

AG: Domestic Enforcement in the Event of Refusal to Surrender on Grounds of Fundamental Rights

News

Thomas Wahl

If a national or resident of a Member State is sought by means of a European arrest warrant for the enforcement of a custodial sentence and that Member State does not surrender the person to the issuing Member State because there is a risk of a violation of fundamental rights, the refusing Member State is required to enforce the sentence against that person on its own territory. This is the proposal made by Advocate General (AG) *Athanasios Rantos* in his [Opinion](#) delivered on 10 July 2025 in [Joined Cases C-722/23 \(Rugu\)](#) and [C-91/24 \(Aucroix\)](#).

Background of the case

The case stems from a request for a preliminary ruling by the Belgian Cour de cassation (Court of Cassation) and concerns the interpretation of Art. 4(6) of Framework Decision 2002/584/JHA on the European arrest warrant (FD EAW) in conjunction with the *Aranyosi and Căldăraru* case law of the ECJ ([Joined Cases C-404/15 and C-659/15 PPU](#)). In that case, the ECJ ruled that a Member State may refuse, on the basis of Art. 1(3) FD EAW, to surrender a person if there is a risk of their fundamental rights being violated in the issuing State ([→eucrim 1/2016, 16](#)). The present case concerns the legal consequences of such a refusal.

In the present case, European Arrest Warrants (EAWs) were issued by the Romanian and Greek judicial authorities against a Romanian and a Belgian national, both residing in Belgium, for the purpose of enforcing prison sentences. The Belgian courts of appeal refused to execute the EAWs on the grounds that, given the conditions of detention in Romania and Greece, there was a risk that their fundamental rights would be violated if they were surrendered.

The Belgian Court of Cassation wishes to know, in particular, whether the executing judicial authority has the option or is even obliged to order the enforcement of the sentences imposed on the convicted persons in the issuing Member State within its own territory in order to prevent them from escaping punishment. It refers in this regard to the interpretation of Art. 4(6) FD EAW which includes an optional refusal ground and provides in situations in which the EAW has been issued for purposes of execution of a custodial sentence or detention order that the executing State undertake to execute the sentence or detention order "in accordance with its domestic law" if the requested person "is staying in, or is a national or a resident of the executing Member State".

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Opinion by AG Rantos

In his Opinion, AG *Rantos* first observes that the ECJ created a new ground for mandatory non-execution of an EAW with its judgment in *Aranyosi and Căldăraru*. In addition, there are the optional refusal grounds, including Art. 4(6) FD EAW. In that regard, the AG considers that the executing judicial authority must apply, in addition, that ground for optional non-execution where the conditions for its application have been satisfied and execute the custodial sentence in its territory. A different solution would be incompatible with the objective of the EAW mechanism, namely to combat impunity.

Lastly, AG Rantos argues that the optional nature of Art. 4(6) FD EAW turns into an obligation when the EAW was not executed due to fundamental rights grounds (Art. 1(3) FD EAW). In doing so, two conditions must be fulfilled: (1) the conditions for the application of Art 4(6) FD EAW are satisfied (i.e., the person concerned is a national or resident of the executing Member State); and (2) the procedure and conditions laid down by Framework Decision 2008/909/JHA are complied with a view to effectively taking charge of that sentence in the executing Member State.

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