

Anonymised version

Translation

C-91/24 – 1

Case C-91/24 [Aucroix] ⁱ

Request for a preliminary ruling

Date lodged:

6 February 2024

Referring court:

Cour de cassation (Belgium)

Date of the decision to refer:

31 January 2024

Appellant in cassation:

Procureur général de Mons

Respondent in cassation:

HL

[...]

Cour de cassation (Court of Cassation, Belgium)

Judgment

No P.24.0111.F

**THE PUBLIC PROSECUTOR AT THE COUR D'APPEL DE MONS
(COURT OF APPEAL, MONS),** appellant in cassation,

v

[...] [HL], [...]

a person who is the subject of a European arrest warrant,

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

respondent in cassation.

I. PROCEDURE BEFORE THE COURT

The appeal has been brought against a judgment delivered on 18 January 2024 by the Indictment Division of the cour d'appel de Mons (Court of Appeal, Mons).

[...]

[...] [procedure].

II. DECISION OF THE COURT

- 1 The respondent in cassation ('the respondent'), who is of Belgian nationality and resides in the Kingdom of Belgium, is the subject of a European arrest warrant issued on 9 March 2016 by the Greek authorities with a view to enforcing a five-year custodial sentence.

The judgment under appeal refuses to execute that European arrest warrant in accordance with 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 refusal is based on the respondent's mental condition, combined with the conditions of detention in the State issuing the warrant, which are incompatible with the guarantees laid down in Articles 3 and 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The judgment states that the respondent would be exposed to the risk of being detained in an overcrowded prison where he would not have access to care appropriate to his state of health.

- 2 Asserting an infringement of Article 6(4) of the Law of 19 December 2003 on the European arrest warrant, the ground of appeal alleges that, having refused to execute the European arrest warrant because of the conditions of execution of the custodial sentence in the issuing State, the Indictments Division should have considered applying the grounds for optional non-execution referred to in the abovementioned article. In that respect, the appellant in cassation argues that that legal provision is intended to prevent situations where a person whose surrender is refused might remain unpunished.

The ground of appeal also alleges that the Indictments Division should have referred a question to the Court of Justice of the European Union for a preliminary ruling to establish whether, where the judicial authority of the executing State finds that there are grounds for mandatory refusal to execute a European arrest warrant because of a risk that the fundamental rights of the person concerned might be infringed, that authority must examine the possibility of applying the ground for optional non-execution of the European arrest warrant laid down in Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on

the European arrest warrant (the abovementioned Article 6(4) of the Law of 19 December 2003 transposes that provision into Belgian law).

- 3 Article 1(2) of the abovementioned framework decision states that Member States 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.

Article 1(3) of the framework decision provides that that framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU.

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

- 4 It follows from the [...] judgment [of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)* (C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033)], 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.

Moreover, in the [...] judgment [of 29 June 2017, *Popławski* (C--579/15, EU:C:2017:503)], 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.

In accordance with Article 6(4) of that law – which, as has already been noted, transposes Article 4(6) of the framework decision – the execution of a European arrest warrant may be refused if it has been issued for the purposes of executing a sentence, where the person concerned is Belgian, is staying or residing in Belgium and the competent Belgian authorities undertake to enforce the sentence in accordance with Belgian law.

- 5 The ground of appeal raises the question as to whether, where the courts of a State executing a European arrest warrant have found that there is a risk that the fundamental rights of the requested person might be infringed if that person is

surrendered to the issuing State and they are thus required to refuse to execute the European arrest warrant, Article 4(6) of the framework decision must be interpreted as requiring those courts of the executing State to examine – in order to avoid a situation where the requested person who is a national of or resides in that State might remain unpunished – whether it is appropriate to order, in accordance with the provision transposing the abovementioned Article 4(6) into national law, that the custodial sentence imposed on the person concerned in the Member State that issued the European arrest warrant, which is referred to in that warrant, be served in the executing Member State.

- 6 In accordance with Article 267 TFEU, where a question on the validity and interpretation of acts adopted by the EU institutions, bodies, offices and agencies is raised in proceedings before a court of a Member State against whose decisions there is no judicial remedy under national law, that court is required to refer the question to the Court of Justice.

[...]

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 a 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, must 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 be interpreted as requiring those courts of the executing State to examine – in order to avoid a situation where the requested person who is a national of or resides in that State might remain unpunished – whether it is appropriate to order, in accordance with the provision transposing the abovementioned Article 4(6) into national law, that the custodial sentence imposed on the person concerned in the Member State that issued the European arrest warrant, which is referred to in that warrant, be served in the executing Member State?

[...]

[...] [procedure]