

Spain, Constitutional Court, Melloni, STC 26/2014, 13 February 2014

Deciding bodies and decisions

Constitutional Court (Tribunal Constitucional) Decision of 13/02/2014, case no 26/2014

Area of law Criminal Law

Subject matter

Police and judicial cooperation in criminal matters - European arrest warrant - Surrender procedures between Member States - Decisions rendered at the end of proceedings in which the person concerned has not appeared in person - Execution of a sentence pronounced in absentia - Possibility of review of the judgment.

The case concerned the surrender of a person who had been convicted in absentia. The Spanish Constitutional Court made a preliminary reference regarding the interpretation and validity of Article 4a(1) of the Framework Decision on the European arrest warrant (EAW) and the interpretation of Charter Article 53.

According to the constitutional court's interpretation of Article 24(2) of the Spanish Constitution, the surrender of a person who has been condemned in absentia, without conditioning the surrender to the possibility to obtain a retrial, would violate the right to a fair trial. This interpretation clashed with the obligations stemming under the Framework Decision, and particularly Article 4a(1), which did not allow rejecting the execution of the EAW in the circumstances of the case.

Summary Facts Of The Case

Mr. Melloni had been condemned in absentia in Italy to ten years' imprisonment for the crime of bankruptcy fraud. Throughout the trial, he had been represented by two lawyers of his choice. An EAW for the execution of the sentence was issued and four years later he was detained in Spain. The competent Court decided to execute the EAW, but Mr. Melloni submitted a complaint (*amparo*) before the Constitutional Court arguing that his surrender would amount to a breach of the right to a fair trial.

The Constitutional Court decided to stay proceedings and make a reference to the CJEU regarding the interpretation and validity of Article 4a(1) of the Framework Decision in light of

Charter Articles 47 and 48(2) and the interpretation of Charter Article 53.

The CJEU confirmed the validity of the Framework Decision under Articles 47 and 48(2) of the Charter. The CJEU referred to the ECtHR case law and concluded that the right to appear in person at the trial was not an absolute right and that the accused may waive that right, expressly or tacitly, under certain conditions.

Regarding Charter Article 53, the CJEU acknowledged that state courts may apply national standards of protection of fundamental rights in reviewing national implementing measures, as long as the level of protection provided for by the Charter, and the primacy, unity and effectiveness of EU law are not compromised.

In the resolution of the case, the Constitutional Court referred to the Charter as a hermeneutic criterion for the interpretation of Article 24(2) of the Constitution. Hence, the Charter was not directly enforced, but the Constitutional Court followed the interpretation given by the CJEU to overrule the previous constitutional interpretation of the right to a fair trial.

Relation to the scope of the Charter

This case was within the scope of EU law and hence within the scope of the Charter pursuant to Article 51(1) therein, since the national legislation on the EAW implements the corresponding Framework Decision. The Charter was used as a hermeneutic tool.

Article 47: Right to an effective judicial remedy and fair trial

Article 48(2): Right of defence

Relation between the Charter and EHCR

The Constitutional Court argued that constitutional fundamental rights need to be interpreted according to both the ECHR and the Charter, and quoted decisions from the ECtHR (*Sejdovic v Italy*, 1 March 2006) and the CJEU (C-399/11, *Melloni*).

Impact on Jurisprudence

The preliminary ruling triggered the reversal of the settled constitutional interpretation of the right to a fair trial to lower the standard of protection, not only in the field of the EAW, but regarding extradition more generally.

Sources - EU and national law

EU law

Council Framework Decision 2009/299/JHA of 26 Feb. 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual

recognition to decisions rendered in the absence of the person concerned at the trial.

National Law

Article 24(2) Spanish Constitution

Sources - CJEU Case Law

The decision is the national follow up of Case C-399/11, *Stefano Melloni v. Ministerio Fiscal*, 26 February 2013
