

ECJ: Executing Member State Must Ensure Enforcement of Custodial Sentence if it Denies Surrender due to Fundamental Rights Grounds

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News

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If an EU Member State refuses the surrender of persons due to bad detention conditions in the EU Member States that sentenced them, the refusing Member State is required to enforce the prison sentence on its own territory. The main aim must be to avoid impunity of the requested person. This is the key statement of the Grand Chamber of the ECJ in its [judgment](#) of 4 June 2026 in the [Joined Cases C-722/23 \(Rugu\) and C-91/24 \(Aucroix\)](#).

Background to the cases and legal question

In the dispute of the main proceedings, the Belgian courts refused to surrender a Romanian national residing in Belgium and a Belgian national to Romania and Greece respectively in accordance with Art. 1(3) of the [Framework Decision 2002/584/JHA](#) on the European arrest warrant (FD EAW) in conjunction with the ECJ case law in [Aranyosi and Căldăraru \(Joined Cases C-404/15 and C-659/15 PPU\)](#) (→[eucrim 1/2016, 16](#)). They argued that the EAWs from Romania and Greece, which sought to enforce custodial sentences against the defendants, could not be executed due bad detention conditions which would infringe the defendants' fundamental rights under Art. 4 CFR.

The referring Belgian Court of Cassation asked the ECJ what consequences the refusal would have for the enforcement of the Romanian and Greek verdicts imposing custodial sentences. In particular, it wished to know whether the Belgian judicial authorities may, or even must, apply in addition the ground for optional non-execution provided for in Art. 4(6) FD EAW in order to prevent the impunity of the requested persons. Pursuant to Art. 4(6) FD EAW, an executing judicial authority *may* refuse to execute the EAW if that warrant has been issued for the purposes of enforcing a custodial sentence or detention order, where the requested person is staying in, or is a national or resident of, the executing Member State and that State undertakes to enforce the sentence or detention order in accordance with its domestic law.

For details → [eucrim 2/2025, 151](#) summarising the opinion of Advocate General (AG) *Rantos* in the present case.

The ECJ's decision and reasoning

The judges in Luxembourg first held that the optional refusal ground of Art. 4(6) FD EAW cannot be applied as a complement to the ground for mandatory non-execution resulting from Art. 1(3) FD EAW. The opposite

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approach would disregard the objectives pursued by each of those grounds as well as their respective nature.

However, the ECJ acknowledged that the EAW mechanism, which seeks to combat the impunity of a person requested for extradition who is present in a territory other than that in which he or she has committed an offence, must be respected. To this end, an executing authority that refuses to execute an EAW on fundamental rights grounds is required actively to seek to ensure that the requested person does not go unpunished as a result of that refusal. Therefore, the question raised in the present case must be resolved on the basis of [Framework Decision 2008/909/JHA](#) on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (FD 2008/909).

The ECJ provides several clarifications on how FD 2008/909 should be applied in the present situation. These include:

- The objective of FD 2008/909 to increase the requested person's chances of reintegrating into society must be reconciled with the objective of FD 2002/584 to combat impunity;
- The executing judicial authority must apply FD 2008/909 in order to obtain recognition, in its territory, of the judgment imposing the sentence, delivered in the issuing Member State, which justified the issue of the EAW and, on the basis of that recognition, to ensure the enforcement of that sentence in that territory;
- In accordance with Art. 4(5) FD 2008/909, the executing authority must, on its own initiative, request the issuing Member State to forward the criminal judgment to it, together with the necessary certificate;
- When exercising discretion to refuse such transmission of the judgment, the issuing Member State must take due account of the fact that, as a result of that refusal, the sentenced person would remain unpunished;
- The judicial authorities involved must finally respect Art. 6(2) FD 2008/909 which provides for exceptions to the requirement for the convicted person's consent to the enforcement of the sentence in his/her home country or country of residence.

Put in focus

The reasoning of the ECJ's Grand Chamber differs from the approach chosen by AG *Rantos* in the present case (→ [eucrim 2/2025, 151](#)). The AG advocated for the application of Art. 4(6) FD EAW in addition to Art. 1(3) FD EAW. While the AG also applied FD 2008/909, he stressed the connection between Art. 4(6) FD EAW and the FD 2008/909, as set out in Art. 25 FD 2008/909. While the AG reached the result by advocating that the refusing Member State is required to enforce the sentence against the requested person on its own territory following a refusal to execute an EAW due to fundamental rights grounds on the basis of Art. 1(3) FD EAW, the ECJ appears more lenient requiring "only" that the executing Member State must "actively seek" the enforcement of the custodial sentence on its territory by way of applying FD 2008/909 exclusively.

Both, the ECJ and the AG adhere, however, to the case law that the avoidance of impunity is one of the Union's primary objectives. This objective is included not only in the EAW mechanism, but also in the founding treaties, as Art. 3(2) TEU offers the Union's citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured alongside appropriate measures to prevent and combat crime. The judges in Luxembourg explicitly stress this again.

Furthermore, the ECJ's judgment in *Rugu* and *Auctroix* reiterates the need for loyal cooperation between the judicial authorities of the EU Member States that operate in this area of freedom, security and justice. [Ac-](#)

According to the ECJ, this cooperation must inform the dialogue between the executing and issuing authorities in order to ensure that the operation of the EAW is not brought to a standstill.

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