

## Czech Republic, Ústavní soud (Constitutional Court), III. ÚS 367/18, consitutional, 13. 3. 2018

### Member State

 Czech Republic

---

### Topic

Mutual trust

---

### Sector

European Arrest Warrant

---

### Deciding Court Original Language

Ústavní soud

---

### Deciding Court English translation

Constitutional Court

---

### Registration N

III.ÚS 367/18

---

### Date Decision

13/03/2018

---

### ECLI (if available)

ECLI:CZ:US:2018:3.US.367.18.2

---

### National Follow Up Of (when relevant)

N/A

---

### EU legal sources and CJEU jurisprudence

Art. 3, art. 4 of the Framework Decision 2002/584/SVV

Judgement of the CJEU from 5. 4. 2016, Joined cases C-404/15 a C-659/15 PPU, Aranyosi and C?ld?raru, ECLI:EU:C:2016:198

---

### Subject Matter

European Arrest Warrant – Mutual trust – Risk of inhuman and degrading treatment – Situation in the prison system – Burden of proof

---

### Legal issue(s)

What is the burden of proof for the risk of inhuman and degrading treatment of the extradited person in the requesting State's prisons?

---

### Request for expedited/PPU procedures

N/A

---

### Interim Relief

N/A

---

### National Law Sources

§ 205(1)(e), § 205(1)(j) of the Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters (zákon o mezinárodní justiční spolupráci ve věcech trestních)

---

### Facts of the case

The complainant was convicted in Latvia for taking part in mass demonstrations in Riga in early 2009 and causing disorder. He was sentenced to 20 months' imprisonment. The Regional Court, in a decision which was appealed to the Constitutional Court, ruled that the initial provisional detention is converted into extradition detention.

---

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

The Constitutional Court points out, first of all, that the concept of the European Arrest Warrant precludes review of the decision taken by the issuing State, save for established reasons. The complainant first contested the double criminality of the offences for which he had been sentenced. The Constitutional Court referred to its previous decision, in which it had already dealt with this objection and concluded that the complainant's actions at the demonstration had exceeded the limits of legitimate civil resistance. Such conduct is also punishable in the Czech Republic.

Furthermore, the complainant contested the situation in the Latvian prison on the ground of the risk of inhuman or degrading treatment. He referred to the case-law of the Court of Justice in this regard.

The Constitutional Court found that it was not so much a question of how often violations of fundamental rights and freedoms occurred in a particular country (the issuing Member State) and whether and how they were subsequently remedied, but whether, taking into account the specific circumstances of the case, there were reasonable grounds to believe that such a violation might occur in the given case, either during the judicial proceedings or in the course of the restriction of personal freedom in connection with the judicial proceedings. Therefore, the complainant would have to allege concrete threats to his rights. However, he did not provide these "serious and

demonstrable reasons" for believing that he would be exposed to "danger", as required by the case-law of the European Court of Justice.

In view of the fact that the complainant took certain steps in the proceedings in Latvia and was therefore aware of their existence, as well as of the existence of the European Arrest Warrant, the Constitutional Court also did not accept the plea of manifest denial of justice.

In the end, the complaint was found to be manifestly unfounded.

---

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

N/A

---

#### Relation between the EU Charter and ECHR

N/A

---

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

consistent interpretation

---

#### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

There is no interaction with other (ordinary) national courts or any foreign courts.

---

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

The Constitutional Court cited one decision of the Court of Justice to establish the burden on the complainant to state the reasons for supposed danger to his rights.

---

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

The Constitutional Court used the Court of Justice decision to interpret national law consistently with EU law.

---

#### Impact on Legislation / Policy

N/A

---

#### Notes on the national implementation of the preliminary ruling by the referring court

N/A

---

#### Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

---

#### Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

No

---

Did the national court take into account national case law on fundamental rights?

Yes

---

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

---

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

---

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

N/A

---

Connected national caselaw / templates

N/A

---

Other

N/A

---

(Link to) full text

<https://nalus.usoud.cz/Search/ResultDetail.aspx?id=101248&pos=1&cnt=2&typ=result>

---

Author

Ondřej Kadlec, Šimon Chvojka, Masaryk University

---