



## PRESS RELEASE No 173/22

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Advocate General's Opinion in Joined Cases C-514/21 & C-515/21 | Minister for Justice and Equality  
(Levée du sursis)

### **European Arrest Warrant: Advocate General Ćapeta proposes that the term 'trial resulting in the decision' is to be interpreted as any step of the proceedings, which has the decisive influence on the deprivation of a person's liberty.**

The Court of Appeal (Ireland) referred two cases with similar facts to the Court. In both cases, a person had been found guilty of committing an offence following a fair trial (First Offence). That finding of guilt resulted in the imposition of a suspended prison sentence. Afterwards, that same person was accused of a second offence (Trigger Offence) committed during the probation period. The second trial was conducted *in absentia* and resulted in a finding of guilt and the imposition of a prison sentence. Consequently, the suspension of the prison sentence for the First Offence was revoked. The person concerned being out of the country, a European arrest warrant (EAW)<sup>1</sup> was issued for the execution of the prison sentence for the first offence. (1)

Case C-514/21 concerns an EAW issued by a Hungarian judicial authority requesting the surrender of LU for the execution of the prison sentence for the First Offence. Case C-515/21, concerns a similar request by a Polish judicial authority seeking the surrender of PH. In both cases, the referring court wishes to know whether an executing authority can refuse the surrender on the foot of an EAW for the execution of the sentence relating to the First Offence because the second trial was held *in absentia*. (2) That, in turn, depends on the meaning of the expression 'trial resulting in the decision' in Article 4a(1) of the EAW Framework Decision.

In her Opinion delivered today, Advocate General Tamara Ćapeta proposes that **the term 'trial resulting in the decision' is to be interpreted as any step of the proceedings, which has the decisive influence on the decision on the deprivation of a person's liberty.** It should therefore be interpreted to include the trials, such as those for the Trigger Offences in the present cases. The result is that, provided none of the conditions under Article 4a(1) of the EAW Framework Decision is met, the referring court has the option not to surrender the appellants to Poland and Hungary respectively. (37)

Advocate General Ćapeta notes that when a decision involves a significant change for the person concerned, especially a possible deprivation of liberty, he or she must be given the possibility to impact every step of the procedure that has a decisive influence on the final decision on the sentence. Consequently, both trials (for the First

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<sup>1</sup> Within the meaning of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24). (EAW Framework Decision)

Offence and for the Trigger Offence) fall within the scope of Article 4a(1) of the EAW Framework Decision. (102,103) The Advocate General further explains that Article 4a(1) of the EAW Framework Decision harmonises the conditions under which the authority executing an EAW, in any Member State, is allowed not to recognise a decision of a court of the issuing state adopted in a trial conducted *in absentia*. If none of the scenarios envisaged under Article 4a(1) of the EAW Framework Decision exists, then, and only then, does the EAW Framework Decision authorise the executing authority to refuse the surrender. (92) On the contrary, if any of the conditions under that provision is met, the person was (or will be) given a chance to be present at the trial and influence the final decision. If that is so, the executing judicial authority is not allowed to carry out any additional inquiries into possible infringements of Article 6 ECHR. After surrender, the responsibility to ensure fundamental rights rests on the issuing Member State.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later 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 Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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