

ECJ Ruled on Fundamental Rights Refusal of Norwegian Surrender Warrant



News

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In its judgment of 14 September 2023, the [ECJ ruled](#) on the extent Member State courts must take account of fundamental rights when it comes to extradition on the basis of the Agreement on the surrender procedure between, on the one hand, the Member States of the European Union and, on the other hand, the Republic of Iceland and the Kingdom of Norway. In addition, the Court had to decide as to which extent decisions taken in other EU Member States in the extradition case can be taken into account by the executing court ([Case C-71/22, *KT v Sofiyska gradska prokuratura*](#)).

Facts of the case and questions referred

The case at issue concerns a surrender procedure before the *Sofiyski gradski sad* (Sofia City Court, Bulgaria). The competent Norwegian authority issued an arrest warrant against KT for fraud which caused damage to the Norwegian social insurance system. When KT entered Poland, KT was arrested on the basis of the respective SIS alert. However, the Warsaw Regional Court (Poland) refused to execute the Norwegian arrest warrant because surrender would entail a breach of Art. 8 ECHR as a result of KT's permanent severance from his children. The Warsaw court also considered that the Norwegian authorities could use other forms of judicial cooperation in criminal proceedings with Bulgaria where KT resides with his children.

Norway upheld the SIS alert and when KT entered Bulgaria he was arrested again. The Norwegian authority issued a new arrest warrant which was based on the same grounds as the first one that was sent to Poland.

In this context, the referring Sofia City Court asked first whether the Agreement on the surrender procedure between the EU and Norway/Iceland allows the issuing of a new arrest warrant in the same case. Second, the referring court raised the question of the possible impact of the refusal previously made by the Polish court.

ECJ's ruling on successive arrest warrants

At first, the ECJ stressed that the provisions of the EU-Norway/Iceland Agreement on the surrender procedure are very similar to the corresponding provisions of the Framework Decision 2002/584 on the European Arrest Warrant (FD EAW). No provision in the Agreement prohibits the issuing of several successive arrest warrants against a person, including where the execution of a first arrest warrant has been refused. This is corroborated by the objective of the Agreement that - as the FD EAW - seeks to establish a simplified and more effective system for surrendering persons convicted or suspected of having committed a crime as well

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as to fight against the impunity of the requested person. A systematic prohibition for the issuing authority to issue a new arrest warrant in the same case would undermine the effectiveness of the established surrender system and would entail a risk of impunity. The ECJ, however, makes two restrictions that must be respected by the *issuing* authority:

- It cannot issue a new arrest warrant if the circumstances have not been changed on the basis of which an executing judicial authority has refused to give effect to the arrest warrant on fundamental rights grounds (Art. 1(3) of the Agreement);
- It must examine whether the issuance of a new arrest warrant is proportional in the light of the particular circumstances. Regarding this proportionality test, the issuing authority must take into account the nature and gravity of the offence for which the requested person is prosecuted, the consequences for that person of the arrest warrant, and the prospects of execution of any new arrest warrant.

ECJ's ruling on previous refusal by another Member State court

Since the surrender Agreement and the FD EAW share the same objectives and structure, the ECJ refers to its case law on the FD EAW and calls to mind that, in analogy, the State parties to the Agreement are, in principle, required to execute an arrest warrant issued by another State party and can refuse to execute such arrest warrants only for reasons arising from the Agreement. Refusals on the basis of fundamental rights (Art. 1(3) of the Agreement) can only happen exceptionally and following an appropriate examination of possible infringements. However, the Agreement does not include any provision that provides for the possibility of refusing the execution of an arrest warrant when the execution of a first arrest warrant concerning the same person and the same acts was refused by a State party to that agreement. A refusal on the basis of *ne bis in idem* (Art. 4 No. 2 of the Agreement) does not apply in the constellation referred.

The ECJ clarifies that the refusal decision that exists in an EU Member State (here: the decision by the Warsaw Regional Court) admittedly "*encourages vigilance*" from the executing authority of another Member State (here: the Sofia City Court) to which a new arrest warrant against the same person for the same acts has been addressed. This circumstance is, however, not liable to exempt the executing authority of the latter Member State from its obligation to examine the request for surrender and to take a decision (of its own) on the execution of the arrest warrant.

Put in focus

The ECJ's ruling in the case "KT" is interesting in three respects:

First, the judges in Luxembourg interpret the Agreement on the surrender procedure between the EU and Norway/Iceland and the FD EAW largely in parallel. The ECJ case law on the European Arrest Warrant is applied in analogy. This is justified by the reasoning that the two instruments share the same objectives and structure. In this context, the ECJ made clear that the execution of an arrest warrant issued by Norway or Iceland must, in principle, be executed and can only be refused on the basis of the grounds established in the agreement.

Second, the ECJ clarified that the fundamental rights clause in Art. 1(3) in the Agreement (which corresponds to Art. 1(3) FD EAW) established a refusal ground. In parallel to the FD EAW, a refusal on grounds of fundamental rights infringements in the issuing country must, however, be applied narrowly. The ECJ mainly refers here to its recent judgment in *Puig Gordi* → [eucrim 1/2023, 41-43](#).

Third, the ECJ clarified that there is no "mutual recognition of decisions refusing the execution of an arrest warrant". The executing authority that has to deal with a successive arrest warrant issued in the same case

against the same person must take a decision on its own. There is no automatic refusal because of a first refusal decision. On the one hand, this decision taken in another Member State (here: Poland) can be considered by the executing authority in the second Member State (here: Bulgaria). On the other hand, the executing decisions must not lose sight of the main objective of the surrender instruments, i.e. avoiding impunity.

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