

CJEU Ruling in Spanish Rapper Case: Legislation at Time of Offence is Decisive

News

Thomas Wahl

On 3 March 2020, the Grand Chamber of the CJEU decided the legal question referred to by the Court of Appeal of Ghent, Belgium in the extradition case against rapper Valtònc (case C-717/18).

Spain had issued a European Arrest Warrant against *Josep Miquel Arenas* (who performs as rapper under the name Valtònc) for the purpose of executing a 2017 sentence of imprisonment. He was, *inter alia*, sentenced to the maximum prison sentence of two years for “glorification of terrorism and the humiliation of the victims of terrorism.” The sentence followed the law in force at the time the offences were committed (in 2012/2013); however, the maximum term of imprisonment was changed to three years in 2015. The question now was which point in time is decisive in order to determine the “minimum maximum threshold” in Art. 2(2) FD EAW. Art. 2(2) FD EAW does away with the verification of double criminality, *inter alia* for “terrorism,” under the condition that the offence is punishable in the issuing State for a maximum period of at least three years. For the background of the case and the opinion of the Advocate General, see eucriM 4/2019, pp. 245-246.

Contrary to the opinions of the Belgian and Spanish governments and the Belgian Procureur-generaal, the CJEU ruled that the executing authority must take into account the law of the issuing State in the version applicable to the facts giving rise to the case in which the EAW was issued. The purpose of the FD EAW, which is to facilitate and accelerate judicial cooperation, as well as the context of the provision justify this interpretation. The CJEU further argues that making reference to the version of the law at the time of the issuance of the EAW means that the executing authority has to look into possible amendments of the laws in the issuing State, which would run counter to the principle of legal certainty.

Lastly, the CJEU clarifies the relationship between Art. 2(2) and Art. 2(4) FD EAW: the fact that the offence at issue cannot give rise to surrender without verification of the double criminality of the act, pursuant to Art. 2(2), does not necessarily mean that execution of the EAW has to be refused. The executing judicial authority is responsible for examining the double criminality criterion of the act set out in Art. 2(4) in the light of the offence at issue.

The judgment means that the Belgian extradition court must now verify whether the facts giving rise to the EAW against the rap artist would also be punishable under Belgian law. However, the first instance court already denied the double criminality of the act at issue, so it is likely that Valtònc will not be surrendered to Spain. Another solution would be that Spain withdraws the EAW because it was apparently issued on false legal assumptions.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947

<https://eucriM.eu>



About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**