


## Hungary, Budapest-Capital Regional Court of Appeal, EBD2018.B.23., appellate, 2018

Member State

 Hungary

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Topic

mutual trust

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Sector

European Arrest Warrant

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Deciding Court Original Language

F?városi Ítéltábla

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Deciding Court English translation

Budapest-Capital Regional Court of Appeal

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Registration N

5.Beuf.10.142/2018

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Date Decision

2018

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ECLI (if available)

N/A

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National Follow Up Of (when relevant)

N/A

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EU legal sources and CJEU jurisprudence

1. Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (Recitals 12 and 13 and Article 1(3))
  2. Charter of Fundamental Rights of the European Union (Articles 1, 3, 4, 48)
  3. Case C-388/08. PPU Leymann and Pustovarov
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### Subject Matter

The Slovak District Court issued an EAW against the defendant in criminal proceedings brought against him for qualified theft. The Hungarian court, acting as a court of first instance, refused to execute the EAW on the ground that the defendant was physically abused and subjected to forced interrogation by the police during the investigation in the issuing Member State, so the execution would seriously violate his rights guaranteed in criminal proceedings. However, the appeal court reversed the decision and executed the EAW.

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### Legal issue(s)

grounds for the refusal to execute EAW, violations of the EU Charter, requesting the surrender of a person having been physically abused by the police

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### National Law Sources

Act CLXXX of 2012 on cooperation in criminal matters with the Member States of the European Union, particularly Article 5(1)f

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### Facts of the case

In March 2017, a Slovak District Court issued an EAW against the defendant regarding criminal proceedings brought against him for qualified theft. A criminal procedure was also instituted against him in Hungary for theft, and the Hungarian District Court ordered the defendant's pre-trial detention. Regarding the EAW, the Budapest-Capital Regional Court decided on his temporary arrest for surrender and turned to the Slovak authority for additional information. In February 2018, the Budapest-Capital Regional Court decided not to execute the EAW and ordered the defendant's release. The prosecutor appealed against the decision. The prosecutor claimed that even though the defendant pressed charges against the Slovak police officers for physical abuse for which criminal proceedings are pending against them in Slovakia, the proceedings against these officials are in themselves proof that Slovakia ensures the protection of the defendant's rights.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Budapest-Capital Regional Court held that it was obliged to refuse the EAW's execution since the execution would have seriously violated the defendant's fundamental rights guaranteed in criminal proceedings by international treaty or EU legislation. It argued that the defendant claimed at the hearing of the EAW procedure to have been the victim of physical abuse and forced interrogation by the Slovak police. It was informed by the Slovak Ministry of the Interior that criminal proceedings were brought against the police officers for assaulting the defendant to compel him to plead guilty, and there are reasonable grounds for believing that they would be indicted for these acts. The Hungarian court held that due to the short time limits in EAW proceedings, it is not possible to wait for the delivery of the final judgment in the above-mentioned

procedure. But it is reasonable to believe, even without the final verdict, that the Slovak authorities violated several rights of the defendant, enshrined in the EU Charter, namely, his right to human dignity (Article 1), personal integrity (Article 3), the presumption of innocence and the right of defence (Article 48), and the investigation was also in breach of the prohibition of torture and inhuman treatment (Article 4). Act CLXXX of 2012, transposing the EAW Framework Decision into Hungarian law, stated that the court should refuse to execute the EAW if the execution "would seriously infringe the fundamental rights of the suspect in criminal proceedings under an international treaty or an EU legal act". The Budapest-Capital Regional Court stressed that this ground for refusal would be meaningless if it did not cover the instance when there are reasonable grounds to suspect the breach of the EU Charter's several provisions. However, the Budapest-Capital Regional Court of Appeal (Fővárosi Ítéltábla) found the prosecutor's appeal well-founded and reversed the first-instance decision. The appeal court argued that even though there are reasonable grounds to believe that the defendant's rights enshrined in the EU Charter were seriously violated during the investigation, it could not infer from a single, past infringement that the execution of an EAW would entail a further risk of violation of either the same or other fundamental rights. The ground for mandatory non-execution of EAWs, invoked by the court of first instance, was incorporated into the relevant national law by an amendment with the effect of 1 January 2018 in order to safeguard the defendants' fundamental rights, in accordance with Article 1(3) of the Framework Decision. The appeal court referred to the explanatory memoranda of the amending law, which stated that mutual recognition and mutual trust are fundamental principles, which also include confidence that Member States guarantee the fundamental rights of the defendants. The CJEU judgment in the Leymann case also found that, as a general rule, EAWs must be executed. The appeal court argued that the refusal on the grounds of fundamental rights violation could only take place if sufficiently justified and supported by factual evidence. Criminal proceedings brought against the officials in the issuing Member States provide effective and lawful responses to the infringement of the defendant's fundamental rights and constitute sufficient safeguards for protecting the defendant's rights in subsequent proceedings. The appeal court further noted that the refusal of the execution of the EAW cannot be used as a sanction for a one-off infringement that occurred in the past. The grounds for refusal on account of fundamental rights violations can only be invoked if systemic, more widespread concerns can be raised. This is underlined by the cases determined in recitals 12 and 13 of the Framework Decision. These provisions allow the refusal of the surrender for the following reasons: if there are reasonable, objective grounds to believe that an EAW was issued in order that a person be prosecuted or punished on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons (Recital 12); or if there is a serious risk that a person would be subjected to death penalty, torture or other inhuman or degrading treatment or punishment (Recital 13). The Budapest-Capital Regional Court of Appeal concluded that in the case concerned, the EAW was issued against the defendant for theft, so neither the subject matter nor the consequences of the proceedings posed the risk of fundamental rights violations mentioned above.

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#### Relation of the case to the EU Charter

The EU Charter was invoked by the Hungarian courts in order to decide whether a ground for the mandatory non-execution of the EAW exists or not.

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#### Use of Judicial Interaction technique(s)

consistent interpretation, mutual recognition

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## Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Budapest-Capital Regional Court referred only to Case C-388/08 Leymann and Pustovarov (indirectly, by citing the explanatory memoranda of the domestic legislation) to argue that Member States, as a general rule, are obliged to execute the EAW. So, the Hungarian court highlighted the importance of mutual trust and mutual recognition without invoking the Aranyosi case, which laid down the grounds for refusing cooperation based on serious human rights concerns.

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## Strategic use of judicial interaction technique (purpose aimed by the national court)

In the present case, the judicial interaction technique did not figure prominently in the court's reasoning. The decision of whether to comply with the EAW or not in case of human rights concerns did not draw directly on the CJEU jurisprudence.

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## Impact on Legislation / Policy

The background to the case: In May 2017, the Hungarian Parliament amended Act CLXXX of 2012 and created a new ground for the mandatory refusal of the execution of the EAW. The amending law stated that the court shall refuse to execute the EAW if "the execution of the European arrest warrant would seriously infringe fundamental rights of the suspect in criminal proceedings under an international treaty or an EU legal act." According to the explanatory memoranda of the amending law, the new provision implemented Article 1 (3) of the Framework Decision, requiring the protection of the defendant's fundamental rights. It also noted that the CJEU recently found in the Aranyosi case (Case C-404/15) that the execution of the EAW shall be refused if it entails a serious violation of the defendant's fundamental rights. The explanatory memoranda also invoked Case C-388/08 to argue that, as a general rule, Member States are obliged to execute EAWs, so the refusal by reference to serious human rights violations must be sufficiently justified and supported by factual evidence.

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## Impact on national case law from the same Member State or other Member States

The decision of the Budapest-Capital Regional Court of Appeal was published as a so-called guiding decision (or decision in principle). Guiding decisions were decisions of lower courts, which were selected by the Supreme Court (Kúria) for publication in order to serve as guidance on matters of principle. Guiding decisions were published in an edited format, having a headnote with the ratio decidendi of the original decision. The headnote of EBD2018.B.23 reads as follows: "The fact that a foreign national was subjected to forced interrogation during criminal proceedings abroad and that the police officers who interrogated him were therefore also prosecuted does not mean that the execution of a European arrest warrant issued against him would seriously violate the fundamental rights of the person concerned under an international treaty or an EU legal act in criminal proceedings and that the "issuance" of the warrant should therefore be refused." Since 2020, when the legislator introduced the so-called limited precedent system, according to which lower courts and the Kúria must follow the published decisions of the Kúria (if they seek to deviate from the Kúria's judgment, they have to provide a justification for it), it is no longer possible to publish guiding decisions. In the case of EBD2018.B.23., the original (full) decisions of the first and second instance courts are not available in the official database, so in this analysis, we could rely only on the edited version of the decision on appeal.

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