



Press and Information

Court of Justice of the European Union
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Judgment in Case C-261/09
Gaetano Mantello

A national court which issues a European arrest warrant may declare that an earlier judgment given under its legal system does not cover the same acts as those referred to in the arrest warrant

As a general rule, the judicial authority which arrests the accused may not then refuse to surrender him

The Framework Decision¹ on the European arrest warrant is designed to simplify and speed up surrender procedures between Member States: it removes the complexity and potential for delay inherent in the political and administrative procedures for extradition by establishing a system of free movement of judicial decisions based on the principle of mutual recognition. The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in the Charter of Fundamental Rights. Moreover, the judicial authority of the Member State responsible for executing the arrest warrant must refuse to execute the warrant if it is informed that the requested person has been finally judged by a Member State in respect of the same acts. Furthermore, if the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it must request the authority which has issued the warrant to provide it with the necessary supplementary information as a matter of urgency.

In 2005 Mr Gaetano Mantello was convicted by the Tribunale di Catania (Catania District Court, Italy) of unlawful possession of cocaine intended for onward sale. He subsequently served a prison sentence of 10 months and 20 days.

In 2008, that court issued a European arrest warrant in respect of Mr Mantello, alleging that between 2004 and 2005 he had participated in organised drug trafficking in a number of Italian towns and in Germany.

Having become aware, towards the end of 2008, of the arrest warrant on the Schengen Information System (SIS), the German authorities had Mr Mantello arrested. The Tribunale di Catania – in its capacity as the judicial authority which issued the arrest warrant – informed the Oberlandesgericht (Higher Regional Court) Stuttgart that the judgment delivered in 2005 was not a bar to executing the warrant.

The Oberlandesgericht nevertheless made a reference to the Court of Justice, asking whether it may oppose execution of the arrest warrant in application of the *ne bis in idem* principle, since, at the time of the investigation which led to Mr Mantello's conviction for possession of cocaine, the Italian investigators already had enough evidence to prosecute him for participating in the organised trafficking of narcotic drugs. In the interests of their investigation, the investigators did not pass on to the investigating judge all the information and evidence in their possession and did not, at that time, request the prosecution of those acts.

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).

In response to the first question concerning the interpretation of “the same acts”, the Court states that its interpretation of that concept in previous cases in relation to the Schengen Implementing Convention² is equally valid for the purposes of the Framework Decision. However, in its view, the national court’s questions in actual fact relate more to the concept of “**finally judged**”. Thus, this case raises the question whether the fact that the Italian investigating authorities had, at the time of the conviction for possession of narcotic drugs (2005), evidence concerning the accused’s participation in a criminal organisation, but did not submit that evidence for consideration by the Tribunale de Catania in order not to jeopardise the smooth running of the investigation, meant that there was already a decision which could be regarded as a final judgment in respect of the acts set out in the arrest warrant.

The Court notes that a requested person is considered to have been finally judged in respect of the same acts where, following criminal proceedings, further prosecution is definitively barred or the person is finally acquitted. **Whether a person has been ‘finally’ judged is determined by the law of the Member State in which judgment was delivered.** Consequently, **a decision which, under the law of the Member State which instituted criminal proceedings, does not definitively bar further prosecution at national level in respect of certain acts does not constitute a procedural obstacle to the possible opening or continuation of criminal proceedings** in respect of the same acts in one of the Member States of the European Union.

When, **in response to a request for information made by the executing judicial authority, the authority that issued the arrest warrant has expressly stated** on the basis of its national law **that the earlier judgment delivered under its legal system is not a final judgment covering the acts referred to in the arrest warrant issued by it, the executing judicial authority cannot as a general rule refuse to execute the European arrest warrant.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19).