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Judgment of the Court in Case C-700/21 | O. G. (European Arrest Warrant issued against a third-country national)

The option of refusing to execute a European Arrest Warrant in order for the sentence to be executed in the Member State of residence must be equally applicable to third-country nationals

The judicial authority must be able to assess whether the third-country national is sufficiently integrated in the executing Member State, and whether there is thus a legitimate interest justifying the execution in its territory of the sentence imposed in the issuing Member State.

On 13 February 2012, the Court of First Instance of Braşov issued a European arrest warrant ('EAW') against a Moldovan national, for the purposes of executing a custodial sentence. The Court of Appeal of Bologna is the executing judicial authority responsible for the surrender of the requested person since he is resident in Italy. Even though his defence established the stable nature of his family and professional life in Italy, the executing judicial authority did not have the option of refusing his return to Romania so that the sentence could be executed in Italy. Under the Italian law transposing the EAW framework decision,¹ that option is limited to Italian nationals and nationals of other Member States who have stable economic, occupational and emotional ties to Italy, to the exclusion of third-country nationals.

Taking the view that that difference in treatment is unjustified, the Court of Appeal of Bologna seised the Italian Constitutional Court. That court considers that it is necessary, before assessing whether the national law complies with the Italian Constitution, to examine whether it complies with EU law. The EAW framework decision lays down the possibility for the Member states to confer on the court the option of refusing to execute the EAW where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence in accordance with its domestic law. Since that provision does not limit its scope of application solely to EU citizens, the Italian Constitutional Court refers a question in that regard to the Court of Justice.

In its judgment delivered today, **the Court (Grand Chamber) replies that EU law precludes a national law which excludes, absolutely and automatically, any third-country national staying or resident in the territory of that Member State from benefiting from the ground for optional non-execution of an EAW, without the executing judicial authority being able to assess the connections that that national has with that Member State.** Such a national law is **contrary to the principle of equal treatment enshrined in the Charter of Fundamental Rights of the European Union** since it treats differently, on the one hand, its own nationals and other citizens of the Union and, on the other hand, third-country nationals, without account being taken of the fact that those third-country nationals may equally show that they have a sufficient degree of integration within the

¹ 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision (JO 2002, L 190, p. 1)

society of that Member State to justify that they serve, in that State, a sentence pronounced in the issuing Member State.

The application of the ground of optional non-execution in question is subject to two conditions being met. The first is **that the requested person is staying in the executing Member State, is a national of or resident in that Member State.** The second is **that that State undertakes to execute, in accordance with its domestic law, the sentence** in respect of which the EAW has been issued. The Court has stated, as regards the first condition, that there is nothing to preclude a Member State from making the benefit of that ground of non-execution, for a third-country national, subject to the condition that that national has stayed or resided continuously in that Member State for a minimum period of time.

Where it finds that those two conditions are met, **the executing judicial authority must then ascertain whether there is a legitimate interest to justify the sentence imposed in the issuing Member State being enforced on the territory of the executing Member State.** That assessment allows that authority to take account of the objective pursued by the EAW framework decision which consists of increasing the requested person's chances of reintegrating into society when the sentence imposed on him or her expires.

Therefore, it is for the executing judicial authority to make an **overall assessment of all of the specific elements characterising the situation of the requested person** capable of showing that there are **connections between that person and the executing Member State such that the execution of the sentence in that Member State, where he or she is staying or is resident, will contribute to this or her social rehabilitation.** Those elements include the family, linguistic, cultural, social or economic links that the third-country national has with the executing Member State as well as the nature, duration and conditions of his or her stay in that Member State.

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 and the résumé](#) of the judgment is published on the CURIA website on the day of delivery.

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