

## European Union, CJEU, Jeremy F., judgment of 30 May 2013

### Deciding bodies and decisions

CJEU, judgment of 30 May 2013, Case C-168/13 PPU, *Jeremy F.*, EU:C:2013:358

The ECJ decided on a reference for preliminary ruling issued by the *Conseil constitutionnel* (French Constitutional Court, France).

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### Area of law

Effective Judicial Protection - Criminal Law

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### Subject matter

European Arrest Warrant (EAW)

The European Court of Justice clarified whether, in the absence of specific provisions in the European Arrest Warrant Framework Decision, a Member State can provide for an appeal with suspensive effect against the judicial decision authorising the extension of a European Arrest Warrant to further offences, in order to comply with the requirements of fundamental rights' protection laid down by the domestic Constitution.

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### Summary Facts Of The Case

After being charged for child abduction by the Crown Court at Maidstone (UK), Mr Jeremy fled to France, where he was arrested thanks to a European Arrest Warrant (EAW). Before the Bordeaux Court of Appeal, the man consented to his surrender to the UK authorities. However, he did not waive the speciality rule, which would prohibit British officials from adding charges not included in the EAW. Later on, the British authorities issued another EAW, connected to the facts of the first proceedings, but concerning a different offence (sexual activity with a child, notably the abducted child).

The Bordeaux Court of Appeal decided to consent to the extension of the EAW.

Mr Jeremy F therefore appealed the decision before the *Cour de Cassation* (French Supreme Court), which decided to refer a priority question of constitutionality to the *Conseil Constitutionnel* (French Constitutional Court) in relation to Article 695<sup>46</sup> of the French Code of Criminal Procedure. This provision does not grant any appeal with suspensive effect against the judgment extending the EAW. The Supreme Court raised concerns regarding its compatibility with, *inter alia*, the right to an effective judicial remedy, as guaranteed by the domestic constitution. The *Conseil Constitutionnel* decided to stay the proceedings and to ask the CJEU, in essence,

*Whether Articles 27(4) and 28(3)(c) of the EAW Framework Decision must be interpreted as precluding Member States from providing for an appeal suspending execution of the decision of the judicial authority which consent to the extension of an EAW.*

The reasoning of the CJEU can be divided into three main logical steps.

In the first place, after observing that the EAW Framework Decision does not make any provisions on the possibility to appeal with suspensive effect a decision on the extension of an EAW, the Court considered whether this entailed a violation of the right to an effective remedy set out in Article 47 of the Charter. The Court indeed stressed that this provision “is of special importance” (para 42) within the EAW system. It found that, in spite of the lack of the abovementioned possibility, the EAW Framework Decision ensures that warrants are attended by all the guarantees appropriate for decisions of such a kind; in particular, the entire surrender procedure is carried out under judicial supervision.

It also observed that, in cases of detention with a view to extradition, the ECtHR ? interpreting Article 5(4) ECHR, which provides for a *lex specialis* in relation to the more general requirements of Article 13 ECHR ? has held that, when the decision depriving a person of his liberty is made by a court at the close of judicial proceedings, the supervision required by Article 5(4) of the Convention is incorporated in the decision and that the Contracting States are not under a duty to set up a second level of jurisdiction for the examination of the lawfulness of detention and for hearing applications for release (see, respectively, ECtHR, judgment of 5 June 2012, *Khodzhamberdiyev v. Russia*, no. 64809/10, para. 103, and judgment of 4 March 2008, *Marturana v. Italy*, no. 63154/00, para. 110). The CJEU also recalled its own case law in the different field of procedures concerning the granting and withdrawing of the refugee status, where it has held that Council Directive 2005/85/EC, read in the light of the principle of effective judicial protection, affords an individual a right of access to a court but not to a number of levels of jurisdiction (see Case C-69/10 *Samba Diouf* EU:C:2011:524).

Thus, the Court affirmed that the provisions of the Framework Decision themselves already provide for a procedure that complies with the requirements of Article 47 CFR, regardless of the implementing methods chosen by the Member States (para. 47).

In the second place, the Court observed, however, that the circumstance that the EAW does not provide for a right of appeal with suspensive effect does not as such prevent the Member States from providing for such a right. National authorities are indeed left with the choice as to the specific manner of implementing the objectives pursued by the Framework Decision. In particular, the Court observed that recital 12 in the preamble points out that the Framework Decision does not prevent a Member State from applying its constitutional rules relating *inter alia* to respect for the right to a fair trial. Thus, the Court affirmed that Articles 27(4) and 28(3)(c) of the Framework Decision must be interpreted as not precluding Member States from providing for an appeal suspending execution of the judicial decision granted the requested extension of an EAW.

The discretion left to the member States is not, however, without limits; the objective of accelerating judicial cooperation, which underlines the whole Framework Decision, would otherwise be frustrated. Indeed, as a third step, the Court engaged with the limits to the possibility to foresee a right to appeal with suspensive effect. Based on a systematic reading of the Framework Decision, the Court concluded that the limits laid down by its Article 17 must in any event be observed. Accordingly, it replied to the question referred by the *Conseil Constitutionnel* in the sense that Articles

27(4) and 28(3)(c) of the Framework Decision must be interpreted as not precluding Member States from providing for an appeal suspending execution of the judicial decision granting the requested extension of an EAW, provided that the final decision on the surrender is adopted within the time limits laid down in Article 17 of the Framework Decision.

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### Relation to the scope of the Charter

- Right to an effective remedy and to a fair trial (Article 47 EU Charter)

The relevance of the Charter stemmed from the fact that the dispute at stake in the main proceedings concerned the application of the EAW Framework Decision.

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### Relation between the Charter and ECHR

Article 47 of the EU Charter is based on Article 13 of the ECHR, while the second paragraph corresponds to Article 6 (1) of the ECHR. With regard to the third paragraph, the explanation of Article 52(3) points out that “Article 47(3) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation”. Thus, the scope of legal aid under the Charter is broader than under the 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).

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## Impact on Legislation / Policy

### Impact at the EU level

After *Melloni* judgement - where the CJEU has made a distinction between two set of situations, where the relationship between the standards of protection provided by, respectively, the Charter and the domestic constitution takes a different shape – the Court clarified the crucial circumstance of the existence (or the lack) of EU secondary law provisions applicable to the case that determine precisely the level of protection to be granted in a certain situation.

If the EU legislator determined itself the precise standard of protection (no margin of discretion left to the Member States), there is no space for the application of the domestic standard. In case of a conflict between the latter and the EU law standard that cannot be solved through consistent interpretation (of the former to the latter), the EU law standard takes precedence over the domestic one. However, an essential pre-condition is that the EU law standard is itself compatible with the Charter. This may be question before the CJEU through a reference for preliminary ruling on the validity of the EU law provision at issue. If there are no validity issues, then the EU law standard alone applies as a matter of primacy of EU law over national law.

By contrast, if the EU legislator has left discretion to the Member States as regards the level of fundamental rights' protection, the relevant standard is the domestic one, provided that two conditions are satisfied: it must not impair the level of protection granted by the Charter nor compromise the "primacy, unity and effectiveness" of Union law.

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## Sources - EU and national law

### National Law

- Article 69546 of the *Code de procédure pénale* (Code of Criminal Procedure). As amended by Law No 2009-526 of 12 May 2009 simplifying and clarifying the law and alleviating procedures (*Loi no 2009-256, du 12 mai 2009, de simplification et de clarification du droit et d'allègement des procédures, JORF, 13 May 2009, p. 7920*)

### EU Law

- Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States (EAW Framework Decision, OJ 2002 L190/1), as amended by 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-396/11 *Radu*, EU:C:2013:39
- C-399/11, *Melloni*, EU:C:2013:107
- C-192/12 PPU, *West*, EU:C:2012:404
- C-491/10 PPU, *Aguirre Zarraga*, EU:C:2010:828

### On the principle of effective judicial protection

- Case C-69/10, *Samba Diouf*, EU:C:2011:524

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## Comments

### **National follow up decision of *Conseil Constitutionnel*, judgment n°2013-314 QPC of 21 June 2013**

In its judgment n°2013-314 QPC of 21 June 2013, the *Conseil Constitutionnel* recalled that the French legislator has power to adopt the measures necessary to implement the EAW Framework Decision. This flows from Article 88-2 of the Constitution, which, by so providing, has removed the obstacles that would otherwise derive from the Constitution itself. It is therefore the task of the *Conseil Constitutionnel* to verify whether the national legislator adopted provisions exceeding the margin of manoeuvres that Article 34 of the pre-Lisbon TEU left to the Member States as regards the implementation of Framework Decisions.

The *Conseil Constitutionnel* then declared unconstitutional the fourth paragraph of Article 695-46 of the Code of Criminal Procedure, insofar as it does not grant any appeal against the decision on the extension of an EAW, for being in contrast with the right to a judicial remedy as granted by the Constitution. Although the outcome appears to be in line with the CJEU's judgment, no express mention of the Charter can be found in the ruling.

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