

THE NATIONAL HIGH COURT FINALISES THE EXPORT EXTRADITION PROCEDURE BETWEEN SPAIN AND THE UNITED KINGDOM FOLLOWING BREXIT

This legal briefing analyses the recent order of the Criminal Chamber of the National High Court sitting in plenary session, which analyses and establishes the legal framework and functioning of police and judicial cooperation in criminal matters between Spain and the United Kingdom after Brexit contained in the Trade and Cooperation Agreement between the European Union (“EU”) and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part¹ (the “Agreement”).

1. Background

In the context of the processing of a European Arrest Warrant (“EAW”) for a British citizen, the Criminal Chamber of the Spanish High Court has had the opportunity to rule on the procedure to be followed in matters of extradition between the United Kingdom and Spain following Brexit.

2. Regulatory framework for police and judicial cooperation in criminal matters between Spain and the United Kingdom

The National High Court began by describing the pre-Brexit and post-Brexit regulatory framework. Up to 1 January 2021, when the United Kingdom was part of the EU, arrest warrants between the United Kingdom and Spain were governed by the EAW² and its transposition into Spanish law in Law 23/2014, of 20 November, on the mutual recognition of criminal decisions in the EU. The United Kingdom’s exit from the EU on 1 January 2021 prevents the continued application of this legislation, as it is no longer a Member State.

Since then, the applicable legal framework for the surrender of persons wanted for trial or to serve the sentences imposed is the Agreement, together with Export Extradition Law 4/1985 of 21 March (“EEL”).

¹ Signed in Brussels on 24 December 2020 and published in the Official Journal of the European Union No 444, dated 31 December 2020, with entry into force on 1 January 2021.

² The Council Framework Decision of 13 June 2002 (2002/584/JHA) on the European arrest warrant and the surrender procedures between Member States, as amended in relation to certain procedural aspects by the Council Framework Decision of 26 February 2009 (2009/299/JHA).

3. Conclusions

After analysing the legal nature of the current relationship between Spain and the United Kingdom in this matter, the National High Court reached the following conclusions regarding the processing of export extradition proceedings:

- (i) The processing of export extradition proceedings with the United Kingdom will be governed by the rules currently in force, i.e. the Agreement and the EEL.
- (ii) The Agreement will have priority application in the following matters: (a) determining the scope of application of arrest warrants issued by the judicial authorities of the United Kingdom; (b) the mandatory and optional grounds for non-execution; (c) the political offence and nationality of the requested person exceptions; (d) the guarantees that the issuing State must give in cases of custodial life sentences, regarding the return of nationals or residents, and if there is a real risk to the protection of the fundamental rights of the requested person; (e) the form of the arrest warrant; (f) the transmission and procedure for transmitting an arrest warrant; and (g) the rights and detention of the requested person and the consent to surrender of the requested person.
- (iii) In relation to the jurisdiction to receive the arrested person brought before the court, to decide on his or her personal situation and to initiate the processing of the export extradition requested by the British judicial authorities:
 - a. If the requested person consents to his or her surrender, jurisdiction will correspond to the Central Criminal Investigations Courts (“CCIC”), which will decide on the surrender, and may decide to supplement the information provided with the necessary details concerning the identity of the requested person and the factual and legal circumstances justifying the extradition request.
 - b. If the requested person does not consent to surrender, the CCIC will have to refer the proceedings to one of the Sections of the Criminal Chamber of the National High Court, which will give notice to the Public Prosecutor's Office and the requested person's lawyer to make submissions, and will decide, if necessary, on the additional information proposed and convene the hearing.
- (iv) The Criminal Chamber of the National High Court has jurisdiction to decide whether to grant or refuse the surrender of the requested person. An appeal against that order may be brought before the National High Court sitting in plenary session.
- (v) In the event of receiving requests from several states, the corresponding Section of the Criminal Chamber of the National High Court will also be competent to decide

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because Article 16 of the EEL is not applicable, as the Government does not actively intervene in this new form of export extradition.

- (vi) As regards the time limit for bringing the requested person before the CCIC, as this is not regulated in the Agreement, the provisions of Article 11 of the EEL remain in force: the requested person must be brought before the CCIC within 24 hours of his or her arrest.
- (vii) In terms of time limits: (a) for issuing decisions; (b) for completing the procedure; (c) for surrendering the requested person; (d) in the event of postponed or conditional surrender; (e) for the transit of the person to be surrendered; and (f) for deduction of the period of detention served, the provisions of the Agreement will apply.

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The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was prepared on 23 March 2021 and Pérez-Llorca does not assume any commitment to update or revise its contents.

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