V. was requested by the Spanish judicial authorities, once notified of his imminent release, the French Gendarmerie went to “maison d’arrêt” in Biarritz, arrested Benigno C. V at the exit and took him to the Spanish border where they handed him over to the *Guardia Civil*. Would this “direct surrender”, without a European arrest warrant, invalidate the subsequent prosecution, trial and judgment in any way, or is it a matter that has no bearing on the prosecution in Spain?

8.- If the arrest warrant for Dionisio M. L. is refused in Italy, would there be any alternative for ensuring he is tried in Spain?

9.- The arrest warrant for Carlos B. N is duly processed and granted, but the final decision on surrender is not issued until the twelfth day; does this invalidate the surrender?

10.- If you practice in a state other than Spain, answer letter a); if you practice in Spain, answer letter b)

a) If, in the case at hand, the arrest warrants, instead of being processed by a Spanish judge, were issued by a judicial authority in your country, because the persons under investigation are in different European countries, do you think the answer to any of the above questions would be different?

b) Contestar si una vez producidas las entregas y puestos los entregados a disposición del Juzgado de Santander, debe tener lugar la correspondiente comparecencia prevista en el artículo 505 de la Ley de Enjuiciamiento Criminal.

(Answer whether, after the persons have been surrendered and appeared before the Santander Court, the corresponding hearing envisaged in Article 505 of the Spanish Law of Criminal Procedure should be held.)