

DECISION N° 108/2013

Facts

The defendant was the subject of an European Arrest Warrant (EAW) issued by Germany, whereby Greece was requested to surrender the subject for prosecution. The defendant was accused of membership in an organised criminal group and facilitation of illegal entry, with the purpose of obtaining a financial benefit thereby. The organised criminal group arranged the smuggling of migrants, in several ventures, from Greece to Dresden (Germany). The journeys were carried out through an altered touristic bus, which contained a hidden compartment to conceal irregular migrants. In each smuggling venture, the organised criminal group resorted to up to 28 persons who posed as tourists so as to avoid suspicion if the bus was intercepted by law enforcement. The defendant was one of such 'tourists', having received 100 Euro per smuggling venture.

The defendant was detained in Greece as a result of the EAW but did not consent to be surrendered to Germany.

Elements of success

- Principle of legality
- Principle of legal certainty

Challenges

- Fragmented implementation of international obligations across EU

Background

Most migrants were Afghans and nationals of Arab countries. Migrants travelled in the hidden compartment of the bus for several hours, in inhumane conditions.

Key issues

- ❖ International cooperation (EAW)

Investigation

Five separate smuggling ventures in which the defendant participated were investigated. All took place between April and August 2011. The last one took place on 21 August of said year. The defendant joined the organised criminal group before 6 March 2011.

The defendant was allegedly involved in the smuggling of at least 55 migrants.

Reasoning

Where the subject of the EAW does not consent to be surrendered, the EAW shall be executed if: (i) the underlying offense constitutes a crime under Greek criminal law, irrespective of its legal classification, which is punishable by a custodial sentence or security measure of

a maximum of at least twelve months, (ii) the courts of the district where the EAW was issued sentenced the requested person to a custodial penalty or security measure of at least four months for an offense which is classified as a misdemeanour or as felony under Greek law as well.

The execution of the EAW shall be denied *inter alia* when the crime was committed wholly or in part in Greek territory. For refusing execution of the EAW in such circumstances, it is not a pre-requisite that the requested person be subject to prosecution in Greece for the same conduct.

The place where the perpetrator committed wholly or partly the criminal act or omission as well as the place where the criminal result occurred or - in the case of attempt – was expected to have occurred in line with the intent of the perpetrator is considered as the place of commission of the crime.

In cases where the perpetrator smuggles irregular migrants from Greece to other countries, both Greece and those other countries of destination are considered places of commission of the crime.*

In the instant case, the crime was thus perpetrated also in Greece. Accordingly, in the terms on national law, the EAW might not be executed regardless of whether criminal proceedings have been initiated in Greece against the defendant, for the same acts.

Verdict/Decision

The execution of the EAW was denied. The detention of the defendant was lifted.

Opinion

International judicial cooperation is critical in the effort of bringing migrant smugglers to justice, particularly given the inherent cross-border nature of this crime type. This case provides insight into the specifics of the operability of an important instrument of mutual legal assistance (i.e. EAW) and the obstacles that may derive from the specifics of its implementation at the national level.

Notes

* *Areios Pagos, Judgment N° 200/2011.*