



Maria Hadjisavva

Supreme Court rejects EAW cancellation request: appellant's individual rights not absolute

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Litigation, Cyprus

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Introduction

The Supreme Court recently rejected a Greek appellant's request for the annulment of a European arrest warrant (EAW) which had been issued against him on 3 May 2016 in order to investigate alleged criminal offences.⁽¹⁾ The appellant had appealed to the Nicosia District Court seeking the issuance of a decree annulling or suspending the EAW, as well as other subsidiary orders on its main application. The Nicosia court had held, in light of the circumstances of the case, that the upholding of the EAW was proportionate. As such, it had rejected the appellant's request.

Decision

The Supreme Court upheld the first-instance court's judgment, citing the following legislative provisions (among others):

The application is based, inter alia, on the Framework Decision and the delivery procedures between Member States, as amended by the Council Framework Decision 2009/299 /JHA, dated 26 February 2009, on Articles 4 (1) (c), 7, 11 (1) (a) and 17 (1) of the European Arrest Warrant and the Procedures for the Delivery of Wanted Among the Member States of the European Union Law of 2004, Law 133 (I) / 2004, of the law governing the European Union in general, and others.

Although the court erroneously accepted the appellant's appeal of the *ne bis in idem* principle (ie, the prohibition of double jeopardy), it rightly concluded that Cyprus was not prevented from executing the EAW by investigating the case against the appellant. This was despite the fact that the process in Cyprus could be pending when the process commenced in Greece, which would determine which state could complete the process the fastest. For the same reason, it was not possible to conclude that the promotion of the EAW for this purpose was a misuse of the procedure in the sense of pursuing similar aims by adopting parallel remedies.

The appellant agreed with the court's conclusion that there was no likelihood of another EU member state adopting a "judgment similar to that of the Council of Appeals since no other State is involved in those offences". The court's examination of this matter was again argued within the parameters of Paragraph 10.3 of the Handbook on how to adopt and implement EAW,⁽²⁾ so it is unlikely that the appellant was correct in claiming that this matter had affected the court's understanding of the issue at hand.

It is generally accepted that both the national arrest warrant and the EAW were lawfully issued by the Cyprus court under the European Convention on Human Rights (ECHR) and the applicable law in order to facilitate an investigation into criminal offences by public officials who, based on the testimony, had been bribed. The ECHR and the abovementioned law and directives cease to apply when issued by an EAW state (in this case, Cyprus) which has reached no agreement on the concentration of criminal proceedings to continue an investigation into offences which are committed within its territory and fall within its jurisdiction, subject to the principle of proportionality. In the circumstances of the case at hand, neither the convention nor the law or directives had been infringed.

The Supreme Court concluded as follows:

The appellant's individual rights are not absolute but may be restricted as required by the Law. In any event, the appellant has not shown that the core of its rights has been violated to the extent that Article 6 of the ECHR has been violated, in any way.

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Endnotes

(1) Civil Appeal 239/2018, *Mpompolas v Cyprus*, 26 September 2019.

(2) Handbook on how to adopt and implement European Arrest Warrant (2017/C/335/01), *Official Journal of the European Union*.

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