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Judgment of the Court in Case C-164/22 | Juan

The prohibition of double jeopardy does not appear to preclude the execution of a European arrest warrant against the person responsible for a fraudulent pyramid scheme set up in Spain and in Portugal

The facts on the basis of which that person was convicted in Spain and in Portugal do not appear to be identical

A Spanish national was, from the end of May 2001, chairman of the board of directors of a Portuguese company entirely controlled by a Spanish company, of which he was also, from the end of January of the same year, chairman of the board of directors. The main activity of the two companies was the same: the marketing of investment products which concealed a fraudulent pyramid scheme. The massive uptake of those investment products by individuals allowed the Portuguese company to experience exceptional growth and expansion. Following the intervention of the Spanish judicial authorities in spring 2006, then that of the Portuguese judicial authorities, the companies ceased their activities, which led to significant financial losses for the investors.

That Spanish national is serving a prison sentence of 11 years and 10 months in Spain for serious fraud and money laundering which was imposed on him by a judgment of 2018 that became final in 2020. He was also sentenced in Portugal to six years and six months in prison for serious fraud. A European arrest warrant ('the EAW') was therefore issued against him for the purpose of executing that sentence and forwarded to the competent Spanish authorities.

In December 2021, the National High Court of Spain refused to execute that EAW on the ground that the requested person was a Spanish national, while deciding that he would serve in Spain the sentence imposed in Portugal.

The requested person, who brought an appeal against that order, claims that the EAW may not be executed and the Portuguese judgment may not be enforced: according to him, the facts on which the Spanish judgment is based are the same as those that form the subject of the Portuguese judgment. He therefore alleges infringement of the principle *ne bis in idem*. According to that principle, enshrined, in particular, in the Charter of Fundamental Rights of the European Union, no one may be tried or punished twice in criminal proceedings for the same criminal offence.

Ruling on a request for a preliminary ruling from the National High Court of Spain, the Court of Justice, in its judgment delivered today, recalls that the framework decision on the EAW¹ sets out a ground for mandatory non-execution which reflects the principle *ne bis in idem* and the purpose of which is to ensure that a person is not prosecuted or tried more than once in respect of the same acts.

Thus, **that framework decision precludes the execution of an EAW** issued by a Member State (in this case,

¹ 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).

Portugal), **where** the requested person has already been finally judged in another Member State (in this case, Spain) and is serving a prison sentence there for the offence established in that judgment, provided that that person is being prosecuted in the issuing Member State in respect of **the same acts**.

As regards the latter condition, the Court observes that **the principle *ne bis in idem* applies only where the facts at issue are identical**. Thus, there must be a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space. By contrast, it is unnecessary, in order to establish the existence of the 'same acts', to take account of the classification of the offences in question under the law of the executing Member State (in this case, Spain).

While it is for the National High Court of Spain to determine whether the facts are identical in the present case, the Court provides it with elements of interpretation for that purpose.

In that regard, the Court notes that the requested person repeated in Portugal the fraudulent activity carried out in Spain. Although the operating method was identical, the activities were carried out via separate legal entities. In addition, the fraudulent activity continued in Portugal after an investigation was opened and activity in Spain ceased. Furthermore, the National High Court specified that the Spanish judgment concerns the fraudulent activity carried out in Spain to the detriment of persons residing in Spain, while the Portuguese judgment concerns the activity carried out in Portugal to the detriment of persons residing there.

In those circumstances, the Court concludes that, subject to verification by the National High Court, **it appears that the facts referred to in the Spanish and Portuguese judgments are not identical**.

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, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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