



CASE STUDY

Magdalena Ličková, Legal Secretary at the Court of Justice of the EU, Luxembourg

Naples, 15 October 2024

Case Scenario 1

Mr. V, and Mr. M are both nationals of the **Member State A** and live and work in the **Member State B**. They were made subject of two extradition requests issued by a third country (country R).

In response to that request, the authorities of the **Member State B** have placed Mr. V and Mr. M into custody. Both of them were accused of the involvement in a criminal association in connection with the counterfeiting of payment cards. Under the law of the third country at issue, that offence is punishable with a term of imprisonment of between 4 and 8 years.

The Public Prosecutor's Office of the Member State B has authorised Mr. V's and Mr. M's extradition to the third country at issue.

However, Mr. V and Mr. M both filed an appeal against the respective extradition decisions before the competent national court, alleging that the extraditions are not justified.

The national court of the Member State B that has been seized of those appeals entertains doubts as to whether EU law may be relevant to the case at hand and whether that court should also take into the consideration the Charter of Fundamental Rights of the European Union (the 'Charter'). It observes that its national law prohibits the extradition of its nationals. However, it also observes that Mr. V and Mr. M are not nationals of the Member State B and that, moreover, there is no extradition treaty currently in force between the European Union and the third country at issue. For that reason, the matter at hand appears to be rather governed exclusively by the national law of the Member State A.

1. Do you agree with the premiss that the matter at hand falls entirely within the remit of national law of the Member State B?
2. If not, can you identify any aspect of EU law that may be relevant?
3. If so, how would you phrase the question(s) that the court seized of the appeals at issue may refer to the Court of Justice for a preliminary ruling?



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4. In what respect may the Charter become relevant?
5. Let us assume now that the court of the Member State B has indeed sent a request for a preliminary ruling to Luxembourg. After that request has been made, it turns out that, on the one hand, Mr. V has been in fact extradited because the competent authorities of the Member State B decided to execute the extradition decision of the Public Prosecutor. On the other hand, Mr. M has been released from the custody and, on the very same day, absconded. It seems that he went back to the Member State of his nationality (Member State A) although that is not certain.
6. Do you think that, under those circumstances, the Court of Justice will reply to the question(s) referred?



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Case Scenario 2

Facts

[Imaginary] Mr Novy was prosecuted in Slovakia for several offences allegedly committed in 1995. In 1998, the president of that State issued an amnesty that covered those offences. Later, in 2001, the competent national court terminated the prosecution based on that amnesty. That decision became final, and was endowed, under national law, with the same effects as an acquittal. However, in application of the respective national law, the amnesty was revoked in 2017. The revocation of that amnesty meant that the initial criminal prosecution resumed. Mr Novy contested, before the competent national court, the lawfulness of the decision to resume those criminal proceedings. After filing that petition, he went into hiding.

- a) The competent national court observes that Mr Novy's whereabouts are currently unknown. It is unclear whether he is currently within the territory of the Union or has perhaps travelled to Australia. Be it as it may, that court does not exclude issuing a European arrest warrant ('EAW'). It is nevertheless not certain whether, in those circumstances, conducting the criminal prosecution against Mr Novy would not be precluded by the principle of *ne bis in idem*.

The competent national court is therefore considering referring a question for a preliminary ruling and it wishes to ask the Court to submit the question referred to the urgent preliminary proceedings.

- b) The competent national court decided to issue an EAW. Meanwhile, it appeared that Mr Novy travelled to Italy. There he was placed into custody. However, the Italian competent executing authority is not certain whether it may execute that EAW given that it is not sure whether that would comply with the principle of *ne bis in idem*.

It is therefore considering referring a question for a preliminary ruling to the Court of Justice. It wishes to ask the Court to submit the question referred to the urgent preliminary proceedings.



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Legal Framework

Council Framework Decision 2002/584/JHA of 13 June 2002 on **the European arrest warrant and the surrender procedures between Member States** [‘EAW FD’]

Article 1: Definition of the European arrest warrant and obligation to execute it

‘1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.’

Article 3 ‘Grounds for mandatory non-execution of the European arrest warrant’

‘The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by 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;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.’

Article 8(1) of the EAW FD requires certain information to be contained in a European arrest warrant: ‘The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:



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...

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

...'

Questions to be considered [common for scenarios a) and b) above]:

How would you identify the relevant aspect of EU law concerned (if any) and the fundamental right concerned?

Do you think that the request for the preliminary ruling will be admissible?

And what about the request concerning the urgent preliminary proceedings?



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Case Scenario 3

Facts

By application lodged with [an imaginary] district court in Marseille, [imaginary] Ms Maître, who is a lawyer based in Marseille, asked that court to issue [imaginary] Mr K, residing in Hamburg, with a payment order for an amount owed to her as consideration for the legal services rendered by her in connection with legal proceedings in Germany. The district court in Marseille issued a payment order for the sum of EUR 20.000, plus interest and costs. That order was not challenged and became final. Ms Maître then requested the district court in Marseille to issue a certificate within the meaning of Article 53 of Regulation No 1215/2012, with respect to that order. At that stage, the district court realized that it should have never confirmed its international jurisdiction given that the relationship between Mr K and Ms Maître was one between a consumer and a professional.

That court is of the view that the automatic issue of the certificate within the meaning of Article 53 of Regulation No 1215/2012 under those circumstances might deprive Mr K of an effective remedy. It therefore considers submitting a question for a preliminary ruling to the Court of Justice.

Legal Framework

Pursuant to Article 4 (1) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

Article 17 of Regulation 1215/2012 (which makes part of Chapter II, Section 4 of that regulation) states:

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

(a) it is a contract for the sale of goods on instalment credit terms;



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(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

...

Article 18 of Regulation No 1215/2012 provides:

‘1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

...’.

Pursuant to Article 45 of Regulation 1215/2012

1. On the application of any interested party, the recognition of a judgment shall be refused:

...

(e) if the judgment conflicts with:

- (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

...

Pursuant to Article 47 (1) of Regulation No 1215/2012 ‘For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:



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- a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest

According to Article 53 of Regulation No 1215/2012: ‘The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.’

Questions to be considered:

Do you think that the Charter, if it applies, may be of any relevance for the case at hand?

What would be the perspective under which it could be invoked and with what practical result?



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Case Scenario 4

Facts

PL (the employee) and the company Z (the employer) entered into a fixed-term part-time employment contract for the period from 1 March 2022 to 31 December 2022.

On 15 July 2022, the employer notified PL of the termination of his employment contract. PL was not informed of the reasons for that termination as this is not required by the national applicable law. Indeed and more specifically, Article 20(2) of the respective Labour Code provides that ‘the statement by the employer concerning the termination of an employment contract of indefinite duration, with or without a notice period, shall state the reason justifying that termination.’

Following his dismissal, PL brought an action before the respective district court of the Member State A, seeking compensation due to an unlawful dismissal.

PL claims, first, that even though the Labour Code does not require employers to state the reasons for termination in the event of termination of fixed-term employment contracts, the absence of such information infringed the principle of non-discrimination.

In response, the employer argues that it had dismissed PL in accordance with the applicable national provisions in force, which, in fact, PL does not dispute.

Moreover, under the national applicable law, where a worker brings an action against the termination of his or her fixed-term employment contract, the court having jurisdiction does not review the reason for dismissal and the worker concerned is not entitled to any compensation based on the absence of justification for that dismissal.

In that light, the court that has been seized with PL’s action doubts whether the national rule at issue complies with the protection deriving from Article 30 of the Charter, according to which ‘every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices’. It also doubts about the compatibility of the national legislation with Article 21(1) of the Charter which, in its view, prohibits all forms of discrimination.



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Legal Framework

Directive 1999/70/EC¹

Recital 14 of Directive 1999/70 states as follows:

‘The signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships’.

Article 1 of Directive 1999/70 provides that:

‘The purpose of the Directive is to put into effect the framework agreement on fixed-term contracts concluded on 18 March 1999 between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto.’

The framework agreement on fixed-term contracts concluded on 18 March 1999 between the general cross-industry organisations (ETUC, UNICE and CEEP) (the ‘framework agreement’)

The third paragraph in the preamble to the framework agreement states:

‘This agreement sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. It illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and for using fixed-term employment contracts on a basis acceptable to employers and workers.’

Pursuant to clause 1 thereof, the purpose of the framework agreement is, first, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

¹ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).



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Clause 4 of the framework agreement, entitled ‘Principle of non-discrimination’, provides, in paragraph 1 thereof:

‘In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.’

Questions

What would be the question(s) that you would suggest to be referred to the Court of Justice for a preliminary ruling under the circumstances of the case at hand?

Is the invocation of the Charter in this context necessary? (Perhaps the useful reply may be found already in the applicable rules of EU secondary law as reproduced above?)



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