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Judgment of the Court in Case C-305/22 | C.J. (Enforcement of a sentence further to an EAW)

A judicial authority cannot refuse to execute a European arrest warrant and assume responsibility itself for the enforcement of the sentence without the consent of the State that issued that warrant

Without that consent, the issuing State may maintain the European arrest warrant and enforce the sentence itself on its own territory

The European arrest warrant is a simplified judicial procedure, laid down by EU law,¹ which allows for the arrest of a person in the Member State in which he or she is located and for the surrender of that person to the Member State that issued the warrant, so that he or she may be prosecuted there or so that the sentence imposed on him or her may be enforced. In that respect, the principles of mutual trust and mutual recognition constitute the basis for judicial cooperation in criminal matters and give rise to an important rule, namely that the Member States are required to execute any European arrest warrant. Non-execution of such a mandate may therefore take place only in exceptional cases. In this judgment, the Court of Justice explains why the non-execution of European arrest warrant, in order to enforce a sentence in the State in which the person concerned resides, is valid only if the executing judicial authority complies with the conditions and procedure associated with the recognition of the sentencing judgment and the assumption of responsibility for the enforcement of that sentence, laid down by other EU legislation.

In 2017, A Romanian citizen was sentenced by the Court of Appeal, Bucharest, to a term of imprisonment, which became final on 10 November 2020. On 25 November 2020, that court issued a European arrest warrant against that person for the purpose of enforcing that sentence. On 29 December 2020, that person was arrested in Italy. However, the Italian judicial authorities refused to surrender the person concerned to the Romanian authorities. By contrast, those authorities decided to recognise the sentencing judgment of the Court of Appeal, Bucharest, and to enforce the sentence in Italy. They considered that this would increase the chances of social rehabilitation for the person concerned, who was legally and actually resident in Italy. Moreover, the Italian judicial authorities deducted the periods of detention already served in Italy from the initial duration of the sentence and placed the sentenced person under house arrest with concurrent suspension. For their part, the Romanian judicial authorities dispute both the recognition of the sentencing judgment and its enforcement in Italy. They maintain that the European arrest warrant issued against the Romanian citizen remains in force. Therefore, according to the Romanian authorities, the person must be surrendered and the sentence must be enforced not in Italy but in Romania.

Hearing the case, the Court of Appeal, Bucharest, decided to refer a question to the Court of Justice, in particular concerning whether the refusal to surrender a person who is the subject of a European arrest warrant issued in order to enforce a custodial sentence presupposes that the issuing State has consented to the enforcement of the sentence in another Member State. In addition, it asks whether, where the issuing State has not given its consent to that assumption of responsibility in accordance with the specific rules of EU law on the matter,² it retains the right to enforce the sentence and therefore to maintain the European arrest warrant.

In its judgment, the Court recalls, first of all, that the European arrest warrant is based on the principle of mutual trust and that refusal to execute that warrant is an exception, which must always be interpreted strictly.

Accordingly, the judicial authorities of the Member State which refuses to execute the European arrest warrant in order for the sentence to be enforced on the territory of that State must obtain the consent of the authorities of the issuing Member State as regards the assumption of responsibility for the enforcement of the sentence imposed in the latter State. Such consent entails the forwarding to the executing Member State of the sentencing judgment handed down by the issuing Member State, together with a certificate. Without that consent, the conditions for the assumption of responsibility for that enforcement are not met and the person concerned must be surrendered. The objective of increasing the chances of social rehabilitation, relied on by the Italian authorities, is not absolute and must be reconciled with the rule of principle that Member States are to execute any European arrest warrant.

In view of the various functions of the sentence within society, the authorities of the Member State in which a custodial sentence has been imposed on a person may legitimately rely on the criminal policy arguments of that Member State in order to justify the sentence imposed being enforced on its territory and, consequently, refuse to forward the sentencing judgment and the certificate for the purpose of enforcing the sentence in another Member State. In any event, if the refusal to execute a European arrest warrant was made in breach of the essential conditions and procedure laid down by EU law, that European arrest warrant remains in force and the issuing State retains the right to enforce the sentence imposed on its own territory.

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.

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The full [text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Council Framework Decision 2002/584/JHA](#) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

² [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.