



Stream

Strengthening Trust in the
European Criminal Justice Area
through Mutual Recognition
and the Streamlined Application
of the European Arrest Warrant

Jurisprudential Digest

The Court of Justice of the European Union

Anjum Shabbir



This report was funded by the European Union's Justice Programme (2014-2020). It has been prepared in the context of the STREAM project (JUST AG 101007485). The content of this report represents the views of the author only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

This Jurisprudential Digest is a research-based aid for all users of the European Arrest Warrant (EAW) system as established by Framework Decision 2002/584/JHA, with a particular focus on national judicial authorities in EU Member States. It distils the essence of key judgments of the Court of Justice of the European Union – and therefore extracts the key legal principles and findings rather than offering a detailed presentation of the facts of each case.

The list of cases includes a selection of key judgments that cover the interpretation of EU primary law and the definition of legal concepts (such as ‘arrest warrant’, ‘issuing judicial authority’, and ‘executing judicial authority’). The Digest is structured around the main themes of the STREAM Project. For this reason it is divided into three sections:¹

1. **General rules:** Validity of the EAW Framework Decision; direct effect; and primacy of EU law
2. **Issuing an EAW:** (a) who falls under the legal concept of ‘issuing judicial authority’ in order to be able to request the surrender of a person from another Member State; and (b) what rights are protected at this pre-surrender stage?
3. **Executing an EAW:** (a) when and how the ‘executing judicial authority’ can refuse a request to surrender a person to another Member State on fundamental rights grounds; and (b) what rights are protected at the post-surrender stage.

Within those sections, the judgments are ordered chronologically so that the development, progression, or changes in the interpretation of the relevant EU law can more easily be followed. Where relevant, the keywords will distinguish between judgments concerning EAWs issued for (a) prosecution purposes, or (b) sentencing purposes.

¹ Not included are the Court’s judgments on in absentia, *ne bis in idem*, time limits, and pre-surrender detention in the executing State: a list of these judgments can be found in Annex 2 of the Digest.

1. GENERAL RULES:

Validity of the Framework Decision, Direct Effect and Primacy of EU law

Framework Decision is valid (with regard to the choice of instrument and removal of double-criminality verification):

Advocaten voor de Wereld, [C-303/05](#) (3 May 2007)

Keywords: Validity of the Framework Decision; no need to verify double criminality for 30 offences; principle of legality; Article 2(2) of the EAW FD

The Court of Justice held that the Framework Decision's validity was not affected by abolishing the double criminality requirement for 30 offences (Article 2(2) of the EAW FD) in light of the principle of legality. The Member States still had sovereignty in defining offences and penalties, and national law must in any event respect the principle of legality and fundamental rights. Nor did it find that the legal instrument should have been a Convention instead of a Framework Decision, or find any issue concerning equality and non-discrimination.

Framework Decision is valid (with regard to the way procedural rights are protected in light of Articles 6 and 47 of the Charter):

Spetsializirana prokuratura, [C-649/19](#) (28 January 2021)

Keywords: Rights of persons subject to an arrest warrant; Rights of suspects or accused persons who are arrested and detained; Directive on the right to be informed does not apply pre-surrender; effective judicial protection is ensured post-surrender; Framework Decision is not invalid in light of Articles 6 and 47 of the Charter; Article 6 of the Charter; Article 47 of the Charter

The Court of Justice ruled that certain rights under Directive 2012/13 on the right to be informed do not apply to persons subject to an EAW (concerning the Letter of Rights, information about the criminal act, and access to the case file). This did not however affect its validity in the light of Articles 6 and 47 of the EU Charter because: (i) Article 8(1)(d) and (e) of the EAW FD require certain information about the offence to be provided; (ii) from the moment of surrender and becoming an 'accused person', those rights are ensured; (iii) there is no right to effective judicial protection pre-surrender; and (iv) after that the right to effective judicial protection is ensured because the decision to issue a European Arrest Warrant must be subject to review by a court.

Primacy of EU law:

Melloni, [C-399/11](#) (26 February 2013)

Keywords: person sentenced in absentia; right to be present at trial; right to a fair trial; surrender conditional on possibility to review the judgment; higher national standards than EU standards for fundamental rights do not apply; Article 4a(1) of the EAW FD; Articles 47, 48(2), and 53 of the Charter.

The Court of Justice ruled that the executing judicial authority cannot make surrender conditional on the fulfilment of higher, additional national (fundamental rights) requirements which are not foreseen in exhaustively harmonised EU law (Framework Decision 2009/299). This was in the context of the executing authority intending to make surrender conditional on the issuing authority enabling a review where there was an in absentia sentencing of the person subject to the EAW.

No direct effect of the Framework Decision:

Popławski, [C-579/15](#) (29 June 2017)

Keywords: obligation of conform interpretation

The Court of Justice held that the Framework Decision provisions do not have direct effect. This was in the context of an EAW issued several years after a suspended sentence became enforceable, and the person in question gained resident rights in the interim. The Court of Justice held that national legislation should not prevent the executing judicial authority from surrendering the person in question in cases where an EAW is issued several years after a suspended sentence has become enforceable. The executing judicial authority should not merely inform that it is taking over enforcement, especially if that later proves to be impossible.

No direct effect of the Framework Decision:

CJ, [C-492/22 PPU](#) (8 December 2022)

Keywords: EAW for prosecution purposes; public prosecutor; decision to postpone surrender; meaning of 'executing judicial authority'; time limits for surrender; detention; provisional release; preventing absconding; right to appear at trial; Framework Decision provisions do not have direct effect; Articles 6, 7 and 48 of the Charter; interpret national law in conformity with EU law

The Court of Justice confirmed that the Framework Decision does not have direct effect. (It did so in the context of its judgment finding that when the executive

authority postpones surrender, that is a decision on execution of an EAW (and if not taken within the time limits, the person in question may be released).)

There must be a national arrest warrant and if there is not one the executing judicial authority may refuse to give effect to the EAW:

Bob-Dogi, [C-241/15](#) (1 June 2016)

Keywords: EAW for prosecution purposes; meaning of ‘arrest warrant’; national arrest warrant; European arrest warrant; Article 8(1)(c) of the Framework Decision; information in the EAW form; EAW based on a national judicial decision; refusal to give effect to an EAW; Article 8(1)(c) of the EAW FD

The Court of Justice confirmed that the term ‘arrest warrant’ under Article 8(1)(c) of the Framework Decision refers to a national arrest warrant which is distinct from the European Arrest Warrant. If there is no such national arrest warrant underlying the EAW, the executing judicial authority has a duty to request supplementary information to examine the reason for lack of reference to a national arrest warrant. If it concludes the EAW is invalid due to the lack of a national arrest warrant, it must refuse to give effect to the EAW.

2. THE ISSUING STAGE

Requesting the surrender of a person to be prosecuted or sentenced by issuing a European Arrest Warrant

This section collates the Court of Justice's judgments determining or clarifying:

1. Who is legally entitled to issue a EAW: the meaning of 'Issuing judicial authority' in law. In a number of judgments the Court of Justice of the European Union developed the EU law interpretation of which authority can be an 'issuing judicial authority' that is legally entitled to issue a European Arrest Warrant under the EAW Framework Decision. It held that the concept of 'issuing judicial authority' under Article 6(1) of the EAW Framework Decision has an autonomous meaning in EU law.
2. What conditions must be met to issue a EAW, such as the need for a national arrest warrant on which it is based, and for the proportionality of the decision to issue to be assessed; and
3. The rules on ensuring that the fundamental and procedural rights of persons in question are reviewable. The Court clarified how to interpret the Framework Decision in the light of the Charter of Fundamental Rights, specifically the right to effective judicial protection so that the fundamental rights of persons can be challenged and enforced.

The central police service cannot issue an EAW:

Poltorak, [C-452/16 PPU](#) (10 November 2016)

Keywords: meaning of 'issuing judicial authority'; 'independence of issuing judicial authority'; central police service not an issuing judicial authority; separation of powers

The Court of Justice ruled that a central police service (the Swedish National Police Board) is not an 'issuing judicial authority'. The term 'issuing judicial authority' is broader than only courts and tribunals and includes actors 'participating in the administration of justice'. But the police service was an actor falling within the executive branch, and not considered as falling within that wider notion of judiciary. This was important in the light of the principle of the separation of powers (the rule of law).

Public prosecutor verifying and validating a national arrest warrant issued by a police service results in a 'judicial decision':

Özçelik, [C-453/16 PPU](#) (10 November 2016)

Keywords: meaning of 'arrest warrant'; national arrest warrant issued by police service and confirmed by a public prosecutor; Article 8(1)(c) of the Framework Decision

The Court of Justice ruled that it is irrelevant if a national arrest warrant has been issued by a police service if the public prosecutor's office verifies and validates it. Doing so makes it the authority responsible for issuing the national arrest warrant. As a public prosecutor can fall within the term 'judicial authority' where it administers criminal justice, it is covered by the term 'judicial authority', and its decision is a 'judicial decision' under Article 8(1)(c) of the Framework Decision.

A ministry cannot be an issuing judicial authority:

Kovalkovas, [C-477/16 PPU](#) (10 November 2016)

Keywords: meaning of 'arrest warrant'; national arrest warrant issued by a police service and confirmed by a public prosecutor

The Court of Justice confirmed its ruling in *Poltorak*: organs belonging to the executive branch such as ministries could not be an 'issuing judicial authority'.

A public prosecutor can issue a European Arrest Warrant under certain conditions:

PF, [C-509/18](#) (27 May 2019)

Keywords: Issuing judicial authority; Independence of issuing judicial authority; Influence of executive in European Arrest Warrant cases; Public prosecutor as issuing judicial authority; effective judicial protection; proportionality of a European Arrest Warrant

The Court of Justice ruled that a 'Prosecutor General' can be an issuing judicial authority. (In this case that included the Prosecutor General of Lithuania), because:

- such authorities 'participate in the administration of justice' (but ministries or public services that are part of the executive do not);
- criminal proceedings include the pre-trial phase; and
- a European Arrest Warrant can be issued for prosecution purposes (and not only for the purposes of finding a person who has been convicted and sentenced so they can serve their sentence).

This was made conditional on:

- it being able to exercise its responsibilities objectively;
- take into account all evidence;
- being free of influence from external directions or instructions ‘in particular from the executive’. It has to be ‘beyond doubt’ that its issuing of an EAW is its decision alone and not that of the executive.

Further conditions were established in order to ensure fundamental rights protection, ensure review possibilities, and to show its independence:

- There had to be a dual level of protection of procedural rights and fundamental rights, especially as fair trial rights under Article 6 of the EU Charter of Fundamental Rights are at stake. That dual level of protection has to be ensured by the issuing judicial authority:
 - i. at the first stage through a national arrest warrant under national law; and
 - ii. at the second stage, when the EAW is issued.
- There must be a decision at *one* of those two stages that ensures effective judicial protection if there is an authority issuing the EAW that is not strictly a judge or court. That authority must satisfy itself that the requirements necessary in order to issue an EAW are met:
 - i. in particular that there is a judicial decision (by a judge or pre-trial investigation court) at the national arrest warrant level which remands the person in custody;
 - ii. that the decision can be challenged/ is reviewable before a court; and
 - iii. the fundamental rights safeguards of the person in question are available in the adoption of that decision.
- At the second stage, when the EAW is issued, the issuing authority must review the conditions necessary for issuing an EAW: is it proportionate to issue it? Is that decision reviewable? This is even if there has been a national arrest warrant issued by a judge or court.

A public prosecutor cannot issue an EAW if it is not independent from the executive:

OG (Parquet de Luebeck) and PI, C-508/18 and C-82/19 PPU (27 May 2019)

Keywords: Independence of issuing judicial authority; Influence of executive in European Arrest Warrant cases; Public prosecutor as issuing judicial authority; effective judicial protection; proportionality; assurances or information exchange between authorities

The Court of Justice largely confirmed its ruling in *PF* concerning independence of the issuing judicial authority. Public prosecutors offices' are not 'issuing judicial authorities' under the Framework Decision if there is a direct or indirect risk that are at risk of directions or instructions in a specific case connected to the adoption of a decision to issue a European Arrest Warrant from the executive (governmental) branch of the country. (In this case German public prosecutors offices were not 'issuing judicial authorities'. They investigate persons suspected of having committed a criminal offence and only they can initiate the prosecution. The problem was that they belonged to a hierarchical structure subject to the Minister for Justice of the *Land* – which could supervise, direct or even instruct those subordinate to him.) It added that the issuing judicial authority must be in a position to give 'assurances' to the executing judicial authority that the independence required of it was guaranteed – through 'statutory rules' and an 'institutional framework' showing it is free of any risk of being subject to influence ('instruction') in a specific case from the executive.

A public prosecutor's office which is not completely independent from the executive can still issue a European Arrest Warrant if it is 'endorsed' and reviewed by a (reviewable) court decision:

NJ (Parquet de Vienne), C-489/19 PPU (9 October 2019)

Keywords: meaning of 'European Arrest Warrant'; validity of a European Arrest Warrant; 'issuing judicial authority'; public prosecutor as issuing judicial authority; independence of the public prosecutor from the executive; effective judicial protection; proportionality of the European Arrest Warrant

The Court of Justice ruled that a European Arrest Warrant issued by a public prosecutor's office which could receive specific directions or instructions in a case from the executive was still valid. This is because it did not have legal effect until it was endorsed by a court (deciding on its legality and proportionality, a decision which was reviewable). The court was considered as not merely confirming the public prosecutor's decision, but as coming to an independent decision.

The Court of Justice examined the question from the perspective of whether this was a valid EAW in light of who had issued it (unlike previous cases this year looking directly at who is issuing the EAW and their independence and competence to do so). In this case the Court repeated parts of its judgment in *PF* on the dual level of protection required, including that decisions to issue an EAW must include guarantees (fundamental rights) specific to judicial decisions; that the decision must be open to review by a court; that its proportionality can be reviewed; and the need for independence of the issuer as protected by law – to exclude the risk that the EAW decision is subject to external instructions, especially from the executive.

Public prosecutor can be an issuing judicial authority even if there is no separate judicial review of its decision to issue an EAW for prosecution purposes

ZB/Openbaar Ministerie (Public Prosecutor, Brussels), [C-627/19 PPU](#) (12 December 2019)

Keywords: meaning of ‘issuing judicial authority’; public prosecutor’s office as issuing judicial authority; European Arrest Warrant issued for sentencing purposes; proportionality of issuing the European Arrest Warrant; fundamental rights; judicial review of sentencing judgment

The Court of Justice ruled that a public prosecutor can issue a European Arrest Warrant for sentencing purposes even if there is no separate judicial remedy against its decision to do so. It distinguished the case from *OG and PI* and *PF* because of the purpose of the EAW for sentencing and not for prosecution. It based this on the fact that EAWs for sentencing purposes were already based on an enforceable judgment imposing a sentence, and therefore that the person in question had benefited from the presumption of innocence and fair trials under Article 47 of the Charter, and moreover judicial review was possible to ensure effective judicial protection. It also found that it follows from this type of EAW that it is proportionate, based on the requirement that there is a sentence of a minimum period before an EAW can be issued.

Effective judicial protection when a public prosecutor has issued the EAW:

Openbaar Ministerie (Parquet de Suède), [C-625/19 PPU](#) (12 December 2019)

Keywords: meaning of ‘issuing judicial authority’; public prosecutor’s office as issuing judicial authority; effective judicial protection; judicial review; right of appeal; proportionality of issuing an EAW; provisional detention order

The Court of Justice clarified that effective judicial protection was ensured if there can be judicial review in the issuing State to challenge whether the requirements

for issuing an EAW have been met (especially its proportionality), where a public prosecutor has issued the EAW for prosecution purposes on the same day a provisional detention order has been made by a court. It held that it was legitimate for different Member States to have different ways to allow the exercise of the right of effective remedy: a separate right of appeal against the EAW issuing-decision by a PPO was one acceptable way of ensuring effective judicial protection. Moreover the right to appeal the provisional detention order meant proportionality could be examined again on appeal. An early examination of proportionality in a legal system killed two birds with one stone: examining whether it was necessary to order provisional detention as well as whether an EAW was proportionate to issue.

Public prosecutors that receive general instructions from the executive can still be an issuing judicial authority if independence can be guaranteed / effective judicial protection

JR and YC/Parquet général du Grand-Duché de Luxembourg (Procureurs de Lyon et Tours), Joined Cases [C-566/19 PPU](#) and [C-626/19 PPU](#) (12 December 2019)

Keywords: meaning of ‘issuing judicial authority’; public prosecutor as issuing judicial authority; independence of the issuing judicial authority; proportionality of issuing the European Arrest Warrant; effective judicial protection before or after surrender

The Court of Justice ruled that an issuing judicial authority includes public prosecutors that receive *general* instructions from the executive. This is permissible if they have the status of judge, participate in the administration of criminal justice, and have a guarantee of independence, especially with regard to the executive, when issuing an EAW. (In this case, the French public prosecutor had the status of judge, participated in the administration of criminal justice, and the French Constitution ensured their independence but allowed *general* instructions to ensure uniform policy to be given.) On assessing proportionality before the decision to issue the EAW is adopted to ensure the conditions to do so are met, it ruled that effective judicial protection is provided concerning that issuing and proportionality, and there is a system of scrutiny before or after surrender of the person that meets the requirement of effective judicial protection.

Effective judicial protection where there is no national arrest warrant or review possibility

MM, [C-414/20 PPU](#) (13 January 2021)

Keywords: meaning of ‘issuing judicial authority’; public prosecutor as issuing judicial authority; no national arrest warrant; pre-trial detention; validity of EAW; proportionality of issuing the EAW; effective judicial protection post-surrender; Article 6(1) and Article 8(1)(c) of the Framework Decision; Article 47 of the Charter

The Court distinguished the concept of ‘issuing judicial authority’ from that of ‘effective judicial protection’ in the issuing State. An issuing judicial authority such as a public prosecutor could qualify as such without there having to be a review of its decision by a court of the EAW and the national decision the EAW is based on. The Court of Justice highlighted the essential role of national courts to guarantee compliance with fundamental rights as enshrined in the Charter: specifically in this case, the court of the issuing State should ensure the right of effective judicial protection as enshrined in Article 47 of the Charter. It should do so post-surrender through the possibility of reviewing the validity of an EAW, if there was no such judicial review possibility. A court in the issuing State reviewing the pre-trial detention decision of the person surrendered based on an EAW, has jurisdiction to indirectly review the validity of that EAW being challenged before it, if there is no national arrest warrant and no separate legal remedy against that EAW. If the EAW is found to be invalid, that does not mean the person should be released: but the conditions for pre-trial detention based on national law should be reviewed by a court.

Effective judicial protection to be granted pre-surrender

PI/Svishtov, [C-648/20 PPU](#) (10 March 2021)

Keywords: meaning of ‘issuing judicial authority’; independence of issuing judicial authority; public prosecutor as issuing judicial authority based on its detention order; no judicial review of public prosecutor’s decisions before surrender; effective judicial protection; proportionality of issuing the EAW; dual level of protection of fundamental rights; interpretation of Article 8(1)(c) of the Framework Decision in light of Article 47 of the Charter; EAW for prosecution purposes

The Court of Justice developed its ruling on effective judicial protection in the above case *MM* – it should be granted *pre-surrender*. It held that if there is no judicial review possible of the public prosecutor’s decision to order the detention of the person, and decision to issue a European Arrest Warrant before surrender, that this is contrary to Article 8(1)(C) of the EAW FD in light of Article 47 and the Court’s case

law, and effective judicial protection is not ensured. There must be national procedural rules allowing for the pre-surrender review of the national judicial decision on which the EAW is based, or of the EAW, where both are adopted by a public prosecutor.

Effective judicial protection: post-surrender

Spetsializirana prokuratura (Informations sur la décision nationale d'arrestation), [C-105/21](#) (30 June 2022)

Keywords: national arrest warrant; right to an effective judicial remedy; no need to ensure effective judicial protection pre-surrender; right to information in criminal proceedings pre-surrender; person's right to be informed of the accusation against them pre-surrender; right of access to case materials pre-surrender; conditions for issuing an EAW; Directive 2012/13; Articles 6 and 47 of the Charter

The Court of Justice held that the executing judicial authority is bound by the right to information Directive 2012/13 in the period between issuing an EAW and before surrender, namely by informing the person in question of the reasons for the arrest, including the criminal act suspected/accused of committing. However, *the right to effective judicial protection* does not have to be ensured before surrender: this means there is no obligation on the issuing authority to provide information as to available legal remedies and having to forward the national decision. As the Court frames it, Articles 6 and 47 of the Charter in no way requires that there is a *third level of judicial protection*. It also does not find that the right to freedom of movement and residence and the principles of equality and mutual trust change that conclusion. It adds that providing legal challenge information, and the national decision on arrest would also complicate and delay a procedure that is supposed to be simplified and quick.

Systemic and generalised deficiencies regarding the judiciary in the issuing State does not mean a specific issuing judicial authority is automatically denied that status

L and P/ Openbaar Ministerie, [C-354/20 PPU](#) (17 December 2020)

Keywords: meaning of 'issuing judicial authority'; independence of the issuing judicial authority; refusal to surrender the person on fundamental rights grounds; right to a fair trial; right of access to an independent and impartial tribunal; rule of law backsliding; systemic or generalized deficiencies; effective judicial protection; Article 47(2) of the Charter; Articles 1(3) and 6(1) of the EAW FD;

The Court of Justice confirmed its previous case-law on the meaning of ‘issuing judicial authority’ (as including authorities ‘participating in the administration of justice’ and which are independent from the executive when issuing an EAW). However, it ruled that an executing judicial authority cannot deny this state to an issuing judicial authority based only on the existence of systemic and generalized deficiencies regarding the judiciary in the issuing Member State. This judgment should be read together with *OG and PI*, *Aranyosi* and *LM*: it also set out that both steps of the two-step test for refusals on fundamental rights grounds (both general and specific, based on evidence of a certain nature) must be fulfilled on a case-by-case basis before deciding on refusal to surrender a person.

3. NON-EXECUTION OF THE EUROPEAN ARREST WARRANT

Refusal to surrender a person to another Member State for criminal justice purposes

This section includes:

1. The Court's jurisprudence on when fundamental rights grounds can be relied on to refuse the surrender of a person subject to a European Arrest Warrant, which limits the principles of mutual trust and mutual recognition; and
2. Details the EU standards on what rights are available to persons subject to an EAW pre- and post- surrender

No right of person subject to a European Arrest Warrant to be heard pre-surrender

Radu, [C-396/11](#) (29 January 2013)

Keywords: Right to be heard at the EAW-issuing stage; grounds for refusal to surrender person subject to EAW

This ruling is an early EAW case that is significant because it restricted the scope of the right to be heard in the context of EAW proceedings: there was no such right before the judicial authorities in the issuing Member State: there was a possibility rather for the executing judicial authority to scrutinize the EAW. In this case Mr Radu argued that the EAW should not have been issued without his being able to exercise his right to a fair trial, in breach of Articles 47 and 48 of the EU Charter of Fundamental Rights, and Article 6 of the ECHR.

The judgment is well-known for being restrictive with respect to fundamental rights not only in that context but also as a whole: the Court of Justice followed the letter of the law and concept of mutual trust in the Framework Decision strictly, in a way that did not open the door for fundamental rights concerns to serve as a grounds for refusal to surrender a person subject to an EAW under Article 1(3) of the Framework Decision. It did not consider the issue raised concerning the constitutional principle of proportionality where a breach of fundamental rights had been alleged (the right to a fair trial: presumption of innocence, right to be heard, and right to liberty). In that respect this case is now out of date, as the *Aranyosi* and *LM* judgments of 2016 and 2018 establish and develop a fundamental-rights test which means the principles of mutual trust and recognition can in specific circumstances be limited for fundamental rights reasons. It made a point of making

the distinction between EAWs issued for prosecution purposes (as in this case) and EAWs issued for sentenced persons to carry out their sentence.

Refusal to surrender on fundamental rights grounds (right to a fair trial, right to be present at trial). No higher national level of fundamental rights protection allowed

Melloni, C-399/11 (26 February 2013)

Keywords: person sentenced in absentia; right to be present at trial; right to a fair trial; surrender conditional on possibility to review the judgment; higher national standards than EU standards for fundamental rights do not apply; Article 4a(1) of the EAW FD; Articles 47, 48(2), and 53 of the Charter.

The Court of Justice ruled that the executing judicial authority cannot make surrender conditional on the fulfilment of higher, additional national (fundamental rights) requirements which are not foreseen in exhaustively harmonised EU law (Framework Decision 2009/299). This was in the context of the executing authority intending to make surrender conditional on the issuing authority enabling a review where there was an in absentia sentencing of the person subject to the EAW.

Refusal on fundamental grounds (constitutionally protected) did not apply if the right had been expressly or implicitly waived. That waiver of the right to be present at trial occurs if established unequivocally, there were minimum safeguards in place, and it is not contrary to public interest. There is no violation of the right if the person was informed of the date and place of the trial, or was defended by counsel they instructed, and the person did not appear.

Refusal to surrender on fundamental rights grounds (detention conditions)

Aranyosi, [C-404/15](#) (5 April 2016)

Keywords: refusal to surrender on fundamental rights grounds; prohibition of inhuman and degrading treatment; detention conditions in the issuing Member State

For the first time the Court of Justice ruled that a possible violation of a fundamental right – in this case the right not to be tortured or subjected to inhuman and degrading treatment as a result of poor prison detention conditions – could be an exception to the principles of mutual trust and mutual recognition. It established a two-step test to prove that there was a risk of facing such breach under Article 4 of the Charter if the person in question was surrendered, based on ‘objective, reliable, specific, and

properly updated information on the detention conditions’ that (1) demonstrates the existence of systemic or generalised deficiencies; and (2) a specific and precise assessment of the conditions in which the person will be detained.

The threshold for inhuman and degrading treatment was determined by reference to the European Court of Human Rights’ jurisprudence on Article 3 ECHR., including *Varga and Others v. Hungary* finding that prison conditions in Hungary violated that right. To evaluate the risk, the space available to an individual, including in a multi-occupancy cell, sanitary conditions, the possibility of free movement within the prison, as well as the ‘cumulative effects of all aspects of life in detention’ had to be taken into account. The risk could not be ruled out by the mere existence of a legal remedy to challenge detention conditions. The Court of Justice developed the duty of the executing judicial authority to request additional information from the issuing Member State: if then it concluded there was a real risk of breach of that right, it must refuse to surrender the person in question.

Rights of the defence

Tupikas, [C-270/17 PPU](#) (10 August 2017)

Keywords: ‘trial resulting in the decision’; rights of the defence

The doubt in this case was whether the person had been able to exercise his right of defence not only at first instance, but also during the appeal proceedings – which the EAW did not indicate. It was not clear whether the right to a fair trial and an effective remedy had been respected (Article 6 ECHR and Article 47 Charter). The Court held that the appeal proceedings were in principle included, because the concept of ‘trial resulting in the decision’ under Article 4a(1) of the EAW relates only to the instance delivering a final sentence/penalty/rules on the guilt.

Refusal to surrender on fundamental rights grounds (detention conditions)

ML, [C-220/18 PPU](#) (25 March 2018)

Keywords: refusal to surrender on fundamental rights grounds; prohibition of inhuman or degrading treatment; detention conditions in the issuing Member State; assessment of detention conditions by the executing judicial authorities; legal remedy in the issuing Member State; information; up to date information; supplementary information; assurances given by the issuing judicial authority; Article 3 ECHR; Article 4 of the Charter

The Court of Justice held that refusal to surrender a person on the fundamental rights grounds that there is a real risk of violation of Article 4 of the Charter (prohibition of inhuman or degrading treatment based on poor detention conditions) cannot be ruled out just because there is an avenue of legal redress concerning those detention conditions in the issuing State.

There had to be a minimum level of severity of ill-treatment. And assessment of the detention conditions could only be carried out for prisons in which the person would actually be detained (including on a temporary or transitional basis), and only the relevant detention conditions should be examined.

It ruled that assurances – even from a minister – can be taken into account about the prison conditions, but the information relied upon had to be accurate and up to date. If asking for supplementary information, this had to be a last resort to used in exceptional cases according to Article 15(2) EAW FD.

Finally, it retained the ECtHR benchmark, adding that a strong presumption of a violation of Article 3 ECHR arises when the personal space available to a detainee is below 3 m² in multi-occupancy accommodation: but that this is rebuttable if the reductions in the minimum space available are ‘short, occasional, and minor’ and there is enough ‘freedom of movement outside the cell’ and ‘adequate out-of-cell activities’.

Refusal to surrender on fundamental rights grounds (*Aranyosi* test extended from Article 4 Charter cases to Article 47 Charter cases – independence of the judiciary)

LM/ Minister for Justice and Equality, C-216/18 PPU (25 March 2018)

Keywords: refusal to surrender on fundamental rights grounds; right of access to an independent and impartial tribunal; independence of judges/judiciary; fundamental right to a fair trial; ‘flagrant denial of justice’; systemic and generalized deficiencies; substantial grounds for believing risk of a breach; rule of law backsliding; information provided by the issuing authority; Article 7 TEU; Article 2 TEU; Article 6 ECHR; Article 47(2) of the Charter; Article 1(3) of the EAW FD

The Court of Justice clarified the interpretation of Article 1(3) of the EAW FD and applied by analogy the two-step test established in *Aranyosi*, in a case concerning refusal to surrender a person on fundamental rights grounds (right to a fair trial, relying on the Commission’s Article 7 TEU proceedings). The Court confirmed that it was necessary to make the specific assessment part of the test even in the context of a system no longer operating within the law. It still had to determine specifically

and precisely if there are substantial grounds that the individual will run such a risk if surrendered, having regard to the nature of the offence, the personal situation, the factual context of the EAW, and the information provided by the issuing State.

The Court of Justice ruled that: the requirement of independence of judicial authorities participating in EAWs proceeding was central to guarantee the right to effective judicial protection and the fundamental right to a fair trial; judicial independence is a crucial precondition for the protection of the fundamental rights derived from EU law, but also a requirement that is necessary to comply with the values set out in Article 2 TEU, in particular the value of the rule of law, and the interlinked principle of separation of powers.

Refusal to surrender on fundamental rights grounds (detention conditions)

Dorobantu, [C-128/18](#) (15 October 2019)

Keywords: refusal to surrender a person on fundamental rights grounds; prohibition of inhuman or degrading treatment; detention conditions in the issuing State's prisons; assessment and review of detention conditions by the executing judicial authority; systemic or generalized deficiencies; Article 3 ECHR; Article 4 of the Charter; assurances; information exchange; insufficient information to make a decision on surrender

The Court of Justice confirmed that in cases concerning Article 4 of the Charter, a limitation of the principle of mutual recognition and trust is allowed exceptionally (given its absolute nature). The executing authority is bound to assess whether there was a real risk of its violation when making a surrender decision. It clarified the extent and scope of the executing authority's review of detention conditions:

- there must be an up-to-date and detailed examination of the detention conditions based on objective, reliable, specific and properly updated (precise) information that can be from international sources (UN, ECHR, CoE) and national rulings;
- it must relate to the specific person;
- it must relate to the specific prison and not all prisons in that Member State generally (to prevent delays and impunity);
- even if the legality of detention conditions was reviewable, the executing authority must still carry out its assessment for the individual;
- information and assurances had to be sought from the issuing authority;

- a finding of real risk of Article 4 violation must be exceptional where assurances have been given about the prison conditions (they should generally be relied upon, unless there are specific indications to the contrary).

The Court's reliance on ECtHR criteria was expressly confirmed.

Refusal to surrender: serving the sentence in the executing Member State

SF, [C-314/18](#) (11 March 2020)

Keywords: return of the person to the executing State after surrender; guarantee to return person to serve sentence; change to duration of sentence; social reintegration; Article 1(3) EAW FD; Article 5(3) EAW FD; Article 3 EAW FD

The Court held that a person must be returned to the executing State as soon as the sentencing decision in the issuing State becomes final – but the duration of the sentence could not be changed. However, this was unless the person's presence in the issuing State was essential concerning the administration of justice or defence rights pending such final decision. The sentence could only be adapted in strict conditions as set out under FD 2008/909.

Who does 'executing judicial authority' cover

AZ/*Openbaar Ministerie*, [C-510/19](#) (24 November 2020)

Keywords: meaning of 'executing judicial authority'; independence of the executing judicial authority; public prosecutor subject to instructions from the executive; effective judicial protection; prosecution for offence not listed in the EAW; rule of speciality; Article 6(2) and 27(3)(g) of the EAW FD

The Court of Justice held that the term 'executing judicial authority' under Article 6(2) of the EAW FD has an autonomous EU law meaning and transferred its interpretation and criteria in *OG and PI* on who can be an 'issuing judicial authority'. It ruled that executing judicial authority includes actors that 'participate in the administration of criminal justice' as long as they are acting independently and do not receive instructions in a specific case from the executive (Article 27(3)(g)).

By contrast to the dual level of protection required when issuing an EAW, the intervention of the executing judicial authority was the sole level of protection provided for by Framework Decision for the purposes of guaranteeing that, the person requested enjoy all the guarantees appropriate to the adoption of judicial

decisions, in particular, those resulting from the fundamental rights and the fundamental legal principles

The Court specified further that if the executing judicial authority was not a court in the strict sense, national procedural rules had to provide for a judicial remedy with respect to its decision to execute the EAW to provide effective judicial protection. The judgment arose in the context of a dispute in the main proceedings over whether the Dutch Public Prosecutor qualified as an executing judicial authority that could give consent regarding disapplication of the rule of speciality.

Systemic and generalised deficiencies regarding the judiciary in the issuing State does not mean a specific issuing judicial authority is automatically denied that status

L and P/ Openbaar Ministerie, [C-354/20 PPU](#) (17 December 2020)

Keywords: meaning of ‘issuing judicial authority’; independence of the issuing judicial authority; refusal to surrender the person on fundamental rights grounds; right to a fair trial; right of access to an independent and impartial tribunal; rule of law backsliding; systemic or generalized deficiencies; effective judicial protection; Article 47(2) of the Charter; Articles 1(3) and 6(1) of the EAW FD;

The Court of Justice confirmed its previous case-law on the meaning of ‘issuing judicial authority’ (as including authorities ‘participating in the administration of justice’ and which are independent from the executive when issuing an EAW). However, it ruled that an executing judicial authority cannot deny this state to an issuing judicial authority based only on the existence of systemic and generalized deficiencies regarding the judiciary in the issuing Member State. This judgment should be read together with *OG and PI*, *Aranyosi* and *LM*: it also set out that both steps of the two-step test for refusals on fundamental rights grounds (both general and specific, based on evidence of a certain nature) must be fulfilled on a case-by-case basis before deciding on refusal to surrender a person.

Right to effective judicial protection and right to information

Spetsializirana prokuratura (Informations sur la décision nationale d’arrestation), [C-105/21](#) (30 June 2022)

Keywords: right to an effective judicial remedy; effective judicial protection; no effective judicial protection pre-surrender; right to information in criminal proceedings; right to access

case materials; right to be informed of the accusation against him/her; Directive 2012/13; Articles 6 and 47 of the Charter

The Court of Justice held that the executing judicial authority is bound by the right to information Directive 2012/13 in the period between issuing an EAW and before surrender, namely by informing the person in question of the reasons for the arrest, including the criminal act suspected/accused of committing. However, *the right to effective judicial protection* does not have to be ensured before surrender: this means there is no obligation on the issuing authority to provide information as to available legal remedies and having to forward the national decision. As the Court frames it, Articles 6 and 47 of the Charter in no way requires that there is a *third level of judicial protection*. It also does not find that the right to freedom of movement and residence and the principles of equality and mutual trust change that conclusion. It adds that providing legal challenge information, and the national decision on arrest would also complicate and delay a procedure that is supposed to be simplified and quick.

Refusal to surrender on fundamental rights grounds (judicial independence)

X and Y/Openbaar Ministerie, [C-562/21 PPU](#) (22 November 2022)

Keywords: refusal to surrender on fundamental rights grounds; right to a fair trial; appointment of judges; independent and impartial tribunal previously established by law; system or generalized deficiencies; substantial grounds for believing real risk of breach of rights; rule of law; dialogue; sincere cooperation; Articles 1(2) and (3) EAW FD

The Court of Justice ruled that if the executing authority has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State it can refuse surrender for prosecution and sentencing purposes, if there is a real risk of a breach of the right to a fair trial, and there is no effective judicial remedy for the breach/the composition of judges it will be tried by cannot be determined and there is no effective remedy to challenge the validity of judicial appointment. It emphasised the need to carry out a 'specific and precise verification' based on 'objective, reliable, specific and properly updated' information on the individual's situation, and that both steps of the two-step test have to be carried out.

Refusal to surrender on fundamental rights grounds: (right to a fair trial/jurisdiction in main proceedings)

Puig Gordi and Others, [C-158/21](#) (31 January 2023)

Keywords: refusal to surrender a person on fundamental rights grounds; jurisdiction of the issuing judicial authority; rights of the defence; right to a fair trial; presumption of innocence; systemic or generalised deficiencies; right of access to a tribunal previously established by law; successive EAWs; Articles 4 and 47 of the Charter; Articles 1(3), 6(1) and 8 of the EAW FD

The Court of Justice listed the grounds for refusal to surrender that stem or flow from the Framework Decision (risk of infringement of Articles 4 and 47 of the Charter) are exceptional, and have a ‘strictly limited scope’. The ground for refusal in this case was identified as a provision of the Belgian EAW act, which could not serve as a ground for refusal if it went beyond the scope of Article 1(3) of the EAW FD. Nor could the Belgian authority verify the issuing authority’s jurisdiction to issue an EAW, unless it had evidence (based on objective, reliable, specific and properly updated information) that there was a risk of breach of the right to a fair trial, on account of systemic and generalised deficiencies, and there are substantial grounds for believing the individual in question faces such a risk. It also gave its views on reliance on a WGAD report (as a factor to take into account but not to rely on alone), and emphasized that issuing judicial authority has to be asked for supplementary information and be engaged with in dialogue. And it added that an EAW cannot be successively issued where there is no change in circumstances pursuant to a refusal to surrender. Whereas the executing judicial authority must not refuse surrender on the ground that that suspect is at risk of being tried by a court in the issuing state, which lacks jurisdiction, it still can consider under the second prong of the test as a reason for suspending surrender that the court in the issuing state *manifestly* lacks jurisdiction for that purpose.

ANNEX 1

List of Judgments in the Digest

Advocaten voor de Wereld, [C-303/05](#) (3 May 2007)

Radu, [C-396/11](#) (29 January 2013)

Melloni, [C-399/11](#) (26 February 2013)

Aranyosi, [C-404/15](#) (5 April 2016)

Bob-Dogi, [C-241/15](#) (1 June 2016)

Poltorak, [C-452/16 PPU](#) (10 November 2016)

Özçelik, [C-453/16 PPU](#) (10 November 2016)

Kovalkovas, [C-477/16 PPU](#) (10 November 2016)

Poptawski, [C-579/15](#) (29 June 2017)

Tupikas, [C-270/17 PPU](#) (10 August 2017)

ML, [C-220/18 PPU](#) (25 March 2018)

LM/ Minister for Justice and Equality, [C-216/18 PPU](#) (25 March 2018)

PF, [C-509/18](#) (27 May 2019)

OG (Parquet de Luebeck) and PI, [C-508/18](#) and [C-82/19 PPU](#) (27 May 2019)

NJ (Parquet de Vienne), [C-489/19 PPU](#) (9 October 2019)

Dorobantu, [C-128/18](#) (15 October 2019)

Openbaar Ministerie (Parquet de Suède), [C-625/19 PPU](#) (12 December 2019)

JR and YC/Parquet général du Grand-Duché de Luxembourg (Procureurs de Lyon et Tours),
Joined Cases [C-566/19 PPU](#) and [C-626/19 PPU](#) (12 December 2019)

ZB/Openbaar Ministerie (Public Prosecutor, Brussels), [C-627/19 PPU](#) (12 December 2019)

SF, [C-314/18](#) (11 March 2020)

AZ/Openbaar Ministerie, [C-510/19](#) (24 November 2020)

L and P/Openbaar Ministerie, [C-354/20 PPU](#) (17 December 2020)

MM, [C-414/20 PPU](#) (13 January 2021)

Spetsializirana prokuratura, [C-649/19](#) (28 January 2021)

PI/Svishtov, [C-648/20 PPU](#) (10 March 2021)

Spetsializirana prokuratura (Informations sur la décision nationale d'arrestation), [C-105/21](#) (30 June 2022)

X and Y/Openbaar Ministerie, [C-562/21 PPU](#) (22 November 2022)

CJ, [C-492/22 PPU](#) (8 December 2022)

Puig Gordi and Others, [C-158/21](#) (31 January 2023)

ANNEX 2

List of Judgments not included in the Digest

Kozłowski, C-66/08 (17 July 2008)

Rights of persons subject to a European Arrest Warrant who are resident/staying in the executing MS (compared to the protection given to nationals)

Keywords: meaning of the terms 'resident' and 'staying' in the executing Member State; refusal to execute a European Arrest Warrant

Santesteban, C-296/08 PPU (12 August 2008)

Previous Extradition Treaty

Keywords: whether the Framework Decision or previous extradition treaty applies; Articles 31 and 32

Leymann and Pustovarov, C-388/08 PPU (1 December 2008)

Keywords: specialty principle; consent procedure; Article 27 of the EAW FD

Wolzenburg, C-123/08 (6 October 2009)

Refusal to surrender: residence rights

Keywords: refusal to execute a European Arrest Warrant; Article 4(6); refusal to surrender conditional on residence period of five years in Member State's territory; Person arrested a national of the issuing Member State; Article 12 EC

I. B. C-306/09 (21 October 2010)

Surrender conditional on return to executing MS to serve sentence:

In absentia/new trial

Keywords: sentenced in absentia; surrender conditional on return to executing Member State to serve the sentence; new trial in the issuing Member State; grounds for refusal; guarantees to be provided by issuing Member State; Articles 1(3), 4(6) and 5(1), (3) EAW FD.

Mantello, C-261/09 (16 November 2010)

Ne bis in idem

Keywords: (Reference for a preliminary ruling – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 3(2) – Ne bis in idem – Concept of the 'same acts' – Possibility for the executing judicial authority to refuse to execute a European arrest warrant – Final judgment in the issuing Member State – Possession of narcotic drugs – Trafficking in narcotic drugs – Criminal organisation)

West, C-192/12 PPU (28 June 2012)

Successive European Arrest Warrants: which Member State is responsible for consent

Keywords: EAW for sentenced person; subsequent surrender; successive EAWs; responsibility for consent to surrender; meaning of 'executing Member State'; Article 27(2) and (3)

Lopes Da Silve Jorge, C-42/11 (5 September 2012)

Refusal to surrender: nationals of the issuing Member State

Keywords: refusal to surrender; arrested person is national or resident of issuing Member State; EAW for sentenced person; all connections to be examined; national law restricts power to refuse surrender to nationals

Jeremy F. C-168/13 PPU (30 May 2013)

Appeal (against decision to surrender) with suspensive effect

Keywords: specialty rule; extension of EAW for onward surrender; decision of executing judicial authority to give consent; appeal with suspensive effect

Lanigan, C-237/15 (16 July 2015)

Time Limits

Keywords: obligation to execute the EAW; continued detention; time limits for decision to execute; consequences of failure to follow time limits; Article 6 of the Charter, Articles 12, 15 and 17 of the EAW FD

Dworzecki C-108/16 PPU (24 May 2016)

In absentia sentence

Keywords: summoned in person; official notification by other means; aware of the scheduled trial; Person not appearing at trial; In absentia; Trial resulting in the decision; Rights of the defence; Right to a fair trial; Waiver of right to appear at trial; Method of service; Supplementary information; Grounds for refusal to surrender; Optional grounds for refusal to surrender

JZ, C-294/16 PPU (28 July 2016)

(Deduction of) Detention served in the executing Member State

Keywords: deduction of detention period served in executing Member State; meaning of 'detention'; restriction of liberty other than prison; curfew and electronic tag; Articles 6 and 49 of the Charter

[Vilkas, C-640/15 \(25 January 2017\)](#)

Time Limits

Keywords: New surrender date; Not possible to agree new surrender date; Surrender within 10 days; Resistance to surrender; Force majeure; Time limits; Detention; Article 6 of the Charter; Articles 15 and 23 of the Charter

[Zdziaszek, C-271/17 PPU \(10 August 2017\)](#)

Refusal to surrender in an in absentia case and the meaning of 'trial resulting in the decision'

Keywords: EAW for sentenced person; failure to appear during proceedings leading to sentence; meaning of 'trial resulting in the decision'; cumulative sentences; 'Article 4a(1) of the EAW FD'; rights of the defence; grounds for refusal to surrender; lack of information on the arrest warrant

[Ardic, C-571/17 PPU \(22 December 2017\)](#)

Refusal to surrender in an in absentia case and the meaning of 'trial resulting in the decision'

Keywords: EAW for sentenced person; revocation of suspended sentence; revocation proceedings conducted in absence of person concerned; meaning of 'trial resulting in the decision'; 'Article 4a(1) of the EAW FD'; rights of the defence; grounds for refusal to surrender

[Piotrowski, C-367/16 \(23 January 2018\)](#)

Refusal to surrender: minors

Keywords: Surrender of a minor; Refusal to surrender a minor; Persons who cannot be criminally responsible because of their age; Minimum age for criminal responsibility; Ground for non-execution; Article 3(3) EAW FD; No substantive re-examination of an analysis already carried out in issuing State

[Pisciotti, C-191/16 \(10 April 2018\)](#)

Extradition

Keywords: extradition to the US of an EU citizen who has exercised the right to freedom of movement; extradition agreement between the US and Member State; prohibition on extradition rules for own nationals only; proportionality; Articles 18 and 21 TFEU

[X, C-367/16 \(5 July 2018\)](#)

Refusal to surrender: minors

Keywords: grounds for refusal; minors; requirement to verify the minimum age at which a minor may be regarded as criminally responsible or assessment in each case; Article 3(3) of the EAW FD

[AY, C-268/17 \(25 July 2018\)](#)

Ne bis in idem

Keywords: Refusal to surrender in a corruption case; Optional grounds for refusal; Mandatory grounds for refusal; Croatia's accession to the EU; Person who has been interviewed as a witness; Decision of the public prosecutor's office to terminate investigation; 'finally judged'; Final judgment; Ne bis in idem; Same acts; Several EAWs; Failure of executing authority to reply

[R O, C-327/18 PPU \(19 September 2018\)](#)

Risk of fundamental rights not being respected post-Brexit

Keywords: Brexit; Notification of intention to withdraw from EU; Rights of the defence post-Brexit; Issuing authority in the UK; Executing authority in Ireland; Article 50 TEU; Issuing State no longer a Member State; Grounds for refusal; Suspend execution of the EAW

[IK, C-551/18 PPU \(6 December 2018\)](#)

Detention

Keywords: Failure to list additional sentence in EAW for the same offence; No ground for refusal to surrender; Rule of specialty; Legal proceedings; Effective judicial protection; Deprivation of Liberty; Enforcement of a custodial sentence; Three year threshold; Article 8(1)(f)

[Sut, C-514/17 \(13 December 2018\)](#)

Refusal to surrender: where the offence is only punishable by fine in the executing Member State

Keywords: refusal to surrender; offence in question subject to a custodial sentence in the issuing Member State but punishable in the executing Member State by fine only; Article 4(6) EAW FD; Social rehabilitation; Impossible to enforce sentence in executing State

[TC, C-492/18 PPU \(12 February 2019\)](#)

Detention

Keywords: Release (pending surrender decision); Provisional release (pending surrender decision); Detention (for more than 90 days); Absconding (high risk of); Articles 4 and 6 of the Charter; Article 12 of the EAW FD (time limits for surrender decision)

[X, C-717/18 : 3 March 2020](#)

Double criminality

Keywords: Refusal to surrender on grounds of no double criminality of the offence; Custodial sentence of three years not reached; Double criminality; Custodial sentence less than three years; law of the issuing Member State in the version applicable to the facts giving rise to the case; law of the issuing Member State in the version in force at the date of issue of the European arrest warrant

Generalbundesanwalt beim Bundesgerichtshof, C-195/20 PPU : 24 September 2020

Specialty rule

Keywords: Specialty rule; Prosecution for offence not listed on EAW; Several EAWs; Articles 27 and 28;

TR/Generalstaatsanwaltschaft Hamburg, C-416/20 PPU (17 December 2020)

Refusal to surrender on fundamental rights grounds (in absentia)

Keywords: conditioning surrender on guarantee of a new trial; sentenced in absentia; person absconded; right to be present at trial; presumption of innocence; right to a fair trial; Article 4a of the EAW FD; Articles 8 and 9 of Directive 2016/343

Spetsializirana prokuratura, C-649/19 : 28 January 2021

Certain rights under the Right to be Informed Directive do not apply in EAW cases

Keywords: Right to information; Rights of suspects or accused persons who are arrested or detained; Rights of persons subject to an arrest warrant; Directive 2012/13; Effective judicial protection; Effective judicial protection from the moment of arrest; Right to information before surrender; Right to information about legal remedies before surrender; Right to information about legal remedies in the issuing state before surrender; Legal remedies; National arrest warrant; Validity of EAW; Articles 6 and 47 of the Charter

JR (Mandat d'arrêt – Condamnation dans un État tiers, membre de l'EEE) (C-488/19)
17 March 2021

Keywords: EAW for sentenced person; grounds for refusal to surrender; meaning of 'enforceable judgment; offence committed in a non-EU country; conviction by court of a non-EU country recognized by issuing State under bilateral treaty; third country's judgment recognized by a Member State can be the basis for an EAW; right to a fair trial; effective judicial protection; Article 8(1)(c) of the EAW FD; Articles 47 and 48 of the Charter

X (Mandat d'arrêt européen – Ne bis in idem), C-665/20 PPU : 29 April 2021

Refusal to surrender: Ne bis in idem (same acts)

Keywords: Ne bis in idem; 'same acts'; Sentenced by a third country; Trust in a third country's system; Optional ground for non-execution of an EAW/optional ground for refusal to surrender; Margin of discretion; Refusal to surrender because sentence imposed in third country has not yet been served in full and may be executed at a later date/no ruling on one of the offences/no trust in third country; Impunity; Preventing impunity; Legal certainty for the person in question; Sentence remitted; Amnesty; Leniency; Remission of sentence; Amnesty granted by a third country taken into account; Circumstances in which amnesty granted by a third country; Case-by-case assessment

AB and Others, C-203/20 (16 December 2021)

Refusal to surrender: ne bis in idem

Keywords: Ne bis in idem; Acquittal; Proceedings discontinued; Amnesty; Amnesty revoked; Criminal liability not determined; Can an EAW be issued

Governor of Cloverhill Prison, C-479/21 PPU (16 November 2021)

Risk of fundamental rights not being respected post-Brexit

Keywords: legal basis of surrender mechanism between EU and UK post-Brexit; EAW regime no longer applicable in the UK; transition period; Withdrawal Agreement

C and CD v Syyttäjä, C-804/21 PPU (28 April 2022)

Time Limits and force majeure

Keywords: Expiry of time limits for surrender; COVID-19 pandemic; Force majeure; Several surrender dates; Appeal ongoing at the same time as EAW request; Asylum claim at the same time as EAW request; Police services are not an issuing authority; Police services cannot determine force majeure; Police services cannot set a new surrender date; prevention of absconding; Article 23(3) and 23(5) of the EAW FD

Spetsializirana prokuratura (Informations sur la décision nationale d'arrestation), C-105/21 (30 June 2022)

Keywords: Executing judicial authority bound by Right to Information Directive pre-surrender; right to effective judicial protection does not have to be ensured pre-surrender; Articles 6 and 47 of the Charter; no 'third level of judicial protection'; legal remedies; national arrest warrant