



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-268/17  
Ured za suzbijanje korupcije i organiziranog kriminaliteta v AY

**According to Advocate General Szpunar, the Court is not competent to answer questions asked by the issuing judicial authority of a European arrest warrant on whether the executing authority can refuse to execute that warrant**

*The issuing authority cannot substitute itself for the executing authority by addressing questions to the Court which only that latter authority is entitled to ask within the framework of a preliminary ruling procedure*

AY is a Hungarian national and the chairman of a Hungarian company, against whom criminal proceedings have been initiated in Croatia. AY is suspected of having agreed to pay a considerable amount of money to the holder of a high office in Croatia, in return for the conclusion of an agreement between the Hungarian company and the Croatian Government.

Upon, and subsequent to, the opening of an investigation in Croatia against AY for active corruption, the Croatian authorities asked on several occasions (for the first time on 10 June 2011) their Hungarian counterparts to provide them with international legal assistance by interviewing AY as a suspect and delivering a summons to him. While the Hungarian authorities did not execute these requests, they also opened an investigation in order to verify if a criminal offence prejudicing the integrity of public life in the form of active corruption at international level under the Hungarian Criminal Code had been committed. This investigation was closed on 20 January 2012 on the grounds that the acts committed did not constitute a criminal offence. However, the investigation of the Hungarian authorities was not opened against AY as a suspect, but only in connection with the alleged criminal offence with AY having only been interviewed as a witness in the course of this investigation.

On 1 October 2013, following Croatia's accession to the EU, the Croatian authorities issued a European arrest warrant against AY. However, the execution of this warrant was refused by the Hungarian judicial authorities on the grounds that criminal proceedings had already been terminated in Hungary in respect of the same acts as those on which the arrest warrant was based.

On 15 December 2015, the Županijski Sud u Zagrebu (County Court, Zagreb, Croatia), before which the criminal proceedings against AY are in progress, issued a new European arrest warrant regarding AY, in respect of which the Hungarian authorities refused to adopt any formal decision on the grounds that it was not legally possible in Hungary to arrest AY or to initiate a new procedure for the execution of the arrest warrant at issue.

In these circumstances, the Croatian court has, in essence, asked the Court of Justice whether the framework decision on the European arrest warrant<sup>1</sup> enables an authority of a Member State not to execute such a warrant on the grounds that criminal proceedings had already been terminated in that State for the same acts as those specified in the warrant, even if the person against whom the warrant has been issued had only the status of a witness rather than that of a suspect or an accused in those proceedings. The Croatian court would also like to know if a national authority is required to adopt a decision on any European arrest warrant communicated to it, even where it has

<sup>1</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

already made a decision in respect of a previous arrest warrant relating to the same person and the same criminal proceedings.

In today's opinion, Advocate General Maciej Szpunar points out that, in the case at hand, the Croatian court having issued the European arrest warrant at issue seeks to receive from the Court **guidance as to the rights and obligations of the Hungarian authorities which constitute the executing authorities of the warrant**. The Advocate General is of the opinion that the answers of the Court to questions of whether these latter authorities are entitled (or, as the case may be, obliged) under the framework decision not to execute the warrant at issue **would not be necessary for the Croatian court in order to progress the procedure pending before it**. In this context, the Advocate General stresses that the answers of the Court would legally have no incidence on whether this national court maintains or withdraws the warrant since it would eventually be incumbent upon that latter court to make a decision on this point regardless of those answers.

In addition, the Advocate General highlights that the present case ultimately relates to the interpretation of Hungarian law in light of the provisions of the framework decision, a task which is incumbent upon the Hungarian authorities that are meant to make a decision on the arrest warrant. In this regard, the Advocate General points out that the **Croatian court concerned cannot substitute itself for the Hungarian authorities at issue by addressing questions in the matter at hand to the Court** within the framework of a preliminary ruling procedure.

The Advocate General therefore takes the view that **the Court lacks jurisdiction to answer the questions relating to the rights and obligations of the Hungarian authorities competent to decide on the execution of the arrest warrant at issue**.

Finally, the Advocate General is of the opinion that **the authorities of the Member States are required to adopt a decision on any European arrest warrant**, even where they have already made a decision in respect of a previous arrest warrant relating to the same person and the same criminal proceedings.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.*

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