

Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings – safeguards for requested
persons

Croatia,

2022

Contractors:

Human Rights House Zagreb, Centre for Peace Studies

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EXECUTIVE SUMMARY

Right to information

Findings demonstrate that the right to information is implemented in practice as all interviewed persons have agreed that the persons arrested on EAW in Croatia are informed about their rights upon arrest and afterwards again by the state attorneys. The requested persons are informed about the content of the EAW issued against them and about the procedural rights they have during the EAW proceeding. However, findings also revealed some differences in practices, as some practitioners stated that the information on EAW is given only orally and in writing upon request, while other practitioners state that this information is always provided both orally and in writing, as it is part of the Letter of Rights.

Right to interpretation and translation

Findings demonstrate that the rights to the interpretation and translation are being respected in regard to it being available and accessible to the requested person throughout the proceedings.

However, several defence lawyers have stressed obstacles in accessing this right outside the court's proceedings. In that regard, several lawyers shared that during the acts of the police and in regard to interpretation of the consultation with the lawyer there are no official interpreters available, which is why sometimes the communication is being translated by native speakers who are not authorised to translate. This creates difficulties and practice and affects the quality of interpretation. Despite the legal requirement that certain documents require a written translation, differences in the responses of practitioners point out differences in practice. The practices vary, but many interviewed practitioners stated that usually these documents are being translated orally instead in writing.

Right to access to a lawyer

Findings demonstrate that the right to a lawyer in Croatia as the executing country is respected, where the person is provided with relevant information, the ex-officio defence lawyer who is present throughout the procedure from the very beginning. In practice, the appointment of such lawyer differs, and the findings indicate that the persons are rarely able to choose the lawyer from the list of EAW defence lawyers on their own, and usually do not have access to phone or internet to research or contact these lawyers upon arrest. Different practices were noticed through the research findings, where different authorities appoint and contact the ex officio defence lawyer: the police, the prosecutor's office or the court. However, the findings indicate that the person is free to choose another lawyer from the list of ex-officio lawyers in EAW proceedings later in the procedure. In regard to the right to a dual representation, the findings show the lack of knowledge and experience among the practitioners in Croatia.

Issuing and execution of the EAW – factors considered

Findings demonstrate that issuing and executing the EAW is a well-established practice that is conducted when legal conditions are met under the provisions of the Law on the Judicial

Cooperation in Criminal Matters with the Member States of the European Union. The EAW could be issued for two purposes, criminal prosecution or execution of a custodial sentence or detention order. When it comes to assessing strict legal preconditions for issuing and executing EAW all the interviewees are of the opinion that those proceedings are conducted according to the law. However, when it comes to assessing the proportionality, detention conditions and rights to a fair trial in EAW proceedings, including other factors are not given much importance and assessment. The main argument in answers from the two judges, two prosecutors and one lawyer is that mutual trust between the EU Member States as the fundamental principle must be respected.

INTRODUCTION

The fieldwork included conducting the total number of nine interviews, out of which four were conducted with the defence lawyers, and five with judges and prosecutors. In the process interviewers have interviewed three defence lawyers from Zagreb and one from Rijeka , and out of the second group, interviews were held with three prosecutors (one from Varaždin and two from Zagreb) and two judges (one from Varaždin - local level and one from Zagreb, national level).

All of the conducted interviews were held face-to-face, due to removal of restrictions caused by the Covid-19 pandemic in Croatia.

- **PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS**

At the preparation stage of the fieldwork, the contractors have chosen the two interviewers. They were chosen based on the relevant expertise and legal knowledge they hold, as well as proven experience in carrying out social qualitative research projects and publicising findings. They as well participated in several FRA research projects, which was a relevant previous experience. The interviewers were afterwards trained in using methodology provided for this particular fieldwork. Besides the methodology, the interviewers were informed on data protection policy and forms needed to protect data of the interviewers. Finally, the interviewers participated in the induction meeting with FRA where they gathered more insight and information on the whole process.

- **SAMPLE AND DESCRIPTION OF FIELDWORK**

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 5, completed: 5

Table 1: Sample professionals

Code	Group	Expertise in European Arrest Warrant proceedings	Gender
1	Defence lawyer	Attorney in Rijeka - on the list of lawyers from Croatian Bar Association providing legal assistance in the EAW proceedings,	M

2	Defence lawyer	Attorney in Zagreb - on the list of lawyers from Croatian Bar Association providing legal assistance in the EAW proceedings	M
3	Defence lawyer	Attorney in Zagreb - on the list of lawyers from Croatian Bar Association providing legal assistance in the EAW proceedings	M
4	Defence lawyer	Attorney in Zagreb - on the list of lawyers from Croatian Bar Association providing legal assistance in the EAW proceedings	M

5	Prosecutor/Judge	Municipal State Attorney in Varaždin	M
6	Prosecutor/Judge	County Court Judge in Varaždin	M
7	Prosecutor/Judge	High Criminal Court Judge	M
8	Prosecutor/Judge	Municipal State Attorney in Zagreb	F
9	Prosecutor/Judge	Deputy County State Attorney in Zagreb referred to the State Attorney's Office of the Republic of Croatia	F

The interviews were conducted in a generally comfortable and relaxed atmosphere. The interviewers feel that there was a high level of trust and openness from the interviewees and that they had no troubles discussing the topics of the research. The lengths of the interviews were different, and mostly depended on the personality of the interviewee. In that sense, three interviewees from the group of judges and prosecutors tended to discuss the issues more broadly, while others, especially two lawyers, were very concise in their answers. The average length was 53 minutes.

- **DATA ANALYSIS**

To get an overall insight into current policy context and legal provisions in Croatia concerning procedural rights requested persons in the EAW proceedings, including to present the perspective of professionals, particularly judges, prosecutors and lawyers on their experiences dealing with EAW proceedings, a research was conducted in three phases. The first phase of the research covered a desk research of legal and policy overview of the EAW proceedings in Croatia. The second phase of the research involved small-scale social fieldwork research consisting of semi-structured interviews with judicial authorities and defence lawyers engaged in issuing and executing EAW. The third phase involved delivering a final country report summarising the desk research's results and the interview findings.

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

This report is based on a research carried out by the Human Rights House Zagreb and Centre for Peace Studies for the **EU Agency for Fundamental Rights (FRA)** titled 'Procedural Safeguards in European Arrest Warrant proceedings'. This report seeks to present the perspective of professionals, particularly judges, prosecutors and lawyers on their experiences dealing with European Arrest Warrant proceedings in Croatia and additionally, find out how judicial authorities ensure the protection of procedural rights of requested persons. The ultimate goal of the project is to provide evidence-based advice to the European Council and to the European Commission on practical aspects of procedural rights in European arrest warrant proceedings as referred to in the legal framework on procedural rights. The project included an analysis of the legal framework and empirical research. The fieldwork included conducting the total number of nine interviews, out of which four were conducted with the defence lawyers, and five with judges and prosecutors. All of the conducted interviews were held face-to-face, due to removal of restrictions caused by the Covid-19 pandemic in Croatia. This Report consists of four main topics, right to information, right to interpretation and translation, right to a lawyer and about issuing and executing of the EAW.

RESEARCH FINDINGS

1. RIGHT TO INFORMATION

a. Legal overview

According to article 24 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union,¹ immediately after the arrest of a requested person, the police shall provide the arrested person with the Letter of Rights in accordance with the provisions of domestic criminal procedural law. The State Attorney shall inform the requested person about the content and grounds for issuing an EAW, the possibility of consenting to surrender to the issuing State and the possibility of waiving the application of the specialty principle and the consequences of a waiver. The State Attorney will question the requested person about personal circumstances, citizenship and relations with the issuing State, and whether and for what reasons they oppose surrender.

The Letter of Rights enlists the following rights:²

- the right to a defence counsel of their choice or a defence counsel appointed by the court;
- the right to request the appointment of a defence counsel even when the defence is not obligatory;
- the right of the defence counsel to be present at the interrogation of the requested person and the right to communicate freely, undisturbed and confidentially with the defence of their choice;
- the right to appoint defence counsel in the issuing State;
- the right to request in the issuing State a defence counsel to be appointed at the expense of the state when the EAW is issued for the purpose of prosecution;
- the right to interpretation and translation;
- the right to remain silent,
- the right to inspect the case file before questioning before the State Attorney;
- the right to emergency medical care;
- the right to inform about the deprivation of liberty of the person appointed by the requested person or the Embassy.

According to the applicable provisions, immediately after the arrest of a requested person, the police shall provide the arrested person with the Letter of Rights in accordance with the

¹ Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

² Article 24 para 3 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

provisions of domestic criminal procedural law.³ In accordance with domestic criminal procedural law i.e. Criminal Procedure Act⁴ (hereinafter: CPA), every time when the law enforcement or judicial authority ex officio conducts legal action it must check whether the suspect or accused person has received the Letter of Rights, which according to the law should always be given in writing. As the Letter of Rights should always be given in writing, this would mean that the translation of it should, in principle, be given in writing as well. If the Letter of Rights has not been served, the surrender proceedings will be stopped and the Letter of Rights will be ordered to be delivered and only after that, the criminal procedure will be continued.⁵ While executing an EAW in Croatia and during the interrogation of the requested person before the State Attorney, the requested person must be instructed before the interrogation about their rights.⁶ The State Attorney shall inform the requested person about the content and grounds for issuing an EAW, the possibility of consenting to surrender to the issuing State and the possibility of waiving the application of the specialty principle and the consequences of a waiver.⁷ The same provisions are applicable when an investigating judge is deciding on pre-trial detention of the requested person. Before starting the hearing, the investigation judge needs to check whether the person has been informed of their rights. If the requested person has not been informed of these rights, the judge will call the State Attorney to do so.⁸ When deciding on the surrender of a requested person, at the beginning of the hearing the preceding judge will check whether the requested person has received and understood the Letter of Rights and if not, the judge will order the State Attorney to hand over the Letter of Rights.⁹

There are no explicit provisions of legal remedies in case the requested person is not provided with information about the EAW and about their rights during the proceedings. However, according to the applicable provision, the requested person, the defence counsel and the

³ Article 24 para 1 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union (*Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije*), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force on 19 December 2020.

⁴ Criminal Procedure Act (*Zakon o kaznenom postupku*), OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19.

⁵ Article 239 para 3 of the Criminal Procedure Act (*Zakon o kaznenom postupku*), OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19.

⁶ Article 24 para 3 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union (*Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije*), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁷ Article 24 para 4 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union (*Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije*), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁸ Article 24a para 3 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union (*Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije*), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁹ Article 24b para 4 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union (*Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije*), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

State Attorney have the right to file an appeal against the decision on approving or rejecting the surrender of the requested person within three days. In the appeal requested person can challenge the decision stating that their defence rights have been violated. This will be additionally confirmed during interviews.

b. Right to information in practice

The findings show that persons arrested upon EAW are generally informed about their rights immediately upon arrest, in accordance with the law. They are at later stages informed again on their rights, as this is one of the strict procedural preconditions for legality of the procedure. The findings show that in general persons are aware of the contents of the EAW and their rights, while there are some challenges in their understanding of the 'speciality rule'. However, the authorities seem to be aware of that fact and make sure they explain this to the arrested person in a manner understandable to them. The interviewed judge of the second instance court has confirmed that they "do not remember a single case where, in an appeal procedure led by the Supreme Court, one of the parties would point out that they were not aware of some of their rights."¹⁰

- Provision of information (when, how by whom)

From the conducted interviews it can be concluded that generally requested persons are informed about their rights, according to the law. This is done in several stages of the procedure, first one being immediately, upon arrest. Police are informing requested persons orally as well as by handing them a written Letter of Rights.

One of the interviewed lawyers has illustrated how the requested person is informed in several stages:

"Requested persons were informed in part by the police upon the arrest, and in the other part by the County State's Attorney's Office during the instruction on rights, and ultimately by me as a defence lawyer." Lawyer, Croatia

In Croatian: "Informirala ih je jednim dijelom policija pri uhićenju, a u drugom dijelu županijsko državno odvjetništvo prilikom davanja pouke o pravima i u konačnici ja kao branitelj"

The requested persons seem to be generally effectively informed about their rights, since the interviewed Supreme Court judge has stated that they are not aware of any appeal that would bring forward that there was any lack of information regarding the rights of requested persons. The interviewed lawyers as well did not mention appeals on these basis, from their experiences.

¹⁰ In Croatian: "Ne sjećam se kroz moj dosadašnji rad niti jednog slučaja da bi u žalbi o kojoj je odlučivao Vrhovni sud neka od stranaka istakla problem da nije upoznata s nekim od svojih prava."

- Information about rights

All interviewed professionals from all groups stated that the requested persons are in practice informed about their rights according to law, when arrested upon the EAW. Namely, interviewees from the group of prosecutors and judges, and two out of four interviewed lawyers mentioned different rights, among which: right to a lawyer right that the lawyer is present during the questioning the freedom to unhampered and confidential communication with their lawyer, the right to a lawyer in the issuing state, right to translation and interpretation, right to remain silent right to access the file , right to be questioned and to state everything that they deem important, right to emergency medical aid, and the right that of their deprivation of liberty the person they name is informed (or consular body), right to consular assistance and to contact the consulate or embassy, content of the EAW, possibility to consent, possibility to waive the speciality rule . The police officers have a duty to inform the persons of their rights and to hand out a written Letter of Rights, which is translated to a language understandable to the requested person. One interviewed prosecutor further explained the specificities in rights of the requested person in the surrender proceedings as opposed to the rights in the criminal procedures:

“The person is fully informed of all his/her rights since the relevant documentation comes with the Letter of Rights. During the arrest, the police inform them about the rights. Regarding the state attorney's office, the instruction on rights is different, the content is different from the usual instruction on rights in regular criminal proceedings. The detainee is informed about the rights specified in the Law on Judicial Cooperation (Art.24), on the right proscribed under domestic procedural law to which he/she is entitled and what is specifically determined in relation to the requested persons for the execution of the EAW, that is, the right to an interpreter, to a lawyer in another country in case of extradition for the purpose of conducting criminal proceedings. Basically, about all the rights under Article 24 specified in the Law on Judicial Cooperation.” Prosecutor, Croatia

In Croatian: “Osoba je obavještena u potpunosti o svim svojim pravima obzirom da uz dokumentaciju dolazi i pouka o pravima koju policija uručuje traženoj osobi prilikom uhićenja i u njoj stoji sve na što je upozorena. Što se tiče državno odvjetničkog dijela drugačija je pouka o pravima, sadržajno je drugačija od uobičajenih pouka o pravima u redovnim kaznenim postupcima. Uhićenik se informira o pravima koju su navedene u Zakonu o pravosudnoj suradnji (članak 24), o pravima prema domaćem postupovnom pravu, na što ima pravo pa tako i što je specifično određeno u odnosu na tražene osobe za izvršenje EUNa, a to je pravo na tumača, na odvjetnika u drugoj državi ako se radi o izručenju radi vođenja kaznenog postupka. Sve što je navedeno Čl. 24 se navodi u pouci o pravima.”

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

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judge 1	Judge 2	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES	X	X	X	X	X	X	X	X	X	9
In writing	-	-	-	-	-	-	-	-	-	0
Orally	-	-	-	-	-	-	-	-	-	0
In writing and orally	X	X	X	X	X	-*	X	X	-*	7
NO	-	-	-	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	-	0

* The point has not been clarified or answered by the interviewee

- Information about the EAW – content and procedure

The research findings show that the requested persons arrested in Croatia are in practice informed about the contents of the EAW against them (with translation if needed) in accordance with the law. The Letter of Rights contains the content and grounds for issuing an EAW, and the police, as well as their defence lawyer, orally instruct them on the grounds for issuing an EAW. Moreover, requested persons are informed of the contents of the EAW against them in several stages: upon the arrest they are informed by the police, prosecutor, later the investigative judge, and finally the president of the council that issues the decision. One of the interviewed prosecutors has noted that the persons are always informed on the contents of EAW, and explained further the role of the state attorney:

“The state attorney's office informs them about what they are charged with, the penalty imposed, legal classification of the offence and about the execution of the prison sentence. They are asked what their relationship is to the issuing country and whether they would evaluate any human rights violations. They are asked if they

consent to surrender and if they consent, they are being explained about the consequences of consenting to surrender. They are informed about the waiver of specialty rules.” (Prosecutor, Croatia)

In Croatian: “To ih obaviještava državni odvjetnik, informira ih se za što se terete, koje je kazneno djelo, o izvršavanju kazne zatvora i to je nekakva uputa. Pita ih se kakav je njihov odnos prema državi izdavanja, da li bi ocijenili možda neke povrede ljudskih prava te ih se pita pristaju li na predaju i ako pristaju, objašavaju im se koje su posljedice i informira ih se o odricanju od pravila specijalnosti”

One of the interviewed judges also explained the importance of information provided to requested persons in several stages:

“Of course, this is one of the conditions for the legality of the procedure. The requested persons must be informed of the content of the entire act on the basis of which they were arrested. They must know clearly whether the arrest is for the purpose of conducting proceedings or executing a sentence. If it is to serve a sentence - which sentence. If it is for the purpose of conducting the procedure - which procedure. Therefore, they have to know all these details.” (Judge, Croatia)

In Croatian: “Naravno, to je jedan od uvjeta za zakonitost postupka. Osobe moraju biti obaviještene o sadržaju cijelog akta na temelju kojih su uhićeni. Oni moraju jasno znati je li uhićenje radi vođenja postupka ili izvršavanja kazne. Ako je radi izvršavanja kazne - koje kazne. Ako je radi vođenja postupka - koji je to postupak. Dakle, oni moraju znati sve te detalje.”)

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

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judge 1	Judge 2	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES	X*	X	X*	X	X	X	X	X	X*	9
In writing	-	-	-	-	-	-	-	-	-	0
Orally	-	-	-	X	X	-	-	X	-	3
In writing and orally	-	X	-	-	-	X	X	-	-	3
NO	-	-	-	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	-	-	-	0

Did not answer	-	-	-	-	-	-	-	-	-	0
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* The interviewee did not specify in which manner are the persons informed of their rights.

● Information on consenting to surrender

The interview findings show that the requested persons are in practice given the relevant information on consenting to surrender and explained on what it entails. This is done by several parties: their lawyer, the prosecutor and the judge. Further on, the interviewed practitioners stated that the requested persons are in detail informed about the consequences of renouncing the ‘speciality rule’, and the interviewed judges stressed this to be one of the key warnings that is necessarily provided to the requested persons.

In particular, one of the interviewed lawyers stated:

“Yes, requested persons are aware in detail of this right and how they may or may not approve any proceedings that may be instituted against them.” Lawyer, Croatia

In Croatian: “Jesu, detaljno su upoznati sa tim pravom i o tome na koji način mogu odobriti ili ne odobriti eventualne postupke koji se protiv njih mogu voditi.”

Another interviewed lawyer also illustrated the manner in which this information is provided, as well as mentioned the issues with adequate translation of the Letter of Rights:

„The requested persons are informed about their rights. First, they are informed about their rights by the police and then again by the state attorney’s. The police is a sort of first instance that informs them of their rights in the procedure and usually the state attorney’s office informs them in more detail about their rights. The requested persons receive the Letter of Rights but it is often in Croatian because the legal deadlines are too short. As a rule, interpreters are used to translate the content from Croatian into the language spoken by the requested person. They are informed of all procedural rights under the law.” Lawyer, Croatia

In Croatian: „Jesu, obaviještene su. Redovno se radi o osobama koje prvo prolaze policijsku obradu, tek nakon toga idu prema državnom odvjetništvu. Policija je nekakva prva instanca koja ih upoznaje sa onim o čemu se radi. Državno odvjetništvo nešto detaljnije. Tražene osobe dobiju pouku o pravima, ali vrlo često bude samo na hrvatskom jer su prekratki zakonski rokovi. Ukoliko je riječ o strancu, ima prevoditelja, pa mu prevoditelj prevodi sa hrvatskog tekst.”

Interestingly, one interviewed lawyer stressed their concern because they see a procedural trick which can be used by the issuing state to bypass the “speciality rule”: “Yes, they are, but

*there exists one trick in the procedural law.*¹¹ The example they provided concerned a situation where there is a suspicion that a requested person has committed several crimes in the issuing country. However, the prosecutors of the issuing country can deliberately choose to start the investigation only regarding one of these crimes and in that regard issue an EAW, while the prosecuting authorities deliberately do not start investigations for other crimes. And then, only after the person arrested upon EAW has renounced the speciality rule and arrived in the country that issued the EAW, the prosecuting bodies can issue a decision on starting investigation for the other crimes. Therefore, the lawyer described this as a very weak rule if the authorities have in their hands legal ways to abuse it.

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

	Law yer 1	Law yer 2	Law yer 3	Law yer 4	Judge 1	Judge 2	Prose cutor 1	Prose cutor 2	Prose cutor 3	Total
YES	X	X	X	X	X	X	X	X	X	9
NO	-	-	-	-	-	-	-	-	-	0
Don't know/ reme mber	-	-	-	-	-	-	-	-	-	0
Did not answe r	-	-	-	-	-	-	-	-	-	0

- Understanding of information

The interviewed professionals generally agree that, from their experience, persons understand the information provided, and many of them highlighted that they (both the prosecutors, judges and lawyers) give special attention to this and make sure that the requested person completely understands the content of their rights. One interviewed judge stressed:

“I will not proceed any further until I am convinced that the parties have indeed understood their rights.” Judge, Croatia

¹¹ In Croatian: “Da, jesu, ali tu postoji jedan procesnopravni trik.”

In Croatian: "Ne idem dalje dok se ne uvjerim da su stranke doista na pravilan način shvatile svoja prava."

Regarding the understanding of the speciality rule, two interviewees, among which one judge and one defence lawyer highlighted that they have encountered cases where the requested person did not understand fully what it entails, but that therefore they have made efforts to further explain it to the person.

In particular, one of the interviewed lawyers stressed that in their opinion, the person is only generally informed about what consenting to their surrender entails. They explained that in many situations the requested persons "do not understand that consenting to surrender does not mean only that they will be surrendered to some country and that is it". The lawyer further explained that the police "needs to inform also on what consenting to surrender means, what awaits in the country to which they will be surrendered"¹² (i.e. they are not informed of all the consequences).

One of the interviewed judges pointed out that the authorities are fully aware that the requested persons come from different backgrounds (including different levels of education, economic and social status etc.) and that is why they make additional effort that they present the relevant legal terms in the way that the person will really be able to understand to the fullest extent. In this specific question, to understand to the fullest extent what the surrender entails and which are its consequences. The judge shared their experience where a person has renounced the 'speciality rule', without understanding what it entails:

"I personally have the experience where the requested person renounced the 'speciality rule'. However, I had the impression that the party did not fully understand it. Therefore, when I explained it to them in a way that they could understand - that is when the turnaround happened. They did not want to give up the 'speciality rule'. Also, my principle is that the waiver statement (which is irrevocable) must be clear and the party must know in every detail what it means and what the consequences are." Judge, Croatia.

In Croatian: "Osobno imam iskustvo da se stranka odrekla načela specijalnosti. Međutim, imao sam dojam da stranka nije do kraja to razumjela. Međutim kad sam joj približio taj institut, pojasnio joj na način da joj bude razumljivo - tada je došlo do obrata. Dakle, nije se željela odreći načela specijalnosti. Također, moj princip je da izjava o odricanju (koja je neopoziva) mora biti jasna i da stranka mora o svakom detalju znati što to znači i koje su posljedice toga."

The same interviewed judge highlighted that in practice they also allow that the hearing is temporarily paused while the person additionally consults with their lawyer regarding the 'speciality rule', so that the decision to renounce is given freely and informed.

¹² In Croatian: "Oni [tražene osobe] ne razumiju da, recimo, pristanak na predaju ne znači samo da se njih preda u nekakvu državu i to je to. Oni [policija] moraju obavijestiti i što znači sam taj pristanak na predaju, što ih čeka u toj državi u koju se treba predati.."

Similarly, one interviewed prosecutor highlighted that the requested persons are fully informed about what consenting to surrender entails, further explaining how they in the role of prosecutor pay special attention to those:

“According to the Law on Judicial Cooperation it is the duty of the State Attorney to inform requested persons in a manner they can understand the content and that the consent to surrender cannot be withdrawn, and of course - the meaning of the speciality rule.” Prosecutor, Croatia

In Croatian: “Prema Zakonu o pravosudnoj suradnji dužnost je državnog odvjetnika da traženu osobu o tome obavijesti i da joj protumači što znači da se pristanak na predaju ne može povući i naravno - načelo specijalnosti. To su elementi na koje se posebno obraća pažnja da se to osobi detaljno i precizno objasni.”

The same interviewed prosecutor added that they try to explain the rights in the most picturesque way, with considering all the circumstances of the person's background (level of education, language, etc...).

c. Additional best practices or challenges

The research findings revealed the challenges in requested persons full understanding of the ‘speciality rule’, in particular. Several interviewed practitioners from both groups highlighted that the persons sometimes cannot fully understand the consequences of their consent to surrender or the weave of the ‘speciality rule,’ and all the relevant details. However, good practice highlighted by several interviewed practitioners from all interviewed groups is that they personally give special attention to making sure that the requested person understands what the speciality rule entails. Lawyers highlighted that they thoroughly explain it to their clients, one of the prosecutors particularly explained the role of the prosecution in explaining it further in a manner understandable to the person in question, while the county judge was very firm on their principle of not going further with the procedural action until they are convinced the requested person is fully aware of their rights and consequences of their decisions.

d. Discussion of findings

Findings demonstrate that the law is implemented in practice as all interviewed persons have agreed that the persons arrested on EAW in Croatia are informed about their rights upon arrest and about the content of the EAW issued against them. The arrested persons are informed about this in several stages of the proceedings. However, findings also revealed some differences in practices, as some practitioners stated that the information on EAW is given only orally and in writing upon request, while other practitioners state that this information is always provided both orally and in writing, as it is part of the Letter of Rights.

Regarding the understanding of the provided information, several practitioners highlighted the difficulties in comprehension of what the ‘specialty rule’ entails - while stating, on the other hand, that these difficulties in understanding are bridged through explanation from several actors in the procedure.

2. RIGHT TO INTERPRETATION AND TRANSLATION

a. Legal overview

According to the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union, the requested person has a right to interpretation and translation in the EAW proceedings.¹³ Given that the requested person exercises their rights in accordance with the provisions of domestic criminal procedural law, the provisions on the right to interpretation and translation are regulated in more detail by the CPA.¹⁴ Pursuant to the CPA, the parties, witnesses and other procedural participants have the right to use their own language in the proceedings. If the proceedings are not carried out in their national language the interpretation of statements stated in the hearing and the translation of documents and other written evidence will be provided by an interpreter.¹⁵ According to the academic articles, if a domestic court suspects that the defendant does not speak the national language sufficiently, the court will instruct them on the right to interpretation and translation.¹⁶ However, it is questionable whether judicial authorities in criminal proceedings have the necessary knowledge to assess language proficiency. The basic assumption is that the defendant has stated that they will use another language.¹⁷ However, in some cases an interpreter was appointed even when the suspect waived their right to interpretation because the judicial authority conducting the interrogation considered that they did not speak Croatian well enough¹⁸. A survey conducted among state attorneys, police officers and lawyers show that the need for interpretation and translation is determined by the defendant stating that he/she does not speak or understand the Croatian language. Respondents from the ranks of state attorneys and police officers stated that they use interpreters even when it comes to citizens of countries with a similar language, such as Serbian, so that the case would not fail due to a procedural error. On the other hand, the research pointed to some practices such as offering

¹³ Article 24 para 3 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

¹⁴ According to the Article 202 para 3 of the CPA, provisions on the defendant shall apply to suspects, accused persons and persons against whom special proceedings are provided by this Act or another Act.

¹⁵ Article 8 para 3 of the CPA.

¹⁶ Martina Bajčić, Ph. D., Assistant Professor, Faculty of Law, University of Rijeka, Right To Interpretation and Translation of Accused Persons in Criminal Proceedings through the Lens of Recent Case Law of the ECHR And The CJEU ([Pravo okrivljenika na tumačenje i prevođenje u kaznenom postupku kroz prizmu recentne prakse europskog suda za ljudska prava i suda EU](#)), page 239.

¹⁷ Martina Bajčić, Ph. D., Assistant Professor, Faculty of Law, University of Rijeka, Right To Interpretation and Translation of Accused Persons in Criminal Proceedings through the Lens of Recent Case Law of the ECHR And The CJEU ([Pravo okrivljenika na tumačenje i prevođenje u kaznenom postupku kroz prizmu recentne prakse europskog suda za ljudska prava i suda EU](#)), page 239.

¹⁸ E. Ivičević Karas, Z. Burić, M. Bonačić: The Right Of Defence In Different Stages Of The Croatian Criminal Procedure: Results Of Practical Studies ([Prava obrane u različitim stadijima hrvatskog kaznenog postupka: Rezultati istraživanja prakse](#)), Croatian Annual of Criminal Sciences and Practice, vol. 23, 2/2016, page 526.

English as an alternative language in situations where there is a long waiting period for an interpreter to come.¹⁹

Written translations of the documents such as the Letter of Rights, the decision on the deprivation of liberty, court summons, the ruling on investigation, the order for evidentiary action, the indictment, private lawsuit, court decision after indictment until the final termination of the proceedings, and a court decision in proceedings upon extraordinary legal remedies requires a written translation²⁰. However, if above mentioned documents could not be translated into spoken language of the defendant it will be translated to them orally i.e. by an interpreter. In that case, the judicial authority has an obligation to deliver those documents translated as soon as possible to the defendant²¹. In contrast, if this does not violate the procedural rights of the defence and the defendant has a defence counsel an oral translation or an oral summary of the evidence may exceptionally be provided without the obligation to subsequently serve the translation in writing²². Moreover, the defendant may waive the right to translation after being informed of the consequences of the waiver by the judicial authority conducting the proceedings. The statement of renunciation must be free and unambiguous and signed by the defendant²³. In the practice, the right to translation in state attorney's offices and courts is exercised by translating all additional documents required by the defendant or defence counsel and sometimes the entire file is translated as well²⁴.

The authority conducting the proceedings may *ex officio* or upon a reasoned written request of the defendant order the written translation of the evidence or part of it if it is necessary, and even may as an exception provide an oral translation or oral summary of the evidence.²⁵ If the court objects to written translation of the evidence, the defendant has a right to appeal.²⁶ Additionally, the defendant may request the interpretation of communication between him and his legal counsel if necessary for the purpose of preparation of the defence or for lodging an appeal or for undertaking other procedural actions²⁷. In practice, the defendant and the defence counsel are given a short time to communicate with the help of an interpreter before the hearing or they are allowed to briefly separate during the hearing if

¹⁹ E. Ivičević Karas, Z. Burić, M. Bonačić: The Right Of Defence In Different Stages Of The Croatian Criminal Procedure: Results Of Practical Studies ([Prava obrane u različitim stadijima hrvatskog kaznenog postupka: Rezultati istraživanja prakse](#)), Croatian Annual of Criminal Sciences and Practice, vol. 23, 2/2016, page 526.

²⁰ Article 8 para 5 of the CPA. CPA is being subsidiary applied in the surrender proceedings, based on the Art. 132 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union (Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force on 19 December 2020.

²¹ Article 8 para 5 of the CPA.

²² Article 8 para 6 of the CPA.

²³ Article 8 para 7 of the CPA.

²⁴ E. Ivičević Karas, Z. Burić, M. Bonačić: The Right Of Defence In Different Stages Of The Croatian Criminal Procedure: Results Of Practical Studies ([Prava obrane u različitim stadijima hrvatskog kaznenog postupka: Rezultati istraživanja prakse](#)), Croatian Annual of Criminal Sciences and Practice, vol. 23, 2/2016, page 544.

²⁵ CPA is being subsidiary applied in the surrender proceedings, based on the Art. 132 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union

²⁶ Article 8 para 6 of the CPA.

²⁷ Article 8 para 8 of the CPA.

they need to consult²⁸. However, some respondents pointed out that the provision of interpreters outside the hearing is not within the jurisdiction of the court and that defence counsel should take care of interpretation. In the academic articles it was found that English is often used for communication between defendants and defence counsel even if the defendant speaks English poorly. The reason for this is that the costs of their mutual communication are often borne by the defendants themselves.²⁹

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

The requested persons are in practice provided with interpretation as soon as they are arrested. Generally, the interviewed practitioners did not encounter bigger difficulties in that regard. It is a requirement in law, but also the requirement that arises from the situation itself, the interviewees from both groups noted. That is due to the fact that in most of the cases the requested persons do not understand Croatian. One of the interviewed prosecutors stressed that in the assessment of whether the interpretation is needed, it is the factual situation, which is important, and not what the requested person claims. One of the interviewed prosecutors highlighted the importance of factual situation in regard to understanding of the requested person of the proceedings, by sharing the practice where the prosecution interrupts the interrogation when it is noticed that the requested person cannot follow. In line with that, statements of the other interviewees, specifically all of the interviewed professionals from the group of prosecutors and judges, and one lawyer who also highlighted that in their roles they always check whether the person completely understands and speaks Croatian before waving that right. This assessment is being primarily conducted by the police upon arrest. The role of the defence lawyers is also crucial in the early stage since they are the ones in contact with their client and they can assess if the communication is fluent or not. One of the interviewed lawyers gave an example of the situation where they made sure that the requested person understood Croatian and that they can communicate in Croatian without any difficulties. Further on, they explained that *"the requested person in this case has read and completely understood the Letter of Rights that was written in Croatian - and therefore everyone in the procedure was on several occasions reassured that there was no need for interpretation nor translation."*³⁰

²⁸ E. Ivičević Karas, Z. Burić, M. Bonačić: The Right Of Defence In Different Stages Of The Croatian Criminal Procedure: Results Of Practical Studies ([Prava obrane u različitim stadijima hrvatskog kaznenog postupka: Rezultati istraživanja prakse](#)), Croatian Annual of Criminal Sciences and Practice, vol. 23, 2/2016, page 544.

²⁹ E. Ivičević Karas, Z. Burić, M. Bonačić: The Right Of Defence In Different Stages Of The Croatian Criminal Procedure: Results Of Practical Studies ([Prava obrane u različitim stadijima hrvatskog kaznenog postupka: Rezultati istraživanja prakse](#)), Croatian Annual of Criminal Sciences and Practice, vol. 23, 2/2016, page 540.

³⁰ In Croatian: "Tražena osoba u ovom predmetu pročitala je i u potpunosti razumjela Pouku o pravima koja je napisana na hrvatskom jeziku - te su se stoga svi u postupku u više navrata uvjerali da nema potrebe za tumačenjem niti prijevodom."

All the interviewed practitioners from all the groups agree that in practice interpreters are always provided throughout the procedure, from the very beginning. One of the interviewed lawyers also added that they have not encountered any difficulties regarding this right, and not even in cases where interpretation of the languages that are not very common was needed. The practice of using English as an intermediary language was mentioned by two interviewed lawyers, where in situations when they can communicate with the requested person in English, they will use that language for their consultations. One of the interviewed judges also highlighted that the requested persons “must be provided with interpretation so that the court is able to communicate with them.”³¹

Although the interviewed prosecutors and judges stated that the official translators need to be the ones ensuring these rights in the judicial proceedings, one of the interviewed lawyers stressed that in many cases different persons provide translation and interpretation - especially at the initial stages. In particular, the interviewed lawyer stated that “these are not always official court interpreters,” which he believes can create issues. Talking from their experience, they have shared that in lack of official translation, authorities are inviting native speakers regardless of their education. The lawyer stressed that this can have positive and negative effects. At first, the lawyer presented this as a problem, since “*these can literally be ad hoc interpreters*”, and further explained how “*the authorities are inviting native speakers regardless of their education*” (for example, sellers from the nearby shops) - implying that this might hamper the quality of translation. As a positive effect he outlined the fact that this police practice is effective in the way that the person gets the interpreter very rapidly. This helps the procedure to flow more easily and quickly compared to a situation where it is insisted that the official court interpreter is present. He stressed the issue of the lack of available official court translators for some languages and explained by giving an example of the situation where only two official court interpreters of a certain language exist in the city. In cases where both of the official court interpreters would be unavailable, this would mean that the person would need to wait even for a week to continue the procedure.

- Translation of documents

The findings suggest that the translation of relevant documents to a language a requested person can understand during the EAW proceedings is always available. As a rule, certain documents should always be provided in the language a requested person understands. However, it seems that the practices vary in regard to which documents are always translated, and which are translated upon request.

For example, one of the interviewed lawyers stated that very often the documentation is not translated, while only main points and content are translated to requested persons orally at the hearing by an interpreter.

Another defence lawyer explained that the documents (including the Letter of Rights) are translated orally to the requested person, as soon as possible (not awaiting the hearing). One of the interviewed prosecutors shared the same practice, stating:

³¹ In Croatian: “Mora dobiti tumačenje da bi sud mogao komunicirati s njim.”

“The content of the Letter of Rights is always orally provided in a language that a requested person understands. Decisions on surrender, the decision on pre-trial detention and I even think the decision of appointing a defence attorney is being provided in a language that a requested person understands. These other parts of the file are not relevant to have to be translated. If needed, the interpretation could always be provided.” Prosecutor, Croatia

In Croatian: “Pouka o pravima se uvijek usmeno prevodi. Uvijek se prevodi i rješenje o predaji, rješenje o istražnom zatvoru, mislim čak i o postavljanju branitelja da se prevodi. Ovi ostali dijelovi spisa nisu relevantni da bi se morali prevesti, a ako se baš nešto treba se može osigurati tumačenje.”

Similarly, one interviewed judge explained that certain documents are always provided in a language a requested person can understand (for example, the Letter of Rights). However, they stated that the content of the case file and other documents will be translated upon the request of the person.

Another interviewed defence lawyer explained that all relevant documents that are provided to the defence lawyer are translated and provided to the arrested person in the language they understand. They highlighted that such translation is important because both the arrested person and their lawyer can file an appeal against those decisions. Similarly, one of the interviewed prosecutors stated that the Letter of Rights and other relevant documents are always translated in writing:

“The documents are always translated. It can happen due to short deadlines that no translator can be found (specifically for Arabic languages where translators do not have Arabic keyboard so the translation is handwritten what can take a longer time), then the content of the Letter of Rights is always orally provided and subsequently the written translation is delivered to the requested person.” Prosecutor, Croatia

In Croatian: “Dokumenti se uvijek prevode u pisanom obliku. Zna se dogoditi, zbog kratkih rokova, da se ne može naći prevoditelja (specifično za arapske jezike, gdje prevoditelji nemaju arapsku tipkovnicu tako da rukom pišu što vremenski traje) tada se izvršava usmeni prijevod pouke o pravima prije ispitivanja, a naknadno se prevede i pisano koji se uručuje traženoj osobi.”

One of the interviewed judges stressed that in terms of procedural rights - it is crucial that the requested persons have access to translation upon request of any part of the case file to make sure that the person can assess their future legal steps. They stressed that this is given high importance, because the right to defence would be only formally available if the person does not have the possibility to read this documentation in their own language.

- Interpretation of consultations with lawyers

It is generally understood by the practitioners that the interpretation of the consultations with a lawyer is covered from the state budget. One of the interviewed prosecutors highlighted

that this is a fundamental right of the requested person. Therefore, the state should provide an interpreter. It is not reasonable to expect a requested person to bear these costs. One of the interviewed prosecutors also summed up:

“The interpreter is always appointed at the expense of the state budget. If the defence council is appointed ex officio and does not understand the language spoken by the requested person an interpreter will interpret their communication.” Prosecutor, Croatia

In Croatian: “Uvijek na teret državnog proračuna, tumač ide po direktivi, a kada pristupi naravno ukoliko branitelj koji je postavljen po službenoj dužnosti ne razumije jezik kojim govori tumač uvijek sudjeluje u njihovoj komunikaciji.”

One of the interviewed judges shared that in their personal opinion, the inaccessibility of interpretation during the consultations, due to the lack of financial means, would violate their right to a lawyer. To explain their point, the same judge also added:

“If the person does not have the interpretation available, all that we teach, all their rights lose content, real effect and meaning.” Judge, Croatia

In Croatian: “Ako stranka nema dostupnost tumača, sve ovo što mi poučavamo, sva njezina prava gube sadržaj, stvarni efekt i smisao.”

While all the practitioners agree that the state-appointed interpreters should be available and that the person has the right to have one, several interviewed defence lawyers highlighted obstacles in practice. One of the interviewed defence lawyers stated that *“if you want to do your job right, you are going to hire an interpreter by yourself”*³². They explained that in practice at courts that most often execute EAWs (located in the cities close to the Croatian border) there are no interpreters available for a whole range of languages. They shared their experience where in a certain situation in custody a truck driver was translating for a client, since there were no official interpreters available. Therefore, they concluded that the practice has taught them to hire an interpreter from Zagreb and go together to visit a requested person. Similar obstacles were highlighted by another interviewed defence lawyer where they stated that the interpreter is rarely the authorised one, due to lack of interpreters. They stated that while the official interpreters are state-appointed and covered from the budget, the other interpreters are not covered, and provide translation out of favour.

c. Discussion of findings

Findings demonstrate that the right to the interpretation and translation are being respected in regard to it being available and accessible to the requested person throughout the proceedings.

However, several defence lawyers have stressed obstacles in accessing this right outside the court’s proceedings. In that regard, several lawyers shared that during the acts of the police

³² In Croatian: “Ukoliko želiš savjesno obaviti taj posao, tada angažiraš sam svog tumača.”

and in regard to interpretation of the consultation with the lawyer there are no official interpreters available, which is why sometimes the communication is being translated by native speakers who are not authorised to translate. This creates difficulties and practice and affects the quality of interpretation.

Despite the legal requirement that certain documents require a written translation, differences in the responses of practitioners point out differences in practice. The practices vary, but many interviewed practitioners stated that usually these documents are being translated orally instead in writing.

3. RIGHT TO ACCESS TO A LAWYER

a. Legal overview

When Croatia is an issuing state, a person against whom an EAW has been issued, after the arrest in the executing State has the right to appoint a defence counsel of their choice in Croatia. The appointed defence counsel in Croatia has the right to take all legal actions related to providing information and advice to the defence counsel of that person in the executing State. If the requested person wishes to appoint a defence counsel of their choice, the State Attorney's Office that issued the EAW submits to the competent authority of the executing State a list of lawyers compiled by the Croatian Bar Association who provide information and advice in proceedings under the EAW. When the State Attorney's Office issues an EAW against the requested person for the purposes of execution of a pre-trial detention, the requested person will have a defence counsel appointed ex officio in Croatia. This is due to the provisions of the domestic procedural law which prescribes that the defendant must have a defence counsel from the moment of the receipt a ruling ordering the detention or pre-trial detention. Upon receipt of the notification of the arrest of the requested person, the State Attorney's Office issuing the EAW is obliged to inform the executing State of the ex-officio defence counsel in order to establish his/her communication with the defence counsel in the executing State.

When Croatia is an executing State, immediately after the arrest of a requested person, the police will provide the arrested person with the Letter of Right and will instruct the requested person that they have the right to a defence counsel in the Republic of Croatia. If an EAW is issued for the purpose of conducting criminal prosecution, the police will instruct the requested person that they have the right to request a defence counsel in the issuing State. In that case, the police shall without delay inform the domestic county court about the request of the requested person for a defence counsel. When the defence counsel is appointed to the requested person, the State Attorney's Office will inform the competent authority of the issuing state of it.

Therefore, the requested person has the right to a defence counsel of their choice or a defence counsel appointed by the court, the right to request the appointment of a defence counsel even when the defence is not obligatory, the right of the defence counsel to be present at the interrogation of the requested person and the right to communicate freely, undisturbed and confidentially with the defence of their choice, the right to appoint defence counsel in the issuing State and the right to request in the issuing State a defence counsel to be appointed at the expense of the state when the EAW is issued for the purpose of prosecution.

When Croatia is an executing State and the defence counsel is appointed to the requested person, the State Attorney's Office will inform the competent authority of the issuing state of it. In practice, the State Attorney's Office will contact the person designated as the contact person in the issuing state or will inform the competent authority of the issuing state via the European Judicial Network in criminal matters.

Regarding judicial cooperation, the Ministry of Justice is the central coordinating body that provides assistance to domestic competent authorities and competent authorities of other Member States in establishing contacts and judicial cooperation. National S.I.Re.N.E. Office is

an organisational unit of the Ministry of the Interior which is the central body responsible for the exchange of supplementary information related to warnings from the Schengen Information System. As for the fact that Croatia is still not part of the Schengen area, it does not have access to the Schengen Information System (SIS) and, consequently, does not receive alerts. Therefore, the EAW can be received and forwarded through the secure telecommunications system of the European Judicial Network in criminal matters. The competent authority issuing the EAW shall transmit a warning through the national S.I.Re.N.E. office when requesting the arrest of a certain person on an EAW in case the whereabouts of that person are not known.

There are no explicit provisions regarding the legal remedies available if the requested person is not provided with legal representation or their access to a lawyer is delayed or denied. According to the applicable provision, the requested person, the defence counsel and the State Attorney have the right to file an appeal against the decision on approving or rejecting the surrender of the requested person within three days. In the appeal requested person can challenge the decision stating that their defence rights have been violated.

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?	
Croatia	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)
Croatia	YES-	YES

b. Right to access to a lawyer in practice

- Information about legal assistance (including on dual representation)

All of the interviewed practitioners confirmed that in practice the requested persons are informed of their right to access to a lawyer in Croatia as the executing country, as this is a constitutional right. However, when it comes to the right to dual representation, the answers vary which indicates that there is no set practice in this regard. The explanation for that might be found in the interview provided by one of the judges who stated:

“This is a novelty introduced in our legal system, but how the warning procedure looks in practice - I am not aware.” Judge, Croatia

In Croatian: "Ne znam, to je novost koja je uvrštena u naš zakon, a kako izgleda taj proces upozoravanja - to ja ne znam."

Regarding the right to a defence lawyer in Croatia as executing State, the practitioners stated that the requested persons are informed about their right to be assisted by a lawyer. This information is provided both by the police and by the prosecutors, while several practitioners mentioned that it is also part of the Letter of Rights. The requested person can appoint the lawyer of their choosing or request an ex-officio lawyer to be provided by the State. One of the interviewed prosecutors stated:

*"The requested person is always informed and appointed with an ex-officio defence council. Given that the County Attorney's Office in Croatia is a judicial body that executes the EAW and that for all national criminal procedures before the County Attorney's Office require an ex-officio defence counsel, then we have **a practice of appointing an ex-officio defence counsel even though the criminal offence that is the subject of the EAW does not require mandatory defence in the Republic of Croatia**".* Prosecutor, Croatia

In Croatian: "Uvijek, s obzirom i da je postupak... Županijsko državno odvjetništvo u Hrvatskoj je tijelo koje izvršava Europski uhiđbeni nalog, a svi postupci nazovimo ih domaći pred županijskim državnim odvjetništvom zahtijevaju i branitelja po službenoj dužnosti, onda mi imamo praksu da tražimo branitelja po službenoj dužnosti iako je možda kazneno djelo koje je predmet Europskog uhiđbenog naloga ne zahtijeva obveznu obranu u Republici Hrvatskoj, sad se mi ne upuštamo kakva je obrana u zemlji izdavanja."

Another interviewed prosecutor stated that the access to the lawyer is a prerequisite for any further action in the procedure:

"A person has the right to an attorney from the first moment after he/she is arrested. The requested person may not be questioned by the state attorney if that person does not have a lawyer. So, if the requested person did not choose their own lawyer, then the state funded attorney will be elected ex officio by the president of the county court at the request of the state attorney." Prosecutor, Croatia

In Croatian: "Osoba ima pravo na odvjetnika, od prvog trenutka, ne može se pristupiti ni ispitivanju kod državnog odvjetnika/županijskog ako ta osoba nema branitelja. Znači ako ga nije sama odabrala, onda se bira prema službenoj dužnosti kojeg određuje predsjednik županijskog suda na traženje državnog odvjetnika i on ide na teret državnog proračuna."

The differences in practices are indicated in the answers provided regarding the practical appointment of the lawyers. There are lists of lawyers who can be appointed ex officio, however, there were different answers provided in terms of whether such lists are handed to the requested persons.

In firstly noticed practice, several interviewed practitioners, among which two defence lawyers and one judge, stated that the police handle the list of ex officio lawyers to the requested persons and ask them if they want to hire someone from that list. If the person chooses someone from that list, then the authorities will contact the lawyer to check whether they are available to represent the requested person.

Similar to this practice, one of the prosecutors stated that a defence attorney is immediately appointed ex officio and then a list of lawyers in the EAW procedures is subsequently sent so requested persons have the option to choose someone else from the list if they wish to do so. Another interviewed prosecutors also stated that they appoint ex officio defence counsel before the requested person is interrogated in the Attorney's Office. If they do not accept the given counsel, they have the right to choose their own. One of the interviewed judges also explained that the requested persons often have additional questions regarding the lawyers from the list. They emphasised that involved personnel put additional real effort into the endeavour to enable the arrested people to choose the defence lawyer in the best possible way based on the criteria which the arrested people find important.

However, in secondly noticed practice, one of the interviewed practitioners particularly said that they do not inform in such a manner, but that the police have the lists and choose the lawyer from the list for the requested person. They described this practice as follows:

"They [the requested persons] get in touch with a lawyer after someone from the police asks if they want a lawyer, recommends that they take a lawyer and, of course, then one of the police officers contacts one of the lawyers on the list." Lawyer, Croatia

In Croatian: "[tražena osoba] stupa u kontakt s odvjetnikom tako da netko iz policije pita ako želi odvjetnika, preporuča da uzmu odvjetnika i naravno onda netko od policajaca, odnosno policijskih službenika kontaktira jednog od odvjetnika s liste."

According to the experience of the same lawyer, the police call the lawyers one by one until they find one that is available at the moment. The police in practice never give the persons a list with contacts of the available lawyers. From the lawyer's explanation that followed it is to be concluded that this practice is reasonable because, as they explained, the requested persons are not able to determine from the list which lawyer to choose because they are not aware of the experience these lawyers have. And for this reason, it is beneficial that the police officers contact the lawyers who are experienced in procedures concerning EAW and that it is in the interest of the police for the person to get an experienced lawyer, because it ensures the police themselves that potential procedural mistakes will be avoided.

In thirdly noticed practice, one interviewed defence lawyer explained that, from their experience the arrested persons are not given the list of lawyers, nor do they choose the lawyer from the list. Instead, the appointment of the ex officio lawyer is done by the court. They further explained:

"The competent county court issues a decision appointing one of the defence lawyers from the list for a specific case. The defence lawyer is informed immediately, and the place and time where the first interrogation will take place, so that they can consult

the arrested person before the interrogation and inform them of their rights and legal situation.” Lawyer, Croatia

In Croatian: “Nadležan županijski sud donosi rješenje kojim imenuje jednoga od branitelja s liste za konkretan slučaj. Odmah o tome se obavještava branitelj, te se obavještava o mjestu i vremenu gdje će se provesti prvo ispitivanje kako bi mogao prije ispitivanja provesti razgovor s uhićenom osobom te obavijestiti o njezinim pravima, pravnoj situaciji.”

They further stated that only in exceptional cases he was informed by the prosecutor in the case, while they had not had experience in which the police would contact ex officio lawyers from the list, in regard to EAW proceedings.

Right to dual representation

In regard to the requested persons’ right to dual representation, the practitioners’ responses differed. More than a half (5 out of 9) of the respondents confirmed that the requested persons are informed of this right. Two of the interviewed practitioners, among which one prosecutor and one defence lawyer, stressed that this information is also included in the Letter of Rights. Furthermore, as explained by one of the lawyers, the lawyer in the issuing state should be provided from the budget of that state if the EAW is issued because of the criminal procedure. They also shared their experience where the lawyers from the issuing countries contacted the persons arrested upon EAW in Croatia and visited them in the detention in Croatia. However, as stressed by one of the interviewed lawyers, the executing State does not provide assistance in contacting a lawyer in the issuing state, and that relies on the requested person themselves, while another lawyer pointed out that no lists are handed by the authorities in this regard.

On the contrary, one of the lawyers explicitly stated that the requested person is not in practice informed that they can benefit from the assistance of a lawyer in the Member State that issued the EAW. They explained that in practice they (as a defence lawyer) contact the lawyer abroad, if needed. Similarly, another interviewed lawyer was not sure whether the requested persons are informed of the right to dual representation. They additionally explained that these contacts are also mostly carried out through the defence lawyers:

“In practice I often cooperate with a lawyer in the issuing country. But again, it depends on the motivation of the lawyer in the executing State, whether he/she is appointed ex officio or hired by a requested person, does he/she know what he is doing and the like. We communicate most often by email or phone, depending on whether we speak the same language.” Lawyer, Croatia

In Croatian: “U praksi imamo često slučaj da surađujemo sa odvjetnikom u državi izdavanja pa se onda čujemo i komuniciramo. Ali opet, to ovisi o motiviranosti ovdašnjeg odvjetnika. Da li je izabrani, da li je branitelj po službenoj dužnosti, da li zna šta radi i slično. Najčešće komuniciramo mailom ili telefonom, ovisno o tome da li govorimo isti jezik.”

However, one of the interviewed judges stressed that the assistance of the authorities is provided to the requested persons regarding the appointment of the lawyer in the issuing state, when needed. In particular, they stated that in such situations the court would contact the authorities in the issuing state, obtain information and, if necessary, request a list of lawyers who can represent the party in the proceedings. The judge stressed this as necessary for the requested person to be able to exercise this right.

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

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judge 1	Judge 2	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES	X	X	X	X	X	X	X	X*	X*	9
In writing	-	-	-	-	-	-	-	-	-	0
Orally	X	-	-	-	-	-	X	-	-	2
In writing and orally	-	X	X	X	X	X	-	-	-	5
-	-	-	-	-	-	-	-	-	-	0
Don't know /remember	-	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	-	0

* The interviewee did not specify in which manner are the persons informed of their right to access a lawyer.

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	Lawyer 4	Judge 1	Judge 2	Prosecutor 1	Prosecutor 2	Prosecutor 3	Total
YES	-	X	X	-	X	-	X	-	X	5
NO	X	-	-	-	-	-	-	-	-	1
Don't know/remember	-	-	-	X	-	X	-	-	-	2
Did not answer	-	-	-	-	-	-	-	X	-	1

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

From the answers of the interviewed practitioners it can be concluded that in most of the cases the requested persons do not have access to phone nor the internet in order to contact their lawyer upon arrest. The initial contact is mostly established by the authorities who call the defence lawyer. As explained by one of the interviewed lawyers, if the person told the police that they want to call a certain person, the police would call them upon the request, but that in practice there are no situation where a person would be handed out a list of lawyers and then granted the access to internet in order to decide which lawyer they want to defend them. Another interviewed lawyer explained that the contact with the lawyer is later established, and the client is given access to the phone to establish such contact once they are detained and has a right to almost unlimited contact and visits of their lawyer to the investigatory prison.

It is generally understood by the interviewed practitioners that the lawyer in the executing State provides legal aid to the requested person to their best ability and knowledge. In particular, the interviewed practitioners mentioned the following tasks: explaining the legal situation and possibilities at their disposal, rights and the speciality rule, steps of the procedure in practice. If needed the lawyer also contacts the family of the client and if needed contacts also the lawyer in the issuing state. As explained by one of the interviewed prosecutors, a lawyer in more detail explains what is happening and the course of the procedure, while the important task is to consider material and procedural irregularities that should be taken when deciding whether or not to surrender requested person. Another

prosecutor shared that they believe lawyers in Croatia are not very familiar with the specifics of the EAW procedure. In their opinion, this is why the lawyers do not concentrate on the formal reasons for executing EAW. Two interviewed defence lawyers highlighted that the assistance provided in EAW proceedings depends on the motivation and efforts of the certain lawyer.

The interviewed practitioners agree that persons arrested on EAW can privately meet and consult their lawyers at any stage of the proceedings, from the very beginning. Also, their lawyer was present at interrogations and hearings at all times and the interviewed lawyers did not face any obstacles in that regard. In practice the right to consult their lawyer privately and freely is respected and used. To illustrate the importance of this, one of the interviewed judges stated the following:

“If a party wants to talk to a lawyer and consider this to be important, (the exercise) of such right will be granted. This is a sacred right – guaranteed to the greatest extent.” Judge, Croatia

In Croatian: “Ako stranka ima potrebu razgovarati s odvjetnikom i smatra da je to važno, to će joj biti osigurano. To je sveto pravo i tu je maksimalno osigurano pravo.”

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	
Lawyer 4			X
Judge 1	X		
Judge 2			X
Prosecutor 1			X
Prosecutor 2			X
Prosecutor 3			X
Total	1	2	6

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

The interviewed practitioners do not have relevant experience relating to the content of the legal assistance in issuing state. Most of them have only shared the assumption on what the lawyer in the issuing state should be doing, such as gathering additional evidence as to merits of the case, or regarding the assessment of whether the person was aware that they were being tried in absentia or whether they even received a summons and similar.

Only one lawyer shared their experience from one EAW case where the lawyer in the issuing state provided assistance relating to the merits of the case and was in contact with the prosecutors' office in the issuing state and accessed the file.

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		
Lawyer 3			X
Lawyer 4			X
Judge 1	X		
Judge 2			X
Prosecutor 1			X
Prosecutor 2			X
Prosecutor 3			X
Total	2	0	7

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

From the answers of the interviewed practitioners, it can be concluded that the defence lawyer ex-officio (provided from the state budget) is always provided to the requested persons.

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 answer provided	
Lawyer 2	YES		No answer provided	
Lawyer 3	YES		No answer provided	
Lawyer 4	YES		No answer provided	
Judge 1	YES		No answer provided	
Judge 2	YES		No answer provided	
Prosecutor 1	YES		No answer provided	
Prosecutor 2	YES		No answer provided	
Prosecutor 3	YES		No answer provided	
TOTAL	8	0	0	0

c. Discussion of findings

Findings demonstrate that the right to a lawyer in Croatia as the executing country is respected, where the person is provided with relevant information, the ex-officio defence lawyer who is present throughout the procedure from the very beginning. In practice, the appointment of such lawyers differs, and the findings indicate that the persons are rarely able to choose the lawyer from the list of EAW defence lawyers on their own, and usually do not have access to phone or internet to research or contact these lawyers upon arrest. Different practices were noticed through the research findings, where different authorities appoint and contact the ex officio defence lawyer: the police, the prosecutor's office or the court. However, the findings indicate that the person is free to choose another lawyer from the list of ex-officio lawyers in EAW proceedings later in the procedure.

In regard to the right to a dual representation, the findings generally show the lack of experience in that regard of the practitioners in Croatia.

4. ISSUING AND EXECUTION OF THE EAW

a. Legal overview

EAW proceedings are based on mutual cooperation between EU Member States and the principle of proportionality. In the EAW proceedings the competent authorities of the Republic of Croatia are obliged to issue orders and decisions in proportion to its aim³³. During the EAW proceedings the competent authorities are also obliged to act within their competences and in accordance with the basic principles of the legal order of the Republic of Croatia in such a way as to achieve the purpose of judicial cooperation³⁴. Therefore, in the EAW proceedings the provisions of domestic procedural law are subsidiary applied. In accordance with the applicable provisions of the CPA³⁵, any act or measure restricting freedom or rights of others must be proportionate to the nature of the need for restriction in each individual case. The court and other judicial bodies when deciding ex officio on actions and measures restricting freedom or rights shall be careful not to apply a more severe measure if the same purpose can be achieved with a milder measure. Their duration must be limited to the shortest necessary time. Additionally, the right to a fair trial is enshrined not only in the CPA but also in the Article 29 of the Constitution of the Republic of Croatia.³⁶

In regard to issuing **the EAW**, the Croatian authorities are obliged to issue orders and decisions in proportion to its aim. The EAW could be issued for two purposes, criminal prosecution or execution of a custodial sentence or detention order.³⁷ For handing over the requested person

³³ Article 3a para 1 of Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

³⁴ Article 3a para 2 of Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

³⁵ Article 4 of the CPA.

³⁶ Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*), OG 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

Article 29 of the Constitution "Everyone shall be entitled to have his/her rights and obligations, or suspicion or accusation of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law. In the case of suspicion or accusation of a criminal offence, the suspected, accused or convicted person shall be entitled:- to be informed promptly, in a language which he/she understands and in detail, of the nature of and reasons for the charges against him/her and the evidence incriminating him/her;- to have adequate time and facilities to prepare his/her defence;- to a defence counsel and unrestricted communication therewith, and to be informed of this right;- to defend himself/herself in person or through a defence counsel of his/her own choosing, or, if he/she has not sufficient means to pay for such counsel, to have free counsel provided under the conditions specified by law;- to be present at his/her trial insofar as he/she is at the disposal of the court;- to examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;- to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court. An admission of guilt may not be coerced from a suspected, accused or convicted individual. Evidence obtained illegally may not be admitted in court proceedings. Criminal proceedings may only be initiated before the court at the request of an authorised prosecutor."

³⁷ Article 2 para 8 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske](#)

for prosecution, EAW is issued by the judicial body conducting the proceedings, and for the purpose of executing the sentence of imprisonment or involuntary placement EAW is issued by the execution judge of the county court.³⁸

County state attorney's office is forwarding the EAW to the competent body of the executing State as well as those EAW issued by the municipal state attorney's offices in the area of their territorial jurisdiction.

The EAW must be issued on the prescribed form and shall be submitted by the domestic courts directly to the competent authority of the executing State.³⁹ The EAW must contain the following information: identity and citizenship of the requested person, name, address, telephone and fax numbers, e-mail address of the body that issued the order, proof of the existence of a final judgement, arrest warrant or other executive court decision, legal designation and legal description of the criminal offence, factual description of the offence including the circumstances under which the offence was committed, time and place of commission, degree of participation of the requested person in the commission of the offence, the type and amount of the criminal sanction imposed by the final judgement, and if possible the consequences of the act.⁴⁰

The EAW can be received and forwarded through the secure telecommunications system of the European Judicial Network in criminal matters. The competent authority issuing the EAW shall transmit warning through the national S.I.Re.N.E. Office through the Schengen Information System (SIS) that it is looking for a certain person in order to execute an EAW if it is not known where that person is.⁴¹

Apart from the criminal offences in respect of which the verification of double criminality does not apply, the competent national authority may also issue an EAW for criminal offences punishable by imprisonment not exceeding one year or more or by a final sentence of imprisonment of at least four months. Additionally, the competent authority will issue an EAW for the purpose of criminal prosecution if pre-trial detention has been ordered against the requested person. However, the body that issued the EAW should immediately revoke it when the requested person is handed over, or when the statute of limitations for criminal

[Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

³⁸ Article 6 para 1 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

³⁹ Article 7 para 1 and 2 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁴⁰ Article 18 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁴¹ Article 19 para 1 and 2 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

prosecution or execution of the sentence expires and for other reasons why the EAW is no longer required.⁴²

In regard to governing the **execution of the EAW**, The County State's Attorney's Offices are responsible for receiving the EAW according to the place where the person is located or where they have permanent or temporary residence. If it is not known where the requested person is, the Zagreb County State's Attorney's Office is in charge of receiving the EAW.⁴³

The police may, in accordance with their powers under the law governing police conduct, arrest a person against whom an EAW has been issued. The requested person will be handed over to the police custody supervisor⁴⁴ no later than 24 hours after the arrest and the State Attorney will be notified about the arrest and will be provided with an EAW.⁴⁵ The State Attorney will interrogate the requested person on the circumstances from the EAW within 16 hours of being handed over to the custody supervisor.⁴⁶ The State Attorney shall inform the requested person about the content and grounds for issuing an EAW, the possibility of consenting to surrender to the issuing State and the possibility of waiving the application of the specialty principle and the consequences of a waiver.⁴⁷ If the State Attorney does not order precautionary measures⁴⁸ they shall order the police to bring the requested person to

⁴² Article 17 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁴³ Article 5 para 1 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁴⁴ According to the Article 23 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020, the police will bring the requested person to the detention unit and handed over to the custody supervisor within 24 hours after the arrest. Their duties are to inform the detainees with their rights and to provide them with medical help if needed or to inform their family/relatives that they have been detained or contact a lawyer or their consulate if they are foreign citizens, as prescribed in Regulation on Reception and Treatment of Arrested and Detained Persons and on Records of Detainees in the Detention Police Unit (Pravilnik o prijemu i postupanju s uhićenikom i pritvorenikom te o Evidenciji pritvorenika u pritvorskoj policijskoj jedinici), OG 88/2009, 78/2014, 123/2016, 50/2019, 111/2020

⁴⁵ Article 23 para 1 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁴⁶ Article 23 para 2 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁴⁷ Article 24 para 4 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁴⁸ As pre-trial detention is the most severe measure for ensuring the presence of the defendant, precautionary measures are conditioned by the existence of reasons for pre-trial detention under Art. 123 of the Criminal Procedure Act (CPA) as one of the milder measures that can be applied if the same

the competent investigating judge within 48 hours of the arrest to decide on pre-trial detention and to initiate the surrender procedure.⁴⁹ If the requested person consents to the surrender procedure and waives the application of the principle of specialty the investigating judge shall issue a decision on surrender with consent together with the decision on pre-trial detention.⁵⁰ If the requested person has not consented to the surrender, the president of the out-of-court panel⁵¹ will order a hearing be held within three days from receiving the documentation. The requested person and their defence counsel have the possibility to challenge issuing the EAW and can give reasons for opposing the surrender and may indicate the existence of reasons for refusing the surrender. Additionally, the requested person may consent to the surrender to the issuing State and if the requested person does so the out-of-court panel shall issue a decision on surrender with the consent. In order to execute the decision on surrender against the requested person, measures must be applied which will ensure surrender in accordance with domestic law. However, instead of ordering pre-trial detention due to surrender, the court may order one of the milder measures, such as precautionary measures or bail under domestic procedural law if the same purpose can be achieved by applying such a measure.⁵²

Withdrawing the EAW: The body that issued the EAW should immediately withdraw it when the requested person is handed over, or when the statute of limitations for criminal prosecution or execution of the sentence expires and for other reasons why the EAW is no longer required.⁵³ The court will withdraw the procedure of execution of the EAW if the requested person is no longer in the territory of the Republic of Croatia or if the issuing state has revoked the European arrest warrant. If the decision approving the surrender of the requested person has become final but the circumstances have arisen due to which the surrender should be refused or the procedure of execution of the EAW should be suspended, the court shall re-examine the decision *ex officio* or at the proposal of the parties. When the

purpose may be achieved by any of the precautionary measures, such as: prohibition to leave a residence or to visit a certain place or a territory or to approach a certain person or to establish or maintain contacts with a certain person (prescribed in the Art. 98 CPA). On the other hand, a bail (Art. 124 (5) CPA) is also a milder measure that could be applied for providing the presence of a defendant if legal conditions are met but in the strict legal sense the bail is not enlisted as one of the precautionary measures but as one of independent milder measures. The court shall by their discrepancy decide which measure to apply.

⁴⁹ Article 23 para 3 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁵⁰ Article 24a para 4 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁵¹ Court panel that decides outside the official hearing

⁵² Article 26 para 1 and 3 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁵³ Article 17 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

court finds that the conditions for the execution of the EAW no longer exist, the court will revoke its earlier decision and issue a decision suspending the procedure for the execution of the EAW.⁵⁴ On the other hand, the grounds for refusal are limited by the grounds for mandatory and optional non-execution of the EAW. The mandatory grounds for refusal of the EAW are following:⁵⁵

1. if an EAW has been issued for an offence covered by amnesty in the Republic of Croatia and Croatia has a jurisdiction to prosecute the offence under its own criminal law;
2. Ne bis in idem - if the court is informed that the requested person has already been convicted in one of the Member States in respect of the same criminal offence, or that the sentence has been served or is currently being served or can no longer be executed under the law of the sentencing Member State;
3. if the requested person has not reached the age of 14 at the time of the commission of the criminal offence;
4. If the act on which the EAW is based does not constitute an offence under domestic law. For fiscal offences, the execution of a European arrest warrant cannot be refused simply because domestic law does not prescribe the same type of tax or fee or does not contain the same provisions on taxes, fees, duties or currency changes as the law of the issuing State;
5. if the person who is the subject of the EAW is being prosecuted in the Republic of Croatia for the same act as that on which the EAW is based, unless the public prosecutor and the competent authority of the issuing State have agreed that the proceedings are going to be conducted by a judicial authority of the issuing State;
6. if the domestic judicial authority has decided not to institute criminal proceedings for an offence for which an EAW has been issued because the suspect has complied with the obligations imposed on him/her as a condition for not initiating criminal proceedings;
7. if the criminal prosecution or punishment of the requested person is statute-barred according to the domestic law and the acts fall within the jurisdiction of the Republic of Croatia under its own criminal law;
8. if the court has received notification that the requested person has already been convicted by a third State for the same offence and the sentence has been executed or is currently being executed or may no longer be executed under the law of the sentencing State.

In accordance with the principles of effective cooperation, expediency and the right to a fair trial the court may refuse to execute an EAW (the optional grounds for refusal of the EAW) in following cases:⁵⁶

1. if the national judicial authority has decided not to institute criminal proceedings for an offence for which an EAW has been issued or the criminal proceedings have been suspended or a final judgement has been given against the requested person in one of the Member States for the same offence;

⁵⁴ Article 24c of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁵⁵ Article 20 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁵⁶ Article 21 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

2. where the EAW relates to offences which:

- a) have been committed in whole or in part in the territory of the Republic of Croatia,
- b) were committed outside the territory of the issuing State, and domestic law does not allow criminal prosecution for those acts when committed outside the territory of the Republic of Croatia.⁵⁷

In addition, the Court may refuse to execute an EAW issued for the purpose of serving a prison sentence or a measure involving deprivation of liberty imposed by a judgement rendered in absentia, unless

- a) the requested person was promptly and personally served with an invitation indicating the place and time of the hearing at which the verdict was rendered in absentia, or that they received official notification of the place and time of the hearing in a manner from which it can be concluded that they knew about a hearing and being warned that a verdict may be rendered in absentia in the event of non-attendance at the hearing.
- b) Also, in the cases when the requested person was represented at the hearing by a defence counsel.
- c) Thirdly, if the requested person has expressly stated that he or she does not object to the judgement rendered in their absence or has not filed a request for reopening a proceeding or appeal in time or
- d) the requested person was not personally served with the decision but will be personally served with it without delay immediately after the surrender and will be informed of the time frame within which he or she has to request a retrial or appeal.⁵⁸

b. Issuing and execution of the EAW in practice

Findings demonstrate that issuing and executing the EAW is a well-established practice that is conducted when legal conditions are met under the provisions of the Law on the Judicial Cooperation in Criminal Matters with the Member States of the European Union. When it comes to assessing strict legal preconditions for issuing and executing EAW all the interviewees are of the opinion that those proceedings are conducted according to the law. However, when it comes to assessing the proportionality, detention conditions or right to a fair trial in EAW proceedings, those factors are almost never assessed. The main argument in most of the answers from the two judges, two prosecutors and one lawyer is that mutual trust between the EU Member States as the fundamental principle must be respected.

⁵⁷ Article 21 para 1 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁵⁸ Article 21 para 2 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

“We applied a so-called ‘EU comfortable interpretation’. We practically hand over all these people automatically because the level of trust is so high that absolutely nothing is questioned.” Prosecutor, Croatia

In Croatian: “Mi smo primijenili ‘EU komforno tumačenje’. Mi praktički automatski predajemo sve te osobe. Taj stupanj povjerenja je toliko velik da se ne propituje apsolutno ništa.”

That principle of trust was especially highlighted by a judge (HR_J_2) where the interviewee considered that it would be rude to question decisions or the EAW of another Member State outside of the scope of legal requirements set in the law. Therefore, they concluded that the questions regarding the proportionality, access to fair trial, detention conditions etc. would be considered and assessed when that is raised by the person in question. They stressed repeatedly that this mutual trust is what the EU law is based on and that the Framework decision would not be functioning without such respect and trust.

“The prerequisites for the issuance of the EAW, as well as circumstances under which the issuance of the EAW will not be accepted, are precisely prescribed within the Law and from which it is obvious that the lawmaker respects the principle of mutual trust and respect of judicial decisions of the EU Member States to the maximum.” Judge, Croatia

In Croatian: “Pretpostavke i razlozi kada se europski uhidbeni nalog neće prihvatiti su striktno zakonski propisane i određene i može se iz tih odredbi iščitati da zakonodavac uvažava maksimalno načelo povjerenja međusobnog i priznavanja sudskih odluka koje se donose među državama članicama Europske unije.”

The same judge further explained that decisions made by the Criminal Court in Germany, Netherlands or Croatia are decisions made on the basis of the law and with full respect of all fundamental human rights and freedoms. The judge believes that it would be rude to check whether the courts or procedural rules in the EU Member States ensure that all fundamental principles are respected, nor would they be glad if someone doubted them. However, the judge pointed out that the requested person *“is not prevented from claiming the opposite – the party has the opportunity to argue and prove such claims and if the claims are substantiated then such claims will be checked”*.

In support of the above, another judge considered that if the conditions for surrender prescribed by the law are met, the surrender of the requested person will be executed. The interviewee is of the opinion that no legal provision would require proportionality to be considered when Croatia surrenders the requested persons. Once EAW is issued, authorities execute it. Will these concerns be assessed and how will they be assessed is something that is within the competence of the judicial branch which decided on the surrender of the requested person.

When interviewees were asked how they assess proportionality concerns when they are called to execute an EAW, a judge and prosecutor stated that they can only assess proportionality if the act on which the EAW is based does not constitute an offence under domestic law. They both gave the same example; driving without a driver's licence is not a criminal offence in Croatia so surrender cannot be executed. A prosecutor stated that in that case they will flag it and simply apply milder measures in relation to that person and not order

pre-trial detention. Moreover, a prosecutor stated that in Croatia on issued EAW there is no possibility of contesting or rejecting the EAW because the principle of proportionality was not respected when issuing it.

However, it was interesting to hear that the proportionality concerns, detention conditions and procedural rights in the issuing state are assessed when it comes to third countries. The most striking example was the Petruhin case that was singled out by one of the prosecutors. In Petruhin case the CJEU established if a citizen of EU Member State is arrested on the territory of another EU Member State based on an extradition request from a third country, such as a Croatian citizen arrested in Slovenia based on a Bosnian extradition request. In that case, Slovenia is obliged to inform Croatia in order for Croatia to issue an EAW. In the opinion of the interviewed person, it is absurd situation since the requested person first of all spends twice as long in pre-trial detention and the second thing is that in 99.99% of cases the country of citizenship cannot issue an EAW because if it could it would initially have issued and then that third country would transfer the criminal proceeding. Namely, the interviewee pointed out that in all these cases the criminal offence was committed on the territory of a third country and that the third country would have to decide in advance on the transfer of criminal prosecution and not on the arrest warrant. At that moment when the requested person was arrested, interviewee states why would a third country, if it has a warrant and the person was arrested, would withdraw the warrant and transfer the persecution to the Croats or any other EU Member State. According to the opinion of the interviewee those situations open up space for abuse and falsification of the procedure. In order to facilitate those situations, it would be better if third countries could act upon warrant.

Moreover, opinions from the interviewees differ whether Croatia is an issuing state or executing State which will be further elaborated in paragraphs below.

- Factors considered when issuing the EAW

Findings demonstrate that when Croatia is an issuing State, EAW is issued whenever the conditions are met, for the reason of criminal prosecution or when a pre-trial detention has been ordered. In the latter case, according to the applicable provisions of the Criminal Procedure Act, the principle of proportionality must be respected when determining the pre-trial detention because it is the last resort measure. When Croatia is an issuing state some of the practitioners stated several factors that are taken into account. A prosecutor especially highlighted several factors, the gravity of the crime, deprivation of liberty (as one of the most invasive methods in criminal proceedings must be guided by the factual basis of the case), whether the requested person fled before, circumstances of their previous punishment, the purpose of the criminal proceedings and so.

“Proportionality is a factor that is taken into consideration because if we say that deprivation of liberty is the most invasive measure then we are always obliged to consider milder measures if possible. Of course, if milder measures are not possible then that is the only possibility.” Prosecutor, Croatia

In Croatian: "Proporcionalnost je faktor koji se uzima u obzir jer ako kažemo da je lišenje slobode najinvazivnija mjera onda smo uvijek dužni razmotriti blaže mjere ako je moguće. Naravno ako nisu moguće blaže mjere onda je to jedina mogućnost."

Moreover, another prosecutor stated that when Croatia is the issuing state, the EAW is always issued for serious crimes so there is no doubt that proportionality is not taken into consideration. This practitioner assumes that EAW will not be issued for minor offences. On the other hand, a lawyer is of the opinion that EAW are often issued for misdemeanours or some minor crimes in which it is probable that conditional sentences will be imposed. In their own opinion EAW shouldn't be issued for minor crimes, however in a formal and legal sense this criterion is needed because it is in the interest of the state that every criminal offence be carried out.

"EAWs are often issued for minor crimes for which I don't think should be issued. However, in a formal and legal sense you cannot take that criterion. If you have criminal proceedings, and if it is clear to you that it will end with some kind of suspended sentence, you cannot stop the issuing of a European arrest warrant. It is in the interest of the state that every criminal procedure ends." Lawyer, Croatia
In Croatian: "Vrlo često se europski uhidbeni nalog izdaje za minorna kaznena djela, za koja mislim da ga ne bi trebalo izdavati. Iako u pravnom smislu ne možeš uzimati taj kriterij. Ako imaš kazneni postupak I ako je tebi jasno da će on završiti nekakvom sitnom, uvjetnom kaznom, ti ne možeš šresumirati na takav način da bi to zaustavilo izdavanje europskog uhidbenog naloga. Interes je svake države da svaki kazneni postupak završi."

Despite the legal requirement that proportionality must be assessed, differences in the responses of practitioners point out differences in practice regarding challenging the issuing of the EAW. The majority of practitioners that are judges or prosecutors stated that requested persons can challenge the issuing of the EAW via regular legal remedy. Moreover, a judge stated that there are possibilities for filing extraordinary legal remedies and ultimately a lawsuit to the constitutional court. On the other hand, two defence lawyers think the requested persons are not in position to challenge the issuing of the EAW.

- Factors considered when executing the EAW

Findings demonstrate that when Croatia is executing State, the proportionality test as well as examining the detention conditions and procedural rights in the issuing state is almost never assessed. The interviewed practitioners stated that the reason is that mutual trust between Member States is assumed and therefore certain things are not questioned (from detention conditions to respect for the right to a fair trial). Two interviewed lawyers are of the opinion that no elements besides the classification of a crime and strict legal requirements are taken

into account. The opinion of a judge is that authorities (called to execute the EAW) are not in the position to assess proportionality concerns. Once EAW is issued, authorities execute it. Will these concerns be assessed and how will they be assessed is something that is within the competence of the judicial branch which decided on the surrender of the requested person. One lawyer is of the opinion that proportionality should not be assessed because the EAW would lose its purpose. They explained that this would open space for corruption and illegal acts and highlighted that the guarantee regarding proportionality would be that they are prosecuted in the state where they are apprehended.

However, it was interesting to hear that issues such as detention conditions or respecting the fair trial are assessed when it comes to third countries such as Russia or Turkey. Two prosecutors consider that when discussing the EAW it is crucial to always take into consideration the fundamental principle of the Framework Decision, which is the principle of mutual trust between EU Member States and mutual recognition of judicial decisions. Moreover, a prosecutor emphasised that the uniform application of the Framework Decision throughout the European Union must be achieved. The question that arises is *“What is the purpose of European law if citizens in Croatia can exercise a right granted to them on the basis of a European norm while in another EU Member State they cannot do so.”* Interviewee further elaborated that it would be rude to question decisions or the EAW of another Member State outside of the scope of legal requirements set in the law. They trust that the person whose execution is requested in Germany, Slovenia or another EU Member State will have a fair and just trial with the protection of all fundamental human rights and freedoms.

“Ultimately, of course, mistakes happen in which case the parties will have the opportunity to appeal through regular and extraordinary remedies to correct any mistakes.” Prosecutor, Croatia

In Croatian: “U konačnici, naravno, pogreške se događaju u kojem će slučaju stranke imati priliku žaliti se putem redovnih i izvanrednih pravnih lijekova kako bi ispravile pogreške.”

When it comes to assessing the detention conditions, the majority of the interviewees are of the opinion that detention conditions in the issuing state are not assessed due the mutual trust which is the basis for judicial cooperation. Moreover, a prosecutor pointed out that otherwise they would need to go into the merits and question whether a judicial body that issued a decision on pre-trial detention was lawful and that is something that they cannot do and therefore the cooperation would be impossible. However, two judges and one prosecutor are of the opinion that detention conditions in the issuing state could be pointed out and disputed in the surrender procedure by their defence counsel. . On the other hand, a judge confirmed that the Croatian authorities considered the detention conditions in the issuing state, however as far as the interviewee is aware no case was rejected due to the (inadequate) detention conditions. When considering such conditions authorities use available information from the Croatian Ministry of Foreign Affairs, Amnesty International and similar organisations and any other source of information available to them.

Even though majority of the interviewees pointed out that all Member States of the EU act on the principle of trust which is the basis of judicial cooperation and the main reason why

authorities do not consider the detention conditions, procedural rights of the requested person and their individual situation, one prosecutor stressed that situation differs when it comes to third countries. Same prosecutor pointed out that when it comes to for example Turkey and Russia which are known for violating human rights then the court will consider the situation and they will obtain information from the UN decision committees from the Council of Europe, international organisations and ECtHR case law and they will of course take into account the case law of the European Court of Human Rights. Therefore, in those situations the detention conditions and the degree of respect for procedural rights are questioned.

The biggest obstacle in executing EAW was pointed out by the lawyer and his opinion is that pre-trial detention is almost automatically ordered against requested persons without assessment of the situation at large. The lawyer is of the opinion that Croatia is an extremely rigid country when it comes to pretrial detention.

“...detention conditions in the issuing state does not matter to us. We make our request and the other country acts according to its own rules. We have no influence on that. Croatia is an extremely rigid country when it comes to pretrial detention. Pre-trial detention is ordered to a much greater extent than in other European countries, and as a rule most EAWs are accompanied by pre-trial detention. Which is of course wrong, but in accordance with the Croatian legal tradition, which is disastrous in this regard.”
Lawyer, Croatia

In Croatian: “...nama to nije bitno. Mi postavljamo naš zahtjev i druga država postupa po svojim pravilima. Mi na to nemamo utjecaja. Hrvatska je ekstremno rigidna zemlja kada je u pitanju istražni zatvor. Istražni zatvor se određuje u puno većoj mjeri nego u drugim europskim zemljama, a u pravilu uz većinu europskih uhićenih naloga ide i istražni zatvor. Što je naravno pogrešno, ali u skladu s hrvatskom pravnom tradicijom koja je po tom pitanju katastrofalna.”

c. Additional best practices or challenges

All of the interviewees expressed their satisfaction with respect to procedural rights of the requested persons in Croatia. The proportionality concerns and right to fair trial are respected and taken into account when Croatia is an issuing state. However, as mentioned earlier, when Croatia is an executing State, the proportionality test as well as examining the detention conditions and procedural rights in the issuing state is almost never assessed because EAW proceedings are based on a high level of mutual trust and harmonised standards established at the EU level. Detention conditions and right to a fair trial are almost never questioned not from judicial authorities of the executing State nor from lawyers.

Moreover, a judge and the prosecutor identified a difficulty of achieving uniform implementation of the EAW Framework Decision across different EU Member States. In essence they argued this is due to different concepts and legal doctrines, different interpretations, and consequently different natures of the same legal institutes. A judge is of the opinion that the cooperation between Member States needs to be further expanded, and laws harmonised to a greater extent. The interviewee is a supporter of expanding further the cooperation in criminal matters which is currently limited to the areas defined by the Framework Decision:

“I am in favour of expanding cooperation in criminal matters, which is now limited to those areas defined by the Framework Decision, even further. Of course, this is very difficult and demanding, because the Member States guard their right to punish and determine what is allowed and what is forbidden as their exclusive and sovereign right. However, the world is becoming global and we are facing a number of common issues.” Judge, Croatia

In Croatian: “Ja sam pobornik toga da se suradnja u kaznenopravnim stvarima, koja je sad ograničena na ona područja koja su definirana Okvirnom odlukom, da se još više proširi. Naravno da je to jedan vrlo težak i zahtjevan put jer države članice svoje pravo na kažnjavanje i određivanje što je dopušteno, a što je zabranjeno ljubomorno čuvaju kao svoje isključivo i suvereno pravo. Međutim svijet postaje globalan i susrećemo se sa nizom zajedničkih pitanja.”

On the other hand, grounds for non-execution of the EAW, interpretation of those reasons, grounds for optional non-execution of the EAW were highlighted by one of the interviewed prosecutors as open issues in regard to issuing and executing EAWs. The concerns were raised if some grounds for non-execution are optional and the country is not a common law country, how to ensure uniform practice and legal certainty that one court does not judge differently from another court and to avoid potential abuses.

Additionally, the interesting example was made by one interviewed lawyer who stated that proportionality is taken into consideration generally, with exemptions. The interviewee has highlighted the example of Zsolt Tamas Hernadi. The case involved the judgement (upheld by the Supreme Court of Croatia) sentencing former Prime Minister of Croatia to six years for accepting bribes from Hungarian MOL (oil and gas company) chief Zsolt Hernadi, while Hernadi was trial in absentia and was sentenced to two years in prison. Neither a detention order nor European arrest warrants have resulted in the CEO’s surrender to the Croatian authorities. The Municipal Court of Budapest has refused to execute an EAW issued by the Croatian authorities with explanation that in case the defendant is handed over, “there is a risk that his right to a fair hearing would be infringed upon, and the impartial consideration of the case could not be ensured.”⁵⁹ The lawyer stated that this is the greatest shame and the example when the EAW was not acted upon, and that it can be so easily ignored when issued against certain persons. The interviewee connected this to the proportionality, and questioned its existence in this case, where Hernadi was not surrendered to Croatia even though he was convicted.

The biggest obstacle was raised regarding determining pre-trial detention by a defence lawyer. Pre-trial detention is ordered to a much greater extent than in other European countries, and as a rule most EAWs are accompanied by pre-trial detention. Having in mind that in Croatia pre-trial detention is the most severe measure it is to be concluded that the proportionality test is not being adequately assessed.

⁵⁹ See for example the media coverage: BBJ, Court refuses to execute European Arrest Warrant for MOL CEO, 24.08.2018., available at: <https://bbj.hu/politics/polls/issues/court-refuses-to-execute-european-arrest-warrant-for-mol-ceo>

d. Discussion of findings

Findings demonstrate that the law is strictly applied in practice as all practitioners agree that legal conditions for issuing and executing EAW under the provisions of the Law on the Judicial Cooperation in Criminal Matters with the Member States of the European Union are well respected. However, when it comes to assessing the proportionality, detention conditions and rights to a fair trial in EAW proceedings, including other factors are not given much importance and assessment. The main argument in most of the answers from the interviewees is that mutual trust and harmonised standards established at the EU level are respected and every Member State acts upon this trust. On the contrary, judicial cooperation would never be possible without the high respect of mutual trust.

5. USE OF DIGITAL AND TECHNOLOGICAL TOOLS IN EAW PROCEEDINGS

a. Legal overview

There are no explicit provisions on using digital tools, however according to the article 12h of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union, the competent State Attorney's Office and the competent judicial body of other Member State with which contact is established communicates with each other by all means that enable a written record. The contact points of the European Judicial Network in criminal matters take the necessary steps to facilitate the establishment of direct contacts between the domestic competent judicial authorities and the competent judicial authorities of other Member States in the enforcement of judicial decisions.⁶⁰ When Croatia is an executing State and the defence counsel is appointed to the requested person, the State Attorney's Office will inform the competent authority of the issuing state of it.⁶¹ In practice, the State Attorney's Office will contact the person designated as the contact person in the issuing state or will inform the competent authority of the issuing state via the European Judicial Network in criminal matters.⁶²

There are no explicit provisions on using online questioning of requested persons within the Act on Judicial Cooperation, however this possibility is envisaged in the Criminal Procedure Act. The enactment of the Act on Amendments to the CPA of 27 July 2017 (OG 70/17) gave effect to the Access to a Lawyer Directive. National criminal procedural law has introduced a number of changes, inter alia, relating to mandatory interrogation of suspects in police stations using audio-visual devices.⁶³

Table 12: Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an	Facilitating the provision of	Remote examination of witnesses or the	Communication with involved foreign authorities	Facilitating transmission of document	Facilitating access to a lawyer	Facilitating access to a lawyer
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⁶⁰ Article 11 para 2 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁶¹ Article 24 para 2 of the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union ([Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, entered into force in 19 December 2020.

⁶² Judicial Academy, mr.sc. Danka Hržina, State Attorney's Office of the Republic of Croatia, Handbook: Amendment To The Law On Judicial Cooperation In Criminal Matters With The Member States Of The European Union ([Novela Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske Unije](#)), page 10.

⁶³ Article 275 of the Criminal Procedure Act

	executing State)	interpretation	person arrested (when an issuing state).	(both executing – issuing states).	s (issuing - executing)	in the issuing Member State (when an executing State)	in the executing Member State (when an issuing state)
Croatia	YES	YES	NO	YES	YES	YES	YES
TOTAL							

b. Interview findings

The majority of practitioners considers that digitalization, especially the possibility of questioning requested persons remotely, would lead to fewer EAWs being issued rather than requesting their arrest with an EAW. A lawyer, a judge and a prosecutor emphasised that digitalization should be more used in the surrender procedures. A prosecutor highlighted that the possibility of questioning the requested person via video link should be used more often in surrender procedures because if the requested person were to be examined through a video link, they might even have the EAW withdrawn. The same prosecutor has the impression that many countries issue EAWs, including Croatia, only to interrogate the person which is not proportionate. Therefore, digitization could lead to a better application of the principle of proportionality because there is a possibility that after the interrogation there will no longer exist the need to surrender the requested person or there will no longer exist prerequisites for indictment.

Moreover, a judge and a prosecutor emphasised that digitalization can assist in the faster exchange of documents and information between the judicial bodies of the Member States of EU, but also in relation to the accessibility of the information regarding lawyers who can represent before the court of the country that issued the warrant and that would be good to create platform where can EAWs automatically be uploaded and downloaded). Also, a lawyer and a prosecutor are of the opinion that digitalization could be of help if some translation application could be installed in order to translate EAW which would be of help for the police and the courts until official translation comes from the issuing state.

Regarding the risks, a judge and a prosecutor emphasised risks in the email communication because it is hard to confirm whether the person sending the notification or the person responding is exactly the person listed as the contact person. The risks that are also mentioned were the dependence on technology, the danger of hacking and other dangers that exist in all other areas that rely on digitalization and the internet raised by the judge.

Even though the majority of practitioners saw digitalization as a positive step that can speed the proceedings and can even help to lead to fewer EAWs being issued, a judge and a lawyer

are of the opposite opinion. The judge considers that digitalization cannot lead to fewer EAWs being issued because the national procedural criminal law provides for the possibility that the presence of the requested person can be secured by video connection only in cases enumerated by the law. In the process of issuing and deciding on the EAW, this is not prescribed as a possibility. Moreover, the lawyer considers that digitalisation may lead to even more EAWs being issued. In particular, the interviewee explained that, in case that the flow of information is effective it will be easier to arrest the requested person. This would motivate the executing bodies (such as the courts and the prosecutors) to initiate and carry out such procedures. Moreover, although one of the interviewed lawyers sees benefits of the digitalisation in other legal procedures, they feel that it would be either very difficult or harmful towards the rights of the requested person to digitalise these procedures to a higher extent because some procedural legal requirements would form obstacles that some actions are carried out from a distance. For example, it was stressed that the presence of the defendant is obligatory in all the Member States and the very presence of the person involved in the proceedings has its impact. The interviewee believes that through such presence judges can have a better overview, then through digital tools.

Most of the practitioners emphasised that digitalisation did not play any role during the pandemic nor had any effect on the EAW proceedings. However, one defence lawyer thinks differently. The lawyer emphasised that the role of digitalisation during the pandemic was visible because the hearings could be held online - meaning that the arrested persons and sometimes their defence lawyers did not need to, or could not, physically be present at the courtroom and therefore this enabled the courts to avoid delays in the procedures.

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)
(e.g.) LAWYER 1	YES	YES	X	YES	YES		

LAWYER 2	YES	YES	X	YES	YES		
LAWYER 3	YES	YES	X	YES	YES		
LAWYER 4	YES	YES	X	YES	YES		
(e.g.) JUDGE 1	YES	YES	X	YES	YES		
JUDGE 2	YES	YES	X	YES	YES		
PROSECUTOR 1	YES	YES	X	YES	YES		
PROSECUTOR 2	YES	YES	X	YES	YES		
PROSECUTOR 3	YES	YES	X	YES	YES		
TOTAL	(e.g.) 4/3						

c. Discussion of findings

The majority of practitioners considers that digitalization, especially the possibility of questioning requested persons remotely, would lead to fewer EAWs being issued rather than requesting their arrest with an EAW. It was especially emphasised that the possibility of questioning the requested person via video link should be used more often in surrender procedures because if the requested person were to be examined through a video link, they might even have the EAW withdrawn. Some practitioners suggested introducing translation applications which would help them to translate the content of the EAW and therefore immediately upon arrest they would be able to provide the requested person with information of the EAW.

CONCLUSION

This report presents the practice and experience of professionals, particularly judges, prosecutors and lawyers when dealing with European Arrest Warrant proceedings in Croatia. The main conclusion is that EAW proceedings are in a sense formalistic and are conducted in a prescribed manner according to the law. Findings demonstrate that the right to information, interpretation, and right to a lawyer are well respected. Even though the **right to information** is implemented in practice as all interviewed persons have agreed that the persons arrested on EAW in Croatia are informed about their rights upon arrest and afterwards again by the state attorneys. However, additional efforts should be made from the judicial bodies involved in these procedures to make sure that the requested person understands to the fullest extent their rights, and the consequences of their decisions.

Right to translation and interpretation are being respected in regard to it being available and accessible to the requested person throughout the proceedings. Despite the legal requirement that certain documents require a written translation, differences in the responses of practitioners point out differences in practice. The practices vary, but many interviewed practitioners stated that usually these documents are being translated orally instead in writing. Therefore, additional efforts should be made to standardise the practice of translation and interpretation and to ensure that Letter of Rights is translated to all official languages of the EU.

Right to a lawyer is as well respected when Croatia is an executing country. Requested person is provided with the ex-officio defence lawyer who is present throughout the procedure from the very beginning. In practice, the appointment of such lawyers differs, and the findings indicate that the persons are rarely able to choose the lawyer from the list of EAW defence lawyers on their own, and usually do not have access to phone or internet to research or contact these lawyers upon arrest. Additional efforts should be made to ensure that requested person is able to choose another lawyer from the list of ex-officio lawyers in EAW proceedings.

In regard to **issuing and executing an EAW**, the EAW procedures are simplified in the way that no elements besides the classification of a crime and strict legal requirements are considered, on the other hand the proportionality concerns, detention conditions and procedural rights in the issuing state are not questioned since in most cases mutual trust is assumed. It was interesting to hear that these issues are assessed when it comes to third countries (Russia or Turkey). Even though all of the interviewees pointed out that all Member States of the EU act on the principle of trust mutual recognition, additional efforts should be put on judicial authorities to assess in every single case the proportionality concerns, detention conditions in the issuing state and individual situation of a requested person.