

Romania, The High Court, Radu, Decision no 2372/2013 of 17 July 2013, File no 1230/36/2009

Deciding bodies and decisions

The High Court of Romania (Inalta Curte de Casatie si Justitie) Decision no 2372/2013 of 17 July 2013, File no 1230/36/2009

Area of law

Criminal Law

Subject matter

European arrest warrant - grounds of refusal to execute an European arrest warrant

Summary Facts Of The Case

The dispute arose before the Court of Appeal of Constanța, which was requested to admit the execution of four EAWs issued by German authorities against Mr Radu. Mr. Radu did not consent to his surrender and in order to avoid the execution of the warrants used two instruments. First, R.C.V. invoked the exception of unconstitutionality of provisions of the national law implementing the EAW Framework Decision 2002/584/JHA. He argued that these provisions violate Art 23(5) of the Constitution (preventive arrest during criminal investigations) and Art 24(1) (the right to a fair trial), as well as Art 6(3) ECHR concerning the rights of the accused. The Constitutional Court rejected the exception of unconstitutionality by decision nr.1290/14.10.2010. Second, R.C.V. requested the Court of Appeal of Constanta to refer a preliminary reference to CJEU.

In this context the Court of Appeal Constanta referred a preliminary question to the ECJ asking the EU court whether national courts have the right to decide on the conformity of EAW with fundamental rights and, if this is not the case, to refuse execution, even if such a cause of refusal is neither provided by the Framework Decision 2002/584/JHA nor by the national implementing law.

The CJEU by judgment of 29 January 2013 of Grand Chamber (C-396/11) held that the Charter does not allow a refusal to execute an EAW on the basis that the requested person was not heard by the issuing authority.

Following the preliminary ruling of the CJEU on January 2013 (C-396/11), the referring Court of Appeal Constanta, by Decision no. 26/P/11.03.2013, disregarded the guidance of the ECJ and rejected the execution of the four EAWs and the surrender of Mr Radu.

For one of the warrants, the Court of Appeal based its refusal on the *ne bis in idem* principle, since

R.C.V. had been already sentenced for the same act by the Romanian authorities and was serving the sentence (see Article 3 (2) EAW Framework Decision 2002/584/JHA, grounds for mandatory non-execution).

For the other three warrants, the Court of Appeal based its refusal on two main arguments:

First, the Court reasoned that the principle of mutual recognition and the application of EAW Framework Decision 2002/584/JHA is subject to the limits of Article 6 TEU and the EU Charter. As such, the Court of Appeal appreciated that a judicial authority of the executing state might refuse the surrender and execution of an EAW in exceptional cases, other than the ones limitatively provided for by the EAW Framework Decision 2002/584/JHA and the national transposing norm. The respect of fundamental rights was appreciated such an exceptional case.

Second, the Court of Appeal held that the surrender would constitute a disproportionate interference with the right to liberty and right to family life, taking into account the long period of time between the offence and prosecution of R.C.V. – 12 years. Moreover, the prosecution in Romania would ensure a better exercise of the right to defence.

The State prosecutor appealed the decision of the Court of Appeal in front of the High Court. The High Court annulled the Court of Appeal's decision by Judgment no. 2372 of 17 July 2013, giving priority to the principle of mutual recognition. The High Court found that the decision of the Court of Appeal was unlawful as it makes a wrong application of the law and the ECJ's interpretation. Further on, the High Court decided that the limitations to the fundamental rights were necessary and proportionate, given the gravity of the offences. Based on the above findings, the High Court ordered the execution of three EAWs and the surrender of Mr Radu to the German authorities. One EAW execution was rejected, according to *ne bis in idem principle*.

The surrender was authorized under the condition that if found guilty the requested person would be transferred to Romania for serving the sentence.

Relation to the scope of the Charter

The case falls within the scope of the Charter pursuant to Article 51(1) therein, as we are in a situation of implementation of EU law at the national level. However, the national court does not mention any Charter provisions, or other Charter application or interpretation rules.

Article 6 Charter (Right to liberty and security)

Article 48 Charter (Presumption of innocence and right of defence)

Relation between the Charter and EHCR

Article 5 ECHR (Right to liberty and security)

Article 6 ECHR (Right to a fair trial)

Impact on Jurisprudence

The outcome achieved by the national judge is consistent with the decision of the ECJ as the High Court ordered the execution of the EAW and the surrender of the requested person. Nevertheless, neither the Court of Appeal nor the High Court considered closely the guidance of the ECJ. More than that, the High Court analysis of the ECJ ruling is limited to a brief mentioning of the referral without any further consideration to the latter.

Sources - CJEU Case Law

The decision is the national follow up of ECJ, Judgement of 29 January 2013, Ciprian Vasile Radu, Case C-396/11, ECR 2013, ECLI:EU:C:2013:39
