

## **Slovenia, District Court of Nova Gorica, I Kpd 30101/2020-18, ordinary, 4 September 2020**

### Member State

 Slovenia

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### Topic

Mutual trust

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### Sector

European Arrest Warrant (Asylum)

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### Deciding Court Original Language

Okrožno sodišče v Novi Gorici

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### Deciding Court English translation

District Court of Nova Gorica

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### Registration N

I Kpd 30101/2020-18

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### Date Decision

4 September 2020

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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

Dublin regulation (Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast))

Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the

## ECtHR Jurisprudence

N/A

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## Subject Matter

European Arrest Warrant, conflicting EAW's by Hungary and Austria, return to Hungary, risk of discrimination on the grounds of ethnicity, Recital 12 of the Framework decision, assurances given by Hungary, asylum claim, transfer before the decision on asylum in Slovenia is taken.

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## Legal issue(s)

The Administrative Court (the AC) had to determine whether the decision of the Ethical Commission of the Slovenian Bar Association constitutes an act of public power (*de iure imperii*) or not, and whether the lawyer affected by the decision of the Ethical Commission is entitled to challenge its decision in an administrative dispute.

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## Request for expedited/PPU procedures

N/A

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## Interim Relief

N/A

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## National Law Sources

Cooperation in Criminal Matters with the Member States of the European Union Act (CCMMSEUA)

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## Facts of the case

On 18 June 2020, R. T., a Russian national of Chechen origin was arrested at the Slovene-Italian border by the Slovene authorities. He was driving a van that was stolen the previous day in Austria.

The investigation judge obtained two European Arrest Warrants (EAWs). In the first from 4 May 2020, Hungary sought the return of the defendant in order to conduct criminal proceedings for the crime of human smuggling, punishable by a maximum of 8 years of imprisonment under the 2012 Hungarian Criminal Code. On 17 January 2020, R. T. was said to have been driving a vehicle with 7 Syrian nationals, when he was stopped by the Hungarian Police. He nevertheless managed to evade the police and escape. The second EAW from 19 June 2020, was issued by Austria for the theft of the van the day before R. T. was arrested in Slovenia. The crime was punishable by maximum of 3 years of imprisonment.

Heard before the investigation judge a day after the arrest, R. T. expressed his wish to be returned to Austria, since he lived there, had his family there and since he heard that in Hungary has a bad reputation concerning the attitude towards Chechens. On 2 July 2020, two weeks after his arrest,

he expressed the wish to apply for asylum in Slovenia and did so on 23 July 2020. He therefore maintained that before any return decision is taken, the Slovene authorities must first decide on his asylum claim.

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

In the proceedings before the investigation judge, it turned out that the defendant lived with a friend in Lienz (SW Austria), whereas his family was in Vienna. He was nevertheless in regular contact with his family: wife and two small children. His attorney argued his family could not visit him in Hungary due to high costs of travel to Hungary, that his family was unable to bear. In addition, the attorney expressed concerns over fairness and impartiality of proceedings in Hungary due to his client's ethnicity and his status of asylum seeker and opposed the return on the basis of Article 10, point 8 of the Cooperation in Criminal Matters with the Member States of the European Union Act (CCMMSEUA), which literally implements Recital 12 of the Framework Decision, prohibiting the return if a person's position in the criminal proceedings may be substantially prejudiced on the grounds of his/her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation.

As a result, the investigation judge requested the Hungarian Ministry of Justice under Article 15 (2) of the Framework Decision to clarify whether such risk of discrimination indeed exists in Hungary. The Ministry of Justice replied that Hungary, as a member of the EU, bound by the Charter and by the ECHR, respects the principle of non-discrimination and that in any event, the defendant has the right to turn to the ECtHR. The investigation judge also consulted the 2019 UN Committee on the Elimination of Racial Discrimination Report for Hungary.

On the basis of the information above, the District Court, to whom the casefile was referred after the investigation was finished, decided that the defendant should be returned to Hungary and not to Austria. The court found that there are no reasons against the return. According to the court, the alleged (racial, ethnic) discrimination was confirmed neither by the reply of the Ministry of Justice nor by the report of the UN Committee. The claim for asylum was regarded as being unable to bar the transfer to Hungary, since the Dublin Regulation enables that the asylum proceedings are underway even if the asylum seeker is situated in the territory of another MS. With respect to conflicting EAWs, the court decided that two circumstances from Article 16(1) of the Framework Decision, namely the seriousness of the offence and the date of issue of the EAW, demand the return to Hungary and that personal circumstances (the fact that the defendant's family lives in Austria) do not carry enough weight, taking into account the prescribed criteria in Article 16(1), to affect the decision of the court.

Upon appeal, the High Court agreed with the District court. The defendant was transferred to Hungary before the end of his asylum procedure

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### Relation of the case to the EU Charter

N/A

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Relation between the EU Charter and ECHR

N/A

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Use of Judicial Interaction technique(s)

N/A

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

N/A

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

N/A

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

N/A

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Impact on Legislation / Policy

N/A

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

N/A

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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

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

N/A

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

N/A

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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

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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

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

N/A

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Connected national caselaw / templates

N/A

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Other

N/A

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[\(Link to\) full text](#)

First instance judgment is not publicly available. Higher Court of Koper, Order I Kp 30101/2020 of 25 September 2020 is available in Slovenian:

[https://www.sodnapraksa.si/?q=I%20Kp%2030101/2020&database\[SOVS\]=SOVS&database\[IESP\]=IESP](https://www.sodnapraksa.si/?q=I%20Kp%2030101/2020&database[SOVS]=SOVS&database[IESP]=IESP)

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Author

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. District Court of Nova Gorica, I Kpd 30101/2020-18 of 4 September 2020 (not publicly available)
  2. Higher Court of Koper, Order I Kp 30101/2020 of 25 September 2020, ECLI:SI:VSKP:2020:I.KP.30101.2020
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