



24.6.2010

NOTICE TO MEMBERS

Subject: Petition 1834/2009 by Konstantinos Lazaridis (Greek), on Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States and lack of compliance with the ‘ne bis in idem’ principle

1. Summary of petition

The petitioner points out that a French court has convicted him of a matter for which a Greek court had previously declared him innocent and that, because of loopholes in EU legislation in this particular area, he is faced with having to serve a prison sentence in France. The petitioner refers in this connection to the fact that Council framework decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States does not provide EU citizens with certainty that the ‘ne bis in idem’ principle will be complied with by Member States judicial authorities. The petitioner therefore calls on the European Parliament to take the necessary measures to ensure that this serious legal failing is remedied.

2. Admissibility

Declared admissible on 23 March 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 24 June 2010.

The European Commission has no power to intervene in the day-to-day running of the criminal justice system of any individual Member State. Thus, in this specific case, only France and Greece are responsible for the legal assessment of the petitioner's case.

However, the Commission would like to make the following observations for the information

of the Committee on Petitions.

In the European Union, the binding rule relating to the principle "*ne bis in idem*" in criminal matters is laid down in Articles 54 to 58 of the Convention Implementing the Schengen Agreement. This provision has been interpreted on many occasions by the Court of Justice, which has in particular held that acquittals also entail a "*ne bis in idem*" effect for the whole Union, inasmuch of course as a second procedure would concern the same facts (see the judgment of the Court of 28 September 2006 in case C-150/05, Van Straaten).

Moreover, Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42), aims to prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts. This would indeed entail the risk of leading to two final judgments concerning the same facts in breach of the principle "*ne bis in idem*". Member States must implement this Framework Decision by 5 June 2012.

Regarding the "*ne bis in idem*" principle, in particular Article 3 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1) provides –under the heading "Grounds for mandatory non-execution of the European arrest warrant": "The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases: 2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State." This mandatory ground for refusal presupposes that the executing judicial authority is informed about the earlier judgment, which would most probably be invoked by the person concerned or his lawyer.

Finally, Article 50 of the Charter of Fundamental Rights of the European Union provides that no one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Conclusions

The Commission does not have the competence to pursue this particular case any further. The Petitions Committee could advise the petitioner to ask for legal advice as to available remedies under French law.