

CJEU Gives Guidance on Double Criminality Test



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News

In its judgment of 14 July 2022 in Case C-168/21 (*KL / Procureur général près la cour d'appel d'Angers*), the CJEU determined the scope of the condition of double criminality in European arrest warrant cases.

Background of the case

The case concerns the execution of an Italian EAW for the purpose of enforcing a sentence against KL who was convicted for the offence of “devastating and looting”, committed in the context of the G8 summit in Genoa (Italy) in 2001. If he is surrendered, KL will face an imprisonment of over 12 years in Italy.

The referring *Cour de Cassation* (Court of Cassation, France) asked whether the Court of Appeal of Angers (France) was right in refusing the Italian EAW because the “breach of peace” is a constituent element for the offence of “devastating and looting” under Italian law, but not under French law. Should the requirement of double criminality not preclude the surrender of KL, the referring court further asked whether the execution of the EAW should be refused in the light of the principle of proportionality in relation to criminal offences and penalties enshrined in Art. 49(3) CFR.

The CJEU's decision

In the first place, the CJEU determined the parameters for the double criminality test pursuant to Art. 2(4) and Art. 4 No. 1 of the Framework Decision on the European Arrest Warrant as follows:

- It is sufficient if the acts giving rise to the sentence imposed in the issuing Member States also constitute an offence in the executing Member State;
- The offences do not need to be identical in the two Member States concerned;
- The condition of double criminality is met if the factual elements underlying the offence would also be subject to a criminal sanction in the territory of the executing Member States if they were present in that State;
- If an exact match between the protected legal interests were required, the *effet utile* of the EU's surrender system would be affected and it would also counter the rule that refusal grounds in the FD EAW must be interpreted strictly in order to limit the cases of non-recognition and non-enforcement.

As a result, the condition of double criminality in Art. 2(4) and Art. 4 No. 1 FD EAW is met if the acts in question impair a legal interest protected in the issuing Member State, and if such acts are also covered by a criminal offence under the law of the executing Member State but the impairment of that legal interest is not an element constituting that criminal offence there.

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In the second place, the CJEU held that Art. 2(4) and Art. 4 No. 1 FD EAW, read in the light of Art. 49(3) CFR, must be interpreted as meaning that the executing judicial authority may not refuse to execute an EAW issued for the enforcement of a custodial sentence where that sentence was imposed in the issuing Member State for the commission by the requested person of a single offence consisting of several acts and only some of those acts constitute a criminal offence in the executing Member State.

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