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Court of Justice of the European Communities

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Judgment in Case C-123/08

Dominic Wolzenburg

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## **Netherlands legislation may provide for different treatment of Netherlands nationals and nationals of other Member States with regard to execution of a European arrest warrant**

The Framework Decision on the European arrest warrant<sup>1</sup> provides that Member States are, in principle, obliged to act upon a European arrest warrant. Nevertheless, in certain situations, the executing judicial authority may refuse to surrender a requested person.

The Netherlands legislation implementing that Framework Decision provides that the surrender of a Netherlands national for the purposes of execution of a custodial sentence imposed by final judicial decision will be refused. However, for nationals of other Member States, such a refusal is subject to the condition that they have lawfully resided in the Netherlands for a continuous period of five years and that they are in possession of a residence permit of indefinite duration.

Dominic Wolzenburg, a German national, was given a suspended custodial sentence of one year and nine months in respect of a number of offences. After he had left Germany to live in the Netherlands, the German court decided to revoke the conditional suspension of the sentence on the ground that Mr Wolzenburg had infringed the conditions under which he benefited from that suspension. Accordingly, the German issuing judicial authority issued a European arrest warrant against him and requested the Netherlands executing judicial authority to surrender Mr Wolzenburg for the purpose of enforcing the now final custodial sentence.

In essence, the Netherlands court seeks a ruling from the Court of Justice concerning the compatibility with Union law of national legislation which provides for different treatment of Netherlands nationals and nationals of other Member States with regard to refusal to execute a European arrest warrant.

First of all, the Court recalls that, in accordance with the Directive on residence of citizens of the Union<sup>2</sup>, such citizens who have resided legally for a continuous period of five years in the host Member State are to have the right of permanent residence there. The Directive, while allowing citizens of the Union to apply for a document attesting to their permanent residence in the host Member State, does not require such a formality. Consequently, the Court rules that **the Member State of execution cannot, in addition to a condition as to the duration of residence in that State, make application of the ground for non-execution of a European arrest warrant subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration.**

Next, the Court examines, on the basis of Article 12 EC (the principle of non-discrimination) the compatibility of the Netherlands legislation which provides for nationals of other Member States who have not resided for a period of five years in its territory to be treated differently from its own nationals.

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<sup>1</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, p. 1).

<sup>2</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, p. 77).

The Court recalls that the European arrest warrant is based on the principle of mutual recognition and that although, generally, Member States are obliged to act on a request issued by a judicial authority of another Member State, they nevertheless retain, when implementing the grounds for optional non-execution, a certain margin of discretion.

To be compatible with Community law, a difference in treatment based on nationality must be objectively justified, proportionate to the objective pursued and must not go beyond what is necessary to achieve that objective.

The Court considers that the ground for optional non-execution has in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him expires. The Member State of execution is therefore entitled to pursue such an objective only in respect of persons who have demonstrated a certain degree of integration in the society of that Member State. In the present case, the single condition based on nationality for its own nationals, on the one hand, and the condition of residence of a continuous period of five years for nationals of other Member States, on the other, may be regarded as being such as to ensure that the requested person is sufficiently integrated in the Member State of execution.

Furthermore, the Court considers that a condition requiring residence for a continuous period of five years for nationals of other Member States cannot be considered to be excessive having regard, in particular, to the requirements of integration.

The Court points out in that regard that Community legislation on the right of residence has expressly laid down the condition of residence for a continuous period of five years as precisely the length of time beyond which citizens of the Union acquire a permanent right of residence in the host Member State. Next, it finds that a requirement for residence such as that provided for by the national legislation in question, does not go beyond what is necessary to attain the objective of ensuring that persons who are nationals of other Member States achieve a degree of actual integration in the Member State of execution.

The Court concludes that **Article 12 EC (the principle of non-discrimination) does not preclude the legislation of a Member State of execution under which the competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, whilst such a refusal is, in the case of a national of another Member State having a right of residence as a citizen of the Union, subject to the condition that the person has lawfully resided for a continuous period of five years in that Member State of execution.**

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**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 Community law or the validity of a Community 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 the same issue is raised.

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