



## European Arrest Warrant – Conditions for execution

### *Fact of the case:*

Mr. Marton is a Hungarian national, against whom the Hungarian Court has issued two European arrest warrants, the first on November 4<sup>th</sup> because the suspect had stolen 3,000 EUR in cash and valuable items and the second on December 31<sup>st</sup>, 2014 because he had broken several doors inside a school and stolen objects, causing damages amounting to 1,000 EUR. On January 14<sup>th</sup> 2015, he was arrested in Bremen, Germany, based on a request for international search entered into the Schengen Information System, and was brought before the investigator on the same day. Mr. Marton however does not consent to his surrender.

European Court of Human Rights has convicted Hungary on grounds of overcrowding of prisons and inhuman detention conditions. Further, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) has referred to the significant prison overcrowding in Hungary identified in the course of its visits made between 2009 and 2013.

The Prosecutor's Office in Bremen asks the Hungarian Court to provide information, in which specific facility they will detain the suspect in the event of surrender, but the Hungarian judicial authorities do not have a clear and definitive reply to this question.

The case of whether the European arrest warrant should be executed is brought before the Higher Regional Court in Bremen, and the following concerns arise:

### *Arguments to be considered*

The right not to be subjected to torture and inhuman or degrading treatment or punishment is one of the few rights recognised as absolute and non-derogable. This means that no restrictions or exceptions to its protection are permitted.

### *Legal Framework*

#### **Relevant European Law**

The ECHR prohibits torture and inhuman or degrading treatment or punishment (art.3) without possibility of derogation in time of emergency (article 15)

The Explanations relating to the Charter of Fundamental Rights state that '[t]he right in Article 4 [of the Charter] is the right guaranteed by Article 3 of the ECHR, which has the same wording ... By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article'.



Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) defines the European arrest warrant as a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. Member States are obligated to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision. The Decision does not modify the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU (article 1 of the Decision).

Articles 3, 4 and 4a of the Framework Decision set out the grounds for mandatory and optional non-execution of the European arrest warrant.

Article 15 of the Framework Decision provides:

‘1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.’

### Relevant National Law

The Framework Decision was transposed into the German legal system by Paragraphs 78 to 83k of the Law on international mutual legal assistance in criminal matters (Gesetz über die internationale Rechtshilfe in Strafsachen) of 23 December 1982, as amended by the Law on the European arrest warrant (Europäisches Haftbefehlsgesetz) of 20 July 2006 (BGBl. 2006 I, p. 1721; ‘the IRG’).

Under Paragraph 15 of the IRG, headed ‘Detention pending extradition’:

‘1. On receipt of the request for extradition, an order may be made for the individual sought to be detained pending extradition, where

(1) there is a risk that the individual will not cooperate with the extradition procedure or the enforcement of the extradition, or

(2) there is specific evidence to support a strong suspicion that the individual sought will hinder the determination of the facts in the foreign proceedings or in the extradition procedure.

2. Subparagraph (1) shall not apply where the extradition appears to be prima facie unlawful.’

Paragraph 24 of the IRG, headed ‘Suspension of execution of the arrest warrant issued for the purposes of extradition’, provides:

‘1. An arrest warrant issued for the purposes of extradition must be suspended forthwith when the conditions for provisional detention pending extradition are no longer met or the extradition has been declared to be unlawful.

2. An arrest warrant issued for the purposes of extradition must also be suspended at the request of the Public Prosecutor at the Higher Regional Court. When that request is made, the Public Prosecutor shall order the release of the individual sought.’

Paragraph 73 of the IRG states:

‘In the absence of a request to that effect, mutual legal assistance and the transmission of information shall be unlawful if contrary to the essential principles of the German legal system. In the event of a request under Parts VIII, IX and X, mutual legal assistance shall be unlawful if contrary to the principles stated in Article 6 TEU.’

### *Questions*

1. Can the judicial authority executing the European arrest warrant refuse to execute such warrant, when there is serious evidence that the detention conditions in the issuing Member State are incompatible with fundamental rights, in particular Article 4 of the Charter?

2. Since, in accordance with the framework decision on the European arrest warrant, the executing judicial authority can refuse to execute such a warrant only in cases, which are exhaustively listed, among which the verification of respect for fundamental rights in the issuing Member State is not included, is this a matter of complete harmonization (according to the Melloni case law), in which the invocation of respect for fundamental rights threatens the effectiveness of European legislation?