



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 107/12
Luxembourg, 5 September 2012

Judgment in Case C-42/11
João Pedro Lopes Da Silva Jorge

A Member State cannot restrict solely to its own nationals the non-execution of a European arrest warrant with a view to enforcing in its territory a custodial sentence imposed in another Member State

The principle that there should be no discrimination on the grounds of nationality precludes French legislation which automatically and absolutely prevents other Member States' nationals who are staying or resident in France from serving their sentence in France

The Framework Decision on the European arrest warrant¹ provides that Member States are in principle obliged to act upon such a warrant. Thus, through a series of minimum checks, the national judicial authority (the executing judicial authority) accedes to the request for the surrender of a person made by the judicial authority of another Member State (the issuing judicial authority) for the purposes of conducting a criminal prosecution or enforcing a custodial sentence or detention order. However, in certain cases, the executing judicial authority may refuse to surrender the requested person. That is so, in particular, when a European arrest warrant has been issued for the purposes of enforcing a custodial sentence against a person who is staying in the executing Member State, or is a national or a resident thereof, and that State undertakes to enforce the sentence in its territory².

The French legislation which transposes that Framework Decision restricts the power not to execute an arrest warrant on such a ground solely to requested persons who are French nationals³.

The cour d'appel d'Amiens (Court of Appeal, Amiens) (France) has been seised of proceedings relating to the execution of a European arrest warrant issued on 14 September 2006 by the tribunal criminal de Lisboa (Criminal Court of Lisbon) (Portugal) against Mr Lopes Da Silva Jorge. In 2003, that Portuguese court had sentenced Mr Lopes Da Silva Jorge, a Portuguese national, to five years' imprisonment for drug trafficking. Subsequently, he married a French national in 2009 with whom he is resident in France. In addition, since February 2008 he has been employed by a French company as a long-distance lorry driver under an open-ended contract.

Since he did not consent to being surrendered to the Portuguese authorities, Mr Lopes Da Silva Jorge asked to be imprisoned in France, relying on the above-mentioned ground for non-execution of the European arrest warrant and respect for his right to private and family life enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms. On 20 May 2010, after informing Mr Lopes Da Silva Jorge of the contents of the European arrest warrant, the Public Prosecutor attached to the cour d'appel d'Amiens ordered his imprisonment.

The cour d'appel d'Amiens asks the Court of Justice whether the French legislation under which the possibility of refusing to surrender a person in order to enforce in France a custodial sentence imposed in another Member State is limited solely to French nationals – by automatically and

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).

² Article 4(6) of the Framework Decision.

³ Article 695-24 of the French Code of Criminal Procedure.

absolutely excluding nationals of other Member States who are staying or resident in its territory – is compatible with the Framework Decision.

In its judgment delivered today, the Court points out that although the Member States are in principle obliged to act upon a European arrest warrant, they may allow the competent judicial authorities, in specific situations, to decide that a sentence imposed must be enforced in the territory of the executing Member State. The Framework Decision states that that is the case when the requested person 'is staying in, or is a national or a resident of, the executing Member State', and that State undertakes to enforce that sentence in accordance with its domestic law. The Court has consistently held that that ground for optional non-execution has in particular the objective of enabling the judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when his sentence expires. That objective is legitimately pursued where a certain degree of integration in the society of that Member State is demonstrated.

The Court has already held⁴, by way of derogation from the principle of mutual recognition, that a Member State may limit the benefit of that ground for non-execution of a European arrest warrant to its own nationals or to the nationals of the other Member States who have lawfully resided within the national territory for a continuous period of five years. That condition may be regarded as being such as to ensure that the requested person is sufficiently integrated in the Member State of execution.

However, **the Member States cannot, without undermining the principle that there should be no discrimination on the grounds of nationality⁵, limit the non-execution of a warrant on the ground in question solely to their own nationals, by automatically and absolutely excluding nationals of other Member States** who are staying or resident in the territory of the Member State of execution irrespective of their connections with that Member State (the terms 'resident' and 'staying' having to be defined uniformly by the Member States).

That does not mean that that Member State must necessarily refuse to execute a European arrest warrant issued against a person resident or staying in its territory. However, in so far as that person demonstrates a degree of integration in the society of that Member State comparable to that of a national thereof, the executing judicial authority must be able to assess whether there is a legitimate interest which would justify the sentence imposed in the issuing Member State (Portugal) being enforced within the territory of the executing Member State (France).

The Court adds that the circumstance asserted by France whereby, as a result of its current domestic law⁶, it can undertake to enforce the sentence of a person sentenced in another Member State only if that person is a French national cannot justify the difference in treatment between a non-French national and a French national.

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.

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

⁴ Case [C-123/08 Wolzenburg](#); see also Press release [No 86/09](#).

⁵ Article 18 TFEU.

⁶ In that connection, the French Government submitted that, unlike other Member States, France is not a party to the European Convention on the International Validity of Criminal Judgments, signed at the Hague on 28 May 1970, or to the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991. By contrast, like all the other Member States, France has ratified the Convention on the Transfer of Sentenced Persons, signed in Strasbourg on 21 March 1983, which provides that sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality. The Court rejected that argument by finding that, although that convention allows France to limit solely to French nationals the possibility of a sentence imposed abroad being enforced in France, it does not impose this as an obligation.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355