

European Union, CJEU, Aranyosi and Căldăraru, judgment of 5 April 2016

Deciding bodies and decisions

CJEU (Grand Chamber), judgment of 5 April 2016, Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, EU:C:2016:198

Area of law

Criminal Law - Effective Judicial Protection - Mutual Recognition

Subject matter

European Arrest Warrant - reasons to refuse the execution of the warrant - fundamental rights - mutual trust

Whether the national judicial authority requested to execute a European Arrest Warrant (EAW) - issued in respect of a person for the purposes of conducting a criminal prosecution or executing a custodial sentence – may or shall refuse *tout court* execution where there is solid evidence that detention conditions in the issuing Member State are incompatible with fundamental rights, in particular with Article 4 of the EU Charter ('Prohibition of inhuman or degrading treatment'), or, rather, the national judicial authority may or must make the surrender conditional on obtaining information from the issuing Member State

Summary Facts Of The Case

Mr Aranyosi, a Hungarian national, and Mr Căldăraru, a Romanian national, were the addressees of two European arrest warrants (EAW), issued – respectively – by the Hungarian and Romanian authorities in order to execute a sentence (Aranyosi) or to exercise the criminal action (Căldăraru). The two men were arrested in Bremen, Germany.

Before the *Hanseatisches Oberlandesgericht in Bremen* (Higher Regional Court of Bremen), the Court that had to decide on their surrender to Hungary and Romania, Mr Aranyosi and Mr Căldăraru claimed that, in the event of surrender, they would have been subject to conditions of detention in breach of Article 3 ECHR ("Prohibition of torture", which corresponds to Article 4 of the EU Charter, "Prohibition of inhuman or degrading treatment") and of the fundamental rights granted by EU law. They relied on judgments where the European Court of Human Rights had found Hungary and Romania to be in breach of Article 3 ECHR, because of the overcrowding of their prisons and the inhuman detention conditions therein. They also referred to a report issued

by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The national legislation transposing the EAW Framework Decision in the German legal order states that “mutual legal assistance shall be unlawful if contrary to the principles stated in Article 6 TEU”. Therefore, the national court considered that the surrender could be granted lawfully only if, under the EAW Framework decision, it was possible to make the surrender conditional on obtaining assurances by the issuing Member State on the detention conditions to which the persons concerned would have been subject to. Accordingly, the Higher Regional Court of Bremen decided to refer to the ECJ a reference for preliminary ruling, asking, in essence:

whether the national judicial authority requested to execute a European Arrest Warrant (EAW) may or shall refuse tout court execution where there is solid evidence that detention conditions in the issuing Member State are incompatible with fundamental rights, in particular with Article 4 of the EU Charter, or, rather, the national judicial authority may or must make the surrender conditional on obtaining information from the issuing Member State showing that detention conditions are compatible with fundamental rights.

At the outset, the ECJ recalled that the principle of mutual recognition, on which the European arrest warrant system is based, presupposes the mutual confidence between the Member States that their national legal systems provide equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter. This is an essential pre-condition, because the principle of mutual trust requires each Member State to consider, save in *exceptional circumstances*, all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law.

The EAW Framework Decision gives effect to the principle of mutual recognition by providing, in its Article 1(2), that Member States are in principle obliged to execute a EAW. Indeed, the executing judicial authority must refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework Decision. Similarly, the conditions on which the execution of a EAW may be made subject are listed exhaustively in Article 5 of the Framework Decision.

The situation described by the applicants in the main proceedings – notably, the risk to be the subject of inhuman detention conditions, in case of surrender – does not correspond to any of the obligatory or optional non-execution grounds or to the conditions for suspension of the execution.

Nevertheless, at this point the ECJ recalled that the principle of mutual recognition can be limited

'in exceptional circumstances'. It considered that, according to Article 1(3) of the Framework Decision, this is not to have the effect of modifying the obligation to respect fundamental rights as enshrined in, inter alia, the Charter. Article 4 of the Charter, concerning the prohibition of inhuman or degrading treatment or punishment, corresponds to Article 3 ECHR: this is an absolute and non-derogable provision, and so is Article 4 of the Charter.

According to the ECJ, Article 4 of the Charter does not imply that, where there exists objective, reliable, specific and properly updated evidence which highlights deficiencies about the detention conditions in the issuing Member State (systemic or generalised, affecting certain groups of people or certain places of detention), the executing national judicial authority shall bring to an end the EAW procedure. Rather, such an authority has a duty to assess the existence of a risk that, in case of surrender, there may be a violation of Article 4 of the Charter in respect of the person concerned.

The ECJ stressed the cooperation duties between the Member State issuing the EAW and the Member State requested to execute it.

The requesting national judicial authority shall request to the judicial authority of the issuing Member State - pursuant to Article 15(2) of the EAW Framework Decision – to provide all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State. A time limit for the receipt of the requested information may be fixed.

If this assessment phase leads to excluding the existence of a risk that surrender may entail the violation of Article 4 of the Charter in respect to the person concerned, the national judicial authority requested to execute the EAW shall go ahead with execution. The ECJ also pointed out that, in this case, the surrender does not affect the possibility for the individual concerned, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, where appropriate, the lawfulness of the conditions of his detention in a prison of that Member State

By contrast, if, in the light of the information received, the executing judicial authority finds that there exists a risk of violation of Article 4 of the Charter for the individual concerned, the execution of the EAW must be postponed until it obtains the supplementary information that allows it to discount the existence of such a risk. Within this timeframe, the person concerned can be held in custody only insofar as the procedure was carried out in a sufficiently diligent manner, and taking into account that – in light of Article 52(1) of the Charter – any limitation to fundamental rights (such as Article 6 on the right to liberty and Article 48(1) on the presumption of innocence) must comply with the principle of proportionality. However, if the executing judicial authority decides to bring the detention to an end, it shall attach to the provisional release all necessary measures

aimed to prevent the person concerned from absconding and to ensure that the material conditions necessary for the surrender remain fulfilled until the final decision on the execution of the EAW has been taken.

If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

Relation to the scope of the Charter

- Prohibition of inhuman or degrading treatment (Article 4 EU Charter)

Article 4 of the EU Charter corresponds to Article 3 ECHR. It follows from Article 52(3) of the EU Charter and the related official explanation that Charter provisions that correspond to fundamental rights already granted by the ECHR shall be interpreted as having the same scope and meaning afforded by the ECHR to their correspondents, taking into account also the case law of the European Court of Human Rights. However, a higher level of protection can be granted Under EU law (meaning that the ECHR only sets a minimum standard of protection – non-derogable *in peius* – for corresponding Charter provisions)

Other Charter rights involved:

- Right to liberty and security (Article 6 EU Charter)
 - Presumption of innocence and rights of defence (Article 48(1) EU Charter)
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Relation between the Charter and ECHR

Article 4 EU Charter corresponds to Article 3 ECHR within the meaning of Article 52(3) EU Charter.

Impact on Jurisprudence

Impact on national case law from the same Member State or other Member States: Sweden

Solna Tingsrätt, judgment of 3 may 2016, B 2768-16

A person was convicted of a crime in Romania. He was arrested in Sweden with regard to the European Arrest Warrant. The Swedish court was to decide whether this was a breach of the ECHR.

The court referred to the ECJ's judgment *Aranyosi and C?ld?raru*, stating that the surrender can be refused with regard to Article 4 of the Charter and Article 3 of the ECHR where there exist the risk of a breach of basic human rights. It also highlighted, in line with the ECJ's decision, which it is up to the executing member state to search for information from the issuing member state, to make sure that there is no such risk. The Swedish court noted that in several cases the European

Court of Human Rights had found Romania to have breached Article 3 ECHR, in cases concerning the detention conditions in Romanian prisons.

According to the Swedish court, there good reasons to believe that anyone serving time in a Romanian prison faces the risk of being exposed to treatment that would be in breach of article 3 of the ECHR. Therefore, the extradition is refused.

The court also considered a conditional extradition, if Romania could provide binding guarantees that Article 3 would not be overridden. Such a solution, however was considered to be not compatible with the ECJ's judgment in Case C-399/11 *Melloni*.

Impact on Legislation / Policy

Impact on EU legislation

On close inspection, the case concerns the validity of the EAW Framework Decision itself: the ECJ engaged with the interpretation of the EAW Framework Decision in conformity with the EU Charter and, by doing this, it avoided having to declare the Framework Decision invalid, for being in contrast with EU fundamental rights.

Interestingly, only a few months after the CJEU delivered its preliminary ruling, *the Hanseatisches Oberlandesgericht* in Bremen lodged another reference for preliminary ruling before the CJEU, in relation to the case of Mr Aranyosi. This second reference (Case C-496/16) highlights that the German Court is not completely satisfied with the guidance provided by the CJEU. These are the questions raised before the Court: *“Are Article 1(3), Article 5 and Article 6(1) of Council Framework Decision 2002/584/JHA 1 of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States to be interpreted as meaning that the executing Member State, when taking a decision on extradition for the purposes of prosecution, must eliminate any real risk of inhuman or degrading treatment of the person sought, within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, attributable to the conditions of his detention only in the first prison in which that person will be imprisoned following his surrender to the issuing Member State?*

Must the executing State, when taking that decision, also eliminate any real risk of inhuman or degrading treatment of the person whose surrender is sought that may be attributable to the conditions of his detention in the place of his subsequent imprisonment in the event of conviction?

Must the executing State eliminate that risk for the person whose surrender is sought also in the event of possible relocations to other prisons?”.

In reality, these are not the only questions that have remained open. Additional questions are, for instance, the following:

- is the CJEU's approach applicable to the violations of other fundamental rights granted by the Charter??– how long is the “reasonable time” after which the executing judicial authority shall establish that the existence of a real risk cannot be excluded?

- in such a case, which are the criteria/elements on which the executing judicial authority shall base its decision to proceed (or not) with the surrender??
 - which are the consequences of denying surrender?
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Sources - EU and national law

National Law

- paragraphs 78 to 83k of the Law on international mutual legal assistance in criminal matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) of 23 December 1982, as amended by the Law on the European arrest warrant (*Europäisches Haftbefehlsgesetz*) of 20 July 2006 (BGBl. 2006 I, p. 1721; ‘the IRG’).

EU Law

- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190/1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81/24)
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Sources - CJEU Case Law

On the EAW

- C-399/11 *Melloni*, EU:C:2013:107
- C-192/12 PPU, *West*, EU:C:2012:404
- C-168/13 PPU, *F.*, EU:C:2013:358
- C-237/15 PPU, *Lanigan*, EU:C:2015:474,

On mutual trust

- C-491/10 PPU, *Aguirre Zarraga*, EU:C:2010:82
 - Opinion 2/13, *Accession of the EU to the ECHR*, EU:C:2014:2454
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Comments

By relying on Article 4 of the Charter in combination with Article 1(3) of the Framework Decision, in *Aranyosi and Căldăraru* case the ECJ gave substance – within the field of the EAW – to the limit of “exceptional circumstances” that justify the non-operation of mutual recognition mechanisms. The interpretation of the EAW Framework Decision in light of the EU Charter led the ECJ to introduce – basically – a new situation where the execution of an EAW must be postponed and, possibly, even refused.

Moreover, in order to ensure the respect of the EU Charter, the ECJ strengthened the duties of cooperation between the Member State issuing the EAW and the Member State requested to

execute it, with the view to establishing the existence of a serious risk of a breach of Article 4 of the Charter with respect to the addressee of a EAW. It is also interesting to note that, whilst the national court referred the case to the ECJ because the main proceedings involved national provisions transposing in the German legal order the EAW Framework Decision, on close inspection the ECJ had to decide on the validity of the EAW Framework Decision itself: in light of the Charter. Indeed, by relying on the reference to the prevalence of EU fundamental rights on the EAW Framework Decision, contained in Article 1(3) of this latter, and by engaging in an operation of consistent interpretation of the Framework Decision with the Charter, the ECJ avoided having to declare the EU act invalid.

In a different field, notably the European Common Asylum System, an interesting case where the ECJ (Grand Chamber) avoided a declaration of invalidity of an EU act (notably, the Regulation 343/2003, the so so-called Dublin II Regulation), by interpreting it in conformity with the EU Charter (and intensifying the duties of the Member States) is Joined cases C- 411/10 and C-493/10, *N.S. and others*

Another interesting case where the ECJ (Grand Chamber) strengthened the duties of the authorities of the Member States to cooperate within the framework of the European Arrest Warrant mechanism is Case C-185/15 *Petruhhin*, ECLI:EU:C:2016:630, concerning the request for extradition to a non-EU Member State of an EU citizen with the nationality of a different Member State than that receiving the request.
