

CJEU Delivers Judgment on Speciality Rule



Thomas Wahl

News

On 24 September 2020, the CJEU ruled on a reference from the German Federal Court of Justice (*Bundesgerichtshof*) in an urgent preliminary ruling procedure (Case C-195/20 PPU [*Generalbundesanwalt beim Bundesgerichtshof v XC*]). The case concerned interpretation of the speciality rule applicable to the European Arrest Warrant. This rule is laid down in Art. 27(2) and (3) of Framework Decision 2002/584 (FD EAW). It states that persons surrendered may not be prosecuted, sentenced, or otherwise deprived of their liberty for an offence committed prior to their surrender other than that for which they were surrendered (Art. 27(2)). This principle does not apply, however, if the executing judicial authority that surrendered the person gives its consent (Art. 27(3)(g) FD EAW).

The CJEU has now ruled that the principle of speciality is linked to the execution of only one particular EAW. This means that the principle of speciality does not preclude a measure restricting the liberty of a person who was the subject of a first EAW from being the subject of an arrest warrant for an earlier and different act for which he/she was surrendered in execution of said arrest warrant and if that person voluntarily left the territory of the issuing Member State of that first EAW. In the concrete case, this meant that only Italy, which decided on a second EAW against the person concerned, had to give its consent for further prosecutions and not Portugal, which decided on the first EAW.

The case before the CJEU indirectly has to do with the missing person case *Maddie McCann*. In 2007, the four-year old girl disappeared from her bed in an apartment at a resort in the Algarve region of Portugal. The case attracted huge media coverage. One person is currently the main suspect of having kidnapped and abused the child. He is in prison in Germany for other crimes that were the subject to the preliminary ruling procedure before the CJEU. He remains silent regarding the *Maddie McCann* case, and the prosecution office of Braunschweig is continuing investigations against him. Nonetheless, the CJEU has confirmed that German authorities did not make a mistake when they convicted the defendant for other offences in 2019. He must remain in prison and serve a combined custodial sentence of seven years.

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