

ECJ/UK/ROMANIA: The UK's decision to leave the EU should not affect the execution of a European arrest warrant

EU law applies as long as the UK is a Member State

Court of Justice of the European Union/PRESS RELEASE No 124/18 (07.08.2018) – <https://bit.ly/2vPxPtx>– In 2016, the UK issued two European arrest warrants ('EAWs') in respect of R0 (the first in January 2016 and the second in May 2016) for the purposes of conducting prosecutions of the offences of murder, arson and rape. R0 was arrested in Ireland on the basis of these arrest warrants and has been in custody since 3 February 2016. R0 raised objections to his surrender to the UK on the basis, amongst other things, of issues related to the UK's withdrawal from the EU.

The High Court (Ireland) has ruled against R0 on all of his points of objection, other than the issues of the consequences of Brexit. It therefore asks the Court of Justice whether, in light of the UK on 29 March 2017 having given notice of its intention to withdraw from the EU, and the uncertainty as to the arrangements which will be put in place after the UK's withdrawal, it is required to decline to surrender to the UK a person subject to a EAW whose surrender would otherwise be required.

In today's Opinion, Advocate General Maciej Szpunar proposes

that the Court of Justice find that the EAW system should continue to apply for as long as the UK is a Member State. He comments that, from the information submitted by the High Court, there appears to be no reason not to execute the EAW in question.

The Advocate General first reiterates that the principle of mutual recognition, which is based on mutual trust, between the Member States means that the execution of a EAW constitutes the rule and a refusal to execute is an exception which must be interpreted strictly. The Advocate General notes that none of the mandatory or optional grounds for non-execution of the EAW are present in the case at issue. Specifically, the Irish court has concluded that, with the exception of the consequences of Brexit, there is no separate issue of potential inhuman or degrading treatment in respect of RO's surrender to the UK.

Next, the Advocate General examines whether the UK's notification of its intention to leave the EU has any bearing on the legal assessment to be carried out in relation to the execution of the EAW. He rejects RO's argument that the UK's withdrawal notice constitutes an exceptional circumstance which requires non-execution of an EAW. In his view, **as long as a State is still a Member of the EU, EU law applies, including the provisions of the Framework Decision on the European arrest warrant(1) and the duty to surrender.**

In addition, according to the Advocate General, there are no tangible indications that the political circumstances preceding, giving rise to, or succeeding the withdrawal notification are such as to not respect the substantive content of the Framework Decision and the fundamental rights

enshrined by the Charter of Fundamental Rights of the European Union. He agrees with the argument that **the UK has decided to withdraw from the EU, not to abandon the rule of law or the protection of fundamental rights.** Consequently, in the Advocate General's view, **there is no basis to question the UK's continued commitment to fundamental rights.** Moreover, the UK will continue to remain subject to rules of domestic and international law which impose obligations on the UK in the context of extradition.

On this basis the Advocate General proposes that the executing judicial authorities can expect, at the moment of executing the EAW, the issuing Member State to abide by the substantive content of the Framework Decision, including for post surrender situations after the issuing Member State has left the EU. This presumption can be made if other international instruments will continue to apply to the Member State that has left the EU. **Only if there is tangible evidence to the contrary can the judicial authorities of a Member State decide not to execute the arrest warrant.**

Finally, the Advocate General considers that the fact that Court of Justice will no longer have jurisdiction after 29 March 2019 is not an obstacle to R0's surrender to the UK. The Advocate General notes, in particular, that the Framework Decision was adopted in 2002, but the Court of Justice only obtained full jurisdiction with regards to the interpretation of the Framework Decision on 1 December 2014, that is to say five years after the entry into force of the Treaty of Lisbon in 2009. Consequently it was neither possible, before that time, for a case such as this to have reached the Court, nor could a UK court have submitted a request for a preliminary ruling to the Court before that time, despite the fact that the EU was firmly anchored on the rule of law, including

access to justice.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

(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).

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