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Advocate General's Opinion in Joined Cases C-722/23 | [Rugu] and C-91/24 | [Aucroix] ¹

Advocate General Rantos: a Member State which refuses to execute a European arrest warrant on account of the conditions of detention in the issuing Member State is required to order the execution, on its own territory, of the sentence imposed in the issuing Member State

That rule, which is intended to combat impunity, applies to nationals or residents of the executing Member State where that State undertakes to execute the sentence in accordance with its domestic law

A Romanian national and a Belgian national, both residing in Belgium, were each the subject of a European arrest warrant (EAW) issued, respectively, by the Romanian and Greek judicial authorities for the purpose of executing prison sentences.

The Belgian appeal courts seised refused to execute those EAWs on the ground that, in the event of surrender, the conditions of detention in Romania and Greece would expose the requested persons to the risk of their fundamental rights being infringed.

In that context, the Belgian Court of Cassation referred a question to the Court of Justice concerning the interpretation of Framework Decision 2002/584/JHA. ² In particular, it seeks to ascertain whether the executing judicial authority has the option or is required, in order to avoid impunity of the sentenced persons, to order the execution, on its own territory, of sentences imposed on them in the issuing Member State.

In his Opinion, Advocate General Athanasios Rantos proposes that the Court should rule that **a Member State which refuses to execute an EAW on account of there being such a risk that the persons concerned would suffer a breach of their fundamental rights is required to order that the sentence be served in its territory where those persons are nationals of, or reside in, that Member State.**

First of all, the Advocate General recalls that, in principle, Member States are required to execute any EAW. They may refuse to execute an EAW only on the grounds expressly provided for by Framework Decision 2002/584. Exceptionally, however, the existence of a real risk that the person in respect of whom an EAW has been issued would, if that person is surrendered to the issuing judicial authority, suffer a breach of his or her fundamental rights, constitutes a new ground for mandatory non-execution, established by the EU Courts, in addition to those already provided for in that framework decision.

Next, the Advocate General observes that, in addition to the grounds for mandatory non-execution of an EAW, Framework Decision 2002/584 also provides for grounds for optional non-execution, inter alia, where, first, the requested person is staying in, or is a national or resident of, the executing Member State and, second, that Member State undertakes to execute, in accordance with its domestic law, the sentence in respect of which the EAW has been issued.

In that regard, the Advocate General considers that the executing judicial authority must apply, in addition, that

ground for optional non-execution where the conditions for its application have been satisfied and execute the custodial sentence in its territory. He points out that, if the EAW were not executed, a person who has been finally sentenced could be released even if they present a high degree of danger to society, which would be incompatible with the objective of the EAW mechanism, namely to combat impunity. In addition, that ground for non-execution is intended to increase the chances of reintegrating the sentenced person into society after the end of his or her sentence, which presupposes, by definition, that the sentence is actually executed in the only Member State where that remains possible.

Lastly, according to the Advocate General, it appears inconsistent with the EAW mechanism to give the executing judicial authority no more than the option to order the execution of the custodial sentence in its own territory. **The optional nature of that ground for non-execution should, in the Advocate General's view, become an obligation**, provided that, first, the conditions for its application are satisfied and, second, the procedure and conditions laid down by Framework Decision 2008/909/JHA ³ are complied with a view to effectively taking charge of that sentence in the executing Member State.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. 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 are now beginning their deliberations in this case. Judgment will be given at a later date.

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 EU law or the validity of an EU 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.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ The names of the present cases are fictitious names. They do not correspond to the real names of any party to the proceedings.

² Council [Framework Decision 2002/584/JHA](#) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council [Framework Decision 2009/299/JHA](#) of 26 February 2009.

³ Council [Framework Decision 2008/909/JHA](#) of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.