

Ireland, CJEU, C-216/18 PPU, 25.07.2018,

Member State

 Ireland

Topic

Mutual trust

Sector

EAW, Use of Preliminary Reference Procedure

Deciding Court Original Language

Court of Justice of European Union - preliminary reference by High Court of Ireland

Deciding Court English translation

Court of Justice of European Union

Registration N

C-216/18

Date Decision

25.07.2018

ECLI (if available)

ECLI:EU:C:2018:586

National Follow Up Of (when relevant)

NO

EU legal sources and CJEU jurisprudence

Charter art. 47 and 48, TEU art. 7, Framework decision 2002/584 - Article 1(3) of 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, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').

Aranyosi and C?ld?raru (C?404/15 and C?659/15 PPU, EU:C:2016:198); judgment of 10 August

2017, *Zdziaszek*, C-271/17 PPU, EU:C:2017:629, paragraph 72 and the case-law cited; judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 34 and the case-law cited; judgment of 10 November 2016, *Poltorak*, C-452/16 PPU, EU:C:2016:858, paragraph 26 and the case-law cited; judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 25 and the case-law cited); see judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 51; judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 31 and the case-law cited;

ECtHR Jurisprudence

N/A

Subject Matter

Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 1(3) — Surrender procedures between Member States — Conditions for execution — Charter of Fundamental Rights of the European Union — Article 47 — Right of access to an independent and impartial tribunal)

Legal issue(s)

Judicial reforms in Poland - independence of the judiciary.

Request for expedited/PPU procedures

YES - REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 23 March 2018, received at the Court on 27 March 2018, in proceedings relating to the execution of European arrest warrants issued against L.M. Request for a preliminary ruling concerns the interpretation of Article 1(3) of 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, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'). The request has been made in connection with the execution, in Ireland, of European arrest warrants issued by Polish courts against LM ('the person concerned'). LM submits, inter alia, that his surrender would expose him to a real risk of a flagrant denial of justice in contravention of Article 6 of the ECHR. In this connection, he contends, in particular, that the recent legislative reforms of the system of justice in the Republic of Poland deny him his right to a fair trial. In his submission, those changes fundamentally undermine the basis of the mutual trust between the authority issuing the European arrest warrant and the executing authority, calling the operation of the European arrest warrant mechanism into question.

Interim Relief

N/A

National Law Sources

European Arrest Warrant Act 2003

Facts of the case

LM was sought in connection with allegations of involvement in an organised crime group and drug smuggling and trafficking. Polish courts issued three EAWs against him in 2012 and 2013. Following his detention in Ireland in 2017, in proceedings before the High Court there, he objected to the surrender, raising arguments concerning the risk of the prohibition of inhuman or degrading treatment (Article 3 ECHR), respect for private and family life (Article 8 ECHR) and the right to a fair trial (Article 6 ECHR). The first two were rejected by the Irish court, while the third was examined in depth.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

In the LM case, the Court recalled and upheld its previous jurisprudential findings on the treatment of judicial independence, largely developed from the case law of the European Court of Human Rights, but also added new elements to it. The requirements of independence, autonomy and impartiality are central to the Union legal order, a guarantee for the protection of all rights derived by individuals from Union law, and for the preservation of the values common to the Member States.

Relation of the case to the EU Charter

Charter as a legally binding instrument i.e. para 33 - First of all, it is apparent from the grounds of the order for reference and from the express mention of the judgment of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198), in the first question, that the questions asked by the referring court relate to the circumstances in which the executing judicial authority may, on the basis of Article 1(3) of Framework Decision 2002/584, refrain from giving effect to a European arrest warrant on account of the risk of breach, if the requested person is surrendered to the issuing judicial authority, of the fundamental right to a fair trial before an independent tribunal, as enshrined in Article 6(1) of the ECHR, a provision which, as is clear from paragraph 5 of the present judgment, corresponds to the second paragraph of Article 47 of the Charter.

Relation between the EU Charter and ECHR

Protection granted through the EU Charter is more extensive than that stemming from ECHR in the particular case - i.e. para 53 In order for that protection to be ensured, maintaining the independence of those bodies is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to access to an 'independent' tribunal as one of the requirements linked to the fundamental right to an effective remedy (judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 41).

Use of Judicial Interaction technique(s)

Preliminary reference

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with

foreign courts)

N/A

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

N/A

Strategic use of judicial interaction technique (purpose aimed by the national court)

not applicable - but: The Court categorised the use of the dialogue mechanism as an injunction - the judicial authority 'should request' (must request) additional information from the authority issuing the EAW. This formula was carried over verbatim by the Court of Justice from the Aranyosi and C?ld?raru judgment, but there it referred to obtaining information about the conditions under which a person, subject to an EAW, is to be deprived of his or her liberty.

Impact on Legislation / Policy

While the presumption of respect for individual rights safeguards the functioning of the mutual recognition mechanism, it cannot remain irrebuttable, as it cannot be guaranteed that every state will always respect these rights. In 2011, Court of Justice ruled in the N.S. judgment on asylum policy that the presumption of respect for fundamental rights by other Member States may be rebutted, even if an act of secondary legislation does not explicitly indicate this possibility. With regard to the EAW, the Court confirmed this with the Aranyosi and C?ld?raru and LM judgments.

Notes on the national implementation of the preliminary ruling by the referring court

The presumption lasts as long as there are no 'exceptional circumstances', i.e. serious information indicating that the situation in the issuing state may be in breach of EU standards of protection for individuals. The presumption is then over-ridden and the executing authority of the EAW is obliged to examine whether, in the individual case pending before it, the rights of the particular person concerned could be jeopardised in the event of surrender. The trust then needs to be confirmed and the execution process is no longer automatic. In the EAW cases, the Court first considered as circumstances justifying the revocation of the presumption - the risk of a violation of the prohibition of inhuman or degrading treatment of a person due to conditions of deprivation of liberty that do not meet European standards in the state to which the prosecuted person would be surrendered (Aranyosi and C?ld?raru) and then, in the LM case, the risk of a violation of the right to a fair trial. While 'exceptional circumstances' are a necessary criterion, they are not yet sufficient for the non-execution of an EAW. They only condition the overcoming of the presumption and concretise the obligation to carry out further investigation in accordance with the methodology indicated by the CoJ.

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

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

A new emphasis of the Court of Justice's jurisprudence in the LM judgment was to link the execution of the EAW to respect for the rule of law. This issue had not been present in earlier cases, whether N.S. or Aranyosi and C?ld?raru. In the LM case, it became a natural consequence of the focus on judicial independence, which is part of both the requirements of a fair trial and the rule of law. (by Pawe? Filipek, more:

<https://bip.brpo.gov.pl/sites/default/files/2021->

11/Problem%20praworz?dno?ci%20w%20Polsce%20w%20?wietle%20orzecznictwa%20Trybuna?u%20S
)

Connected national caselaw / templates

- 21.12.2011 r., C-411/10 i C-493/10 N.S. vs. Secretary of State for the Home Department, M.E. i in. vs. Refugee Applications Commissioner i Minister for Justice, Equality and Law Reform, para 105. - In its judgment of 17 December 2020 (C-354/20 PPU and C-412/20 PPU) Court of Justice confirmed the obligation to conduct a full LM test. It recognised that the existence of irregularities in a particular State, such as those identified before the referring court, does not necessarily translate into all the rulings of the courts of that State in every particular case. It upheld the specific nature of the refusal to execute an EAW, which must be justified by 'exceptional circumstances'.⁶⁸ The opposite was true. It upheld the specific nature of the refusal to execute an EAW, which must be justified by "exceptional circumstances". A contrary interpretation, in the Court's view, would lead to an extension of the limitations of the principles of mutual trust and mutual recognition.

Other

N/A

(Link to) full text

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=204384&doclang=EN>

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