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Advocate General's Opinion in Case C-303/05

Advocaten voor de Wereld v Leden van de Ministerraad

**ADVOCATE GENERAL RUIZ-JARABO TAKES THE VIEW THAT THE EUROPEAN
ARREST WARRANT DOES NOT BREACH THE FUNDAMENTAL RIGHTS TO
EQUALITY BEFORE THE LAW AND TO LEGALITY IN CRIMINAL PROCEEDINGS**

The European arrest warrant and extradition belong to different value systems

The European arrest warrant was adopted by the Council of the European Union by a Framework Decision of 2002.¹ The European arrest warrant is a decision from a Court in a Member State, addressed to the authorities of another Member State, seeking the arrest and surrender of an individual for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. For a European arrest warrant to be issued it is sufficient that the acts to which it relates be punishable by the law of the issuing Member State by a custodial sentence, although surrender may be made subject to the condition that the act constitutes an offence in the country of destination. That option is not available in the case of the most serious offences.

Advocaten voor de Wereld brought an action in the Arbitragehof contesting the Belgian law transposing the Framework Decision into national law. By the question referred that Court asks the Court of Justice to rule on the appropriateness of the judicial instrument used and to rule as to whether the prohibition, in certain circumstances, on making the execution of the European warrant subject to the condition that the facts on which it based must also constitute an offence in

¹ 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).

the State of execution breaches the fundamental rights to equality before the law and to the legality of criminal proceedings.²

As regards the appropriateness of the legal instrument used, the Advocate General, having pointed out the differences between the European arrest warrant and extradition, takes the view that the only alternative to a framework decision would be an international convention. However, he points out that the Treaty of Amsterdam made provision for the framework decision as a new legal instrument intended to circumvent the difficulties arising from the ratification of international treaties. In that connection he emphasises that the Commission, in its proposal for a framework decision, stated that this instrument was chosen for reasons of effectiveness in view of the limited success of the previous conventions.

Mr Ruiz-Jarabo concludes that the Member States and the Institutions are required to achieve the objectives laid down by the Treaty of the European Union, which include the maintenance and development of an area of freedom, security and justice, using the most appropriate measures. They are also bound to ensure the effectiveness of Community law, so that the Council was not only entitled but, indeed, obliged to establish a mechanism for the European arrest warrant and surrender procedure in a framework decision.

As regards the principle of **equality before the law**, the Advocate General takes the view that **the introduction of a different regime on the basis of the nature of the facts does not breach that principle, since it does not take account of a personal situation but of the nature of the offence**. On the other hand, where there are differences between offences and they are of differing seriousness the individuals who commit them cannot be compared to one another.

Similarly, **the differences which may arise from the execution of a European warrant are objective**, since they correspond to the nature of the offence and the penalty for it. They are reasonable and justified because they are aimed at combating crime in an area of freedom, security and justice. And they are **proportionate** since they ensure the surrender by a Member State of a person accused or convicted of a serious offence to the authorities of a judicial system which is comparable to that of the said Member State and which respects the principles of the rule of law and guarantees the fundamental rights of the individual concerned, including the rights which apply during the course of criminal proceedings.

On the other hand, in the view of the Advocate General, **the principle of equality in the application of the law is not breached when different courts hand down conflicting judgments**. The Framework Decision itself provides for the accurate exchange of information and direct contact between the courts involved. In addition, should any uncertainty remain, the procedure for referring a preliminary ruling facilitates a uniform interpretation within the territory of the Union.

Mr Ruiz-Jarabo points out that observance of the principle of legality in criminal proceedings must be required of the legislature of the State issuing the European warrant and its courts for the purposes of commencing criminal proceedings and resolving them, where appropriate, with a

² The constitutional courts of Poland, Germany and Cyprus have ruled that domestic laws transposing the Framework Decision are unconstitutional in that they authorised the surrender of a national to the authorities of another Member State. The Czech constitutional court dismissed an action against the law transposing the Decision.

sentence. A European warrant which is correctly issued must be based on acts which are defined as offences in the issuing State.

Finally, the Advocate General stresses that **the arrest and surrender procedure entailed in the execution of a European arrest warrant is not punitive in nature**. The court responsible for executing the warrant must establish that the conditions for handing over an individual who is in its jurisdiction to the issuing court have been satisfied, but the executing court is not required to hear the substance of the case, except for the purposes of the surrender proceedings, and must refrain from assessing the evidence and delivering a judgment as to guilt.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS, DE, EN, ES, EL, FR, HU, IT, NL, PL, SK, SL

The full text of the Opinion may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-303/05>

It can usually be consulted after midday (CET) on the day of delivery.

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