



The Sophie Toscan du Plantier Case : Judicial Cooperation between two EU Member States in trouble

On 23 December 1996, the body of SOPHIE TOSCAN du PLANTIER was found at the entrance to a laneway leading to her residence in the south-west of Ireland near the port of Bantry in county Cork.

Sophie had been viciously killed in the night of the 22 to 23 December, her head partially crushed by a concrete block.

The *Gardaí* (Irish Police) identified Ian BAILEY as a suspect due to the number of serious suspicions and evidence implicating him. BAILEY, a British citizen, had moved to this part of Ireland a few years before the murder.

The Irish criminal procedure depends, as in the UK and the USA, on the decision of the Prosecution to decide on the indictment of a suspect in the absence of reasonable doubt on his/her guilt based on the police investigation. The Director of Public Prosecution in Ireland has so far considered that the evidence gathered by the *Gardaí* has not been sufficient to bring charges against Ian BAILEY.

It is only in 2008, twelve years after the crime, that the *Gardaí* forwarded the case to the French prosecution. Under French law, French judges have jurisdiction to deal with any crime committed abroad on a French citizen. Following an in-depth investigation, involving the hearings of witnesses on location in Ireland, the investigating judge concluded that BAILEY should be charged. This conclusion was subsequently confirmed by the examining chamber of the appeal court and then by the Court of Cassation, after appeal made by the suspect.

On 31 May 2019, the Court of Assizes in Paris convicted BAILEY in absentia to twenty-five years in jail and immediately issued another European Arrest Warrant (EAW) in order to obtain that the convicted murderer be handed over to the French justice. If Ireland finally agrees to extradite BAILEY, he will be retried by new Court of Assizes sitting with a jury and after an adversarial debate as provided for under French criminal law.

To date, Ireland has still to execute this latest EAW. BAILEY has challenged it before the High Court which must rule on its execution by mid-July after a three-day hearing and pleading period. Given the rejection of the previous EAW in 2012 by the Irish Supreme Court, French Justice might face another refusal. However, in 2012, the Supreme Court had justified its refusal of the EAW on two grounds:

- 1) At the time, because the French investigation had not been completed, bringing charges against BAILEY was unlikely and not certain; however, the legal situation has now changed and BAILEY is no longer a person who might be charged but an *offender convicted* by a French court on the basis of a clearly motivated decision.
- 2) As for the second ground, by transposing in its criminal law the 2002 Council Framework Decision on the European Arrest Warrant, Ireland has introduced an additional requirement for the validity of an EAW issued by another member state that is the *requirement of reciprocity* when pressing charges against a suspect.

In our case, a French citizen was killed in another country; the suspect resides in that other country while being a citizen of a third country (i.e., BAILEY is still a British citizen). French criminal law provides that the French justice system can intervene in the case, initiate criminal prosecution, decide on bringing charges against the suspect and refer to the competent French court which will decide on the suspect's guilt and request his transfer to the issuing state via the EAW.

Irish criminal law does not provide for the same possibility meaning that if an Irish citizen was killed in France, the Irish justice system could not intervene either at the investigation stage or at the

prosecution stage. Irish justice system can only intervene abroad if the suspect is himself/herself an Irish citizen. In other words, it is *the nationality of the victim* which authorises the French justice system to deal with a criminal case when the crime has been committed abroad whereas, under Irish law, it is the nationality of the alleged perpetrator which justifies the intervention of the Irish justice system abroad.

However, the 2002 Council Framework Decision does not provide for this condition of reciprocity between the judicial procedures of the two jurisdictions concerned by the EAW. It is precisely because of the differences between legal systems of EU member states that the Framework Decision, based on the cooperation in criminal matter and mutual trust, was concluded in a Europe traumatised by the terrorist attacks of the first years of the new century.

Had there been no major differences between their legal systems in criminal matters, EU member states would not have found necessary to come up with such an international agreement. If then, member states transpose the Framework Decision by adding each further requirements to the ones agreed in the agreement in order to validate the execution of an EAW, it is tantamount to make it inapplicable in total contradiction with the judicial cooperation and mutual trust that such an agreement requires.

Sophie's murder has therefore become a European case, a specific case which thrust lies in the reconciliation of French criminal law and its so-called *inquisitorial* procedure with Irish criminal law and its so-called *adversarial* procedure under the development of EU law which favours efficiency, cooperation and mutual trust.

We expect from the EU institutions a critical and objective appraisal of the implementation by each member state of the 2002 Framework Decision and eventually the questioning of member states such as Ireland that have not correctly transposed its provisions in their domestic criminal law.

Michel André GAZEAU (Sophie's Uncle)