

Decision 3025/2014. (II. 17.) AB
on rejecting a judicial initiative

The Constitutional Court, sitting in plenary session, on the subject-matter of a judicial initiative with concurring reasoning by *Dr. Béla Pokol* Justice of the Constitutional Court, and dissenting opinions by *Dr. Elemér Balogh*, *Dr. András Bragyova*, *Dr. László Kiss* and *Dr. Miklós Lévy* Justices of the Constitutional Court has adopted the following

decision:

1. The Constitutional Court rejects the judicial initiative aimed at establishing that section 15 (3) of the Act CLXXX of 2012 on Criminal Cooperation with the Member States of the European Union is in conflict with the Fundamental Law, its annulment, and the prohibition of its application in the pending case No. 2.Bk.373/2009 – examining the compatibility of section 15 (3) of the Act CLXXX of 2012 on Criminal Cooperation with the Member States of the European Union with the Fundamental Law only in the context of the execution of the European arrest warrants issued for the purpose of executing custodial sentences or measures involving deprivation of liberty.
2. The Constitutional Court refuses the petition aimed at establishing that section 8 (1), section 11 (1) (c), section 12 (1) and section 13 (4) of the Act CLXXX of 2012 on Criminal Cooperation with the Member States of the European Union are in conflict with the Fundamental Law and for their annulment.

Reasoning

I

[1] 1. Criminal proceedings for the surrender of a person caught in Hungary under the European arrest warrant No.2.Bk.373/2009 issued by the Antwerp Court on 6 March 2009 were pending at the Budapest-Capital Regional Court. The European arrest warrant was issued in the judgement of the Antwerp Court dated 15 October 2008 for the purpose of executing a three-year prison sentence for participation in a criminal organisation, tax evasion, money laundering and other offences under the Belgian Criminal Code, since the prisoner had not voluntarily begun serving his prison sentence but had left for Hungary. The convicted person was arrested and detained on 2 April

2009 and brought before the Budapest-Capital Regional Court on 3 April 2009. At a hearing held on 3 April 2009, the Budapest-Capital Regional Court, by its ruling No. 2.Bk.373/2009/18, suspended the pending criminal proceedings concerning the execution of the European arrest warrant and the surrender and initiated proceedings before the Constitutional Court, seeking the annulment of section 15 (3) of the Act CXXX of 2003 on Criminal Cooperation with the Member States of the European Union ("old ACCEU"). According to that provision, "another coercive measure restricting personal liberty may not be used in place of arrest for surrender purposes or provisional arrest for surrender purposes, nor may the arrest for surrender purposes or provisional arrest for surrender purposes of a requested person be terminated on bail."

[2] On 29 March 2012, the petitioner judge, in his motion supplemented on the basis of the ruling No. III/1177/2012 of the Constitutional Court, submitted that, since in the implementation of the Decision 2002/584/JHA of the Council of the European Union of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, the law-maker made it compulsory to order arrest for surrender purposes or provisional arrest for surrender purposes, thereby it excluded the application of other coercive measures known in domestic law which restrict personal liberty in lieu of arrest and the possibility of release on bail. In the petitioner's view, this rule does not follow from the provisions of the Framework Decision, and indeed, Article 12 of the Framework Decision states that the possibility of the provisional release of the person charged is available under the domestic law of the executing State, provided that the competent authority of the Member State takes all necessary measures to prevent the person's escape.

[3] According to the petitioner judge, the mandatory application of arrest for surrender purposes and provisional arrest for surrender purposes does not comply with the rule of guarantee laid down in Article I (3) of the Fundamental Law, since the necessity and proportionality of the statutory restriction on personal liberty (Article IV of the Fundamental Law) are not enforced. The petitioner also alleges infringement of Article Q (2) and (3) of the Fundamental Law, since the mandatory ordering of arrest for surrender purposes or provisional arrest for surrender purposes is also contrary to the requirements of the relevant international conventions and documents relating to arrest. The principle, consistently upheld in both international and domestic case-law, is that the material gravity of the offence on which the criminal proceedings are based cannot in itself constitute a ground for imposing a coercive measure. This is further reinforced, however, by the fact that arrest warrants can be issued not only for the most serious offences.

[4] This also leads to a breach of the principle of equality before the law. In the context of the present proceedings, the petitioner judge relies on the contradiction that, in domestic criminal proceedings, the court considered it sufficient, on the basis of the

same criteria, to order the least restrictive coercive measure, namely a prohibition on leaving the residence, but that, in the context of international criminal cooperation, this was out of the question because of the contested provision of the old ACCEU. In the petitioner's opinion, nor do the tight procedural deadlines justify excluding the applicability of measures alternative to arrest in the field of international criminal cooperation.

[5] In a further supplement dated 13 December 2012, the petitioner judge referred to the fact that the old ACCEU will be repealed on 1 January 2013 and will be replaced by the new Act CLXXX of 2012 on Criminal Cooperation with the Member States of the European Union (hereinafter: ACCEU). The ACCEU provides, also in its section 15 (3), the same way for the mandatory ordering of arrest for surrender purposes or provisional arrest for surrender purposes and, as a new element compared to the previous legislation, for the mandatory ordering of provisional arrest for execution purposes. In the view of the petitioner judge, the new Act of Parliament does not change the situation violating the Fundamental Law, and the petitioner therefore maintained his petition unchanged with regard to section 15 (3) of the ACCEU and extended it to the related additional provisions of the ACCEU, namely section 8 (1), section 11 (1) (c), section 12 (1) and section 13 (4), on the ordering of provisional arrest for execution purposes, arrest for surrender purposes or provisional arrest for surrender purposes.

II

[6] The statutory provisions invoked by the petitioner and taken into account by the Constitutional Court:

[7] 1 The provisions of the Fundamental Law:

"Article Q (2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law be in conformity with international law.

(3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by publication in rules of law."

"Article T (3) No law shall conflict with the Fundamental Law."

"Article I (3) The rules relating to fundamental rights and obligations shall be laid down in an Act of Parliament. A fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right."

"Article IV (1) Everyone has the right to liberty and security of the person.

(2) No one shall be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences.

(3) Any person suspected of having committed a criminal offence and taken into detention

must, as soon as possible, be released or brought before a court. The court shall be obliged to hear the person brought before it and shall without delay make a decision with a written statement of reasons to release or to arrest that person."

"Article XV (1) Everyone shall be equal before the law."

[8] 2 Provisions of international treaties:

[9] 2.1 The provisions of the International Covenant on Civil and Political Rights, promulgated by the Law-Decree No. 8 of 1976 (hereinafter: "Covenant"):

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

[...]

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

[10] 2.2 The provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "Convention") promulgated by the Act XXXI of 1993:

"Article 5 - Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

[...];

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority for reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

[...];

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

[...]

3. Everyone arrested or detained in accordance with the provisions of paragraph (1) (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released pending trial. Release may be conditioned by guarantees to appear for trial."

[11] 3 The provisions of the ACCEU affected by the petition:

"Section 8 (1) If the European arrest warrant has been issued for the purpose of executing a custodial sentence or a measure involving deprivation of liberty and the requested person is a Hungarian citizen residing in the territory of Hungary, the Budapest-Capital Regional Court shall refuse to execute the European arrest warrant and – if the preliminary data do not indicate any grounds for refusing the takeover of execution – shall order the temporary arrest of the requested person for the purpose of execution and shall immediately send its decision thereon to the Minister responsible for Justice (hereinafter: "Minister"). The Minister shall request the Member State to take charge of the execution of the sentence of imprisonment or detention order of the sentenced person."

"Section 11 (1) The Budapest-Capital Regional Court shall hold a hearing at which

(c) if the person sought does not wish to avail himself of the possibility of a simplified surrender procedure and the court finds that none of the grounds for refusal referred to in section 5, section 6 or section 8 (1) apply, it shall order the provisional arrest for the purpose of surrender of the person sought and shall immediately send the decision to the Minister."

"Section 12 (1) The Budapest-Capital Regional Court shall order the arrest for the purpose of surrender and the surrender (simplified surrender) of the requested person if

(a) the conditions for the execution of the European arrest warrant and the surrender are fulfilled, and

(b) the requested person consents, after having been duly warned, to his or her surrender, in which case the warning and consent and, where applicable, the express waiver of the right to the application of the speciality rule referred to in section 30 shall be recorded in a report.”

“Section 13 (4) If the conditions for the execution and surrender of the European arrest warrant are fulfilled, the Budapest-Capital Regional Court shall order the arrest and surrender of the requested person. The prosecutor, the requested person and his or her defence counsel shall make a statement on the appeal against the decision of the hearing immediately after the decision has been promulgated.”

“Section 15 (3) Another coercive measure restricting personal liberty may not be used in place of arrest for surrender purposes, provisional arrest for surrender purposes, or provisional arrest for execution purposes, nor may the arrest for surrender purposes, provisional arrest for surrender purposes, or provisional arrest for execution purposes of a requested person be terminated on bail.”

III

[12] The Constitutional Court first provided an overview of the provisions of the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, adopted by the Council of the European Union (published in Official Journal L 190 of July 2002, p. 18, pp. 0001-0020, hereinafter: “Framework Decision”) and the main provisions of the transposing legislation in Hungarian law on the matter under examination.

[13] 1 The general rules on surrender within the European Union were previously governed by the European Convention on Extradition of the Council of Europe, adopted in Paris on 13 December 1957, and its two Additional Protocols (promulgated in Hungary by the Act XVIII of 1994), the Convention on the Suppression of Terrorism, adopted in Strasbourg on 27 January 1977 (promulgated in Hungary by the Act XCIII of 1997), the Schengen (II) Convention of 1990, the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union (published in Official Journal C 78 of 30 March 1995, p. 0002-0010) and the Convention relating to extradition between the Member States of the European Union, drawn up on the basis of Article K.3 of the Treaty on European Union (published in Official Journal C 313 of 23 October 1996, p. 0012-0023). The role of these EU conventions was taken over by the European arrest warrant as from 1 January 2004. According to the essence of the European arrest warrant, if a judicial authority of one of the EU Member States requests on the basis of a legal act issued by the authority the surrender of a person subject to a criminal

procedure or already convicted, then this act should be enforced all through the territory of the European Union and the person concerned is handed over to the relevant authority within the shortest time possible.

[14] According to recitals 1 and 5 of the Framework Decision, European arrest warrant was intended to abolish extradition between Member States for persons fleeing from justice or suspected of having committed a criminal offence following a final conviction and to replace it by a system of surrender between judicial authorities. Recitals 6 and 10 of the Framework Decision also stress that the European arrest warrant is the first concrete implementation of the principle of mutual recognition in the field of criminal law, based on a high level of confidence between Member States. European arrest warrant is therefore an important element of criminal cooperation in the European Union, which is essentially based on two pillars. Criminal cooperation is based on the principle of mutual recognition of judgements and decisions in criminal matters and involves the gradual approximation of the laws of the Member States. [Article 82 (1) of the Treaty on the Functioning of the European Union]

[15] According to Article 1 of the Framework Decision, a European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. Article 2 lays down the conditions for the applicability of the European arrest warrant, which may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

[16] Under the European arrest warrant, the personal liberty of the suspect is restricted, but the Framework Decision contains a number of safeguards to protect the detained person. Article 11 provides that a person caught on the basis of a European arrest warrant shall be informed by the executing competent judicial authority of the European arrest warrant, its content, the possibility of consenting to surrender and also his or her right to be assisted by a legal counsel and by an interpreter. Article 12 of the Framework Decision contains provisions on keeping in detention the person caught on the basis of a European arrest warrant. According to this provision, "when a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding."

[17] It can therefore be concluded that the Framework Decision leaves it to the Member States which have transposed its provisions into their national law to decide whether to detain (in accordance with their national law) or possibly release the requested person pending a decision on the outcome of the surrender procedure.

[18] 2 The provisions of the Framework Decision have been transposed into Hungarian law by the Act CXXX of 2003 on criminal cooperation with the Member States of the European Union. This Act was replaced on 1 January 2013 by the ACCEU. In order to ensure the successful execution of the European arrest warrant, the Act makes the detention and subsequent arrest of the person concerned mandatory. The ACCEU distinguishes between three different types of arrest: arrest for the purpose of surrender, provisional arrest for the purpose of surrender and provisional arrest for the purpose of execution.

[19] On the basis of an arrest warrant, a person caught on the territory of Hungary shall be detained for a maximum period of seventy-two hours (section 10 of the ACCEU). The Budapest-Capital Regional Court will hold a hearing on the case, where the person shall be informed of the content of the arrest warrant, the possibility of a simplified surrender and – if there are no circumstances that would justify the refusal of the European arrest warrant – a decision on detention shall be taken. The court shall order the arrest of the person concerned for the purpose of surrender if the conditions for the execution of the arrest warrant and the surrender are fulfilled (sections 11 and 13 of the ACCEU). If the person concerned does not consent to the surrender and the court finds that none of the grounds for refusal of the European arrest warrant apply, the Budapest-Capital Regional Court shall order the provisional arrest of the person concerned for the purpose of surrender (section 12 of the ACCEU). If the court finds at a retrial held after the European arrest warrant has been received that the conditions for execution and surrender are fulfilled, it shall order the arrest for the purpose of surrender.

[20] A provisional arrest for the purpose of execution is issued if the European arrest warrant has been issued for the purpose of executing a custodial sentence or a detention order and the requested person is a Hungarian national residing in Hungary. In this case, the Budapest-Capital Regional Court shall refuse to execute the European arrest warrant and notify the Minister responsible for Justice, who shall initiate the takeover of the execution of the custodial sentence or measure involving deprivation of liberty of the person concerned (section 8 of the ACCEU).

[21] All three arrests are coercive measures restricting personal liberty, the duration of which is laid down in the ACCEU (see: Resoning [71] to [76]).

[22] Section 2 of the ACCEU provides that, as background legislation in proceedings with the Member States, the Act XIX of 1998 on Criminal Procedure (hereinafter: ACP)

shall be applied, subject to the derogations contained in the Act. According to the ACP, the coercive measures restricting personal liberty which may be applied in criminal proceedings (until their final conclusion) are pre-trial detention, prohibition on leaving the place of residence, house arrest and bail without restriction of personal liberty.

[23] The ACP provides for the issue of an arrest warrant in the event of non-serving of a custodial sentence by the prisoner, and the rules for the execution of the arrest warrant are laid down in separate legislation (see Reasoning [42] to [48]).

[24] Pursuant to the provisions of the ACCEU relating to arrest, the Budapest-Capital Regional Court shall order the arrest for the purpose of surrender, provisional arrest for the purpose of surrender or provisional arrest for the purpose of execution of the requested person. Section 15 (3) of the ACCEU, by categorically prohibiting the use of other coercive measures restricting personal liberty and the use of bail, makes the deprivation of liberty of a person detained on the basis of an arrest warrant mandatory. According to the reasoning of this provision of the ACCEU, the law-maker intended to make the arrest mandatory because the European arrest warrant and the proceedings based on it are usually issued for serious offences. In the law-maker's view, ordering arrest is a way of ensuring that the person concerned is not exempting itself from the proceedings, also in view of the short time limits for proceedings, and thus of allowing the European arrest warrant to be executed in good time.

IV

[25] The petition is unfounded.

[26] 1 The petitioner judge requested a finding that section 8 (1), section 11 (1) (c), section 12 (1), section 13 (4) and section 15 (3) of the ACCEU were in conflict with the Fundamental Law. A judge may initiate establishing on the basis of Article 24 (2) (b) of the Fundamental Law that a law or a provision of a law is contrary to the Fundamental Law, if it is to be applied in the course of the adjudication of an individual case pending before the judge.

[27] In the context of the old ACCEU, the petitioner judge sought a finding that section 15 (3) and section 11 (1) (c) of the old ACCEU were in conflict with the Fundamental Law and the annulment of those provisions, as provisions of the law applicable in the individual case. In subsequent supplements to the petition, the petitioner pleaded the violation of the Fundamental Law by the new section 15 (3) and section 11 (1) (c) of the amended ACCEU, which contained the same rules as before, and extended the petition to the additional rules on arrest for the purpose of surrender, provisional arrest for the purpose of surrender and provisional arrest for the purpose of execution in section 8 (1), section 12 (1) and section 13 (4). The Constitutional Court found that section 11 (1)

(c) and section 15 (3) of the ACCEU apply in the case at hand, but section 8 (1), section 12 (1) and section 13 (4) are not applicable in the course of adjudicating the case.

[28] According to section 52 (1) of the ACC, the petition should contain an explicit request. A petition is deemed to be explicit if it clearly indicates, among others, the provision of law to be examined by the Constitutional Court and contains reasons as to why the provision of law complained of is contrary to the specific provision of the Fundamental Law.

[29] The petition contains a detailed explanation as to why the petitioner judge considers section 15 (3) of the ACCEU, which is also applicable in the specific case, to be contrary to the Fundamental Law, and the petition therefore meets the requirements for an explicit request in this part. However, the Constitutional Court found that the petition could not be regarded as explicit with regard to section 11 (1) (c), because it did not state the reasons why it considered this provision of the ACCEU to be contrary to the Fundamental Law. In fact, the petition challenges the exclusion of alternatives to arrest, and thus the mandatory arrest, and not the possibility of deprivation of liberty for the execution of a European arrest warrant.

[30] The Constitutional Court therefore dismissed the petition in respect of section 8 (1), section 12 (1) and section 13 (4) of the ACCEU, which are not applicable in the court proceedings, and in respect of section 11 (1) (c) of the ACCEU, which is not clearly justified by the petitioner.

[31] 2.1 The Constitutional Court, in its examination of the constitutionality of section 15 (3) of the ACCEU, found that cooperation implemented in the field of criminal cooperation in the European Union is much more direct than the classical form of cooperation in system of international criminal cooperation between States. However, the degree of European integration has not reached a level where it is possible to speak of a single area of (criminal) law in the European Union where the European Union has exclusive legislative competence. Accordingly, the requirement of mutual recognition, which ultimately means that Member States treat each other's criminal proceedings as equivalent to their own, is a key element of European criminal cooperation. At the same time, Member States executing a European arrest warrant, through their judicial authorities, control the European arrest warrant issued by another Member State by examining the grounds for refusing surrender, and indirectly the criminal proceedings (conducted) by the other Member State. The right of control of the executing Member State is exercised by its criminal courts (in Hungary, the Budapest-Capital Regional Court) during the surrender procedure, a specific procedure for the execution of the European arrest warrant.

[32] When the Budapest-Capital Regional Court applies a coercive measure in the surrender procedure, its decision naturally ensures the personal presence of the

requested person in the surrender procedure (this is also referred to in the already mentioned ministerial justification to section 15 (3) of the ACCEU).

[33] At the same time, the most important and ultimate function of the European arrest warrant – in view of the purpose of its issuing and its unconditional validity – is to ensure that the requested person is available during the criminal proceedings in the issuing Member State; and that the sentence of imprisonment or the measure involving deprivation of liberty to be served can be served as quickly as possible in the issuing Member State (in the case of a provisional arrest for the purpose of execution, in the executing Member State).

[34] In the light of the above, the Constitutional Court has held that the application of provisional arrest for the purpose of surrender, arrest for the purpose of surrender and provisional arrest for the purpose of execution has a dual function. Thus, the decision of the Budapest-Capital Regional Court on coercive measures ensures, on the one hand, the presence of the requested person in the surrender procedure. On the other hand, the Budapest-Capital Regional Court, when taking its decision – typically by examining the grounds for refusing surrender – also takes into account the criminal proceedings of the issuing Member State, thus facilitating the ultimate function of the European arrest warrant.

[35] 2.2 The Framework Decision regulates the European arrest warrant in a uniform way, regardless of the purpose for which it was issued. Accordingly, neither does the ACCEU distinguish between the ways in which European arrest warrants are executed for different purposes (i.e. the execution of a custodial sentence or a detention order or the conduct of criminal proceedings).

[36] In the Constitutional Court's view, a substantive distinction should be made between the two specific purposes for issuing a European arrest warrant, depending on the stage of the criminal proceedings against the requested person in the issuing Member State.

[37] In the case of a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order, the criminal proceedings against the requested person have been finally concluded and an attempt has been made, under the law of the issuing State, to execute the custodial sentence or detention order imposed by the final judgement, which has been frustrated because the requested person has left the Member State concerned before being arrested.

[38] In the case of an arrest warrant issued for the purpose of criminal proceedings, the criminal liability of the requested person has not yet been decided in the issuing Member State and the arrest warrant is intended to ensure the participation of the requested person in those proceedings. Where in the former case the custodial

sentence imposed by a final judgement has a definitive effect (the requested person is convicted), in the latter case the legal situation regarding the criminal liability of the requested person is dependent on the presumption of innocence, therefore the deprivation of liberty applied is not a criminal sanction but a (coercive) measure of a temporary nature to facilitate the conduct of the criminal proceedings.

[39] In the Constitutional Court's view, the two cases should be treated differently in the constitutional examination of the execution of the European arrest warrant, including the deprivation of liberty applied in connection with it by the courts of Hungary as the executing Member State.

[40] 3 In the present case, in the judicial initiative regulated in section 25 of the Act CLI of 2011 on the Constitutional Court – since the place of the legislation challenged in this case contains identical provisions for several situations different from each other – the Constitutional Court examined the application of certain statutory provisions by the petitioner judge only in the context of the specific case before it, in the light of the context raised by the petitioner judge, and only in this segment did it carry out the Constitutional Court's review of the legislative provisions applied. In the criminal case on which the judicial initiative is based, the European arrest warrant was issued for the purpose of executing a custodial sentence, and the Constitutional Court has therefore examined in the present decision the relationship of section 15 (3) applicable in the main proceedings to the Fundamental Law solely in the context of that purpose.

[41] The Constitutional Court first examines whether the mandatory deprivation of liberty rule applicable to a prisoner caught on the basis of a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order is consistent with the rules of execution applicable to a convicted person caught on the basis of a national (domestic) arrest warrant. Subsequently, the Constitutional Court outlines the content of the right to liberty, referring to the provisions of international human rights conventions and the case-law of the European Court of Human Rights (ECtHR) on this right. Then the Constitutional Court, using the conclusions drawn from the above, will examine the context of the contested provision in relation to the right to personal liberty and the prohibition of discrimination, assessing the content of the judicial initiative.

[42] 4 According to the quoted provision of the Framework Decision, the executing Member State may decide, "in accordance with its own law", whether the requested person who is in custody under a European arrest warrant should continue to be detained or whether that Member State may release him or her at any time "in conformity with the domestic law", subject to certain conditions.

[43] In the light of these considerations, the Constitutional Court has provided an overview of the national rules on the issue and execution of (domestic) arrest warrants issued for the purpose of executing custodial sentences.

[44] Chapter XXX of the ACP contains general rules on the execution of decisions taken in criminal proceedings. According to section 590 (3) of the ACP, "if the sentence or the remainder of the sentence is to be served on a convict residing in an unknown place, the enforcement judge shall take measures to locate the whereabouts of the convicted person, and in the case of imprisonment, issue an arrest warrant."

[45] Among the laws containing detailed rules, section 6/A (1) (d) of the Law-Decree No. 11 of 1979 on the execution of sentences and measures (hereinafter: LDPE), "the penal enforcement judge may, for the purpose of executing the sentence or the medical treatment under compulsory detention, order a residence search, a warrant of caption or issue an arrest warrant in order to locate a prisoner or person subject to medical treatment under compulsory detention who is in an unknown place and has not begun serving a sentence of imprisonment or detention which has been finally imposed."

[46] Pursuant to section 25 (3) and (4) of the Decree No. 9/2002 (IV. 9.) of the Minister of Justice on the duties of courts and other bodies in the enforcement of decisions taken in criminal matters, where the notice to start imprisonment could not be served on the prisoner because, according to the report of the serving agent, the prisoner failed to receive the notice after two attempts to serve it or the prisoner is unknown at the indicated address, or has left the address indicated to an unknown destination, the penal enforcement judge shall take measures to locate the convicted person under section 590 (3) of the ACP and section 6/A (1) (d) of the LDPE, as detailed above. First, the judge shall order a residence search to establish the whereabouts of the prisoner, and if this is unsuccessful and if it is established that the prisoner has absconded or gone into hiding with the intention of preventing the execution of the custodial sentence, the penal enforcement judge shall order the warrant of caption of the prisoner by issuing an arrest warrant. The penal-enforcement judge shall order in the arrest warrant that the convicted person be brought to the county (county-level competence) penal institute and shall immediately notify the competent county (county-level competence) penal institute by sending a copy of the arrest warrant.

[47] Finally, it should be pointed out that section 10 (c) of the Decree 6/1996 (VII. 12.) of the Minister of Justice on the rules for the execution of imprisonment and pre-trial detention mentions the arrest warrant issued by the penal enforcement judge with the content described above as one of the documents on which admission to the penal institute is based, and states in section 16 (1) that "a prisoner who has been caught on the basis of an arrest warrant issued for the purpose of commencing or

continuing the execution of a custodial sentence and who has been transferred to the institution shall be admitted regardless of the time of day.”

[48] To summarise the above rules, it may be stated that a prisoner caught on the basis of a (domestic) arrest warrant issued for the purpose of executing a custodial sentence shall immediately begin to serve the custodial sentence and shall not be released after his or her caption. It also follows from the foregoing that the mandatory deprivation of liberty for the execution of a custodial sentence or a European arrest warrant issued for the purpose of executing a custodial measure is consistent with the rules on the execution of a warrant of caption issued for the purpose of executing a custodial sentence in the domestic context, with the logical difference, arising from the absence of exclusive jurisdiction (see Reasoning [31] to [39]), that the part of the deprivation of liberty corresponding to the duration of the surrender procedure is carried out in the territory of the executing Member State.

[49] 5.1 Article IV (1) of the Fundamental Law declares the right to personal liberty as a general principle, according to which everyone has the right to liberty and security of person, and no one may be deprived of his or her liberty otherwise than for a reason and in accordance with a procedure laid down by law.

[50] The right to personal liberty may be restricted under the permissive provisions of Article IV of the Fundamental Law. However, a lawful, statutory deprivation of personal liberty may also cause unjustified harm. Certain restrictive provisions are in conformity with the Fundamental Law if the restriction is necessary and proportionate to the constitutionally recognised aim it seeks to achieve. In assessing proportionality, account should also be taken of the need to ensure that there are adequate safeguards to mitigate to an acceptable degree any harm to rights that may result from the restriction. The conditions for a restriction of the right to personal liberty may therefore be determined by interpreting the provisions of Article IV of the Fundamental Law in conjunction with Article I (3) of the Fundamental Law and in relation to each other.

[51] The general formal criterion of the possibility of restricting fundamental rights is laid down in the first sentence of Article I (3) of the Fundamental Law, according to which rules relating to fundamental rights and obligations may be laid down by Acts of Parliament. In the context of the right to personal liberty, Article IV (2) of the Fundamental Law specifically emphasises that an individual may be deprived of his or her personal liberty only for a reason and under a procedure laid down by Acts of Parliament. Article I (3) of the Fundamental Law provides for the possibility of limiting the content of fundamental rights. According to this, a fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right. It

also follows that a lawful, statutory deprivation of personal freedom can only be considered compatible with the Fundamental Law if the restriction is necessary and proportionate to the constitutionally recognised aim it is intended to achieve.

[52] 5.2 The international human rights conventions referred to in the initiative regulate the right to personal liberty in a way similar to the provisions of the Fundamental Law. Article 9 of the Covenant guarantees the right to liberty and security of person, according to which deprivation of liberty may be deprived only for reasons and in accordance with procedures defined by law, but arbitrary arrest and detention are prohibited.

[53] Article 5 of the Convention provides for the right to liberty and security of person. Article 5 (1) (a) to (f) of the Convention contains an exhaustive list of grounds and conditions under which a person may be lawfully deprived of liberty by a procedure established by law. The Constitutional Court accepts as a minimum standard for the enforcement of fundamental rights the level of legal protection set out in the international treaties and the related case-law {Decision 32/2012 (VII.4.) AB, Reasoning [41], last confirmed in the Decision 33/2013 (XI.22.) AB, Reasoning [24]}, and therefore the Constitutional Court has also reviewed the case law of the ECtHR on the said provision.

[54] When assessing whether a deprivation of liberty can be considered lawful, the ECtHR first of all examines whether the detention is lawful under the domestic law of the State in which it is executed (formal aspect). However, according to the case-law of the ECtHR, the decisive factor in determining the lawfulness of a deprivation of liberty is whether it complies with the purpose set out in Article 5 (1) of the Convention, namely the requirement of inherent lawfulness, according to which the detention may not be arbitrary (substantive aspect). [Khudoyorov v Russia (6847/02), 8 November 2005, para 137; Lopko and Touré v Hungary (10816/10), 20 September 2011, para 20] Accordingly, a deprivation of liberty within the meaning of national law may also be arbitrary where there is bad faith or deception on the part of the authorities or where the detention (based on its circumstances and location) is not connected with a ground of detention laid down in the Convention [Saadi v United Kingdom [GC] (13229/03) 29 January 2008, para 69].

However, the ECtHR has also stated in its case-law on the right to liberty that the concept of "arbitrariness" differs to some extent in the case of the different grounds of detention listed in Article 5 (1) (a) to (f) of the Convention [Saadi v United Kingdom [GC] (13229/03), 29 January 2008, paragraph 68].

[55] Article 5 (1) (f) of the Convention, which is relevant to the present case, allows for the lawful arrest of a person who is being prosecuted for extradition purposes. In

relation to this provision, the ECtHR has held that the level of protection in this case differs from the level of protection applicable to the ground of detention under Article 5 (1) (c). The existence of the criterion of “reasonable necessity”, for example to prevent the committing of a new offence or the absconding of the accused, is not required in order to assess the lawfulness of detention based on Article 5 (1) (f) of the Convention [Chahal v United Kingdom (22414/93), 15 November 1996, para. 112; last confirmed in Sidikovy v Russia (73455/11), 20 June 2013, para. 162]. According to the case-law of the ECtHR, detention for extradition purposes lawfully restricts the right to liberty of the person for as long as extradition proceedings are pending, provided that such proceedings are carried out with due diligence and within a reasonable time by the authorities of the Contracting State [Kolompar v Belgium (11613/85), 24 September 1992, para 36, last confirmed in Sidikovy v Russia (73455/11), 20 June 2013, para 162]. Nor does the lawfulness of the detention depend on whether the decision on the basis of which the extradition was sought is justified under national law or the Convention [Chahal v United Kingdom (22414/93), 15 November 1996, paragraph 112; last upheld in Sidikovy v Russia (73455/11), 20 June 2013, paragraph 162].

[56] 6 The subject of the present constitutional review is the exclusion of the applicability, on the basis of the ACCEU, of institutions substituting mandatory deprivation of liberty in the execution of a European arrest warrant issued for the purpose of executing a custodial sentence or a measure involving deprivation of liberty.

[57] 6.1 The Constitutional Court found that the legislation in question complied with the formal requirements of the Fundamental Law and the international human rights conventions in relation to the restriction of fundamental rights, since the conditions and methods of deprivation of liberty applicable in the execution of a European arrest warrant, as well as the procedure and the rights of the requested person, are laid down by an Act of Parliament.

[58] 6.2 As deductible from the provisions of the Fundamental Law, public authorities have both the right and the duty to enforce punitive authority. In order to fulfil this task, the bodies exercising criminal authority shall be provided with effective means, which necessarily entails the use of coercive measures that severely restrict rights. The need to use coercive measures may also be justified by the fact that the offences are threatening or infringing the fundamental constitutional rights of other persons. The restriction of the fundamental constitutional rights of the persons concerned, in particular the accused, in criminal proceedings may therefore also be in the interests of the protection of other persons or of society. A balance between these two interests requires the incorporation of guarantees in criminal proceedings.

[59] Arrest for the purpose of surrender, provisional arrest for the purpose of surrender and provisional arrest for the purpose of execution are temporary deprivations of

liberty of the requested person for the purpose of executing a European arrest warrant. The purpose of the European arrest warrant, as examined in the present proceedings, is the arrest and surrender of the requested person with a view to the execution in another Member State of a custodial sentence or a measure involving deprivation of liberty. It also follows from the above that the execution of a European arrest warrant may, in order to ensure the successful prosecution of the penal authority and the effective combating of cross-border crime, necessarily entail the search for the requested person, his or her arrest and subsequent detention, which may, however, be regarded as a necessary measure for the purpose pursued.

[60] 6.3 The Constitutional Court then examined whether the mandatory arrest complied with the requirement of proportionality, i.e. whether the mandatory restriction of the personal liberty of the requested person by means of arrest for the purpose of surrender, provisional arrest for the purpose of surrender and provisional arrest for the purpose of execution was proportionate to the aim of enabling – as a result of the execution of the European arrest warrant – the commencement of requested person’s custodial sentence or measure involving deprivation of liberty which had been imposed by a final judgement and which, in the absence of voluntary compliance by the requested person, had not been carried out within the prescribed period.

[61] 6.3.1. In doing so, the Constitutional Court first took into account the fact that prior to the issuing of the European arrest warrant for the purpose of executing the custodial sentence or measure involving deprivation of liberty a final decision imposing a custodial sentence or measure involving deprivation of liberty had been taken at the end of criminal proceedings in the issuing Member State, secured with appropriate guarantees. In the course of the criminal proceedings, the sentencing court had the opportunity to examine and consider all the evidence and circumstances of the case, even to a greater extent than the court which is competent to decide on the lawfulness of pre-trial detention in the course of the criminal proceedings. In the case at hand, the court in the issuing Member State, after careful consideration of the evidence, has established beyond reasonable doubt that the person in question has committed a criminal offence. The court therefore considered it necessary, having regard to the personal circumstances, to impose on the person the most severe penalty or measure involving a necessary infringement of personal liberty. It follows from the finality and binding nature of the final judgement that the deprivation of liberty imposed or applied shall be compulsorily executed by the authorities within the limitation period. As a general rule, execution takes place on the basis of voluntary compliance by the sentenced person, following service of the summons to report to the penal institute.

[62] The process leading to the issuing of the European arrest warrant begins precisely when the requested person has not voluntarily begun to serve the custodial sentence

or measure. In the absence of voluntary compliance, the issuing Member State will first make attempts under its national law to locate the sentenced person. Only after the ineffectiveness of the measures taken to locate the sentenced person or the finding that the sentenced person has acted in an attempt to flee from execution, is the European arrest warrant issued for the arrest and surrender of the requested person.

[63] In the absence of voluntary compliance by the requested person, the execution of the custodial sentence or detention order imposed by a final judgement may start only upon the detention in the executing Member State of a person successfully caught on the basis of a European arrest warrant issued for the purpose of executing a custodial sentence or measure. There is no constitutional objective which justifies the law-maker's providing for the possibility of applying coercive measures not involving deprivation of liberty to persons who voluntarily commence the execution of a final deprivation of liberty in respect of persons caught on the basis of a European arrest warrant. This would give the latter category of persons an advantage which could discourage the voluntary commencing of final custodial sentences.

[64] 6.3.2. The Constitutional Court has held that in the transfer procedure, the court of the executing Member State is obliged to examine before deciding on the deprivation of liberty whether there are grounds for refusing the transfer. This obligation is a rule of guarantee which is of major importance with regard to the restriction of the right to liberty, since no deprivation of liberty may be imposed if any ground for refusal exists. (An exception to this is the ordering of provisional arrest for the purpose of execution, but in this case there is a special ground for refusal, on the basis of which the person sought, on the ground of his or her Hungarian nationality, initiates through the Minister responsible for Justice in Hungary the transfer of the execution of the deprivation of liberty imposed by a final judgement.)

[65] On the basis of the mutual cooperation and trust between the Member States in each other's legal systems, the Hungarian executing judicial authority (the Budapest-Capital Regional Court) examines the grounds for refusal of surrender on the basis of the information provided by the authorities of the issuing Member State. The Constitutional Court, in its examination of the constitutionality of other provisions of the ACCEU, stated in this connection that "this does not, however, imply the acceptance without control of the authority issuing the arrest warrant." {Decision 3144/2013. (VII.16.) AB, Reasoning [20]} The Budapest-Capital Regional Court may, through the Minister, request that it be provided as a matter of urgency with the additional information necessary for a decision refusing surrender, if the information and facts previously communicated by the judicial authority of the issuing Member State do not allow an appropriate decision to be taken on the surrender (section 19 of the ACCEU). The executing judicial authority therefore carries out a certain degree of review of the

European arrest warrant [see also the European Court of Justice judgement of 29 January 2013 in Case C-396/11 Radu, paragraph 42].

[66] By examining the grounds for refusal, the Budapest-Capital Regional Court may assess the circumstances which, for certain reasons, preclude the execution of a custodial sentence or a measure involving deprivation of liberty which has been imposed by a final and binding judgement of a court of the requesting Member State and which should accordingly mandatorily be executed. The possibility of review by the Budapest-Capital Regional Court is therefore of guaranteed importance because, if the enforcement of a criminal sanction involving deprivation of liberty were excluded, the deprivation of liberty ordered by the Budapest-Capital Regional Court would not be lawful either.

[67] The grounds for refusal typically arising in connection with a European arrest warrant issued for the purpose of executing a custodial sentence or a measure involving deprivation of liberty may include the following: the sentence is statute-barred under Hungarian law if the offence on which the European arrest warrant is based falls within Hungarian jurisdiction [See section 5 (c) of the ACCEU]; the existence of a decision on the basis of which the sentence on which the arrest warrant is based has already been executed or cannot be executed under the law of the issuing Member State [see section 5 (d) of the ACCEU]; a final acquittal or conviction for the same acts in a third State, if the sentence has already been executed or is being executed or cannot be executed under the law of the State which issued the final judgement [See section 5 (e) of the ACCEU]; or, in the absence of certain guarantees, a judgement imposing a custodial sentence or measure against a defendant in absentia [See section 6 of the ACCEU].

[68] Some of the grounds for exclusion are linked to circumstances which the court of the requesting State could not have assessed, since they occurred after the final judgement, precisely in the context of the passage of time. The passage of time may in certain cases have an impact on the enforceability of the custodial sentence or measure, and a review of these grounds for exclusion by the Budapest-Capital Regional Court would ensure that a deprivation of liberty is applied in the transfer procedure only if the judgement on which the European arrest warrant is based is still enforceable.

[69] The ground for refusal applicable in the case of deprivation of liberty by a judgement rendered in respect of an absent person is intended to ensure that – because of the different rules of the Member States governing such proceedings – the European arrest warrant is executed only if the proceedings against the absent person in the issuing Member State contain the safeguards which are largely based on the case-law of the ECtHR [see recitals (1), (3), (4), (8), (11) and (12) of the European Union's Council Framework Decision 2009/299/JHA amending Framework Decisions

2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (promulgated in: Official Journal L 81, 2009. 27 March 2011)].

[70] 6.3.3. The Constitutional Court has ruled that the mandatory detention for the purpose of executing a European arrest warrant issued for the purpose of a custodial sentence or a measure involving deprivation of liberty is applicable in the absence of grounds for refusal, provided that several conditions of guarantee are met. The existence of these conditions is established by two judicial forums, complementing each other's action, thus ensuring the lawful and proportionate application of the coercive measure. The court of the issuing Member State, in the criminal proceedings leading to the final conviction, applied to the requested person a mandatory criminal sanction involving deprivation of liberty, after careful consideration of the evidence and personal circumstances. And in the surrender procedure of a person arrested as a result of a European arrest warrant issued for lack of voluntary compliance, the Budapest-Capital Regional Court, when examining the grounds for refusal, is obliged to assess the grounds for possible exclusion from execution. If the Budapest-Capital Regional Court finds that there are no grounds for exclusion, the constitutional basis for the mandatory imposition of a coercive measure is that the mandatory execution of a custodial measure imposed by a judgement of the court of the issuing Member State is also constitutionally justified.

[71] 6.3.4. From the point of view of proportionality of the restriction of the right to liberty, the rules of the ACCEU provide for short time limits for the surrender procedure and the transfer (and thus the detention) of the requested person, in line with the objectives of the Framework Decision. Accordingly, provisional arrest for the purpose of surrender may last for a maximum of forty days from the date of its ordering, after which it shall be terminated (Section 15 (1) of the ACCEU)

[72] The final decision on the execution of the European arrest warrant and on surrender shall be taken within ten days of stating the consent if the requested person consents to surrender, or, in the absence of consent, within sixty days of the person's caption. These time limits may, exceptionally, be extended by thirty days; if the new time limit cannot be met, the Minister responsible for Justice shall inform Eurojust, giving the reasons for the delay (Section 16 (1) to (3) of the ACCEU).

[73] The requested person shall be surrendered to the competent authority of the issuing Member State not later than ten days after the decision on the execution of the European arrest warrant and the surrender has become final. If the time limit cannot be met due to unforeseeable circumstances beyond the control of any of the Member States, the Member States concerned shall agree on a new surrender date. In that case,

the requested person shall be surrendered within ten days of the new deadline (Section 20 (4) to (5) of the ACCEU).

[74] Once these time limits have expired, the requested person shall be released without delay. (Section 20 (7) of the ACCEU).

[75] The period spent by the requested person in detention in the executing Member State counts in full towards the period of deprivation of liberty to be executed in the requesting Member State (see Article 26 of the Framework Decision).

[76] Provisional arrest for the purpose of execution shall last no longer than the period until taking the decision on executing the custodial sentence or the measure involving deprivation of liberty and shall not exceed the duration of the sentence or measure set out in the Member State's decision. The entire period of provisional arrest for the purpose of execution shall be included in the duration of the custodial sentence or measure involving deprivation of liberty recognised and taken over for execution by the court. (Section 8 (2) to (3) of the ACCEU)

[77] 6.3.5. The Constitutional Court found that the provisions described above guarantee that, in the case under examination by the Constitutional Court, the mandatory deprivation of liberty, which is applied in the transfer procedure to ensure the enforcement of the custodial sentence imposed or the custodial measure applied, is applied in a procedure which provides adequate guarantees and requires short time limits. A criminal sanction involving deprivation of liberty contained in a judgement of the court of the issuing Member State shall constitute a necessary and proportionate restriction of the requested person's right to liberty. The European arrest warrant serves precisely to execute this criminal sanction, and the Budapest-Capital Regional Court shall review the European arrest warrant following the arrest of the requested person and then decide whether to apply the deprivation of liberty. In the light of the foregoing, it may be concluded that the deprivation of liberty which the Budapest-Capital Regional Court is required to apply in the circumstances described constitutes a proportionate restriction on the right to liberty.

[78] On the basis of the foregoing, the Constitutional Court concluded that the challenged provision of the ACCEU, when applied in the context of a European arrest warrant issued for the purpose of executing a sentence or measure involving deprivation of liberty, does not infringe the fundamental right to personal liberty enshrined in Article IV (1) and (2) of the Fundamental Law, as invoked by the petitioner, and therefore rejected the petition in this part.

[79] 7 The petitioner judge also invokes a violation of Article XV (1) of the Fundamental Law (equality before the law), justifying his claim by the fact that the court had considered it sufficient to impose a prohibition on leaving the residence of the

defendant in another criminal proceeding against the defendant in Hungary on the basis of "identical criteria", but – due to the law in question – in the framework of international criminal cooperation, a less severe coercive measure could not be taken into account in the transfer proceedings before the petitioner judge. The petitioner judge further submits that in surrender proceedings, the provision imposing mandatory detention and excluding alternatives known under domestic law discriminates against the accused persons in surrender proceedings in comparison with the accused persons in domestic criminal proceedings. In the case of the latter, the law provides for the possibility of less severe coercive measures than arrest, whereas in surrender proceedings this is not possible.

[80] According to the consistent case-law of the Constitutional Court, the requirement of equality before the law only prohibits unjustified distinctions between homogeneous groups (prohibition of discrimination or disadvantage). Discrimination can therefore be established if a law treats a person or a group of persons differently from another person or group of persons in the same situation (belonging to the same group for the purposes of the legislation) without there being a reasonable constitutional justification for doing so. Consequently, providing different statutory regulations on scopes of persons having different characteristics shall not be regarded as discrimination. {See: Decision 191/B/1992. AB, ABH, 1992, 592, 593; most recently reinforced in the Decision 23/2013. (XI.25.) AB , Reasoning [87]}

[81] 7.1. The Constitutional Court therefore examined, first of all, whether persons arrested on the basis of a European arrest warrant issued for the purpose of executing a custodial sentence or a measure involving the deprivation of liberty and subject to mandatory arrest – if the conditions for surrender are met – constitute the same category as that of the persons subject to a decision on the deprivation of liberty in domestic criminal proceedings. In making that determination, the Constitutional Court refers back to the findings made in paragraph IV/4 of its decision, according to which the situation of persons arrested on the basis of a European arrest warrant issued for the purpose of executing a custodial sentence and arrested in the course of surrender proceedings, which is the subject of the present constitutional review, is comparable to that of persons arrested on the basis of a domestic arrest warrant and compulsorily deprived of their personal liberty prior to the execution. In both cases, the legislation concerns a person who has not voluntarily begun serving the custodial sentence imposed by a final judgement and the authorities therefore take action to arrest that person by issuing an arrest warrant. The aim is to ensure that the custodial sentence imposed by the final judgement is served as soon as possible after the caption of the accused person.

[82] In paragraphs [42] to [48] of its reasoning, the Constitutional Court held that the contested provisions of the ACCEU and the rules on the execution of a domestic arrest

warrant issued for the purpose of executing a custodial sentence have the same consequence (mandatory deprivation of liberty) in relation to persons sought and then caught. Considering that both the ACCEU and the rules on the enforcement of domestic arrest warrants described above treat persons caught in the same way, no discrimination can be established in this case.

[83] 7.2. The lack of alternatives complained of by the petitioner in relation to the ACCEU (possibility of a less severe coercive measure or the possibility of not imposing a coercive measure) arise in "domestic" criminal proceedings in relation to those accused persons whose criminal liability has not yet been finally decided. The Constitutional Court has therefore examined whether persons caught on the basis of an arrest warrant issued for the execution of a custodial sentence imposed by a final judgement and persons caught on the basis of an arrest warrant issued in the course of criminal proceedings still pending against them form the same group.

[84] The Constitutional Court refers back to paragraphs [61] to [63] of the Reasoning, according to which a person caught on the basis of an arrest warrant issued for the purpose of executing a custodial sentence and deprived of his personal liberty begins to serve a custodial sentence imposed on him or her as a criminal sanction by a final and definitive judgement. However, the continued detention of a person caught and detained on the basis of an arrest warrant in the course of ongoing criminal proceedings does not serve the purpose of serving a mandatory penal sanction. The purpose of detention in this case is to ensure that the person presumed innocent is present during the criminal proceedings.

[85] In the light of the above, the situation of persons subject to coercive measures in ongoing criminal proceedings (where the possibility of alternatives arises) cannot be compared with, and does not constitute a homogeneous group of persons deprived of their liberty for the purpose of executing a custodial sentence or a measure involving deprivation of liberty.

[86] On the basis of the foregoing, the Constitutional Court found that the contested provision of the ACCEU, when examined in the context of a European arrest warrant issued for the purpose of executing a custodial sentence or measure, does not infringe the fundamental right to equality before the law enshrined in Article XV (1) of the Fundamental Law, relied on by the petitioner, and therefore rejected the petition in that respect as well.

Budapest, 11 February 2014.

Dr. Péter Paczolay,
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Dr. Elemér Balogh,
Justice of the Constitutional Court

Dr. István Balsai,
Justice of the Constitutional Court

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