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Judgment of the Court in Case C-158/21 | Puig Gordi and Others

An executing judicial authority may not, in principle, refuse to execute a European arrest warrant on the basis that the court called upon to try the requested person in the issuing Member State does not have jurisdiction to do so

That authority must, however, refuse to execute that European arrest warrant if it finds that there are systemic or generalised deficiencies affecting the judicial system of that Member State and that the court called upon to try the requested person in that Member State clearly lacks jurisdiction

The Spanish Supreme Court refers questions to the Court of Justice which have arisen in the context of the prosecution of former Catalan leaders following a referendum, held on 1 October 2017, concerning self-determination for the Autonomous Community of Catalonia (Spain). European arrest warrants (EAW) were issued for some of the defendants who had left Spain, including Mr Lluís Puig Gordi. The Belgian courts refused to give effect to the EAW issued for Mr Puig Gordi. They considered that there was a risk that his right to be tried by a tribunal established by law would be infringed, given that the jurisdiction of the Spanish Supreme Court to try the persons sought did not have an express legal basis.

The Spanish Supreme Court asks whether an executing judicial authority may refuse to execute an EAW by relying on a ground for non-execution which is not set out in the framework decision on EAWs,¹ or on the ground that the issuing judicial authority (in the present case, the Spanish Supreme Court) does not have jurisdiction to issue the EAW in question. Furthermore, the Spanish Supreme Court is uncertain as to the conditions under which the judicial authority responsible for executing an EAW (in the present case, the Belgian courts) may refuse to execute that EAW on the ground of an alleged infringement of the defendant's fundamental rights. It asks, in particular, whether the executing judicial authority may, for that purpose, assess the jurisdiction of the court called upon to try the requested person in the event of him or her being surrendered to the issuing Member State.

The Spanish Supreme Court also states that it has to rule on whether to maintain or withdraw the existing EAWs and asks the Court about the possible issuing of a new EAW.

The Court, sitting as the Grand Chamber, states that **the principles of mutual trust and mutual recognition between the Member States** are the cornerstone of the system of judicial cooperation in respect of an EAW. It states, however, that **the fundamental right to a fair trial** is also of cardinal importance. That right guarantees the protection of all the rights which individuals derive from EU law and the preservation of the values common to the Member States. It is in the light of those principles and that right that the Court answers the Spanish Supreme Court's questions as follows.

¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision (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).

An executing judicial authority does not have the power to refuse to execute an EAW based on a ground for non-execution which arises solely from the law of the executing Member State. If that were the case, the framework decision would not be applied uniformly and the Member States would be able to determine freely the scope of the obligation to execute EAWs. The Court adds that **a decision refusing to execute an EAW, taken following an appropriate assessment, must be of an exceptional nature.**

However, **the executing judicial authority may apply a national provision which provides that the execution of an EAW is to be refused where that execution would lead to an infringement of a fundamental right** enshrined in EU law. The scope of that national provision must not, however, go beyond the scope of the obligation to respect the fundamental rights which is laid in that framework decision, as interpreted by the Court.

Furthermore, the executing judicial authority may not verify whether an EAW has been issued by a judicial authority which had jurisdiction for that purpose under the national law of the issuing Member State and refuse to execute that EAW where it considers that that is not the case.

However, where the requested person alleges that his or her **surrender** to the issuing Member State (in the present case, Spain) will expose him or her an **infringement of the fundamental right to a fair trial**, in that he or she would be tried there by **a court lacking jurisdiction** for that purpose, **the executing judicial authority** (in the present case, the Belgian courts) **must assess the merits of that allegation in the context of the two-step examination** established by the Court's case-law. That authority must therefore examine:

1. first of all, whether there is **a real risk of infringement of that right, on account of systemic or generalised deficiencies in the operation of the judicial system of the issuing Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which the person concerned belongs;**
2. next, where applicable, **specifically and precisely, whether,** in the light of that person's personal situation, the nature of the offence and the factual context, **there are substantial grounds for believing that that person will run such a risk in the event of being surrendered to that Member State.**

A refusal to execute an EAW based on the lack of jurisdiction of the court called upon to try the requested person **is permissible only if the executing judicial authority concludes,** first, **that there are such deficiencies** in the issuing Member State and, secondly, that that court **clearly lacks jurisdiction.**

The Court adds that, under **the obligation of sincere cooperation,** a refusal to execute an EAW based on a clear lack of jurisdiction of the court called upon to try the requested person must be **preceded by a request** made to the issuing judicial authority **for supplementary information,** in accordance with the provisions of the framework decision.

Lastly, **the Court rules that it is possible to issue several successive EAWs** for a requested person with a view to obtaining his or her surrender by a Member State after the execution of a first EAW concerning that person has been refused by that State. **However,** the execution of a new EAW **must not result in an infringement of the fundamental rights** of that person and the issuing of the new EAW must be proportionate.

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

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