

TOPIC 2

THE CHANGE OF PARADIGM: THE PRINCIPLE OF MUTUAL RECOGNITION AND ITS IMPLICATIONS. PERSPECTIVES FROM THE TREATY OF LISBON SELF-ASSESSMENT QUESTIONNAIRE

1.) Police and judicial cooperation in criminal matters in the European Union:

- a) Is based on the exequatur, which means that foreign judicial decisions are only effective when expressly recognised in the enforcing state by an internal jurisdictional body.
- b) Are aimed exclusively at fighting transnational crime or offences that affect the Union's legal assets.
- c) Continue to be an integral part of the community's third pillar, with the adoption of regulatory instruments corresponding almost exclusively to the Member States.
- d) **Is an area that has been communitised by the Treaty of Lisbon, meaning that the competence in this regard has been assumed to a large degree by the community institutions.**

2.) The creation of a European area of freedom, security and justice:

- a) **Is a long-term aim towards which progress is being made by means of the implementation of the principle of mutual recognition, among other things.**
- b) Is a reality today, thanks to the advances undergone in recent years.
- c) Is based on the principle of request and the simplification of the exequatur procedures.
- d) Materialised once the Hague Programme was fully enforced.

3.) Choose the correct option:

- a) **It is for the Commission to take the legislative initiative in relation to the criminal law provisions necessary for the effective application of Community law, thus forming part of the first pillar.**
- b) The approval of provisions regarding criminal law matters by community institutions, be they substantive or procedural rules, will always be on the initiative of the Member States.
- c) The harmonisation of substantive criminal law is not considered particularly relevant for the purposes of the implementation of the principle of mutual recognition.
- d) The harmonisation of substantive criminal rules has been duly accompanied by an equally effective approximation of the provisions regarding the procedural guarantees of accused persons, meaning that there are sufficient Community regulations in this regard.

4.) Cooperation in criminal matters within the European Union:

- a) Is based almost exclusively on the Conventions of the Council of Europe, ratified by all Member States, as well as other non-EU states.
- b) Is still based on the principle of request, as mutual recognition is still an aim and not a reality at this point in time.
- c) Is based on the Schengen Agreement, which represented the creation of the European judicial space in which judicial decisions move freely throughout the entire territory of the EU.
- d) **Started originally with the Conventions of the Council of Europe, which have been significantly surpassed by Community law in many respects.**

5.) The communitisation of judicial cooperation in criminal matters:

- a) Has been a reality since the 1997 Treaty of Amsterdam.
- b) Did not entail new developments, in view of the reluctance of states to assign sovereignty in criminal matters.
- c) **Occurred with the entry into force of the Treaty of Lisbon and must be translated into an important boost for activities in that field.**
- d) Is a matter that does not even appear on the Community's agenda.

6.) Framework Decisions:

- a) Are equivalent to directives in all respects, but deal with different areas.
- b) Need to be transposed into internal law although, if this is not done, they will be directly applicable, thus making up for the inactivity on the part of states.
- c) **Are obligatory to the extent that they require that national law be interpreted in conformity with them, even if they are not transposed on time.**
- d) Are the same as regulations, although their material scope is limited to the third pillar.

7.) The 2000 Convention on mutual assistance in criminal matters between Member States of the EU:

- a) Has been ratified by all Member States.
- b) Has not entered into force as it has not been ratified by a sufficient number of Member States.
- c) Merely gives the provisions of the 1959 Council of Europe Convention Community law status.
- d) **Introduces the application of the *regit actum* principle, by virtue of which the rules of the requesting state are applied, and not those of the requested state.**

8.) Choose the correct option:

- a) **The creation of an area of freedom, security and justice requires the harmonisation of (substantive and procedural) criminal rules and the implementation of the principle of mutual recognition.**
- b) The application of the *forum regit actum* principle has to do with the idea of mutual recognition, as it obliges states to respect the procedural guarantees of the place of enforcement.
- c) The harmonisation of criminal law must be imposed by directly applicable rules issued by EU bodies, as they are the ones that have legislative capacity in this regard.
- d) The ratification of the European Convention on Human Rights by the Member States represents a *de facto* harmonisation of the procedural guarantees of accused persons all over the EU, without requiring complementary actions in this regard.

9.) The intended harmonisation of criminal rules:

- a) **Covers both the substantive and procedural aspects, seeking a kind of uniformity in the classification of criminal behaviour and the penalties as well as a common system of procedural guarantees.**
- b) Covers both substantive and procedural aspects, although each state maintains the autonomy to determine what the offences are, what penalties are applied and the guarantees for the accused persons.
- c) Deals exclusively with procedural rules, as each state maintains the autonomy to determine what conduct it considers punishable and the penalties to be applied.
- d) Deals exclusively with substantive aspects, as each state maintains the autonomy to determine the procedural guarantees to be applied in its legal system.

10.) Mutual recognition:

- a) Requires an exequatur procedure in order to guarantee that certain minimum requirements are met in any event.
- b) Will never become a reality until a Criminal Code and a Criminal Procedure Act are approved at European level.
- c) **Can only be the result of a prior labour of regulatory harmonisation that leads to reciprocal trust by the states in each other's legal and judicial systems.**
- d) Only makes sense in relation to decisions rendered by supranational jurisdictional bodies.

11.) The European Arrest Warrant:

- a) Is merely the extradition procedure within the EU by another name.
- b) **Represents an important step forward in relation to the traditional extradition regime, even making the surrender of a country's own nationals obligatory.**
- c) Represents the application of the principle of the mutual recognition of decisions in criminal matters, although it excludes the surrender of a country's own nationals.
- d) Requires that the principle of dual criminal be respected in any event.

12.) The work of the Court of Justice in relation to police and judicial cooperation in criminal matters:

- a) Has made it possible to recognise the obligatory nature of Framework Decisions, to the extent of demanding that national law be interpreted in conformity with them, even if they have not been transposed on time.
- b) Is completely irrelevant as it has to do with matters that are expressly excluded from the jurisdiction of said body.
- c) Goes no further than the interpretation of the treaties that make express reference to said possibility.
- d) Has made the communitisation of the third pillar possible.

13.) The application of the *ne bis in idem* principle envisaged in the Convention implementing the Schengen Agreement:

- a) Is limited to final judgments, convictions or acquittals, provided that the decision was reached on the merits of the case.
- b) Covers exclusively final convictions, strictly speaking, as it makes no sense in the case of acquittals.
- c) Is suspended until said Convention enters into force, as it has not been ratified by all Member States.
- d) **Has been interpreted by the CJEC to mean that it covers any decision that brings a criminal action to an end.**

14.) The entry into force of the Treaty of Lisbon:

- a) Did not introduce important changes in relation to cooperation in criminal matters, as it keeps its place in the third pillar and the application of specific regulatory instruments is also kept.
- b) Will prevent the development of Eurojust, which will be transformed into a European Public Prosecutor's Office to which the national Public Prosecutor's Offices will be organically and functionally answerable.
- c) **Represented the communitisation of the third pillar, heralding a new stage in the process for the creation of an area of freedom, security and justice.**
- d) Meant the abandonment of the principle of mutual recognition, replacing the national jurisdictions with a fully European judicial organisation, in which procedures for the homologation of judicial decisions no longer make sense.