

## France, Conseil Constitutionnel, Jeremy F. v. Premier ministre

### Deciding bodies and decisions

Constitutional Council (Conseil constitutionnel) - Court of Justice of the European Union -  
Supreme Court (Cour de cassation) - Bordeaux Court of Appeal (Cour d'appel de Bordeaux)

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### Subject matter

Police and judicial cooperation in criminal matters – EAW Framework Decision 2002/584/JHA – Articles 27(4) and 28(3)(c) – European arrest warrant and surrender procedures between Member States – Speciality rule – Extension of the European arrest warrant to other offences – Decision of the judicial authority of the executing Member State to give consent – Non-availability of appeal with suspensive effect

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### Summary Facts Of The Case

The applicant J.F. is a UK citizen who fled to France after being charged by UK courts for child abduction. Upon arrest by the French police, J.F. consented to extradition before the appellate court in Bordeaux but did not invoke the specialty rule that would prohibit British officials from adding charges not included in the EAW. British authorities asked the Bordeaux Court of Appeal for permission to prosecute J.F. for another offence, namely unlawful sexual conduct with a female minor, which was not included in the first EAW.

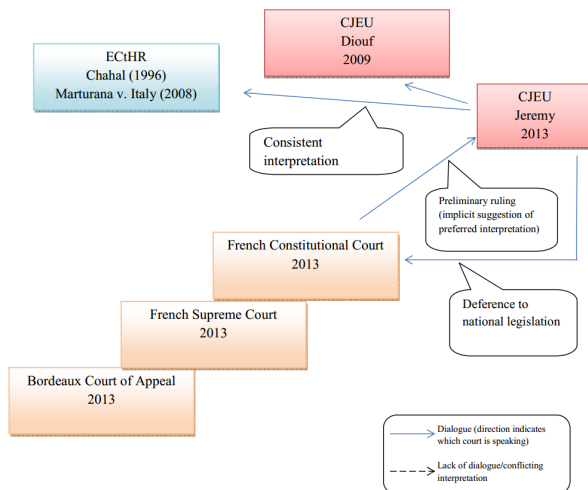
The Bordeaux Court of Appeal decided to extend the arrest warrant. J.F. appealed the decision before the French Supreme Court (Cour de Cassation), which referred to the Constitutional Council a priority question of constitutionality relating to Art 695-46 of the French Code of Criminal Procedure which do not allow for an appeal of the judgment extending the EAW. The Supreme Court raised concerns regarding the compatibility of the contested provisions with the principle of equality before the law and the right to an effective judicial remedy.

In this context, for the first time, the Constitutional Council addressed a preliminary reference to the CJEU by way of the urgent preliminary reference. The Constitutional Council essentially asked whether the EAW Framework Decision 2002/584/JHA precludes domestic provisions that do not provide for the possibility of an appeal with suspensive effect against a decision to execute a EAW or a decision giving consent to an extension of the warrant. It seems that the Constitutional Council formulated the preliminary questions in a way that shows its preference for an interpretation whereby such a right of appeal should be recognized.

The CJEU held that the EAW Framework Decision 2002/584/JHA does not preclude the Member States from providing for an appeal with suspensive effect against a decision to execute a EAW or a decision giving consent to an extension of the warrant, provided that the final surrender or extension decision is given within the time-limits of Article 17 of the EAW Framework Decision 2002/584/JHA.

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## Diagram



### Vertical (domestic court – CJEU)

National courts can influence the case-law of supra-national courts by means of direct bottom-up, or at least two-way, vertical interaction. In *Jeremy F.* case, the national constitutional court uses for the first time the preliminary reference to get an interpretation from CJEU, which would reinforce its own line of reasoning. The Constitutional Council uses the preliminary reference tool strategically, as the preliminary questions addressed to CJEU implicitly suggest the interpretation preferred by the referring court.

### Horizontal (CJEU–ECtHR)

Horizontal indirect dialogue between the CJEU and the ECtHR can also take place in the context of Member State measures based in EU law that are claimed to violate fair trial guarantees. Thus, Member States' measures implementing EAW Framework Decision 2002/584/JHA, have been challenged as contrary to Article 13 ECHR and Article 47 EU Charter.

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## Impact on Jurisprudence

The Constitutional Council held that the decision on unconstitutionality of the challenged national provisions is to be observed by the national courts, including in the pending proceedings as of the publication date in the Official Journal – 16 June 2013.

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## Impact on Legislation / Policy

The national provisions of the Code of Criminal procedure have been declared unconstitutional as of the publication date of the decision in the Official Journal of 16 June 2013.

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## Sources - ECHR

- Article 5 paragraph (4)
  - Article 13
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## Sources - CJEU Case Law

- Case C-69/10 Samba Diouf (2011)

In *Jeremy F* preliminary ruling, the CJEU cited its own judgment in *Diouf* (C-69/10) as an example of a similar interpretation of the right to an effective remedy (C-168/13, paragraph 44). In *Diouf*, the CJEU found in a different context that “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.” Thus, the CJEU found in *Jeremy F* that EU law neither demands nor prohibits appellate proceedings. However, if a member states decided to put in place such appellate proceedings, the EAW Framework Decision 2002/584/JHA requires Member States to execute arrest warrants quickly – within the time-limits laid down in Article 17 thereof.

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## Sources - ECtHR Case Law

- *Chahal v. the United Kingdom*, Application no. 22414/93, Judgment of 15 November 1996, § 126
- *Marturana v. Italy*, Application no. 63154/00, Judgment of 4 March 2008, § 110 and the case-law cited therein

The CJEU, in answering the preliminary question, referred strategically to the ECtHR's case law to assess whether the absence of an appeal in case of a decision extending the EAW to other offences was compatible with the right to an effective judicial remedy under Art 13 of the ECHR and Art 47 of the EU Charter (C-168/13, paragraph 43). Essentially, CJEU cited the *Chahal* judgment of the ECtHR in favour of the proposition that Art 5(4) ECHR is *lex specialis* to Art 13 ECHR in cases of detention in view of extradition, and *Marturana v. Italy* in support of the view that Art 5(4) does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention.

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## Comments

1. **First reference for a preliminary ruling addressed by the French Constitutional Council**  
The case of *Jeremy F* is the first one when the Constitutional Council decided to address a preliminary reference to the CJEU. The urgent preliminary procedure was used by the Constitutional Council due to the need for the Constitutional Council to deliver its own judgment in a maximum of 3 months.

**2. Margin of appreciation of the Member state implementing the EAW Framework Decision 2002/584/JHA**

In deciding on the necessity of obtaining a preliminary ruling from the CJEU, the Constitutional Council first determined if the Member States were recognised a margin of discretion when implementing the EAW Framework Decision 2002/584/JHA. It then held in the follow-up decision that it was entitled to review the constitutionality of the challenged provision of the French Code of Criminal Procedure as it “does not necessarily result from the acts adopted by the institutions of the European Union in relation to the European arrest warrant”.

**3. Strategic use by French Constitutional Council of the preliminary reference judicial interaction technique**

The Constitutional Council included in the preliminary reference addressed to the CJEU its own interpretation of the balance between the principle of mutual recognition of criminal judgments and the right to effective remedy, seemingly in favour of higher guarantees for the right to an effective remedy, making a strategic attempt to influence the CJEU.

**4. Strategic use by the CJEU of the ECtHR case-law**

Similarly to Melloni, the CJEU strategically uses Art 6 and 5(4) ECHR and the jurisprudence of the ECtHR to justify its own interpretation of the right to an effective remedy (Art 47 and 48 EU Charter). The CJEU held that the ECtHR does not require to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, it has to be mentioned that the CJEU omitted a relevant part of the ECtHR jurisprudence on the interpretation and application of Art. 5(4) ECHR, whereby the Court held that in cases where the grounds justifying the person's deprivation of liberty are susceptible to change with the passage of time, the possibility of recourse to a body satisfying the requirements of Art 5 § 4 of the Convention is required (*Kafkaris v. Cyprus*, Application no. 9644/09).

**5. Respect for the national constitutional traditions of the Member States**

The CJEU showed respect of the national constitutional traditions by recognising the possibility of the Member States to secure a higher level of protection of the right to an effective remedy, as long as the application of the EAW Framework Decision 2002/584/JHA is not frustrated.

**6. A higher level of protection of the right to an effective remedy**

The Constitutional Council established a higher level of protection of the right to effective judicial remedy pursuant to the national constitutional principles.

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