

Are Fundamental Rights a Basis for Refusing an EAW?

PPT with voice-over

The EAW Framework Decision and the Charter



In this presentation, we will explore how the EAW Framework Decision interplays with the Charter and, in particular, with:

The right to respect for private and family life, the right to not to be tried or punished twice in criminal proceedings for the same criminal conduct (*ne bis in idem*) and the right to liberty and security.



For a better understanding of the lecture, it is highly recommended to check the EAW Framework Decision in parallel.

Right to respect for private and family life

Case C-261/22 GN, 2023

Could an executing judicial authority refuse to execute an EAW where the surrender of the mother of young children to the issuing Member State would risk her right to respect for private and family life and would be contrary to the best interests of her children, as protected by Articles 7 and 24 of the Charter respectively?

- The fact that the requested person is the mother of young children living with her is not a sole ground to refuse to execute an EAW.
- Principle of mutual trust places a presumption that the conditions of detention of the mother of young children and of the care of those children in the issuing Member State are appropriate to such a situation.
- If there is evidence indicating a risk breaching the rights enshrined in Articles 7 and 24 of the Charter, the two-step test should be conducted:
 - (i) Is there objective, reliable, specific and properly updated information which demonstrates that there is a real risk of breach, in the issuing Member State, of those fundamental rights on account of systemic or generalised deficiencies in the conditions of detention of mothers of young children, or deficiencies in those conditions affecting more specifically an objectively identifiable group of persons, such as children with disabilities?
 - (ii) Are there substantial grounds for believing that the deficiencies identified in the first step are liable to personally impact the requested person or his/her children and expose them to a real risk of breach of their rights?

Right to respect for private and family life

Case C-700/21 OG, 2023

Could an executing judicial authority refuse to execute an EAW when the surrender is a third-country national staying or residing in its territory, irrespective of the links that individual has with that territory, in light of Article 4(6) of the EAW Framework Decision and Article 7 of the Charter?

- Article 4(6) is a ground for optional non-execution of the EAW that allows the executing judicial authority to refuse to execute an EAW when the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.
- The transposition of this ground of refusal shall comply with the fundamental rights and fundamental principles referred to in Article 6 TEU, in accordance with Article 1(3) of the EAW Framework Decision.
- Comparable situations?

Article 20 of the Charter (equality before law) applies to comparable situations. A third-country national is in a comparable situation than the requested person in the situation expressed in Article 4(6) of the EAW Framework Decision.

- Is there a legitimate interest justifying the enforcement of the sentence on the territory of the executing Member State?

Union citizens and third-country nationals residing or staying in the executing Member State are likely to have, subject to the checks which the executing judicial authority must make, comparable chances for social rehabilitation if, they serve their sentence or are detained in the executing Member State.

Right to respect for private and family life

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- If Article 4(6) is transposed allowing the absolutely and automatically refusal to enforce the sentence in the executing Member State when the surrender is a third-country national, even where s/he is staying or resident in the territory of that Member State and without account being taken of the degree of integration of him/her within the society of that Member State, the provision does not comply with Article 20 of the Charter.
- The assessment of the degree of integration must consider various objective elements of his/her personal situation: the duration, nature and conditions of the conditions of the presence of the requested person in that State and the family, linguistic, cultural, social and economic connections which he or she has with that State.
- The objective of the assessment is to determine if the application of this ground contributes to increasing the chances of social rehabilitation after that sentence or detention order has been executed.

Ne bis in idem

Case C-665/20 X, 2021

Could an executing judicial authority refuse to execute an EAW when the surrender has served sentence for the same acts in a third State and part of the penalty has been remitted by a non-judicial authority of that State, in light of Article 4(5) of the EAW Framework Decision and Article 50 of the Charter?

- The principle of mutual trust between Member States is based on their shared common values, which impacts their criminal justice systems. Based on this principle, Article 3(2) of the EAW Framework Decision places the obligation to refuse the execution of the EAW in case of ne bis in idem within the EU.
- The States parties to the Convention implementing the Schengen Agreement have mutual trust in their criminal justice systems and Article 54 of which precludes ne bis in idem violations.
- In the case of third States which are not party to that agreement, or which do not have other privileged relation with the EU, the mutual trust cannot be presumed. Article 4(5), as an optional ground non-execution, grants a margin of discretion to the Member States to refuse the EAW in light of the particular circumstances of the case.
- The purpose of the case-by-case analysis is to determine whether the failure to surrender that person would be such as to undermine the legitimate interest in preventing crime within the area of freedom, security and justice.
- It is for the executing judicial authority, when exercising the discretion it enjoys, to strike a balance between, on the one hand, preventing impunity and combating crime and, on the other, ensuring legal certainty for the person concerned through the respect for decisions of public bodies which have become final.

Ne bis in idem

Case C-164/22 Juan, 2023

When should an executing judicial authority consider that a situation of *ne bis in idem* arises and, consequently, refuse to execute the EAW?

- Article 3(2) sets a ground for mandatory non-execution when the requested person has been judged in a Member State in respect of the *same acts* provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.
- The concept of the 'same acts' refers only to the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together in time and space, irrespective of the legal classification given to them or the legal interest protected.
- In this case, the CJEU highlighted that, despite the obvious links of both cases, the illicit activity was carried out by separate legal entities, there was only occasional overlap between the acts committed in both Member States and the injured persons were different. Thus, the acts covered by both judgments were not inextricably linked together and, consequently, the facts of the two judgments were not identical.
- Therefore, the executing judicial authority cannot refuse the execution of the EAW in light of Article 3(2).
- The fact that offences committed in the issuing Member State should be classified as a 'continuing criminal offence' under the domestic law of the executing Member State cannot affect the aforementioned conclusion.

Lawfulness of deprivation of liberty

Case C-237/15 PPU Lanigan, 2015

What is the effect of a failure to observe the time-limits stipulated in Article 17 of the EAW Framework Decision and how this failure affects the rights enshrined in Article 6 of the Charter?

- Article 15(1) provides, as a general rule, that the executing judicial authority is to decide 'within the time-limits and under the conditions defined in this Framework Decision' whether the requested person is to be surrendered.
- Article 17(1) provides that such a warrant is to 'be dealt with and executed as a matter of urgency'. Article 17(2) and (3) stipulates precise time-limits within which the final decision on the execution of a EAW is to be taken, and Article 17(4) authorises the extension of those time-limits, within which that decision should be taken.
- Article 1(2) stipulates that Member States are in principle obliged to give effect to a EAW, unless at least one of conditions for refusal is met.
- The expiry of the time-limits laid down in Article 17 is not a ground for refusal included in Articles 3, 4 and 4a. Consequently, when this happens, the execution of the EAW is postponed, not abandoned.
- Abandoning the EAW would run counter to the Framework Decision's objective of accelerating and simplifying judicial cooperation and could encourage delaying tactics aimed at obstructing the EAW's execution.
- Article 26(1) provides that the issuing Member State is to deduct all periods of detention arising from the execution of a EAW from the total period of detention to be served in that State.

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What is the effect of a failure to observe the time-limits stipulated in Article 17 of the EAW Framework Decision and how this failure affects the rights enshrined in Article 6 of the Charter?

- Article 12 stipulates that the executing judicial authority shall take a decision on whether a person arrested on the basis of a EAW should remain in detention, in accordance with the law of the executing Member State and in conformity with Article 6 of the Charter.
- The detention period shall comply with Article 52(1) of the Charter. For that purpose, the executing judicial authority shall conduct an assessment of the situation at issue considering all the relevant factors that could justify the duration of the detention, preventing the excessive duration of the custody.
- When the conclusion of the assessment is to end the detention, that authority is required to adopt any measures it deems necessary so as to prevent the requested person from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the EAW has been taken.

Lawfulness of deprivation of liberty

Case C-492/18 TC, 2019

Does a domestic provision providing that a requested person could not be kept in custody under an EAW for more than 90 days contravened Article 6 of the Charter?

- A general and unconditional obligation to release the requested person purely and simply upon expiry of those time limits or where the total duration of the period that the person has spent in custody exceeds those time limits could limit the effectiveness and objectives of the surrender system put in place by the EAW Framework Decision.
- If the executing judicial authority decided to release the requested person, it is required to adopt any measures it deems necessary so as to prevent the requested person from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the EAW has been taken.
- Conversely, if the risk of absconding cannot be reduced to an acceptable level by the imposition of appropriate measures, the release of the requested person merely because a period of 90 days has elapsed since the date of his arrest is not compatible with the obligations arising under EAW Framework Decision.
- In conformity with the CJEU's settled case-law, the domestic provision in question shall be interpreted by the Dutch authorities in light of the EAW Framework Decision.
- The EAW Framework Decision precludes the domestic provision, as long as, it cannot be interpreted in conformity with it.