

**Application of the CFD
2008/909/JHA and CFD
2008/947/JHA in the
case law of the
County Court in Zagreb, Republic
of Croatia**

PhD Tanja Pavelin

Judge – EJN contact point

High Criminal Court of Republic of Croatia

Republic of Croatia

COUNCIL FRAMEWORK DECISION 2008/909/JHA of 27 November 2008

STATISTICS DATA

Croatia as the Issuing State (CFD 2008/909)

- 2 Certificates with judgements so far
- The Certificates had been issued on a request of the sentenced person
- Factors such as age, health conditions, personal, family and property circumstances of the sentenced person as well as possibility of successful resocialization and integration in society are taken into account

COUNCIL FRAMEWORK DECISION 2008/909/JHA of 27 November 2008

STATISTICS DATA

Croatia as the Executing State (CFD 2008/909)

- 70 final court cases
- Most of them are positively solved
- 10 refusal cases by now, half of them partially refusal
- For example when the Issuing State had issued a Certificate for several criminal offenses, and some of the offenses are not felonies under domestic law
- Contacting competent authority of the Issuing State to reach an agreement on partial recognition

COUNCIL FRAMEWORK DECISION 2008/909/JHA of 27 November 2008

STATISTICS DATA

Croatia as the Executing State (CFD 2008/909)

- Withdrawal of the Certificate - termination of the procedure of recognition the judgement and enforcement the sentence
- Taking into account health, characteristics, family and property circumstances as well as other relevant circumstances related to the sentenced person.

COUNCIL FRAMEWORK DECISION 2008/947/JHA OF 27 November 2008

STATISTICS DATA

CROATIA AS THE ISSUING STATE

- 9 Certificates so far (in all cases community service)
- Issuing of Certificate usually on request of the sentenced person

CROATIA AS THE EXECUTING STATE

- 1 Certificate so far

COUNCIL FRAMEWORK DECISION 2008/947/JHA of 27 November 2008

- Declaration on Article 4 (2) of CFD 2008/947 - enforcement of such types of probation measures and alternative sanctions that are provided in the criminal legislation of the Republic of Croatia
- There is no limitation to the measures referred to in Article 4 (1) of CFD 2008/947
- Difficulties due to delivering supporting documentation in Croatian language - some MS request to deliver all documentation in their language which is not mandatory according the CFD 2008/947/JHA
- Article 21: *„the Certificate from Article 6(1) shall be translated into the official language or one of the official languages of the Executing State.“*
- Clause 19: *„the form of the Certificate is drafted in such a way so that essential elements of the judgment and, where applicable, of the probation decision are comprised in the Certificate, which should be translated into the official language or one of the official languages of the Executing State.“*

CFD 2008/909/JHA - Main conditions for recognition

- 1) Double criminality rule - acts that comprise the essential characteristics of a criminal offence under domestic law, regardless of the legal description or legal classification of the criminal act set out in the judgment received
 - Croatia has submitted declaration stating that the competent authorities will not apply Article 7 Paragraph 1 of the CFD 2008/909
 - Double criminality has being checked in every single case

AND

- 2) Croatian nationality and active permanent/temporary residence in Croatia
OR
- 3) Croatian nationality and expulsion or deportation order to the Croatia after releasing from prison OR
- 4) Consent of the competent Ministry of the Republic of Croatia (Ministry of Justice) to forward the judgement and agreement of the sentenced person

The most frequent grounds for non-recognition and non-enforcement of the foreign judgements

- 1) Double criminality condition
- 2) Nationality of the Republic of Croatia, but there is no active residence/measure of deportation or expulsion to the Republic of Croatia
- 3) No consent of the Ministry of Justice of the Republic of Croatia to forward the judgement
- 4) The Certificate was incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a time limit no longer than seven working days set by the court
- 5) Ne bis in idem

The most frequent grounds for non-recognition and non-enforcement of the foreign judgements

practical problem → the measure of deportation or expulsion is imposed on the sentenced person, but, at the same time, the factual deportation of that person to the Republic of Croatia, after his release from prison, does not stem from the text of the submitted judgement (regarding this legal situation, there is a relevant Supreme Court of the Republic of Croatia's judgement, no. Kž-eu-17/2019, dated 9TH October 2019, which says the following:

„Unlimited ban of residence, in substantial and terminological sense, cannot be equalled in total to the measure of deportation or expulsion, therefore, at least for now, the conclusion of the first instance court, that all the requirements for recognition of foreign judgement prescribed by the Article 91 of the Act are met, is premature.”

Practical issues in the case law of the County Court in Zagreb

- **inadequate translations**
- According to the Article 23. Paragraph 3 of the CFD 2008/909/JHA we do not request Croatian translation of the decision, except:
- if the content of the Certificate is insufficient, OR
- if the sentenced person had not been present at the hearing/ decision has not been delivered to the sentenced person
- Translation of all relevant documents shall be provided in accordance with Article 3 of the Directive 2010/64 either by the Issuing State either by a certified court interpreter
- The Issuing State sometimes does not provide additional information and documentation within the 7-day time limit required by national law - delay and exceeding deadlines

Practical issues in the case law of the County Court in Zagreb

- **if a duration of the prison sentence was not in accordance with the domestic law, prison sentence is changed** during the procedure of recognition of the judgment (for example life sentence)
- Counting time of duration of prison sentence
- No residence in Croatia/ **factual deportation of person to the Croatia does not stem from the text of the submitted judgement**
- sentenced person must be explicitly deported to the Republic of Croatia --) refusal of recognition
- Expulsion or deportation order as additional documentation when it's necessary

Information exchange form

- e-mail as the fastest instrument of correspondence
- Notification both via e-mail and regular mail and delivery of all decisions
- As competent body – providing of requested information speedily

Legal remedies and the right to a defense counsel

- Against 1st instance decision - right of appeal to the High Criminal Court of the Republic of Croatia
- The High Criminal Court must decide upon this appeal within fifteen days
- The sentenced person has the right to a defense counsel of his own choice, as well as a defense counsel *ex officio*; right to communicate with a diplomatic or consular representative of his country, the right to inform a third party in the event of deprivation of liberty in accordance with the provisions of the Croatian criminal procedure code and Directive 2013/48 /EU

LINK BETWEEN CFD 2002/584 /JHA on the EAW and CFD 2008/909 /JHA

- The provision of the national law implementing these CFD (Article 22, Paragraph 4)
- It stipulates that if an EAW is issued for the purpose of enforcing a custodial sentence or a measure involving deprivation of liberty and the requested person is a national of the Republic of Croatia who has a permanent or temporary residence in its territory and has agreed to serve his sentence in the Republic of Croatia, the court shall postpone the decision on the EAW
- Requesting the documentation from the Issuing State in an appropriate deadline, which may not be longer than 15 working days for its delivery – starting the procedure on recognition
- After the decision on recognition and enforcement of a foreign judgement becomes final - refusal to enforce the EAW
- If the EAW has been issued for the purpose of conducting criminal proceedings, and the requested person is a national of the Republic of Croatia or a person residing or staying in its territory, the court shall make the surrender of that person conditional on his return to the Republic of Croatia (Article 22, Paragraph 3 of the Croatian implementation law)

RELEVANT CASE LAW OF THE CJEU

- **Case C-717/18 from March 3 2020 on double criminality**
- Interpretation of an Article 2(2) of CFD 2002/584/JHA
- Whether Article 2(2) of CFD 2002/584 must be interpreted as meaning that, in order to ascertain whether the offence for which an EAW has been issued is punishable in the Issuing State by a custodial sentence or a detention order for a maximum period of at least three years, as it is defined in the law of the Issuing State, the executing judicial authority must take into account the law of the Issuing State in the version applicable to the facts giving rise to the case in which the EAW was issued or the law of the Issuing State in the version in force at the date of issue of that arrest warrant.

RELEVANT CASE LAW OF THE CJEU

- According to the Article 2(2) of CFD 2002/584, under the terms of that CFD and without verification of the double criminality of the act, the offences enumerated in that provision, if punishable in the Issuing State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the Issuing State, give rise to surrender.
- However, the wording of Article 2(2) of CFD 2002/584 does not specify which version of that law must be taken into account by the executing judicial authority in order to verify whether the condition of the threshold of a custodial sentence for a maximum period of three years, set out in that provision, is satisfied, where that law has been the subject of amendments between the date of the facts giving rise to the case in which the EAW has been issued and the date of issue, or execution, of that arrest warrant.

RELEVANT CASE LAW OF THE CJEU

RULING: Article 2(2) of CFD 2002/584/JHA of 13 June 2002 on the EAW and the surrender procedures between MS must be interpreted as meaning that, in order to ascertain whether the offence for which a EAW has been issued is punishable in the Issuing State by a custodial sentence or a detention order for a maximum period of at least three years, as it is defined in the law of the Issuing Member State, the executing judicial authority must take into account the law of the Issuing State in the version applicable to the facts giving rise to the case in which the EAW was issued.

RELEVANT CASE LAW OF THE CJEU

➤ **Case C-2/19 from March 26 2020 – CFD 2008/947/JHA**

- The referring (Estonian) court finds that suspension of the execution of the sentence imposed on sentenced person is contingent only upon the obligation, resulting from Estonian criminal code, not to commit a new intentional offence and therefore such obligation does not correspond to any of the probation measures or alternative sanctions referred to in Article 4(1) of CFD 2008/947/JHA
- Since estonian law authorises recognition of a judgment pursuant to cfd 2008/947 only in so far as it imposes at least one of those probation measures or one of those alternative sanctions, the referring court decided refer the following question to the court of justice for a preliminary ruling: *“Is the recognition and supervision of execution of a judgment of a MS compatible with ... CFD 2008/947/JHA even where the sentenced person has by that judgment been conditionally released from the obligation to serve a custodial sentence, without any additional obligations being imposed, so that the person’s only obligation is to avoid committing a new intentional offence during the probation period (this being a suspended sentence within the meaning of aragraph 73 of the Estonian criminal code)?”*

RELEVANT CASE LAW OF THE CJEU

- Since the question referred relates to recognition of a judicial decision that has imposed a custodial sentence whose execution is suspended, it must be determined whether such a judicial decision is to be regarded as a judgment, within the meaning of Article 2(1) of CFD 2008/947, on the basis of article 2(1)(b) thereof, which refers to judicial decisions imposing a suspended sentence
- The term '**suspended sentence**' is defined in Article 2(2) of CFD 2008/947 as *being a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures*
- Therefore, it must be determined **whether the obligation not to commit a new criminal offence during a probation period is a probation measure within the meaning of CFD 2008/947**

RELEVANT CASE LAW OF THE CJEU

- It follows that it is upon the competent authority of the Issuing State to determine the conditions upon which suspension of the execution of the custodial sentence or measure involving deprivation of liberty that is imposed is contingent, in such a way as to enable the authorities of the executing state to identify, on the basis of the judgment or probation decision, the probation measures imposed on the sentenced person
- It is for the referring court to establish whether, in the light of the matters set out in the judgment forwarded, that is so in the main proceedings

RELEVANT CASE LAW OF THE CJEU

RULING: Article 1(2) of CFD 2008/947/JHA read in conjunction with Article 4(1)(d) thereof, must be interpreted as meaning that recognition of a judgment that has imposed a custodial sentence whose execution is suspended subject to the sole condition that a legal obligation not to commit a new criminal offence during a probation period be complied with falls within the scope of that framework decision, provided that that legal obligation results from that judgment or from a probation decision taken on the basis of that judgment, a matter which is for the referring court to establish



THANK YOU!