

Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings – safeguards for requested persons

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Table of Contents

EXECUTIVE SUMMARY	5
INTRODUCTION.....	7
RESEARCH FINDINGS.....	8
• 1.Right to information.....	8
a. Legal overview.....	8
• The law on persons under arrest	9
• The EAW law	9
b. Right to information in practice	12
• Provision of information (when, how by whom)	12
• Information about rights.....	13
• Information about the EAW – content and procedure.....	14
• Information on consenting to surrender	14
• Understanding of information	15
c. Discussion of findings	16
• 2.Right to interpretation and translation	16
a. Legal overview.....	16
b. Interpretation and translation in practice.....	18
• Provision of interpretation (decision and means)	18
• Translation of documents	19
• Interpretation of consultations with lawyers	20
c. Discussion of findings	20
• 3.Right to access to a lawyer	21
a. Legal overview.....	21
• Content of the right.....	21
• Timing.....	22
• Legal aid.....	22
• Exchange of correspondence	23
• Interview with a lawyer in the detention centre	23
• Temporary suspension of the right to a lawyer	23
b. Right to access to a lawyer in practice	24
• Information about legal assistance (including on dual representation).....	24
• Legal assistance in executing State (access, consultations, lawyer’s tasks)	25
• Legal assistance in issuing State (access, consultations, lawyer’s tasks)	27

•	Communication between the lawyers in both states	31
•	Free of cost access to a lawyer (or legal aid)	31
c.	Challenges.....	32
d.	Discussion of findings	32
•	4. Issuing and execution of the EAW	32
a.	Legal overview	32
•	When Cyprus is the executing State	33
•	When Cyprus is the issuing State	33
•	Proportionality	33
•	Remedies.....	36
•	Right to an appeal	36
•	Sanctions and right to compensation	37
•	Right to a copy of the executing decision	38
•	Remedies.....	38
b.	Issuing and execution of the EAW in practice	38
•	Factors considered when issuing the EAW	38
•	Factors considered when executing the EAW.....	39
c.	Challenges.....	45
d.	Discussion of findings	46
•	5. Use of digital and technological tools in EAW proceedings	46
a.	Legal overview	46
b.	Interview findings	47
•	Right to information.....	53
•	Right to interpretation and translation.....	54
•	Right to access to a lawyer.....	54
•	Issuing and execution of the EAW.....	55
•	The use of digital and technological tools in EAW proceedings	56
	CONCLUSION.....	58

List of Tables

Table 1: Sample professionals	7
Table 2: Are persons arrested on an EAW informed about their procedural rights?.....	14
Table 3: Are persons arrested informed of the contents of the EAW against them?	14
Table 4: Are the requested persons informed about what consenting to their surrender entails?	15
Table 5: Dual representation (in law)	24
Table 6: Cost-free legal assistance (in law)	24
Table 7: Are persons informed of their right to access a lawyer?	25
Table 8: Information on dual representation, interview findings	25
Table 9: Facilitating dual legal representation, interview findings (executing MS).....	27
Table 10: Providing dual legal representation, interview findings (issuing MS).....	31
Table 11: Cost-free legal assistance, interview findings	32
Table 12: Use of technological tools (in law)	47
Table 13: Use of digital tools, interview findings.....	52

EXECUTIVE SUMMARY

Right to information

The law transposing the Framework Decision on the EAW casts duties to provide information on the judge examining the application for execution of an EAW. In addition to the law transposing the Framework Decision on the EAW, the legal framework includes the Law on the rights of suspects, persons arrested and persons remanded in custody, which creates obligations for the police to inform arrested persons about their rights, as the first point of contact of an arrested person with the authorities. The practitioners interviewed confirmed that a Letter of Rights is always handed out to requested persons upon arrest by the arresting or the interrogating police officer; its contents however are not always explained by the police officers and the language is not always comprehensible to requested persons. Information about rights is further provided by the judge before whom the requested persons are presented within 24 hours from arrest, however the specialty rule is not always or adequately explained by all judges; often it is up to the lawyer to explain the specialty rule to their clients to enable them to make an informed decision. The contents of the EAW are communicated to the requested persons by the police in a rather vague and general manner; the details and particulars are explained to requested persons by their lawyers once they obtain a copy of the EAW.

Right to interpretation and translation

Interpretation is provided inside the courtroom at all times and the judge will ensure that it is adequate and of sufficient quality. Views about what happens at police stations are disputed and the practice emerged as uneven, as police officers are not trained to determine the language of interpretation required. According to the lawyers, no interpretation is provided outside the courtroom and communications between requested persons and their lawyers are also not supported by state-paid interpretation. The contents of the file are not translated, except if requested by the lawyer. Requested persons are not informed about their right to have the file translated for them. Prosecutors assume that the file is already in a language understood by the requested persons and that translation can, if necessary, be provided by their lawyers. The Letter of Rights is available in several languages however the police does not always hand it to requested persons in the right language.

Right to access to a lawyer

Accessing a lawyer in Cyprus as the executing State is generally problem-free although a number of weaknesses were identified by the lawyers. These include the fact that the list of legal aid lawyers, which may not necessarily include experts in the EAW, is handed out in a paper form with only names and phone numbers. In the absence of access to the internet and without the right to contact a person who they trust, requested persons have no opportunity to conduct research and locate a suitable lawyer. Accessing a lawyer in the issuing Member State is impossible without the help of the lawyer in Cyprus. However, prosecutors were unaware of this right and of the remedies available for infringements of this right, and no facilitation is offered by the authorities in order to exercise it.

Issuing and execution of the EAW – factors considered

The only factors considered by the Courts are those listed in the Framework Decision, some interpreted rather narrowly. The prosecutors viewed all EU Member States as sufficiently respectful of fundamental rights so as not to create suspicions that can lead to the non-execution of EAWs.

Detention conditions are not routinely examined and, even if raised by the requested person's lawyers, the court will conclude that they do not constitute reason for non-execution, as there are sufficient remedies in the issuing State to ensure redress.

INTRODUCTION

The field research consisted of interviews with three lawyers and three public prosecutors of the Attorney General’s office designated by the Attorney General, following consultation with the FRA. Judges in Cyprus do not ordinarily give interviews. Three interviews were conducted face-to-face and three were conducted via telephone, based on the expressed preferences of the interviewees themselves. Two out of the three lawyers agreed to be interviewed face-to-face; and two out of the three prosecutors preferred a telephone interview. All interviewees agreed to be recorded and signed the relevant consent forms.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

All interviews were conducted by the FRANET team’s senior expert and no training was required. The lawyers were selected based on their experience in defending requested persons in EAW proceedings, whilst the prosecutors were designated by the Attorney General as experienced in EAW matters. No challenges were encountered.

○ SAMPLE AND DESCRIPTION OF FIELDWORK

Defence lawyers:

Requested: 3, completed: 3

Public prosecutors:

Requested: 3, completed: 3

Table 1: Sample professionals

No.	Group	Experience in EAW proceedings	Gender
1	Defence lawyer	Represented wanted persons in EAW proceedings	M
2	Defence lawyer	Represented wanted persons in EAW proceedings	M
3	Defence lawyer	Represented wanted persons in EAW proceedings	F
4	Prosecutor/Judge	Represented the authorities in EAW proceedings	F
5	Prosecutor/Judge	Represented the authorities in EAW proceedings	F
6	Prosecutor/Judge	Represented the authorities in EAW proceedings	F

The interviews lasted on average one hour. The atmosphere was good throughout all interviews. The overall impression was that the prosecutors were more eager to defend the system and the practice of the authorities whilst the lawyers were less reluctant to identify gaps and weaknesses.

- **DATA ANALYSIS**

The legal analysis relied on desk research and analysed the transposing legislation, case law and other literature.

The recorded interviews were first transcribed and translated to English. The language was made readable and the key quotations were selected. The research compared and contrasted the six responses by codifying the standard answers common to all interviews and then dealing with the deviations. The responses of the prosecutors' cohort were particularly contrasted against the responses of the lawyers' cohort. The responses within each cohort were then compared to locate differences.

- **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

The report describes the legal framework and practice of EAW proceedings in Cyprus, based on the findings offered by the jurisprudence and the experiences of lawyers and public prosecutors. The prosecutors described the procedures followed once the requested persons were presented in court for the hearing concerning the execution of the EAW. Prosecutors further described their knowledge or presumptions about what happens at the stage of police investigation, from the point of arrest onwards; however, two out of three prosecutors admitted that they are not present during this part of the proceedings and do not have personal knowledge. The lawyers described the functioning of the system from the perspective of their clients, starting from the point of their initial arrest, locating both the areas where rights were implemented and the shortcomings of the law, the practice and the Cypriot legal system and culture.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

There are two sources of relevant legislative provisions setting out the right to information: the law transposing the Framework Decision on the EAW (hereinafter, the EAW law)¹ and the law regulating the right of all persons arrested and remanded in custody in the context of any criminal procedure including but not restricted to the EAW (hereinafter, the law on persons under arrest).² The law on persons under arrest contains provisions as regards the right to information which apply mutatis mutandis to persons arrested under a EAW. Generally speaking, the EAW law casts duties to provide information on the judge examining the application for execution of an EAW, whilst the law on persons under arrest casts this duty on the police as the first point of contact of arrested person with the authorities.

¹ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, articles 17(1)(c) and 17(9), stating explicitly this.

² Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005.

- The law on persons under arrest

The law on persons under arrest sets out a duty for the investigating police officer to inform persons arrested in a language understood by such persons of the reasons for their arrest, the right to access a lawyer and to communicate with a lawyer of their choice without any other person being present, legal aid eligibility if applicable, the right to interpretation and translation, the right to remain silent, the right to non-self-incrimination, the place where they will be detained, and their right to communicate with a third party under certain conditions.³

The law states that at times the right to information may not be granted immediately after arrest, when this is justified by the special circumstances of the case, either because there is an urgent need to prevent serious consequences for the life and bodily integrity of a person or a need to prevent a situation that may pose a serious risk to the criminal procedure. The derogation from the duty to immediately provide information must be proportionate, must not go beyond what is necessary, must be strictly limited in time, must not be based solely on the type or seriousness of the offence and must not prejudice the universally fair nature of the proceedings.⁴ Such temporary derogation must be implemented by a duly reasoned decision on a case-by-case basis, taken by the police officer in charge of interrogations. The arrested persons affected by such a decision may, at their first appearance before a court, request the court to review the legality of this derogation and issue any order deemed necessary under the circumstances.

Where the persons arrested are below 18 years of age, their guardians have the right to be informed by the police in a language accessible to them about the reasons for their arrest and detention and the place of detention.⁵ The derogation from this right in order to prevent risks, as set out above, applies also in the case of information provided to the guardians.

- The EAW law

The EAW law requires that all requested persons be presented before the district judge within 24 hours of their arrest. As soon as the judge is satisfied as to their identity, the judge will inform them of the content of the EAW, their rights to a lawyer and to an interpreter and their possibility to consent to their surrender to the issuing State.⁶ The judge must also inform requested persons without unjustified delay after deprivation of their liberty about their right to appoint a lawyer in the issuing State.⁷

³ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 3(1).

⁴ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 3(3)(a)

⁵ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 6(a).

⁶ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 17(a).

⁷ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 17(5).

The EAW law states that the requested persons ‘must be provided’ with a document of rights in a language that is simple and accessible to them.⁸

The Letter of Rights must provide the following information about the requested person’s rights:

- The maximum period that requested persons can be detained before being brought before a judge is 24 hours from arrest;
- The right to be informed of the contents of the EAW on the basis of which they were arrested, in a language they understand, although sometimes this information will be provided only in summary form and/or orally;
- The right to speak confidentially to a lawyer;
- The right to assistance from the police to contact a lawyer;
- The right to free interpretation for communicating with their lawyers;
- The right to confidentiality in all communications with their lawyers;
- The right to consent or not consent to be surrendered to the issuing Member State, pointing out that such consent will accelerate the procedure and that it is irrevocable.
- Persons who do not consent to their surrender have the right to a hearing before the Court.
- Copies of documents

The requested persons can ask for and receive copies of all documents, either themselves or through their lawyer, at their own expense.⁹

- Waiver of rights

The EAW law provides a procedure for requested persons to waive their rights to information, to a lawyer and to interpretation. The procedure requires, as a precondition for the waiver, that the requested person must have received oral or written information in simple and accessible language regarding the content of the rights waived and the consequences of the waiver.¹⁰ The waiver of rights can be oral or written and it must be recorded in the Court’s file.

- Consent to surrender

When requested persons declare that they consent to their surrender, such consent and potentially the express waiver of the speciality rule must be presented before the court. The court must clearly explain to the requested persons the consequences of waiving the speciality rule and inform them of

⁸ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 17(1A).

⁹ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 17(2).

¹⁰ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 17(8).

their right to appear with a lawyer and an interpreter. The judge must also highlight the irrevocability of the aforementioned statements.¹¹

Cyprus did not serve a notice to the Council under article 27(1) of the EAW Framework Decision.¹² Requested persons surrendered to the Cypriot authorities will not be prosecuted or deprived of their liberty for acts performed before their surrender which are different from the acts for which the EAW was issued.¹³ The national law transposed verbatim the exceptions to this rule as they are found in the Framework Decision on EAW, article 27, paragraphs (3) and (4).¹⁴ There is no mechanism to ensure that the information is understood; the law provides only for the duty of the competent authority to provide the information in a suitable format.

- Simple and accessible language

The law provides that the information must be provided in a language understood by the requested person, in simple and accessible form, taking into account the special needs of persons deemed to be vulnerable.¹⁵ Where the persons arrested are manifestly unable, owing to any mental or physical disability, to exercise the right of communication with a lawyer without assistance, an officer of the medical and/or social services of the state will be made available to them immediately after their arrest or as soon as practicable, in order to provide assistance to the arrested persons to exercise their right to communicate with their lawyer.¹⁶

- Waiver of rights

In case where arrested persons want to waive their right to a lawyer, the right to communicate with their embassy or consulate and the right to contact third parties, the police must inform the arrested person orally or in writing in a simple and accessible way of the content of the rights to be waived and the potential consequences of the waiver and ensure that the waiver is undisputed and voluntary.¹⁷ The police has the duty to inform arrested persons that they have the right to revoke at any moment their waiver of rights and to exercise the rights they had previously waived. From a combined reading of the two laws comprising the legal framework, it may be inferred that the right to revoke a waiver extends to the specialty rule. This is premised on the fact that the revocation of a waiver is foreseen in article 11 of the law on persons under arrest; and the EAW law explicitly states that the rights

¹¹ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 19.

¹² Consultation with the Attorney General's Office and the Ministry of Justice 26 April 2022.

¹³ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 36(1).

¹⁴ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 36(2).

¹⁵ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 3(1); Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 1A.

¹⁶ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 3(4).

¹⁷ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, articles 11(2)(b) and 11(2)(c).

conferred by, inter alia, article 11 of the law on persons under arrest, apply mutatis mutandis to procedures under the EAW law.¹⁸

- Recording in an interrogation file

The provision of information to an arrested person is recorded in the interrogation file, bearing the date and time of the provision of information. The date and time of the request for information is also recorded. In the event of a delay to supply the requested information, the reason for the delay must be recorded in the file. If any arrested persons decide to waive rights foreseen under the law, the circumstances of the waiver are recorded in the file by the police officer in charge of investigation and is co-signed by the arrested person. If the arrested person refuses to sign this document, the police officer records the refusal.¹⁹

b. Right to information in practice

- Provision of information (when, how by whom)

All three prosecutors stated that the Letter of Rights is handed to all persons arrested with an EAW, even though they were never present during an arrest and could not have had personal knowledge. The lawyers however confirmed this statement, adding that in recent years the letter is available in several languages. The Letter of Rights is handed to requested persons as soon as they reach the police station. The procedure followed for persons arrested under an EAW is the same as the procedure followed when persons are arrested under a national arrest warrant.

Prosecutors suggested that the arresting or investigating police officer explains the contents of the Letter of Rights orally, admitted however that they were never present at the time of the arrest or the police interrogation. As one of the prosecutors stated:

“We, as the prosecuting authority, are not present at the time of the arrest, so we don’t have a thorough knowledge of the manner which the police use to inform requested persons of their rights; the police must be asked about if and when a Letter of Rights is handed to arrested persons.”

“Εμείς, ως εισαγγελική αρχή, δεν είμαστε παρόντες κατά τη στιγμή της σύλληψης, οπότε δεν έχουμε ενδελεχή γνώση του τρόπου με τον οποίο η αστυνομία ενημερώνει τους συλληφθέντες για τα δικαιώματά τους- η αστυνομία πρέπει να ερωτηθεί για το αν και πότε παραδίδεται επιστολή δικαιωμάτων στους συλληφθέντες.”

Lawyers on the other hand reported that the contents of the Letter of Rights are not explained orally, that the Letter of Rights is handed out to requested persons without explanation and that sometimes the Letter of Rights is not understood by the requested persons for various reasons, such as that they are in a state of shock, or because the language in which the Letter of Rights was provided to them was not their mother tongue or too legalistic for them. One of the lawyers interviewed reported that the police officers are not trained on the EAW and are in no position to explain issues which are unique and specific to the EAW, such as the specialty rule, to requested persons. All rights are however

¹⁸ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 17(c).

¹⁹ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, articles 11(1) and 11(2)(a).

explained to the requested persons in court in the presence of an interpreter when they are presented there within 24 hours of the arrest.

- Information about rights

All interviewees agreed that the right to a lawyer is the foremost of all rights, invariably communicated to requested persons. Being a fundamental principle of the Cypriot constitution and not a 'new' right, as opposed to the right to information or the specialty rule or the right to a lawyer in the issuing Member State, it is clearly spelled out in the Letter of Rights. Additional rights set out in the Letter of Rights include the right to remain silent, the right to translation and interpretation and the right to health and pharmaceutical care.

One of the lawyers interviewed described the information about rights as "*a formalistic procedure*", which includes the handing over to the requested persons of a document containing their rights, which may appear satisfactory as regards the letter but not the spirit of the law. The interviewee noted that requested persons may originate from a country where English is not their first language and yet they are handed an English document of rights rather than a document in their mother tongue, because only the English Letter of Rights was available at the time or because the police officers did not make a correct assessment of what language the requested person would have understood. Foreign nationals can be arrested in Cyprus on an EAW as soon as they land at the airport and are placed in an isolated room, whilst their family members with whom they had travelled are not provided with any information or explanation. As reported by the lawyer interviewed:

"We defended a person who had just arrived in Cyprus from an Asian country. He was arrested at the airport by a person who was not a police officer but rather some sort of an airport security guard. The arrested person was in a state of shock, which rendered it impossible for him to understand the English document handed to him. The document mentions the right to a lawyer and to interpretation, probably other rights too which I don't remember, but the language is not friendly to a lay person, even when the language is known to him, especially in light of the state of shock he may be in. To understand this document, it is necessary to have a person explain the contents to him and answer questions, which does not happen at the initial stage." Cyprus, lawyer.

Υπερασπιστήκαμε ένα άτομο που μόλις είχε φτάσει στην Κύπρο από μια ασιατική χώρα. Συνελήφθηκε στο αεροδρόμιο από άτομο που δεν ήταν αστυνομικός, αλλά ένα είδος φρουρού ασφαλείας του αεροδρομίου. Ο συλληφθείς βρισκόταν σε κατάσταση σοκ, γεγονός που τον κατέστησε αδύναμο να κατανοήσει το αγγλικό έγγραφο που του παραδόθηκε. Το έγγραφο αναφέρει το δικαίωμα σε δικηγόρο και σε διερμηνεία, πιθανώς και άλλα δικαιώματα τα οποία δεν θυμάμαι, αλλά η γλώσσα δεν είναι φιλική για έναν απλό άνθρωπο. Ακόμη και αν ο συλληφθείς γνωρίζει τη γλώσσα αυτή, πρέπει να λάβουμε υπόψη το πρίσμα της κατάστασης σοκ στην οποία μπορεί να βρισκόταν. Για να κατανοήσει το έγγραφο αυτό, είναι απαραίτητο να του εξηγήσει κάποιος το περιεχόμενο και να απαντήσει σε ερωτήσεις, κάτι που δεν συμβαίνει στο αρχικό στάδιο

Table 2: Are persons arrested on an EAW informed about their procedural rights?

	Lawyer 1	Lawyer 2	Lawyer 3	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES	X	X	X	X	X	X	6
In writing (Letter of Rights)	X	X	X	X	X	X	6
Orally	-	-	-	X	X	X	3
In writing (Letter of Rights) and orally				X	X	X	3
NO	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	0

- Information about the EAW – content and procedure

Information about the content of the EAW is usually briefly explained orally and vaguely by police officers. According to all persons interviewed, once presented in Court, the judge explains the contents of the EAW to the requested persons in the presence of an interpreter.

Prosecutors reported that requested persons are informed satisfactorily about the content of the EAW and the procedure to be followed. The prosecutors assume that interpreters at the police station orally translate the content of the EAW to the requested persons and that this meets the standards required by the law. Lawyers disputed the fact that there are always interpreters available at the police station; they also claimed that the police's assessment of the language of interpretation needed is not always correct.

The lawyers interviewed reported that it is in fact the lawyers who first inform requested persons of the details of the EAW. The police merely inform them about the charges against them but nothing more. The particulars of the charges appear on the EAW which is handed to the lawyers. The requested persons are entitled to a copy of the sworn affidavit, which is essentially the same as the EAW; in practice both documents are handed to the lawyers.

Table 3: Are persons arrested informed of the contents of the EAW against them?

	Lawyer 1	Lawyer 2	Lawyer 3	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES	X	X	X	X	X	X	6
In writing	Upon request	6					
Orally	X	X	X	X	X	X	6
In writing and orally				-			0
NO	-			-			0
Don't know/remember	-			-			0
Did not answer	-			-			0

- Information on consenting to surrender

All lawyers reported that the police do not provide information on consenting to surrender; this is explained by the judge examining the application for execution of the EAW who explains the speciality rule in a clear language. Some prosecutors suggested that the arresting and / or the interrogating police officer informs requested persons about the specialty rule; this was contradicted by one of the lawyers, who stated that the police lack the necessary training to adequately explain this rule.

Prosecutors agree that in all cases the judge will inform in full the consequences of consenting to surrender:

“The arresting police officers also inform requested persons about the consequences of consenting to their surrender. The judge before whom the arrested persons are presented 24 hours after the arrest also informs them about the consequences of consent and explains the specialty rule. If the requested person does not understand, the judge will explain it in simple language to ensure that it is fully comprehended.” Cyprus, prosecutor.

Οι αστυνομικοί που διενεργούν συλλήψεις ενημερώνουν επίσης τα άτομα που αναζητούνται για τις συνέπειες της συναίνεσης στην παράδοσή τους. Ο δικαστής ενώπιον του οποίου παρουσιάζονται οι συλληφθέντες 24 ώρες μετά τη σύλληψη τους ενημερώνει επίσης για τις συνέπειες της συναίνεσης και εξηγεί τον κανόνα της ειδικότητας. Εάν ο εκζητούμενος δεν κατανοεί, ο δικαστής τον εξηγεί σε απλή γλώσσα για να διασφαλίσει ότι τον κατανοεί πλήρως

The lawyers interviewed dispute whether the duty to properly inform about consenting to surrender is always sufficiently discharged and doubt about whether this is effectively communicated by the police:

“Even where the police attempt to explain the consequences of consent, the communication of the information is definitely not done correctly or in detail. To consent to surrender, the requested persons must discuss their options with their lawyers and not with the police officers.” Cyprus, lawyer.

Ακόμη και όταν η αστυνομία προσπαθήσει να εξηγήσει τις συνέπειες της συναίνεσης, η κοινοποίηση των πληροφοριών σίγουρα δεν γίνεται σωστά ή λεπτομερώς. Για να συναινέσουν στην παράδοση, οι εκζητούμενοι πρέπει να συζητήσουν τις επιλογές τους με τους δικηγόρους τους και όχι με τους αστυνομικούς.

Table 4: Are the requested persons informed about what consenting to their surrender entails?

	Lawyer 1	Lawyer 2	Lawyer 3	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES	X	X	X	X	X	X	6
NO							
Don't know/remember	-			-			0
Did not answer	-			-			0

- Understanding of information

The prosecutors interviewed expressed certainty that the requested persons understand the information pertaining to the content, procedure, and consequences of their decisions well enough to make informed decisions. The lawyers expressed doubts about how adequate the information provided is as they consider that requested persons are not always told the details and consequences of the process in a manner or language clearly comprehensible to them. Some of the lawyers reported that during the court procedure, some judges explain the consequences of agreeing to be surrendered but others do not.

None of the lawyers interviewed had encountered a case where there was consent. One of the lawyers stated that the question of consent is too serious to be decided at that stage of the arrest, because of the inability of the police to adequately explain the consequences of consent. Even where the police attempt to explain, the information is not communicated correctly or in sufficient detail, whilst arrested persons may be prompted by the police to give testimony or answer to the charges before consulting their lawyers. The interviewee noted that, whilst there are several training seminars for police officers, she was not aware of any training on the EAW.

c. Discussion of findings

All practitioners agreed that a Letter of Rights is always provided to requested persons upon arrest by the police. Prosecutors reported that the police also explained its content orally, which was disputed by the lawyers. It further emerged that whilst long standing rights like the right to a lawyer were invariably communicated to requested persons, complex legal norms such as the specialty rule could not adequately be explained by the police and were not always explained by the judge. Legal representation emerged as a crucial factor in ensuring that the necessary information is adequately communicated, as police officers cannot be expected to be in a position to communicate complex legal norms. The central role which the law affords to the police to provide information is, according to the lawyers, too onerous given the police training gaps and the uneven and unmonitored practice followed at different police stations.

2. Right to interpretation and translation

a. Legal overview

The legal standards relating to provision of interpretation and translation to requested persons are contained in the national law transposing Directive 2010/64/EU. The scope of the national law transposing Directive 2010/64/EU covers the entire criminal procedure from the point where persons are notified that they are suspected of or charged with an offence until final determination. It provides for the duty of the 'competent authority' to provide without delay interpretation to a suspect or an accused person during all stages of the criminal procedure, including police interrogation and the court procedure.²⁰ 'Competent authority' is defined to include police authorities conducting the investigation, a police investigator appointed by the Council of Ministers or the Attorney General to conduct an investigation, the criminal court or the competent court executing an EAW.²¹ Where necessary to ensure the fairness of the proceedings, the competent authority provides interpretation for the communication between the requested person on the one hand and the person's lawyer on the other hand, where this is directly related to interrogations and/or hearings in the course of the

²⁰ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 4(1).

²¹ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 2.

execution of an EAW and/or the lodging of an appeal and/or other procedural requests, including a request for bail. The competent authority can verify, by any means it considers appropriate, whether or not the requested person speaks and understands the language of the procedure for the execution of the EAW.²²

The criminal procedure law regulates interpretation during court proceedings, providing for the right of accused persons to have testimony delivered in court interpreted to them in a language understood by them. Where the accused person is defended by counsel the interpretation may, with the consent of the counsel and the approval of the Court, be omitted. Where documents are filed in court as evidence, the Court has discretion to decide which part of that, if any, needs to be interpreted to the accused person.²³

The legal source for the right to translation in the context of the EAW is the law transposing the Interpretation and Translation Directive, the scope of which explicitly covers the EAW proceedings.²⁴ The law states that, in order to safeguard the right of an accused person to a defence and the right to fair trial, the competent authority provides written translation of all documents which are 'essential'.²⁵ The term 'essential' is defined to include the arrest warrant, the detention order, the charges, any court decision and order within the procedure and any other document which is considered essential by the competent authority, either on its own initiative or at the reasoned request of the suspect or accused person or the suspect's or accused person's lawyer.²⁶ The term 'any court decision' mentioned in the law must be seen as including a court decision in the issuing State. The competent authorities are under no duty to provide translation of passages of essential documents which do not contribute to the suspected or accused persons' understanding of the case against them.²⁷ Requested persons have the right to object to the decision of the competent authority that the translation of a certain document or part of this document or the provision of interpretation is not necessary. The objection is examined by the competent authority and if it is found to be well-founded then the translation or interpretation must be provided as requested.²⁸ There is no decision from any Cypriot court examining claims for infringement of the right to translation of documents, either as issuing or as executing authority.

Where necessary, the competent authority can provide interpretation through the use of communication technology, such as videoconferencing, telephone and/or the Internet, unless the interpreter's physical presence is necessary to ensure the fairness of the proceedings.²⁹

²² Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 4(5).

²³ Cyprus, Law on Criminal Procedure (*Ο περί ποινικής δικονομίας νόμος*) Cap.155, Article 65

²⁴ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 3(1).

²⁵ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 5(1).

²⁶ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 5, paragraphs (1) and (2).

²⁷ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 5(3).

²⁸ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 6.

²⁹ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 4(7).

In the case of the translation of documents, instead of a written translation, the competent authority may provide an oral translation or an oral summary of essential documents, provided that this does not prejudice the fairness of the proceedings.³⁰

The interpretation must be of sufficient quality to ensure that the elements comprising a fair trial have been adequately addressed. This includes the prerequisite for the defendants to have a thorough understanding of the charges against them so as to enable them to duly exercise the right to a defence. To this end, the competent authority concerned must pay attention to the specificities of communication, using an interpreter as and where necessary.³¹

The failure to provide interpretation or translation entitles the requested person to file objections at the competent authority which will examine this claim and provide the interpretation or translation as required.³² The requested person may also claim fair compensation by bringing a legal action against the state, irrespective of whether or not any real injury or loss, monetary or otherwise, were sustained as a result, where the failure to provide interpretation or translation can be attributed to the police.³³ The requested person may file an objection to the competent authority claiming that the interpretation or the translation provided was 'insufficient' to safeguard fair trial. The objection is then examined by the competent authority and if it is found to be well-founded then the translation or interpretation must be provided as requested.³⁴

A constitutional provision safeguards the right to a fair trial which is deemed to include access to free assistance of an interpreter if the accused person cannot understand or speak the language used in court.³⁵ As is the case with all constitutional rights, the failure to provide interpretation in court is actionable per se against individuals as well as against the state and may lead to a claim for compensation.³⁶

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

The practitioners interviewed agree that interpretation is generally provided, at least inside the courtroom; and that it is up to the requested persons to say if the quality is adequate and the language appropriate, as no-one else is suited to evaluate this. If the requested person tells the court that interpretation is not correct, then the judge will take measures on the spot to replace the interpreter:

"If the person does not speak Greek, it is imperative that an interpreter be appointed. The court will decide if interpretation is necessary. The court will also check the qualifications of the interpreter and ensure that the interpretation provided is suitable, adequate and faithful." Cyprus, prosecutor.

³⁰ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 5(5).

³¹ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 4(6).

³² Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 6.

³³ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 36.

³⁴ Cyprus, Law on the right to interpretation and translation during the criminal procedure of 2014 ([Ο περί του Δικαιώματος σε Διερμηνεία και Μετάφραση κατά την Ποινική Διαδικασία Νόμος του 2014](#)), article 6.

³⁵ Cyprus, The Constitution of the Republic of Cyprus ([Το Σύνταγμα της Κυπριακής Δημοκρατίας](#)) article 30(3).

³⁶ Cyprus Supreme Court (2001), *Yiallourou v. Evgenios Nicolaou*, Appeal No. 9331, 8 May 2001.

Εάν το άτομο δεν μιλά ελληνικά, είναι επιτακτική ανάγκη να διοριστεί διερμηνέας. Το δικαστήριο θα αποφασίσει εάν η διερμηνεία είναι απαραίτητη. Το δικαστήριο θα ελέγξει επίσης τα προσόντα του διερμηνέα και θα διασφαλίσει ότι η διερμηνεία που παρέχεται είναι κατάλληλη, επαρκής και πιστή

The lawyers questioned whether interpretation is indeed provided when needed, adding that the phrase ‘where needed’ needed to be further defined and expanded to cover the entire EAW procedure. One of the lawyers argued that interpretation is needed from the first moment that requested persons are apprehended, but it is not always provided until the requested persons enter the court room. Inside the court room, the judge will determine if interpretation is needed, after consultation with the requested persons and/or their lawyers. Before entering the court room, it is up to the police officer to determine if it is necessary and if so, in what language. The problem with this is that police officers are not trained to evaluate what language is truly understood by the requested person, whilst not all interpreters are stand-by around the clock to respond to calls from the police.

- Translation of documents

Although requested persons are entitled to ask for translation of the documents of the file, translation is not readily provided and requested persons are not informed of their right to have the entire file translated to them. The prosecutors confirmed that the contents of the file are not translated; and the lawyers reported that the Court will not come forward to provide translation of the file unless the lawyer asks for it. Prosecutors reported that the contents of the file could, upon request, be explained by the interpreter; one of the prosecutors stated that the file contains only standard procedural information and that any extra documents transmitted by the issuing Member State ought to be translated by the requested person’s lawyer. Two out of the three prosecutors reported an assumption that the requested persons always understand the language of the issuing Member State and would only admit this is not always the case when prompted. The authorities of the various Member States exchange documents in English, except where the communication is between Cyprus and Greece, but the requested person does not necessarily comprehend either Greek or English:

“The initial EAW document sent by the issuing State is in the mother tongue of the issuing State, which is the mother tongue of the requested person, because usually it is the requested person’s country of origin that issues the EAW. For our own purposes, as prosecuting authority, we always ask for a translation in English and in Greek. So, the initial document is in their own mother tongue, but we also try to explain the content to the requested person in case something is not clear. If the initial EAW is not in the mother tongue of the requested person, then a translation in the requested person’s mother tongue is provided by the interpreter. I am not sure if the content of the file is translated in the mother tongue of the requested person or if it is in English.” Cyprus, prosecutor.

Το αρχικό έγγραφο ΕΕΣ που αποστέλλεται από το κράτος έκδοσης είναι στη μητρική γλώσσα του κράτους έκδοσης, η οποία είναι η μητρική γλώσσα του εκζητούμενου προσώπου, διότι συνήθως η χώρα καταγωγής του εκζητούμενου προσώπου εκδίδει το ΕΕΣ. Για τους δικούς μας σκοπούς, ως εισαγγελική αρχή, ζητάμε πάντα μετάφραση στα αγγλικά και στα ελληνικά. Έτσι, το αρχικό έγγραφο είναι στη μητρική τους γλώσσα, αλλά προσπαθούμε επίσης να εξηγήσουμε το περιεχόμενο στον εκζητούμενο σε περίπτωση που κάτι δεν είναι σαφές. Εάν το αρχικό ΕΕΣ δεν είναι στη μητρική γλώσσα του εκζητούμενου, τότε παρέχεται μετάφραση στη μητρική γλώσσα του εκζητούμενου από τον διερμηνέα. Δεν είμαι

σίγουρος αν το περιεχόμενο του φακέλου μεταφράζεται στη μητρική γλώσσα του προσώπου στο οποίο υποβάλλεται η αίτηση ή αν είναι στα αγγλικά

The Letter of Rights is available in several languages and is usually given to the requested persons in a language they understand. One lawyer reported an instance, where the Letter of Rights was given in English to a person who spoke English but was not a native English speaker and could not readily comprehend legal language in English. One of the lawyers reported that the Letter of Rights is not always given promptly or at all in the right language:

“By the time the police officer evaluates the needs of the requested persons and decides which language is understood by the requested persons, they may already have spent several hours in detention at the police station. In the frame of the judicial procedure, a large volume of documents is lodged. These are the documents exchanged between the authorities of the various countries involved, which are in English and are lodged in the court file in English. These are filed in the Court as exhibits and copies may be given to the requested person or his lawyer upon request. The content however will not be translated to any language other than English.” Cyprus, lawyer.

Μέχρι να αξιολογήσει ο αστυνομικός τις ανάγκες των εκζητούμενων και να αποφασίσει ποια γλώσσα καταλαβαίνουν, μπορεί να έχουν ήδη περάσει αρκετές ώρες κράτησης στο αστυνομικό τμήμα. Στο πλαίσιο της δικαστικής διαδικασίας, κατατίθεται μεγάλος όγκος εγγράφων. Πρόκειται για τα έγγραφα που ανταλλάσσονται μεταξύ των αρχών των διαφόρων εμπλεκόμενων χωρών, τα οποία είναι στην αγγλική γλώσσα και κατατίθενται στον αγγλικό φάκελο του δικαστηρίου. Αυτά κατατίθενται στο δικαστήριο ως τεκμήρια και αντίγραφα μπορούν να δοθούν στον εκζητούμενο ή στον δικηγόρο του κατόπιν αιτήσεως. Το περιεχόμενό τους, ωστόσο, δεν μεταφράζεται σε καμία άλλη γλώσσα πλην της αγγλικής.

- Interpretation of consultations with lawyers

Prosecutors were rather vague on whether interpretation is provided for the requested person's consultation with their lawyers, as they did not have information about what happens inside police stations. One prosecutor suggested that consultations with a lawyer are interpreted by a state-appointed interpreter; however, all three lawyers agreed that consultations with their clients are not interpreted by a state-appointed interpreter and that, if interpretation is needed, this must be paid by the requested person. None of the lawyers could remember if the law foresees free interpretation for the lawyer-client consultations and one lawyer said that the right to free interpretation applies only to the Court proceedings.

c. Discussion of findings

Interpretation and the choice of language in which interpretation is to be offered is likely to be more of a disputed issue in police stations rather than in the courtroom. The prosecutors interviewed appeared certain that the arresting police officer explains orally to persons arrested their rights but

no concerns were expressed as to whether an interpreter was present at the time of the oral explanation. The duty of the authorities to provide translation of the contents of the file was completely overlooked by the prosecutors. The provision of state-paid interpretation to facilitate communications between requested persons and their lawyers remained unclear, as lawyers and some of the prosecutors reported that this is not available.

Detecting the language understood by the requested persons is mediated by a number of factors: the state of shock which a requested person may experience following the arrest; the complexity of legal terminology; and assumptions expressed by the prosecutors, which permeate the decision on the choice of language: the assumption that all requested persons speak the language of the issuing State unless the opposite is proven; or that spoken English should be sufficient for a person to understand a legal document; or that the requested person's lawyer should interpret and translate. The prosecutors' presumption that the language of the issuing Member State is the same as the mother tongue of the requested person, although rebuttable, cannot exclude the possibility that within the tight timelines for execution set by the court, the issue of the language really understood by the requested person may be overlooked.

3. Right to access to a lawyer

- a. Legal overview
 - Content of the right

The right to a lawyer includes:³⁷

- The right to access to a lawyer within a time limit and in such a way as to enable the requested persons to exercise their rights effectively without undue delay after deprivation of liberty. The applicable time limits are foreseen in the law as follows: Where the requested person has consented to surrender, the court decides on the execution of the EAW within 10 days from the statement of consent. In case of non-consent to surrender, the final decision on the execution of the warrant is made within 60 days from arrest; exceptionally, both time limits may be extended for up to 30 days. The appeal against the court decision must be filed within three days from the publication of the decision;³⁸
- The right to meet and communicate with the lawyer at any given time including before police interrogation;
- The right to request the presence and participation of their lawyer during examination by the competent court;
- The right to have their lawyers present and participating during the investigation, including the possibility for the lawyers to explain to their clients the procedure and advise them as to their procedural rights;

³⁷ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), articles 17(b) and (c).

³⁸ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), articles 23 and 24.

- The right to have their lawyer present during search and collection of evidence provided the requested persons themselves have the right to be present during the search.³⁹
- Communication between lawyers and clients is covered by the rule of confidentiality.
 - Timing

The law on the rights of persons arrested applies mutatis mutandis to persons arrested on the basis of an EAW, given that the EAW process entails interaction with the police, including interrogation for the purpose of ascertaining their identity and the provision of information regarding rights. Under this law, all persons arrested must be informed immediately after arrest and without undue delay of their right to a lawyer and any entitlement they might have to legal aid. If the persons are eligible for legal aid, the police officer in charge of interrogations will ask the requested persons to sign the allegation of insufficient means and provide the list of legal aid lawyers. The police officer will then transfer the legal aid request to the lawyers identified by the requested persons. The law entitles arrested persons to call a lawyer of their choice privately, at the following instances:

- Before they are interrogated by the police or any other competent authority;
- Prior to being brought before the Court;
- During search or other collection of evidence by the police or other authority; and
- Without undue delay after being deprived of their freedom.⁴⁰

This provision (article 3 of the law on arrested persons) is explicitly mentioned in the EAW law as one of the provisions which apply mutatis mutandis to the EAW.⁴¹ Police interrogations are possibly necessary in order to ascertain the identity of the person.

- Legal aid

Legal aid is available for requested persons in the context of proceedings for the execution of an EAW where Cyprus is the executing State.⁴² Where Cyprus is the issuing State, the requested person is entitled to legal aid in Cyprus for the purposes of the procedure in the executing Member State; in this context, legal aid covers only the costs of the lawyer in Cyprus assisting the lawyer in the executing State by providing information and advice so as to enable the requested person to effectively exercise rights in the executing Member State.⁴³

When requested persons who are arrested and deprived of their freedom claim that they lack sufficient means to access a lawyer, they must inform the police officer in charge of interrogations. The police officer will ask the requested person to sign this allegation and provide without delay the list of legal aid lawyers. The police officer will contact the lawyer identified by the requested person and transfer the request for legal aid.

³⁹ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), articles 17(b) and (c).

⁴⁰ Cyprus, Law on the rights of suspects, persons under arrest and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)), N.163(I)/2005, article 3.

⁴¹ Cyprus, Law on the European Arrest Warrant and the procedures for surrender of wanted persons between Member States of the European Union of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), N.133(I)/2004, article 17(c).

⁴² Cyprus, Law in legal aid ([Ο περί Νομικής Αρωγής Νόμος του 2002](#)) article 4A(1).

⁴³ Cyprus, Law on legal aid ([Ο περί Νομικής Αρωγής Νόμος του 2002](#)) article 4A(2).

The legal aid assistance must be provided at the same time as the privately paid legal assistance, namely:

- without delay if the suspect is deprived of his or her liberty, or
- before questioning by the police or other competent authority, or
- before being brought before a court, or
- before a search or collection of evidence by the police or other competent authority.

The provision of legal aid at the interrogation stage is subject to the approval of the competent court.⁴⁴

- Exchange of correspondence

Detainees are entitled to send to and receive letters from their lawyers without being opened or read by any member of the police or prison staff, except in exceptional cases in which the officer in charge has reasonable cause to believe that an illegal item is enclosed in the envelope, in which case the letter can be opened and inspected in the presence of the detainee without reading its contents. Detainees are also entitled to send to and receive letters from: the European Court of Human Rights; the Attorney General of the Republic; the Ombudsperson; the Independent Authority for the Investigation of Allegations and Complaints against the Police; and any international or national human rights commission, body or authority with the power to investigate and decide on allegations of human rights violations without such letters being opened or read by any member of the police or prison staff.⁴⁵

- Interview with a lawyer in the detention centre

All persons in custody are entitled to have confidential interviews for their defence with their lawyer in the detention centre where they are detained, in a private room out of sight and hearing of any member of the police or prison staff, as the case may be, and to give and receive from the lawyer confidential instructions, written or oral. This right can be exercised at any day and time and the police officer in charge must not obstruct or impede the exercise of this right. For detainees under the age of 18, their parents or guardians are entitled to attend the interviews with the lawyer. In the case of foreign detainees or detainees who for any other reason cannot communicate with their lawyer in a language that the detainee understands, the police officer in charge must at the request of the lawyer secure the presence of an interpreter to join the interview and facilitate communication between the lawyer and the detainee in a language that the detainee understands.⁴⁶

- Temporary suspension of the right to a lawyer

The right to a lawyer may be temporarily suspended without undue delay after deprivation of liberty in exceptional circumstances at the pre-investigation stage where:

- Access to a lawyer is impossible due to the geographical isolation of the suspect;

⁴⁴ Law on the rights of suspects, persons under arrest and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)), N.163(I)/2005, article 3A.

⁴⁵ Law on the rights of suspects, persons under arrest and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)), N.163(I)/2005, article 15.

⁴⁶ Cyprus, Law on the rights of suspects, persons under arrest and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)), N.163(I)/2005, article 12.

- The police must take urgent action to prevent serious consequences to the life, liberty or bodily integrity of a person
- The police must take action to prevent a serious risk to the criminal procedure.

The temporary suspension of the right to a lawyer must be proportionate, must not exceed the boundaries of what is necessary, the timeline of the suspension must be specified, the suspension must not rely on the nature or severity of the offence at stake and must not prejudice the fairness of the procedure. The suspensions must be accompanied by a justified decision of the police officer in charge of investigation. The requested persons can request the judge at the first date of their hearing to examine the refusal of their right to a lawyer and the judge can issue any order deemed appropriate under the circumstances.⁴⁷ There has been no court decisions in Cyprus where the right to a lawyer has been temporarily suspended.

Table 5: Dual representation (in law)

Does the law of the executing MS foresee that the person arrested has a right to have the assistance of a lawyer in the issuing Member State and informed of this right?		
Cyprus	Yes	

Table 6: Cost-free legal assistance (in law)

Free of cost lawyer provided in law	When your country is an executing State	When your country is an issuing State (e.g., to assist the lawyer in the executing State)
Cyprus	YES Provided the requested person does not have sufficient means to pay for a lawyer	NO

b. Right to access to a lawyer in practice

Present your interviews findings, present what seems to be a standard and then deviation from it. Present promising practices.

- Information about legal assistance (including on dual representation)

All interviewees concurred that the arresting police officers believe that their duty to inform requested persons of their right to a lawyer is discharged by handing out to them out the Letter of Rights. This document includes information about the right to a lawyer and access to legal aid, although this and other rights may not be clearly or fully understood at that stage. If a requested person does not have a lawyer nor the financial means to appoint one, the police supplies them with the list of legal aid

⁴⁷ Cyprus, Law on the rights of suspects, persons under arrest and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)), N.163(I)/2005, article 3(2D).

lawyers, from which the person can choose a lawyer who is then contacted by the police on their behalf.

Table 7: Are persons informed of their right to access a lawyer?

	Lawyer 1	Lawyer 2	Lawyer 3	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES							
In writing	X	X	X	X	X	X	6
Orally	X	X	X	X	X	X	6
In writing and orally	X	X By the judge	X By the judge	X	X	X	6
NO	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	0
Did not answer	-			-	-	-	0

Table 8: Information on dual representation, interview findings

Are persons arrested on an EAW informed by authorities on their right to have the assistance of a lawyer in the issuing Member State?							
	Lawyer 1	Lawyer 2	Lawyer 3	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES							0
NO	x	x	x	x	x	x	6
Don't know/remember	-			-			0
Did not answer	-			-			0

- Legal assistance in executing State (access, consultations, lawyer's tasks)

Assistance takes the form of court representation and legal advice on various matters, including whether the requested persons will consent to surrender, what are the requirements for the execution of the EAW and what are the permissible reasons for execution of the EAW. Once a lawyer is appointed, the rights of requested persons to be always represented by their lawyer; to have confidential meetings with their lawyer; and to consult their lawyer at any time, are respected:

“Legal representation is provided at all stages requested by the arrested person, from the point of the arrest and even during the court proceeding. If the requested person requests, the Court will adjourn the proceedings to give the requested persons the possibility to consult with their lawyer. The lawyer is present at all stages and at all hearings. If the requested persons state that they do not want to be represented by a lawyer, then we as prosecuting authority will explain their rights to them in the presence of the interpreter.” Cyprus, prosecutor.

Η νομική εκπροσώπηση παρέχεται σε όλα τα στάδια που ζητά ο συλληφθείς, από τη στιγμή της σύλληψης και ακόμη και κατά τη διάρκεια της δικαστικής διαδικασίας. Εάν το ζητήσει ο συλληφθείς, το δικαστήριο αναβάλλει τη

διαδικασία για να του δώσει τη δυνατότητα να συμβουλευτεί το δικηγόρο του. Ο δικηγόρος είναι παρών σε όλα τα στάδια και σε όλες τις ακροάσεις. Εάν οι εκζητούμενοι δηλώσουν ότι δεν επιθυμούν να εκπροσωπηθούν από δικηγόρο, τότε εμείς ως εισαγγελική αρχή θα τους εξηγήσουμε τα δικαιώματά τους στην παρουσία διερμηνέα.

The novel angle that was revealed when discussing the right to a lawyer was that, given the weaknesses of the mechanisms supporting the right to information, the right to a lawyer becomes a prerequisite for other rights; only if there is legal representation can requested persons know their rights and claim them and this is where legal representation becomes more crucial. Information about rights is essentially provided only by the requested person's lawyer:

"The requested person is not informed of the right to a lawyer at the time of the arrest. This right may be included in the Letter of Rights handed to them but I am not sure. I can say for sure that the police do not inform them orally of this right. If for any reason requested persons do not want to appoint a lawyer or do not manage to appoint a lawyer until the judicial procedure starts, then they have no guidance on how to exercise their rights and will be lost in the process. In order to safeguard the exercise of their rights, requested persons need legal representation throughout; without a lawyer, it will be practically impossible to have their rights safeguarded." Cyprus, lawyer

Ο εκζητούμενος δεν ενημερώνεται για το δικαίωμά του σε δικηγόρο κατά τη σύλληψη. Το δικαίωμα αυτό μπορεί να περιλαμβάνεται στην επιστολή δικαιωμάτων που τους παραδίδεται, αλλά δεν είμαι σίγουρη. Μπορώ να πω με βεβαιότητα ότι η αστυνομία δεν τους ενημερώνει προφορικά για το δικαίωμα αυτό. Εάν για οποιονδήποτε λόγο οι εκζητούμενοι δεν θέλουν να διορίσουν δικηγόρο ή δεν καταφέρουν να διορίσουν δικηγόρο μέχρι να ξεκινήσει η δικαστική διαδικασία, τότε δεν έχουν καμία καθοδήγηση για το πώς να ασκήσουν τα δικαιώματά τους και θα χαθούν στη διαδικασία. Για να διασφαλιστεί η άσκηση των δικαιωμάτων τους, οι εκζητούμενοι χρειάζονται νομική εκπροσώπηση καθ' όλη τη διάρκεια- χωρίς δικηγόρο, είναι πρακτικά αδύνατο να διασφαλιστούν τα δικαιώματά τους.

In most cases, the lawyers who will represent a person in Cyprus will also have to gather evidence on the merits of the case, because the only information available is the bundle of documents exchanged between the authorities. The degree to which information can be collected varies depending on the issuing State, which makes legal representation in the issuing State even more crucial, because it is through that lawyer's assistance that information can be obtained. Lawyers interviewed stated that from their experience, in some countries information was readily available when asked; in other countries the authorities were reluctant to provide even information that was already in the court's file in Cyprus. Prosecutors do not favour the gathering of evidence on the merits of the case and neither do the judges, who see the EAW as a purely procedural issue that should not meddle with the substance of the case, which will be tried at the issuing State after the EAW is executed.

Whether or not the requested person can appoint a lawyer in the issuing State depends primarily on whether the requested person was given the necessary information and resources to do so without support from the Cypriot authorities, as well as the legal system and judicial traditions prevailing in the issuing State. Since it is not always the case that the requested person has ties with the issuing

State, they may not be in a position to locate and instruct a lawyer to assist with the preparation of the case.

Table 9: Facilitating dual legal representation, interview findings (executing MS)

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing? (When your country is an executing State)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1		X	
Lawyer 2		X	
Lawyer 3		X	
Prosecutor 1		X	
Prosecutor 2		X	
Prosecutor 3		X	
Total	0	6	0

- Legal assistance in issuing State (access, consultations, lawyer's tasks)

The lawyers and prosecutors interviewed concurred that in practice no-one informs requested persons of their right to a lawyer in the issuing Member State. An experienced lawyer stated,

"I am well aware that this right is spelled out in the law, but judges usually do not inform requested persons of this right. If the requested persons have lawyers in Cyprus, then their lawyers will inform them about this right. The executing authorities in Cyprus do not provide facilitation to appoint a lawyer in the issuing Member State; it never happened. I doubt that the Cypriot authorities have a list of lawyers in the issuing State they could make available to requested persons. I have no knowledge of such a case and no list of lawyers in any other country was ever provided. If the requested persons ask the Cypriot court for time to talk to a lawyer in the issuing State, then this will be granted but that is about all the facilitation that the requested person will get. No facilitation for legal aid is provided either." Cyprus, lawyer.

Γνωρίζω πολύ καλά ότι το δικαίωμα αυτό προβλέπεται από το νόμο, αλλά οι δικαστές συνήθως δεν ενημερώνουν τους εκζητούμενους για το δικαίωμα αυτό. Εάν οι εκζητούμενοι έχουν δικηγόρους στην Κύπρο, τότε οι δικηγόροι τους θα τους ενημερώσουν για το δικαίωμα αυτό. Οι αρχές εκτέλεσης στην Κύπρο δεν παρέχουν διευκολύνσεις για τον διορισμό δικηγόρου στο κράτος μέλος έκδοσης-δεν συνέβη ποτέ. Αμφιβάλλω αν οι κυπριακές αρχές διαθέτουν κατάλογο δικηγόρων στο κράτος μέλος έκδοσης, που θα μπορούσαν να θέσουν στη διάθεση των εκζητουμένων. Δεν έχω γνώση μιας τέτοιας περίπτωσης και ποτέ δεν παρασχέθηκε κατάλογος δικηγόρων σε οποιοδήποτε άλλο κράτος. Εάν οι εκζητούμενοι ζητήσουν από το κυπριακό δικαστήριο χρόνο για να μιλήσουν με δικηγόρο στο κράτος έκδοσης, τότε αυτό θα τους δοθεί, αλλά αυτή είναι περίπου όλη η διευκόλυνση που θα λάβει ο εκζητούμενος. Δεν παρέχεται καμία διευκόλυνση ούτε για νομική συνδρομή.

None of the prosecutors were aware of legal aid being provided to cover legal costs at the issuing State, nor did they see any reason for having representation in the issuing State at the stage of the execution of the EAW in Cyprus, as this is seen as a purely procedural matter that must be executed

swiftly. All substantive issues must according to them be dealt with at the stage of the judicial proceedings in the issuing State. As noted by one of the public prosecutors:

“I don’t know what happens in the issuing Member State as regards legal representation. I am not aware of the procedure which takes place after we execute the EAW and surrender the requested person. We never had a request for assistance to appoint a lawyer in the issuing Member State. I don’t know what would happen if the requested person asked for a lawyer in the issuing Member State. Once the requested person is surrendered, it is for the issuing State to take over the procedure of informing the person of his rights and ensuring he gets legal representation. I have never come across a case where facilitation was offered to a requested person to identify and appoint a lawyer in the issuing Member State. I am not aware of any legal aid entitlement in the issuing State. Cyprus offers legal aid for the procedures in Cyprus, not for procedures in another Member State. I don’t remember having read this right or having been informed about it.” Cyprus, prosecutor.

Δεν γνωρίζω τι συμβαίνει στο κράτος μέλος έκδοσης όσον αφορά τη νομική εκπροσώπηση. Δεν γνωρίζω τη διαδικασία που λαμβάνει χώρα αφού εκτελέσουμε το ΕΕΣ και παραδώσουμε το εκζητούμενο πρόσωπο. Δεν είχαμε ποτέ αίτημα για συνδρομή για τον διορισμό δικηγόρου στο κράτος μέλος έκδοσης. Δεν γνωρίζω τι θα συνέβαινε εάν το εκζητούμενο πρόσωπο ζητούσε δικηγόρο στο κράτος μέλος έκδοσης. Μόλις παραδοθεί ο εκζητούμενος, εναπόκειται στο κράτος μέλος έκδοσης να αναλάβει τη διαδικασία ενημέρωσης του προσώπου για τα δικαιώματά του και να διασφαλίσει ότι θα έχει νομική εκπροσώπηση. Δεν έχω συναντήσει ποτέ περίπτωση όπου προσφέρθηκε διευκόλυνση σε εκζητούμενο πρόσωπο να εντοπίσει και να διορίσει δικηγόρο στο κράτος μέλος έκδοσης. Δεν γνωρίζω κανένα δικαίωμα νομικής συνδρομής στο κράτος έκδοσης. Η Κύπρος προσφέρει νομική συνδρομή για τις διαδικασίες στην Κύπρο, όχι για διαδικασίες σε άλλο κράτος μέλος. Δεν θυμάμαι να έχω διαβάσει αυτό το δικαίωμα ή να έχω ενημερωθεί σχετικά.

Assistance to identify and contact lawyers in the issuing Member State is only provided by the requested persons’ lawyers in Cyprus. One of the prosecutors interviewed reported:

“I am not sure about whether we have such a duty. The procedure takes place in Cyprus, I don’t know what happens in the issuing Member State. The identification and selection of a lawyer in the issuing Member State is one of the duties of the lawyer in Cyprus; the lawyer in Cyprus must mediate in order to secure the services of a lawyer in the issuing Member State. I can’t say if there is any assistance by providing a list of lawyers in the issuing State, I don’t know what happens at the stage of the police interrogation. If the lawyers in Cyprus cannot help their clients locate and instruct a lawyer in the issuing Member State and the person asks for a list of lawyers, then we might be able to help. This has never happened in my experience. I don’t know if any facilitation is offered to locate a legal aid lawyer in the issuing Member State either. I assume that what applies to non-legal aid lawyers also applies to legal aid lawyers.” Lawyer, Cyprus.

Δεν είμαι σίγουρη αν έχουμε τέτοιο καθήκον. Η διαδικασία λαμβάνει χώρα στην Κύπρο, δεν γνωρίζω τι συμβαίνει στη χώρα έκδοσης. Ο εντοπισμός και η επιλογή δικηγόρου στη χώρα έκδοσης είναι ένα από τα καθήκοντα του δικηγόρου στην Κύπρο- ο δικηγόρος στην Κύπρο πρέπει να μεσολαβεί για να εξασφαλίσει τις υπηρεσίες δικηγόρου στο κράτος μέλος έκδοσης. Δεν μπορώ να πω αν υπάρχει οποιαδήποτε βοήθεια από μας με την παροχή καταλόγου δικηγόρων στο κράτος μέλος έκδοσης, δεν γνωρίζω τι συμβαίνει στο στάδιο της αστυνομικής ανάκρισης. Εάν οι δικηγόροι στην Κύπρο δεν μπορούν να βοηθήσουν τους πελάτες τους να εντοπίσουν και να αναθέσουν σε δικηγόρο στο κράτος μέλος έκδοσης και το άτομο ζητήσει κατάλογο δικηγόρων, τότε ίσως μπορέσουμε να βοηθήσουμε. Αυτό δεν έχει συμβεί ποτέ από την εμπειρία μου. Δεν γνωρίζω αν προσφέρεται επίσης κάποια διευκόλυνση για τον εντοπισμό δικηγόρου νομικής βοήθειας στο κράτος μέλος έκδοσης. Υποθέτω πως ό,τι ισχύει για τους δικηγόρους που δεν παρέχουν νομική βοήθεια ισχύει και για τους δικηγόρους που παρέχουν νομική βοήθεια.

The gap in facilitating dual representation was described by one of the lawyers as follows:

“Finding a lawyer in the issuing Member State is a big problem. No list of lawyers or other facilitation is provided in Cyprus to assist requested persons to find a lawyer in the issuing Member State. No assistance is provided by the authorities. Only if they appoint a lawyer in Cyprus will they be able to realise the right to have a lawyer in the issuing Member State. I have not seen it happen and I am sure that they are not informed about representation in the issuing State. In fact, they are often not adequately facilitated to have legal representation in Cyprus, never mind facilitation to have legal representation in the issuing Member State or to have legal aid for such representation. I have never come across any case where the requested person was informed or facilitated for this. Neither the police officers nor the prosecutors provide such information.” Cyprus, lawyer.

Η εύρεση δικηγόρου στο κράτος μέλος έκδοσης αποτελεί μεγάλο πρόβλημα. Στην Κύπρο δεν παρέχεται κατάλογος δικηγόρων ή άλλη διευκόλυνση για να βοηθηθούν οι εκζητούμενοι να βρουν δικηγόρο στο κράτος μέλος έκδοσης. Οι αρχές δεν παρέχουν καμία βοήθεια. Μόνο αν διορίσουν δικηγόρο στην Κύπρο θα μπορέσουν να υλοποιήσουν το δικαίωμά τους να έχουν δικηγόρο στο κράτος μέλος έκδοσης. Δεν έχω δει να συμβαίνει κάτι τέτοιο και είμαι βέβαιη ότι δεν ενημερώνονται για τη νομική εκπροσώπηση στο κράτος έκδοσης. Στην πραγματικότητα, συχνά δεν διευκολύνονται επαρκώς να έχουν νομική εκπροσώπηση στην Κύπρο, πόσο μάλλον να διευκολύνονται να έχουν νομική εκπροσώπηση στο κράτος μέλος έκδοσης ή να έχουν νομική βοήθεια για την εν λόγω εκπροσώπηση. Δεν έχω συναντήσει ποτέ καμία περίπτωση όπου το πρόσωπο στο οποίο υποβάλλεται η αίτηση να έχει ενημερωθεί ή να έχει διευκολυνθεί για το σκοπό αυτό. εκζητούμενοι οι αστυνομικοί ούτε οι εισαγγελείς παρέχουν τέτοιες πληροφορίες.

It follows that when a right is not clear, redress for the violation of that right is also unclear. One of the prosecutors stated:

“If the right to a lawyer is infringed, the Court’s decision for the execution of the EAW may be challenged, with an appeal to the Supreme Court. Legal representation is a constitutional right in Cyprus and is a serious issue. As regards dual representation, as I was not aware of this right, I don’t know if there are any means to challenge this. I need to check if they really have the right to a lawyer in the issuing Member State and if so, who pays the legal fees.” Cyprus, prosecutor.

Εάν παραβιάζεται το δικαίωμα σε δικηγόρο, η απόφαση του Δικαστηρίου για την εκτέλεση του ΕΕΣ μπορεί να προσβληθεί με προσφυγή στο Ανώτατο Δικαστήριο. Η νομική εκπροσώπηση αποτελεί συνταγματικό δικαίωμα στην Κύπρο και είναι ένα σοβαρό ζήτημα. Όσον αφορά τη διπλή εκπροσώπηση, καθώς δεν γνώριζα αυτό το δικαίωμα, δεν γνωρίζω αν υπάρχουν μέσα για την προσβολή του. Πρέπει να ελέγξω αν όντως έχουν δικαίωμα σε δικηγόρο στο κράτος μέλος έκδοσης και αν ναι ποιος πληρώνει τα νομικά έξοδα

Whenever rights are infringed, including but not limited to the right to dual representation, these infringements can be presented in court as reasons not to execute the EAW. All practitioners concurred that, from their experience, the infringement of procedural rights is not deemed as important enough or even relevant to lead to a rejection of the application for the execution of the EAW. As one of the lawyers stated:

“Our main challenge is the fact that the courts tend to be more prone to approve the execution of the EAW. The courts are not very willing to take factors into account to question the legality of the EAW. Roughly speaking, I would say that in 99% of cases the court will approve the EAW application. Those arrested with EAW tend to be surrendered.” Cyprus, lawyer.

Η βασική μας πρόκληση είναι το ότι τα δικαστήρια τείνουν να είναι πιο επιρρεπή στο να εκτελέσουν το ΕΕΣ. Τα δικαστήρια δεν είναι πολύ πρόθυμα να λάβουν υπόψη παράγοντες που θέτουν υπό αμφισβήτηση τη νομιμότητα του ΕΕΣ. Σε γενικές γραμμές, θα έλεγα ότι στο 99% των περιπτώσεων, το δικαστήριο θα εγκρίνει την αίτηση έκδοσης του ΕΕΣ. Οι συλληφθέντες με ΕΕΣ τείνουν να παραδίδονται.

There is always the right to an appeal, but very often the timelines given by the court are so strict that the right to an appeal is rendered superficial. The timeline is so tight that it is extremely difficult to prepare an appeal within three days. One of the lawyers noted:

“We are not in a position to effectively help our clients, because when we file the appeal, we must already have our argument in place. We must have held prior meetings with our client, we must have had the chance to communicate with the lawyer in the issuing State and the filing of the appeal itself is a very time-consuming bureaucratic process. Out of the three days granted by the court to file the appeal, one day is spent on the filing procedure, so that leaves only two days for meetings, consultations and write up of the appeal.” Cyprus, lawyer.

Δεν είμαστε σε θέση να βοηθήσουμε αποτελεσματικά τους πελάτες μας, διότι όταν καταθέτουμε την έφεση, πρέπει να έχουμε ήδη έτοιμο το επιχειρήμά μας. Πρέπει να έχουμε πραγματοποιήσει προηγούμενες συναντήσεις με τον πελάτη μας, πρέπει να είχαμε την ευκαιρία να επικοινωνήσουμε με τον δικηγόρο στο

κράτος έκδοσης και η ίδια η κατάθεση της έφεσης είναι μια πολύ χρονοβόρα γραφειοκρατική διαδικασία. Από τις τρεις ημέρες που χορηγεί το δικαστήριο για την κατάθεση της έφεσης, η μία ημέρα δαπανάται για τη διαδικασία κατάθεσης, οπότε απομένουν μόνο δύο ημέρες για συναντήσεις, διαβουλεύσεις και σύνταξη της έφεσης.

Table 10: Providing dual legal representation, interview findings (issuing MS)

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing in another MS? (When your country is an issuing State)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1			X
Lawyer 2			X
Lawyer3			X
Prosecutor 1			X
Prosecutor 2			X
Prosecutor 3			X
Total			6

- Communication between the lawyers in both states

Communication between lawyers in both states is not facilitated in Cyprus, but it is not obstructed either. Prosecutors assume that this is not a matter of concern and that is purely a matter between the requested persons and their lawyers.

The interviewed lawyers agreed that no facilitation is offered but noted the importance of being given due facilitation and time to consult with lawyers issuing the EAWs.

- Free of cost access to a lawyer (or legal aid)

Prosecutors and lawyers reported that requested persons are handed a list with the names and phone numbers of legal aid lawyers. All practitioners admitted that requested persons are not given access to the internet in order to research and identify lawyers and that the current practice of merely handing out of a paper list of names and phone numbers has room for improvement. One of the lawyers stated:

“If they are given access to the internet, they can research the lawyers’ expertise and make an informed decision, but they are not normally given access to the internet. The system is not efficient; requested persons should be given the right to research and choose their lawyer, not just to choose randomly from the list. They should be given the right to contact a person they know to help them identify a lawyer and to speak with more than one lawyer, it should not be a fast-track decision.” Cyprus, lawyer.

Εάν τους δοθεί πρόσβαση στο διαδίκτυο, μπορούν να ερευνήσουν την εμπειρογνωμοσύνη των δικηγόρων και να λάβουν τεκμηριωμένη απόφαση, αλλά συνήθως δεν τους δίνεται πρόσβαση στο διαδίκτυο. Το σύστημα δεν είναι αποτελεσματικό- οι εκζητούμενοι πρέπει να έχουν το δικαίωμα να ερευνούν και να επιλέγουν τον δικηγόρο τους και όχι απλώς να επιλέγουν τυχαία από τον κατάλογο. Θα πρέπει να τους δοθεί το δικαίωμα να επικοινωνήσουν με ένα πρόσωπο που γνωρίζουν για να τους βοηθήσει να εντοπίσουν δικηγόρο και να

μιλήσουν με περισσότερους από έναν δικηγόρους, δεν θα πρέπει να είναι μια γρήγορη απόφαση.

Table 11: Cost-free legal assistance, interview findings

Free of cost lawyer provided	When your country is an executing State	When your country is an issuing State for the purposes of procedures in the executing MS (e.g., to assist the lawyer in the executing State)
LAWYER 1	YES	No
LAWYER 2	YES	No
LAWYER 3	YES	No
Prosecutor 1	YES	No
Prosecutor 2	YES	No
Prosecutor 3	YES	No
TOTAL	6	6

c. Challenges

One lawyer noted that the legal aid list does not necessarily compile experts in the EAW. An additional problem identified is that, often the court timelines are so tight, there is not sufficient time to locate and instruct a lawyer. If requested persons are not happy with the lawyer initially instructed, they will need time to identify a new lawyer and instruct the new lawyer who will in turn require time to study the file. Because of the strict timelines in place, this is often rendered impossible. The courts tend to forget that preparation is needed and set hearing dates even before a lawyer is located.

d. Discussion of findings

The police do not consistently advise requested people about the right to legal representation. The right is mentioned in the Letter of Rights handed to them and will also be explained by the judge when the requested persons appear before the court within 24 hours from the arrest. However, the Letter of Rights is not always understood by the requested persons and by the time that they are presented before the judge, they may already have been prompted by the police to give testimony or to answer to charges. Communication with the lawyer is not obstructed but is not facilitated either. Given the gaps in informing requested persons about their rights identified in the previous sections, the right to a lawyer emerges as a key issue as it is the most reliable method of informing requested persons about their rights. Accessing legal aid is a straightforward process, however it provides requested persons with little information to make an informed decision in identifying a suitable lawyer. The legal aid list does not necessarily include lawyers with expertise on EAWs.

None of the prosecutors were aware of the right to dual representation and all practitioners confirmed that requested persons are not informed about this right nor are they facilitated to exercise it. This means that only those requested persons who can appoint a lawyer with international connections will be in a position to identify a lawyer in the issuing Member State. This gap revealed the additional gap that infringement of a procedural right will not be deemed as serious enough so as to lead to a rejection of the application to execute an EAW.

4. Issuing and execution of the EAW

a. Legal overview

- When Cyprus is the executing State

The judge must inform requested persons without undue delay after the deprivation of their liberty that they have the right to appoint a lawyer in the issuing Member State.⁴⁸

If the requested persons wish to exercise their right to appoint a lawyer in the issuing Member State and do not already have such a lawyer, the competent authority in Cyprus must inform the competent authority of the issuing Member State as soon as possible. The lawyer in the issuing State must supply all necessary information and advice to the lawyer in the executing State so that the wanted persons can effectively access their rights.⁴⁹ There is no relevant case law.

- When Cyprus is the issuing State

When Cyprus is the issuing State the competent authorities must provide the requested person, without undue delay, information to facilitate the appointment of a lawyer in Cyprus. To facilitate such appointment, a list must be provided to the requested person with names and telephone number of all lawyers registered in the Register of Practising Lawyers.⁵⁰ The law does not specify the institution with competency to provide the information and the list, nor the authority to transmit the information to the Member State, nor the mode of transmission. As a matter of practice, it is the Ministry of Justice that transmits the list of lawyers.

- Proportionality

The EAW law provides that the application of the provisions of this law may not result in a violation of the obligation to respect fundamental rights and principles, in accordance with Article 6 of the Treaty on European Union and prohibits extradition to a state where there is a serious risk that requested persons would be subjected to the death penalty or subjected to torture or other inhuman or degrading punishment or treatment.⁵¹ An EAW can be issued for acts punishable by Cypriot penal laws with penalties of deprivation of freedom of at least 12 months or where a penalty of at least four months has already been imposed.⁵² An application to the court for the issue of a EWA must be accompanied by the written consent of the Attorney General of the Republic.⁵³

The only guidance on interpreting proportionality in the context of the applying the Framework Decision on the EAW is the jurisprudence that evolved over the years which relies extensively on the principle of mutual recognition as the cornerstone of judicial cooperation. The emerging judicial tradition is that the EAW process is intended to provide judicial assistance between Member States so that suspects are surrendered without complexity or unnecessary delays. National courts interpret

⁴⁸ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), article 17(5).

⁴⁹ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), article 17(5).

⁵⁰ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), article 17(6).

⁵¹ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), Article 2(2).

⁵² Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), Article 7(1).

⁵³ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), Article 7(2).

the CJEU jurisprudence⁵⁴ as setting a duty on national courts to execute every EAW presented before it unless any of the preventive circumstances exhaustively listed in the Framework Decision apply.⁵⁵ The Courts have stated that the execution of an EAW is a *sui generis* process where the timelines are narrow, because the procedure does not amount to a criminal prosecution as such, which is primarily the task of the issuing State. Judges have stated that Articles 3 and 4 of the Framework Decision do not make any explicit reference to fundamental rights issues as grounds for refusal; and that the legislator, taking into account the fundamental rights of the requested persons on the one hand and the need to create a "simplified system" for the surrender of requested persons on the other, applying the principle of proportionality, preserved in the provisions of Articles 3 and 4, as well as Articles 9-25 of the Framework Decision those of the fundamental rights considered absolutely necessary to safeguard the EAW proceedings, e.g. the guarantees provided in Article 5 of the Framework Decision.⁵⁶

The issuing of an EAW can be challenged for reasons of non-compliance with the prerequisite elements provided in the EAW law, including:

- The name and nationality of the requested person, the contact details of the issuing authority, reference to an enforceable judgment, arrest warrant or similar order of a judicial authority, the nature and legal classification of the offence, a description of the circumstances of the commission of the offence, the sentence imposed, if it is a final judgment or the range of sentences provided for the offence under the law of the issuing Member State;⁵⁷
- It was issued by an authority other than the designated authority for issuing the arrest warrant or for acts not foreseen in the EAW law or where the legal guarantees foreseen in the law are not complied with.

The EAW law does not provide a specific procedure for challenging the issuance of an EAW. Given that the issuance of the warrant is a decision of the court, this can be appealed against on the basis of the general law on the administration of justice, which safeguards the right to appeal any district court decision or order exercising civil or criminal jurisdiction before the Supreme Court. The Supreme Court in its appellate jurisdiction can ignore any trial court findings on facts and can reassess the testimony delivered and draw its own conclusions; it can hear again any witnesses who testified at first instance and can order the trial court or another court to hear the case again.⁵⁸ The filing of the appeal does not have an automatic suspensive effect on the EAW. In order to contest their arrest, requested persons must file an application for a certiorari order at the Supreme Court, requesting the court to cancel or set aside the arrest warrant.⁵⁹

The only guidelines for the execution of the EAW are the decisions of the Court which form legal precedents, in line with the English common law tradition. In recent years Cypriot courts were repeatedly faced with execution requests from the Greek authorities for cases where the requested persons were tried and convicted in absentia and whether the legal guarantees of the issuing Member State were such so as to safeguard their right to a fair trial. Specifically, the issue examined by the

⁵⁴ Court of Justice of the European Union, [C-396/11](#) Re. Ciprian Vasile Radu, 29 January 2013

⁵⁵ Cyprus, District Court of Nicosia, [Re. the European Arrest Warrant concerning Thomas Petrou](#), Case No. 18/2017, ECLI:CY:EDLEF:2017:A372, 8 December 2017.

⁵⁶ Cyprus Supreme Court, [Howden James v. Attorney General of the Republic](#), Civil Appeal no. 184/2014, 17 July 2014.

⁵⁷ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), Article 4(1)

⁵⁸ Cyprus, Laws on Courts of 1960 until (No.3) of 1988 ([Οι περί Δικαστηρίων Νόμοι του 1960 έως \(Αρ.3\) του 1998](#)), article 25.

⁵⁹ Cyprus Supreme Court, [Re. the application of XXX Georgiou for permit to file an application for a certiorari order against the decision of the District Court of Paphos dated 18.5.2021 for the issue of a temporary arrest warrant against the applicant](#), ECLI:CY:AD:2021:D268, Civil Application No. 125/2021, 23 June 2021.

national courts was whether the requested persons would have an unconditional right to a retrial once surrendered in Greece or whether their only right would be to appeal their conviction passed in absentia or to prove force majeure circumstances.

The leading case is the Appeal Court decision in *Proios* where the Attorney General's appeal against the trial court refusal of a request from Greece for the execution of an EAW was rejected.⁶⁰ The trial court had rejected the application of the Greek authorities for the execution of an EAW against a Greek national residing in Cyprus convicted in Greece in absentia for economic crimes, on the ground that the Greek authorities had not provided the legal guarantees necessary when persons are tried and convicted in absentia. The requested person argued that summons had been wrongly served, as they were given to his sister with whom he had no relations and to his mother who suffered from dementia. The only legal guarantees offered by the Greek justice system were found by the trial court to be insufficient, since they provided only for the right to appeal invoking force majeure and not the right to a retrial. The Attorney General appealed the trial court decision on the ground that the trial court had no right to look into the content of the guarantees issued by the Greek legal system and could not reject the application for execution of the EAW on that basis. The Appeal Court examined the question whether the court was justified in refusing to execute the EAW on the basis of the efficacy of the legal guarantees provided by the Greek authorities. Relying on the ruling in *Melloni*⁶¹ the Appeal Court rejected the appeal on the ground that the trial in absentia gave rise to the need for the Greek authorities to provide adequate assurance that he will have an opportunity to apply for a retrial of the case in Greece and failure to provide such adequate assurance entitled the Cypriot court to deny the execution of the European Arrest Warrant. The assurance given by the Greek authorities did not provide the right to a retrial but only to an appeal upon reasons of force majeure, which does not meet the requirements of article 5(1) of the Framework Decision.

A dissenting judge disagreed with the rejection of the appeal, on the basis of article 5(2) of the Framework Decision on the EAW which renders the execution of the arrest warrant conditional upon legal guarantees only if the offence at stake is punishable by custodial life sentence or life-time detention; the prison sentences imposed in this case ranged between 6-36 months. The dissenting judge relied on the CJEU ruling in *Melloni*⁶² which interpreted Article 4a(1) of the Framework Decision as precluding the rendering of the execution of a European arrest warrant conditional upon the conviction in absentia being open to review in the issuing Member State. The dissenting judge stressed that in *Melloni*, the CJEU concluded that this provision does not prejudice the rights to an effective judicial remedy and to a fair trial, or the rights protected by Charter articles 47 and 48(2). According to the dissenting judge, article 4(a) of the Framework Decision should be read in light of this interpretation and the execution of the European arrest warrant should not be made conditional upon the adequacy of the legal guarantees safeguarding the wanted person's right to a retrial. Relying on *Melloni*, the dissenting judge stated that although Charter Article 53 permits the use of more favourable national standards for the protection of fundamental rights, this presupposes that primacy, unity and effectiveness of EU law are not compromised in the process; article 53 cannot be interpreted as enabling a court to make the surrender of a person convicted in absentia conditional upon the

⁶⁰ Cyprus Supreme Court, Appeal jurisdiction, [Attorney General v xxx Proios](#), Civil appeal no. 230/2019, ECLI:CY:AD:2020:A80, 3 March 2020.

⁶¹ Court of Justice of the European Union (CJEU), C-399/11, [Stefano Melloni v Ministerio Fiscal](#), 26 February 2013.

⁶² Court of Justice of the European Union (CJEU), C-399/11, [Stefano Melloni v Ministerio Fiscal](#), 26 February 2013.

conviction being open to review, as that would undermine the principles of mutual trust and recognition.

In the case of *Stavrou*,⁶³ the national court once again rejected an application for execution of an EAW from the Greek authorities to surrender the requested person in order to serve a five-year prison sentence imposed by a Greek court in his absence. The requested person had not been summoned to his trial in person and a notice was stuck on his door instead. The requested person told the court that he had had no information about the case against him and had not been informed that a judgement against him in absentia was possible. On the basis of undisputed testimony presented in Court, the requested person was tried in absentia and was not represented by a lawyer of his choice. The deadline for the exercise of the right to a retrial in Greece had passed and retrial was only possible for reasons of ‘force majeure’, defined by the Greek authorities as ‘unforeseen and exceptional event that cannot be prevented by measures of extreme care and prudence’. In light of this, the Court concluded that the legal guarantees did not expressly give the possibility to the requested person to have the conviction in absentia set aside and to have his case retried, because this right was subordinated to the force majeure requirement, and this was not consistent with the guarantees required by article 5(1) of the Framework Decision.

In the case of *Maragakis*, the Court decided to order the execution of the EAW of the requested person who had been tried and convicted in absentia in Greece, because he had failed to present any justification or explanation as to the reasons why he did not appear at his trial. The lawfulness, under Greek criminal procedure, of the service of the summons to the wanted person, both by mailing it to his last known address and to his lawyer, was not disputed by the defence, nor could the Court rule on the legality of this practice if it were raised and as a result the failure of the requested person to appear at his trial was deemed unjustified.⁶⁴

- Remedies

The following remedies are available for a requested person in case they are not provided with information about the EAW and about their rights during the proceedings

- Right to an appeal

The EAW law provides for the right to an appeal at the Supreme Court against a district court decision ordering the execution of an EAW, however the appeal must be premised on a point of law and not on a point of fact.⁶⁵ The appeal must be filed within three days from publication of the District Court decision on the execution of the EAW and the Supreme Court will then adjust all other deadlines for the hearing of the appeal, the issue of the decision on the appeal and the surrender of the requested person accordingly.⁶⁶ The law does not clarify if the failure to provide information is a point of law or a fact; this is a matter of interpretation by the Court, based on the facts of the case. If sufficient evidence was presented in the District Court to establish the infringement of this right which the Court, then ignored, this might be seen by the Supreme Court as an error of law. If the requested person did

⁶³ Cyprus, District Court of Limassol, [Re. the requested person XXX Georgiou Stavrou](#), EAW Application No.6/2020, ECLI:CY:EDLEM:2020:B56, 3 November 2020

⁶⁴ Cyprus, District Court of Nicosia, [Re. Maragkakis of Greek nationality](#), European Arrest Warrant n. 6/2021, ECLI:CY:EDLEF:2021:A262, 19 May 2021.

⁶⁵ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), article 24(1).

⁶⁶ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), article 24(2).

not claim the infringement of this right before the District Court, then an appeal premised on this might be seen as an error of law, in which case it will be rejected as inadmissible. In the case of *Howden*, a requested person appealed the District Court decision for the execution of an EAW against him, on the grounds that he was not permitted to present testimony at the trial court stage, as a result of which he was denied the right to a fair trial, he was deprived of the right to present testimony showing abuse of process and of his right to a defence. The Appeal Court rejected the appeal on the justification that acceptance of the fundamental rights claims raised by the requested person would entail the risk of imposing additional criteria to those incorporated in the Framework Decision on the EAW, which would undermine the simplified mechanism of surrender of wanted persons introduced by the Framework Decision. The Appeal Court cited extensively the CJEU ruling in *Ciprian Vasile Radu*⁶⁷ which concluded that the executing authority cannot refuse to execute an EAW on any ground other than those mentioned in article 5 of the Framework Decision on the EAW.⁶⁸

The *Howden* decision followed the rationale of the Supreme Court in the case of *Michaelides* where the requested person also unsuccessfully appealed the trial court ruling on the execution of an EAW against him on the grounds that his fair trial rights had been infringed, citing amongst others the extensive media coverage of his case and the length of time that elapsed since the offences mentioned in the EAW. The Appeal Court rejected the appeal stating that the media reports did not affect the judgement of the court and that the provision of the opportunity to prepare the defence and the passage of a long period of time since the alleged commission of the offences, could be raised before the issuing State authorities. The Appeal Court concluded that the failure of the trial court to directly recognise the application of fundamental human rights in this case was an error, but the correctness of its final reasoning was not invalidated on that ground alone, in the light of the fact that it correctly examined and decided all the objections raised by the requested person before it.⁶⁹

- Sanctions and right to compensation

The law of the rights of persons under arrest provides criminal sanctions for police officers who fail to inform persons arrested in a language understood to them of the reasons for their arrest, their right to a lawyer, their entitlement to legal aid if applicable, their right to interpretation and translation, their right to remain silent, their right not to incriminate themselves, their place of detention, their right to communicate with the lawyer of their choice without anyone else being present and their right to communicate with a person of their choice under conditions. The sanctions foreseen in case of conviction of a police officer are imprisonment of up to six months and/or a fine up to €1,708; no minimum sanctions are foreseen and the Court is free not to impose any sentence at all if it so chooses.⁷⁰ Disciplinary proceedings are also foreseen for police officers violating these rights.⁷¹ The law further provides that the aforesaid criminal prosecution and the disciplinary proceedings do not prejudice any criminal liability under the Convention against Torture and Other Cruel, Inhuman or

⁶⁷ Court of Justice of the European Union, [C-396/11](#), *Proceedings relating to the execution of European arrest warrants issued against Ciprian Vasile Radu*, 29 January 2013.

⁶⁸ Cyprus Supreme Court, [Howden James v. Attorney General of the Republic](#), Civil Appeal no. 184/2014, 17 July 2014.

⁶⁹ Cyprus Supreme Court, [Constantinos \(Dinos\) Michaelides v. Attorney General of the Republic](#), Civil Appeal No. 221/13, 2 September 2013.

⁷⁰ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 33.

⁷¹ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 34.

Degrading Treatment or Punishment⁷² but does not provide any mandatory prosecutions under the ratifying law. It is noted that, under the Cypriot Constitution, the Attorney-General has sole discretion to institute criminal proceedings and although this discretion must be exercised ‘in the public interest’,⁷³ there are no guidelines and no system of accountability for the exercise of this discretionary power. A person whose rights were infringed by a police officer or prison guard may bring an action against the state and claim fair compensation, irrespective of whether or not any real injury or loss, monetary or otherwise, were sustained as a result.⁷⁴

- Right to a copy of the executing decision

Where the EAW is issued for the purpose of executing a custodial sentence or a detention order, and the requested persons were not personally served with the decision to execute the EAW and were not previously officially informed of the existence of legal proceedings against them, the requested persons can ask for a copy of the decision to be provided to them before they are handed over to the competent executing authorities, which must be provided immediately by the executing judicial authority. In this case the requested persons may ask for a retrial, or an appeal and their detention must be regularly reviewed pending the retrial or appeal, on the basis of the law of the executing State.⁷⁵

- Remedies

The law does not provide for any remedies in the event that the judge does not inform requested persons of their right to dual legal representation or unreasonably delays providing this information. Although the EAW law provides for the right to an appeal at the Supreme Court against a district court decision ordering the execution of an EAW, the appeal must be premised on a point of law and not on a point of fact⁷⁶ and there is no legal precedent to suggest that the infringement of a procedural right can lead to a cancellation of the decision ordering the execution of the EAW.⁷⁷

b. Issuing and execution of the EAW in practice

- Factors considered when issuing the EAW

Prerequisites

Prosecutors and lawyers reported that an EAW will be issued when there are reasonable grounds to believe that the person requested is implicated in a serious offence, the requested person is located in an EU country and there are real prospects for a conviction. In order to reach the stage of issuing an EAW, the prosecuting authorities already have almost sufficient evidence to lodge the case in court.

⁷² Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 35.

⁷³ Cyprus, The Constitution of the Republic of Cyprus ([Το Σύνταγμα της Κυπριακής Δημοκρατίας](#)) article 113(2).

⁷⁴ Cyprus, Law on the rights of suspects, persons arrested and persons remanded in custody of 2005 ([Ο περί των Δικαιωμάτων Υπόπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005](#)) N. 163(1)/2005, article 36.

⁷⁵ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), articles 14(3) and 14(4).

⁷⁶ Cyprus, Law on the European Arrest Warrant and the Procedures for the Surrender of Wanted Persons between the Member States of the European Union Law of 2004 ([Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητούμενων Μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ένωσης Νόμος του 2004](#)), article 24(1).

⁷⁷ Cyprus Supreme Court, [Howden James v. Attorney General of the Republic](#), Civil Appeal no. 184/2014, 17 July 2014; Cyprus Supreme Court, [Constantinos \(Dinos\) Michaelides v. Attorney General of the Republic](#), Civil Appeal No. 221/13, 2 September 2013.

According to the prosecutors interviewed, by the time the EAW is executed, the authorities have already secured sufficient evidence to lodge the case.

Proportionality

Prosecutors agreed that the prospects of a conviction and the seriousness of the offence are major factors in the decision to issue an EAW. One of the lawyers compared the issuing of an EAW to a national arrest warrant, i.e., it is issued in the same manner and on the same grounds as in the case of the national arrest warrant: if the preconditions set in the law are met, i.e., if there is reasonable suspicion and a real prospect for a conviction.

- Factors considered when executing the EAW

Challenging the issue

All interviewees agreed that Cypriot courts take a narrow view on challenging the issue of an EAW by another Member State. They stated that Cypriot courts are prone to viewing the EAW as a procedural matter of mutual recognition and collaboration with other EU Member States, rather than a matter for contestation. Being a merely procedural matter means that the justice system does not recognise that there are fundamental rights concerns that must be addressed at this stage, because these concerns can theoretically be taken up at the substantive trial in the issuing State. The deprivation of the liberty of requested persons at this stage was not seen as a fundamental rights concern with irreversible results. The prosecutors were in line with the approach of the courts and clarified that the EAW is intended to be a formalistic and quick procedure to facilitate the substantive procedure in the issuing State:

“Our jurisprudence says that every EAW issued must be executed unless certain provisions for non-execution specifically mentioned in the Framework Decision are present. The jurisprudence is clear that only those provisions can lead to non-execution of an EAW; we cannot add our own reasons not to execute an EAW.

I have never heard of a case where the Ministry of Justice contacted the authorities in the issuing State to ask for withdrawal of an EAW. If the requested person raises such an issue, then the Ministry of Justice will of course transmit it to the issuing State, however the Ministry will not undertake such an initiative on its own accord.”
Cyprus, prosecutor.

Η νομολογία μας λέει ότι κάθε ΕΕΣ που εκδίδεται πρέπει να εκτελείται, εκτός εάν υπάρχουν ορισμένες διατάξεις για τη μη εκτέλεση που αναφέρονται ρητά στην απόφαση-πλαίσιο. Η νομολογία είναι σαφής ότι μόνο αυτές οι διατάξεις μπορούν να οδηγήσουν στη μη εκτέλεση ενός ΕΕΣ- δεν μπορούμε να προσθέσουμε δικούς μας λόγους για τη μη εκτέλεση ενός ΕΕΣ.

Δεν έχω ακούσει ποτέ για περίπτωση κατά την οποία το Υπουργείο Δικαιοσύνης επικοινωνήσει με τις αρχές του κράτους έκδοσης για να ζητήσει την ανάκληση ενός ΕΕΣ. Εάν ο εκζητούμενος εγείρει ένα τέτοιο ζήτημα, τότε το Υπουργείο Δικαιοσύνης θα το διαβιβάσει φυσικά στο κράτος έκδοσης, ωστόσο το Υπουργείο δεν θα αναλάβει μια τέτοια πρωτοβουλία από μόνο του

The lawyers, on the other hand, considered that this is the wrong reading of the law governing the EAW process in Cyprus and that it entails fundamental rights risks which are ignored for the sake of good collaboration with other Member States.

Proportionality

All interviewees agreed that the courts in Cyprus do not consider an apparent infringement of proportionality as a valid ground for challenging the issue of an EAW by another Member State. They reported that there was never a case in court where proportionality was deemed as good reason to challenge the issuance of an EAW. In order to reject an application from another Member State for the execution of an EAW, the Cypriot court must have more solid and clear issues at stake than proportionality and must have CJEU rulings on that particular point, like the lack of competence of the issuing authority because it was not a judicial authority. In this case the court will not hesitate to reject an application and most likely the Attorney General will see the problem and withdraw the application too. But never on the basis of a debatable question like proportionality.

“We first examine the identity of the persons; then we examine the acts for which they are sought and if they amount to criminal offences under Cypriot law to meet the double criminality element; then we check if any of the reasons of obligatory non-execution stated in the law are present...That is all we check.

The EAW is about the mutual recognition of decisions between Member States and not about proportionality. It is not for us to judge if the EAW is proportionate to the aim it is sought for. If the issuing State has decided to issue the EAW either for serving a penalty or for a prosecution, it is not for us to question the judgement of the other Member State. We will not check whether there are real prospects for imprisonment because we lack competence to look into the merits of the case.”
Cyprus, prosecutor.

Πρώτα εξετάζουμε την ταυτότητα των προσώπων· στη συνέχεια εξετάζουμε τις πράξεις για τις οποίες καταζητούνται και αν συνιστούν ποινικά αδικήματα σύμφωνα με την κυπριακή νομοθεσία για να πληρείται το στοιχείο του διπλού αξιόποινου· στη συνέχεια ελέγχουμε αν συντρέχει κάποιος από τους λόγους υποχρεωτικής μη εκτέλεσης που αναφέρονται στο νόμο... Αυτό είναι το μόνο που ελέγχουμε.

Το ΕΕΣ αφορά την αμοιβαία αναγνώριση των αποφάσεων μεταξύ των κρατών μελών και όχι την αναλογικότητα. Δεν είναι δική μας αρμοδιότητα να κρίνουμε αν το ΕΕΣ είναι αναλογικό για τον επιδιωκόμενο σκοπό. Εάν το κράτος έκδοσης έχει αποφασίσει να εκδώσει το ΕΕΣ είτε για την εκτέλεση ποινής είτε για τη δίωξη, δεν είναι δική μας αρμοδιότητα να αμφισβητήσουμε την κρίση του άλλου κράτους μέλους. Δεν θα ελέγξουμε αν υπάρχουν πραγματικές προοπτικές φυλάκισης, διότι δεν έχουμε αρμοδιότητα να εξετάσουμε την ουσία της υπόθεσης

One of the lawyers suggested that it is legally not possible to raise proportionality issues as this is not one of the reasons listed in the law for non-execution of the EAW:

“A requested person cannot raise such concerns as proportionality. It’s not one of the requirements for issuing an arrest warrant. If there is a decision from a criminal court for imposition of a penalty, it’s not for the requested state to evaluate this sentence. The execution of the warrant is, in this case, a mere formality. If the request is based on a national arrest warrant, then the question of proportionality is crucial; if the issuing State for instance requests persons in order to try them for

repeated traffic offences whilst in fact this is a mere pretext and the reasons are political, then the proportionality principle comes into play in order to comply with the spirit of the Directive.” Cyprus, lawyer.

Το εκζητούμενο πρόσωπο δεν δικαιούται να εγείρει προβληματισμούς όπως η αναλογικότητα. Δεν είναι μία από τις προϋποθέσεις για την έκδοση εντάλματος σύλληψης. Εάν υπάρχει απόφαση ποινικού δικαστηρίου για την επιβολή ποινής, δεν είναι αρμοδιότητα του κράτους εκτέλεσης να αξιολογήσει την ποινή αυτή. Η εκτέλεση του εντάλματος είναι, στην περίπτωση αυτή, μια απλή τυπική διαδικασία. Εάν το αίτημα βασίζεται σε εθνικό ένταλμα σύλληψης, τότε το ζήτημα της αναλογικότητας είναι κρίσιμο· εάν το κράτος έκδοσης λ.χ. ζητά πρόσωπα προκειμένου να τα δικάσει για επανειλημμένες παραβάσεις της τροχαίας αλλά στην πραγματικότητα πρόκειται για ένα απλό πρόσχημα ενώ οι λόγοι είναι πολιτικοί, τότε η αρχή της αναλογικότητας τίθεται σε εφαρμογή προκειμένου να υπάρξει συμμόρφωση με το πνεύμα της οδηγίας.

Another lawyer noted that proportionality legally can and sometime is raised before the courts, but that in practice courts do not consider it:

“In theory our courts reiterate principles like proportionality in their decisions. However, this does not take place in practice. Our courts nowadays when they examine applications for EAWs, amongst the numerous cases they are examining and under the pressure of time, they are faced with an EAW which has strict timelines. As a result, the courts tend to look only into whether the formalities are met. The proportionality question is not examined, even though the judge might state in the judgement the proportionality principle was considered; It is more of a ‘tick the box’ process.” Cyprus, lawyer.

Θεωρητικά, τα δικαστήριά μας επαναλαμβάνουν αρχές όπως η αναλογικότητα στις αποφάσεις τους. Ωστόσο, αυτό δεν συμβαίνει στην πράξη. Τα δικαστήριά μας σήμερα, όταν εξετάζουν αιτήσεις για ΕΕΣ, ανάμεσα στις πολυάριθμες υποθέσεις που εξετάζουν και υπό την πίεση του χρόνου, έρχονται αντιμέτωπα με μια ΕΕΣ που έχει αυστηρά χρονοδιαγράμματα. Ως αποτέλεσμα, τα δικαστήρια τείνουν να εξετάζουν μόνο αν τηρούνται οι διατυπώσεις. Το ζήτημα της αναλογικότητας δεν εξετάζεται, παρόλο που ο δικαστής μπορεί να αναφέρει στην απόφαση ότι εξετάστηκε η αρχή της αναλογικότητας· πρόκειται περισσότερο για μια διαδικασία “τσεκάρετε το κουτί”.

In practice, the courts will evaluate proportionality concerns if they have to, because these are raised by the lawyer of the requested person. But they do not take the bold step of rejecting an application on the basis of the proportionality principle. After evaluation, the court will reject the concerns and approve the EAW application. One lawyer pointed out that “*not all courts have the boldness to reject an application for an EAW*”. The authorities are in contact with each other and exchange information, but withdrawals are rare:

“In one case we argued that the application was so frivolous that it should not even have been promoted by our Ministry of Justice, but our Ministry did not have the boldness to make such a decision. It preferred to take the safe step of leaving the

decision to the court. Lack of boldness is a very typical characteristic of the Cypriot authorities.” Cyprus, lawyer.

Σε μια περίπτωση υποστηρίξαμε ότι η αίτηση ήταν τόσο επιπόλαιη που δεν έπρεπε καν να προωθηθεί από το Υπουργείο Δικαιοσύνης, αλλά το Υπουργείο μας δεν είχε την τόλμη να λάβει μια τέτοια απόφαση. Προτίμησε να κάνει το ασφαλές βήμα αφήνοντας την απόφαση στο δικαστήριο. Η έλλειψη τόλμης είναι ένα πολύ χαρακτηριστικό γνώρισμα των κυπριακών αρχών.

Conditions of detention

The courts will not on their own initiative examine the detention conditions in the issuing Member State. This will be done only if this is raised by the requested person’s lawyer. The sources which the court will examine are the sources cited and presented by the requested person’s lawyer, like monitoring body reports or reports of the EU institutions. Lawyers suggest that they do not have sufficient access to information about detention conditions in other countries, therefore they do not feel confident about raising the detention conditions in other countries as a reason for non-execution of an EAW. There is a general impression that the detention conditions are acceptable throughout the EU, in varying degrees, but nevertheless acceptable.

“I do not think that detention conditions play any role in the execution of the EAW unless there is an allegation that detention conditions in a certain country are inhumane and unacceptable. In the absence of such an allegation, the authorities will not, on their own initiative, examine the detention conditions. In order to investigate detention conditions in the issuing Member State, we would first contact the competent authorities in that state to find out; it is not our job to conduct an investigation into detention conditions; it isn’t a matter for the Attorney General or the Ministry of Justice. I am aware that there are several reports from organisations on detention conditions; if there was such a case about another country, it would have become known and we would be aware of it.” Cyprus, prosecutor.

Δεν νομίζω ότι οι συνθήκες κράτησης παίζουν κανένα ρόλο στην εκτέλεση του ΕΕΣ, εκτός κι εάν υπάρχει ο ισχυρισμός ότι οι συνθήκες κράτησης σε μια συγκεκριμένη χώρα είναι απάνθρωπες και απαράδεκτες. Ελλείψει ενός τέτοιου ισχυρισμού, οι αρχές δεν θα εξετάσουν, με δική τους πρωτοβουλία, τις συνθήκες κράτησης. Προκειμένου να διερευνήσουμε τις συνθήκες κράτησης στο κράτος μέλος έκδοσης, θα επικοινωνήσουμε πρώτα με τις αρμόδιες αρχές του εν λόγω κράτους για να το μάθουμε- δεν είναι δική μας δουλειά να διεξάγουμε έρευνα για τις συνθήκες κράτησης- δεν είναι θέμα του Γενικού Εισαγγελέα ή του Υπουργείου Δικαιοσύνης. Γνωρίζω ότι υπάρχουν αρκετές εκθέσεις από οργανώσεις σχετικά με τις συνθήκες κράτησης- αν υπήρχε μια τέτοια υπόθεση για μια άλλη χώρα, θα είχε γίνει γνωστή και θα την γνωρίζαμε.

Lawyers and prosecutors interviewed agreed that judges in Cyprus would not refuse to execute an EAW due to the detention conditions of another EU Member State. Courts may be prepared to consider such issues for third countries, but all agreed that Courts in Cyprus will not take into account the detention conditions of other EU countries:

“No, detention conditions in the issuing State are not taken into account. The list of reasons for non-execution of an EAW is exhaustive: we can only deny execution of the EAW if the prosecution relied on race, religion etc. and if punishment will be inhumane, but detention conditions are not part of the reasons for non-execution. Our jurisprudence says that in the framework of mutual cooperation recognition between Member States, we consider there are no human rights violation in an EU country. We don’t have access to information about detention conditions, I don’t know if the police or the Ministry of Justice has such access. I have never heard of the FRA database.” Cyprus, prosecutor.

Όχι, δεν λαμβάνονται υπόψη οι συνθήκες κράτησης στο κράτος έκδοσης. Ο κατάλογος των λόγων για τη μη εκτέλεση του ΕΕΣ είναι εξαντλητικός: μπορούμε να αρνηθούμε την εκτέλεση του ΕΕΣ μόνο εάν η δίωξη βασίστηκε στη φυλή, τη θρησκεία κ.λπ. και εάν η τιμωρία θα είναι απάνθρωπη, αλλά οι συνθήκες κράτησης δεν αποτελούν μέρος των λόγων για τη μη εκτέλεση. Η νομολογία μας λέει ότι στο πλαίσιο της αναγνώρισης της αμοιβαίας συνεργασίας μεταξύ των κρατών μελών, θεωρούμε ότι δεν υπάρχει παραβίαση των ανθρωπίνων δικαιωμάτων σε μια χώρα της ΕΕ. Δεν έχουμε πρόσβαση σε πληροφορίες σχετικά με τις συνθήκες κράτησης, δεν ξέρω αν η αστυνομία ή το Υπουργείο Δικαιοσύνης έχει τέτοια πρόσβαση. Δεν έχω ακούσει ποτέ για τη βάση δεδομένων του FRA.

None of the three prosecutors and two of the lawyers interviewed had not heard of the FRA database on detention conditions. Only one of the lawyers was aware of it and had even used it in court, but without success:

“I am aware of the FRA database, and I have used it; I often consult the FRA website but most lawyers do not. The EAW procedures would have been greatly improved if seminars were available on sources of information, both for the lawyers and for the judges.” Cyprus, lawyer.

Γνωρίζω τη βάση δεδομένων του FRA και την έχω χρησιμοποιήσει-συμβουλευόμαι συχνά τον ιστότοπο του FRA, αλλά οι περισσότεροι δικηγόροι δεν το κάνουν. Οι διαδικασίες του ΕΕΣ θα είχαν βελτιωθεί σημαντικά εάν υπήρχαν σεμινάρια σχετικά με τις πηγές πληροφόρησης, τόσο για τους δικηγόρους όσο και για τους δικαστές.

Right to a fair trial (rule of law)

Lawyers and prosecutors agreed that the implementation of the procedural rights of requested persons may be raised in court, but if the EAW is issued, these will not be considered as reasons for non-execution. If the EAW is valid and has not been cancelled, then the Court will go ahead and execute it.

They all agreed that Cypriot courts are unlikely to be in a position to determine whether the requested person will have a fair trial in the issuing State. This might arise where there is an independent monitoring report about the issuing State establishing that the issuing State regularly prosecutes persons for political or racial reasons. The EAW will be executed even where the requested person

was tried and convicted in absentia, where there are conditions for a re-trial or an appeal. If there is no evidence for a politically or racially motivated prosecution, then the EAW will be executed.

When asked whether Cypriot authorities consider the procedural rights of the requested person in the issuing State when deciding on the execution of an EAW, prosecutors reported that the right to a fair trial by an independent court is not considered:

“We examine exhaustively the factors for non-execution mentioned in the Directive and its transposing legislation. We don’t examine anything over and above those. Those are the preconditions for refusing to execute an EAW, nothing else. We don’t examine whether he is likely to have a fair trial in the issuing Member State. If he has already been convicted, we examine whether he has the right to an appeal.”
Cyprus, prosecutor.

Εξετάζουμε εξαντλητικά τους παράγοντες μη εκτέλεσης που αναφέρονται στην οδηγία και στην εναρμονιστική νομοθεσία. Δεν εξετάζουμε τίποτα πέραν αυτών. Αυτές είναι οι προϋποθέσεις για την άρνηση εκτέλεσης ενός ΕΕΣ, τίποτε άλλο. Δεν εξετάζουμε αν είναι πιθανό να έχει δίκαιη δίκη στο κράτος μέλος έκδοσης. Εάν έχει ήδη καταδικαστεί, εξετάζουμε εάν έχει δικαίωμα έφεσης.

Another prosecutor offered the elements examined when the requested person was tried in absentia:

“If a requested person was tried in absentia, we examine whether he has the right to an appeal or retrial. We only examine the requirements explicitly mentioned in the law: if he was summoned to appear in court, if he was aware that he would be judged in absentia, if his lawyer was present, etc; the requirements contained in the law are very specific. The guarantee which we ask to see is whether he can appeal the judgement against him or he if can be tried afresh. If the answer is yes, then we will execute the EAW.”
Cyprus, prosecutor

Εάν το εκζητούμενο πρόσωπο δικάστηκε ερήμην, εξετάζουμε το κατά πόσον θα έχει δικαίωμα έφεσης ή επανάληψης της δίκης στη χώρα έκδοσης. Εξετάζουμε μόνο τις προϋποθέσεις που αναφέρονται ρητά στο νόμο: αν κλήθηκε να εμφανιστεί στο δικαστήριο, αν γνώριζε ότι θα δικαστεί ερήμην, αν ήταν παρών ο δικηγόρος του κ.λπ. Η εγγύηση που ζητάμε να δούμε είναι αν μπορεί να ασκήσει έφεση κατά της απόφασης εναντίον του ή αν μπορεί να δικαστεί εκ νέου. Εάν η απάντηση είναι θετική, τότε θα εκτελέσουμε το ΕΕΣ.

As in all issues discussed, the court will not examine anything on its own initiative. The issues have to be raised by the lawyer of the requested person, who must present robust evidence that some rights will be infringed in the issuing Member State. The court will not take the initiative to investigate what is likely to happen in the issuing Member State. For persons tried and convicted in absentia, the court will examine whether there is a right to a hearing in the issuing Member State and whether the requested person will be able to challenge the conviction passed in absentia. A lawyer can raise several issues in court, and the court may ignore all of them without explanation and without answering to each issue raised.

Individual situation

Lawyers and prosecutors agreed that the authorities in Cyprus will consider individual circumstances of a requested person, such as serious health issues if there is sufficient evidence that the requested person is not in a position to travel. The court would agree to postpone the execution of the EAW until the person is in position to travel to the issuing State. It is rare however for the court to take into consideration any issues other than health.

“We had a case where EAWs were pending for three different cases. The requested person was a resident in Cyprus, his family was in Cyprus for the past 20 years, he had children in Cyprus, but our Ministry of Justice did not confirm that in case he is convicted he can serve the sentence in Cyprus. Even though all legal requirements were met for this confirmation to be issued by the Ministry of Justice, the court granted the EAW warrant to be executed. I have never come across a case where humanitarian grounds were taken into account to refuse to execute an EAW.”
Cyprus, lawyer

Είχαμε μια υπόθεση όπου εκκρεμούσαν ΕΕΣ για τρεις διαφορετικές υποθέσεις. Ο εκζητούμενος ήταν κάτοικος Κύπρου, η οικογένειά του βρισκόταν στην Κύπρο τα τελευταία 20 χρόνια, είχε παιδιά στην Κύπρο, αλλά το Υπουργείο Δικαιοσύνης δεν μας παρείχε την επιβεβαίωση ότι σε περίπτωση καταδίκης του θα μπορούσε να εκτίσει την ποινή του στην Κύπρο. Παρόλο που πληρούνταν όλες οι νομικές προϋποθέσεις για να εκδώσει το Υπουργείο Δικαιοσύνης αυτή την επιβεβαίωση, το δικαστήριο ενέκρινε την εκτέλεση του ΕΕΣ. Δεν έχω συναντήσει ποτέ περίπτωση όπου να λαμβάνονται υπόψη ανθρωπιστικοί λόγοι για την άρνηση εκτέλεσης εντάλματος ΕΕΣ.

c. Challenges

Prosecutors expressed satisfaction with the operation of the EAW process in Cyprus. Only one prosecutor noted that there is room for improvement:

“The Letter of Rights can be made shorter and more concise, in order to be better understood. The long list of rights may not be so helpful and easily understood by a person upon arrest, given the confusion that is natural for a person under those circumstances. Some issues must be explained orally upon request. In the case of the speciality rule, we often remind the court to explain it well and we explain it to the requested person ourselves in advance if the person appears without a lawyer, as we believe it is highly crucial that we do not surrender anyone for the purpose of being tried for offences other than those mentioned in the EAW.” Cyprus, prosecutor

Το έντυπο δικαιωμάτων μπορεί να γίνει πιο σύντομο και περιεκτικό, ώστε να γίνεται καλύτερα κατανοητό. Ο μακρύς κατάλογος των δικαιωμάτων μπορεί να μην είναι τόσο χρήσιμος και εύκολα κατανοητός από ένα άτομο κατά τη σύλληψη, δεδομένης της σύγχυσης που είναι φυσικό να επικρατεί σε ένα άτομο υπό αυτές τις συνθήκες. Ορισμένα θέματα πρέπει να εξηγούνται προφορικά κατόπιν αιτήματος. Στην περίπτωση του κανόνα για την ιδιαιτερότητα, συχνά υπενθυμίζουμε στο δικαστήριο να τον εξηγήσει καλά και τον εξηγούμε κι εμείς οι ίδιοι στο εκζητούμενο πρόσωπο εκ των προτέρων, εάν το πρόσωπο εμφανίζεται

χωρίς δικηγόρο, καθώς πιστεύουμε ότι είναι εξαιρετικά κρίσιμο να μην παραδίδουμε κανέναν με σκοπό να δικαστεί για αδικήματα άλλα από αυτά που αναφέρονται στο ΕΕΣ.

Lawyers see as the main challenges the need to alert the court to fundamental rights concerns which are not adequately considered:

“The fact that a disproportionate burden is placed on the requested person to prove infringement of rights in order to challenge the execution of the EAW, is in itself is a violation of the right to a fair trial. The fact that we know in advance that in 99% of cases the courts will grant the EAW shows that we are dealing with a certain court mentality. We understand that the EAW procedures are aimed at facilitating surrender, however we should not disregard human rights in the name of solidarity between Member States.” Cyprus, lawyer.

Το γεγονός ότι επιβαρύνεται δυσανάλογα το εκζητούμενο άτομο να αποδείξει την παραβίαση των δικαιωμάτων του προκειμένου να αμφισβητήσει την εκτέλεση του ΕΕΣ, αποτελεί από μόνο του παραβίαση του δικαιώματος σε δίκαιη δίκη. Το γεγονός ότι γνωρίζουμε εκ των προτέρων ότι στο 99% των περιπτώσεων τα δικαστήρια θα χορηγήσουν το ΕΕΣ δείχνει ότι έχουμε να κάνουμε με μια συγκεκριμένη δικαστική νοοτροπία. Κατανοούμε ότι οι διαδικασίες ΕΕΣ αποσκοπούν στη διευκόλυνση της παράδοσης, ωστόσο δεν θα πρέπει να παραβλέπουμε τα ανθρώπινα δικαιώματα στο όνομα της αλληλεγγύης μεταξύ των κρατών μελών.

d. Discussion of findings

Courts and prosecutors share the view that the prevalence of mutual recognition and collaboration with other Member States, restricts the prospect of refusing to execute an EAW due to the risk of infringements of procedural rights. This position is further enhanced by the view that the EAW is merely a procedural matter and that the only approach is therefore to execute the EAW if the preconditions of the Framework Decision are met. All EU countries are seen as respectful of fundamental rights and the prohibition contained in the Framework Decision that no person should be extradited to a country where he is likely to sustain inhuman treatment is somehow not seen as relevant to detention conditions. The common law tradition of placing the burden on the parties to raise evidential or legal issues in order for the courts to consider them, in the case of the EAW, translates into a burden on the requested persons to raise fundamental rights concerns themselves, which alone raises issues of fair trial.

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

There are no provisions regulating the use of digital tools in the Cypriot legal framework and no relevant guidelines to address fundamental rights concerns arising from the use of such tools.

Table 12: Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing State)	Facilitating access to a lawyer in the executing Member State (when an issuing State)
Cyprus	NO	NO	NO	YES	No	NO	NO
(e.g.) Italy							
TOTAL	6	6	6	6	6	6	6

b. Interview findings

All interviewees agreed that there may be positive potential from digitalisation but they also referred to possible dangers from a human rights perspective. The concerns raised did not relate to privacy but to the efficiency of court meetings with physical presence. One of the lawyers stated:

“Digitisation could help codify the problems that exist across Europe and find ways to address them. It would also help to ensure a uniform application of the Framework Decision on the EAW and a better application of the proportionality principle. I am not aware of any risks with digitalisation; transparency has never harmed anyone. If the job can be done without transferring the requested person to the issuing Member State, then better not to issue it and respect the proportionality principle. Not with the aim of reducing the number of EAWs issued; where they must be issued, they should be issued to ensure security in the European space. But it is good for the contact points to know each other, so as to have a single operating area, to render the interrogation process more efficient and ensure the process is not abused by needless requests for surrender. When interrogation can be carried out adequately in the executing Member State, then the rights of suspects are better protected. A video camera interrogation will show whether the suspect is willing to give information or whether his testimony is unreliable. Once the testimony delivered is assessed, then an informed decision can be made at the issuing Member State whether they want to proceed with the issue of the EAW. If after the interrogation reasonable suspicion arises and the issuing Member State requests the execution of the EAW, then the executing Member State will execute it. I have no knowledge of what happened in the pandemic in the context of the EAW proceedings. In my office we used the opportunity to conduct mock trials by way of training, to improve the skills of our lawyers. With digitization you can do a lot from a distance.” Cyprus, lawyer

Η ψηφιοποίηση θα μπορούσε να βοηθήσει στην κωδικοποίηση των προβλημάτων που υπάρχουν σε όλη την Ευρώπη και στην εξεύρεση τρόπων αντιμετώπισής τους. Θα βοηθούσε επίσης να διασφαλιστεί η ομοιόμορφη εφαρμογή της απόφασης-πλαίσιου για το ΕΕΣ και η καλύτερη εφαρμογή της αρχής της αναλογικότητας. Δεν γνωρίζω κανέναν κίνδυνο από την ψηφιοποίηση- η διαφάνεια δεν έχει βλάψει ποτέ κανέναν. Εάν η διαδικασία μπορεί να γίνει χωρίς να μεταφερθεί το εκζητούμενο πρόσωπο στο κράτος μέλος έκδοσης, τότε καλύτερα να μην εκδοθεί και να τηρηθεί η αρχή της αναλογικότητας. Όχι με στόχο τη μείωση του αριθμού των εκδοθέντων με ΕΕΣ- όπου πρέπει να εκδοθούν, θα πρέπει να εκδοθούν για να διασφαλιστεί η ασφάλεια στον ευρωπαϊκό χώρο. Αλλά καλό είναι τα σημεία επαφής να γνωρίζονται μεταξύ τους, ώστε να υπάρχει ένας ενιαίος χώρος λειτουργίας, να καταστεί η διαδικασία ανάκρισης πιο αποτελεσματική και να διασφαλιστεί ότι η διαδικασία δεν καταχράται με άσκοπες αιτήσεις έκδοσης. Όταν η ανάκριση μπορεί να διεξαχθεί επαρκώς στο κράτος μέλος εκτέλεσης, τότε τα δικαιώματα των υπόπτων προστατεύονται καλύτερα. Μια ανάκριση με βιντεοκάμερα θα δείξει αν ο ύποπτος είναι πρόθυμος να δώσει πληροφορίες ή αν η κατάθεσή του είναι αναξιόπιστη. Μόλις αξιολογηθεί η μαρτυρία του, τότε μπορεί να ληφθεί τεκμηριωμένη απόφαση στο κράτος μέλος έκδοσης εάν θέλει να προχωρήσει στην έκδοση του ΕΕΣ. Εάν μετά την ανάκριση προκύψουν εύλογες υποψίες και το κράτος μέλος έκδοσης ζητήσει την εκτέλεση του ΕΕΣ, τότε το κράτος μέλος εκτέλεσης θα το εκτελέσει. Δεν έχω γνώση του τι συνέβη στην πανδημία στο πλαίσιο της διαδικασίας έκδοσης ΕΕΣ. Στο γραφείο μου αξιοποιήσαμε την ευκαιρία να διεξάγουμε εικονικές δίκες στα πλαίσια της κατάρτισης, για να βελτιώσουμε τις δεξιότητες των δικηγόρων μας. Με την ψηφιοποίηση μπορείς να κάνεις πολλά από απόσταση.

Another lawyer was also positive about using digital means:

“I think digitalisation would play an enormous role and would make the procedure faster and more efficient. It could also lead to fewer EAW issued and I think digitalisation should become compulsory. The non-videtaping of interrogations leads to fundamental rights concerns, and I consider it unacceptable. Police officers are deemed by the court as experts even if many of them have never undergone any training to acquire expertise. If there is a digital record, then it will be possible to show the court how police officers handle the investigation. Digitalisation would also help in the creation of a useful database of documents to be retrieved when needed. I don’t see any dangers in digitalisation, except perhaps the fact that it may lead to less diligent procedures and mere ticking of boxes. Our office was fully digitalised even before the Coronavirus pandemic. The judicial procedure could also be digitalised and trials should be able to be conducted long distance via teleconferencing, without the requested person being present.” Cyprus, lawyer

Νομίζω ότι η ψηφιοποίηση θα παίξει τεράστιο ρόλο και θα καταστήσει τη διαδικασία ταχύτερη και αποτελεσματικότερη. Θα μπορούσε επίσης να οδηγήσει στην έκδοση λιγότερων ΕΕΣ και πιστεύω ότι η ψηφιοποίηση θα πρέπει να καταστεί υποχρεωτική. Η μη βιντεοσκόπηση των ανακρίσεων εισάγει το ενδεχόμενο για παραβιάσεις θεμελιωδών δικαιωμάτων και το θεωρώ απαράδεκτο. Οι

αστυνομικοί θεωρούνται από το δικαστήριο ως εμπειρογνώμονες, ακόμη και αν πολλοί από αυτούς δεν έχουν ποτέ υποβληθεί σε καμία εκπαίδευση για την απόκτηση εμπειρογνομosύνης. Εάν υπάρχει ψηφιακή καταγραφή, τότε θα είναι δυνατόν να δείξουν στο δικαστήριο πώς οι αστυνομικοί διαχειρίζονται την ανάκριση. Η ψηφιοποίηση θα βοηθήσει επίσης στη δημιουργία μιας χρήσιμης βάσης δεδομένων με έγγραφα που θα μπορούν να ανακτηθούν όταν χρειαστεί. Δεν βλέπω κινδύνους με την ψηφιοποίηση, εκτός ίσως από το γεγονός ότι μπορεί να οδηγήσει σε λιγότερο επιμελείς διαδικασίες και σε απλή συμπλήρωση κουτιών. Το γραφείο μας ήταν πλήρως ψηφιοποιημένο ακόμη και πριν από την πανδημία του κορονοϊού. Η δικαστική διαδικασία θα μπορούσε επίσης να ψηφιοποιηθεί και οι δίκες θα πρέπει να μπορούν να διεξάγονται εξ αποστάσεως μέσω τηλεδιάσκεψης, χωρίς να είναι παρών ο εκζητούμενος.

The third lawyer disagreed:

“I don’t know to what extent digitalisation would help in the live hearing process, as I think physical presence is necessary in order to adequately evaluate reactions. But the digitalisation of the process before the hearing would indeed be useful. If the procedure is standardised in a digital process, there is a risk that the protection of rights will become superficial and ineffective. Yes, I believe that digitalisation could lead to fewer EAWs being issued. We were not greatly affected by the pandemic, we generally do not use digital tools. By their very nature, the EAWs must be tried with physical presence within a short period of time.” Cyprus, lawyer

Δεν ξέρω σε ποιο βαθμό η ψηφιοποίηση θα βοηθούσε στη διαδικασία της ζωντανής ακρόασης, καθώς θεωρώ ότι η φυσική παρουσία είναι απαραίτητη για την επαρκή αξιολόγηση των αντιδράσεων. Όμως η ψηφιοποίηση της διαδικασίας πριν από την ακρόαση θα ήταν πράγματι χρήσιμη. Εάν η διαδικασία τυποποιηθεί σε μια ψηφιακή διαδικασία, υπάρχει ο κίνδυνος η προστασία των δικαιωμάτων να γίνει επιφανειακή και αναποτελεσματική. Ναι, πιστεύω ότι η ψηφιοποίηση θα μπορούσε να οδηγήσει στην έκδοση λιγότερων ΕΕΣ. Δεν επηρεαστήκαμε σε μεγάλο βαθμό από την πανδημία, γενικά δεν χρησιμοποιούμε ψηφιακά εργαλεία. Από τη φύση τους, τα ΕΕΣ πρέπει να δικάζονται με φυσική παρουσία μέσα σε σύντομο χρονικό διάστημα.

Prosecutors were also divided in their views about digitalising the process. One prosecutor did not see any problems in utilising digitalisation because they viewed the EAW procedure as purely procedural.

“Digitalisation would indeed be highly desirable; it would help a lot if technology was used more, as the execution of an EAW is clearly a judicial procedure which could even be conducted without a prosecutor. There may be risks, as the procedure becomes impersonal for the requested person, e.g. when there are issues of health at stake, the treatment is different when you see a person in your screen rather than when you see them in person, as their behaviour can give the court a better perspective of their personal situation. Requested persons can also be examined through judicial assistance though, in other words the issuing State can ask us to examine a suspect and this happens regularly. This was the case of the person requested by Germany which I mentioned above. Even though he

claimed he wanted to be tried in Cyprus, when we tried to examine him, he claimed his right to remain silent, which I thought was odd. In the absence of a complainant against him in Cyprus and of any testimony from his part, how could he claim that he wanted to be tried in Cyprus? On what basis would he be tried? Why should we decide to try him in Cyprus when he refused to give evidence?" Cyprus, prosecutor

Η ψηφιοποίηση θα ήταν όντως εξαιρετικά επιθυμητή- θα βοηθούσε πολύ αν η τεχνολογία χρησιμοποιούνταν περισσότερο, καθώς η εκτέλεση ΕΕΣ είναι σαφώς μια δικαστική διαδικασία που θα μπορούσε να διεξαχθεί ακόμη και χωρίς εισαγγελία. Μπορεί να υπάρχουν κίνδυνοι, καθώς η διαδικασία γίνεται απρόσωπη για τον εκζητούμενο, π.χ. όταν διακυβεύονται θέματα υγείας, η αντιμετώπιση είναι διαφορετική όταν βλέπεις ένα άτομο στην οθόνη σου παρά όταν το βλέπεις αυτοπροσώπως, καθώς η συμπεριφορά του μπορεί να δώσει στο δικαστήριο καλύτερη εικόνα της προσωπικής του κατάστασης. Ωστόσο, τα εκζητούμενα πρόσωπα μπορούν επίσης να εξεταστούν μέσω δικαστικής συνδρομής, με άλλα λόγια το κράτος έκδοσης μπορεί να μας ζητήσει να εξετάσουμε έναν ύποπτο και αυτό συμβαίνει τακτικά. Αυτή ήταν η περίπτωση του ατόμου που ζητήθηκε από τη Γερμανία, την οποία ανέφερα παραπάνω. Παρόλο που ισχυριζόταν ότι ήθελε να δικαστεί στην Κύπρο, όταν προσπαθήσαμε να τον εξετάσουμε επικαλέστηκε το δικαίωμά του στη σιωπή, που μου φάνηκε περίεργο. Ελλείψει παραποιομένου στην Κύπρο και χωρίς οποιαδήποτε μαρτυρία εκ μέρους του, πώς μπορούσε να ισχυριστεί ότι ήθελε να δικαστεί στην Κύπρο; Σε ποια βάση θα μπορούσε να δικαστεί; Γιατί θα έπρεπε να αποφασίσουμε να τον δικάσουμε στην Κύπρο όταν αρνήθηκε να δώσει μαρτυρία;

The digitalisation used during the pandemic did not concern criminal proceedings or EAW, it was only used in the context of administrative law. For criminal cases, we appeared in court at the risk of our health, in order to avoid unnecessarily long detention of persons awaiting trial. We certainly had fewer EAW requests during the pandemic." Cyprus, prosecutor

Η ψηφιοποίηση που χρησιμοποιήθηκε κατά τη διάρκεια της πανδημίας δεν αφορούσε την ποινική διαδικασία ή το ΕΕΣ, χρησιμοποιήθηκε μόνο στο πλαίσιο του διοικητικού δικαίου. Για τις ποινικές υποθέσεις, εμφανιζόμασταν στο δικαστήριο με κίνδυνο της υγείας μας, προκειμένου να αποφύγουμε την αχρείαστη κράτηση προσώπων που ανέμεναν τη δίκη. Σίγουρα είχαμε λιγότερες αιτήσεις για ΕΕΣ κατά τη διάρκεια της πανδημίας

Another prosecutor noted that digital technology could be used to collect testimonies from abroad but not to examine the suspects themselves, as they did not see the questioning of suspects as part of EAW procedure:

"Digitalisation would be very useful, it would help to speed up the process, facilitate the giving of testimony from witnesses abroad through teleconferencing and the entire process would be easier. I can't think of any risks. The only concern I can think of is the right to a lawyer in the issuing State because it helps arrested persons to have personal contact with a lawyer to avoid misunderstandings. I don't think that digitalisation would help in questioning the defendants remotely, this is not the reason why the EAW is requested; the EAW is merely a procedural tool and not

part of the examination of the merits of a case. EAWs are issued either to serve a sentence or prosecute a person, so examining the suspect at this station is not one of the aims of the EAW. The use of digital tools did not change during the pandemic.” Cyprus, prosecutor

Η ψηφιοποίηση θα ήταν πολύ χρήσιμη, θα βοηθούσε στην επιτάχυνση της διαδικασίας, θα διευκόλυνε την κατάθεση μαρτύρων στο εξωτερικό μέσω τηλεδιάσκεψης και η όλη διαδικασία θα ήταν ευκολότερη. Δεν μπορώ να σκεφτώ κανέναν κίνδυνο. Ο μόνος προβληματισμός που μπορώ να σκεφτώ είναι το δικαίωμα σε δικηγόρο στο κράτος έκδοσης, διότι βοηθά τους συλληφθέντες να έχουν προσωπική επαφή με δικηγόρο για την αποφυγή παρεξηγήσεων. Δεν νομίζω ότι η ψηφιοποίηση θα βοηθούσε στην εξ αποστάσεως ανάκριση των κατηγορουμένων, δεν είναι αυτός ο λόγος για τον οποίο ζητείται το ΕΕΣ- το ΕΕΣ είναι απλώς ένα διαδικαστικό εργαλείο και όχι μέρος της εξέτασης της ουσίας μιας υπόθεσης. Το ΕΕΣ εκδίδεται είτε για την έκτιση ποινής είτε για τη δίωξη ενός προσώπου, οπότε η εξέταση του υπόπτου σε αυτό το σταθμό δεν αποτελεί έναν από τους στόχους του ΕΕΣ. Η χρήση των ψηφιακών εργαλείων δεν άλλαξε κατά τη διάρκεια της πανδημίας

Yet another prosecutor agreed that examining the suspect is not part of the EAW process and noted that digitalisation is neither necessary nor legally possible, except for the internet search to enable requested persons to identify a lawyer to represent them:

“I don’t think that digital tools are provided to requested persons. We do not use digital tools in court, I don’t know about what happens inside police stations. The pandemic measures did not affect criminal justice...I believe that the rights of requested persons are better safeguarded if they appear in Court in person, where the interpreter is there in person. Access to the internet to identify and contact a lawyer of their choice would of course serve the interests of justice. EAWs are issued in two cases: in order to prosecute or to serve a sentence. A person cannot be surrendered in the issuing Member State in order to be interrogated. No EAW can be issued or executed for the purpose of interrogating a suspect; only for prosecuting the persons or in order for the persons to serve a sentence already passed on them by the court. So, we will execute the warrant only if the prosecution is certain; if we think that they authorities in the issuing State are not sure about prosecuting the person, and the issuing State merely wants to interrogate him and then decide whether or not to prosecute him, we will not execute the warrant.

We did not digitalise the EAW process. Our legal system is countervailing; in other legal systems the court has more powers, they can contact the issuing Member State and do several things which our court is not permitted to do. In the countries with the continental legal system, digitalisation is easier because it can be done by the judge without consulting anybody. In Cyprus the court hears and decides and both sides must be represented before the court, which renders the digitalisation process more difficult.” Cyprus, prosecutor

Δεν νομίζω ότι τα ψηφιακά εργαλεία να παρέχονται στα εκζητούμενα άτομα. Δεν χρησιμοποιούμε ψηφιακά εργαλεία στα δικαστήρια, δεν ξέρω τι συμβαίνει μέσα στα αστυνομικά τμήματα. Τα πανδημικά μέτρα δεν επηρέασαν την ποινική

δικαιοσύνη... Πιστεύω ότι τα δικαιώματα των εκζητούμενων διασφαλίζονται καλύτερα αν εμφανίζονται αυτοπροσώπως στο Δικαστήριο, όπου ο διερμηνέας είναι εκεί αυτοπροσώπως. Η πρόσβαση στο διαδίκτυο για τον εντοπισμό και την επικοινωνία με δικηγόρο της επιλογής τους θα εξυπηρετούσε φυσικά τα συμφέροντα της δικαιοσύνης. Τα ΕΕΣ εκδίδονται σε δύο περιπτώσεις: για την άσκηση ποινικής δίωξης ή για την έκτιση ποινής. Κανένα πρόσωπο δεν μπορεί να εκδοθεί στο κράτος μέλος έκδοσης προκειμένου να ανακριθεί. Κανένα ΕΕΣ δεν μπορεί να εκδοθεί ή να εκτελεστεί με σκοπό την ανάκριση ενός υπόπτου- μόνο για τη δίωξη των προσώπων ή για την έκτιση ποινής που έχει ήδη επιβληθεί σε αυτά από το δικαστήριο. Επομένως, θα εκτελέσουμε το ένταλμα μόνο εάν η δίωξη είναι βέβαιη- εάν πιστεύουμε ότι οι αρχές του κράτους έκδοσης δεν είναι σίγουρες για τη δίωξη του προσώπου και το κράτος έκδοσης θέλει απλώς να το ανακρίνει και στη συνέχεια να αποφασίσει εάν θα του ασκήσει δίωξη ή όχι, δεν θα εκτελέσουμε το ένταλμα.

Δεν ψηφιοποιήσαμε τη διαδικασία έκδοσης ΕΕΣ. Το νομικό μας σύστημα είναι αντισταθμιστικό- σε άλλα νομικά συστήματα το δικαστήριο έχει περισσότερες εξουσίες, μπορεί να επικοινωνήσει με το κράτος μέλος έκδοσης και να κάνει διάφορα πράγματα που το δικό μας δικαστήριο δεν επιτρέπεται να κάνει. Στις χώρες με το ηπειρωτικό νομικό σύστημα, η ψηφιοποίηση είναι ευκολότερη επειδή μπορεί να γίνει από τον δικαστή χωρίς να διαβουλευτεί κανέναν. Στην Κύπρο το Δικαστήριο ακούει και αποφασίζει και οι δύο πλευρές πρέπει να εκπροσωπούνται ενώπιον του δικαστηρίου, γεγονός που καθιστά τη διαδικασία ψηφιοποίησης πιο δύσκολη.

Table 13: Use of digital tools, interview findings

Interviewees per Country	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing – executing)	Facilitating access to a lawyer in the issuing Member State (when an executing State)	Facilitating access to a lawyer in the executing Member State (when an issuing State)
LAWYER 1	NO	NO	NO	YES	No	NO	NO
LAWYER 3	NO	NO	NO	YES	No	No	
LAWYER 3	NO	NO	NO	YES	No	No	
PROSECUTOR 1	NO	NO	NO	YES	No	NO	NO
PROSECUTOR 2	NO	NO	NO	YES	No	No	No
PROSECUTOR 3	NO	NO	NO	YES	No	No	No

TOTAL	0/6	0/6	0/0	6/6	0/6	0/6	0/6
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Discussion of findings

Cyprus has transposed the provisions pertaining the rights of requested persons as provided by the Council Framework Decision [2002/584/JHA](#) and the Right to information Directive ([Directive 2012/13/EU](#)). The desk study which the relevant Cypriot case law was complemented with the fieldwork which shed light on the enforcement in practice of the fundamental rights in EAW proceedings. The report has illustrated legal gaps and shortcomings in the interpretation and implementation of these rights.

The prosecutors and lawyers agreed that the scope for judicially challenging the issuing and executing of an EAW in Cyprus is extremely narrow. Cypriot courts construe the requested person's procedural rights as a formality. Prosecutors and lawyers disagree however whether Cypriot courts correctly construct EU law on EAWs.

The prosecutors interviewed were of the view that in Cyprus fundamental rights are complied with and the procedural rights are correctly adhered to. The prosecutors however had no knowledge or regard of the relevant EU case law, where the CJEU ruled on several EAW cases.

The lawyers interviewed suggested that there are fundamental rights concerns in the treatment of requested persons in EAW proceedings. Despite the transposition of the Directives, lawyers located gaps and shortcomings important aspects related to the meaning of these rights, the implementation and the substance of these rights were not properly observed.

- Right to information

It is questionable whether the lengthy document which sets out the rights of arrested persons in a legalistic language, usually handed to persons upon arrest without any oral explanation, complies with the requirement to inform arrested persons of their rights. The duty to provide information of rights relies to a large extent on police officers who are not trained on the specificities of the EAW. This gap essentially shifts the duty of information on to the lawyers, which begs the question if a lawyer is indeed present from the beginning of the process and at all its stages and whether the lawyer is indeed trained on the EAW process. The provision of interpretation at the stage where information about rights is communicated also emerged as an issue of concern; although the Letter of Rights is available in several languages, the choice of language often rests with a police officer who may not always select the language most adequately understood by the arrested person. There is little evidence to support the claim made by some prosecutors that an interpreter is always present when the police explains suspects their rights; and no state interpretation is provided to facilitate the communication between the arrested persons and their lawyers, although lawyers in practice play an important role in providing requested persons with information about their rights, supplementing the gaps in the provision of information by the police.

In terms of the practice of the right to information the interviewed prosecutors disagreed with the lawyers about what takes place in the police station. This may be explained by several factors:

- Neither lawyers or prosecutors are present upon arrest or during the first contact between requested persons and the police. The lawyers however receive information from the perspective of their clients at some point in time.

- Different police officers and police stations may follow different practices; the police practice may also differ depending on who the requested person is.
- The police merely hand a document of rights information to requested persons, without ensuring that the person understands it.
- Police officers are not trained or are not necessarily trained on EAWs and are not necessarily in a position to explain rights and features which are unique to the EAW such as the dual representation and the specialty rule.
 - Right to interpretation and translation

Interpretation

Prosecutors and lawyers agreed that interpretation must be provided in EAW proceedings and that this right should cover the entire scope of the EAW proceedings, from the police station right through the communication with lawyers as well the court proceedings. However, they disagreed over the accessibility of interpretation anywhere outside the courtroom.

Interpretation and the choice of language in which interpretation is to be offered is likely to be an issue of concern in police stations where, according to the prosecutors interviewed, the arresting police officer explains to arrested persons what their rights are orally. The lawyers disputed that any oral information is offered by the police, however in the event that such oral communication does take place, it is unlikely that this is interpreted in the arrested person's mother tongue. The method used in order to detect the arrested persons' mother tongue is also unclear.

Communication between arrested persons and their lawyers is not covered by state interpretation and relies on the financial ability of the requested person to pay for the interpretation services. Not all interviewees were aware that the state does not provide free interpretation to facilitate the communication between requested persons and their lawyers. Detecting the language understood by the requested persons is hampered by a number of factors: the state of shock which a requested person may experience following the arrest; the complexity of legal terminology; and assumptions permeating the decision on the choice of language, such as the assumption that all requested persons speak the language of the issuing State unless the opposite is proven, or that spoken English should be sufficient for a person to understand a legal document, or that the requested person's lawyer should translate.

Translation

The documents in the file are not translated in the language of the requested person; and prosecutors were firm that the state has no duty to provide translation of the entire file. The prosecutors interviewed did not regard this as an infringement of the right to translation, because they assumed that requested persons speak either English or the language of the requesting state and the file usually consists of documents in both languages. Although knowledge of these languages by the requested person is a presumption that can be rebutted, given the tight timelines for execution of the EAW set by the court, the question whether the requested person really understands the language of the documents in the file may be overlooked.

Where there are lawyers present, prosecutors seem to presume that the lawyers are responsible for explaining the content of the file to their clients and even for translating the contents of the file to them.

- Right to access to a lawyer

The framework inevitably sets the financially disadvantaged defendants at a double disadvantage: they have to choose a lawyer from a list of names that mean nothing to them; the legal aid lawyers are not necessarily experts in EAWs; and there is no free interpretation outside the courtroom to help them communicate with their lawyers.

The practice of offering a list of telephone numbers of legal aid lawyers is outdated and ineffective. There is no known infrastructure to facilitate the identification of a lawyer in the issuing Member State and no database on legal aid eligibility.

Accessing a lawyer in the executing Member State is not without hurdles, given the gaps in the process of informing requested persons about their rights. This is of fundamental significance in light of the fact that access to a lawyer emerged as a pre-requisite for other rights, including the right to dual representation which was unknown to all prosecutors. Lawyers and prosecutors agreed that in the execution of an EAW in Cyprus no information or other facilitation is offered to requested persons to appoint a lawyer in the issuing State. Prosecutors expressed concern as to who pays the cost of legal representation in the issuing State if the right to dual representation was to be implemented.

- Issuing and execution of the EAW

All persons interviewed agreed that Cypriot courts do not examine the conditions of detention in the issuing State if there is a documented risk that the requested person might be detained contrary to the prohibition of inhuman and degrading treatment.⁷⁸ Nor do Cypriot courts verify the conditions in the issuing MS to the rule of law requirements.⁷⁹

Also, prosecutors and lawyers agreed that the right of appeal against the decision to issue an EAW in Cyprus is extremely narrow in scope and unlikely to succeed. Moreover, they agreed that Cypriot Courts are highly unlikely to accept a requested person's claim based on the violation of proportionality.

There is disagreement between the prosecutors and the lawyers interviewed as to whether the courts approach in treating the requested persons' procedural rights in EAW case is legally in line with EU law.

Prosecutors viewed EAW proceedings as a procedure that must be speedy, straightforward and uninterrupted, more or less like a formality. They saw little, if any scope in legal arguments in challenging the issue or execution the EAW, as this is matter pertaining to the content of EAW and not the procedure. The procedure is perceived as matter to be dealt with in another jurisdiction based on "alien law" which is of no concern to Cypriot courts.

One prosecutor entertained the importance of proportionality when it comes to issuing an EAW, suggesting that when Cypriot authorities decide on issuing an EAW proportionality is a concern that is given due regard. However, the same prosecutor saw no role in such a proportionality challenge at an appeal level before a Cypriot court. Legally speaking it is doubtful whether this reading meets the standards required in CJEU case law and guidelines provided by the Commission Notice — Handbook on how to issue and execute a European arrest warrant ([2017/C 335/01](#)) which requires that an EAW should always be proportional to its aim.

Some prosecutors interviewed appeared not to be aware of the conditions for issuing an EAW and the proportionality rule, stating that if there is a proportionality rule in the EAW law, then this will be

⁷⁸ As required by the [Aranyosi judgment](#).

⁷⁹ As required by the case C-354/20 PPU and C 412/20.

complied with. This also suggests that neither prosecutors nor judges undergo training on the provisions of the Framework Decision on the EAW. Nevertheless, prosecutors stressed that the Cypriot authorities are adhering to the provisions of the EAW law and respect the rights of requested persons. In addition, there emerged a high degree of faith in the justice systems of other EU Member States, which were all presumed to respect fundamental rights.

The lawyers interviewed consider that the standard practice of Cypriot courts is to be a “*mere formality*” where they have to “*tick the boxes*”, rather than properly and substantially scrutinise claims as required by EU law. Lawyers and prosecutors interviewed were of the view that Cypriot courts choose formality over substance, executing all EAW for which the elements mentioned in the law are present, without taking into account any issues of proportionality, detention conditions, and convictions in absentia or other situations entailing a risk of violation of the right to a fair trial.

- Lawyers consider that Cypriot authorities, including courts and prosecutors, hold the problematic presumption that all rights are respected across the EU. This severely restricts possibilities for an extensive evaluation of the risks for violation of rights which the requested person may face in the issuing Member State.
- Courts do not question the legality of EAW applications and tend to approve them, unless there are specific and robust reasons for rejecting them, based on CJEU rulings, such as lack of competence of the issuing authority. Infringement of procedural rights is never a reason for rejecting an EAW warrant.
- Whilst personal circumstances and humanitarian issues may be taken into account to facilitate or postpone the execution of the EAW, Cypriot courts do not take such grounds into account to reject the execution of an EAW.
- Prosecutors interviewed did not question detention conditions in the issuing Member State, nor are sub-standard detention conditions deemed to fall within the definition of ‘inhuman treatment’ of the EAW Framework Decision.
- There is limited knowledge about detention conditions in other Member States. The prosecutors and two lawyers interviewed were unaware of the FRA database on detention conditions; one lawyer was aware of the FRA database and had used it.

- The use of digital and technological tools in EAW proceedings

There are no provisions regulating the use of digital tools in the Cypriot legal framework and no relevant guidelines to address fundamental rights concerns arising from the use of such tools. The pandemic facilitated the development of digital tools by law firms, business, and the state. However, there was no change in the EAW proceedings in Cyprus.

Some lawyers and prosecutors consider that the use of digital tools has considerable potential, without identifying or recognising any potential violation of rights emerging from the use of new technologies.

Two prosecutors saw little potential in digitalisation as a measure that may reduce the number of EAWs, because EAWs are seen as falling within the absolute and unfettered discretion of the issuing Member State.

One lawyer identified a risk in extending the use of digitalisation, as a potential for rendering the procedure even more automatic, formalistic and faster, without the necessary checks and balances and due regard to fundamental rights concerns.

CONCLUSION

Despite the legal framework safeguarding procedural rights, there are significant gaps and shortcomings in the interpretation and implementation of these rights.

Legal representation emerged as the main safeguard against a culture prevalent in the national authorities of approaching the EAW as a mere formality to serve the needs of our EU partners. Access to legal aid does not necessarily provide the tools for addressing this situation, partly because the EAW expertise of legal aid lawyers is not guaranteed and partly because even the best EAW lawyers in the country are confronted with a court that is reluctant to examine fundamental rights concerns. This means that legal representation is more crucial before the court hearing rather than at the hearing itself, in order to ensure that the requested persons have the necessary advice to make informed decisions. The gaps identified by this research in communicating to arrested persons the right to legal representation at the pre-trial stage essentially jeopardise access to all procedural rights, given that information about these rights is not consistently communicated by the police in an effective manner. As the pre-court stage is essentially the period of police detention, questions of interpretation to facilitate communication between lawyer and client and access to a lawyer in the Member State assume additional significance. Digitalisation is recognised as a potential for speeding up the process, for enlarging the options of requested persons in appointing lawyers in both executing and issuing States and for gathering evidence; however, the privacy concerns it entails have not entered the picture in order to be addressed.

Below are a number of recommendations in order to address the gaps identified in the study:

- Whilst the right to interpretation is recognised as far as the judicial process is concerned, this is not the case with the pre-trial stage which largely takes place inside the police station. The right of requested persons to interpretation for all communications outside the courtroom must be clearly defined, to include communications both the police officers and their lawyers. The right to translation needs to be further specified in order to explicitly cover translation of EAW documents in a language that the requested persons have explicitly stated that they understand.
- Police officers, prosecutors, lawyers, and judges could benefit from obligatory training on EAWs and CJEU jurisprudence on the EAW Framework Decisions, including dual representation, the specialty rule, the proportionality principle and interpretations of the reasons mentioned in the Framework Decision for non-execution of EAWs.
- The authorities could develop and constantly upgrade a database with information on detention conditions and other fundamental rights issues in all EU countries conditions, including relevant CJEU, ECtHR and national case law, to assist Cypriot courts in evaluating the situation in the issuing State and making an informed decision about the extradition.
- The right to access a lawyer must be further defined and clarified to include:
 - o Facilitation to allow requested persons to appoint a lawyer in the issuing State;
 - o Facilitation including internet access to identify suitable lawyers in both the issuing and the executing State;
 - o Extension of legal aid to cover the fees of specialist lawyers in the field in both the issuing and the executing State.
- Guidelines should be issued to address privacy and data protection concerns in the use of digital tools.