



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 118/18

Luxembourg, 25 July 2018

Judgment in Case C-268/17
AY (Arrest warrant — witness)

The execution of a European arrest warrant cannot be refused on the ground that a decision of the Public Prosecutor's Office has closed a criminal investigation when, during that investigation, the requested person was interviewed as a witness only

Judicial authorities of the Member States are required to adopt a decision on any European arrest warrant communicated to them

AY, a Hungarian national, is the chairman of the board of directors 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 a 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 their Hungarian counterparts on several occasions (for the first time on 10 June 2011) to provide them with international legal assistance by interviewing AY as a suspect and delivering a summons to him. Although the Hungarian authorities did not execute these requests, they opened an investigation in order to verify whether 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 by decision of the Hungarian National Bureau of Investigation of 20 January 2012 on the ground 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, AY having **been interviewed as a witness only** during the investigation.

On 1 October 2013, following Croatia's accession to the EU, the Croatian authorities issued a European arrest warrant against AY. However, the Hungarian judicial authorities refused to execute the warrant on the ground that criminal proceedings had already been closed 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 against AY, in respect of which the Hungarian authorities refused to adopt any formal decision on the ground that it was not legally possible in Hungary to arrest AY or to initiate a new procedure for the execution of the warrant.

In these circumstances, the Croatian court has, in essence, asked the Court of Justice whether the framework decision on the European arrest warrant¹ enables an authority of a Member State not to execute such a warrant on the grounds that criminal proceedings had already been closed 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 the status of a witness only rather than that of a suspect or an accused in those proceedings. The Croatian court also wishes to know whether a national authority is required to adopt a decision on any European arrest warrant communicated to it, even where it has already made a decision in respect of a previous arrest warrant relating to the same person and the same criminal proceedings.

¹ 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).

In his Opinion of 16 May 2018, Advocate General Szpunar proposed that the Court of Justice should declare that it 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.

However, in today's judgment, the Court states, first of all, that the admissibility of the request for a preliminary ruling is not called into question by the fact that the questions asked concern the obligations of the executing judicial authority, even though the referring court is the judicial authority that issued the European arrest warrant. As the issue of a European arrest warrant affects the individual freedom of the requested person, and the observance of fundamental rights, according to the Court's case-law, falls primarily within the responsibility of the issuing Member State, the issuing judicial authority must be able to refer questions to the Court for a preliminary ruling.

Next, the Court recalls that, except in exceptional circumstances, the executing judicial authorities may refuse to execute a European arrest warrant only in the exhaustively listed cases of non-execution provided for by the framework decision. Consequently, an executing judicial authority which does not reply following the issue of a European arrest warrant and thus does not communicate any decision to the judicial authority which issued the warrant is in breach of its obligations under the framework decision.

The Court goes on to examine whether the *ground for obligatory non-execution* set out in Article 3(2) of the framework decision applies in the present case. That ground for non-execution concerns the case where the executing judicial authority is informed that the requested person has been **finally judged** in a Member State in respect of the same acts. The Court observes in that regard that the delivery of a final judgment implies that **criminal proceedings had previously been instituted against the requested person**. Accordingly, in the present case, as no criminal proceedings were brought against him, AY cannot be considered to have been 'finally judged' within the meaning of the framework decision. Consequently, the decision which closed the investigation during which AY was interviewed as a witness only may not be relied on for the purpose of refusing to execute the warrant pursuant to that ground for non-execution.

Finally, the Court analyses whether one of the *three grounds for optional non-execution* provided for in Article 4(3) of the framework decision applies in the present case. Those grounds relate to (i) the decision of the executing judicial authority not to prosecute for the offence on which the European arrest warrant is based, (ii) the fact that, in the executing Member State, the judicial authorities have decided to halt proceedings in respect of the offence on which the warrant is based, and (iii) the fact that a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings. The Court finds that the first and third grounds set out above are irrelevant in the present case. With regard to the second ground, the Court observes that an interpretation according to which the execution of a European arrest warrant could be refused where that warrant concerns the same acts as those that have already been the subject of a previous decision, without the identity of the person against whom criminal proceedings are brought being considered relevant, would be manifestly too broad and would entail a risk that the obligation to execute the warrant could be circumvented. As that ground for non-execution constitutes an exception, it must be **interpreted strictly** and in the light of the **need to promote the prevention of crime**. In the present case, the investigation by the Hungarian authorities was conducted, not against AY, but against an unknown person, and the decision that closed that investigation was not taken in respect of AY. The Court concludes from this that the second ground for non-execution set out above does not apply either.

Consequently, the Court finds that the execution of a European arrest warrant cannot be refused on the basis of a decision of the Public Prosecutor's Office, which closed an investigation opened against an unknown person, during which the person who is the subject of that arrest warrant was interviewed as a witness only, without criminal proceedings having been brought against that person and where the decision was not taken in respect of that person.

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 EU 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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Holly Gallagher ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106