

CJEU Blames Hungary for Non-Execution of Croatian EAW for Corruption

News

Thomas Wahl

On 25 July 2018, the CJEU rendered an important [judgment on the obligations of the executing authority](#) in the European Arrest Warrant (EAW) system. Furthermore, the judgment interprets the refusal grounds of Art. 3 No. 2 and Art. 4 No. 3 FD EAW.

In the case at issue ([C-268/17](#)), Hungarian authorities refused to enforce (or did not react to) several EAWs issued by Croatian authorities and courts against AY. AY, a Hungarian national, was suspected of having bribed a high-ranking Croatian politician.

Although the Hungarian Attorney General opened investigations on the case in July 2011, investigations were not conducted against AY as a suspect. Instead, the Hungarian authorities conducted investigations only in connection with the criminal offence against an “unknown person.” In this context, AY was interviewed as a witness only. In January 2012, the Hungarian National Bureau of Investigations closed the investigation because the acts did not constitute a criminal offence. Following the accession of Croatia to the EU, the Croatian authorities issued several EAWs against AY, the first one in October 2013 and, after indictment of AY, in December 2015 and January 2017. The Hungarian authorities did not execute the EAWs. Regarding the first EAW, they argued that criminal proceedings had already been closed in Hungary in respect of the same acts as those described in the EAW. Regarding the subsequent EAWs, they justified their action by pointing out that it was not legally possible in Hungary to arrest AY or to initiate a new extradition procedure.

Against this background, the Croatian court referred, in essence, two questions to the CJEU:

- Is the judicial authority in the executing Member State required to adopt a decision on any EAW communicated to it, even when it already took a decision on a previous EAW relating to the same person and the same criminal proceedings?
- Were the Hungarian authorities entitled not to execute the Croatian EAWs if the suspect AY was only treated as a witness during the criminal proceedings that came to halt in the executing Member State (Hungary) for the same acts on which the EAW was based?

The first controversial issue in this case was whether the reference for a preliminary ruling was admissible. For the first time, it was the issuing authority that brought a case to the CJEU on interpretation of the EAW. The issuing authority ultimately sought a decision from the European Court to force the executing authority to give green light to surrender of a suspect. In its [opinion of 16 May 2018](#), AG *Szpunar* held the reference in-

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admissible because the questions referred are not necessary for the Croatian court to progress the procedure pending before it.

The CJEU objected to this statement and held the request for a preliminary ruling admissible. The CJEU explained that no situations are given in the present case that may shake the presumption of relevance, which national courts enjoy according to settled case law. The CJEU further argued that the issue of a EAW affects the individual freedom of the requested person and the observance of fundamental rights. According to the CJEU's case law, however, this issue primarily falls under the competence of the issuing Member State, so that the issuing authority must be able to initiate a preliminary ruling procedure before the Court in Luxembourg.

As to the first question, the CJEU ruled that the judicial authority in the executing Member State is required to decide on any EAW forwarded to it, even if a ruling on a previous, identical EAW has already been made and the second EAW issued on account of the indictment in the issuing state.

The CJEU went on to examine whether one of the refusal grounds would justify the position of the Hungarian authorities. The CJEU first concluded that the refusal ground of *ne bis in idem* (Art. 3 No. 2 FD EAW) is not relevant in the given case, since the proceedings against AY in Hungary cannot be considered "finally judged" if the person, who is the subject of the EAW, had only been interviewed as a witness.

Second, the CJEU observed that the wording of Art. 4 No. 3 FD EAW, second option (upon which a EAW may be refused if the executing Member State halts proceedings for the offence on which the EAW is based) may justify the decision of the Hungarian authorities. The CJEU found, however, that an interpretation of this provision according to which the execution of a EAW could be refused – if the warrant concerns the same acts without taking into account the identity of the person against whom the criminal proceedings are brought – would be manifestly too broad. Such interpretation would also run counter to the premise that the grounds for non-execution must be interpreted strictly and in light of the need to promote the prevention of crime. Therefore, Art. 4 No 3 FD EAW cannot apply if the decision that terminated the criminal proceedings in the executing Member State had not been taken in respect of the requested person.

In sum, the CJEU ruled that the Hungarian authorities cannot justifiably rely on a refusal ground; hence, they must execute the EAW from the Croatian authorities against AY.

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