



RELEVANT CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU) IN THE EU AREA OF CRIMINAL JUSTICE

1. European Arrest Warrant (EAW): Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and surrender procedures between Member States. Amended by Framework Decision 2009/299/JHA.

1.1 Validity of the EAW: abolishment of double criminality (seriousness of the offence) and principle of legality of criminal offences and penalties

- Case C-303/05, judgment of 3 May 2007 [Advocaten voor de wereld](#)

1.2. Mutual recognition and fundamental rights: interpretation of Art. 47, 48 and 53 of the CHFREU, access to legal remedies

- C-396/11, judgment of 29 January 2013, [Radu](#) (right to be heard in the context of the EAW)
- C-399/11, judgment of 26 February 2013, [Stefano Melloni](#) (constitutional safeguards and trials in absentia, supremacy of EU Law)
- C-168/13PPU, judgment of 26 February 2013 of 30 May 2013, [Jeremy F.](#) (suspensive legal remedies within the time- limits set out by the EAW)

1.3. Non-discrimination (optional ground for refusal, Art.4 (6) of the EAW: requested person is resident, or staying in the executing MS, criteria to be applied by national courts)

- C -66/08, judgment of 17 July 2008, [Szymon Kozłowski](#)
- C-123/08, judgment of 6 October 2009, D. [Wolzenburg](#)
- C-42/11, judgment of 5 September 2012, [João Pedro Lopes Da Silva Jorge](#)

1.4. Relation of the EAW and other legal instruments: transitional regime

- C-296/08, judgment of 12 August 2008, [Santesteban Goicoechea](#)

1.5. Principle of Specialty (Art. 27)

- C-388/08 PPU, judgment of 1 December 2008, [Leymann and Pustarov](#)

1.6. Trial in absentia and principle of mutual recognition: EAW for the purposes of prosecution; surrender subject to the condition that the person is returned to the execution; MS to serve the sentence there

- C-306/09, judgment of 16 November 2010, [I.B.](#)

1.7. Ne bis in idem: mandatorial grounds for refusal Art 3(2), final nature of the judgment of the issuing State

- C-261/09, judgment of 28 June 2012, [Mantello](#)

1.8. Successive EAWs subject to the consent only of the MS which carried out that last surrender

- C-192/12 PPU judgment of 16 November 2010, [Melvin West](#)

2. Transnational *Ne bis in idem* principle set out in Arts. 54-58 of the [Convention implementing the Schengen Agreement \(CISA\)](#) integrated within the EU *acquis*.

Principle which must apply even « when the outcome would be different if its own law were applied ». It is linked with the free movement and must be read in the context of EU integration: the cross-border application of the principle needs to balance free movement of persons and the combating of criminal offences.

2.1 Concept of *idem*: Identity of the material acts, understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected.

- C-436/04, judgment of 9 March 2006, [Van Esbroeck](#)
- C-150/05, judgment of 28 September 2006, [Van Straaten](#)

- C-467/04, judgment of 29 September 2006, [Gasparini](#)
- C-288/05; judgment of 18 July 2007, [Kretzinger](#)
- C-367/05, judgment of 18 July 2007, [Kraaijenbrink](#)

2.2. Concept of *bis* (finally disposed of in one State). Extensive interpretation by the CJEU in 5 rulings:

- C-187/01 and C-385/01, judgment of 11 February 2003, [Gözütok and Brügge](#), (out of court settlement)
- C-150/05, judgment of 28 September 2006, [Van Straaten](#) (acquittal on the basis of lack of evidence)
- C-467/04, judgment of 29 September 2006, [Gasparini](#) (statute of limitation)
- C-297/07, judgment of 11 December 2008, [Bourquain](#) (convictions in absentia)
- C-398/12, judgment of 5 June 2014 [Procura della Repubblica contra M.](#) (order making a finding that there is no ground to refer a case to a trial court)

Limits in rulings

- C-469/03, judgment of 10 March 2005, [Miraglia](#) (no determination of the merit of the case)
- C-491/07, judgment of 22 December 2008, [Turansky](#) (decision of the police not prevent further prosecution)

2.3. Compatibility of the enforcement condition of Art. 54 CISA with Art. 50 of the Charter of Fundamental Rights of the EU

- C-129/14-PPU, judgment of 27 May 2014, [Zoran Spansic](#)

Novel issue in the area of judicial cooperation in criminal matters. The Court is asked to clarify the relationship between Article 50 of the Charter of Fundamental Rights of the EU which ensures the right not to be tried or punished twice in criminal proceedings for the

same criminal offence (the *ne bis in idem* principle), and Article 54 of the CISA concerning the application of that principle.

The rule set out in Art. 54 CISA restricting the application of the *ne bis in idem principle* to cases in which the penalty imposed in a MS has been enforced or is actually in the process of being enforced is not contrary to the Charter. Where the penalty consists of a term of imprisonment and a fine, both imposed as principal penalties, the payment of the fine alone is not sufficient to consider that the penalty has been enforced.

The Court considers that the enforcement condition laid down in the CISA does not call into question the *ne bis in idem* principle as such, since its only purpose is to avoid a situation in which persons finally convicted in a MS go unpunished. The enforcement condition is considered by the Court proportional to the objective pursued (ensuring a high level of security within the area of freedom, security and justice) and does not go beyond what is necessary to prevent a situation in which convicted persons go unpunished.

3. Victims in criminal proceedings: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA). Replaced by Directive 2012/29/EU of 25 October 2012.

3.1 Lack of precision of the Framework Decision and the wide margin of appreciation left to the Member States. Provisions of the Framework Decision must be interpreted in such a way that fundamental rights are respected, including in particular the right to a fair trial as set out in Article 6 of the ECHR.

- C-105/03, judgment of 16 June 2005, [Maria Pupino](#): Principle of loyal cooperation binding in the area of criminal justice and Principle of conforming interpretation of Framework Decisions
- C-404/07, judgment of 9 October 2008, [Katz](#): Testimony of the victim as a witness-victim to be permitted to give testimony which can be taken into account as evidence
- C-483/09, judgment of 15 September 2011, [Gueye and Sánchez](#): Domestic crimes and compatibility with the Framework Decision of the mandatory imposition of an injunction to stay away for a minimum period and provision of national law excluding mediation in criminal cases

- C-205/09, judgment of 21 October 2010 [Eredics and Sápi](#): Meaning of ‘victim’. Legal persons and mediation in criminal proceedings. Detailed rules of application
- C-507/10, judgment of 21 December 2011 [Criminal proceedings against X](#): Protection of vulnerable persons and hearing of minors as witnesses. Special measure for early taking of evidence: refusal by the Public Prosecutor to request the judge in charge of preliminary investigations to hear a witness

3.2. Other rulings:

- C-467/05, judgment of 28 June 2008, [Giovanni dell’Orto](#): the concept of ‘victim’ for the purposes of the Framework Decision does not include legal persons who have suffered harm directly caused by acts or omissions that are in violation of the criminal law of a Member State
- C-79/11, judgment of 12 July 2012, [Giovardini and others](#): compatibility with the Framework Decision of a situation in which the victim of a criminal act is not entitled to seek compensation for the harm directly caused by that act in the course of criminal proceedings from the legal person who committed an administrative offence.

4. Penalties

4.1. Accumulating administrative and criminal sanctions

- Case 617/10, judgment of 26 February 2013, [Aklaqaren v. Hans Akerberg Fransson](#)

The *ne bis in idem* principle laid down in Article 50 of the Charter does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of VAT, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.

4.2 Mutual recognition and financial penalties

- C-60/12, judgment of 14 November 2013, [Marián Baláž](#)

Interpretation of concept “court having jurisdiction in particular in criminal matters” an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision of which it forms part and the objective pursued by Council

Framework Decision 2005/214/JHA. It must be interpreted as covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure.

5. Fundamental rights: relations ECHR-CHFRUE

- Case 617/26 judgment of February 2013, [Aklaqaren v. Hans Akerberg Fransson](#) (Relevant Paragraphs 44-45)

44. The conclusions to be drawn by a national court from a conflict between national law and the ECHR, it is to be remembered that whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of the European Union's law and whilst Article 52(3) of the Charter requires rights contained in the Charter which correspond to rights guaranteed by the ECHR to be given the same meaning and scope as those laid down by the ECHR, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into European Union law. Consequently, European Union law does not govern the relations between the ECHR and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law (see, to this effect, Case C-571/10 Kamberaj [2012] ECR I-0000, paragraph 62).

45. As regards, next, the conclusions to be drawn by a national court from a conflict between provisions of domestic law and rights guaranteed by the Charter, it is settled case-law that a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of European Union law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such a provision by legislative or other constitutional means (Case 106/77 Simmenthal [1978] ECR 629, paragraphs 21 and 24; Case C-314/08 Filipiak [2009] ECR I-11049, paragraph 81; and Joined Cases C-188/10 and C-189/10 Melki and Abdeli [2010] ECR I-5667, paragraph 43).

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