Stream

Strengthening Trust in the European Criminal Justice Area through Mutual Recognition and the Streamlined Application of the European Arrest Warrant

Periodic Country Report: Spain

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Introduction

Spain was the first Member State in EU to implement the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (hereinafter FWD EAW). The FWD EAW was transposed in the Spanish legal system through Law 3/2003 of 14 March on the European Arrest Warrant and Surrender (*Orden Europea de Detención y Entrega* or LOEDE). The development of significant EAW-related case-law by national courts, joint with the idea to provide a codified regulation related to surrender, led the Spanish legislator to repeal Law 3/2003, which has in fact been substituted by Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union (*Ley 23/2014 de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea* or LRM).

Cooperation under the EAW has given rise to an abundant jurisprudence in Spain. Judicial practice has concentrated on the conditions for executing EAWs issued by other EU member states, and on the application of national law transposing the EAW FD in light of the interpretation given to the latter by Court of Justice of the European Union. More recently, important case-law related to the use of the EAW has emerged on issues that are specific to Spain. One of these is the thorniest case, still to be solved, related to the EAWs issued by Spain to obtain the surrender of Carles Puigdemont. Other case-law recently arisen in Spain relates to the postponement of EAWs execution due to the new coronavirus pandemic.

This report deals with judicial decisions pronounced by Spanish superior and ordinary courts. First, judgments pronounced by Constitutional Court solving defence appeal (*recurso de amparo*) promoted by applicant, i.e. the requested person as last resource arguing the violation of fundamental rights regulated after the dismissal of prior appeals (cassation included) according to Articles 53 (2) and 163 (1) (b) Spanish Constitution 1978.

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Second, judgments pronounced by Supreme Court solving appeals in cassation filed by same requested person as extraordinary appeal according to Articles 847 *et seq.* LECrim. Third, orders in first instance solving EAW proceedings in both categories, i.e., issuing and executing judicial authorities.

In this last context, here a sort of decentralized criterium operates by contrast to the centralized criterium that governs the EAW's execution; (Jimeno-Bulnes, M. *et al.,* 2021, p. 71); i.e., all Spanish judicial authorities are the appropriate judges for the issuance and transmission of an EAW but only specific Spanish judicial authorities located in Madrid as they are the Central Judge of the Investigative or Central Judge of Minors if EAW concerns a minor (i.e., requested person is under 18 years old) can execute an EAW; according to present Article 35 LRM. Against this order pronounced by any of these Central Judges appeal before the Criminal Chamber of National Court is contemplated according to ordinary procedural rules contained in prior Articles 216 *et seq.* LECrim and now explicitly in Article 51 (8) LRM. Also it must be clarified than according to prior regulation contained in Article 18 LOEDE appropriate EAW executing judicial authorities with competence in first instance were both: Central Judge of the Investigative (*Juez Central de Instrucción*) if the requested person consented the surrender and Criminal Chamber of the National Court (*Sala de lo Penal de la Audiencia Nacional*) if there was not such consent.

Section I – Issuing of EAWs: rule of law and fundamental rights considerations

The scant Spanish jurisprudence related to EAW issuance in Spain results from different appeals against decision ordering the issuing of EAWs according to the general rule provided in Article 24 LRM. Such provision applies to all mutual recognition instruments, and refers to the ordinary criminal procedural law, most notably the Criminal Procedure Act (*Ley de Enjuiciamiento Criminal* or LECrim). In this context, general rules regulated in Articles 216 et seq LECrim must be applied. They foresee various types of legal remedies such as "the reform appeal, appeal and complaint appeal" (*recurso de reforma*, *de apelación y de queja*). These remedies are available in concrete against both types of decisions (i.e. positive and negative) resolving requests related to mutual recognition instruments by Spanish judicial authorities. After that only cassation before Supreme Court and defence appeal before the Constitutional Court would be possible against prior judicial decisions delivered by ordinary courts, which are unfavourable to the requested person, in both cases the applicant.

I.1. Independence of the issuing authority

In Spain, only judges and courts are recognized as judicial authorities in order to issue an EAW (prior Article 2 (1) LOEDE, and present Article 35 (1) LRM). This is generally the rule in Spain for the issuance of all mutual recognition instruments in criminal matters with exception of the European Investigation Order (henceforth EIO), which issuance can take also place by prosecutors when the EIO does not include any measure restricting fundamental rights (Art. 187 LRM). In concrete, the issuance of an EAW is a responsibility of "the Judge or Court hearing the case in which such orders are appropriate". Currently the appropriate judicial authority to issue an EAW in Spain is the Examining Magistrate or Judge of the Investigative, with the specific exception of the Judge of Violence against Women, who deals with the investigation of causes related to gender violence.

Judicial practice in Spain has not dealt with specific questions related to the concept of 'issuing judicial authority' under Spanish law, nor has this specific issue given rise to any pronouncements. Contrary to other Member States, independence has not been contested (neither in Spain nor in Luxembourg) in relation to Spanish judges and courts acting as issuing judicial authorities. In general, there is not extensive case-law in Spain related to the question of EAW issuance by Spanish judicial authorities nor to rule of law and fundamental rights considerations affecting this phase of the EAW procedure in Spain. A significant exception is represented by the questions concerning different aspects of EAW issuance by Spain's authorities in the well-known *Puigdemont* case.; in this case the Spanish judicial system at a whole is challenged by the national executing judicial authorities in Belgium as a matter of domestic issue (see Belgian report). Nevertheless, the *Puigdemont* case is exposed concerning the specific Spanish background before Spanish issuing judicial authorities.

The case has an obvious political character, since it relates to the claims of independence by the Spanish region of Catalunya (König, Meichelbek & Puchta, 2021). The case, which has been commented by many scholars both in Spain and abroad (Arroyo Zapatero et al., 2018; Labayle, 2018; Various Authors, 2018) has also to some extent affected bilateral judicial cooperation between Spain and other Member States provoking a sort of 'crisis

of confidence' (Baum 2021). This is the situation especially with Belgium, to the extent that a Spanish liaison magistrate has just been appointed in this country[1] with the idea of facilitating judicial cooperation with Spain.

Carles Puigdemont, at the time President of the Catalonian Government, and seven members of the same Catalonian Government (*consellers,* in Catalan) fled to Belgium on 29 October 2017. Consequently, the Central Judge of the Investigative No. 3 in Madrid, Carmen Lamela Díaz, issued an EAW as well as an International Arrest Warrant against Carles Puigdemont Casamajó on 3 November 2017[2] under the accusation of different crimes such as rebellion, insurrection, embezzlement, perversion of justice and disobedience. Due to *privilegium fori* (*aforamiento*) by the requested persons, the cause was transferred to the Criminal Chamber of the Supreme Court. After such transfer, the appropriate magistrate instructor of the case in the Supreme Court (Pablo Llarena Conde) removed the EAW against Puigdemont and his *consellers* leaving only the effects of the International Arrest Warrant by Order pronounced on 5 December 2017[3].

The problem is that most of the mentioned offences for which the EAW has been issued are out of the list of the 32 offences for which the exemption of double criminality requirement operate according to Article 2 (2) FWD EAW. In case of EAWs issued for such offences, each Member State decides if double criminality is required or not. In this regard, it should be pointed that Article 5(1) of the Belgian legislation implementing the EAW on 19 December 2003 (*Loi relative au mandate d' arrêt européen*) establishes such double criminality requirement as a general rule for offences that do not fall within the above-mentioned list of 32 'euro-offences'. According to the Belgian Criminal Code, surrender of Mr Puigdemont could only take place on the basis of the embezzlement crime, as contained under the concept of corruption listed in prior Article 2 (2) FWD EAW (Muñoz de Morales, 2017, p. 8). From the perspective of the Spanish prosecuting authorities, this solution would however be unjust in relation to those suspected politicians, who did not escape from justice and have been judged for the total list of offenses previously mentioned and whose final judgment was delivered last 14 December 2019[4].

The moving of Carles Puigdemont to Germany led the Supreme Court to reactivate the EAW on 23 March 2018,[5] an action reinforced with an informal letter addressed by the magistrate instructor to the appropriate German Prosecution Office in order to inform to the executing judicial authority about the background of the case.[6] Nevertheless, the resolution by the *Schleswig-Holsteinisches Oberlandesgericht* on 5 April 2018[7] declared again that only the embezzlement offence could lead to surrender, insofar Art. 81 (4) *Europäisches*

[1] Order JUS/216/2021, of 1 March, appointing Paloma Conde-Pumpido García as liaison magistrate before the corresponding competent authorities of the Kingdom of Belgium, with accreditation in the Kingdom of the Netherlands and the Grand Duchy of Luxembourg, Spanish Official Journal No. 59, 10.3.2021, p. 27665.

[2] Central Judge of the Investigative No. 3, order of 3 November 2017, ECLI:ES:AN:2017:1326A.

[3] Supreme Court, Criminal Chamber, order of 5 December 2017, ECLI:ES:TS:2017:11325A.

[4] Supreme Court, Criminal Chamber, judgment of 14 December 2019, No. 459/2019, ECLI:ES:TS:2019:2997. The Supreme Court convicted the defendants with different penalties depending on their participation, as perpetrators of a crime of sedition, for another of embezzlement of public funds in medial concurrence with that of sedition, for another crime of disobedience and medially with that of sedition, for another crime of disobedience, and acquitted them of the crimes of rebellion and criminal organisation.

[5] Supreme Court, Criminal Chamber, order of 23 March 2018, ECLI:ES:TS:2018:14479A.

[6] Letter written by Pablo Llarena Conde to Mrs. Führer, *Oberstäatsanwältin in Generalstaatsanwaltschaft des Landes Schleswig-Holstein*, on 17 May 2018 (www.ara.cat/2018/05/17/Carta_Alemania.pdf).

[7] *Schleswig-Holsteinisches Oberlandesgericht,* 1. *Strafsenat*, judgment of 5 April 2018, 1 Ausl (A) 18/18 (20/18), ECLI:DE:OLGSH:2018:0405.1AUSL.A18.18.20.1.00.

Haftbefehlsgesetzt or EuHbG also contemplates as general rule the requirement of the double criminality in order to proceed with same exception of the list of 32 'euro-offences'. Again, dissenting voices emerged, especially in Spain, with varying degrees of support for the German position (Javato Martin, 2018; Muñoz de Morales, 2018; Nieva Fenoll, 2018). At the end, the Spanish Supreme Court as issuing judicial authority removed once more EAW. It also issued an International Arrest Warrant against Carles Puigdemont and his *consellers* by Order pronounced on 19 July 2018[8] arguing the lack of mutual trust shown by the executing judicial authority.

Following the numerous court rulings in the case at hand with regard to the specific issuance of EAWs, a preliminary ruling is currently pending before the CJEU from the same examining magistrate, Pablo Llarena Conde, promoted by order of 9 March 2021.[9] At the time of writing no decision by CJEU has yet taken place but preliminary ruling with specific questions promoted by judge Pablo Llarena Conde is available on the CJEU website[10]. In his resolution and after a long prolegomenon on the background of the case, the Spanish magistrate raises 7 questions for a preliminary ruling in relation to the powers of the respective issuing and executing judicial authorities respect of the functioning of the EAW. The applicant also requests that the present application be dealt with under the expedited preliminary ruling procedure, in accordance with Articles 105 and 106 of the Rules of Procedure of the Court of Justice, issue to be solved in first place. Decision on this second question is also still pending.

I.2. Proportionality

Questions related to the assessment of proportionality have not been specifically dealt by judges and courts in Spain nor relevant problems have been emerged. No specific mention to his requirement is contained in Spanish EAW Law (neither it is in FWD EAW), by contrast to pieces of national legislation transposing other mutual recognition instruments such as, for instance, the EIO case (see Article 189 (1) LRM). A general mention to proportionality is included in the LRM Preamble, in line with the new legislation's purpose to reinforce legal guarantees in surrender proceedings.[11] In any case, the principle of proportionality must always be observed with consideration to specific circumstances of the case as it is mentioned in EAW Handbook[12]. The CJEU has considered the principle of proportionality in its first judgment on the EAW as exposed in the Opinion of the Advocate General Ruiz-Jarabo Colomer on the *Advocaten voor de Wereld* case,[13] in order to protect the rights

[8] Supreme Court, Criminal Chamber, order of 19 July 2018, ECLI:ES:TS:2018:8477A.

[9] Supreme Court, Criminal Chamber, order of 9 March 2021, ECLI:ES:TS:2021:2544A.

[10] Puig Gordi and Others, case C-158/21, available at https://curia.europa.eu/juris/recherche.jsf?language=en (search form, English language), including corrigendum by Supreme Court Order of 16 April 2021.

[11] In concrete, Section VI LRM Preamble: "This has resulted in a reinforcement of the legal guarantees, especially with the introduction of the criteria of proportionality" (official translation provided at the time by the Spanish Ministry of Justice, no more available).

[12] "a) The seriousness of the offence (for example, the harm or danger it has caused); b) The likely penalty imposed if the person is found guilty of the alleged offence (for example, whether it would be a custodial sentence; c) The likehood of detention of the person in the issuing Member State after surrender; d) The interests of the victims of the offence" (Commission Notice, Handbook on how to issue and execute a European arrest warrant, OJ C 335, 6.10.17, pp. 1-83, at p. 15, para. 2.4.).

[13] Advocate-General Ruiz-Jarabo Colomer, opinion delivered on 12 September 2006, ECLI:EU:C:2006:502, para. 69, textually: "Framework Decision 2002/584 concerns the rights of an individual who is the subject of an arrest warrant and specifically sets out the objective of protecting fundamental rights. In points 18 and 24 of this Opinion, I referred to that objective of the Framework Decision, an example of a move towards cooperation in criminal matters which transcends the merely bilateral relationship between States and takes account of a third dimension, namely the rights of the individual concerned". CJEU, judgment of 3 May 2007, *Advocaten voor de Wereld VZW,* C-303/05, ECLI:EU:C:2007:261

of the individual concerned (Van Ballegooij, 2009, p. 89). As some scholars with expertise on the field of Philosophy of Law have argued, the principle of proportionality is a general principle of law, which, “in the field of human rights protection… it is a limit to public interventions that limit the exercise of human rights” (Carretero Sánchez, 2021, p. 1).

I.3. Speciality rule

The specialty rule has been the object of several judgments of the Court of Justice of the European Union (CJEU), including for instance the well-known *Leymann and Pustarov* case[14]. Here the CJEU established precise criteria to determine if the offence under consideration is an ‘offence other’ than the one for which the person was surrendered within the meaning of Article 27 (2) FWD EAW[15]. In Spain, the discussion on this specific issue was dealt by superior courts, the Supreme and Constitutional Courts most notably, after ordinary and extraordinary appeals were promoted by the defendant.

In terms of Spanish jurisprudence, it is worth noting the Supreme Court judgment No. 188/2010 of 11 March 2010,[16] where the argument of the applicant according to which the specialty rule has been violated was dismissed, because “the content of the arrest warrant does not depend on a precise and strict account of the facts alleged as these may, depending on the evidence, be modified within certain limits” (ground 8.3.2). The judgment on cassation upheld the conviction judgment (which had been delivered by the Criminal Chamber of National Court on 16 July 16, 2009) due to other reasons (it rejected the alleged violation of the fundamental right to presumption of innocence contemplated explicitly in Article 24 (2) Spanish Constitution).

The appellant, member with others of Basque terrorist organization ETA (*Euskadi Ta Askatasuna*), was surrendered from France pursuant to an EAW issued by the Central Judge of the Investigative No. 2 in Madrid on the basis of offenses described as “participation in a criminal organization” and “terrorism” (Articles 2 (2) FWD EAW, and 9 (1) LOEDE enforced at the time in Spain). The applicant complained that the condemnation by the Spanish National Court took place for facts other than those contained in the specific EAW executed by the Appeal Court in Pau on 26 February 2008, and thus claimed the existence of a violation of the specialty rule as regulated in European and domestic law. But the Supreme Court stated that “The facts are no different, since reference is made to collaboration with terrorist organisations, in which it would be indifferent, as provided for in art. 576 C.P., whether it is concealing and facilitating the escape of their members or gathering and transmitting information to the terrorist group on targets for committing attacks. In any case, the imputation or qualification of the case is referring to that conduct, restricted to that place and that date, which avoids any fraud, or in other words, it can be clearl stated that if the facts for which he was accused and convicted had been included in the surrender order, the surrender would have taken place just the same".” (ground 8.3.3). The Supreme Court arrived to similar conclusions on judgment No. 263/2010 of 19 March[17]

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[14] CJEU, judgment of 1 December 2008, *Leymann and Pustarov*, C-388/08, ECLI:EU:C:2008:669.

[15] In sum, the CJEU indicated that some modifications of the offence such as described by the issuing Member State are allowed when they “do not alter the nature of the offence and do not lead to grounds for non-execution according to Articles 3 and 4 of the Framework Decision” (ruling 1). Otherwise, consent by the surrendered person must be requested. In relation to specific case tackled in the main proceedings, the CJEU considered that “a modification of the description of the offence concerning the kind of narcotics concerned is not such, of itself, as to define an ‘offence other’ than that for which the person was surrendered within the meaning of Article 27 (2) of Framework Decision 2002/584” (ruling 2).

[16] Supreme Court, Criminal Chamber, judgment of 11 March 2010, No. 188/2010, ECLI:ES:TS:2010:1551.

[17] Supreme Court, Criminal Chamber, judgment of 19 March 2010, No. 263/2010, ECLI:ES:TS:2010:1705.

(among others) also refusing the appeal in cassation in relation to a swindling and forgery offenses. Here, the condemnation took place by judgment of Provincial Court of Málaga on 5 March 2009 and the EAW was issued by the Judge of the Investigative No. 3 of Marbella.

A more recent case concerning the application of specialty rule is judgment No. 598/2020 of 12 November,[18] where Supreme Court also dismissed the appeal in cassation in relation to a jury trial where the EAW was issued by judicial authorities in Valencia and executed by Portugal. Here the question was related to a murder offence which had been classified as manslaughter in the EAW by mistake. For this reason, the Supreme Court concluded that "the principle of speciality is that a person surrendered on the basis of an arrest warrant may not be prosecuted, convicted or deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he was surrendered. And this has not been infringed, nor has it been infringed in the punitive limit, which does not exceed the claim made. The penalty imposed is within the permissible penal framework in relation to the order issued, as stated above" (ground 3.5.III).

[18] Supreme Court, Criminal Chamber, judgment of 12 November 2020, No. 598/2020, ECLI:ES:TS:2020:3665

Section II – The execution of EAWs: national judicial authorities as monitors of trust

The Spanish law transposing the EAW does not contemplate specifically the violation of fundamental rights as cause for refusal to execute an EAW. In fact, prior LOEDE did not include any reference to the protection of fundamental rights by contrast to other national law implementing the EAW (Jimeno-Bulnes, 2007, p. 291). Today a general provision contained in Article 3 LRM expressly declares that "this Act shall be applied respecting the fundamental rights and liberties and the principles set forth in the Spanish Constitution, in Article 6 of the Treaty on the European Union and the Charter of Fundamental Rights of the European Union, and in the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe of 4 November". This legal provision is thus in line with the content of the Recital 12 FWD EAW.

In general Spain is a very cooperative country in terms of judicial cooperation in criminal matters. With the notable exception of the constitutional jurisprudence related to *in absentia* judgments and *res iudicata,* there is not a great deal of case-law concerning exceptions to the execution of EAWs. A reason for this lack of discussion and jurisprudence related to the EAW execution procedure was the absence of appeal against surrender decision by the requested person in prior Article 18 LOEDE (Jimeno-Bulnes, 2009, pp. 271 *et seq*.). Such absence provoked an overload of work before the Spanish Constitutional Court in the face of filing of defence appeals (*recursos de amparo*) as an extraordinary remedy for the violation of fundamental rights based on the right of second instance implicitly contained in Article 24 (2) Spanish Constitution. On the contrary now Article 51 (8) LRM explicitly contemplates "a remedy of appeal" before the Criminal Chamber of National Court against the order on surrender decision delivered by the Central Judge of the Investigative, who is the competent judicial authority in Spain for EAW execution according to Article 35 (2) LRM as above said. Also it was then explained that under Article 18 LOEDE the competence for executing EAW in Spain was shared between the Central Judge of the Investigative if there was consent to surrender by the requested person and the Criminal Chamber of National Court if there was not, in both cases in first instance EAW proceedings. Today, the Central Judge of the Investigative is the only authority to be competent to deal with EAW proceedings in the first instance. The National Court only operates in second instance as appeal court according to Article 51 (8) LRM.

II.1. Grounds of refusal

In relation to grounds of refusal to execute an EAW, the distinction between mandatory non-execution and optional non-execution grounds is specifically addressed in Article 48 LRM; here the regulation of the *non bis in idem* clause (*res iudicata*) as mandatory ground for non-execution of EAW in Article 48 (1) LRM, joint with the minority of criminal age and pardon clauses is included. It should also be mentioned that Article 48 (2) LRM numerates as optional grounds for non-execution of EAW the causes of *litispendentia*, Spanish nationality or legal residence and extraterritoriality with some national case-law related to some of them. Finally, Article 49 LRM foresees the refusal of execution of an EAW based on judgments delivered *in absentia* as additional cause with optional character, in this case giving place to great controversy and case-law due to the lack of specific regulation in prior Spanish EAW legislation as immediately exposed.

In addition, general reasons to refuse execution of mutual recognition instruments are numerated in Articles 32 and 33 LRM. Nevertheless, some of the specific grounds specifically related to EAW execution reproduce the general ones addressed to general execution of mutual recognition instruments.

II.1.1. Decision taken in absentia

A key question that, throughout the years, has contributed to the development of Spanish jurisprudence in the implementation of the EAW is the one related to the execution of decisions rendered *in absentia*. The LOEDE did not implement the specific guarantee provided in the original version of Article 5(1) FWD EAW. This FWD EAW provision was amended by Council Framework Decision 2009/299/JHA of 26 February 2009[19]. The guarantee provided for in prior Article 5 (1) FWD EAW (and now content of Article 4a FWD EAW) refers to decisions rendered following a trial at which the person did not appear in person in the issuing Member State (i.e. decisions and/or trials *in absentia*) (Krapac, 2005). In fact, Spain is not the only Member State that omitted reference to such guarantee (the same approach was also adopted by Latvia, for instance). But the decision of Spain not to implement this specific guarantee is especially worth noting, as there was also a previous precedent in favour of the explicit regulation of such guarantee in Article 2 (3) Law 4/1985, of 21 March, on Passive Extradition. The absence of domestic regulation transposing *in absentia* guarantees is not the only question to have generated jurisprudential debate and litigation in the application of EAW in Spain.

It can be argued that there are reasons for this lack of specific regulation in relation to decisions taken *in absentia*. The focus is on Italy, a country with which Spain has a great deal of communication in judicial practice in the area of international judicial cooperation. A first, general reason, is the political desire to proceed with the surrender of persons declared guilty *in absentia* in Italy according to Italian national legislation although Italy does provide such guarantee (Jimeno-Bulnes, 2007, p. 289). In particular a specific bilateral agreement signed on 28 November 2000 between Spain and Italy as a sort of 'EAW background' aimed at enabling fast-track extradition procedures avoiding any reference to such *in absentia* judgments (Reverón Palenzuela, 2001; Rodriguez Sol, 2001). Legal silence on this point is even less justifiable in Spain (at a legal level, although it may be comprehensible in political terms) since there is previous abundant constitutional jurisprudence pronounced against judgments made in contumacy. Such jurisprudence specifically arose from appeals by Italian citizens against the extradition to Italy (Rey Martinez, 2001; Jimeno-Bulnes, 2006, p. 171)[20]

The Spanish Constitutional Court played a great role in relation to the enforcement of the *in absentia* guarantee contemplated in prior Article 5 (1) and now Article 4 a FWD EAW. There is a very important constitutional precedent in this respect, which is judgement No. 177/2006, of 5 June.[21] The judgement has major implications not only for the subject now under examination, which is the guarantee against *in absentia* convictions but also for its general consequences for the application of EU law in Spain by ordinary judges and courts (Jimeno-Bulnes, 2009, p. 269). In effect, the Constitutional Court upheld the Order of 14 July, 2005, of the Criminal Chamber of the National Court on the basis that there had been undoubtedly violation of the right of due

[19] Article 11 LOEDE instead expressly contemplated the other two guarantees set forth in present Articles 5(2) and (3) FWD EAW, related to assurances to be given by the judicial authority in the issuing Member State in particular cases.

[20] Especially relevant on this subject is the Constitutional Court judgment of 30 March 2000, No. 91/2000, ECLI:ES:TC:2000: 9, known as the *Paviglianiti* case.

[21] Constitutional Court, judgment of 5 June 2006, No. 177/2006, ECLI:ES:TC:2006:177

process guaranteed under Article 24 (2) Spanish Constitution. The violation derived from the EAW had been issued on the grounds of an *in absentia* conviction sentencing the requested Spanish citizen to a prison term of 20 years. The Spanish judicial authority executing the EAW issued by France had placed no conditional requirements in favour of the prescribed review of the conviction judgment (ground 7; De la Quadra-Salcedo Janini, 2006). The constitutional judgment applies the jurisprudential criteria established by the CJEU in the well-known *Pupino* case[22], albeit without any express reference to the latter (Irurzun Montoro & Mapelli Marchena, 2008, p. 27).

This constitutional precedent in relation to the protection against judgments delivered *in absentia* is confirmed by further constitutional case-law as they are, for example, judgments No. 37/2007 of 12 February[23] concerning same case and No. 199/2009 of 28 September[24]. Again Constitutional Court and National Court disagree in relation with fulfilment of judgments *in absentia* guarantee no specifically contemplated at the time for Spain in prior LOEDE as much as Constitutional Court recognizes such guarantee according to the application of general rule provided then in Article 5 (1) and now Article 4a FWD EAW (Rodriguez Horcajo, 2010); by contrast, that was not the attitude of National Court as said and for this reason its judgment. At present time question is solved with by Act 23/2014 of 20 November or LRM, whose Article 49 expressly regulates the "refusal of execution of a European arrest and surrender warrant due to it having been handed down in absentia".

Finally, it must be remembered that the most well-known constitutional case concerning EAW in Spain is the so-called *Melloni* case, judgment No. 26/2014 of 13 February[25], again considering the question of judgments *in absentia* but with reversal criterium. This case gave rise to the first preliminary ruling promoted by the Spanish Constitutional court. The request for preliminary ruling and the ensuing CJEU judgment on 26 February 2013[26] caused great controversy, and was the subject of comments and analysis in Spanish and foreign literature (as examples, Tinsley, 2012; Bachmaier Winter, 2015).

On basis of interpretation of Article 4a FWD EAW provided by the CJEU (in short, precluding the executing judicial authorities to review an EAW upon the conviction rendered *in absentia*), the Spanish Constitutional Court declared that "it does not violate the absolute content of the right to a trial with all guarantees (art. 24.2 CE) to impose a sentence without the appearance of the accused and without the subsequent possibility of correcting his lack of presence in the criminal proceedings followed, when the lack of appearance at the trial is proven to have been decided voluntarily and unequivocally by a duly summoned accused and he has been effectively defended by appointed counsel" (ground 4.XIII). In fact, the appellant had appointed two lawyers of his confidence to represent and defend him, who intervened in the first instance, in the appeal and in the cassation; for this reason, the Constitutional Court stated that the decision of the National Court to surrender the appellant to the Italian authorities without any conditions does not violate the right to a fair trial. The defence appeal was dismissed but several individual votes were casted against such decision, evidence of the great internal debate within the court itself. Nevertheless, this constitutional precedent is employed in further

[22] CJEU, judgment of 16 June 2005, *Pupino,* C-105/03, ECLI:EU:C:2005:386

[23] Constitutional Court, judgment of 12 February 2007, No. 37/2007, ECLI:ES:TC:2007:37

[24] Constitutional Court, judgment of 28 September 2009, No. 199/2009, ECLI:ES:TC:2009:199

[25] Constitutional Court, judgment of 13 February 2014, No. 26/2014, ECLI:ES:TC:2014:26

[26] CJEU, judgment of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107

constitutional cases, such as the recent judgment No. 132/2020 of 23 September[27], although in this case the defence appeal is based on an extradition proceeding and not EAW.

In this last case, the Constitutional Court proceeds with analysis of prior *Melloni* judgment establishing differences between extradition as here it takes place and EAW proceedings, textually: "The comparative analysis of extradition and the European arrest warrant leads to the conclusion that both legal institutes coincide in their purpose, but differ in their nature as they are based on different legal principles (extradition is based on simple cooperation and the Euro-warrant on the basis of cooperation in the form of mutual recognition). According to the procedure leading to the surrender of the requested person by the authorities of another State, the principle of reciprocity, which is essentially political in content and is present in the extradition system, is not identified in the European surrender warrant. Judicial control of the conditions for surrender, which can lead to refusal and which acts as a general rule in extradition, is opposed to a general principle of execution of the European arrest warrant, which admits of certain regulated exceptions, the existence of which must be analysed by the national judicial authorities within the limits defined by the Court of Justice of the European Union" (ground 4.c).

In short, the analysis of compliance with the guarantees and/or fundamental rights in the surrender is more rigorous in cases of extradition than in EAW, and therefore the application for *amparo* is here upheld by contrast to *Melloni* case. As Constitutional Court concluded "the judicial decisions have not adequately weighed up, in accordance with the requirements of constitutional case-law, that the trial held in the absence of the applicant for *amparo* had complied with the of the applicant for amparo had respected the guarantees imposed by Article 24.2 EC, given that there is no evidence of an unequivocal waiver by the applicant for *amparo* that he was not present, nor that he had actual knowledge of the day and place of the trial" (ground 6.6). Precisely, these requirements, whose unfulfillment is here appreciated, were enounced by Constitutional Court in prior *Melloni* case according to judgment No. 26/2014 of 13 February, textually: "(i) the content of such notices was to communicate the date and place of the trial; and (ii) that such notices with such contents were actually delivered to and received at the address of service; and (iii) those notices or their contents were delivered or brought to the actual knowledge by the persons who received them" (ground 6.5).

Concerning specific case-law from ordinary judges and courts in relation with the *in absentia* clause, which lacked of specific regulation took place according to prior LOEDE, it usually followed prior constitutional jurisprudence taking into account the *Pupino* effect. It also involved the application of the 'principle of interpretation in conformity', i.e., the application of national rules in accordance with the content of European rules. According to prior Article 5 (1) FWD EAW, in order to proceed with the execution of an EAW, Spanish judicial authorities required the concerned individual to be summoned in person. Alternatively, they required to be "informed of the date and place of the hearing which led to the decision rendered in absentia", or the guarantee that the requested person shall "have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment". This line of jurisprudence was confirmed, for example, in the orders of the Criminal Chamber of National Court of 7 March 2007[28], 2 November 2007[29] and 28 November

[27] Constitutional Court, judgment of 23 September, No. 132/2020, ECLI:ES:TC:2020:132

[28] National Court, Criminal Chamber, order of 7 March 2007, No. 30/2007, JUR/2008/253212.

[29] National Court, Criminal Chamber, order of 2 November 2007, No. 157/2007, JUR/2008/252473.

2008[30] in relation to the execution of EAWs issued by Italy and Rumania, countries, whose criminal procedure contemplates the possibility to hand down sentences *in absentia*. All these orders expressly mentioned the *Pupino* case arguing the application of such 'principle of interpretation in conformity' despite of the lack of regulation of the *in absentia* guarantee by prior LOEDE. In all cases surrender took place declaring the court the joinder of requirements provided by prior Article 5 (1) FWD EAW, now Article 4a FWD EAW.

II.1.2. Res iudicata authority according to the non bis in idem principle

Same constitutional precedent deals with other interesting questions also related to fundamental rights and/or principles of criminal procedure. In this context, the implementation of the EAW had a great impact on national jurisprudence on the authority of the *res iudicata* exception contemplated (from a negative and/or preclusive angle) under the principle of *non bis in idem*.

Such exemption was first introduced in Articles 12 (1) (a) and 12 (2) (d) of the LOEDE (implementing Articles 3 (2) and 4 (5) FWD EAW), which framed it, respectively, as a mandatory and optional ground for EAW refusal. New provisions on the *res iudicata* exception have then been included in Articles 48 (1) (c) and (d) of the LRM, which currently establish mandatory ground for refusals. As it is known, the FWD EAW established that a different regime on the *res iudicata* exception should be applied depending on whether the state in which the first judicial decision is taken is a member or non-member of the EU (for a critical debate on this issue, see Jimeno-Bulnes, 2010, pp. 308-309). The Spanish legislator position on this question is, instead, that the EU membership should not determine a difference in the application of the *res iudicata* refusal ground. Spanish law (i.e. the above mentioned Articles 48 (1) (c) and (d) of the LRM) prescribes *res indicata* to always be treated as a mandatory ground for refusal.

Res iudicata had been pleaded on the grounds of a refusal of a previous extradition request on account of the Spanish nationality of the appellant which was refused by same National Court in 1989 on the basis of Article 3 (1) Law 4/1985, of 21 March, on Passive Extradition. However, in this context, the Constitutional Court, in morass of prior case-law concerning extradition proceedings (judgments No. 227/2001 of 26 November, ground 5[31]; No. 156/2002 of 23 July, ground 3[32]; No. 83/2006 of 13 March, ground 3[33]), agreed with the National Court in order to define the non-existence of a final judgment on merits because decisions related to extradition or now to EAW proceedings they do not declare the guilt or innocence of the passive subject; they are, in short, procedures for international jurisdictional cooperation.

In relation to *non bis in idem* principle as part of *res iudicata* effect, there is alignment between National Court as ordinary court and Constitutional Court. The alignment between the two courts' jurisprudence consist in declaring the lack of *res iudicata* authority for prior judgments delivered by the same National Court refusing the extradition requests due to the Spanish nationality of the requested person, being surrender now possible by virtue of an EAW proceeding inasmuch the nationality of requested person is not anymore an obstacle.

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[30] National Court, Criminal Chamber, order of 28 November 2008, No. 225/2008, JUR/2008/72540.

[31] Constitutional Court, judgment of 26 November 2001, No. 227/2001, ECLI:ES:TC:2001:227

[32] Constitutional Court, judgment of 23 July 2002, No. 156/2002, ECLI:ES:TC:2002:156

[33] Constitutional Court, judgment of 13 March 2006, No. 83/2006, ECLI:ES:TC:2006:83

In the case *Monedero Angora v. Spain,* judgment pronounced on 7 October 2008, the ECtHR also defended this position.[34] In this case, which concerned a case of execution of a EAW by Spain, the ECtHR expressly declared that "the European arrest warrant procedure replaces the standard extradition procedure between Member States of the European Union and pursues the same aim, namely the surrender to the authorities of the applicant State of a person who is suspected of having committed and offence or who is trying to escape justice after having been convicted by a final decision." For this reason, continues the ECtHR, "execution of a European arrest warrant is, in fact, practically automatic; the judicial authority does not carry out a fresh examination of the warrant in order to check that it conforms to its own domestic law" (ground 2.III). In conclusion, EAW procedure "does not concern the determination of a criminal charge" and application is declared "incompatible *rationae materiae* with the provisions of the Convention" according to Article 35 (3) ECHR being rejected according to Article 35 (4) ECHR.

II.1.3. Assessment of double criminality

Another crucial issue dealt in Spanish EAW-related judicial practice is the one related to the assessment of double criminality in default of a general harmonization of criminal law at the European level (now, approximation of laws, according to Article 83 TFEU).

According to Article 2 FWD EAW, the double criminality test has been abolished for the 32 so-called list offences (euro-crimes). This provision was transposed in Article 9 (1) LOEDE, and currently Article 20(1) of the LRM provides for its general application to all mutual recognition instruments on judicial cooperation in criminal matters. At the same time, the ambiguity in the description of the list-offences generated significant difficulties at times of verifying the legal nature of the offence referred to in the EAW (Pérez Cebadera, 2008, pp. 84 ff). In Spain, for instance, there are no criminal acts that can be qualified as 'corruption' in the meaning given by the EAW FD (Jiménez Villarejo, 2003). In the Spanish criminal legislation this term refers, in fact, to a very different criminal conduct, notably the 'corruption of minors' (Articles 187 – 190, Title VII bis, Chapter V of the Spanish Criminal Code). Spanish jurisprudence shows that problems deriving from a lack of harmonised definition of list offences have emerged even beyond the mentioned example.

Spanish judicial authorities have in fact applied the optional non-execution ground now contemplated in general rules related to all mutual recognition instruments, notably the double criminality requirement contemplated in Article 32 (2) LRM. This is the case when the EAW is issued in relation to an offence other than the listed 32 offences in Article 20 (1) LRM as they are the so-called 'euro-offences' and such offence "is not defined as an offence under Spanish law". The same clause, also with such optional character, was contemplated in prior Article 9 (2) LOEDE. Undoubtedly, the abolition of the traditional dual criminality requirement hitherto in force for extradition proceedings has been one of the central issues of the EAW procedure, and has been the object of great criticism, especially in the first years of the new instrument of judicial cooperation in criminal matters (Jimeno-Bulnes, 2008, pp. 21 *et seq*; Sánchez Domingo, 2011, pp. 85 *et seq*.). Several cases exemplify the consequences produced by this new regime. One of these is the one related to the order of the Criminal Chamber of National Court of 13 December 2007[35], adopted in relation to

[34] *Monedero Angora v. Spain,* No. 41138/05, § 74, 7 October 2008.

[35] National Court, Criminal Chamber, order of 13 December 2007, No. 120/2007, JUR/2008/261072.

an EAW issued by the Court of Bistrita in Rumania which requested a Romanian national to serve a one-year prison sentence for driving a motor vehicle without a driving licence. In the Spanish Criminal Code of 1995 (Arts. 379-385 CP), this offence is not included among the offences against road safety, except when it can be established that the driving without a licence is carried out under the influence of alcoholic beverages, drugs or narcotic substances, or constitutes 'manifest recklessness' as required by the Spanish Criminal Code, which is not here the case. For this reason, the Spanish judicial authority as it was at the time the Criminal Chamber of the National Court due to the lack of consent to the surrender by the requested person (Article 18 LOEDE then enforced) denied the execution of the EAW according to prior Article 9 (2) LOEDE; this precept gave discretion to executing judicial authority to refuse the surrender due to such lack of the double criminality.

In other occasions the refusal of an EAW for this reason have taken place partially. An example of such approach is provided by order of 23 September 2008[36] by same National Court. The case relates to in EAW issued by Germany for offences of fraud or swindling, and false swearing. Only the first offence was contemplated in Articles 2 (2) FWD EAW and 9 (1) of LOEDE as one where the double criminality must not be verified. For this reason, Spain executed the EAW only in relation to first offence arguing that the second one is not contemplated as offence in the Spanish Criminal Code because this false swearing only is regulated for witnesses but not for the debtor as it is here the case. Similarly, the order of National Court, Criminal Chamber, of 14 November 2008[37], where EAW is executed in relation to crimes of theft, disobedience to the judicial authority and driving a motor vehicle under the influence of alcoholic beverages but excluded for the offence of driving a bicycle while intoxicated as requested by Polish judicial authorities.

In other cases, an EAW has been partially non-executed because of the lack of information in relation to prior convictions. In such circumstances, the Spanish judicial authority asked the issuing one (in the case at hand, the Rumanian Judge of Bucarest) "for a subsequent extension of the EAW in respect of these convictions in the manner provided by the law since the Chamber does not rule on them".[38] As known, Article 8 (1) FWD EAW details the information to be contained in the EAW form. Such elements are also specified in prior Article 3 LOEDE, and now in Article 36 LRM. Here it is included the requirement to proceed with the "description of the circumstances in which the offence was committed". The sole the reference to legal classification of the offence or the penalty imposed is not enough to satisfy the requirement of information to be included in the EAW.

II.1.4. Prescription

According to judicial practice in Spain, another grounds for refusal to execute an EAW is the so-called 'prescription'. In Article 4 (4) FWD EAW it is contemplated as optional ground but considered mandatory ground according to Spanish implementation on EAW. This is the case, textually, when "the criminal prosecution or punishment of the requested person is statute barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law" according to Article 4 (4) FWD EAW, also contemplated in prior Article 12 (2) (j) LOEDE and now Article 32 (1) (b) LRM.

[36] National Court, Criminal Chamber, order of 23 September 2008, No. 193/2008, JUR/2009/81329.

[37] National Court, Criminal Chamber, order of 14 November 2008, No. 151/2008, JUR/2009/104614.

[38] National Court, Criminal Chamber, order of 11 December 2008, No. 165/2008, JUR/2009/102619, ground 2.III.

As an example, it can be mentioned order of 14 August 2006[39] where the Criminal Chamber of National Court refused the execution of an EAW issued by the Criminal Court of Lisbon against a Spanish citizen on the basis of a sentence of 6 years imprisonment for the offences of organised and armed robbery by virtue of conviction *in absentia* on 20 September 1993. At the time of the commission of the facts, the Criminal Code of 1973 was the applicable law in Spain. Article 115 (f) of such Code establishes a limitation period of 10 years for imprisonment sentences of no more than six years. This made it possible to consider the penalty time-barred. Also, as legally stipulated, the National Court takes into account the Spanish nationality of the requested person, which means that the Spanish courts have jurisdiction, in accordance with Article 23 (2) of the Act on the Judiciary (*Ley Orgánica del Poder Judicial* or LOPJ). Last, as additional reason, the Court considers the "long period of time has elapsed, together with the fact that there are no current criminal liabilities of the requested person, and his state of health" in order "to make use of this power to refuse surrender, as the sentence is time-barred under Spanish law" (ground 2.IX).

Here it is also worth noting that a series of decisions have been taken by the National Court throughout 2020 and 2021 in relations related to appeals against judicial decisions by the Central Judge of the Investigative according to Article 51 (8) LRM. One frequent argument of appeal employed is in particular the ground for EAW non-execution based on the prescription clause in executing Member State. Practice shows that appeals against execution based on such ground have not always been successful

For example, in the case dealt with by order of 17 November 2020 by the Criminal Chamber of National Court,[40] allegations of prescription were promoted by the requested person, who argued that the penalty was time-barred in Poland and that Polish law was applied wrongfully by issuing judicial authority. Such allegation has been dismissed by the National Court, which declared that "the Spanish courts have no jurisdiction to apply Polish domestic law and, even less, to review its interpretation and application" (ground 1.I). The National Court therefore confirmed the judgment delivered by the Central Judge of the Investigative, recognizing the Polish conviction sentence. It is worth noting that, in the same case, a EAW that had been previously issued by Polish judicial authorities was not been executed in Spain by virtue of a decision taken the Central Judge of the Investigative No. 1 on 20 November 2019, on the basis of the consideration that the defendant argument that he had taken root in Spain *(arraigo,* i.e. the requested person has no residence or known domicile in Spain) and was interested in serving his sentence in Spain.

II.1.5. Rootedness and territoriality clauses

Another reason for appeal before the National Court has been the so-called 'rootedness clause' (*arraigo*), which is based on arguments related to the nationality and/or residence of the requested person in the executing Member State. These appeals have been made on the basis of articles 4 (6) FWD EAW and 48 (2) (b) LRM, which provides for optional grounds of non-execution. In the case dealt with by the Criminal Chamber of National Court[41] in its order of 11 September 2020, the appellant alleged that it is not legal to hand him over to the Swedish authorities because of his domicile being established in Spain (where he had been living with his family for more than four years), and his legal status as a 'collaborator with justice' (*colaborador con la*

[39] National Court, Criminal Chamber, order of 14 August 2006, No. 66/2006, JUR/2008/253942.

[40] National Court, Criminal Chamber, order of 17 November 2020, No. 819/2020, JUR/2021/5262.

[41] National Court, Criminal Chamber, order of 11 September 2020, No. 488/2020, JUR/2020/277602.

justicia). The National Court dismissed the appeal because it found no evidence of the existence of a stable connection (i.e. citizenship or residence) of the appellant with Spain. The Court found in fact that the appellant was in Sweden at the time of sentencing, and had served part of the sentence in that country. Also, the OEDE was issued by the competent Swedish authority only shortly before the appellant's son birth in Spain. It explicitly declares that« It is therefore not possible to consider his roots in Spain to have been established for a period of four years, which does not justify serving the sentence in our country" (ground 3.II).

Further case-law shows that appeals submitted for on the basis of this reason (the rootedness clause) have been combined with another ground of appeal, notably the territoriality cause (i.e., the commission of the offence "in whole or in part in the territory of the executing Member State". This cause is included as ground for optional non-execution of an EAW in Articles 4 (7) (a) FWD EAW and 32 (2) (3) LRM. In the case dealt with by order of 25 November 2020 of the Criminal Chamber of National Court,[42] the appeal was entirely dismissed because of two reasons. On the one hand, the order under appeal expressly conditioned the EAW execution to the event that, if the appellant is sentenced to a custodial sentence or security measure, he is to serve in Spain due to the proved fact that he has Spanish nationality. On the other hand, the National Court declared that "there is no evidence of any criminal proceedings pending in Spain against the requested person in Spain, nor is there any evidence of the commission of any criminal activity in Spain". According to the Court, proof of such evidence is necessary "in order to be able to state that our country is in a better position to prosecute the facts". By contrast, "it is alleged that the French Gendarmerie is investigating an organisation involved in an organisation dedicated to the trafficking of narcotic substances which is said to be based in Bizkaia, the French court in charge of the case having issued an investigation order, issuing a warrant for the arrest and surrender of certain persons including the appellant" (ground 5.II).

The same territoriality clause has been dealt with by the Criminal Chamber of National Court in its order of 21 December 2020.[43] In this case, the Court dismissed the appeal based on principle of ubiquity established by Spanish Supreme Court. According to such principle, the offence is considered to have been committed in all places where any of the activities making up the offence are carried out. This order, however, also dealt with another important issue, that of the maintenance of pre-trial detention as precautionary measure pending the execution of an EAW. This constitutes a reason for numerous appeals against decision of EAW execution by Central Judge of the Investigative according to Article 53 (4) LRM. In this case the National Court declared the appropriateness of the custody in order to secure the surrender of the requested party by virtue of Article 53 (2) LRM. This provision provides either for the custody or the release of the requested person "according to the circumstances of the case and with the aim of securing of the execution of the European arrest and surrender warrant". Due to the absence of clear indication, in the LRM, about the exact circumstance in presence of which the pre-trial detention of the person requested via an EAW should be maintained, the executing authority has to refer to ordinary national procedural law (Art. 503 LECrim; Jimeno Bulnes, 2005, p. 116). Here the National Court considered that "the risk of evading justice has become a reality, as evidenced by the issuing of the surrender warrant" (ground 5.III). For this reason, this allegation was dismissed in appeal. This decision is in line with already existing case-law that established the appropriateness of maintaining pre-

[42] National Court, Criminal Chamber, order of 25 November 2020, No. 849/2020, JUR/2021/4578.

[43] National Court, Criminal Chamber, order of 21 December 2020, No. 928/2020, JUR/2021/9694.

trial custody pending execution of an EAW. Examples of such jurisprudence are provided by orders of National Court on 14 December 2020[44], 16 December 2020[45] and 18 January 2021.[46]

II.1.6. Other grounds of non-execution

Recent case-law from 2021 also saw the dismissal of appeals that requested persons made before Spanish judicial authorities on the basis of other grounds for EAW non-execution. This was for instance the case of the order adopted by the Criminal Chamber of the National Court on 27 January 2021.[47] In this case, the appellant argued that the EAW issued by Estonian judicial authorities did not specify the circumstances relating to his participation in the commission of the offence. According to Articles 8 (1) (e) FWD EAW and 36 (e) LRM, this is compulsory information that must be included in the EAW form. But in its decision on the appeal, the National Court enumerated the information contained in EAW form issued by Estonia. The court noted how the latter indicated the different facts attributed to the appellant, and specified the related conviction sentences. In light of such specification, the court declared that the form included the information required to appreciate all the elements that are necessary to verify the commission of the offence for which the defendant was convicted (ground 2.III). Thus, according to such interpretation, the EAW form does not need to be completed with all the information indicated in Article 19 (1) LRM.[48]

Another recent case in which the execution of an EAW was appealed against relates to the verification of double criminality requirement in offences other than the 32 ‘euro-offences’ list. Such case has been dealt with in the Criminal Chamber of National Court order of 9 March 2021.[49] Here the appeal against the decision to execute an EAW was made because the concrete offence for which the EAW had been issued (i.e. the “attempted home invasion and/or housebreaking”) (*intento de usurpación de vivienda*) is not included in the 32 ‘euro-offences’ list according to Articles 2(2) FWD EAW and 20 (1) LRM. That notwithstanding, the National Court noted that “this does not mean that surrender is not possible”. Rather, for the purpose of surrender, “it may be required that the acts constitute an offence under Spanish law” according to Article 20 (4) LRM. Once the Court verified the dual criminality, it declared that “in this case (these acts) could constitute an attempted burglary in domicile” contemplated in Articles 240 and 241 CP. For this reason, appeal was dismissed and custody maintained inasmuch “the requested person does not have Spanish nationality, nor does he have roots or a domicile in this country. His stay in Spain was based on the use of an identity document false” (ground 1.VI).

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[44] National Court, Criminal Chamber, order of 14 December 2020, No. 924/2020, JUR/2021/10274.

[45] National Court, Criminal Chamber, order of 16 December 2020, No. 925/2020, JUR/2021/10045.

[46] National Court, Criminal Chamber, order of 18 January 2021, No. 27/2021, JUR/2021/68429.

[47] National Court, Criminal Chamber, order of 27 January 2021, No. 54/2021, JUR/2021/68568.

[48] Textually, “in cases of insufficiency of the form or certificate or when it is missing, or manifestly does not correspond to the judicial decision for which enforcement is transmitted, the judicial authority shall notify the issuing authority, setting a term for the certificate to be submitted again or be completed or amended” (official translation provided at the time by the Spanish Ministry of Justice, no more available).

[49] National Court, Criminal Chamber, order of 9 March 2021, No. 145/2021, JUR/2021/103863.

II.2. Fundamental rights and procedural guarantees in EAW proceedings

Another line of constitutional jurisprudence is the one recognizing the relevance of fundamental rights and procedural guarantees in EAW proceedings.

II.2.1. The right to choose legal counsel

With particular regard to the right to choose legal counsel by defendant in EAW proceedings as part of due process of law, the Spanish Constitutional Court has interpreted prior Article 14 (1) LOEDE and now Article 51 LRM to be observed in the hearing which takes place in EAW execution proceeding; here it is compulsory the presence of the public prosecutor, but also that the requested person is assisted by his/her legal counsel and, if necessary, an interpreter. The discussion was addressed in relation to the right of the arrested person to appoint free counsel not accepting an *ex officio* lawyer. Such a declaration took place in two constitutional pronouncements No. 339/2005 of 20 December 2005[50] and No. 81/2006 of 13 March[51], both of which arose from defence appeals against the decision of the National Court to execute and EAW issued by France. These constitutional decisions make an important distinction between legal assistance for those held in police custody and legal assistance before judicial authorities with additional requirements in this last case as part of the 'due process of law' rules. The same protection must be guaranteed for judicial hearings under EAW rules as there are no restriction on the appintment of legal counsel written in national EAW Spanish law.

II.2.2. Postponement of surrender

A different situation is the one where the case when EAW is executed by Spanish judicial authorities but surrender is postponed because the requested person has still criminal proceedings pending in Spain according to Articles 24 (1) FWD EAW, 21 (1) LOEDE and 56 LRM. It should be noted that, in many of these cases, the requested person is subject to pre-trial detention as precautionary measure imposed by Spanish judicial authorities. This is another additional reason hindering the surrender. Both factors are taken into account, for example, in the order by the Criminal Chamber of National Court of 17 July 2008[52] adopted in relation to an EAW issued by the *Tribunal de Grande Instance* in Paris. The EAW was issued for the enforcement of a 10-year prison sentence handed down in a trial *in absentia* on 30 January 2008 on the basis of illicit drug trafficking. For such case, the French Court guaranteed a retrial of the case in case the convicted person lodges opposition. In this context, the National Court decided for the execution of the EAW rejecting the arguments of the defence. Nevertheless, the requested person has criminal responsibilities pending in Spain for which he is in pre-trial detention. In consequence, the National Court, although decides the execution of the EAW, postpones the surrender as the requested person is being held in prison by two other judicial bodies and it is therefore not possible to proceed with surrender; in sum, the Spanish judicial authority suspends the surrender until the responsibilities of the requested person pending in Spain have been concluded.

Last, as mentioned, new judicial practice on EAW has been recently arisen in Spain in relation to the pandemic health crisis taking place the temporal postponement of the surrender on the basis of 'serious humanitarian

[50] Constitutional Court, judgment of 20 December 2005, No. 339/2005, ECLI:ES:TC:2005:339

[51] Constitutional Court, judgment of 13 March 2006, No. 81/2006, ECLI:ES:TC:2006:81

[52] National Court, Criminal Chamber, order of 17 July 2008, No. 95/2008, JUR/2009/108685.

reasons', as contemplated in Articles 23 (4) FWD EAW and 58 (3) LRM (Jimeno Bulnes, 2020, pp. 45 *et seq*). Postponements had to be introduced in many other Member States given the risk of a possible infringement of fundamental rights in the event of the actual surrender of the requested person (Brière, 2020, p. 130).

As example, it can be exposed the order of 6 April 2020 by the Criminal Chamber of National Court[53] delivered in appeal according to prior Article 51 (8) LRM in relation to an EAW issued by Poland for the purpose of prosecution on two accounts: membership of a criminal organisation; and illicit trafficking in narcotic drugs and psychotropic substances. Here the National Court confirms the order under appeal declaring as appropriate the suspension of the surrender "inasmuch as there is an imminent and serious danger of global of a worldwide spread of the epidemic, not only to the defendant himself who could become contagion, but that he himself can infect other people; it is not a national or local health emergency, but a global one" (ground 2.XVI).

Similar criterium adopted the Criminal Chamber of National Court in order of 20 July 2020[54] confirming the postponement of surrender of the requested person to Italy due to the COVID-19 pandemic and the resulting border closures and flight suspensions, again in the consideration of 'serious humanitarian reasons'. In both cases, the argument discussed is the application of Article 23 (5) FW EAW requiring the release of requested person if he or she is in custody (i.e. pre-trial detention). In both cases, pre-trial detention is maintained by decision of National Court. However, the rationale at the basis of such decision differs in the two cases. In the first case, at the basis of the decision is the consideration of the seriousness of the offence and the 'lack of roots' (*arraigo,* i.e. the requested person has no residence or known domicile in Spain) by the requested person. In the second one, the argument employed is the postponement of surrender, and for this reason the postponement of time limits in relation with the obligation to proceed with the release of the requested person. Ultimately, the CJEU's own case law is used here, such as the *Lanigan* case, judgment of 16 July 2015[55] and TC case, judgment of 19 February 2019[56] interpreting provision of time limits in Article 17 FWD EAW.

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[53] National Court, Criminal Chamber, order of 6 April 2020, ARP/2020/798.

[54] National Court, Criminal Chamber, order of 20 July 2020, ARP/2020/242790.

[55] CJEU, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, ECLI:EU:C:2015:474.

[56] CJEU, judgment of 19 February 2019, *TC*, C-492/18 PPU, ECLI:EU:C:2019:108.

Section III – Mutual Trust and cooperation through the EAW: key interpretation and implementation challenges, and solutions adopted in Spain

This report shows some key findings concerning the issuance and, especially, the execution of EAWs by Spanish judicial authorities according to prior Sections I and II respectively.

In relation to the issuance of EAWs by Spanish judicial authorities (Section I) the most famous and controversial case-law is the *Puigdemont* case, still pending, where the independance and competence by Spanish issuing judicial authority is challenged by Belgian executing judicial authorities; it must be made clear that both are different questions inasmuch the question of competence is a matter attached to so-called principle of 'ordinary legality' according to what domestic law decides the attribution of knowledge of facts to specific judge or court being respectful with the fundamental right to "the right of access to the ordinary judge predetermined by law" (Art. 24.2 Spanish Constitution). As said, a judgment by CJEU in answer to preliminary ruling promoted by Spanish Supreme court is still awaited. In terms of Spanish jurisprudence, some cases before Supreme Court have been dealt concerning the application of specialty rule as contemplated in Article 27 FWD EAW.

By contract, much case-law have been arisen in Spain in relation to the execution of EAW (Section II) and, more precisely, the non-execution of EAW because of specific grounds for refusal; this line of jurisprudence is constituted by decisions taken by the National Court (some of them throughout 2020 and 2021) as result of appeals against judicial decisions by the Central Judge of the Investigative according to Article 51 (8) LRM.

- *Res iudicata* with *in absentia* guarantee has constituted the most controversial issue concerning to cooperation on surrender; the issue arises in relation to prior requests on extradition, which the lack of *non bis in idem* principle declares National Court and Constiutional Court in Spain inasmuch both cooperation proceedings (extradition and EAW) do not give place decision on merit by national courts
- *In absentia* guarantee was absent in prior Spanish EAW legislation although declared by Constitutional Court, now *enforced* in present Article 49 LRM giving place to landmark constitutional cases as *Melloni* case
- Other questions relevant to Spanish judges and courts acting as executing judicial authorities refer to the double criminality test for offences other than the listed 32 offences (euro-crimes), which in fact is the problem of thorny Puigdemont case as exposed and probably also question in other Member States due to the lack of harmonization of substantive Criminal Law
- One argument of appeal very much employed is the ground for EAW non-execution based on the prescription clause in executing Member State; judicial practice shows that appeals against execution based on such ground have not always been successful
- Another reason for appeal before the National Court has been the so-called 'rootedness clause' (*arraigo*), which is based on arguments related to the nationality and/or residence of the requested person in the executing Member State; further case-law shows that appeals submitted for on the basis of this reason have been combined with another ground of appeal, notably the territoriality cause (i.e., the commission of the offence "in whole or in part in the territory of the executing Member State").

Last, there are other issues concerning the execution of EAW by Spanish judicial authorities not strictly based on grounds for refusal. One recent issue is the postponement of the surrender due to now the covid-19 pandemic crisis, which has given specific case-law in Spain on the basis of 'serious humanitarian reasons' according to prior CJEU case-law (Jimeno Bulnes, 2020, pp. 45 et seq). also, the possibility of partial EAW execution in Spain, when necessary, has been considered an interesting judicial practice. Finally, as general remark, it can be argued that in Spain the application of EAW proceeding as executing Member State has improved significantly since the implementation of the directives on procedural rights of suspects and accused persons in ordinary criminal procedural law (Valbuena González, 2020).

In concrete, Article 50 (1) LRM makes remission to ordinary procedural legislation in relation to the manner and conditions required for the arrest of the requested person in Spain as executing Member State. Thus, provisions contained in Article 520 (2) LECrim must be applied according to new text derived from the implementation of Directives 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings, 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings and 2013/48/EU of 22 October 2013 on the right of a access to a lawyer in criminal proceedings. In fact, it is established that "all arrested or imprisoned persons will be informed, in writing, in easily understandable language, in a language which they can understand immediately, of the acts they are accused of and the grounds giving rise to their imprisonment, and also their rights" with particular reference to those listed below. In relation this point it has been recommended to make available to detainees under EAW a specific model of declaration of rights as provided for in Annex II of the prior Directive 2012/13/EU (Arangüena Fanego & Rodriguez-Medel Nieto, 2020, p. 54), which is already in operation in Spanish police stations.

REFERENCE LIST

Legislation

- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between the Member States, OJ L 190, 18.7.2002, pp. 1-18.
- Council Framework Decision 2009/299/JHA of 26 February 2009, OJ L 81, 27.3.2009, pp. 24-36.
- Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 6.11.2013, pp. 1-7.
- Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, pp. 1-10.
- Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, OJ L 294, 1.6.2012, pp. 1-13.
- Spanish Constitution, *Boletín Oficial del Estado*, No. 311, 29.12.1978, pp. 29313-29424 (official translation into English also available at https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf)
- Act 3/2003 of 14 March on the European Arrest Warrant (*Orden Europea de Detención y Entrega* or LOEDE), *Boletín Oficial del Estado*, No. 65, 17.3.2003, pp. 10244-10258 (official translation provided at the time by the Ministry of Justice).
- Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union (*Ley 23/2014 de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea* or LRM*), Boletín Oficial del Estado*, No. 282, 21.11.2014, pp. 95437-95593 (official translation provided at the time by the Ministry of Justice).
- Act 6/1985, of 1 July, on the Judiciary (*Ley Orgánica del Poder Judicial* or LOPJ), *Boletín Oficial del Estado*, No. 157, 2.7.1985, pp. 20632-20678 (official translation provided at the time by the Ministry of Justice).
- Criminal Code (*Código Penal* or CP), *Boletín Oficial del Estado*, No. 281, 24.11.1995, pp. 33987-34058 (official translation provided at the time by the Ministry of Justice).
- Criminal Procedure Act (*Ley de Enjuiciamiento Criminal* or LECrim), *Boletín Oficial del Estado*, No. 260, 17.9.1882 (official translation provided at the time by the Ministry of Justice).
- *Europäisches Haftbefehlsgesetzt – EuHbG, Bundesgesetzblatt,* No. 36, 25-7.2006, pp. 1721-1726.
- Law 4/1985 of 21 March on Passive Extradition (*Ley de Extradición Pasiva*), *Boletín Oficial del Estado*, No. 73, 26.3.1985, pp. 7842-7845.
- *Loi relative au mandate d' arrêt européen,* 19 decembre 2003, *Moniteur Belge,* No. 442, 22.12.2003, pp. 60073-60110.

Case law

- ECtHR, *Monedero Angora v. Spain,* No. 41138/05, § 74, 7 October 2008.
- CJEU, judgment of 16 June 2005, *Pupino,* C-105/03, ECLI:EU:C:2005:386
- CJEU, judgment of 3 May 2007, *Advocaten voor de Wereld VZW,* C-303/05, ECLI:EU:C:2007:261
- CJEU, judgment of 1 December 2008, *Leymann and Pustarov*, C-388/08, ECLI:EU:C:2008:669
- CJEU, judgment of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107

- CJEU, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, ECLI:EU:C:2015:474
- CJEU, judgment of 19 February 2019, *TC*, C-492/18 PPU, ECLI:EU:C:2019:108
- Constitutional Court, judgment of 30 March 2000, No. 91/2000, *Paviglianiti*, ECLI:ES:TC:2000:91
- Constitutional Court, judgment of 26 November 2001, No. 227/2001, ECLI:ES:TC:2001:227
- Constitutional Court, judgment of 23 July 2002, No. 156/2002, ECLI:ES:TC:2002:156
- Constitutional Court, judgment of 20 December 2005, No. 339/2005, ECLI:ES:TC:2005:339
- Constitutional Court, judgment of 13 March 2006, No. 81/2006, ECLI:ES:TC:2006:81
- Constitutional Court, judgment of 13 March 2006, No. 83/2006, ECLI:ES:TC:2006:83
- Constitutional Court, judgment of 5 June 2006, No. 177/2006, ECLI:ES:TC:2006:177
- Constitutional Court, judgment of 12 February 2007, No. 37/2007, ECLI:ES:TC:2007:37
- Constitutional Court, judgment of 28 September 2009, No. 199/2009, ECLI:ES:TC:2009:199
- Constitutional Court, judgment of 13 February 2014, No. 26/2014, ECLI:ES:TC:2014:26
- Constitutional Court, judgment of 23 September 2020, No. 132/2020, ECLI:ES:TC:2020:132
- Supreme Court, Criminal Chamber, judgment of 11 March 2010, No. 188/2010, ECLI:ES:TS:2010:1551
- Supreme Court, Criminal Camber, judgment of 19 March 2010, No. 263/2010, ECLI:ES:TS:2010:1705
- Supreme Court, Criminal Chamber, order of 5 December 2017, ECLI:ES:TS:2017:11325A
- Supreme Court, Criminal Chamber, order of 23 March 2018, ECLI:ES:TS:2018:14479A
- Supreme Court, Criminal Chamber, order of 19 July 2018, ECLI:ES:TS:2018:8477A
- Supreme Court, Criminal Chamber, judgment of 14 December 2019, No. 459/2019, ECLI:ES:TS:2019:2997
- Supreme Court, Criminal Chamber, judgment of 12 November 2020, No. 598/2020, ECLI:ES:TS:2020:3665
- Supreme Court, Criminal Chamber, order of 9 March 2021, ECLI:ES:TS:2021:2544A
- National Court, Criminal Chamber, order of 14 August 2006, No. 66/2006, JUR/2008/253942
- National Court, Criminal Chamber, order of 7 March 2007, No. 30/2007, JUR/2008/253212
- National Court, Criminal Chamber, order of 2 November 2007, No. 157/2007, JUR/2008/252473
- National Court, Criminal Chamber, order of 13 December 2007, No. 120/2007, JUR/2008/261072
- National Court, Criminal Chamber, order of 17 July 2008, No. 95/2008, JUR/2009/108685
- National Court, Criminal Chamber, order of 14 November 2008, No. 151/2008, JUR/2008/104614
- National Court, Criminal Chamber, order of 28 November 2008, No. 225/2008, JUR/2008/72540
- National Court, Criminal Chamber, order of 11 December 2008, No. 165/2008, JUR/2009/102619
- National Court, Criminal Chamber, order of 6 April 2020, ARP/2020/798
- National Court, Criminal Chamber, order of 20 July 2020, ARP/2020/242790
- National Court, Criminal Chamber, order of 11 September 2020, No. 488/2020, JUR/2020/277602.
- National Court, Criminal Chamber, order of 17 November 2020, No. 819/2020, JUR/2021/5262
- National Court, Criminal Chamber, order of 14 December 2020, No. 924/2020, JUR/2021/10274
- National Court, Criminal Chamber, order of 16 December 2020, No. 925/2020, JUR/2021/10045
- National Court, Criminal Chamber, order of 21 December 2020, No. 928/2020, JUR/2021/9694
- National Court, Criminal Chamber, order of 18 January 2021, No. 27/2021, JUR/2021/68429
- National Court, Criminal Chamber, order of 27 January 2021, No. 54/2021, JUR/2021/68568
- Central Judge of the Investigative No. 3, order of 3 November 2017, ECLI:ES:AN:2017:1326A

- *Schleswig-Holsteinisches Oberlandesgericht,* 1. Strafsenat, judgment of 5 April 2018, 1 Ausl (A) 18/18 (20/18), ECLI:DE:OLGSH:2018:0405.1AUSL.A18.18.20.1.00

Other sources

- European Commission, Handbook on how to issue and execute a European arrest warrant, OJ C 335, 6.10.17, pp. 1-83
- Advocate-General Ruiz-Jarabo Colomer, opinion delivered on 12 September 2006, ECLI:EU:C:2006:502.

Literature

- Arangüena Fanego, C. and Rodriguez-Medel Nieto, C. (2020), "Directiva 2012/13/UR, relativa al derecho a la información en os procesos penales. Buenas prácticas para su aplicación", en C. Arangüena Fanego, M. de Hoyos Sancho and A. Hernández López (eds.), *Garantías procesales de investigados y acusados en procesos penales en la Unión Europea. Buenas prácticas en España*, Valencia: Tirant lo Blanch, pp. 35-68.
- Arroyo Zapatero, A., Nieto Martín, A. and Muñoz de Morales, M. (eds.) (2018), *Cooperar y castigar: el caso de Puigdemont*, Cuenca: Ediciones de la Universidad de Castilla la Mancha.
- Bachmaier Winter, L. (2015) "Más reflexiones sobre la sentencia Melloni: primacía, diálogo y protección de los derechos fundamentales en juicios *in absentia* en el Derecho europeo", *Revista Española de Derecho Europeo,* No. 56, pp. 153-180.
- Baum, S. (2018), "The Carles Puigdemont case: Europe's Criminal Law in the crisis of confidence", *German Law Journal*, Vol. 19, No. 6, pp. 1349-1358.
- Brière, C. (2020), "Le mandat d'arrêt européen en période de pandémie: cartographie des conséquences du covid-19 sur son fonctionnement", *Revues des affaires européennes*, Vol. 25, No. 1, pp. 125-134.
- Carretero Sánchez, S. (2021), "El principio de porporcionalidad y su potencialidad como argumentación jurídica", *Diario La Ley*, No. 9831, 16 April 2021, www.diariolaley.laleynext.es
- De la Quadra-Salcedo Janini, T. (2006), "El encaje constitucional del nuevo sistema europeo de detención y entrega (Reflexiones tras la STC 177/2006, de 5 de junio)", *Revista Española de Derecho Constitucional,* No. 78, pp. 277-303.
- Irurzun Montoro, F. and Mapelli Marchena, C. (2008), "Orden europea de detención y constitución (comentario a la Sentencia del Tribunal Constitucional 177/2006, de 5 de junio", *Noticias de la Unión Europea,* No. 282, pp. 15-29.
- Javato Martín, A.M. (2018), "¿Existe el delito de sedición en Alemania, Suiza y Bélgica?", *Diario La Ley,* No. 9188, 2 May 2018, www.diariolaley.laleynext.es
- Jiménez Villarejo, F. (2003), "Reflexiones sobre el concepto de corrupción a propósito de la orden de detención europea", *Actualidad Jurídica Aranzadi*, No. 560, pp. 1-5.
- Jimeno Bulnes, M. (2005), "La adopción de medidas cautelares de carácter personal con motivo de la ejecución de una orden europea de detención y entrega", *Revista Penal,* No. 16, pp. 106-122.
- Jimeno-Bulnes, M. (2006), "Spain and the European Arrest Warrant – The view of a 'key user'", in E. Guild (ed.), *Constitutional challenges to the European Arrest Warrant*, Nijmegen: Wolf Legal Publishers (WLP), pp. 163-185.
- Jimeno-Bulnes, M. (2007), "The enforcement of the European Arrest Warrant: a comparison between Spain and the UK", *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 15, No. 3-4, pp. 263-307.

- Jimeno Bulnes, M. (2008), "Orden europea de detención y entrega: garantías esenciales", *Revista de Derecho y Proceso Penal,* Vol. 1, No. 19, pp. 13-32.
- Jimeno-Bulnes, M. (2009), "Spain and the EAW: present status and future perspectives", in E. Guild & L. Marin (eds.), *Still not resolved? Constitutional issues of the European Arrest Warrant*, Nijmegen: Wolf Legal Publishers (WLP), pp. 261-296.
- Jimeno-Bulnes, M. (2010), "The application of the European Arrest Warrant in the European Union: a general assessment", in C. Fijnaut & J. Ouwerkerk (eds*.), The future of police and judicial cooperation in the European Union*, Leiden/Boston: Martinus Nijhoff Publishers, pp. 285-333.
- Jimeno Bulnes (2020), "El impacto del Covid-19 en la cooperación judicial europea", *Revista Aranzadi Unión Europea,* No. 10, pp. 31-65.
- Jimeno Bulnes, M., Pérez Gil, J., Valbuena González, F. and Ruiz López, C. (2021), "The fight against terrorism in Spain: judicial cooperation in criminal matters and procedural rights", in A. Pisapia, *A study on the application of the Charter of Fundamental Rights of the European Union in criminal jurisdiction. The fight against terrorism*, Torino: G. Giappichelli Editore, pp. 63-131.
- König, J., Meichelbeck, P. & M. Puchta (2021), "The curious case of Carles Puigdemont – The European Arrest Warrant as an inadequate means with regard to political offences", *German Law Journal*, Vol. 122, pp. 256-275.
- Krapac, D. (2005), "Verdicts in Absentia ", in J.R. Blekxtoon and W. van Ballegooij (eds.), *Handbook on the European Arrest Warrant,* The Hague: T.M.C. Asser Press, pp. 119-135.
- Labayle, H. (2018), "L'affaire Puigdemont et le mandat d'arrêt européen: chronique d'une faillité annoncée*", Revue des affaires europeennes*, No. 3, pp. 417-429.
- Muñoz de Morales, M. (2017), "¿Cómo funciona la orden de detencón y entrega europea? El caso del *expresident* y sus *consellers* como ejemplo", *Diario la Ley,* No. 9096, 11 December 2017, www.diariolaley.laleynext.es
- Muñoz de Morales, M. (2019), "Doble incriminación a examen. Sobre el caso de Puigdemont y otros supuestos", *InDret,* No. 1, www.indret.com
- Nieva Fenoll, J. (2018), "El examen de la autoridad requerida en la orden europea de detención y entrega de políticos independentistas: entre la política y el Derecho", *Diario La Ley,* No. 9227, 24 May 2018, www.diariolaley.laleynext.es
- Pérez Cebadera, M.A. (2008), *La nueva extradición europea. La orden de detención y entrega*, Valencia : Tirant lo Blanch.
- Reverón Palenzuela, B. (2001), "Notas sobre el traslado suscrito entre España e Italia para la persecución de delitos graves de 28 de noviembre de 2000. Especial referencia a la extradición de personas condenadas en rebeldía", *Anales de la Facultad de Derecho*, No 18, pp. 401-418.
- Rey Martinez, F. (2001), "El problema constitucional de la extradición de condenados en contumacia. Comentario de la STC 91/2000 y concordantes", *Revista Jurídica del Perú*, No. 19, pp.15-57.
- Rodriguez Horcajo, D. (2010), "Derecho europeo y Derecho nacional: dos piezas (a veces) difíciles de encajar. Comentario a la sentencia del Tribunal Constitucional 199/2009 de 28 de septiembre", *Revista General de Derecho Penal*, No. 14, www.iustel.com
- Rodriguez Sol, L. (2001), "La extradición a Italia de personas condenadas en rebeldía, analizada en el marco del espacio judicial europeo", *La Ley,* Vol. 4, pp. 1668-1675.
- Sánchez Domingo, M.B. (2011), "Problemática penal de la orden de detención y entrega europea", in M. Jimeno Bulnes (ed.), *Justicia versus seguridad en el espacio judicial europeo. Orden de detención europea y garantías procesales,* Valencia: Tirant lo Blanch, pp. 61-107).

- Tinsley, A. (2012), "Note on the reference in the case C-399/11 Melloni", *New Journal of European Criminal Law,* Vol. 3, No. 1, pp. 19-30.
- Valbuena González, F. (2020), "Harmonization of procedural safeguards of suspected and accused persons", in M. Jimeno-Bulnes (ed.), *New challenges for judicial cooperation in Spain, Eucrim*, No. 1, pp. 50-54.
- Van Ballegooij, W. (2009), "The European Arrest Warrant: between the free movement of judicial decisions, proportionality and the rule of law", in E. Guild & L. Marin (eds.), *Still not resolved? Constitutional issues of the European Arrest Warrant*, Nijmegen: Wolf Legal Publishers (WLP), pp. 77-95.
- Various Authors (2018), *Focus*, *European Criminal Law Review,* Vol. 8, No. 2.