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EUROPEAN COURT: Bivolaru and Moldovan v. France: A new challenge for the EU?

Bivolaru and Moldovan v. France: A new challenge for mutual trust in the European Union?

By William Julié, founding partner of William Julié Law Office and international criminal law officer at the International Bar Association, and Juliette Fauvarque, trainee lawyer at William Julié Law Office.

Strasbourg Observers (22.06.2021) – <https://bit.ly/3gZftxE> – In the recent *Bivolaru and Moldovan v. France* case, the European Court of Human Rights (ECtHR) handed a landmark

judgment in relation to the execution of European arrest warrants (EAWs) between Member States of the European Union (EU) and the equivalent protection doctrine. For the first time, the ECtHR decided that the execution of an EAW violated Article 3 of the European Convention on Human Rights (ECHR), which prohibits torture, inhumane and degrading treatment. As we shall see, this case sends a clear warning to all European judges – national or supranational – that the execution of EAWs is subject to the ECtHR's jurisdiction.

Under the doctrine of equivalent protection, also known as the '*Bosphorus*' presumption (by reference to the case in which it was first established by the Court), States Parties to the ECHR are presumed to have abided by their obligations under the Convention when applying EU law. This presumption was established by the ECtHR in consideration of the fact that the EU, as an international organization, offers substantive guarantees in the protection of fundamental rights under the Charter of Fundamental Rights, general principles of EU law and the case law of the Court of Justice of the European Union (CJEU).

Two applications were joined in this case. Both concerned French decisions granting the execution of EAWs issued by the Romanian authorities against Romanian nationals for the purpose of serving a custodial sentence. The joinder of these two cases nevertheless resulted in different verdicts, as the Court found a violation of Article 3 in respect of one of the applicants, and no violation in respect of the other.

Facts

The first applicant, Mr. Codrut Moldovan, was convicted by a Romanian court to seven years and six months imprisonment for crimes of human trafficking committed in France and Romania. A European arrest warrant was subsequently issued by the Romanian authorities. With references to the case law of the CJEU and the ECtHR, Mr. Moldovan argued that his surrender

to Romania would lead him to endure conditions of detention contrary to Article 3 of the ECHR. The Romanian issuing authority assured the French executing authority that Mr. Moldovan would be detained in conditions compatible with Article 3. These assurances were found sufficient by the Court of Appeal of Riom, which granted execution of the EAW. This decision was then upheld by the French Court of Cassation.

The second applicant, Mr. Gregorian Bivolaru, was convicted *in absentia* by a Romanian court in 2013 to a term of six years imprisonment on counts of sexual offences against a minor. During investigations, the defendant had fled to Sweden and been the subject of first extradition proceedings for the purpose of being tried in Romania. The Swedish Supreme Court denied his extradition on the ground that he would face persecution in Romania based on his religious beliefs and his activities as leader of the 'movement for spiritual integration into the absolute'. The Swedish authorities subsequently granted Mr. Bivolaru the status of refugee under the Geneva Convention. After his conviction, the applicant was arrested in France pursuant to a Romanian EAW issued for the purpose of serving his sentence. He argued before the Paris Court of Appeal that his refugee status barred his surrender to Romania. He also claimed that he would be subject to inhuman and degrading detention conditions in Romania. The Paris Court of Appeal, having sought further information from Swedish authorities, concluded that the applicant's refugee status did not constitute an obstacle to the execution of the EAW, as Romania had, since then, acceded to the EU. Besides, this argument fell outside the grounds of non-execution of EAWs, which are exhaustively listed in the EAW Framework Decision. Furthermore, the allegations made by the applicant were considered too vague to create a grave risk that he would be subject to inhuman conditions of detention if surrendered. Consequently, the French Court of Appeal granted the execution of the EAW, and that decision was upheld by the Court of Cassation.

Mr. Moldovan and Mr. Bivolaru decided to challenge the decisions against them before the ECtHR on the ground that their surrender to Romania would violate the prohibition of inhuman and degrading treatment under Article 3. In substance, the applicants were alleging that the execution by a Member State of its obligations under the law of the EU constituted a violation of the ECHR – a situation likely to create a conflict of norms between EU law and the ECHR.

Read the FULL article at <https://strasbourgobservers.com/category/by-topic/article-3/>

HRWF Comment

In 2013, HRWF investigated the Bivolaru case in Romania itself and interviewed his alleged minor victim of sexual abuse in the presence of her husband. The concerned minor told HRWF that she was interrogated for 13 hours without the help of a lawyer and outside the presence of her parents. She was forced to write a statement that was afterwards misused to give her the status of injured party – first without her knowledge and afterwards against her will – and to incriminate Gregorian Bivolaru. Despite the fact that with the help of a lawyer she retracted her statement the next morning, the case was channelled through irreversible judicial proceedings. Later on, Gregorian Bivolaru was accused of alleged illegal border crossing attempt.

See HRWF Report here: <https://bit.ly/2SpK53q>

See as well HRWF's judicial monitoring of the Bivolaru case in the framework of HRWF research on the implementation of the European Arrest Warrant between Romania and other EU countries:

<https://hrwf.eu/wp-content/uploads/2019/03/Romania.pdf>

Photo: European Court in Strasbourg

Further reading about FORB in France on HRWF website

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