

CJEU Clarifies Right to be Heard in EAW Cases

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News

In the [Joined Cases C-428/21 PPU and C-429/21 PPU \(HM and TZ\)](#), referred by the Rechtbank Amsterdam, the CJEU had to deal with the question in which Member State and according to which procedures a person already surrendered must be heard if the issuing authorities requests the executing authority's consent as an exception to the specialty rule. In the two cases before the Rechtbank Amsterdam, the issuing authorities requested consent for the additional prosecution of offences committed prior to the surrender of the defendants, in accordance with Art. 27(3)(g) and (4) and Art. 28(3) of the Framework Decision on the European Arrest Warrant (FD EAW). The questions are not explicitly answered in the FD EAW.

According to the [CJEU's judgment of 26 October 2021](#), a balance should be struck between, on the one hand, the effectiveness of the EAW mechanism, which is primarily based on the principles of mutual recognition and mutual trust, and, on the other hand, respect for the surrendered person's fundamental rights. The CJEU concluded the following:

- Since the right to be heard is one of the essential defence rights and is here closely connected with a judicial decision leading to the deprivation of liberty, the person concerned must have the opportunity to exercise his/her right to be heard in relation to a request for additional consent;
- The right to be heard must be exercised in respect of the executing judicial authority competent to deal with the request for additional consent (as provided for the above-mentioned provisions in Art. 27 and 28 FD EAW);
- The hearing can take place in the issuing state, but it must be guaranteed that the person had the opportunity to make known his/her views effectively and before the adoption of the decision by the requested authority;
- The executing judicial authority must ensure that it has sufficient information, in particular on the position of the person concerned, to take its decision on the request for consent issued pursuant to Art. 27(4) or Art. 28(3) FD EAW in full knowledge of the facts and with full respect for the rights of defence. If necessary, it must ask the issuing judicial authority to provide additional information without delay (applying Art. 15 FD EAW in analogy).

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