



Press and Information

Court of Justice of the European Union

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Judgment in Case C-399/11
Stefano Melloni v Ministerio fiscal

The surrender of a person to the judicial authorities of another Member State pursuant to a European arrest warrant cannot be made subject to the possibility of judicial review of the conviction handed down *in absentia*

The Framework Decision on the European arrest warrant reflects the consensus reached by all the Member States regarding the scope of the procedural rights enjoyed by persons convicted in absentia who are the subject of a European arrest warrant

The Framework Decision on the European arrest warrant¹ seeks to replace the multilateral system of extradition between Member States with a system of surrender, as between judicial authorities, of convicted persons or suspects for the purpose of enforcing judgments or of conducting prosecutions. The system thus aims to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the EU to become an area of freedom, security and justice by basing itself on the high degree of confidence which should exist between the Member States.

In October 1996, the Audiencia Nacional (High Court, Spain) authorised the extradition to Italy of Mr Stefano Melloni, in order for him to be tried there in relation to the facts set out in the arrest warrants issued by the Tribunale di Ferrara (District Court, Ferrara) (Italy). After being released on bail of ESP 5 000 000 (approximately €30,000), which he provided the next day, Mr Melloni fled, so that he could not be surrendered to the Italian authorities.

In 1997, the Tribunale di Ferrara declared that Mr Melloni had failed to make appearance in court and directed that notice should in future be given to the lawyers who had been chosen and appointed by him. By a judgment of the Tribunale di Ferrara in 2000, subsequently confirmed on appeal and at cassation level, Mr Melloni was sentenced *in absentia* to 10 years' imprisonment for bankruptcy fraud.

Following his arrest by the Spanish police, Mr Melloni opposed surrender to the Italian authorities, contending, first, that at the appeal stage he had appointed another lawyer, revoking the appointment of the two previous lawyers, despite which notice was still being given to them. Second, he contended that under Italian procedural law it is impossible to appeal against sentences imposed *in absentia*, for which reason the execution of the European arrest warrant should, where appropriate, be made conditional upon Italy's guaranteeing the possibility of appealing against the judgment.

In September 2008, the Audiencia Nacional decided to surrender Mr Melloni to the Italian authorities in order to serve the sentence imposed upon him by the Tribunale di Ferrara, considering that it was not proved that the lawyers appointed by Mr Melloni had ceased to represent him. The Spanish court considered that his rights of defence had been respected, since he had been aware from the outset of the forthcoming trial, deliberately absented himself and appointed two lawyers to represent and defend him, who had acted in that capacity at first instance and in the appeal and cassation proceedings, thus exhausting all remedies.

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), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24).

Mr Melloni filed an action against that order before the Tribunal Constitucional (Constitutional Court, Spain). That court has asked the Court of Justice whether the Framework Decision allows the Spanish courts to make the surrender of Mr Melloni subject to the possibility of judicial review of his conviction, as required by the case-law of the Tribunal Constitucional.

In its judgment delivered today, the Court of Justice observes, first of all, that the Member States are in principle obliged to act upon a European arrest warrant. The executing judicial authority may make the execution of a European arrest warrant subject solely to the conditions set out in the Framework Decision.

In that regard, a provision of the Framework Decision² precludes the judicial authorities from refusing to execute a European arrest warrant issued for the purpose of executing a sentence in a situation where the person concerned has not appeared in person at the trial where, having been made aware of the scheduled trial, he gave a mandate to a legal counsellor to defend him at the trial and was in fact defended by that counsellor. That is Mr Melloni's situation in the present case.

The Court accordingly considers that the wording, scheme and purpose of that provision **precludes the executing judicial authorities (Spain) from making the execution of a European arrest warrant conditional upon the conviction rendered *in absentia* being open to review in the Member State that issued the arrest warrant (Italy)**. The EU legislature has opted to provide an exhaustive list of the circumstances in which the execution of a European arrest warrant issued in order to enforce a decision rendered *in absentia* must be regarded as not infringing the rights of the defence. That approach is incompatible with any retention of the possibility for the executing judicial authority to make that execution conditional on the conviction in question being open to review in order to guarantee the rights of defence of the person concerned.

Secondly, the Court considers that that provision of the Framework Decision is compatible with the right to an effective judicial remedy and to a fair trial and the rights of the defence as recognised under the Charter of Fundamental Rights of the European Union. Although the right of the accused to appear in person at his trial is an essential component of the right to a fair trial, that right is not absolute. The accused may waive that right in a manner attended by certain safeguards. That provision thus sets out the circumstances in which the person concerned must be deemed to have waived his right to be present at his trial.

Lastly, the Court observes that nor does Article 53 of the Charter, which states that nothing therein is to be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, inter alia, by the Member States' constitutions, allow a Member State to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution. Although that article of the Charter confirms that, where an EU legal act calls for national implementing measures, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter and the primacy, unity and effectiveness of EU law are not thereby compromised, to make the surrender of a person subject to such a condition, a possibility not provided for under the Framework Decision, by casting doubt on the uniformity of the standard of protection of fundamental rights as defined in that framework decision, would undermine the principles of mutual trust and recognition which that decision purports to uphold and would, therefore, compromise its efficacy. That framework decision reflects the consensus reached by all the Member States regarding the scope to be given under EU law to the procedural rights enjoyed by persons convicted *in absentia* who are the subject of a 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.

² Article 4a(1)(a) and (b).

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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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