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EUROPEAN ARREST WARRANT

Dismissal

Summary:

It follows from Article 62 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 17 October 2019 that, where the person sought has been arrested before the end of the transition period, *i.e.* on 31 December 2020 at midnight for the purpose of executing a European arrest warrant issued by the United Kingdom judicial authorities, the execution of that warrant shall continue to be governed by the rules of Council Framework Decision 2002/584/JHA, irrespective of whether a challenge is still pending before the courts of the executing State after that date.

Appellant: Mr A.. X...

Facts and procedure

1. It follows from the ruling under appeal and the documents in the proceedings that:
2. On 4 February 2020 the United Kingdom judicial authorities issued a European arrest warrant for Mr X... for the purpose of enforcing a 42-month prison sentence handed down on 14 January 2016 for sexual assault by penetration.
3. This warrant was served on Mr X... on 16 November 2020.
4. Mr X... did not consent to surrender.

Reviewing plea

On the third and fourth parts of the plea:

5. The objections are not of a nature to admit the appeal within the scope of Article 567-1-1 of the Code of Criminal Procedure.

On the other parts of the plea

Statement of plea

6. The plea criticises the ruling under appeal in so far as it found that no mandatory or optional ground for refusing to surrender Mr X... were present and consequently ordered his surrender to the United Kingdom

judicial authorities in performance of the European arrest warrant of 4 February 2020 for the purpose of enforcing a forty-two month prison sentence handed down on 14 January 2016, *whereas*:

"1° a European arrest warrant is a judicial decision issued by a Member State of the European Union, known as the issuing Member State, with a view to the arrest and surrender by another Member State, known as the executing Member State, of a person sought for the purposes of a criminal prosecution or for the execution of a custodial sentence or detention order; according to Article 62 of the Agreement of 12 November 2019 on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the European arrest warrant continues to apply "where the requested person has been arrested before the end of the transition period for the purpose of executing a European arrest warrant, irrespective of the decision of the executing judicial authority as to whether the requested person should remain in detention or be released provisionally"; it follows a contrario that this Agreement does not apply to European arrest warrants where a legal challenge is still pending before the courts of the executing country after the transition period and the effective withdrawal of the United Kingdom from the European Union, i.e. on 1 January 2021; accordingly, the Cour de cassation (Court of Cassation) can only find that the contested ruling is therefore deprived of any legal basis;

2° the following question should be referred to the Court of Justice of the European Union for a preliminary ruling: Does Article 62 of the Agreement of 12 November 2019 on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, which provides that the European arrest warrant mechanism only applies to persons arrested before the end of the transition period, irrespective of the decision of the executing judicial authority as to the continued detention or provisional release of the person sought, extend to persons who have contested the European arrest warrant before the executing country and whose proceedings are still pending after 00:00 on 1 January 2021, the date of the end of the transition period and the effective withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community?

5° Under the terms of Article 695-22-1 of the Code of Criminal Procedure, surrender must be refused for the execution of a sentence pronounced at a trial at which the person concerned failed to appear, unless he or she was informed in a legal manner and effectively of the date and place of the trial; the issuing authority did not indicate in the European arrest warrant the conditions under which the prior information concerning the date and place of the trial and the right to representation by a lawyer had been provided; nor is the ruling under appeal any more specific, simply stating that Mr. X.. X... had been "informed of the trial" and that he had given "a mandate to a counsel who effectively defended him"; such statements fail to meet the specific requirements of the European arrest warrant, which necessitates compliance with a strict procedure; in nevertheless granting Mr. X...'s surrender to the British authorities, the investigating chamber infringed Article 695-22-1 of the Code of Criminal Procedure;

6° under the terms of Article 695-22-1 of the Code of Criminal Procedure, the execution of a European arrest warrant must be refused when the person concerned has not been served with the decision pronouncing the sentence and has not been expressly informed of his right to lodge an appeal against it for the purposes of obtaining a new examination of the case on the merits in his or her presence by a court which has the power to take a decision to set aside or replace the original decision, unless he or she has expressly indicated that he or she does not contest the original decision; that in granting the surrender of Mr. X... to the British authorities without examining, if necessary by means of additional information,

whether Mr X... had been informed of the ruling and the time limits and remedies available to him nor whether he had actually been given the opportunity to challenge the decision taken in his absence, the investigating chamber did not justify its decision in light of Article 695-22-1 of the Criminal Procedure Code. "

Court's response

On the first and second parts of the plea

7. Under Article 62 of the Agreement of 12 November 2019 on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 17 October 2019: "*1. In the United Kingdom, as well as in the Member States in the case of situations involving the United Kingdom, the following acts shall apply as follows: (...) (b) Council Framework Decision 2002/584/JHA shall apply in respect of European arrest warrants where the person sought has been arrested before the end of the transition period for the purpose of executing a European arrest warrant, irrespective of the decision of the executing judicial authority as to the continued detention or provisional release of the person sought(...)*".

8. Article 62 literally only makes the application of Framework Decision 2002/584/JHA subject to the condition that the person sought has been arrested before the end of the transition period for the execution of the European arrest warrant.

9. It does distinguish whether the proceedings were completed before that date or are still ongoing at that time.

10. It clearly follows that where the person sought has been arrested before the end of the transition period, *i.e.* at midnight on 31 December 2020, for the purpose of executing a European arrest warrant issued by the United Kingdom judicial authorities, the execution of that warrant remains governed by the rules of Council Framework Decision 2002/584/JHA, regardless of whether a challenge is still pending before the courts of the executing State after that date.

11. This solution must also prevail in view of the objective pursued by the Withdrawal Agreement of ensuring legal certainty in relations between the Member States and the United Kingdom after the withdrawal of that State, which requires that pending legal proceedings initiated during the transition period in the executing State may be completed in accordance with the rules governing Union law, even after the end of that period.

12. It follows that the correct application of Article 62 of the Withdrawal Agreement, dictated by both a literal reading and a reading as to its objectives, is so obvious as to leave no room for reasonable doubt, and there is no need to refer a question to the Court of Justice of the European Union for a preliminary ruling.

13. In this case, Mr X was arrested on 16 November 2020, *i.e.* before the end of the transition period.

14. Accordingly, the investigating chamber correctly applied Council Framework Decision 2002/584/JHA and the provisions of Articles 695-11 et seq. of the Code of Criminal Procedure.

15. Consequently, the plea must be dismissed.

On the fifth and sixth parts of the plea

16. In ordering the surrender to the United Kingdom judicial authorities of Mr X., who was absent from his trial and who maintained that he had not given a mandate to Mr Y. to represent him at the trial, the ruling states that the United Kingdom authorities had expressly indicated in the arrest warrant that Mr X, having been duly informed of the scheduled trial, had given a mandate to his counsel to represent him at the trial, and that the latter had in fact defended him.

17. The judges add that it is clear from the evidence provided by the United Kingdom judicial authorities, and in particular from an e-mail of 15 December 2015, that, in the event that he was unable to appear in person, Mr X... had indeed given a representation mandate to the counsel who defended him at the trial resulting in a forty-two month prison sentence being passed upon him.

18. In so ruling, the investigating chamber, which correctly applied Article 695-22-1, 2° of the Code of Criminal Procedure and did not have to ascertain whether the person in question fell into the other categories provided for by that Article, justified its decision.

19. It follows that the pleas cannot be accepted.

ON THESE GROUNDS, the Court:

DISMISSES the appeal

President: Mr Soulard

Reporting Judge: Ms Labrousse

Advocate General: Mr Quintard

Lawyers: SARL Cabinet Briard