UNIVERSITETET I BERGEN
DET JURIDISKE FAKULTET

NOTAT

Til

fakultetsstyret

J.nr. 2010/10172
Saksnr

Sak nr. 10/11
Styremøte 01.02.11

PH.D.-GRADEN -
INNSTILLING FRA SAKKYNDIG KOMITÉ OG OPPNEVNING AV OPPONENTER

Juris magister Annika Suominen søkte ved brev datert 02.09.10 om å få avhandlingen "The principle of mutual recognition in cooperation in criminal matters - A study of the principle in four framework decisions and in the implementation legislation in the Nordic Member States" vurdert for ph.d.-graden. Ved brev av 15.09.10 oppnevnte visedekan for forskning følgende sakkyndige komité:

- Professor Asbjørn Strandbakken, Universitetet i Bergen
- Professor Petter Asp, Stockholms universitet
- Professor Sabine Gless, Universität Basel.

Komiteen har levert sin innstilling, datert 20.01.11. Komiteen konkluderer enstemmig med at avhandlingen er funnet verdig for å bli forsvart for ph.d-graden.

Annika Suominen har fulgt fakultetets forskerutdanningsprogram i samsvar med gjeldende forskrifter. Hun har ingen merknader til innstillingen og søknaden legges med dette fram for styret med følgende forslag til

vedtak:

1. I samsvar med enstemmig innstilling fra den sakkyndige komité finnes Annika Suominens avhandling "The principle of mutual recognition in cooperation in criminal matters - A study of the principle in four framework decisions and in the implementation legislation in the Nordic Member States" verdig til å forsvares for ph.d.-graden.

2. Som opponenter oppnevnes:

   - Professor Petter Asp, Stockholms universitet som førsteopponent
   - Professor Sabine Gless, Universität Basel som annenopponent.

Knut Martin Tande
prodekan

Eivind Buanes
fakultetsdirektør

21.01.11 MM
Vedlegg: Innstillingen

The Faculty of Law
University of Bergen
Magnus Lagabøtes plass 1
5010 Bergen

Evaluation for the degree philosophiae doctor (PhD)

Annika Suominen: The principle of mutual recognition in cooperation in criminal matters

A study of the principle in four framework decisions and in the implementation legislation in the Nordic Member States

1. The assignment

In a letter dated 2nd September 2010 to the Faculty of Law, University of Bergen, Annika Suominen applied to be evaluated for the degree Philosophiae Doctor (PhD) on the basis of her thesis: The principle of mutual recognition in cooperation in criminal matters. A study of the principle in four framework decisions and in the implementation legislation in the Nordic Member States. In a letter dated 16th September 2010 the Faculty of Law, University of Bergen, appointed the following committee to evaluate the thesis:

Professor dr. jur. Asbjørn Strandbakken, University of Bergen (chairman of the committee)
Professor dr. jur. Sabine Gless, University of Basel
Professor jur. dr. Petter Asp, University of Stockholm

2. The Norm of the Degree Philosophiae Doctor (PhD)

The Norm for the PhD degree, is regulated by the «Regulations for the degree of philosophiae doctor», adopted by the University Board on 12th June 2003. According to section 1 the aim of the research programme is to qualify the candidate for research activities and other kinds of work requiring a high level of scientific insight. It follows from section 6.1 that the thesis must be an independent, scientific piece of work of international standard and high academic standard with respect to the research questions, examination of concepts, methodological, theoretical and empirical basis, documentation and form of presentation. The dissertation must contribute to the development of new academic knowledge and be of an academic standard appropriate for publication as part of the scientific literature in the field in question.

The board for the Faculty of Law at the University of Bergen approved guidelines for the evaluation of PhD degrees in law by decision dated 4th September 2007.

The regulation and guidelines have been available for the committee, and the committee bases its evaluation upon these criteria.

3. A short presentation of the thesis

Annika Suominen's thesis consists of 378 pages written in English plus abbreviations and bibliography. The thesis is divided into 3 parts and 15 chapters. As the title shows, the thesis deals with the principle of mutual recognition in EU criminal law. Suominen uses four framework decisions and their implementation in the Nordic Members State to illustrate the principle of mutual recognition. The framework decisions are the framework decision on the European arrest warrant (EAW), the framework decision of freezing of evidence and assets (FFWD), the framework decision on financial penalties (FPPWD) and finally the framework decision of confiscation orders (CFWD).

In the first part (containing chapter 1-3), Suominen starts in chapter 1 with an introduction to the subject of the study, its systematisation and its aims and limitations. She also explains the method she uses. Chapter 2 deals with mutual recognition in EU Law in general, including the background for mutual recognition. Interestingly from the point of view of EU Member States, Suominen explains the presumption of mutual trust as a prerogative for mutual recognition. She rightly argues that mutual recognition cannot work without mutual trust, and furthermore discloses the continuing doubts whether such mutual trust actually exists among EU Member States. Consistently with her normative approach she does not and can not solve the tension between the proclamation of the ideal of mutual trust and the fact that such faith in each other's judicial system does not exist in all cases. Therefore, the study's presentation of the relevant framework decisions and their implementation in the national legislations in Nordic Member states in chapter 3 is most valuable, because – as Suominen correctly points out – the Scandinavian countries are much closer and have trust in each other's criminal justice system. This circumstance is one of the reasons why the thesis will be very valuable for a future discussion on mutual recognition in the Nordic countries as well as in the EU. Were Suominen to revise her thesis for publication, these special findings should be pointed out.

Part two analyses the grounds for refusal of mutual recognition in the framework decisions and the implementation of these reasons for refusal in the Nordic member states´ legislation. The chapters in this part have the same structure: an introduction followed by a description of

the relevant ground for refusal, then how the ground for refusal is implemented in the Nordic member states, and finally some concluding remarks.

Chapter 4 deals with impossible recognition as ground for refusal. Recognition can be impossible due to insufficient information in the request received, non-existence of the requested object or conflicting rights to the object requested. The legal status of the person as ground for refusal is dealt with in chapter 5. Relevant reasons under this chapter are nationality of the person concerned, the age of the person, amnesty and pardon and finally privileges and immunities. In chapter 6 Suominen analyses jurisdictional limitations for mutual recognition. Such limitations can be based on the fact that a state's jurisdiction may be limited to acts committed in the state itself, even if most states also have jurisdiction when it comes to certain acts committed outside its territory. The requirement of double criminality which on several points is abolished through framework decisions is dealt with in chapter 7. Human rights provisions set forth important restrictions for mutual recognition. Even if such requirements rarely will be real obstacles for the cooperation within the EU, such limitations are of particular interest from the Nordic perspective. Human rights provisions are analysed in chapter 8 in the thesis. Chapter 9 focuses on *Ne bis in idem* restrictions on mutual recognition. The analysis is not limited to final judgements, but also includes the question to what extent an ongoing investigation can be a reason for refusal of recognition. Finally, the last chapter in part two deals with variable recognitions. This means that this chapter deals with conditional recognition, postponed recognition, alternative recognition and partial recognition.

Part three of the thesis contains 5 chapters. In this part, the findings in part two are lifted up for some general remarks and analyses. In the first chapter in this part, chapter 11, Suominen focuses on the reason why there are different grounds for refusal. In chapter 12 Suominen handles how the different Nordic member states have implemented mutual recognition in their national legislation. The study shows that there are interesting differences in the approach to this issue among the Nordic states. Chapter 13 discusses some general aspects of mutual recognition such as different objectives of mutual recognition, the function of mutual recognition, the multilevel character of mutual recognition, degrees of mutual recognition and limits of mutual recognition. Again, one could raise the question why a lack of mutual trust does not qualify as a ground for refusal as such. Chapter 14 contains a theoretical analysis of mutual recognition as a principle. This analysis is done in light of different theoretical positions. The last chapter of the thesis, chapter 15, contains some perspectives on the future of mutual recognition.

4. The committee's evaluation

The committee finds that mutual recognition in the cooperation in criminal matters in EU law is an excellent topic for a PhD study. Such a study has never been done with focus on the implementation in the Nordic member states, which makes a special case as Suominen has convincingly explained.

Throughout the thesis Suominen shows deep insight in the relevant sources of law, both on the EU institutional level and on the national level both in Finland, Sweden and Denmark.

The comparative method used in the thesis is demanding. The method might raise problems on how to organize the material and make a good structure for the study. Further, a general problem with comparative studies is that the author might not be able to discuss questions on a deeper level. To some extent it is unavoidable that a text with the chosen structure partially gets the character of a catalogue. However, Suominen has according to the committee's view succeeded in combining a thorough investigation on the implementation in the Nordic states with a more general perspective which gains from the comparative parts. In several chapters in part two Suominen contributes with relevant and fine analyses when the material invites to reflection on the findings. It should also be underlined that it is important that someone undertakes the demanding and time-consuming task of actually going into detail as regards the framework decisions and their implementation.

In addition, Suominen has through chapter 11-14 also gone into deeper analyses of the principle of mutual recognition. The division of different grounds of refusal into different groups made in chapter 11 is, e.g., both inventive and interesting, and will add new arguments to further discussions on mutual recognition as a European principle. In addition to a well written comparative part, this adds extra value to the evaluation.

The Committee finds that the thesis represents an individual and independent study on a high academic level. Suominen have brought forward new perspectives and presented new knowledge on the implementation of mutual recognition instruments in the Nordic member states. There is no doubt that the thesis is worthy to be defended for the degree Philosophiae Doctor (PhD) at The University of Bergen.

5. Conclusion

Annika Suominen's thesis: «The principle of mutual recognition in cooperation in criminal matters. A study if the principle in four framework decisions and in the implementation legislation in the Nordic Member States», is found worthy to be defended for the degree Philosophiae Doctor (PhD) at The University of Bergen.

Basel/Bergen/Stockholm 20 January 2011

Sabine Gless Asbjørn Strandbakken Petter Asp