

The spanish constitutional court law european essay

Law



First of all, in 1996 October, The National High Court of Spain, declared that the refuse of disposal of Mr. Stefano Melloni to Italy was justified so that he could tried there in respect of the acts stated in the Arrest Warrants issued by The District Court of Ferrara, Italy. Mr. Melloni was arrested in Spain, but after the decision to release him on vouch against the payment of 5 000 000 pesetas (approx. 30 000 €), which he paid and later ran away, in case that he could not be surrendered to the Italian authorities. In 1997, The District Court of Ferrara, Italy declared that the applicant had failed to make appearance in The Court and directed that notice should in future be given to the lawyers already appointed by him. By judgment of year 2000, of The District Court of Ferrara, subsequently upheld by judgment of year 2003 of The Bologna Appeal Court, Italy, Mr. Melloni was sentenced, in his absence, to 10 years imprisonment for bankruptcy fraud. By judgment of year 2004, The Supreme Court of Cassation, Italy dismissed the appeal submitted by his lawyers. Following his arrest by Spanish police in year 2008, Mr. Melloni opposed his surrender to the Italian authorities, claiming, that at the appeal stage he had appointed another lawyer, elimination of the appointment of the two previous lawyers, despite which notice was still being given to them. Later, he claimed that under Italian procedural law it is impossible to appeal against sentences imposed in absentia (in the absence), for which reason the execution of any European Arrest Warrant should, be made conditional upon Italy's guaranteeing the possibility of appealing against the judgment. In 2008 September, The National Court of Spain authorised surrender of the applicant to the Italian authorities in order to satisfy the sentence against him by The District Court of Ferrara, considering that it was not proved that

the lawyers appointed by Mr. Melloni had stopped to represent him. The Spanish Court said that his rights of defence had been respected, since he had been aware from the beginning of the prospective trial, consciously didn't appear and appointed two lawyers to represent and defend him, at first instance and in the appeal and cassation proceedings, thereby remissive all remedies. Finally, Mr. Melloni appealed against that decision to The Constitutional Court of Spain, that this Court asks The Court of Justice whether the Framework of Decision prohibits The Spanish Courts from making surrender of Mr. Melloni conditional on the right to have his conviction being revised once more.

The Spanish Constitutional Court to The Court of Justice raised the following questions:

Does the article 4a of The European Arrest Warrant and surrender procedures between EU Member States, prevent refusal which would not be allowed under that provision? (Answer was YES, paragraphs 40-41; The Judgement of the Court 2013/02/26); If the basics are comprehensive, does this mean The European Arrest Warrant is inconsistent with The Fundamental Rights as they are protected under various provisions of EU law? (Answer was NO, the European Arrest Warrant IS compatible with The EU Fundamental Rights provisions, paragraph 54; The Judgement of the Court 2013/02/26); If The European law is not incompatible with European Union and other International Fundamental Rights instruments, may the national legal system give a higher degree of protection than the minimum to the international provisions? (Answer was NO, National Law may not pass the minimum, because the European Arrest Warrant has a primacy over national

Fundamental Rights; paragraphs 56-58; The Judgement of the Court 2013/02/26). According to this case the Spanish Constitutional Court of the constitutional complaint would therefore provide. The transfer of criminal enforcement in Italy could therefore be carried out by Spain when Italy makes a declaration that Melloni receive a new trial on application. But the Italian procedural law does not provide for such possibility, Italy can not leave such a statement. Melloni had a safe place to hide in Spain. But to the Spanish Constitutional Court was raised the question of how this interpretation results from the Spanish Constitution fits with the requirements of the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States. The method guarantees that the underlying sets of the Framework Decision, are less than that resulting from the Spanish Constitution. The fact that Melloni was represented by defense authorized by him, legitimized by the Framework Decision, the absence of respective procedures. The Italian absentia, imposes high fines, apparently are an integral part of the local folklore and Justice. There are numerous decisions in which the extradition to Italy was rejected because of the absence procedure without sufficient respect for the rights of the accused. Such denials are no longer possible under the Framework Decision. Because this determined since the new rules in 2009 (Article 4a) that the observance of the rights of justice is not considered by the executing judicial authority, but by the authority issuing the European Arrest Warrant. These are of the appropriate fields have been checked properly in the intended form, the executing authority has no more discretion. In this case, it is likely that the strict requirements set by the law

of The Spanish Constitutional Court to the presence of the accused. The Constitutional Court has held that it is sufficient in delivery because of a judgment in absentia, due to a charge if the person had the actual opportunity to participate in the process. The fundamental right level that was applied in relation to the absence of method framework decision should therefore consistent with the case law of the Constitutional Court in the same level. The opinion of Advocate General Bot (paragraphs 88 - 145): The opinion of Advocate General Bot, gave a new view to the relation between national and European Union' s fundamental rights norms, their protection and primacy, and made an interpretation of Art. 53 of the Charter on Fundamental Rights. Mr. Bot decrease the idea that Art. 53 means that the Charter only has a minimum standard of rights protection tha EU Member States would be able to apply as a higher national norms of protection. Also, he add that a attitude of secondary legislation may be challenged where it violates the national constitutional identity. It must be noted that the Art. 53 of the Charter of Fundamental Rights says:" Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States constitutions." Some things of national constitutional differences between the European Union Member States needs to be changed even when a situation falls to the area of EU law. The Court of Justice of EU faced with the question if Member States can apply nationally

protected fundamental rights, without big limits by primacy principle, at the same time not belonging to the common constitutional traditions. The Opinion of Mr. Bot reveals a conflict between the Spanish Constitution and the Charter of Fundamental Rights. The Court of Spain made the extradition of Mr. Melloni, to Italy in case that he would have the trial there but Mr. Melloni ran away after being released on bail, in this case also escaping from extradition. In the result of this he was sentenced in absentia to 10 years of prison by Italian law (Not in all EU Member states trial in absentia is used, but in Italy it is permitted to have a trial like this, of course under some conditions.). Mr. Melloni, challenged extradition to Italy and protested that what was done by Italian law violates his right to fair trial, and he was sentenced for a serious crime in absentia without having a possibility to defend himself. It must be noted that, Mr. Melloni, had even two lawyers to defend him in front of the Italian court, but it wasn't enough in his point of view. The Constitutional Court of Spain decided to ask the Court of Justice of EU for a decision on this problem. One of the raised problems was if Art. 53 of the Charter could be based on to comply the higher protection of fundamental rights by the Spanish Constitution. The Constitutional Court of Spain in the case of Melloni found 3 interpretations of Art. 53 to consider: The first interpretation was made in 91 paragraph (Opinion of Advocate General) and said that Art. 53 sets the Charter as only a minimal standard of protection. By this interpretation Member States would keep the authority to apply a higher level protection to fundamental rights, by national constitution without making that applicable to all EU Member States. The second interpretation was made in 93 paragraph (Opinion of Advocate

General),, The second interpretation of Art. 53 of the Charter is that the provision aims to define the scope of the Charter and, in particular, the constitutions of the Member States, respectively, by indicating in accordance with Art. 51 of the Charter that, where European Union law applies, is that which derives from the Charter" The third interpretation was made in paragraph 95 (Opinion of Advocate General)" Applying one or other of the first two interpretations depending on the characteristics of the specific problem of fundamental rights at issue and the context in which the assessment of the level of protection which must prevail is made." Advocate General Bot said totally NO, to the first interpretation, seeing it as violating the primacy principle of European Union' s law as having the " effect of impairing the unity and efficacy of that law" (pgh. 100) by allowing the Spanish legislation to apply a different standard in the case saying that makes serious harming to the consensus of the level of protection defined in Art. 4a. From paragraph 105 Mr. Bot gave a clear explanation of it " the traditional methods of evaluating the level of protection which must be afforded to fundamental rights within the European Union." In my opinion one of the most important and which was the main point of Advocate General Bot' s opinion, paragraph 109 of Opinion of Advocate General, which said - ,, The fundamental rights to be protected and the level of protection to be afforded to them reflect the choices of a society as regards the proper balance to be achieved between the interests of individuals and those of the community to which they belong. That determination is closely linked to assessments which are specific to the legal order concerned, relating particularly to the social, cultural and historical context of that order, and

cannot therefore be transposed automatically to other contexts." In other words, the rights that were applied by The Court of Spain and The Court of Italy is not necessarily applicable in the area of EU law in this particular case. In the case of Melloni, the level of rights protection must be " Adapted to the requirements connected with the construction of an area of freedom, security and justice" (pgh. 113). The Framework Decision is meant to ensure the execution of European Arrest Warrants in absentia as well as to guarantee the protection of fundamental rights. According to the Advocate General, that it cannot be relied as to give primacy to national constitutional law over the Framework Decision of EU and to make the execution of a European Arrest Warrant conditional upon the right to a retrial in the issuing Member State, which would be the decision of Constitutional Court of Spain against EU. That goes from compliance of the principles of primacy of European Union law, the uniform and effective application of European Union law within the Member States. In addition, the Advocate General highlighted that the level of protection of fundamental rights must be changed not only theoretically, but in a practice also, adapted to the requirements connected with the objectives to be achieved by the European Union. The European Union legislature firstly should increase the common confidence between the EU Member States by the laws of the Member States concerns the rights of individuals in criminal proceedings. In my opinion, this case important to EU and all Member States, for the interpretation of Art. 53 of the EU Charter of Fundamental Rights and in this case I see it like a limit of primacy principle of national Constitutions, if this article woudn' t exist everything would be much more simple, because national Constitutions can offer higher security

for the principle of primacy. In this case my suggestion would be to modify Art. 53 of the Charter, or make one common and general doctrine (which really should be one common Constitution of EU, but as we know this question is pretty problematic for many reasons) for all EU which must be applied in all Member States, but this is very difficult with so many different countries, legal systems and traditions. This case of Mr. Melloni, gave the Court of Justice the opportunity to distinguish more deeply the area of Art. 53 of the Charter. Finally, the Court of Justice rejected the interpretation according to which Art. 53 authorises Member States to apply their standard of protection of fundamental rights guaranteed in the constitution when that standard is higher than the one from the Charter, and in this case, give the primacy to the application of EU law. The Court once again repeated that EU law takes primacy over national law, including national constitutions. There is nothing very surprising on the decision taken by the Court with regard to primacy of Union law: the unconditional primacy of EU law over national law is confirmed. Furthermore, Member States may apply their standard of protection of fundamental rights when accomplish EU law, with the condition that primacy of EU law is secured and the level of protection of the Charter is not compromised.