

CJEU: UK's Decision to Withdraw from EU Does Not Affect the Execution of EAWs



News

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On 19 September 2018, the European Court of Justice (CJEU) decided on the impact of Brexit on the execution of European Arrest Warrants (EAWs) issued by the UK ([Case C-327/18 PPU](#)). A EAW was issued by a court in Belfast/Northern Ireland for the offences of murder, arson, and rape to Mr. "RO". Within the framework of extradition proceedings in Ireland. RO argued that – given the uncertainty as to the law that will be in place in the UK after Brexit – his rights under EU law cannot be guaranteed anymore and therefore he ought not to be surrendered. The High Court of Ireland accepted this objection and referred the question to the CJEU to clarify whether the potential loss of rights, such as the right to a deduction of a period spent in custody (Art. 26 FD EAW), the speciality rule (Art. 27 FD EAW), the limits on subsequent extradition (Art. 28 FD EAW), or the respect for the fundamental rights enshrined in the CFR give rise to a "significant risk" of injustice, with the consequence that the request for surrender cannot be accepted.

The CJEU found that the mere notification by a Member State of its intention to withdraw from the EU is not an "exceptional circumstance" capable of justifying a refusal to execute a EAW. Such a consequence would circumvent EU law, since it is up to the European Council to determine a Member State's breach of the values set out in Art. 2 TEU – only in this case may a EAW be suspended.

The CJEU further stated that the executing judicial authority must, however, examine whether there are substantial grounds for believing that, after withdrawal from the EU, the person sought would be placed at risk of being deprived of his fundamental rights and the rights delivered, in essence, from the FD EAW in the issuing Member State. This would be the case, for instance, if the issuing Member State did not guarantee the rights enshrined in the ECHR (in particular Art. 3 that corresponds to Art. 4 CFR); however, withdrawal from the EU has no effect on the obligations stemming from the ECHR. Furthermore, the said individual's rights as enshrined in the FD EAW are guaranteed by the UK in its national law independent from the FD EAW or in the 1957 Council of Europe Convention on Extradition (to which the UK would be bound after Brexit), so that RO would not be deprived of the opportunity to assert these rights before UK courts and tribunals after the withdrawal.

In sum, the CJEU did not see any concrete evidence at the moment that fundamental rights and essential rights of the FD EAW would not be respected by the UK after Brexit. However, this is for the referring court to determine. With its judgment, the CJEU follows the [opinion of AG Szpunar](#) delivered on 7 August 2018.

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