



49th Plenary Meeting of the European Judicial Network

Tallinn, 22-24 November 2017

COVER NOTE

From: EJN Secretariat

To: EJN Contact Points

Subject: Discussion paper for the Workshop I – “EAW and detention conditions: consequences of the CJEU Decision on Pál Aranyosi (C-404/15) and Robert Căldăraru (C-659/15 PPU) cases”

The EJN Contact Points will find hereunder a discussion paper for the Workshop I – “EAW and detention conditions: consequences of the CJEU Decision on Pál Aranyosi (C-404/15) and Robert Căldăraru (C-659/15 PPU) cases” at the 49th Plenary Meeting of the European Judicial Network.

Discussion Paper on EAW and detention conditions: <i>consequences of the CJEU Decision on Pál Aranyosi (C -404/15) and Robert Căldăraru (C -659/15 PPU) cases</i>
--

Background

Following the examination of the preliminary questions posed by the *Aranyosi and Căldăraru cases*, the CJEU held that the execution of EAWs must be deferred or eventually brought to an end if there is a real risk of inhuman or degrading treatment because of the conditions of detention of the person concerned in the Member State where the warrant was issued.

The Court emphasised that systemic or generalised poor detention conditions can hamper the surrendering of a person where there is objective, reliable, specific and properly updated evidence of deficient detention conditions in the issuing Member State that the individual concerned by a European arrest warrant would be exposed to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State.

In case the executing Member State would need to verify if there is a real risk of inhuman and degrading treatment of the requested person, it should request supplementary information directly, or through the central authorities, on the detention conditions in the issuing Member State. The reply should be sent within the time limit specified in the request.

As a consequence the executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. The CJEU added that if the existence of a risk of inhuman or degrading treatment cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

Discussion Points

At the beginning of your intervention please present yourself and provide general information on the experience you have as EJN Contact Point/expert in your Member State regarding the application of the requirements by the *Aranyosi and Căldăraru* judgments.

Issuing Member States

1. Has your Member State received a postponement on the execution of the EAW due to difficulties regarding the detention conditions?

If so,

- a. have you established a mechanism to provide additional information?
- b. has your Member State offered alternative solutions?

- c. when issuing further EAWs to the same Member State, have your judicial authorities proactively provided information on the detention conditions to the executing Member State?
- d. has the time limit to provide the additional information been sufficient?

Executing Member States

2. Which have been the tools that your judicial authorities/central authorities have used to assess the potential risks of inhuman and degraded treatment in the issuing Member State?
 - a. Are the central authorities methodically involved in the assessment of the detention conditions?
 - b. Do you consider that a common database on detention conditions within the EU would be of added value to perform this assessment?
3. When requiring additional information from the issuing Member State,
 - a. What type of information has been required?
 - b. Do you consider that a model questionnaire should be developed at national or EU level to facilitate the assessment of the detention conditions? – *For illustration purposes, please see Annex I*;
 - c. Has your Member State also sought information/guarantees in the event of possible relocations to other/subsequent detention centres in the issuing Member States? (Pending CJEU C-496/16)
 - d. Which time limits are in general requested to obtain the information?
4. What have been the consequences if the judicial authorities assess that the person would be at risk of inhuman or degrading treatment?
 - a. Which elements should the issuing state provide in their guarantees to be considered sufficient?
 - b. In case the EAW was issued for the purpose of prosecution: Has your Member State requested the transfer of proceedings?
 - c. How have your judicial authorities interpreted the Court statement "*to bring the surrender procedure to an end*"? Has the execution of the EAW been postponed or refused?
 - d. Has your Member State found best practices?
5. What has been the practice if the person agrees to be surrendered to the issuing Member State? Would the judicial authorities still review the detention conditions?



6. What have been the minimum standards applied by your Member State to assess the detention conditions?
 - a. Would it be useful to compile information on minimum standards to facilitate the assessment in different situations? (e.g. *Muršić v. Croatia* ECHR on personal space)
 - b. Would it be useful to develop a European minimum standard to create a common understanding?

The Role of EJNI and Eurojust

In your experience,

7. What has been the role of the EJNI when there is a need for an assessment of the detention conditions?
 - a. Would further assistance be required from the EJNI Contact Points on this topic?
8. Should additional information be added to the EJNI website on this topic?
 - a. Links to available information from other organisations?
 - b. Other?
9. What has been the role of Eurojust when there is a need for assessment of the detention conditions?
 - a. Would further assistance be required from Eurojust on this topic?



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF JUSTICE

Museumstraße 7
1070 Vienna
Austria

phone: +xxxx
fax: +xxxxx
e-mail:xxxx

Official in Charge:

Re: Transfer of Sentenced Persons -
Framework Decision 2008/909/JHA -
Case of XX

The Federal Ministry of Justice has the honour to forward a certificate referred to in Art. 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union together with the necessary documents and to request to take over the further enforcement of the sentence pronounced by the Regional Court Y, file no. Z, against the XX.

XX is serving the sentence at the following address:

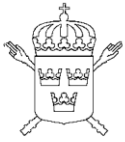
[Address of the Austrian Penitentiary]

XX has stated that he does not want to be transferred to your country due to the prison conditions. In order to examine the enhancement of social rehabilitation of the sentenced person and in accordance with the recent jurisprudence of the ECtHR and the ECJ, the Federal Ministry of Justice has the honour to ask – given the enforcement of the Austrian judgement in Romania - in which detention facility XX will be detained and to be informed about the prison conditions of this detention facility. In case that a detention facility cannot be established in this stage of the proceedings, the Federal Ministry of Justice kindly asks to be informed when the concrete prison is determined by the competent authorities.

The Federal Ministry of Justice avails itself of the opportunity to renew the expression of its highest consideration.

[Date]

On behalf of the Minister:

Date
2016-06-01Page 1 (2)
Document no xxxxx
Our reference xxxxx

Your date

Your reference xxxxx
Bacau Court of Law

Ministry of Justice of Romania
Directorate for International Law and Judicial
Cooperation
Division for International Judicial Cooperation in
Criminal Matters
E-mail:

European arrest warrant issued on May 27, 2015 regarding [REDACTED]

Dear Mams/Sirs

On May xx, 2016 the District Court of Solna ruled that [REDACTED] should not be surrendered to the Romanian authorities, on the grounds that [REDACTED] had sufficiently proven that he, if he is to be surrendered to Romania, would be at real risk of being subjected to treatment in breach of Article 3 of the European Convention on Human Rights as a result of the prison conditions in Romania.

The court referred in its ruling to the judgement, dated April 05, 2016, of the Court of Justice in the European Union in joined cases C-404/15 and C-659/15, [REDACTED] and [REDACTED]. In that judgement the court stated that the execution of a European arrest warrant must be deferred if there is a real risk of inhuman or degrading treatment because of the conditions of detention of the person concerned in the Member State where the warrant was issued. If the existence of that risk cannot be discounted within a reasonable period, the authority responsible for the execution of the warrant must decide whether the surrender procedure should be brought to an end.

The District Court of Solna further more referred to five judgements (Judgement on October 22, 2015, case xxxxxxxx, [REDACTED] and others vs. Romania; Judgement on February 18, 2016, case xxxxxxxx, [REDACTED] and others vs. Romania; Judgement on March 03, 2016, case xxxxx [REDACTED] and others vs. Romania; Judgement on April 07, 2016, case xxxxxxxx, [REDACTED] and others vs. Romania and Judgement on April 21, 2015, case xxxxx, [REDACTED] vs. Romania no. 2) where the European Court of Human Rights has stated violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The District Court of Solna came to the conclusion that in general the conditions in the Romanian prisons are such that there is substantial grounds to believe that a prisoner will be subjected to treatment in breach of Article 3. The overcrowding that generally seems to prevail in these prisons, in addition to each prisoner's own cell surface, also affect other conditions as ability to be outdoors, hygiene, access to toilet and ability to eat.

2016-06-01

Sida 2 (2)
Handling xxx
Ärende xxxxx
Handläggare xxxxx

Information regarding the execution of the sentence of imprisonment in Romania was received from the Court of Bacau and presented to the Swedish court. According to the content it is not possible to say in which category or where [REDACTED] will serve his sentence before implementation has started and a period of evaluation has been carried out and the location cannot be provided in advance.

Considering the above mentioned judgements the district court found that a more concrete and individualized opinion must be required from a state with such serious and frequently noted anomalies. The information provided was considered not to be enough.

The prosecutor will appeal to the Swedish appeal Court. To be used in the appeal case, we kindly ask the Romanian authorities to provide the following:

- Information about the current status in Romanian prisons regarding the problem of overcrowding etc. as described in the above mentioned rulings made by the European Court of Human Rights.
- A specific and individual guarantee that [REDACTED] if extradited to Romania, will not be exposed to prison conditions that are in breach of Article 3 of the European Convention on Human Rights, with as concrete information as possible on, for example, personal space in the cell, outdoor exercise, access to natural light and fresh air, sanitary facilities and hygiene.
- Any other information regarding the Romanian prison standards that would be of relevance to the case, for example measures taken by the Romanian authorities to comply with the standards set out in the Council of Europe's European Prison Rules adopted on 11 January 2006 (Recommendation Rec (2006) 2 of the Committee of Ministers to members states on the European Prison Rules).

We kindly request to receive the information and guarantee as soon as possible and no later than June 15, 2016.

Please send your reply to xxxxx@aklagare.se with attention: Urgent – file nr. xxxxx.

Yours sincerely,

xxxxxx