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Right to fair trial – Case Study II

Mr. S. is a national of Member State A who has been living and working for five years in Member State B, where he has a stable job, partner and young child.

In 2018, the judicial authorities of Member State C issued a European Arrest Warrant (EAW) for Mr. S. for the purpose of prosecution for alleged VAT fraud committed in C between 2012 and 2014. In 2024, during a routine traffic check in B, the EAW is discovered and Mr. S. is arrested and brought before the executing judicial authority in B.

Before the court in B, Mr. S. opposes surrender and argues that, in light of the systemic concerns about judicial independence in C, he faces a real risk of not receiving a fair trial if surrendered as over recent years, international reports have criticised general problems concerning judicial independence in Member State C, referring to political influence over judicial councils and appointment procedures.

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CJEU, Judgement in Case C-216/18 PPU

*“(..) where the executing judicial authority, called upon to decide whether a person in respect of whom a European arrest warrant has been issued for the purposes of conducting a criminal prosecution is to be surrendered, has material (..) indicating that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, **on account of systemic or generalised deficiencies** so far as concerns the independence of the issuing Member State’s judiciary, that authority must determine, specifically and precisely, whether, **having regard to his personal situation**, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant, and in the light of the information provided by the issuing Member State (..), there are substantial grounds for believing that that person will run such a risk if he is surrendered to that State.”*

ECtHR, GUÐMUNDUR ANDRI ÁSTRÁÐSSON v. ICELAND (26374/18)

“211. The Court reiterates that under Article 6 § 1 of the Convention, a court or tribunal must always be “established by law”. (..)

227. (..) Having regard to its fundamental implications for the proper functioning and the legitimacy of the judiciary in a democratic State governed by the rule of law, the Court considers that the process of appointing judges necessarily constitutes an inherent element of the concept of “establishment” of a court or tribunal “by law”, and an interpretation to the contrary would defy the purpose of the relevant requirement.(..)”

European Convention on Human Rights

Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Charter of Fundamental Rights of the European Union

Article 47

Right to an effective remedy and to a fair trial

1. *Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*
2. *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*
3. *Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.*

Questions:

1. **Does Article 47 of the Charter apply to the decision of the executing judicial authority in Member State B on whether to surrender Mr S. under the European Arrest Warrant?**
 - a. Yes, because the execution of an EAW is an implementation of EU law (the Framework Decision on the EAW).
 - b. Yes, but only if Mr S. can also rely on a parallel right under Article 6 ECHR.
 - c. No, because the EAW system concerns criminal cooperation between States and not “rights and freedoms guaranteed by the law of the Union”.
 - d. No, because the Charter does not apply to purely procedural decisions of national criminal courts.
2. **The quoted CJEU passage requires the executing authority, where systemic deficiencies are indicated, to determine “specifically and precisely” whether there are substantial grounds for believing that the requested person will run a real risk of breach of the right to a fair trial if surrendered. In the light of the facts of Mr S.’s case, discuss whether this second, individualised step of the test is satisfied. Which additional factual elements would you consider crucial to conclude that Article 47 CFR prevents surrender?**
3. **Discuss, on the basis of Article 47 of the Charter and Article 6 ECHR, whether the executing judicial authority must interpret the right to a fair trial in Mr S.’s case in line with the standards developed by the ECtHR (e.g. on flagrant denial of justice), or whether the CJEU’s case law on mutual trust and the EAW sets a different threshold. Assume that serious irregularities in judicial appointment procedures in Member State C are later found at Strasbourg to undermine the essence of the right to a “tribunal established by law” under Article 6 ECHR. How should an executing judge in Member State B reconcile this structural finding with the CJEU’s requirement to establish a concrete, individual risk under Article 47 of the Charter before refusing to execute the EAW in Mr S.’s case?**