

## Romania, Court of Appeal Constanta, Radu, Judgement of 11 March 2013, European Arrest Warrant

### Deciding bodies and decisions

Court of Appeal of Constanta, Judgment 26/P of 11 March 2013 - Constitutional Court of Romania, Decision no.1290/14.10.2010 - Court of Justice of European Union (Great Chamber) Case C-396/11 - High Court of Cassation and Justice of Romania (Supreme Court)

---

### Subject matter

Police and judicial cooperation in criminal matters - Framework Decision 2002/584/JHA - European arrest warrant issued for the purposes of prosecution - Grounds for refusing execution - fundamental rights review under the EAW Framework Decision 2002/584/JHA - EU law principles of mutual trust and mutual recognition.

---

### Summary Facts Of The Case

The dispute arose before the Court of Appeal of Constanta, which was requested to admit the execution of four EAWs issued by German authorities against R.C.V. Mr. R.C.V 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 reason for this, he claimed, was that the national judge is extremely limited in executing the EAW, since the national judge can assess only the form and content of the warrant. The Court of Appeal of Constanta seized the Constitutional Court and suspended the trial until the issue of the constitutionality review decision.

The Constitutional Court rejected the exception of unconstitutionality by decision no.1290/14.10.2010. In its reasoning the Constitutional Court held that a contrary decision would breach the principle of mutual recognition of criminal judgments. The constitutional review also found that a provisional custody following the issue of an EAW satisfies the requirements of the right to liberty and right to a fair trial as guaranteed by the Constitution. The case was returned to the Court of Appeal.

Second, R.C.V. requested the Court of Appeal of Constanta to refer a preliminary reference to CJEU. The defendant asked the national court to ask CJEU 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 Court of Appeal of Constanta upheld the request and referred six questions, which raised essentially three issues:

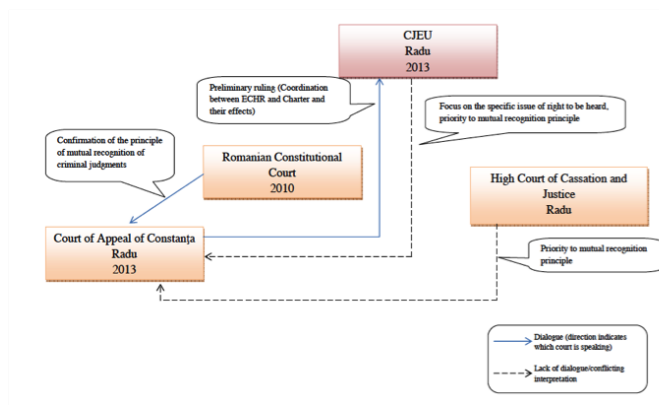
- whether the Charter and the ECHR form part of primary EU law;
- the relationship between Article 5 of the ECHR and Art 6 of the Charter, on the one hand,

and the provisions of the EAW Framework Decision 2002/584/JHA, on the other hand;

- whether the executing judicial authority can refuse to execute the EAW in the event of fundamental rights violations.

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.

## Diagram



Vertical (domestic court – CJEU)

Vertical (domestic court – Constitutional Court)

Strategic use of judicial interaction:

The Court of Appeal uses strategically the judicial interaction tools to achieve an outcome that would be more difficult to justify otherwise. The Court adopts a bottom-up approach. First, the Court asks the Constitutional Court to clarify the conformity of national measures transposing EU law with EU fundamental rights and ECtHR law. Second, the Court asks the CJEU for a similar interpretation. Finally, the Court relies on the Charter of Fundamental Rights of the EU and ECtHR case law against the EAW Framework Decision 2002/584/JHA.

## Impact on Jurisprudence

## Sources - ECHR

- Article 5 paragraph 3 and 4
- Article 6 paragraph 2 and 3

## Sources - Internal or external national courts case law

- Constitutional Court of Romania, Decision no.1290 of 14.10.2010, rejecting the exception of unconstitutionality of art. 77 para. (2) and art. 90 of Law no. 302/2004 on international judicial cooperation in criminal matters
- 

## Comments

### 1. Fundamental rights as grounds for non-execution of an EAW

The Court of Appeal uses the preliminary reference to address the question to the CJEU regarding the relationship between fundamental rights guarantees and EAW refusal grounds.

### 2. Proportionality balance between principle of mutual recognition and right to fair trial

Proportionality interaction technique is used to strike the balance between the fundamental right to fair trial and the principle of mutual recognition.

### 3. Strategic bottom-up use of judicial cooperation techniques

Domestic constitutional review is followed by a reference to the CJEU, showing a bottom-up strategic use of the techniques of judicial cooperation by the national appellate court. Consistent interpretation with EU fundamental rights law beyond the CJEU judgment. The Court of Appeal goes beyond the ruling issued by the CJEU and finds breaches of fundamental rights as such to constitute grounds for refusal, even when it seems clear from the CJEU judgment that fundamental rights claims, outside those expressly provided in Articles 3 and 3 of the EAW Framework Decision 2002/584/JHA are not permitted as grounds of refusal; postponing the surrender on grounds of fundamental rights might be legitimate under the EAW if, the national court proves the principle of uniform and effective application of the EAW is not endangered (see the Jeremy F case, commented in the database)

### 4. Disapplicaiton of the exhaustive grounds for EAW refusal as provided by EAW Framework Decision 2002/584/JHA

Interpretation in conformity with EU fundamental rights leads to an intermediate technique which combines both disapplication and consistent interpretation. The technique is employed to set aside the exhaustive grounds of EAW refusal.

---