Mutual Recognition of Extradition Decisions

A Critical Analysis on the ECJ's Judgment in Kamekris: A Missed Opportunity?

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Article

ABSTRACT

Mutual recognition of judicial decisions and mutual trust are considered one of the cornerstones of the EU's Area of Freedom, Security and Justice. In recent years, the ECJ has rendered numerous decisions dealing with the scope of these principles and further elaborating the idea that EU Member States must recognise certain judicial decisions issued by another EU Member State (e.g., European arrest warrants) on the same footing as they trust each other to comply with EU fundamental rights. In 2022 already, the European Criminal Bar Association (ECBA) urged EU Member States to consider specific categories of extradition decisions to be binding in all Member States and to recognise such decisions by means of mutual recognition. The idea is to avoid restrictions on free movement that would arise if a person sought by an INTERPOL Red Notice had successfully defended extradition in one Member State but was at risk of (once again) being arrested and possibly extradited by another Member State. This was precisely the scenario that culminated in a recent decision by the ECJ in the Kamekris case (C-219/25 PPU), which is subject of this critical analysis.

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I. Facts of the Case

The *Kamekris* case[1] concerns KN, a Greek and Georgian national, who was arrested on 4 October 2021 in Belgium based on an INTERPOL Red Notice issued against him by Georgia. Georgia requested KN's extradition for the execution of a sentence of life imprisonment for trafficking cocaine as part of an organised gang, preparations for the commission of group murder, and the illegal possession of firearms. It should be noted that both the criminal proceedings of first instance as well as the ensuing appeal proceedings in Georgia took place in absentia and date back to 2010/2011.

After his arrest, KN was provisionally released on 29 October 2021 and placed under non-custodial judicial supervision for the duration of the extradition proceedings in Belgium. In January 2025 (more than three years later), KN was then arrested again in France based on the same INTERPOL Red Notice from Georgia. Although France does not extradite its own nationals to third countries (Art. 696-4(1) of the French Code of Criminal Procedure), French law does not prohibit the extradition of nationals of other EU Member States to third countries to enforce a sentence.

Notably, however, just a few weeks after KN's arrest in France, the Cour d'Appel de Bruxelles (Court of Appeal of Brussels) refused the (2021) extradition request by Georgia: the judges in Belgium found that there were "compelling grounds for believing that the extradition of KN to Georgia would expose him to a denial of justice and a real risk of inhuman or degrading treatment."[2] After the Belgian refusal to extradition, KN argued that France would be bound by the Belgian decision and, consequently, would need to refuse his extradition to Georgia – in accordance with the principles of mutual trust and mutual recognition of judicial decisions in EU law. Interestingly, even the Public Prosecutor in France questioned the reliability of assurances of fundamental rights (Art. 3 and 6 ECHR) in light of the political instability in Georgia since November 2024.

The Cour d'Appel de Montpellier (France), the court competent to decide on KN's extradition from France to Georgia, had doubts as to whether the decision of the Court of Appeal of Brussels has authority vis-à-vis the French courts arguing that mutual recognition of another EU Member State's court decision is only required "where EU law makes express provision for such recognition." The Cour d'Appel de Montpellier stayed the extradition proceedings and referred the following question to the ECJ:

> Must [Article] 67(3) and [Article] 82(1) TFEU, in conjunction with Articles 19 and 47 of [the Charter], be interpreted as meaning that a Member State is obliged to refuse to execute an extradition request for a citizen of the European Union to a third country when another Member State has previously refused to execute the same extradition request on the grounds that the surrender of the person concerned may infringe the fundamental right not to be subjected to torture or inhuman or degrading treatment enshrined in Article 19 of [the Charter] and the right to a fair trial enshrined in the second paragraph of Article 47 of [the Charter]?

II. The ECJ's Judgment and Reasoning

In brief: According to the ECJ, an EU Member State is not obligated to refuse extradition to a third country even if another EU Member State has already refused extradition to the same third country due to a serious risk of a fundamental rights violation (Arts. 19 and 47 of the Charter of Fundamental Rights of the European Union).[3] However, the previous refusal must be taken into due consideration when deciding on the extradition request.

At the outset, the ECJ clarified that the case at hand indeed falls within the scope of primary EU law, specifically Art. 18 and Art. 21(1) TFEU, which guarantee the right to free movement and the principle of non-discrimination on grounds of nationality. It reaffirmed its previous case law, which held that KN's possession of the nationality of another EU Member State than the one the extradition request was sent to (in this case: Greece) and also the nationality of a third country (in this case: Georgia) does not deprive him of the rights guaranteed by Art. 18 and Art. 21(1) TFEU.[4] Additionally, the fact that KN was not a permanent resident in France, but rather in Belgium, does not exclude this case from the scope of the Treaties.[5] Building on its previous case law in *Pisciotti*, the Court reiterated that the temporary nature of the stay in the territory of the requested EU Member State does not render such a situation outside the scope of Art. 18 TFEU.[6] It may therefore come as a surprise that Advocate General *Juliane Kokott* concluded in her opinion that EU law already does not apply, neither on the basis of Art. 67(3) TFEU and Art. 82(1) TFEU, nor on the basis of the right to free movement (Art. 21(1) TFEU).[7]

The ECJ also held that the fact that France does not extradite its own nationals (see above), but does so in cases involving nationals of other EU Member States, constitutes unequal treatment; however, this may be justified if the decision to extradite is compatible with fundamental rights, particularly those enshrined in the Charter of Fundamental Rights of the European Union.[8] As set out in the ECJ's previous case law in *Petruhhin*, such an assessment must be carried out on the basis of information that is "objective, reliable, specific and properly updated", e.g., reports and court decisions.[9]

As such – and this is the key aspect of the ECJ's judgment –, when assessing whether there is a serious risk that fundamental rights (notably Arts. 19 and 47 of the Charter) have been violated, the "deciding Member State" is not required to adopt the same (judicial) assessment as another Member State (in this case: Belgium). However, the decision by the other Member State (refusing extradition) must be taken into due consideration when determining whether a serious risk of fundamental rights violations exists.[10]

According to the ECJ, EU law does not provide a basis for an obligation of mutual recognition of extradition decisions: [11]

> [Art. 67(3) TFEU and Art. 82(1) TFEU] merely provide that judicial cooperation in criminal matters in the European Union is based on the principle of mutual recognition.

Furthermore, the Court stated: [12]

> (…) although EU law includes several instruments of secondary legislation laying down an obligation of mutual recognition […] no act of EU law lays down an obligation of mutual recognition of decisions adopted by Member States concerning extradition requests from a third country.

In the *Breian* case (C-318/24 PPU), the ECJ dealt with a similar situation between Member States. In *Breian*, the Court held that the refusal by one Member State to execute a European arrest warrant on the grounds of a risk of fair trial violations (Art. 47 of the Charter) does not oblige the executing authority in another Member State to refuse the same European arrest warrant on the same grounds:[13] "no provision of Framework Decision 2002/584 provides for the possibility, or obligation" to refuse the execution in such situations.[14] The executing authority must "exercise vigilance" and give due consideration to the previous decision refusing execution of the European arrest warrant.[15]

In *Kamekris*, the ECJ applied the same reasoning with regards to extradition decisions involving non-Member-States. [16] In sum, the Court stated:[17]

> (…) a previous decision refusing extradition […] forms part of the information […] that the Member State to which a new extradition request has been made must take into consideration within the framework of its own examination.

III. Comment: A Missed Opportunity for the ECJ?

Put simply, the ECJ missed the opportunity to further develop the principles of mutual trust and mutual recognition in the field of extradition which would have been much needed. An individual Union citizen continues to face extradition and to be deprived of his or her liberty to travel within the EU as long as a non-EU Member State continues to prosecute him/her – irrespective of a decision by a court of another EU Member State.

While staying in the EU Member State that has refused extradition can be considered relatively safe, exercising the right to free movement by travelling to another EU Member State carries a high risk of being arrested, possibly being held in extradition detention for several months, and potentially being extradited to a country that another EU Member State has deemed to be in violation of fundamental rights. There is even a risk of multiple iterations. This is due to the lack of mandatory mutual recognition of refusal decisions: Despite the refusal by the first EU Member State, the INTERPOL Red Notice – which forms the basis for the extradition request – remains in place and may still be enforced by any other EU Member State. In a sense, even if an EU Member State has already refused extradition on the grounds of possible fundamental rights violations, the person concerned will always bear the "risk" that another EU Member State may reach a different conclusion. It is often only a matter of time, until such a situation leads to scenarios where two EU Member States reach opposite decisions: the first one refusing extradition and the second one granting extradition. EU fundamental rights would then not have been interpreted consistently but rather in a fragmented manner.

The ECJ's application of the law severely restricts the right to free movement set out in Art. 21 TFEU, as travelling within the EU as long as a Red Notice is in place might lead to an individual (at least) being arrested in other Member States. As legal practitioners and non-state actors have strongly criticized over the past several years, the latter circumstance is exacerbated by the fact that individuals subject to a Red Notice often do not have access to effective legal remedies to challenge it. This frequently results in the notice remaining active for years and even decades – sometimes despite being clearly illegal – and poses an ongoing risk that the person concerned may be arrested again.[18] It is also well known that Red Notices are often abused by some states – a practice commonly referred to as "transnational repression".[19]

In addition, the ECJ's judgment in *Kamekris* has the consequence that an extradition request from a third country takes precedence over a judicial decision in a Member State that explicitly finds a serious risk of fundamental rights violations in that third country. The opposite should be the case, however, given that the ECJ itself set out the following in para. 49 of the decision: The principle of mutual trust requires each Member State "to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law". Trusting in compliance with fundamental rights would consequently also mean that a Member State must be able to trust that the other Member State interprets fundamental rights "correctly", hence allowing a Member State to accept and recognise a previous assessment of fundamental rights performed by another Member State. This principle should apply in extradition cases, as it is settled case law by the ECJ that the requested Member State must ensure that extradition to a third country does not infringe the rights guaranteed by the Charter of Fundamental Rights.[20]

Furthermore, the *Kamekris* judgment is not in line with the ECJ's case law on respecting and recognising decisions of another Member State in the context of extradition proceedings: For instance, with regard to the

principle of *ne bis in idem,* the Court in Luxembourg has found in the cases of *WS* and *HF* that extradition from the EU to a third country may be barred if it is requested for an offence that has already been finally disposed of by another Member State.[21] In *A/Generalstaatsanwaltschaft Hamm*, the Court found that even administrative decisions may constitute an obstacle to extradition. In that specific case, the Court held that when an EU Member State has granted refugee status, another Member State must not grant extradition unless the refugee status has been revoked or withdrawn by that other Member State which granted the status and there is, otherwise, no further serious risk of fundamental rights violations in the requesting third country.[22]

Lastly, as regards the question of whether EU law provides a legal basis for mandatory mutual recognition of extradition decisions, the ECJ relied on the fact that neither Art. 67(3) TFEU nor Art. 82(1) TFEU nor any secondary EU law provide for such a mandatory recognition mechanism. While the ECJ's requirement for a legal basis is *per se* reasonable, it did not explore whether mutual recognition of extradition decisions could be derived directly from fundamental rights as primary EU law. In this regard, the Court could have relied on its previous case law, which has interpreted fundamental rights as grounds for imposing obligations on judicial authorities of EU Member States. For instance, the ECJ had found in *LM* that a real risk of breaches of the fundamental right guaranteed by Art. 47 of the Charter is "capable of permitting the executing judicial authority to refrain, by way of exception, from giving effect to that European arrest warrant."[23] Similarly, in *HF,* the ECJ derived from Art. 54 of the Convention Implementing the Schengen Agreement (CISA) that mutual trust requires an EU Member State to "accept at face value a final decision communicated […] which has been given in the first Member State."[24]

IV. Conclusion

In our opinion, the ECJ's decision should be seen as a wake-up call for the EU legislator to consider legislative measures in this regard, highlighting the need for a more comprehensive approach to mutual recognition of extradition decisions. In other words, if EU Member States are obliged to mutually recognise judicial decisions such as European arrest warrants and verdicts that entail negative consequences for the person concerned, why should they not also recognise decisions with a positive impact in the sense that they prevent fundamental rights violations from occurring in the requesting country?

This opportunity was missed by the ECJ in the *Kamekris* case. Nevertheless, hope remains that another opportunity will arise for the Luxembourg Court to take a step towards a comprehensive system of mutual recognition of judicial decisions. Although the French Court ultimately held[25] that extradition of KN to Georgia is inadmissible for the same reasons stated by its Belgian counterpart in Brussels, there is no guarantee that similar cases will end as positively.

Legislative measures in that sense are clearly needed!

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1. ECJ, 19 June 2025, Case C-219/25 PPU, *Kamekris (proceedings concerning the extradition of KN)*. For a summary of the judgment in *eucrim*, see T. Wahl, "ECJ: No Obligation for Mutual Recognition of Decision Taken in Favour of a Person Requested for Extradition to a Third Country", pre-print *eucrim* 2/2025 (news of 21 June 2025).↩
2. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 16.↩
3. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 53.↩
4. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 33; see also ECJ, 22 December 2022, Case C-237/21, *Generalstaatsanwaltschaft München v S.M.*, para. 31 for further references.↩
5. ECJ, 19 June 2025, *Kamekris*, *op. cit.* (n. 1), para. 35; see also ECJ, 10 April 2018, Case C-191/16, *Pisciotti*, para. 34.↩
6. ECJ, 19 June 2025, *Kamekris*, *op. cit.* (n. 1), para. 35; see also ECJ, *Pisciotti*, *op. cit.* (n. 5), para. 34.↩
7. Opinion Advocate General, 22 May 2025, Case C-219/25 PPU, *Kamekris*, paras. 30 and 43.↩
8. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 40; see also ECJ, 18 June 1991, Case C-260/89, *ERT*, paras. 42 and 43.↩
9. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 42; see also ECJ, 6 September 2016, Case C-182/15, *Petruhhin*, paras. 57 and 59.↩

10. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 50.↩
11. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 46.↩
12. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 47.↩
13. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 55.↩
14. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 39.↩
15. ECJ, 29 July 2024, Case C-318/24 PPU, *Breian*, paras. 46 and 55.↩
16. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 50: "for the same reasons".↩
17. ECJ, *Kamekris*, *op. cit.* (n. 1), para. 52.↩
18. See, for instance, the ECBA Statement on mutual recognition of extradition decisions, June 2022, available at: <https://ecba.org/extdocserv/publ/ECBA_STATEMENT_Mutualrecognitionextraditiondecisions_21June2022.pdf> accessed 11 August 2025. For the statement, see also T. Wahl, "ECBA Requests Mutual Recognition of Certain Extradition Decisions in Favour of Individual", *eucrim* 2/2022, 122.↩
19. See, for instance, Council of Europe, Report on Transnational repression as a growing threat to the rule of law and human rights, 5 June 2023, available at: <https://rm.coe.int/transnational-repression-as-a-growing-threat-to-the-rule-of-law-and-hu/1680ab5b07>; UK House of Lords, House of Commons Joint Committee on Human Rights, Report on Transnational Repression in the UK, 30 July 2025, <https://committees.parliament.uk/publications/49059/documents/257980/default/>; European Parliament, Draft Report on addressing transnational repression of human rights defenders (2025/2048(INI)), 16 June 2025, <https://www.europarl.europa.eu/doceo/document/AFET-PR-774242_EN.pdf>; European Parliament, Study on Transnational repression of human rights defenders: The impacts on civic space and the responsibility of host states, June 2025, <https://www.europarl.europa.eu/RegData/etudes/STUD/2025/754475/EXPO_STU(2025)754475_EN.pdf>. All hyperlinks were last accessed on 11 August 2025.↩
20. See, for instance, ECJ, *Generalstaatsanwaltschaft München v S.M.*, *op. cit.* (n. 4), para. 55; ECJ, 2 April 2020, Case C-897/19 PPU, *Ruska Federacija*, para. 64 with further references.↩
21. ECJ, 12 May 2021, Case C-505/19, *WS*, para. 82; ECJ, 28 October 2022, Case C-435/22 PPU, *HF*, para. 136.↩
22. ECJ, 18 June 2024, Case C-352/22, *Generalstaatsanwaltschaft Hamm (proceedings relating to the extradition of A)*, para. 71.↩
23. ECJ, 25 July 2018, Case C-216/18 PPU, *LM*, para. 59.↩
24. ECJ, *HF*, *op. cit.* (n. 21) para. 93.↩
25. Decision by the Cour d'Appel de Montpellier of 8 July 2025, N° 2025/00183.↩

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