



Advanced Training in EU Law for Judges and Prosecutors

PRELIMINARY RULING PROCEDURE, CHARTER OF FUNDAMENTAL RIGHTS AND THE RULE OF LAW

Tallinn, 30 September - 2 October 2024

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CASE-STUDY

Facts of the case

In the main proceedings, the Criminal Division of the Spanish High Court had declared that Mr M's extradition to Italy to be tried there was justified. After being released on bail, he had fled and it had not been possible to surrender him to the Italian authorities. The Ferrara District Court (Italy), having noted his failure to appear in court, had sentenced him in absentia to 10 years' imprisonment. That judgment had been upheld on appeal, including on appeal to the Supreme Court of Cassation. Following his arrest by the Spanish police, Mr M had opposed his surrender to the Italian authorities, contending in particular that under Italian procedural law it was impossible to appeal against sentences imposed in absentia, for which reason the EAW should, where appropriate, be made conditional upon Italy's guaranteeing the possibility of appealing against that judgment. The Criminal Division of the Spanish High Court had decided to surrender Mr M to the Italian authorities for the purpose of serving the sentence that had been imposed on him by the Ferrara District Court. The Spanish Constitutional Court had doubts about the constitutionality of this situation and wanted to ask for a preliminary ruling.

Law

The European arrest warrant (EAW) was established under Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ("the Framework Decision"). The Framework Decision entered into force in 2004, replacing the multilateral extradition system established under the European Convention on Extradition. The EAW is a judicial decision issued by one Member State (issuing State) directed to judicial authorities of another Member State (executing State) to secure the arrest and surrender of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

Relying on the principles of mutual recognition and trust between Member States the executing authorities should as a principle execute the EAW, meaning arrest and surrender a requested person. Nevertheless, the Framework Decision does not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union ("the Charter"). Recognizing the applicability of Article 47 of the Charter, the EU legislator included the EAW proceedings in the set of directives on procedural rights of suspects and accused persons (the so called Criminal Procedural Roadmap).

In the Spanish Constitutional Court's view, the first paragraph of Art. 24 of the Spanish Constitution provides that '[e]veryone has the right to obtain effective protection from judges and the courts in the exercise of his rights and legitimate interests, and in no case may there be a denial of defence'.

Questions

*Do you think that in absentia decisions could raise constitutional issues in the Member State concerned?
Do you consider that in absentia judgments raise constitutional issues?*

Can national courts review the standard of protection in cases involving in absentia decisions in the light of the EAW Framework Decision? If so, what can be considered as the purpose or justification?

Could you please prepare a preliminary reference to the Court of Justice of the European Union in this case?

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