



THEMIS Grand Final Competition
(08 – 11 October 2019)

TEAM FINLAND

v.s.

TEAM ITALY

A is from Freeland, a member state of the EU. He is suspected of having committed a murder in Freeland. He is currently staying in Amsterdam.

The Freelandish authorities have asked the Dutch ones to surrender A to Freeland. The Dutch police have arrested A and he is currently in custody in a Dutch prison waiting for his surrender.

Article 22 of the Dutch Surrender Act has implemented Article 17 of the EU Framework Decision 2002/584 on European Arrest Warrants. Article 22 prescribes that in this case A can only be held in custody for 60 days, with an extra 30 days if prolongation is needed.

A's lawyer tells the Court of Amsterdam that A, if being returned to Freeland, might not face a fair trial due to doubts about the good working of the Rule of Law in his country. The Court has therefore asked the Freelandish authorities for detailed information about the guarantees afforded by the Freelandish judicial system to provide A with a fair trial. Time is running late however. The Freelandish authorities are obviously irritated about the critical attitude of the Dutch Court and do not promptly answer the questions.

The custody of A has almost exceeded the maximum of 90 days. A's lawyer asks the Court in Amsterdam to release A as soon as the 90 days have expired. Prolongation of A's custody would be in conflict with Article 22 of the Dutch Surrender Act that is crystal clear on this matter. Prolongation of A's custody would have no legal basis in

the law and would violate A's rights under Articles 6 of the European Charter and 6 of the ECHR.

The Dutch prosecution tells the Court that there is strong evidence that A is probably a dangerous killer and that it would be socially and morally unacceptable if A would be released from custody.

After examining the parliamentary history of the Dutch Surrender Act the Court discovers that, during the implementation of the EAW Directive, the Dutch legislator has misunderstood Article 17 of the EU Framework Decision 2002/584. There is no need to restrict the custody in surrender cases to a maximum of 90 days. There are very strong indications that the legislature – had the meaning of Article 17 of the Framework Decision been clear to the legislator – would have provided for a possibility to prolong the custody in cases like the one of A.

The Amsterdam Court decides that Article 22 of the Surrender Act can be interpreted - in the light of parliamentary history and in accordance with the Framework Decision – as providing a legal basis for A's prolonged detention.

It takes a long time before the Freelandish authorities answer the questions from the Amsterdam Court. As a result, A spends 6 mix months longer in custody, waiting.

A complains at the ECHR that his right under Article 5 of the Convention was violated. He claims that, after the 90 days had expired, that – due to the Courts contra legem interpretation of the Dutch Surrender Act - he was deprived of his liberty in a procedure that was not prescribed by law. Besides, A claims that the proceedings were not fair because, although he was represented by a Dutch lawyer, he was not provided with the interpreter's help throughout the proceedings.

Team FINLAND: present the arguments of representatives of the applicant

Team ITALY: present the position of the Dutch Government