



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

Minister for Justice and Equality v. Naoufal Fassih **On appeal from: [2021] IECA 159**

Headline

The Supreme Court today referred questions on the interpretation of Article 27 of the Council Framework Decision of 13th June 2002 (on which the European Arrest Warrant system is based) to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union.

Composition of Court

MacMenamin, Charleton, O'Malley, Baker, Hogan JJ.

Judgments

O'Malley J. delivered the sole judgment on behalf of the court.

Background to the Appeal

The appellant was surrendered to the Kingdom of the Netherlands on foot of three European arrest warrants issued by Dutch public prosecutors. Subsequently, the High Court of Ireland, as the executing judicial authority, received a request for consent to his further prosecution and imprisonment in relation to other, separate offences.

In the intervening period, the CJEU delivered its judgments in [OG and PI](#) (*Public Prosecutor's Office in Lübeck and Zwickau*) (C-508/18 and C-82/19/PPU) ("*OG and PI*") and in [Criminal Proceedings against AZ](#) (C-510/19) ("*AZ*"). The effect of the judgments is that public prosecutors in the Netherlands cannot be considered to be "judicial authorities" within the meaning of the Framework Decision.

The appellant now wishes to rely upon those judgments for the purpose of arguing that consent to his further prosecution cannot be given, on the basis that the persons who issued the three original warrants did not, as a matter of EU law, have the status of "issuing judicial authorities". It is accepted by the appellant that he cannot reopen the original decision to surrender him as that matter is now *res judicata*. However, he argues that consent to further prosecution cannot be given if the warrants giving rise to that decision were not validly issued. Both the High Court and Court of Appeal held that the appellant was debarred from making such an argument by national procedural rules concerning issue estoppel.

Judgment

The Supreme Court ordered a preliminary reference to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union.

Reasons for the Judgment

The answer to the question whether the appellant should now be permitted to rely upon an argument about the status of the original warrants depends upon the correct legal characterisation of the relationship between the surrender process and the consent process. **[141]**

Primarily, the issue is whether the two processes are so closely linked that a matter necessarily determined for the purposes of a surrender order must be taken as having been determined for the purposes of any subsequent request for consent to further prosecution and punishment, or whether they are separate and “stand alone” procedures. **[142]**

The definition of the legal relationship depends upon the correct interpretation of the Framework Decision, in the light of the judgments of the CJEU in *OG and PI* and *AZ*, and thus is a matter of EU law. The Court further considers that this matter is not *acte clair*. **[142]** In those circumstances, and as the Supreme Court is the court of final appeal in Ireland, it considers that it is obliged under the Treaty on the Functioning of the European Union to refer questions on the issue to the CJEU. **[143]**

Questions Referred

Should Article 27 of the Framework Decision be interpreted as meaning that a decision to surrender a person creates a legal relationship between him, the executing State and the requesting State such that any issue taken to have been finally determined in that decision must also be taken to have been determined for the purposes of the procedure for obtaining consent to further prosecution or punishment for other offences?

If the answer to Question 1 is that Article 27 does not require that interpretation, does a national procedural rule breach the principle of effectiveness if it operates so as to prevent the person concerned from relying, in the context of the consent application, upon a judgment of the Court of Justice of the European Union delivered in the period of time after the order for surrender?

Note

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

2nd December 2021

[\[2021\] IESCDT 108](#)

[\[2021\] IECA 159](#)

Oral submissions made before the Court

Supreme Court Determination granting leave

Judgment of the Court of Appeal (judgment which was the subject of the appeal to the Supreme Court)

