



The Belgian authorities' refusal to extradite a murder suspect to Spain lacked a sufficient factual basis

In today's **Chamber** judgment¹ in the case of **Romeo Castaño v. Belgium** (application no. 8351/17) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights under its procedural aspect (effective investigation).

In this case the applicants complained that their right to an effective investigation had been breached as a result of the Belgian authorities' refusal to execute the European arrest warrants issued by Spain in respect of N.J.E., the individual suspected of shooting their father, Lieutenant Colonel Ramón Romeo, who was murdered in 1981 by a commando unit claiming to belong to the terrorist organisation ETA. The Belgian courts had held that N.J.E.'s extradition would infringe her fundamental rights under Article 3 of the Convention.

The Court observed that a risk to the person whose surrender was requested of being subjected to inhuman or degrading treatment could constitute a legitimate ground for refusing to execute a European arrest warrant and thus for refusing the cooperation requested. However, the finding that such a risk existed had to have a sufficient factual basis.

The Court held, in particular, that the scrutiny performed by the Belgian courts during the surrender proceedings had not been sufficiently thorough for the Court to find that the ground they relied on in refusing to surrender N.J.E., to the detriment of the applicants' rights, had had a sufficient factual basis. Among other things, the Belgian authorities had not sought to identify a real and individual risk of a violation of N.J.E.'s Convention rights or any structural shortcomings with regard to conditions of detention in Spain.

However, the Court stressed that the finding of a violation did not necessarily imply that Belgium was required to surrender N.J.E. to the Spanish authorities. It was the lack of sufficient factual support for the refusal to surrender her that had led the Court to find a violation of Article 2. That in no way lessened the obligation for the Belgian authorities to verify that N.J.E. would not run a risk of treatment contrary to Article 3 of the Convention if she were surrendered to the Spanish authorities.

Principal facts

The applicants are five Spanish nationals who were born between 1959 and 1964 and live in Spain. They are the children of Lieutenant Colonel Ramón Romeo, who was murdered in Bilbao in 1981 by a commando unit claiming to belong to the terrorist organisation ETA.

In 2004 and 2005 a Spanish judge of the *Audiencia Nacional* issued two European arrest warrants in respect of N.J.E., a Spanish national of Basque origin suspected of shooting the applicants' father.

In 2013 N.J.E., who was in Belgium, was placed in detention by an investigating judge of the Ghent Court of First Instance. A few days later the Committals Division of the same court declared the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

arrest warrants to be enforceable. However, on appeal, the Indictments Division refused execution of the warrants, finding that there were substantial reasons to believe that execution would infringe N.J.E.'s fundamental rights. N.J.E. was released. The Federal Prosecutor's Office lodged an appeal on points of law which was dismissed by the Court of Cassation.

In 2015 an investigating judge of the *Audiencia Nacional* issued a new European arrest warrant in respect of N.J.E. The Belgian authorities refused to execute it on the same grounds as before.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 2 (right to life) of the European Convention on Human Rights, the applicants alleged that the decision of the Belgian authorities not to execute the European arrest warrants was preventing the Spanish authorities from prosecuting the suspected perpetrator of their father's murder.

The application was lodged with the European Court of Human Rights on 16 January 2017.

The Spanish Government exercised their right to intervene. Observations were also received from N.J.E. and from the association *Colectivo de víctimas del terrorismo* ("COVITE"), both of whom had been given leave to intervene as third parties in the written procedure.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Paul **Lemmens** (Belgium),
Julia **Laffranque** (Estonia),
Valeriu **Grițco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),
Darian **Pavli** (Albania),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 2 (right to life)

Spain had requested Belgium's cooperation in the context of the Framework Decision on the European arrest warrant². In that regard, the Court considered that it should examine (1) whether the Belgian authorities had responded properly to the request for cooperation, and (2) whether the refusal to cooperate had been based on legitimate grounds.

As to the first question, the Court observed that the Belgian authorities had provided their Spanish counterparts with a properly reasoned response.

In 2013 the Belgian Court of Cassation had held that the refusal to execute the European arrest warrants had been legally justified because of the risk that N.J.E.'s fundamental rights would be infringed in the event of her surrender to Spain, and in particular the risk that she would be detained in conditions contrary to Article 3 of the Convention. In 2016 the Indictments Division had found that the fresh information relied on in the new arrest warrant did not lead to a different assessment, and that the earlier assessment had in fact been confirmed by the observations issued by the United Nations Human Rights Committee in 2015 (the Committee's sixth periodic report on Spain, which, among other things, urged the Spanish authorities to put an end to incommunicado detention).

² Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant.

The Court therefore considered that the approach taken by the Belgian courts was compatible with the principles set out by the Court in its judgment in *Pirozzi v. Belgium*³, according to which, in the context of execution of a European arrest warrant by a European Union member State, the mutual recognition mechanism should not be applied automatically and mechanically to the detriment of fundamental rights.

As to the second question, the Court emphasised that a risk to the person whose surrender was requested of being subjected to inhuman or degrading treatment on account of the conditions of detention in Spain could constitute a legitimate ground for refusing to execute the European arrest warrant and thus for refusing cooperation with Spain. Nevertheless, the finding that such a risk existed had to have a sufficient factual basis, in view also of the presence of third-party rights. In that regard the Court made the following observations.

In 2013 the Indictments Division had based its decision mainly on international reports and on the context of “Spain’s contemporary political history”. It had also referred to the report prepared following the CPT’s⁴ periodic visit in 2011. In 2016, despite the information provided in support of the European arrest warrant issued on 8 May 2015, particularly regarding the characteristics of *incommunicado* detention, the Indictments Division had found that the information received did not enable it to depart from the assessment it had made in 2013, but had not conducted a detailed, updated examination of the situation as it applied in 2016. Likewise, it had not sought to identify a real and individual risk of a violation of N.J.E.’s Convention rights or any structural shortcomings with regard to conditions of detention in Spain. Furthermore, the Belgian authorities had not availed themselves of the possibility under Belgian law (section 15 of the European Arrest Warrant Act) to request further information concerning the application of the prison regime in N.J.E.’s case, and in particular concerning the place and conditions of detention, in order to verify whether her surrender would entail a real and concrete risk of a violation of the Convention. Consequently, the scrutiny performed by the Belgian courts during the surrender proceedings had not been sufficiently thorough for the Court to find that the ground they relied on in refusing N.J.E.’s surrender, to the detriment of the applicants’ rights, had had a sufficient factual basis. Accordingly, Belgium had failed in its obligation to cooperate arising out of the procedural aspect of Article 2 of the Convention. There had therefore been a violation of that provision.

However, the Court stressed that the finding of a violation did not necessarily imply that Belgium was required to surrender N.J.E. to the Spanish authorities. It was the lack of sufficient factual basis for the refusal to surrender her that had led the Court to find a violation of Article 2. That in no way lessened the obligation for the Belgian authorities to verify that N.J.E. would not run a risk of treatment contrary to Article 3 of the Convention if she were surrendered to the Spanish authorities. More generally, the Court’s judgment could not be construed as diminishing States’ obligation to refrain from extraditing a person to a requesting country where there were substantial reasons for believing that the person concerned, if extradited to that country, would run a real risk of being subjected there to treatment contrary to Article 3, and hence to verify that no such risk existed.

Just satisfaction (Article 41)

The Court held that Belgium was to pay the applicants 5,000 euros (EUR) each in respect of non-pecuniary damage and EUR 7,260 jointly in respect of costs and expenses.

Separate opinion

Judge Spano expressed a concurring opinion, joined by Judge Pavli.

³ *Pirozzi v. Belgium*, no. 21055/11, 17 April 2018.

⁴ European Committee for the Prevention of Torture.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.