

## CJEU, C-158/21 Puig Gordi, Judgment of 31 January of 2023

### Member State

 Spain

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### Topic

Right to an independent tribunal and fair trial

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### Sector

Right to an independent tribunal and fair trial – the execution of the European Arrest Warrant – mutual trust

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### Deciding Court Original Language

Tribunal de Justicia de la Unión Europea

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### Deciding Court English translation

Court of Justice of the European Union

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### Registration N

C-158/21

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### Date Decision

31 January 2023

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### ECLI (if available)

ECLI:EU:C:2023:57

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### National Follow Up Of (when relevant)

N/A

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### EU legal sources and CJEU jurisprudence

Article 47 (1) of the Charter (right to a fair trial)

Article 2 TEU

Article 3, 4,5,6 and 15 of the Framework Decision 2002/584

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### ECtHR Jurisprudence

N/A

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## Subject Matter

Right to an independent tribunal – fair trial - execution of the EAW- Mutual trust

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## Legal issue(s)

The Court establishes important rules for the functioning of the FD EAW. First, it ruled on the competence of the issuing judicial authority to issue a new EAW after the executing authority has rejected the first one; and second, it ruled on the lack of competence of the executing authority to supervise the competence of the issuing authority to issue an EAW.

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## Request for expedited/PPU procedures

YES

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## Interim Relief

No interim relief

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## National Law Sources

NO

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## Facts of the case

The Spanish Supreme Court issued an EAW against Mr. Puig Gordi and others (Mr. Puigdemont, Mr. Comin Oliveras and Ms. Ponsatí Obiols, Meritxell Serret Aleu, Marta Rovira Vergés, Anna Gabriel Sabaté). Mr. Puig Gordi and others had fled from Spain to evade the criminal responsibilities they faced after their involvement in the organization of the illegal referendum for Catalonia's secession on 1 October 2017. The Brussels Court of first instance refused to execute the EAW because considered that, in light of Article 6 of the FD EAW, the Spanish Supreme Court was not the competent authority to issue the EAW. To conclude that the issuing authority was not competent, the Belgian court relied on the opinion of the Working Group of Arbitrary Detention (WGAD) and the ECtHR jurisprudence.

The Belgian public prosecutor's office appealed the decision to the Court of Appeals of Brussels, but the latter dismissed the appeal. The Court of Appeals of Brussels upheld the decision of the lower court, primarily for two reasons. First, because it agreed that the competence of the Spanish Supreme Court to issue an EAW lacked explicit legal basis, and second, because it deemed that executing the EAW could jeopardized the fundamental right to the presumption of innocence of the detainee.

The Spanish Supreme Court decided to raise a preliminary question before the European Court of Justice to determine whether, once the executing authority has refused to execute the EAW, a new one can be issued against the same individuals. Additionally, the Spanish Supreme Court asked a several questions to clarify whether the Belgian courts have correctly refused the EAW in accordance with EU law.

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

The Spanish Supreme Courts raised seven questions. In its answer, the CJEU provides general procedural rules for the FD EAW, and interpretative guidelines for national courts to assess when the risk of a violation of article 47 of the Charter may justify no to execute an EAW.

Firstly, in order to preserve the uniform application of the FD EAW, the CJEU affirms that the judicial executing authority may only refuse to execute an EAW if one of the reasons provided in the FD EAW occurred (article 3, 4, 4bis and 5). Secondly, the CJEU reinforces the principle of mutual trust and specifies that the executing judicial authority cannot refuse to execute an EAW on the grounds that the issuing judicial authority is not competent according to the internal distribution rules of the issuing member state. Therefore, Belgian judicial authorities cannot refuse to execute an EAW on the grounds that the Spanish Supreme Court is not competent to issue an EAW.

Thirdly, the CJEU establishes that the executing judicial authority may verify and refuse the execution of an EAW if the surrender of the detained person to the issuing member state entails a risk that he/she will be judged by a court not established by law, due to the lack of competence of the courts of the issuing member state in accordance with their national procedural rules. However, the guidelines provided by the CJEU to the executing judicial authority are very restrictive, and only a manifest lack of jurisdiction of national courts for trying the detainee can be considered a violation of the fundamental right to a court established by law.

The Spanish Supreme Court lastly asked regarding the value of the report elaborated by the WGAD, whether it is possible to issue a new EAW against the same person; and whether it is possible to refuse executing the EAW without requesting additional information to the issuing judicial authority.

The weight of the international report produced by the WGAD. The CJEU adds an interpretative guideline and considers that the report prepared by the working group may be considered as an indication to demonstrate the existence of systemic deficiencies affecting the protection of an objectively identifiable group of individuals. However, the report alone is not sufficient to demonstrate that in the issuing state exist a systemic deficiency regarding the right to be judge by a tribunal established by law (systemic step of Aranyosi test).

The need of complementary information provided by the authorities of the issuing member state. The CJEU asserts that the executing judicial authority may refuse to execute the EAW on the grounds that once the detained person is surrendered, they will be tried by an incompetent authority in accordance with national procedural law of the issuing member state. However, before doing that, the executing judicial authority needs to request complementary information from the issuing judicial authority.

The possibility of issuing another EAW. Finally, the CJEU noted that the refusal of the executing authority to execute the EAW should not prevent the issuing judicial authority, in response to that refusal, from reissuing a new EAW against the same person, with the only condition that the new order must be proportionate and not contrary to Article 1.3 of the FD EAW.

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## Relation of the case to the EU Charter

N/A

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## Relation between the EU Charter and ECHR

N/A

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## Use of Judicial Interaction technique(s)

Consistent Interpretation

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

N/A

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

N/A

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

N/A

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## Impact on Legislation / Policy

At the national level, following-up the decision of the CJEU, both the issuing and executing judicial authorities are in standby. The Spanish Supreme Court -the issuing judicial authority- has not requested the reassessment by the Belgian courts of the execution of the EAW issued against Mr. Puig Gordi (denied on the merits and the origin of the preliminary reference sent by the Spanish Supreme court to the CJEU). Neither the Spanish Supreme Court has issued a new EAW against Mr. Puig Gordi.

The other EAWs against Catalan secessionist leaders have been withdraw by the Spanish courts because (i) legislative changes at the national level -which acquitted or are going to allow the acquaintance of the Catalan secessionist leaders criminally investigated- or (ii) the immunity of some of the investigated for being members of the EU Parliament (which led to the suspension by the Belgian and Italian courts of the issued EAWs).

The decision of the EU Parliament to waive the immunity following the request submitted by the Spanish courts is being disputed before the General Court (Judgment of 5 July 2023, Case T-272/21 Puigdemont i Casemajó and Others v Parliament, EU:T:2023:373) and the final decision of the CJEU in appeal is still pending (Appeal C-572/23 P). After these proceedings, the executing judicial authorities (Belgian and Italian courts) will be able to lift the suspension of the issued EAWs and the issuing judicial authorities (Spanish courts) will be free to withdraw the issued EAWs or to issue new ones.

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

N/A

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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

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

N/A

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

N/A

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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

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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

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

N/A

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#### Connected national caselaw / templates

Judgment of the European Court of Justice of the European Union of 25 July 2018, Minister for Justice and Equality (Deficiencies in the system of justice), C-216/18 PPU, ECLI:EU:C:2018:586; Judgment of the Court of Justice of the European Union, of 17 December 2020, Case L and P (C-354/20 PPU; ECLI:EU:C:2020:1033); Judgment of the Court of Justice of the European Union, of 22 February of 2022, Case X and Y (C-562/21 y C-563/21 PPU; ECLI:EU:C:2022:100)

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#### Other

N/A

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(Link to) full text

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=269942&pageIndex=0&doclang=EN&mo>

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