

Croatian case to clarify EAW double jeopardy rules

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A case being reviewed by Europe's top court will bring much-needed clarification on how double jeopardy rules apply to individuals subject to European Arrest Warrants.

The Court of Justice for the European Union (CJEU) heard arguments in a case brought by the County Court of Zagreb in Croatia asking for clarification on European Arrest Warrant (EAW) double jeopardy rules on 28 February.

Under EU law, an individual who has been investigated or prosecuted in one member state cannot be prosecuted in another country for the same misconduct. This principle of double jeopardy, known as *ne bis in idem*, also precludes an EU country from enforcing an EAW

where the individual subject to the warrant has been investigated or prosecuted for the same misconduct, unless fresh evidence comes to light.

The Croatian court wants the CJEU to clarify whether the double jeopardy principle under EU law means EU countries are allowed to refuse to enforce EAW requests in cases where the country's investigations treated individuals as witnesses and not as suspects. Specifically, Croatia wants to know whether Hungary can refuse to enforce two EAW requests it issued for an individual – named only as AY to prevent reputational damage – after AY was treated as a witness rather than a suspect in an investigation conducted by the Hungarian prosecutor's office.

Croatia's Bureau for the Suppression of Corruption and Organised Crime, known as Uskok, wants AY – who resides in Hungary – to be arrested for allegedly paying bribes to a Croatian public official. Uskok charged AY in absentia in March 2014, and has sought their detention for years. Twice it issued an EAW for AY's arrest: in October 2013 and once again in January 2017.

Hungary's Ministry of Justice has twice refused to enforce the warrant. In 2013 the Hungarian prosecutor's office said that its own investigation into AY's alleged bribery, which started in June 2011 and ended in January 2012, had found no evidence of wrongdoing.

In April 2017, Hungary refused to enforce the EAW for AY's arrest, stating that it had already conducted an investigation into the matter and cleared AY of any wrongdoing.

Uskok has argued that AY was treated as a witness and not as a suspect in Hungary's 2011 investigation and that therefore he is not covered by EU double jeopardy rules. The Croatian court has asked for clarification into the matter ahead of a trial which will see AY prosecuted in absentia.

During the oral hearing on 28 February, counsel to AY, Maya Lester QC at Brick Court Chambers in London, argued that because Hungary had discontinued its investigation into AY's alleged wrongdoing, it is unfair for Uskok to seek to prosecute him a second time for the same offence.

"We argued strongly that the Hungary decision should be binding across the whole of the European Union," said instructing solicitor Michael O'Kane at Peters and Peters in London.

Anand Doobay at Boutique Law in London said the CJEU's ruling on the matter will provide much needed clarity on how EAWs are to be enforced by member states.

"These issues have not yet been considered by the CJEU and this decision will ensure that they are being dealt with consistently across the EU," Doobay said.

He added: "There are increasing instances of repeated EAWs being made and hopefully the obligations of countries receiving these EAWs will be made clearer."

In an emailed statement sent to GIR on 12 March, Hungary's Ministry of Justice said the fact that AY was treated as a witness and not as a suspect in an investigation is not in itself a decisive factor in the applicability of the double jeopardy principle.

Instead, the ministry said it is necessary to determine whether the decision of a national investigative authority resulted from an in-depth investigation into the alleged misconduct and had found no evidence of the crime having been committed, regardless of whether the person concerned had been formally charged or not. The ministry said its investigation of AY in 2013 was thorough and found no evidence of wrongdoing and so it was sufficient enough for it to refuse to enforce the EAWs.

The ECJ's judgment in the case is expected to be published in the next four to six months.

Uskok did not respond to several requests for comment.