



Press and Information

Court of Justice of the European Union

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Judgment in Case C-195/20 PPU

Generalbundesanwalt beim Bundesgerichtshof v XC

A measure involving deprivation of liberty taken against a person referred to in a first European Arrest Warrant (EAW) on the basis of a prior offence different from the one which justified his surrender under a second EAW is not contrary to EU law if that person's departure from the Member State that issued the first EAW was voluntary

In that context, consent must be given by the executing authorities of the Member State which surrendered the prosecuted person on the basis of the second EAW

XC was prosecuted in Germany in three separate sets of criminal proceedings. First, on 6 October 2011, he was sentenced by a local court to a combined custodial sentence of one year and nine months. That sentence was suspended on probation.

Second, in 2016, criminal proceedings were instituted in Germany against XC for an offence committed in Portugal. Since XC was in Portugal, the Staatsanwaltschaft Hannover (Public Prosecutor's Office, Hanover, Germany) issued a European Arrest Warrant ('EAW') in order to prosecute XC for that offence. The Portuguese executing authority authorised XC's surrender to the German judicial authorities. XC received a custodial sentence of one year and three months. During the execution of that sentence, the suspension on probation of the sentence imposed in 2011 was revoked.

On 22 August 2018, the Staatsanwaltschaft Flensburg (Public Prosecutor's Office, Flensburg, Germany) asked the Portuguese executing authority to renounce the application of the specialty rule and consent to the execution of the sentence imposed in 2011. Under that rule, laid down in Article 27(2) of Framework Decision 2002/584,¹ a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered. However, Article 27(3)(g) provides that the specialty rule does not apply where the executing juridical authority which surrendered the person gives its consent.

On 31 August 2018, in the absence of any response from the Portuguese executing judicial authority, XC was released. On 18 September 2018, he went to the Netherlands and later to Italy. The next day, the Staatsanwaltschaft Flensburg (Public Prosecutor's Office, Flensburg) issued a new EAW against XC for the purposes of executing the judgment of 6 October 2011. XC was arrested in Italy on the basis of that EAW. The Italian executing authority agreed to surrender him to the German authorities.

Third, on 5 November 2018, the Amtsgericht Braunschweig (Local Court, Braunschweig, Germany) issued an arrest warrant for the purposes of the conduct of a criminal investigation into a third case involving XC relating to an offence committed in Portugal in 2005 ('the arrest warrant of 5 November 2018'). In December 2018, the Staatsanwaltschaft Braunschweig (Public Prosecutor's Office, Braunschweig, Germany) asked the Italian executing judicial authority also to give consent for XC to be prosecuted for that offence. That authority granted the request.

¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (2009 L 81, p. 24) ('the Framework Decision 2002/584').

XC was remanded in custody in Germany from 23 July 2019 to 11 February 2020 pursuant to the national arrest warrant. During that period, by judgment of 16 December 2019, XC was convicted of the offence committed in Portugal in 2005 and he received a combined custodial sentence of seven years, taking into account the judgment of 6 October 2011.

XC brought an appeal on a point of law (*Revision*) against the judgment of 16 December 2019 before the referring court, the Bundesgerichtshof (Federal Court of Justice, Germany), relying, in particular, on the specialty rule laid down in Framework Decision 2002/584. He claims, in essence, that, in so far as the Portuguese executing judicial authority did not consent to his prosecution for the offence committed in Portugal, the German authorities were not entitled to prosecute him. In view of that argument, the referring court is uncertain whether the arrest warrant of 5 November 2018 can be maintained or must be annulled.

By its judgment of 24 September 2020, delivered in the context of the urgent preliminary ruling procedure, the Court ruled that Article 27(2) and (3) of Framework Decision 2002/584 must be interpreted as meaning that the specialty rule provided for in Article 27(2) does not preclude a measure involving deprivation of liberty taken against a person referred to in a first EAW on the basis of an offence different to that which constituted the basis for his or her surrender under that warrant and prior to that offence, when that person's departure from the Member State which issued the first EAW was voluntary and he or she was surrendered to that Member State under a second EAW issued after that departure for the purposes of executing a custodial sentence, provided that, under the second EAW, the judicial authority executing that warrant consented to the extension of the prosecution to the offence which gave rise to that measure involving deprivation of liberty.

In that regard, the Court observed that it is apparent from the literal interpretation of Article 27(2) of Framework Decision 2002/584 that the specialty rule laid down in that article is closely connected to the surrender resulting from the execution of a specific EAW, to the extent that the wording of that provision refers to a single 'surrender'. That interpretation is borne out by the contextual interpretation of that provision, since other provisions of Framework Decision 2002/584² also establish that the specialty rule is connected to the execution of a specific EAW. In those circumstances, the requirement that consent be given by both the executing judicial authority of the first EAW and the executing judicial authority of the second EAW would hinder the effectiveness of the surrender procedure, thereby undermining the objective pursued by Framework Decision 2002/584, namely that of simplifying and accelerating surrenders between the judicial authorities of the Member States.

Therefore, since, in the present case, XC's departure from Germany was voluntary, once he had served his sentence in that Member State for the offence referred to in the first EAW, he is no longer entitled to rely on the specialty rule relating to the first EAW. In so far as, in the present case, the only surrender relevant to the assessment of compliance with the specialty rule is the one carried out on the basis of the second EAW, the consent required in Article 27(3)(g) of Framework Decision 2002/584 must be given only by the executing judicial authority of the Member State which surrendered the prosecuted person on the basis of that EAW.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

² In particular, Article 1(1), defining the EAW in the light of the specific objective it pursues, and Article 8(1), requiring an EAW to be specific as to the nature and legal classification of the offence to which it refers and to describe the circumstances in which it was committed.

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