

# AG: EAW Can be Refused if Proceedings Revoking Suspension Were Conducted in absentia



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## News

**Thomas Wahl**

In her [Opinion](#) of 27 October 2022 in [Joined Cases C-514/21 and C-515/21 \(LU and PH v Minster for Justice and Equality\)](#), Advocate General (AG) *Tamara Čapeta* dealt with the question of whether a European Arrest Warrant (EAW) can be refused if the proceedings resulting in the revocation of the defendant's suspension of a prison sentence were conducted *in absentia*. In other words, the cases, referred by the Court of Appeal of Ireland, concern the interpretation of the concept of "trial resulting in the decision", as used in the introductory sentence of Art. 4a(1) of the FD EAW. Art. 4a(1) of the FD EAW foresees the right for the executing authority to refuse the execution of EAWs for *in absentia* trials unless certain scenarios of a waiver of the right to be present or a guarantee of a retrial are given.

The AG elaborated a general definition of this concept and concluded 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. This is because the person in question must be given the opportunity to influence the final decision concerning his or her liberty. As a result, Art. 4a(1) FD EAW also applies if the person concerned was absent in the proceedings revoking the suspension of the prison sentence or in the proceedings finding guilt and determining the sentence for the second offence that triggered the revocation. Therefore, the Irish authorities would be allowed to refuse the execution of respective EAWs unless one of the scenarios in Art. 4a(1)(a)-(d) FD EAW had applied in the cases at issue.

If the CJEU were not to follow the proposed definition, the AG provides her view on a second set of questions referred by the Irish court, i.e. whether it could deny the EAWs because the *in absentia* proceedings infringed Art. 6 ECHR – the defendants right to a fair trial.

According to AG *Čapeta* this question implicitly raise the issue whether Art. 1(3) FD EAW allows for additional reasons to refuse surrender on account of fundamental rights infringements in the issuing state, be it as a result of a "flagrant denial of justice", or of the breach of the essence of the fundamental right to a fair trial.

The AG answers this question in the negative. The executing authority cannot refuse EAWs on account of breaches of fundamental rights unless it first established systemic or generalised deficiencies in the protection of the right to a fair trial in the issuing state. Allowing verifications of the respect of fundamental rights in each individual case means the reversal of the EAW mechanism to something more similar to the pre-existing extradition procedures and compromise the aim that surrender can happen quickly. This argumentation is fully in line with the recent opinion by AG *Richard de la Tour* in the *Puig Gordi* case C-158/21 (→ [separate news item](#)).

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