



Press and Information

Court of Justice of the European Union

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Judgment in Case C-640/15

Tomas Vilkas

The authorities responsible for executing a European arrest warrant must, in the event of *force majeure* being established, set a third surrender date where the first two surrender attempts have failed on account of the resistance put up by the requested person

It is for the national courts to verify that the authorities could not foresee such resistance and that the consequences of the resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities

Tomas Vilkas was the subject of two European arrest warrants issued by a Lithuanian court. The Irish authorities attempted to surrender him to the Lithuanian authorities by using a commercial flight. However, he was not allowed on the flight because of the resistance he put up. Two weeks later, a second surrender attempt, also by means of a commercial flight, failed following a series of similar events.

The Irish Minister for Justice and Equality then applied to the High Court (Ireland) for authorisation for a third attempt at surrendering Mr Vilkas. However, the High Court held that it lacked jurisdiction to hear this application and ordered Mr Vilkas's release.

The Minister for Justice and Equality brought an appeal against that judgment before the Court of Appeal (Ireland). In those circumstances, the Court of Appeal asked the Court of Justice whether EU law allows the authorities to agree on a new surrender date on more than one occasion in the event of circumstances beyond one of the Member States' control and, if so, in what situations.

First of all, the Court of Justice notes that under EU law the requested person is to be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant. That rule is, however, subject to certain exceptions. It is thus provided that, if the surrender of the requested person within the period laid down is prevented by circumstances beyond the control of any of the Member States (*force majeure*), the judicial authorities may agree on a new surrender date. On the basis, in particular, of the objectives pursued by the EU legislature, the Court concludes that **EU law does not expressly limit the number of new surrender dates and allows a new surrender date to be set where surrender has failed more than 10 days after the final decision on the execution of the European arrest warrant.**

The Court then examines whether the executing judicial authority (in this instance, the Irish authorities) and the issuing judicial authority (in this instance, the Lithuanian authorities) must agree on a third surrender date where the repeated resistance of the requested person has prevented surrender twice.

First, the Court holds that **the EU legislature had the intention of referring to the concept of *force majeure* in the sense of abnormal and unforeseeable circumstances which were outside the control of the party by whom it is pleaded** and the consequences of which could not have been avoided in spite of the exercise of all due care.

Secondly, the Court points out that the concept of *force majeure* must be interpreted strictly. A case of *force majeure* can justify extending the period for surrendering the requested person only

in so far as surrender within the period laid down is 'prevented'; the fact that surrender is made more difficult cannot therefore justify application of the rule.

The Court concludes that, in this context, **the resistance put up by a requested person to his surrender may properly be regarded as an abnormal circumstance outside the control of the authorities concerned.** On the other hand, that situation cannot, in principle, be classified as an unforeseeable.

A fortiori, in a situation where the requested person has already resisted a first surrender attempt, the fact that he also resists a second attempt cannot normally be regarded as unforeseeable.

The Court notes that the State authorities have means enabling them more often than not to overcome resistance put up by the requested person. It is also possible to envisage recourse to means of transport whose use cannot be effectively prevented by the requested person's resistance.

However, the Court holds that **it cannot be entirely ruled out that, on account of exceptional circumstances, the resistance put up by the requested person to his surrender cannot objectively be foreseen by the authorities concerned** and that the consequences of the resistance for the surrender cannot be avoided in spite of the exercise of all due care by those authorities. **The Court concludes that it is for the referring court to ascertain whether the existence of such circumstances has been established** in the present case.

In addition, since it is possible for the Court of Appeal not to classify the repeated resistance of Mr Vilkas as *force majeure*, **the Court explains that EU law cannot be interpreted as meaning that, once the prescribed time limits have expired, the executing judicial authority is no longer able to agree on a new surrender date with the issuing judicial authority** or that the executing Member State is no longer required to carry on with the execution procedure.

An interpretation to the effect that the executing judicial authority should no longer surrender the requested person or agree, for that purpose, on a new surrender date with the issuing judicial authority after the prescribed time limits have expired would run counter to the objective of accelerating and simplifying judicial cooperation. It follows that **the mere expiry of the prescribed time limits cannot relieve the executing Member State of its obligation to carry on with the procedure for executing the European arrest warrant and to surrender the requested person, and the authorities concerned must agree, for that purpose, on a new surrender 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 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](#) of the judgment is published on the CURIA website on the day of delivery.

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