

Court of Justice of the European Union, C-241/15 - Bob-Dogi case, Second Chamber, 1 June 2016

Member State

 Hungary  Romania

Topic

mutual trust, independence

Sector

European Arrest Warrant

Deciding Court Original Language

Court of Justice of the European Union

Deciding Court English translation

Court of Justice of the European Union

Registration N

C-241/15

Date Decision

1 June 2016

ECLI (if available)

ECLI:EU:C:2016:385

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

C-404/15 - Aranyosi and C?ld?raru, C-237/15 PPU - Lanigan

Subject Matter

Article 8(1)(c) of the Framework Decision 2002/584/JHA; need for a national arrest warrant issued prior to and separately from the EAW; implied reasons for non-execution of the EAW

Legal issue(s)

Interpretation of Article 8(1)(c) of the Framework Decision on the EAW: whether issuing an EAW without a separate national arrest warrant is allowed and whether the non-existence of a national arrest warrant constitutes a reason for the non-execution of the EAW.

Request for expedited/PPU procedures

YES - The referring court requested an urgent procedure arguing that Mr. Bob-Dogi is subject to supervision measures that restrict his personal freedom. The CJEU decided, without further reasoning, not to grant the request, however the President of the Court gave the case priority over others.

National Law Sources

Romanian law: Law No 302/2004 on international judicial cooperation in criminal matters;
Hungarian law: Law No CLXXX. of 2012 on cooperation between the Member States of the European Union in criminal law matters

Facts of the case

In 2015, the District Court of Mátészalka (Hungary) issued an EAW against Mr. Bob-Dogi, a Romanian national, in connection with criminal proceedings commenced against him in respect of offenses committed in Hungary in 2013. Following Mr. Bob-Dogi's arrest and detention in Romania, the Cluj Court of Appeal (Romania) was to decide about his remaining in custody and being surrendered to Hungarian judicial authorities. The Cluj Court of Appeal ordered Mr. Bob-Dogi's immediate release but that he be subject to supervision measures. The referring court observed that the EAW in question constituted, at the same time, a national arrest warrant. The court stated that with regard to a situation in which an EAW is based on itself and not a prior, separate national warrant, the Romanian courts take divergent views about the execution of the EAW. The court decided to refer questions to CJEU regarding whether issuing an EAW without a separate domestic arrest warrant is allowed and whether the non-existence of a domestic arrest warrant constitutes a reason for the non-execution of the EAW.

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

(I) The first question was whether the term 'arrest warrant' used in Article 8(1)(c) of the Framework Decision must be understood as referring to a national arrest warrant that is distinct from an EAW. Referring to Aranyosi and C?ld?raru case, the CJEU emphasizes that the Framework Decision is based on the principle of mutual recognition and confidence between the Member States. It also underlined the EU Charter's binding force regarding applying the provisions of national law

adopted to transpose the Framework Decision.

Article 8(1)(c) of the Framework Decision provides that the EAW must contain information relating to an enforceable arrest warrant or judicial decision having the same effect. The information must be given in a form that refers to them as decisions on which the warrant is based. However, in the main proceedings, a so-called simplified procedure was applied in Hungary, in which an EAW could be issued without a prior national arrest warrant. In such cases, the EAW also constitutes as a national arrest warrant. This practice is not consistent with the Framework Decision; the EAW must be based on a distinct national judicial decision. (1) This interpretation is supported by the textual nature of the Framework Decision that differentiates between the EAW and the arrest warrant that the EAW is based on. (2) The history of Article 8(1)(c) confirms this interpretation. (3) The simplified procedure may interfere with the principles of mutual recognition and confidence. The executing judicial authority cannot verify whether the EAW complies with the requirement in Article 8(1)(c), which means that the requested person already had the benefit of procedural safeguards and fundamental rights. In the lack of a national judicial decision, the first level of the dual-level judicial protection for procedural and fundamental rights is lacking.

(II) The second question is whether the execution of the EAW may be refused if it does not contain any reference to the existence of a national arrest warrant. The CJEU decided that the executing judicial authority must refuse to give effect to the EAW if it was issued in the absence of a separate national warrant. Referring to *Aranyosi and Căldăraru* case, the CJEU notes that the execution of the EAW can be refused in the cases listed in Articles 3, 4 and 4a, or made subject to conditions laid down in Article 5. The lack of any indication of the existence of a national arrest warrant is not one of these grounds. However, those are based on the premiss that the EAW satisfies the requirements as to the lawfulness laid down in Article 8(1)(c). If these requirements are not met, the EAW is not valid. The CJEU ruled that such a decision must remain an exception, and the executing judicial authority must request the judicial authority of the issuing Member State to furnish all necessary information urgently to enable it to examine the actual existence of a national arrest warrant.

Relation of the case to the EU Charter

The CJEU invoked EU Charter to emphasize its binding force regarding the application of the provisions of national law adopted to transpose the Framework Decision, but without a meaningful role in the reasoning.

Use of Judicial Interaction technique(s)

preliminary reference, consistent interpretation, mutual recognition

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

According to the CJEU decision, the referring court noted that in a situation in which an EAW is based on itself, the Romanian courts take divergent views on the execution of the EAW. So the purpose of the referring court was to secure the consistency of Romanian courts' practice. At the same time, the referring court must have been aware that the Hungarian practice is based on legal regulation, so it might have intended to get the Hungarian regulation amended.

Impact on Legislation / Policy

Hungarian legislation was amended by Act CIII of 2016 in order to secure that the EAW be based on a national arrest warrant issued by a national judicial authority.

(Link to) full text

<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-241/15>

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