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Judgment of the Court of Justice in Joined Cases C-722/23 and C-91/24 | [Rugu and Aucroix] <sup>1</sup>

### **A Member State that refuses to execute a European arrest warrant because of the conditions of detention in the issuing Member State must take all possible steps to ensure that the custodial sentence is enforced in its own territory**

*The impunity of the requested person will accordingly be avoided*

The Belgian authorities refused to execute two European arrest warrants on the ground that the conditions of detention in the issuing Member States would risk exposing the requested persons to inhuman or degrading treatment. In response the question raised by the Belgian Cour de cassation (Court of Cassation) as to whether, against that background, Belgium was obliged to enforce the prison sentences on its own territory, the Court replied that the executing Member State must take all possible steps in order to do so. In the area of freedom, security and justice without internal frontiers, the impunity of the persons concerned should be avoided.

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 purposes of the enforcement of custodial sentences.

The Belgian appeal courts refused to execute those EAWs, finding that the conditions of detention in Romania and Greece meant that those requested persons would risk being exposed to inhuman or degrading treatment.

The Belgian Court of Cassation asked the Court whether the Belgian judicial authority could - or must - itself enforce those sentences in Belgium in order to prevent those convicted persons from remaining unpunished. <sup>2</sup>

The Court holds that, in that context, the judicial authority of the Member State which has refused to execute the EAW is required to implement another instrument of judicial cooperation provided for by EU law, on the recognition and enforcement of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty, <sup>3</sup> in order to ensure that those sentences are enforced in its own territory.

That authority is required actively to seek to ensure that the requested person does not go unpunished as a result of that refusal. As regards the steps to be taken to that end, the Court recalls that the obligation of sincere cooperation must inform the dialogue between the executing and issuing judicial authorities in order to ensure that the operation of the EAW is not brought to a standstill.

With that in mind, those two authorities must, in order to ensure effective cooperation in criminal matters, observe the principles of mutual trust and mutual recognition. Accordingly, an executing Member State must, on its own initiative, request the issuing Member State to forward to it the judgment imposing the sentence, which justified the EAW being issued, and ensure the enforcement of the sentence in its territory. The Court states that it is in the public interest that the sentence is enforced in the executing Member State so that the requested person does not remain unpunished.

Lastly, even though the enforcement of a sentence involving deprivation of liberty in another Member State than that in

which the sentence was imposed requires, in principle, the consent of the person concerned, the Court recalls that that is not always the case. It stresses notably that such consent is not required where, in essence, it appears that the requested person has left the territory of the Member State in which he or she was convicted in order to try to escape the enforcement of the sentence.

**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, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> The names of the present cases are fictitious names. They do not correspond to the real names of any of the parties to the proceedings.

<sup>2</sup> The Court is asked to interpret certain provisions of [Council Framework Decision 2002/584/JHA](#), of 13 June 2002, on the European arrest warrant and the surrender procedures between Member States.

<sup>3</sup> [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.