

CJEU: Convictions of Third Countries Executed in EU Member States Can Be Subject of an EAW

Thomas Wahl

In its judgment of 17 March 2021 in Case C-488/19 (*JR*), the CJEU had to address questions on the applicability of the Framework Decision on the European Arrest Warrant (EAW) and the scope of refusal grounds. The case, which was referred by the Irish High Court, dealt with a rather unique constellation: JR, a Lithuanian national, was sentenced in Norway for possession of narcotic substances. Subsequently, Lithuania recognised this Norwegian judgment and took over further execution of the sentence against JR in Lithuania. However, JR absconded and went to Ireland. Lithuania sought his surrender from Ireland in order to execute the remainder of the imprisonment sentence (namely one year and seven months).

According to the CJEU, an EAW can also be issued on the basis of a sentence imposed in a third country (here: Norway), provided that the sentence was recognised in the issuing EU Member State (here: Lithuania). The prerequisites for this are, however, the imposition of a custodial sentence of at least four months and compliance with the EU's fundamental rights in the third-country criminal proceedings.

Although automatic extradition without review only applies between EU Member States, the principle of mutual trust extends to the proper recognition of third-country judgments. Accordingly, the issuing Lithuanian authorities are to be trusted that, in the context of recognition, the sentence handed down in the third country of Norway had been examined for compliance with fundamental rights, in particular the rights of defence under Arts. 47 and 48 of the Charter of Fundamental Rights.

In addition, the CJEU clarified that the ground for refusal in Art. 4 No. 7 lit. b) FD EAW does not apply in the present case. According to this provision, an executing state may refuse to execute an EAW "if the offence was committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory" (so-called extraterritoriality clause or refusal ground of double jurisdiction). In the present constellation, only the criminal law jurisdiction of the third State (here: Norway), which allowed prosecution of the offence, is relevant. The interpretation of the respective ground for refusal in the FD EAW must be based on the premise that the impunity of the requested person be avoided.

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