

MODULE IV:

THE PRINCIPLE OF MUTUAL RECOGNITION AND ITS DEVELOPMENT

Unit 13: Other instruments, projects and perspectives

Self-assessment questionnaire.

I

The implementation of the principle of mutual recognition favours the integration of legal systems:

- a) by harmonising the criminal legislation in force in the Member States;
- b) by developing the instruments of inter-governmental cooperation with a view to implementing direct cooperation between judicial authorities;
- c) by creating the conditions of mutual trust between the legal systems of the Member States, in order to allow the movement and recognition of judicial decisions;
- d) by issuing international letters rogatory.

Correct answer: c) - The essential conditions for complying with the principle of mutual recognition of judicial decisions consist of attaining a minimum level of reciprocal trust between the legal systems of the Member States and surpassing the judicial cooperation based on the system of conventions, as can be seen from the indications in the conclusions of the Tampere European Council.

II

The Stockholm Programme...

- a) envisages control mechanisms for Member States' judicial decisions, to be followed by states different from the issuing one, in order to safeguard the principles of freedom and democracy, as well as respect for human rights;
- b) identifies the following political priorities for the construction of a European area of freedom, security and justice: promoting a European citizenship and protection of fundamental rights; achieving a Europe of law and justice; internal security;
- c) promotes judicial cooperation by means of the creation of direct relations between the jurisdictional bodies of the Member States;
- d) establishes the fundamental criteria for accelerating the harmonisation of criminal justice legislations of the Member States.

Correct answer:

b) - The political priorities of the Stockholm Programme, directly or indirectly relevant in relation to the mutual recognition of judicial decisions, are specified in the following points, all closely related to each other: a European citizenship and fundamental rights; achieving a Europe of law and justice; internal security.

The document underlines that the effective application of the principles established in the Charter of Fundamental Rights and the European Convention of Human Rights constitutes the fundamental requirement for developing the European citizenship.

The rights and duties of this citizenship can only be understood in a common judicial area, governed by the principles of law and justice, the pillars of which are the harmonisation of rules, mutual recognition of judicial decisions, the training of jurists and professionals in the sector and access to justice.

The complement to this structure is an effective strategy of internal security characterised by the promotion of judicial cooperation in criminal matters, mainly for the purposes of combating organised crime and terrorism effectively.

III

Integrated cooperation

- a) is an instrument designed to facilitate cooperation introduced by the Convention on mutual assistance in criminal matters adopted by the Member States of the European Union on 29/5/2000;
- b) is the operational mechanism used by Eurojust to authorise application of judicial cooperation between Member States;
- c) is the term designating all conventional and operational measures that contribute to increase the mutual trust between the Member States, either via instruments specifically designed to develop judicial cooperation, or via the creation of bodies devoted to achieving certain common objectives in the sphere of justice;
- d) is the instrument by means of which it is sought to integrate the legislations of the Member States in relation to judicial cooperation.

Correct answer: c) - This is a conventional term coined by the doctrine in order to identify those measures that, while not specifically designed to achieve concrete mutual recognition objectives, contribute to increase the mutual trust between the Member States, either developing common operational activities (for example, the joint investigation teams) or creating bodies and networks of coordination in several relevant spheres for the sector of justice and security (Europol, Eurojust, European Judicial Network etc.).

IV

The aim of the Framework Decision on the mutual recognition of provisions on supervision measures not involving a deprivation of liberty consists of...

- a) ... homogenising the legislations of the Member States in relation to the supervision measures not involving a deprivation of liberty;
- b) ... reducing overcrowding in the prisons of the Member States;
- c) ... favouring the adoption of supervision measures not involving a deprivation of liberty, guaranteeing the security of citizens and ensuring participation of the person subject to the supervision measures in the trial;
- d) ... adopting common supervision measures for carrying out supervision measures not involving a deprivation of liberty.

Correct answer: b): by means of the mutual recognition of supervision measures not involving a deprivation of liberty the intention is to avoid having judicial authorities of the Member States imposing measures involving a deprivation of liberty in those cases in which the pre-trial measures do not require it, when proceedings are brought against citizens from other states of the Union. In particular, the application of alternative measures to the deprivation of liberty should be promoted by the possibility of such measures also being fulfilled in the country of origin of the person in question, as well as by the guarantee that the accused person will appear at the trial.

V

The mutual recognition of a judicial decision that imposes a supervision measure not involving a deprivation of liberty not envisaged in the internal legal system of the requested state implies...

- a) ... the complete harmonisation of the rules of the Member States in relation to supervision measures not involving a deprivation of liberty;

- b) ... the consent of the requested state so that a supervision measure not involving a deprivation of liberty can be executed in its territory, even if it is a measure that is not envisaged in its domestic legal system;
- c) ... the possibility for the state being asked to apply a supervision measure not involving a deprivation of liberty not envisaged in its domestic legal system to implement any other measure established in its national legislation with similar characteristics to the one it is being asked to recognise;
- d) ... the consent of the requesting state with regard to the application of a supervision measure not involving a deprivation of liberty other than the one requested.

Correct answer: c): In the event the measures adopted by the requesting state are incompatible with the legal system of the Member State that is being asked to execute the decision, the recipient country will not be obliged to abide by the content of the decision and may adapt the provisions of the same so that they are compatible with its own legislation.

In that case, the Framework Decision introduces a very handy flexibility mechanism: the requested state may adapt the measure of the requesting authority and establish the adoption of one of the supervision measures not involving a deprivation of liberty envisaged in its own legal system for offences that are equivalent to the one which led to proceedings being brought. The only restriction in this regard is that more restrictive measures cannot be applied.

VI

Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty implies...

- a) ... the adoption of common criteria in the management of prisons, guaranteeing the dignity and rights of the inmates;
- b) ... proof that the sentenced person has effectively participated in the trial;
- c) ... consent of the sentenced person for the transfer of the judgment to the executing state, pursuant to the legislation of the issuing state;
- d) ... verification that the offence for which the person is being sentenced is contemplated in the legislations of the countries involved in the mutual recognition procedure.

Correct answer: c): Article 4 of the Framework Decision states that the judgment may be transferred to one of the Member States of the Union on the condition that the sentenced person is in the state that issued it or in the state where it is to be executed and, as such, that said person has given his/her consent by virtue of Article 6.

VII

Starting a process with a view to having a judgment sentencing a person to a deprivation of liberty mutually recognised implies...

- a) ... the request being sent exclusively at the discretion of the state rendering the judgment containing the sentence to be applied;
- b) ... the request being sent exclusively at the discretion of the Member State of which the sentenced person is a citizen;
- c) ... the need for the request for recognition of a judgment sentencing a person to a deprivation of liberty to be sent only to the state of which the sentenced person is a national;
- d) ... the possibility that the request for recognition be formulated not only by the state issuing the judgment, but also by a Member State that requests execution in its territory or, also, that the sentenced person him-/herself request execution of the sentence in a different state to the one in which it was rendered.

Correct answer: d): The peculiarity of the mechanism of mutual recognition of judgments involving a deprivation of liberty with regard to other similar systems (for example, the European arrest warrant) is that the initiative does not necessarily have to come from the state issuing the decision to be executed.

In fact, the executing state may decide on its own initiative to ask the issuing state to transfer the judgment together with the certificate. Moreover, the sentenced person him-/herself may apply to the competent authorities of both states to have the necessary procedures set in motion in order for the judgment to be executed in a state other than the issuing one.

However, the procedure still retains a residual trace of respect for the national sovereignty of the state issuing the judgment, as said state has no legal obligation to transfer the judgment and the certificate (See Article 4, section 5 of the Framework Decision).

VIII

The aim of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions is...

- a) ... to establish common criteria for applying probation decisions;
- b) ... to favour the adoption of decisions that allow for probation, in order to reduce prisoner numbers;
- c) ... to favour the social reinsertion of sentenced persons on probation, guaranteeing their free movement within the territory of the Union as well as maintaining their social, cultural, family and linguistic ties;
- d) ... to introduce a mechanism that conditions the adoption of probation to the return of the sentenced person to his/her country of origin.

Correct answer: c): These are the aims that appear in the preamble of the Framework Decision and it is envisaged that they be applied in the country executing the supervision of the probation measures and the alternative sanctions.

IX

The authority of the state requested to execute a judgment that imposes probation can refuse to recognise the judgment and the application of the corresponding supervision measures...

- a) ... if the supervision measures it is asked to execute are not in line with its domestic law;
- b) ... if the offence on which the sentence is based is not envisaged in its domestic law;
- c) ... if the supervision measure corresponds to a more severe category of sentence to the one for which its domestic law allows the application of probation;
- d) ... if recognition of the judgment would entail an infringement of the principle of *ne bis in idem*.

Correct answer: d): Article 11, section 1, letter c) of the Framework Decision contemplates the possibility of refusing recognition of the judgment and assumption of responsibility for the supervision of the probation measures or alternative sanctions when said activity contravenes the principle of *ne bis in idem*.

X

By virtue of the provisions of the Treaty of Lisbon, the “emergency brake”

- a) is a procedure that allows a Member State to take recourse to the European Council in order to terminate an ordinary legislative procedure if a draft bill or framework law affects fundamental aspects of its national criminal justice system;

- a) is a procedure that a Member State can initiate in order to block the effects of judicial decisions adopted by the authorities of other Member States that infringe fundamental aspects of its own national sovereignty;
- b) is a procedure that allows a Member State to definitively block the sanction of a law or framework law that is considered harmful for its national interest
- c) is a procedure that a Member State can trigger to sanction the behaviour of another Member State who refuses to recognise and execute a judicial decision or a request for cooperation from a judicial authority.

Correct answer: a) – According to the “emergency brake” clause, envisaged in the Treaty of Lisbon, if a Member State considers that a draft bill or a framework law undermines fundamental aspects of its national criminal justice system, it may take recourse to the European Council, where it will trigger a debate that must be concluded within four months. Within that term, the European Council may resume the ordinary legislative procedure or ask the Commission or the states that exercised the legislative initiative to present a new project. If the provision is not passed within the following twelve months, a third of Member States may set enhanced cooperation in motion.