



## European Arrest Warrant – Conditions for execution

### *Findings of the Court of Justice of the European Union*

The CJEU was asked to answer the following questions: (1) whether article 1(3) of the Framework Decision is to be interpreted as meaning that a request for surrender for the purposes of prosecution is inadmissible where there are strong indications that detention conditions in the issuing Member State infringe the fundamental rights of the person concerned and the fundamental legal principles as enshrined in Article 6 TEU, or is it to be interpreted as meaning that, in such circumstances, the executing Member State can or must make the decision on the admissibility of the request for surrender conditional upon assurances that detention conditions are compliant. To that end, the referring court also asks whether the executing Member State can or must lay down specific minimum requirements applicable to the detention conditions in respect of which an assurance is sought. (2) Whether Articles 5 and 6(1) of the Framework Decision are to be interpreted as meaning that the issuing judicial authority is also entitled to give assurances that detention conditions are compliant, or do assurances in this regard remain subject to the domestic rules of competence in the issuing Member State.

At the outset, the Court observed that the Framework Decision seeks to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice, founded on the high level of confidence which should exist between the Member States (see judgment in *Melloni*, C-399/11). This includes the confidence that national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter. To that effect, the principle of mutual recognition, which constitutes the ‘cornerstone’ of judicial cooperation in criminal matters, dictates that Member States are in principle obliged to give effect to a European arrest warrant, except in the cases, exhaustively listed, of obligatory or optional non-execution. Moreover, the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of the Framework Decision. That being said, the Court recognised that limitations of the principles of mutual recognition and mutual trust between Member States can be made ‘in exceptional circumstances’.

As regards the prohibition of inhuman or degrading treatment or punishment, the Court noted that it enshrines one of the fundamental values of the Union and its Member States, and is an absolute right both in the ECHR and the Charter system. That is why, in any circumstances, including those of the fight against terrorism and organised crime, torture and inhuman or degrading treatment or punishment is prohibited in absolute terms, irrespective of the conduct of the person concerned.

In order to ensure respect for Article 4 of the Charter in the individual circumstances of the person who is the subject of the European arrest warrant, the executing judicial authority, when faced with evidence of the existence of deficiencies in that regard that is objective, reliable, specific and



properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. 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.

See: *Pál Aranyosi*, Case C-404/15, Judgement of 5.4.2016.

## *Follow-Up Question*

In your national context, do you have experience with cases, where different fundamental rights are weighed against each other?

## *Guidance for facilitators*

- The facilitator distributes the first page.
- The participants should read the background info and discuss the questions.
- After the participants have discussed the questions above, the facilitator should present the findings of the CJEU + the follow-up question and subsequently distribute the second page.
- The participants should discuss the findings and the follow-up question.
- The results of the working group will subsequently be presented in the plenum.

***Note: Before starting, the participants should appoint one note taker and one person to present the results of their working group to the plenum.***