COURT OF JUSTICE
OF THE EUROPEAN UNION

Judgment of the Court in Case C-583/24 [Tagu] [1]

Press release No 154/26

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European arrest warrant: the alleged disproportionality of the sentence imposed in relation to the seriousness of the offence is not sufficient, in itself, to justify a refusal to execute

However, the refusal to execute a European arrest warrant may exceptionally be justified, in particular where the legislation of the issuing Member State permits, or even imposes, prison sentences which are so disproportionate that they amount to inhuman or degrading punishment or where that legislation does not take into account the seriousness of the offence and does not allow for individual circumstances to be taken into account.

A European arrest warrant was issued in respect of a man who had been sentenced in Romania to seven years' imprisonment for importing three grams of cannabis and four MDMA pills. A Netherlands court, before which a request for the execution of that warrant was brought, asks the Court of Justice whether the surrender of the person concerned may be refused because of the disproportionate nature of the sentence imposed in relation to the seriousness of the offence. In the Netherlands, a comparable offence would be punishable by a sentence of one to three weeks' imprisonment.

The Court recalls that the principle of mutual trust between the Member States implies that the execution of a European arrest warrant constitutes the rule and that refusal to execute is possible only in exceptional circumstances, without prejudice to the obligation to respect fundamental rights. Thus, while ensuring compliance with those rights falls primarily within the responsibility of the Member State that issued the warrant, in the event of a risk of a breach of the fundamental rights guaranteed by EU law, a refusal by the executing Member State may exceptionally be justified following an examination in two separate steps. The executing judicial authority must first verify whether there are, in the issuing Member State, systemic or generalised deficiencies, or deficiencies affecting an objectively identifiable group of persons. Where such deficiencies are established, that authority must then determine whether, having regard to the personal situation of the person concerned, that person runs, in practical terms, a real risk of a breach of those fundamental rights.

The Court states, however, that differences – even significant ones – between the penalties provided for in the legislation of the Member States are not sufficient, by themselves, to establish such deficiencies. Such deficiencies may be established where the legislation or judicial practice of the issuing Member State reveals a serious and manifest breach of the principle of proportionality of penalties and there is no effective judicial remedy to redress that breach. That would be the case, inter alia, where that legislation permits, or even imposes, penalties that are so disproportionate that they amount to inhuman or degrading punishment within the meaning of EU law, or do not allow the court to take account of the seriousness of the offence and the specific circumstances of the case in order to adjust the penalty. In the present case, the Court considers that the Romanian legislation does not reveal any deficiencies constituting a manifest and serious breach of the principle of proportionality of penalties which could justify the refusal to execute the European arrest warrant.

In December 2023, DZ was sentenced by final judgment in Romanian to seven years' imprisonment for the importation into that country of three grams of cannabis and four pills containing MDMA. In January 2024, a Romanian court issued a European arrest warrant against him so that he could serve that sentence in Romania.

DZ objected to his surrender before the District Court, Amsterdam (Netherlands), which was responsible for deciding on his surrender to the Romanian authorities. He claimed that the sentence imposed on him was disproportionate. He indicated that the drugs were intended for the personal consumption of his wife, who used them as pain relief. The

Netherlands court notes that the quantities of drugs in question were small and that the couple had no intention of trafficking those drugs.

According to the Netherlands court, at the time of the facts, Romanian law imposed a minimum sentence of seven years' imprisonment for the importation of 'high risk' drugs, such as MDMA. Apart from limited possibilities for sentence reduction, the Romanian courts were not able to take into account either the small amount of drugs concerned or the fact that they were intended for personal consumption or, at the very least, that they had been imported without any intention of trafficking them. Nor was it possible to suspend the sentence imposed on DZ.

In that context, the Netherlands court asks the Court of Justice whether EU law [2] permits the authority responsible for executing the European arrest warrant to refuse the surrender of a person on the ground that the sentence imposed is disproportionate [3] in relation to the offence which gave rise to that sentence and is therefore contrary to the principle of proportionality of criminal offences and penalties enshrined in the Charter of Fundamental Rights of the European Union. [4]

In its judgment, the Court recalls, first, that the principles of mutual trust and mutual recognition between the Member States are of fundamental importance in EU law. Save in exceptional circumstances, each Member State is required to presume that the others comply with EU law and, in particular, with the fundamental rights guaranteed by it. Those principles imply that **execution of the European arrest warrant constitutes the rule and refusal may be envisaged only in exceptional circumstances.**

The possible disproportionality of the sentence is not, as such, among the grounds for non-execution of a European arrest warrant, expressly provided for by the EU legislature. [5]

However, the Court has previously acknowledged [6] that, in exceptional circumstances, the executing judicial authority may, or even must, refuse to execute the European arrest warrant where there is a real risk that the surrender of the person concerned would result in a breach of his or her fundamental rights. [7]

The existence of that risk must, in principle, be assessed in two successive stages. As a first step, the executing judicial authority must have objective, reliable, specific and properly updated information to demonstrate that there are, in the issuing Member State, systemic or generalised deficiencies or deficiencies affecting an objectively identifiable group of persons to which the person concerned belongs. It is only where that first condition is met that the executing judicial authority may, as a second step, examine specifically and precisely whether, having regard to his or her personal situation, the requested person does in fact run a real risk of a breach of his or her fundamental rights.

In the present case, the Court considers **that differences – even significant ones – between the penalties provided for by the laws of the Member States are not sufficient, by themselves, to establish such deficiencies**. In the absence of complete harmonisation of criminal law, the choices of the Member States in the area of criminal policy may differ significantly. To allow the executing judicial authority to review the proportionality of a sentence on the ground that it would have been less severe in its own legal order would amount to conferring on that authority a general function of reviewing criminal decisions made in the other Member States, which is contrary to the principles of mutual trust and recognition.

Deficiencies capable of justifying such a review may therefore be established only where the legislation or judicial practice of the issuing Member State **constitutes a serious and manifest breach of the proportionality of criminal offences and penalties and there is no effective judicial remedy available to redress that breach**. That is the case, inter alia, where that legislation permits, or even requires, prison sentences to be imposed which are so disproportionate as to amount to inhuman or degrading punishment, [8] or even where the applicable rules do not take any account of the seriousness of the offence and do not allow the court to take into account the individual circumstances of the case to adjust the penalty.

In the present case, the Court notes that the minimum sentence of seven years laid down in Romanian law for the importation of 'high-risk' drugs cannot be regarded, in itself, as imposing inhuman or degrading punishment. In addition, Romanian law allows for the individualisation of the sentence. The court may, inter alia, take into account the purpose of the criminal offence, the quantity of drugs concerned and mitigating or specific circumstances and, in certain situations,

alter the classification of the offence, which may lead to a reduction in the sentence. DZ was also able to challenge his conviction on appeal and on a further appeal on a point of law.

In those circumstances, **the Romanian legislation in question does not reveal any deficiencies that could justify a refusal to execute the European arrest warrant.**

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 of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

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

[2] Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

[3] In the Netherlands, the introduction of drugs in that category, in quantities of up to 10 grams, would be punishable by a term of imprisonment of one to three weeks. In addition, the options available to the Romanian court to reduce the sentence or suspend its enforcement are more limited than those available to the Netherlands court.

[4] Article 49(3) of the Charter of Fundamental Rights.

[5] Articles 3, 4 and 4a of Framework Decision 2002/584.

[6] On the basis of the interpretation of Article 1(3) of Framework Decision 2002/584.

[7] See judgments of the Court of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU (see also press release No 36/16) and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU (see also press release No 113/18).

[8] Within the meaning of Article 4 of the Charter, the meaning and scope of which correspond to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.