

**Case C-722/23 [Rugu] <sup>i</sup>**

**Request for a preliminary ruling**

**Date lodged:**

28 November 2023

**Referring court:**

Cour de cassation (Belgium)

**Date of the decision to refer:**

22 November 2023

**Appellant on a point of law:**

AR

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**Cour de cassation (Belgium)**

**Judgment**

[...]

AR, born in [...] (Romania) on [...]

domiciled in [...]

person in respect of whom a European arrest warrant has been issued, appellant on a point of law,

[...]

**I. PROCEDURE**

The appeal has been brought against a judgment delivered on 30 October 2023 by the Indictment Division of the cour d'appel de Bruxelles (Court of Appeal, Brussels).

[...]

<sup>i</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

## II. DECISION OF THE COURT

- 1 The appellant, who is a Romanian national but who, according to the appeal judges, resides in Belgium, is the subject of a European arrest warrant issued on 1 August 2023 by the Romanian authorities with a view to the execution of a four-year custodial sentence.

The chambre du conseil (Investigation Chamber) refused to execute the European arrest warrant on the grounds, provided for in Article 4(5) of the loi du 19 décembre 2003 relative au mandat d'arrêt européen (Law of 19 December 2003 on the European arrest warrant), that the conditions of detention in Romania would expose the appellant to the risk that his fundamental rights, in this case those protected by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, would be infringed.

Following an appeal by the public prosecution service, the Indictments Division confirmed the order, but also decided that the four-year custodial sentence referred to in the European arrest warrant '[could] be served in Belgium' pursuant to Article 6(4) of the Law of 19 December 2003, since the risk that Article 4(5) is intended to prevent concerns the arrangements for the serving of the sentence imposed in Romania, and not the procedure that led to the appellant's conviction there or the conviction itself.

The above decision is the contested decision.

- 2 The plea alleges infringement of Article 25 of 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, Article 4(5) of the Law of 19 December 2003 on the European arrest warrant and Article 38(1) of the loi du 15 mai 2012 relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un État membre de l'Union européenne (Law of 15 May 2012 on the application of the principle of mutual recognition to custodial sentences or measures involving deprivation of liberty imposed in a Member State of the European Union).

The appellant submits that, having found that a ground for mandatory non-execution of the European arrest warrant applied, since there were valid grounds for believing that the warrant's execution would have the effect of infringing the applicant's fundamental rights, it was not open to the appeal judges to apply the effects of the ground for optional non-execution referred to in Article 6(4) of the Law of 19 December 2003, and, since the applicant resided in Belgium, order that he serve in Belgium the prison sentence that had been imposed on him in the issuing State.

- 3 Pursuant to Article 1(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures

between Member States, the latter are to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision.

It is apparent from the judgment of the Court of Justice of the European Union in Cases C-354/20 PPU and C-412/20 PPU of 17 December 2020 that the objective of the mechanism of the European arrest warrant is in particular to combat the impunity of a requested person who is present in a territory other than that in which he or she has allegedly committed an offence.

Furthermore, in its judgment in Case C-579/15 of 29 June 2017, the Court of Justice of the European Union held that the competent national court, by taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, is obliged to interpret the provisions of national law at issue in the main proceeding, so far as is possible, in the light of the wording and the purpose of that framework decision. That obligation meant, in the case then before the Court of Justice, that, in the event of a refusal to execute a European arrest warrant issued with a view to the surrender of a person who had been finally judged in the issuing Member State and given a custodial sentence, the judicial authorities of the executing Member State were themselves required to ensure that the sentence pronounced against that person was actually executed.

However, Article 1(3) of the framework decision states that the decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 4(5) of the Law of 19 December 2003, which transposed the above-mentioned framework decision into Belgian law, provides that the execution of a European arrest warrant is to be refused if there are valid grounds for believing that its execution would have the effect of infringing the fundamental rights of the person concerned, as enshrined in Article 6 of the Treaty on European Union. That ground for non-execution of the European arrest warrant is mandatory.

Finally, pursuant to Article 6(4) of the same law, transposing Article 4(6) of the framework decision, the execution of the European arrest warrant may be refused if it has been issued for the purposes of execution of a sentence, where the person concerned lives or resides in Belgium and the competent Belgian authorities undertake to execute the sentence in accordance with Belgian law. In that event, Article 38(1) of the Law of 15 May 2012 provides that the decision of the investigating court entails the recognition and execution of the custodial sentence or measure involving deprivation of liberty referred to in the judicial decision that is the subject of the European arrest warrant and that that sentence is to be executed in accordance with the provisions of the Law of 15 May 2012.

- 4 The plea raises the question of whether, where the courts of the State executing a European arrest warrant have found that, in the event of the surrender of the

requested person to the issuing State, there is a risk of that person's fundamental rights being infringed and that that risk cannot be averted within a reasonable period, with the consequence that they are obliged to refuse to execute the European arrest warrant, those same courts of the executing State may, nonetheless, decide, in order to prevent impunity on the part of a requested person who resides in a territory other than that in which he or she allegedly committed an offence, that they should order, in accordance with the provision transposing Article 4(6) of the framework decision into national law, the execution in the executing Member State of the custodial sentence imposed on the person concerned in the Member State that issued the European arrest warrant, such sentence being referred to in that warrant.

In other words, does the finding that there is a ground for refusal of mandatory execution of the European arrest warrant preclude the application of the effects of the ground for optional non-execution of the European arrest warrant referred to in Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant?

- 5 In contrast to the case that gave rise to the above-mentioned judgment of the Court of Justice of the European Union in Case C-579/15, in the present case the finding that the person concerned resides in the executing State and that the ground for optional non-execution of the European arrest warrant referred to in Article 4(6) of the framework decision must be applied was preceded by the finding that the surrender of that person to the issuing State would entail a risk of infringement of his fundamental rights, and that therefore the ground of mandatory non-execution referred to in Article 4(5) of the Law of 19 December 2003 was to be applied.

Only an interpretation of Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 can provide an answer to the above question.

It is therefore necessary, pursuant to the third paragraph of Article 267 of the Treaty on the Functioning of the European Union, to refer a question to the Court of Justice of the European Union in the terms set out in the operative part.

- 6 Since the applicant was released on 12 September 2023 by the investigating judge subject to conditions restricting his freedom of movement and prohibiting him, in particular, from travelling abroad, and since the effects of that decision will continue until a final decision has been taken on the execution of the European arrest warrant, and in so far as the answer to the question posed is decisive in that regard, the Court of Cassation asks the Court of Justice of the European Union to consider applying the urgent procedure provided for in the last paragraph of Article 267 of the Treaty on the Functioning of the European Union and in Article 107 of the Rules of Procedure of the Court of Justice of the European Union of 25 September 2012.
- 7 Consideration of the plea in law is suspended until the Court of Justice of the European Union has ruled on the question set out below.

**ON THOSE GROUNDS,**

**THE COURT,**

Stays the proceedings until the Court of Justice of the European Union has delivered a preliminary ruling on the following question:

Where the courts of the Member State executing a European arrest warrant have found that, in the event of the surrender of the requested person to the issuing Member State, there is a risk of that person's fundamental rights being infringed in connection with the execution of the foreign sentence, with the consequence that there are grounds for refusing to execute the European arrest warrant, does Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States authorise courts of the executing Member State that find that the requested person resides in the executing State to decide subsequently that, in accordance with the provision transposing Article 4(6) of the framework decision into national law, the custodial sentence imposed in the Member State that issued the European arrest warrant, which is referred to in that warrant, is to be served in the executing Member State?

[...]

[...] [date and signatures]

WORKING DOCUMENT