



Press and Information

Court of Justice of the European Union

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Judgment in Case C-717/18

X (European arrest warrant – Double criminality)

In order to ascertain whether the European arrest warrant against a person convicted in Spain for the offence of glorification of terrorism and humiliation of the victims of terrorism must be executed without examining whether that offence is punishable also in Belgium, the Belgian courts must take into account the length of the sentence imposed by the Spanish law applicable to the acts committed

In the judgment in X (European arrest warrant – Double criminality) (C-717/18), delivered on 3 March 2020, the Grand Chamber of the Court held that Article 2(2) of the **Framework Decision on the European arrest warrant**¹ ('the framework decision') **requires that, in order to ascertain whether the offence for which a European arrest warrant has been issued is punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years, as it is defined in the law of that Member State, the executing judicial authority must take into account the law of that Member State in the version applicable to the facts giving rise to the case in which the European arrest warrant was issued**, and not in the version in force at the time of issue of that arrest warrant. That ascertainment proves necessary in so far as, according to that provision, the execution of European arrest warrants issued for certain offences punishable by a custodial sentence or a detention order for a maximum period of at least three years cannot be subject to verification of the double criminality of the act, that is to say, to the condition that those offences must be punishable also under the law of the executing Member State.

In 2017, the Audiencia Nacional (National High Court, Spain), convicted X, inter alia, for acts, committed in 2012 and in 2013, constituting the offence of glorification of terrorism and humiliation of the victims of terrorism, set out in Article 578 of the **Spanish Criminal Code in the version in force at the time of those acts**. It imposed on him the **maximum prison sentence of two years stemming from that version** of the Spanish criminal law provision. However, in 2015, that provision was amended and now provides for a custodial sentence of a maximum of three years.

X having left Spain for Belgium, the Audiencia Nacional (National High Court) issued, in 2018, a **European arrest warrant against him for the offence of 'terrorism', which features in the list of offences concerned by the removal of verification of the double criminality of the act**. The **Hof van beroep te Gent** (Court of Appeal, Ghent, Belgium), hearing an appeal in the procedure for the execution of that arrest warrant, decided to make a reference for a preliminary ruling to the Court on account of the **doubts it entertains as to the version of 578 of the Spanish Criminal Code to be taken into account (the one applicable to the facts in the main proceedings or the one applicable at the date of issue of the European arrest warrant) for determining whether the condition setting the threshold of a custodial sentence for a maximum of period of at least three years is satisfied in the case at hand**.

The Court first of all noted that the wording of Article 2(2) of the framework decision does not specify which version of the law of the issuing Member State must be taken into account where

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).

that law has been the subject of amendments between the date of the facts at issue and the date of issue, or execution, of the European arrest warrant. In particular, the use of the present indicative in that provision does not support the conclusion that the version to be taken into account is the one in force at the time that arrest warrant was issued.

Next, so far as concerns the context in which that provision occurs, the Court observed that Article 2(1) of the framework decision provides, *inter alia*, that a European arrest warrant may be issued for sentences of at least four months. That minimum threshold can refer only to the sentence actually imposed in the conviction decision in accordance with the law of the issuing Member State applicable to the facts giving rise to that decision and not to the sentence which could have been passed under the law of that Member State applicable at the date of issue of that arrest warrant. The same must hold for the execution of a European arrest warrant pursuant to Article 2(2) of the framework decision. Indeed, the interpretation whereby the executing judicial authority should take into account the law of the issuing Member State applicable at a different date, according to whether that authority verifies whether the European arrest warrant could be issued in accordance with Article 2(1) of the framework decision or whether that arrest warrant must be executed without verification of the double criminality of the act pursuant to Article 2(2) of the framework decision, would undermine the consistent application of those two provisions.

Moreover, the interpretation whereby the version of the law of the issuing Member State to be taken into account is the one applicable to the facts in question is borne out by Article 8 of the framework decision. That provision provides *inter alia* that the European arrest warrant contains information on the penalty imposed or the prescribed scale of penalties for the offence under the law of the issuing Member State, such information having to be set out in accordance with the form contained in the annex to the framework decision. It is apparent from that form that that information concerns the sentence 'imposed', such that that sentence is the one which, depending on the case, is liable to be imposed or has actually been imposed in the conviction decision and, thus, the one resulting from the version of the law of the issuing Member State which is applicable to the facts in question.

The Court also noted that that interpretation of Article 2(2) of the framework decision is supported by the framework decision's purpose, namely, to facilitate and accelerate judicial cooperation by establishing a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law. Accordingly, the executing judicial authority must be able to rely on the information on the length of the sentence set out in the European arrest warrant itself. Requiring that authority to verify whether the law of the issuing Member State which is applicable to the facts at issue has not been amended subsequent to the date of those facts, first, would run counter to the purpose of the framework decision and, second, would be contrary to the principle of legal certainty, in view of the difficulties that authority may encounter in identifying the various versions of that law that might be relevant.

Last, the Court emphasised that the fact that the offence at issue cannot give rise to surrender without verification of the double criminality of the act pursuant to Article 2(2) of the framework decision does not necessarily mean that execution of the European arrest warrant has to be refused. The executing judicial authority is under the responsibility to examine the criterion of double criminality of the act set out in Article 2(4) of the framework decision in the light of that offence.

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.

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