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EXECUTIVE SUMMARY

Right to information

The EAW process in Hungary consists of two stages: detention, when the law enforcement authority is in contact with the requested person, and court hearings and the arrest trial, in which the court is the central actor. In Hungary only the court can order the arrest (*letartóztatás*) of a requested person. Detention (police custody), prior to the arrest trial, can last a maximum of 72 hours.

It is unclear how the law is implemented in practice when it comes to the provision of information at the police-station, when the person is first detained, and in the detention centres. Although the legal framework is clear and the information stored in the Schengen Information System (SIS) should be shared with the requested persons, and they should be informed about their general rights, it is not clear to what extent the actual practice meets with the legal rules. The lawyers and judges interviewed reported that they meet the requested person later at the court hearings or just before the court hearings or trials, so they have no first-hand information about the process at the police station or in the detention facilities.

However, the findings demonstrate that the law is implemented in practice at court hearings, as all practitioners agree that requested persons are well informed of their rights at court, mainly by the judge and, in most cases, orally. It is also clear that at the court hearings, state appointed native interpreters are always present, which is a basic necessity for understanding the procedure.

The findings are mixed when it comes to whether information is provided in written or oral form. It seems that the information is given at least partly orally, and that it is then recorded in the minutes of the hearings and trials. Thus, the requested person is often lacking information prior to the arrest trial.

Right to interpretation and translation

The findings demonstrate that interpretation is sufficient and of good quality in the EAW cases at the trials or court hearings. The legal framework ensures the presence of an interpreter at all stages of the process: at the police station, during interrogation and at the court hearings or the arrest trial. However, it is only an assumption that in practice the interpreter is present at every stage of each case. Furthermore, while the law provides for the right to use one's mother tongue throughout the entire criminal proceeding, this seems to apply only during specific procedural acts (e.g., hearings). At other times, (e.g., when the lawyer consults with the client in preparation for the hearing/trial), state-appointed interpreters are usually not available.

Right to access to a lawyer

Legal representation/assistance is always provided at court hearings. When the requested person does not have a lawyer of their own choice, the state appoints one. However, the low level of compensation for state-appointed lawyers may demotivate them from putting in the necessary effort to their cases.

Whilst it is a legal obligation to ensure the legal representation of the requested persons, in practice it remains a challenge in most cases. According to all interviewees, due to the lack of time, the requested persons usually only consult the state-appointed lawyer right before the first hearing (at the court or online).

While the requested person legally has the right to dual legal representation, the Hungarian authorities, due to lack of time, do not provide requested persons with assistance to access legal services in the issuing Member State.

Issuing and execution of the EAW – factors considered

According to the interviewees, the EAW procedure, for both the issuing and executing states, is a formality in the EU. On the ground of mutual trust, the judges examine the proportionality and concerns regarding fair trial. Individual reasons or conditions of detention cannot be the basis of refusing the execution of an EAW.

INTRODUCTION

In Hungary, interviews were conducted with four defence **lawyers**, and with three judges and a prosecutor (hereinafter referred to as **judicial authorities**) (see Table 1 below).

All interviews with the defence lawyers were conducted face-to-face in Budapest, while the interviews with the judicial authorities (with the exception of one) took place via electronic means of communications. The main reason is that the judges' and the prosecutor's schedule was very tight, and they preferred online meetings.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

An online meeting between Milieu's project management team and the interviewers (social science experts from the Faculty of Social Sciences of the Eötvös Loránd University – ELTE) took place at the beginning of the project. During this meeting, the approach to the interviews, potential issues and questions raised by the interviewers were discussed. Prior to the meeting, Milieu's deputy project manager and one of the social science experts/interviewers participated in a kick-off meeting organised by FRA. The materials and explanations provided by FRA were shared with the rest of the team. The legal overview prepared by the project's legal expert was also shared with the social science experts/interviewers before the start of the interviews. This ensured that they had a good understanding of the legal context and national implementing measures in Hungary.

Considering that in Hungary prosecutors are not responsible for issuing or executing EAWs, but can request it from the courts, it was agreed with FRA that out of the four interviews to be undertaken with either judges or prosecutors, only one prosecutor would be selected and interviewed.

The task of identification and selection of interviewees was shared between Milieu's and ELTE's team members. Milieu was in charge of identification of judges and prosecutors engaged in issuing and/or executing EAWs, whereas ELTE was responsible for the identification of defence lawyers with relevant experience in representing defendants subjected to EAWs, issued or executed in Hungary.

The identification of judges and prosecutors was challenging, since in Hungary judges and prosecutors cannot participate in research studies without the approval of the national judicial authorities. Therefore, Milieu sent requests to the National Office for the Judiciary (NOJ) and the Prosecutor General's Office for the nomination of judges and prosecutors with relevant practical experience. Prior to nomination and approval of the participation of judges/prosecutors in interviews, these Offices requested the interview questions to be sent to them for verification. The NOJ also asked for declarations to be made in line with the NOJ Presidential Recommendation on scientific research in courts. The NOJ informed that, should the research request be approved by the Office, conducting personal interviews with judges will not be possible, and the interview questions would be answered in writing, anonymously by the nominated judges. This was contrary to FRA's research methodology, as FRA intended to ensure the spontaneity of the interviewees' answers. Nevertheless, after the requested declarations were made, the NOJ expressed its support for personal interviews, and hence FRA decided to exceptionally share the questionnaires with the judicial authorities. Following this, the judicial authorities in question approved the participation of the requested number of magistrates in the research and nominated judges and prosecutors with relevant professional competencies to take part in interviews. This process was time consuming and delayed the interview phase of the project.

The identification and selection of defence lawyers proved to be easier, as no approval from the bar associations was requested. The search for defence lawyers was undertaken online based on relevant search words; in the databases of bar associations; as well as through Milieu's and ELTE's networks.

ELTE also reached out to lawyers listed on the European Criminal Bar Association’s website. In addition, one of the lawyer interviewees was contacted on the recommendation of other lawyers considering their expertise in the field. Despite several efforts, no female lawyers with relevant experience could be interviewed. Female lawyers who had been recommended by other professionals or who were found online did not respond to the interview request or had no experience in the EAW process.

○ **SAMPLE AND DESCRIPTION OF FIELDWORK**

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4

Table 1: Sample professionals

No	Group	Expertise in EAW cases	Gender
1	Defence lawyer	At least 3 years of experience in representing defendants subjected to EAWs, issued or executed in Hungary	M
2	Defence lawyer	At least 3 years of experience in representing defendants subjected to EAWs, issued in other Member States and executed in Hungary	M
3	Defence lawyer	At least 3 years of experience in representing defendants subjected to EAWs, issued or executed in Hungary	M
4	Defence lawyer	At least 3 years of experience in representing defendants subjected to EAWs, issued or executed in Hungary	M
1	Judicial authority	At least 3 years of experience in issuing and executing EAWs	F
2	Judicial authority	At least 3 years of experience in issuing or executing EAWs	F
3	Judicial authority	At least 3 years of experience, only in issuing EAWs	M
4	Judicial authority	At least 3 years of experience, only in executing EAWs	F

With the exception of three interviews, the interview-length was between 50 and 60 minutes. Out of the three exceptions, two lasted around 40 minutes and one lasted 78 minutes.

The level of trust of the interviewees was high in general, except for two lawyer interviewees, who were very suspicious and initially refused to be audio recorded. Fortunately, one of them decided after a couple of minutes to agree to the recording, while in the other case, the interviewer had to take detailed notes. After 20 minutes of the interview, this interviewee also changed their mind and agreed to the audio recording.

The interviews with the judges and prosecutor were different, as the interviewees knew the questions since they received the questionnaire before the interview. They seemed to have prepared their answers in advance, which helped the interview. While methodologically it is uncommon and not recommended to send the questions before the interview, due to the bureaucracy and centralised nature of the Hungarian system, this was unavoidable. Despite this obstacle, the atmosphere of the interviews was trustful, the interviewees trusted that their answers would be treated as confidential, so they shared their honest opinions about the EAW process. In general, however, it seems that in their answers, the judges and the prosecutor focused more on (and also accepted) the legislation, while defence lawyers shared the controversies between the legislation and their practice.

- **DATA ANALYSIS**

As a first step, the legal overview part of each thematic section was completed by the legal expert based on the desk research undertaken at the beginning of the project.

Secondly, on the practical parts, the interviewers applied a qualitative content analysis, based on the topics of the interviews. Since the interviews were already summarised in the interview reporting templates provided by the FRA, the interviewers followed the structure of the templates and highlighted the differences between the answers of the two groups of interviewees (lawyers versus judges and prosecutors).

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

The report examines the European Arrest Warrant (EAW) process in Hungary. Based on legal analysis and eight interviews with professionals who have experience in the field (four defence lawyers, three judges and a prosecutor), the report draws a general picture on how the EAW process is carried out in Hungary. On the one hand, the report focuses on the right to information, rights to interpretation and translation, and the right to access a lawyer, on the other hand it explores the practices of issuing and executing EAWs in Hungary, as well as the impact of digitalisation on the process.

The report highlights that even though the procedural rights of requested persons are respected in general, there are significant inequalities in this regard between the detention phase of an EAW process and the arrest trial. Furthermore, one of the main findings is the information gap between different actors (e.g. the law enforcement authority and the court, and also the defence lawyers). The report also sheds light on the discrepancies between the perceptions of defence lawyers and judges in some aspect of the process.

The right to interpretation and translation, as well as the right to access to a lawyer are respected in Hungary. Challenges mainly emerge from the short deadlines and formal nature of the EAW process. Digitalisation, sped up by the pandemic, enhances the capacity to keep the deadlines and decreases the need for issuing EAWs, but may also endanger the effectiveness of lawyer-client communication.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

Information about rights and the content of the EAW

In Hungary, Act CLXXX of 2012 on criminal cooperation conducted with the Member States of the

European Union (hereinafter: **EU Criminal Cooperation Act**)¹ stipulates procedural rules for issuing and executing an EAW. Article 2 of the EU Criminal Cooperation Act, however, contains a cross-reference to Act XC of 2017 on criminal proceedings (hereinafter: **CPA**)² stipulating that where the EU Criminal Cooperation Act does not provide for special rules, the CPA shall apply. The Hungarian criminal procedural law uses the umbrella term '**defendant**' for persons suspected of having committed a criminal offence, accused persons, convicted perpetrators of criminal offences, and even **requested persons in EAW proceedings**; thus, for any person against whom a criminal proceeding is ongoing, at any stage of the proceeding.

Article 39(1)(c) of the CPA stipulates that **the defendants are entitled to receive information on their criminal procedural rights and obligations** from the court, the public prosecutor's office and the investigating authority. While a Letter of Rights is not provided for in the CPA, according to Article 358 of the CPA, the authorities must make records of all procedural acts in writing (written minutes - *jegyzőkönyv*) and these records must contain all events of the procedural act in such a way that it can be verified later whether all procedural safeguards were observed (Article 359(2)(a)). Under Article 39(1)(j) of the CPA, the authorities must ensure that **the defendant is entitled to inspect the case documents** of the proceeding in their entirety.

Article 39(2) of the CPA provides for **special rules on the right to information** in case the defendant is subject to a **coercive measure that deprives them of their liberty**. A detained defendant shall be entitled to:

- be informed of the reason for their detention and any changes thereto;
- have the court, the public prosecutor's office and the investigating authority inform a person named by the defendant that the defendant is in detention;
- establish, and keep, without supervision, contact in person, via post or by electronic means with the defence lawyer and, in case of a foreign national defendant, the consular representative of the defendant's state (right to confidential communications);
- keep supervised contact in person or controlled contact via post, or by electronic means with the person named by them, in accordance with the instructions of the prosecution service before the indictment or the court after the indictment;
- to keep contact with the person or authority specified in an international treaty promulgated by an Act in accordance with the international treaty.

Regarding the **time** when the authorities must inform the defendant, Article 74(1) of the CPA states that the criminal authorities must inform and advise the persons participating in the criminal proceedings of their rights and obligations prior to the procedural act affecting them.

Article 12(4) of Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and misdemeanour custody (hereinafter: **Criminal Execution Act**)³ obliges the authorities to provide the defendant with **information in writing**, in a clear and easily understandable manner, **prior** to the **execution** of any **coercive measure** depriving the defendant of personal liberty, including arrest in an EAW proceeding. This **Letter of Rights** is given to the defendant upon admission to the

¹ Hungary, [Act CLXXX of 2012 on criminal cooperation conducted with the Member States of the European Union](#) (2012. évi CLXXX. törvény az Európai Unió tagállamaival folytatott bűnügyi együttműködésről), 8 December 2012.

² Hungary, [Act XC of 2017 on criminal proceedings](#) (2017. évi XC. törvény a büntetőeljárásról), 1 July 2018.

³ Hungary, [Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and misdemeanour custody](#) (2013. évi CCXL törvény a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról), 1 January 2015.

detention facility.⁴ It must contain information on the following: available remedies, the right of access to a lawyer, the right to use one's mother tongue, the right of access to the documents included in the case file, the right to keep contact, the right to inform the consular officer, the right to medical assistance and the exercise of patient rights. In addition, it must include information on the behavioural standards and the disciplinary procedure, the coercive measures and security measures with special attention to the use of an electronic surveillance system, the duration of the coercive measure indicating the first and the last day, and the rules on liability for damages. Information on the right to inform other persons of the place of detention must also be provided in line with Article 12(5)(h) of the Criminal Execution Act.

Information about the procedure – consent, speciality rule

Hungary did not notify the General Secretariat of the Council about the possibility of prosecution of offences other than that for which a person was surrendered,⁵ in accordance with Article 27 p. 1 of the EAW Framework Decision.⁶ This means that, in its relations with other Member States, **consent is not presumed** to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order prior to the defendants' surrender, other than that for which they were surrendered.

The EU Criminal Cooperation Act contains the **speciality rule** regarding the issuance of the EAW. According to Article 30(1), the Hungarian criminal authorities shall not initiate criminal proceedings and shall not deprive the defendant of liberty for criminal offences committed before the surrender of the defendant other than those listed in the EAW. This rule, however, shall not apply if:

- a) the person does not leave the territory of Hungary within 45 days after their final release, or returns after leaving;
- b) the criminal offence is not punishable by a custodial sentence or detention or threatened with a measure involving deprivation of liberty;
- c) no measure restricting personal liberty is taken as a result of the criminal proceedings;
- d) a non-custodial sentence or measure, in particular a monetary fine, may be imposed or applied against the person, even if the sentence or measure is likely to restrict their personal liberty;
- e) the person has waived the application of the speciality rule during the surrender procedure (the waiver must be made before the court that issued the EAW);
- f) the person, after the surrender, has expressly waived their right to the application of the speciality rule with respect of certain acts committed before the surrender; or
- g) the judicial authority of the executing Member State, per the request of the Hungarian criminal authorities, gives its consent to the initiation of the criminal proceeding.

⁴ The legislation does not provide for a form; however, detention facilities do have a pre-printed form available. According to the legal expert, the form is based on the detentions' internal rules; therefore, there is a slight difference in the content of the forms provided by the different detention facilities.

⁵ See https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?!=EN&CategoryId=14.

⁶ Article 27 (1): 'Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender'.

The request for consent mentioned under point (g) above must be sent to the executing Member State using a form, in the official language of the executing Member State. The EAW must be translated into the language of the executing Member State in case the partner authority in that Member State does not accept the Hungarian version. The Ministry of Justice is responsible to send the decision on the EAW to the executing Member State.

Accessibility and understanding of information

Respecting the human dignity of all participants in the criminal proceeding is a fundamental principle of the CPA (Article 2). Moreover, the CPA provides for rules on how the authorities should **communicate** with the participants of the proceeding. Among these rules, special communication difficulties, special needs and other personal circumstances (e.g., age, maturity, level of understanding) must also be taken into account.

Article 74(2) of the CPA obliges the authorities to **ensure that the persons involved in the criminal proceeding understands what has been communicated** to them. Article 74(3) stipulates detailed rules on how to achieve this goal. The authorities must provide the information in a simple and comprehensive manner, taking into account the condition and personal characteristics of the person involved in the criminal proceedings; and making sure the persons understood what was communicated to them.

Article 81(2) of the CPA lists some examples of circumstances (personal characteristics) justifying the person's special treatment needs when the authorities provide them with information:

- (a) the age of the person concerned
- (b) the mental, physical and health condition of the person concerned.

Remedies

The CPA provides for specific **remedies** in different stages of criminal proceedings. These remedies are available to all defendants including requested persons in EAW proceedings. The remedies do not differ based on which fundamental/procedural right of the defendant is violated. Instead, a common track of remedies is available for any violation of the rights of the defendant. During the investigation stage, the suspect and the accused person may submit a **complaint** to the investigating authority or to the prosecutor (Article 369 of the CPA). While the CPA allows a complaint to be lodged only against a decision of the prosecutor's office or of the investigating authority, it does not limit the right of the defendants to make a complaint if their procedural rights (e.g., the right to information) are violated. The CPA presumes that at the end of any procedural act there is an outcome, namely a formal decision of the authority. When challenging this decision, the entire underlying procedure of the authority can be challenged and, therefore, reviewed (Articles 369-370 of the CPA).

In the court procedure, the CPA specifically requires the **appellate** court to annul the decision of the first instance court and order it to conduct a new procedure in case the participants in the criminal proceeding could not exercise their procedural rights or they were restricted in exercising such rights (Article 609(2)(b)). The appellate procedure covers all aspects of the entry-level proceeding, therefore, the appellate court should examine, *ex officio*, whether the procedural rights of the defendant were respected in the entry-level proceeding. This relates to any violation regarding the right to information.

- b. Right to information in practice

- Provision of information (when, how by whom)

Based on the interviews, the respect for the right to information should be examined separately for the two stages of the EAW process, i.e., in the context of the first contact with the requested person, namely when the police detain the requested person and in the context of the EAW hearing (also referred to as arrest trial). A maximum of 72 hours may pass from the detention by the police until the first EAW court hearing,⁷ where the judge can order the arrest of the person.

It seems that none of the interviewees have exact information about what happens before the EAW hearing, or they only know what should happen. Judicial authorities assume that the law enforcement authorities inform the requested person about their rights. A judicial authority representative emphasised that requested persons are detained based on the information recorded in the Schengen Information System (SIS) and the recorded information - along with the general rights – should be shared with the requested person. According to this interviewee, written minutes should also be taken upon detaining a requested person. However, it seems that the quality of information provided depends on where the person was detained, as pointed out by another judicial authority representative:

[EN] “Sometimes the requested persons seem to be well informed, sometimes they don’t, it depends on the police station that sends them [where were they apprehended]. Sometimes the files show that they have signed declarations about their rights, but since they are very differently informed, we always tell them everything at the hearing.” (Hungary, judicial authority representative)

[HU] „Van amikor nagyon jól informáltak tűnnek, van, amikor nem, ez nagyon függ attól melyik rendőrkapitányság küldi őket [hol tartóztatták le őket]. Van, hogy a mappában látszik, hogy aláírtak nyilatkozatot őket megillető jogról, de mivel nagyon eltérő módon vannak tájékoztatva, a meghallgatáson mindig mindent elmondunk.”

In light of the above, **the interviewees only assume** that defendants are somehow informed of their right at the police station. Even the defence lawyers interviewed could not give information on how the defendants are informed prior to the EAW hearing. In particular, it is unclear for all the interviewees how the information is supplied at the police station and later on in the detention centres. For instance, a lawyer stated:

[EN] “[During the process of detention] there should be [certain documents always provided by the police in a language a requested person can understand], but I don’t know if these documents are indeed available. [...] I’m sure there are forms, but I don’t know, I don’t ask, when I meet with my client, we prepare for the hearing.” (Hungary, lawyer)

[HU] „[Az őrizetbe vétel folyamata alatt] kellene, hogy legyenek [bizonyos dokumentumok, hogy az érintettek megértsék a velük történő folyamatot], hogy van-e ilyen, azt én nem tudom. Biztos vannak formanyomtatványok, de nem tudom, én nem kérdezem meg, mikor én találkozom vele mi már a meghallgatásra készülünk.”

Furthermore, all interviewees assumed that while information should be made available in writing, requested persons receive information mainly orally, if at all. Two judicial authority interviewees mentioned they have seen a Letter of Rights in written form, even translated, while a lawyer interviewee had not seen any Letter of Rights but assumed that it had been provided at the detention

⁷ This is stipulated in the law, as Article 7(1) of the EU Criminal Cooperation Act limits the duration of police custody prior to the court hearing to 72 hours.

centre or at the police station. Another lawyer advised the researchers to conduct interviews with the police or detention centres in order to understand the process before the involvement of defence lawyers.

The interviews show that judges and prosecutors are not present when requested persons are detained. Lawyers are not present upon detention either, but the requested person might meet with the state-appointed lawyer who can provide further information at the detention facility before the EAW hearing. Since **most of the requested persons are apprehended in the countryside**, the initially appointed lawyers usually withdraw when the case is transferred to the Budapest-Capital Regional Court (*Fővárosi Törvényszék*) where new **state-appointed lawyers** are assigned.

In the second phase, at the EAW hearing, or arrest trial, the judge provides information about the requested person's rights in general and in relation to the EAW process. This information is given orally, although written minutes are taken about the trial. Three judicial authority representatives and two lawyers agree that this information is clear and proper, and it is ensured that the requested person understands the information provided.

The interpreter also plays a role in the provision of the information. An interpreter is assigned when the requested person asks for it, or when the judge considers that the requested person would need it. All interviewees mentioned that prior to the hearing, all information is provided to the requested person by the defence lawyer with an interpreter, and at the hearing by the judge.

- Information about rights

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

*Please note that since the interviewees did not have practical experience in the information process at the police station and in the detention centres, the table below reflects only their answers concerning the **EAW hearings (arrest trial)** in which they participate.*

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judicial auth. 1	Judicial auth. 2	Judicial auth. 3	Judicial auth. 4	Total
YES	X	X	X	X	X	X	X	X	8
In writing (Letter of Rights)	-	-	-	-	-	-	-	-	0
Orally	X	X	X	X	X	X	X	X	8
In writing (Letter of Rights) and orally	-	-	-	-	-	-	-	-	0
NO	-	-	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	0

Prior to the first court hearing, the requested persons are informed about their rights upon detention. However, none of the interviewees have experience or information about the details of this process (see sub-section above).

At the first court hearing, the judge orally provides all the information about the **procedural rights stipulated in law** (Table 2 above reflects the experiences of interviewees in this regard).

Under Hungarian law, the legal representation of the requested person is mandatory at the court hearing; thus, lawyers are also present. The requested person can hire their own lawyer, but if they do not do so, the State assigns a state-appointed lawyer. In addition to lawyers, interpreters are always present at the EAW hearing, and they are involved in the information process.

Lawyers can consult their clients at the detention facility. In cases where such consultation does not take place, the judges assure that the requested person and their lawyer are provided with the time necessary for a consultation, at the latest before the court hearing/trial. However, according to two lawyers interviewed, there is **very limited time** available for the consultation prior to the trial. Furthermore, three lawyers also flagged that hired lawyers in general do not have time to arrive at the court prior to the trial. Thus, they cannot collect enough information about the case, and they are not able to inform their clients about their procedural rights or other aspects in advance, but only when the judge allows/orders them to consult before the hearing. But in any case, during the trial the judge makes sure that the requested person understands every detail, including their procedural rights.

- Information about the EAW – content and procedure

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

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judicial auth. 1	Judicial auth. 2	Judicial auth. 3	Judicial auth. 4	Total
YES	X	X	X	X	X	X	X	X	8
In writing	X	-	-	X	-	-		-	2
Orally	-		X		X	X		X	4
In writing and orally	-	X	-	-	-	-	X	-	2
NO	-	-	-	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	0

In principle, according to a judicial authority representative, the requested person should be informed about the information recorded in the SIS upon their detention. However, based on the previous section's findings, it is unclear whether this is happening in practice. As already mentioned, the interviewees have no experience about the detention process.

At the court hearing, the judge reads out loud all the information available about the content of an EAW, provided that the EAW is available to them in its entirety. Often, the judges do not have all the information from the issuing state at their disposal, but only the EAW itself, or the information recorded in the SIS, and often it is not translated. The SIS alert contains less information than the EAW itself. If only the SIS alert is available, then the judge can only inform the defendant about that. In a

simplified process,⁸ it is enough if only the SIS alert is available. However, if a requested person does not consent to their surrender and the ‘**normal process**’⁹ takes place, then the judge should request and wait for the full EAW issued by the issuing authorities to continue the process.

According to a lawyer, requested persons are informed about the content of the EAW at the latest at the trial, in a written form, while another lawyer indicated that the information is partly given in writing, and partly orally, but the written part usually arrives during the process, prior to the arrest trial.

[EN] “... [The arrested requested persons are informed of the content of the arrest warrant issued against them] if the court already has it. [...] [T]here's a part, there's a verbal part, and then they send the material afterwards. So what happens is that, on the one hand, there's an interpreter, and then we get the material at the arrest meeting. [...] [This material] is given to the lawyer too. So it goes electronically to me [the lawyer], and whatever material is there is given to him [the requested person] at this arrest meeting. [...] Yes, [it goes in writing], so it's printed for him and it's electronic for me. And then there, in the worst case, he receives it on the spot, and then he has time to study it there. And then there is an interpreter to help.” (Hungary, lawyer)

[HU] “... [A letartóztatott keresett személyeket tájékoztatják az ellenük kiadott elfogatóparancs tartalmáról] ha az már megvan. [...] [V]an egy részről, van ami szóban, és aztán utána meg is küldik az anyagot. Tehát az van, hogy egyrészt ott van egy tolmács, és a letartóztatási ülésre megkapjuk az anyagot is. [...] [Ezt az anyagot] az ügyvédnek is odaadják. Tehát nekem elektronikusan megy, és neki meg ami anyag van, azt ő megkapja ezen a letartóztatási ülésen. [...] Igen, [ez írásban megy], tehát őneki nyomtatva, nekem meg elektronikusan. És akkor ott, a legrosszabb esetben ott helyben megkapja, és akkor ott van ideje még tanulmányozni. És akkor ott van egy tolmács, aki segít.”

- Information on consenting to surrender

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

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judicial auth. 1	Judicial auth. 2	Judicial auth. 3	Judicial auth. 4	Total
YES	X	X	X	X	X	X	X	X	8
NO	-	-	-	-	-	-	-	-	0
Don't know/ remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	0

⁸ A lawyer explained that a simplified process takes place when the defendant explicitly consents to their surrender and thus within 10 days, they can be transported to the issuing country. The procedure is laid down in Article 18 of the EU Criminal Cooperation Act.

⁹ A lawyer explained that if the defendant does not consent to their surrender, a normal process takes place, and the defendant stays in Hungary and the execution of the EAW can last more than 60 days. The procedure is laid down in Article 16 of the EU Criminal Cooperation Act, which stipulates the final decision on the surrender of the defendant must be made in a maximum of 60 days after the arrest of the defendant. In exceptional cases, this can be extended by 30 days.

All interviewees consistently noted that information about surrender and what consenting to the surrender would entail is given very clearly to the requested person at the arrest trial. A judicial authority representative and two lawyers noted that the judge emphasises this at the hearing including with reference to the speciality rule (i.e., that they might be prosecuted or detained for previous offences).

Another judicial authority representative explained that the question on consenting to surrender has to be treated separately from the renunciation of the speciality rule. On the one hand, **explicit consent to surrender entails that a simplified process will take place**, meaning that the execution of the EAW is faster and within 10 days the requested person can be transported to the issuing country. Consent to this simplified process cannot be withdrawn. If the defendant does not choose the simplified process, they will stay in Hungary and the execution of the EAW can last more than 60 days ('normal process'). According to this interviewee, most of the defendants (85 %) choose the simplified process. As the interviewee put it:

[EN] "Sometimes first they want to stay in Hungary but after some days spent in a Hungarian detention centre, they change their mind." (Hungary, judicial authority representative)

[HU] "Vannak, akik először nem kérik az egyszerűsített eljárást, de pár nap egy magyar BV intézményben és meggondolják magukat."

On the other hand, requested persons can renounce the speciality rule in both the simplified and the 'normal' EAW executing process (hence, this is not limited only to cases when they consent to their surrender). The requested persons are informed about the meaning and consequences of renouncing the speciality rule in both processes, and in most cases, they do not renounce the speciality rule. According to the judicial authorities, the complexity of this rule makes it challenging to explain to requested persons. For instance, a judge mentioned that if after the explanation they consider that the requested persons still do not understand the speciality rule, they try to convince them not to give up on this right as it is better for them if they do not renounce the speciality rule.

- Understanding of information

The information process before the EAW hearing (at the police station and in the detention facilities) is **unclear for the interviewees**. All the interviewees stated that they have no experience, as they are not present at the police station or in the detention facilities. Three judicial authority representatives asserted that they first meet the requested person at the court hearing or trial. Two lawyers stated that lack of time before the hearing is to the detriment of the consultation with a lawyer, as there is not enough time for the lawyer to make sure that the person understands the procedure and their rights, and is able to make a decision, e.g., on their surrender. Another lawyer also mentioned that sometimes the time for consultation before the trial is limited.

There is little information about the process in police custody. A judicial authority representative emphasised that the police have to evaluate whether the requested person is able to understand the process. If not – and usually this means that the requested person would not be able to speak Hungarian – the Police must appoint an interpreter. However, as a lawyer interviewee noted, the main problem is that in an EAW process everything happens under time-pressure; thus, the main question might not be the linguistic skills, but whether or not the person is able to mentally cope with the situation.

During the EAW hearing, the judges make sure that the defendant understands all the information provided. They specifically ask the defendant to confirm that they have understood everything. It was

also reported by judges that sometimes it is not the language that constitutes an obstacle, but the lower educational background or cognitive skills of the requested person (e.g., understanding the legal language used in courts), or even cultural differences, which make it difficult for the defendant to fully understand all the information supplied to them. In cases where the judges find that the requested person has not fully understood all the information supplied to them, the judges explain it again using very simple words, to be sure that the requested person really understands every detail. All the interviewees unanimously flagged that at the court hearing the procedure is designed with the intention of supplying all information necessary to the requested person, and the participants, especially the judge, will not proceed further until they are absolutely sure that the requested person understands all the relevant information.

c. Additional best practices or challenges

Best practices

According to all interviewees, the fact that specialised judges, prosecutors, lawyers and interpreters work on EAW cases, this supports the process of executing EAWs and guarantees that the procedural rights of the requested person are respected. At the court hearings, the judges are responsible for ensuring the appropriateness and fairness of the process. According to a lawyer interviewee, nationally there are only five judges handling the execution of EAW cases. These cases take place at the Budapest-Capital Regional Court, which has exclusive jurisdiction in executing EAWs. The expertise and knowledge of these specialised judges ensures the quality of the procedure. Interviewees also agreed that the presence of native interpreters is an important benefit of this procedure.

Challenges

According to two lawyers, the short amount of time available for the consultation between the lawyer and the requested person before the hearing poses a challenge. This is true, in particular in light of the fact that the requested person has to make a deliberate decision whether or not to consent to surrender at the trial, hence on site, within a very short amount of time.

d. Discussion of findings

The findings demonstrate that the law is implemented in practice at court hearings, as all practitioners agree that at the trials the requested persons are well informed. It is also clear that at the court hearings state appointed native interpreters are always present, which is a basic necessity for understanding the procedure.

However, from the findings it is unclear how the law is implemented in practice when it comes to information at the police-station and in the detention centres, as the interviewees are not present at these stages and have little practical information on the process.

The legal rules are very clear about the provision of written information on the rights of the detained person (Letter of Rights), and that when providing this information, the executing state has to take the requested person's mental and physical state into account. Written Letters of Rights are hardly available; information is mostly provided orally, and written minutes of the procedure become available only after a procedural act (e.g., a hearing). Although this information seems to be comprehensive, it is rarely mentioned by the interviewees that the pressure caused by the situation, or the individual characteristics of the person are taken into account when informing them. There seems to be a perception gap between lawyers and judges in this regard: while lawyers did not refer to such measures being taken (to adapt the methods of providing information to the requested

person's condition), judges tended to emphasise the measures they take to ensure that the requested persons understand everything.

Whilst it is a legal obligation to ensure the legal representation of the requested persons, all interviewees agreed that this remains a challenge in practice as, due to the lack of time, requested persons in most cases are only able to consult their state-appointed lawyers right before the first hearing (at the court or online). This might pose a challenge to their defence, since the lawyer cannot collect enough information about the situation of the requested person, or how they were detained. It might also be an obstacle in informing them about every option they have.

2. Right to interpretation and translation

a. Legal overview

Accessibility of and legal requirements for interpretation and translation

One of the basic principles of the CPA is the right to use one's mother tongue (Article 8). The CPA stipulates that nobody shall suffer disadvantages because of not knowing the Hungarian language. Everybody is entitled to use the mother tongue in the criminal proceedings. Being a general principle, the right to use the mother tongue is granted to all participants of the proceeding, including requested persons in EAW proceedings, throughout the entire criminal proceeding.

Article 78(1) of the CPA goes even further than that. It allows any participants of criminal proceedings to decide whether they would like to use their mother tongue instead of Hungarian. It presumes that even if the defendants understand the Hungarian language, but they prefer to use the mother tongue that is not Hungarian, the authorities must respect this decision and must provide them with an interpreter, preferably one familiar with specialised legal language. Article 78(7) of the CPA obliges the authorities to translate any document and to make it available to the person who made use of the services of an interpreter during the procedural act. The CPA does not specify what documents need to be translated, it only refers to those that the person concerned has a right to know.

Article 7(3) of the EU Criminal Cooperation Act further stipulates that if the defendant does not know the Hungarian language, with the assistance of an interpreter, the authorities must inform the defendant on the content of the alert placed in the Schengen Information System. Moreover, Article 8(4) of the EU Criminal Cooperation Act orders the court to assign an interpreter to a defendant who does not know the Hungarian language to ensure that the hearing on the execution of the EAW issued by another Member State respects the right of the defendant to use the mother tongue.

Remedies

Remedies are the same as those elaborated under point 1.a.

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

Several interviewees stated that at the EAW trials the presence of the **state-appointed interpreter** is mandatory when the requested person requests it, or when the judge sees it as necessary.

According to a judicial authority representative, the **police** will request an interpreter already when the **person is first detained**, if they perceive that the requested person does not speak Hungarian (well). One lawyer was of a different opinion, stating that during the detention and at the police station interpreters are not, or are rarely, available which affects the requested person's right to information in a language that they know. According to this lawyer, the situation would be better if police officers spoke at least English, but in Hungary the knowledge of foreign languages is low and this is a huge problem, not only in the judicial system, but in the whole country. On the other hand, this lawyer thought that the situation at the **EAW hearing (arrest trial)** is the opposite since professional interpreters are available and translate the whole process well. At the hearing, if the requested person does not ask for an interpreter, but the **judge** perceives that it is necessary, they will appoint an interpreter. It was also pointed out that the interpreter might change in the different phases of the process, i.e., if the person had an interpreter appointed when detained or at the police station, but they are later transported to Budapest for the hearing, another interpreter will be assigned for the trial.

The majority of the interviewees were specialised in the EAW execution process, while two judges and two lawyers had experiences with the issuing process. Thus, experiences concerning interpretation are mainly based on the execution process. All interviewees from the judicial authorities agree that the state-appointed interpreters in the EAW processes in Hungary are **native language speakers, are well-prepared and thorough**. One of them noted that the state is very careful in this regard, so native interpreters are appointed if the requested person is not Hungarian or does not speak Hungarian fluently. If the nationality and the mother tongue of the person differ, the court also takes this into consideration, by appointing an interpreter who speaks the person's mother tongue. According to the judges, the EAW proceeding is one of the few procedures where the quality, including the interpretation, is suitable.

According to a lawyer, a couple of years ago a **system called 'interpreter license'** existed in Hungary. The interviewee believed that this was a good system, because it provided quality service in the judicial system for non-Hungarian speakers. However, this unfortunately **no longer exists**. From this interviewee's point of view, the quality of the services provided by the interpreters in EAW cases is still good. If it happens that the quality is not adequate, the defendants have the **right to appeal** against it, but in practice, in the absence of a common language, it is difficult to check this, and the defendants have to trust that the interpreter translated everything properly:

[EN] "So in principle he [the defendant] has the right to appeal against the quality of the interpretation, but that is practically impossible. In such cases, an interpreter who really does not speak the language is usually not appointed. In other cases, in criminal proceedings, I have had the experience of having an interpreter assigned who even I knew that did not speak English." (Hungary, lawyer)

[HU] „Tehát van elvileg joga arra, hogy jogorvoslattal éljen, a tolmácsolás minőségével szemben, de hát az gyakorlatilag kivitelezhetetlen. Ezekben az ügyekben azért olyan tolmácsot, aki tényleg nem nagyon beszéli a nyelvet, azt nem nagyon szokták kirendelni. Más ügyben, büntetőeljárásban, nekem volt már tapasztalatom, hogy olyan tolmácsot rendeltek ki, akiről még én is nagyon egyszerűen tudtam, hogy nem beszél szegény angolul.”

Usually, the interpreter is present **in person** at the trial. However, since the COVID-19 pandemic, most cases are held online, thus the interpreter also assists **online**. According to a judge, the requested persons usually prefer online hearings, but they can ask for a personal hearing too, or the judge can decide on such a hearing. However, there might be some practical obstacles in ensuring an in-person hearing of the defendant:

[EN] "In June 2022 the COVID-19 restrictions were lifted, until then [since March 2020] only online hearings were allowed. Since the restrictions were lifted, the requested person can insist on a personal hearing. Even in the two months since [June 2022], 80 % of the hearings have still been online, as the process is faster, and the requested persons prefer this. If there is a second hearing because the requested person did not agree to the simplified procedure, we try to hold it in person. The problem here is usually with the detention facility, because there are not enough guards to transport the prisoners [to the court]." (Hungary, judicial authority representative)

[HU] „2022. júniusában vonták vissza a COVID miatti szigorításokat, addig nem lehetett csak online meghallgatásokat tartani. A visszavonás óta az érintettek ragaszkodhatnak a személyes meghallgatáshoz. Az azóta eltelt két hónapban is a meghallgatások 80 százaléka online volt, mert így gyorsabb az eljárás és az érintettek ezt preferálják. Ha van második körös tárgyalás,

mert nem egyezett bele egyszerűsített eljárásba az érintett, azt igyekszünk már személyesen tartani. Itt a BV-vel szokott probléma lenni, mert nincs elég őr a szállításához a raboknak.”

- Translation of documents

According to the judges interviewed, **translation of the documents before the hearing or trial is not possible**, given that the timeframe is too short. In many cases, the documents are translated at the trial, orally by the interpreter, and they appear for the first time in writing in the written minutes. After the trial, some of the documents will be translated. The EAW is always translated, but this is not necessarily the case for related documents, which are translated only if the requested person requests it.

According to a lawyer, the **EAW** is translated into a language that the requested person understands, but other documents are usually not translated in written form. The '**Letter of Rights**' is translated on the spot, orally by the interpreter, and the **content of the case** file is in Hungarian, or in the language of the issuing country. Usually, the documents requested from the issuing country are in the language that the arrested person speaks. Otherwise, they are translated into Hungarian, but not to other languages.

[EN] “[T]he arrest warrant, that is usually translated, but other documents cannot be [...]. [The translation of the other documents] is completely random. [...] Since the documents are requested from the country from which he is requested, in a good case they are in the language he understands, otherwise they are translated into Hungarian.” (Hungary, lawyer)

[HU] “[A] végzést, a letartóztatási végzést, azt le szokták fordítani, az egyéb iratokat, azt nem lehet. [...] [A többi irat fordítása] teljesen esetleges. [...] Miután ugye bekérik az anyagokat abból az országból, ahonnan őt kérik, az jó esetben egyezik azzal a nyelvvél, amit ő ért, egyébként meg magyarul fordítják le nyilván.”

A judicial authority representative emphasised that the requested person has the right to ask for translation, but from the practice of the lawyers it seems that such a direct request for the translation of documents is rare.

- Interpretation of consultations with lawyers

All the interviewees agreed that the requested persons always have the opportunity to consult with lawyers **right before the trial or hearing takes place**, with the assistance of the state-appointed interpreter. Challenges were not formulated regarding the availability of the interpreter, but rather the **limited time** (5-20 minutes) that the judges provide just before the trial or hearing, when they can use the interpreter to consult with their clients (e.g. in the court's hallway). If the hearing is online, the judges always provide privacy for the clients to speak with their lawyers; in practice it means they leave the call for that time.

A lawyer mentioned that since the state-appointed interpreters are only available at the trials, it is hard for the lawyers to consult with their clients before the trial (e.g., in the detention facility) in order to get prepared for the trial, which they find severely problematic. It is unclear how the requested persons can communicate with their lawyers when they are first **detained** or while in the detention facilities. A judicial authority representative indicated that the police should, if necessary, provide an interpreter as soon as the person is detained. The state appointed interpreter should be available if the lawyer and the requested person want to communicate, but it is not entirely clear if this can be

realised in practice. Obstacles regarding interpretation for lawyer-client consultations were reported by a lawyer:

[EN] „The interpreter is only present at the court hearing. And it's very problematic that there is no interpreter at the consultation with the lawyer, so before the court hearing and during the preparation for the court hearing. There is no time to find an interpreter. It is difficult for the interpreter to get into the prison and then the state does not reimburse the interpreter for the time he/she spends in prison, but only for the time spent at the trial. So it's a very problematic issue whether there's an interpreter at the lawyer-client consultation. In practice the judge says that they can talk to the interpreter in the hallway for 5-10-20 minutes before the trial.” (Hungary, lawyer)

[HU] „Csak a bírósági tárgyaláson van jelen tolmács. És nagyon problémás, hogy az ügyvédi beszélőn, tehát a bírósági tárgyalás előtt, az arra való felkészülés során nincsen tolmács, idő sincsen rá, hogy az ember tolmácsot kerítsen. A tolmácsnak nehéz bejutni a bv. intézetbe, és utána pedig az állam nem téríti meg a tolmácsnak azt a díját, amit a börtönben tölt, tehát csak a tárgyaláson eltöltött időt. Tehát ez egy nagyon problémás dolog, hogy az ügyvéd ügyfél közötti beszélőn van-e tolmács. Ez a gyakorlatban az van, hogy a bíró azt mondja, hogy a tárgyalás előtt egy 5-10-20 percet beszélnek a folyosón a tolmáccsal.”

Another possibility that two lawyers reported on is that the arrested person consults with their lawyer via the detention facility's **phone**. In this case, the interpreter might assist from the office of the lawyer, but for such consultations, the state appointed interpreter is usually not available. Another lawyer noted that if the client speaks English well enough (or it can happen that they speak Hungarian), interpretation is not needed.

The issue (state-appointed interpreters assisting lawyer-client consultations only at the trial, but not during detention) seems to stem from the fact that the law provides for the **right to interpretation only during the procedural acts**, and not between them (e.g., when the lawyer consults with the client to get prepared for the hearing/trial).

[EN] “[T]he right to interpretation applies during procedural acts. Mostly, communication over a period of time is excluded from this scope, as it is not possible to be very well prepared with the help of an interpreter appointed by the authority... [The lawyers] must ensure that they are able to prepare for the hearing, whether the person charged is speaking their mother tongue or another language known to them. And obviously the public defenders will not have any possibility to pay an interpreter out of their own pocket even if they have to speak to the client.” (Hungary, lawyer)

[HU] „Ami még probléma lehet, hogy a tolmácsoláshoz való jog az eljárási cselekményeken érvényesül. Leginkább több idővel történő kommunikáció az ebből a körből úgy kiesik [...] nem nagyon lehet felkészülni a hatóság által kirendelt tolmács segítségével. [Az ügyvédnek] saját magának kell gondoskodnia arról, hogy föl tudjon készülni a tárgyalásra, hogy a terhelt beszél-e az anyanyelvet, vagy egy általa ismert másik nyelvet. Nyilván a kirendelt védőnek pedig semennyi lehetősége nem lesz arra, hogy a saját zsebéből még akkor fizessen tolmácsot is, hogy beszéljen az ügyféllel.”

c. Additional best practices or challenges

Best practices

According to a judicial authority representative, when executing EAWs, all the participants to the process (judges, prosecutors, state-appointed lawyers as well as **state-appointed interpreters**) are members of a specialised EAW team at the Budapest-Capital Regional Court (*Budapesti Törvényszék*). This means that the judges usually work with the same interpreters who know the EAW process well. This ensures the quality of these processes. All the judges interviewed underlined the importance of working with specialised professionals, as this improves the effectiveness and quality of the EAW procedures.

Challenges

The lack of a common language is always a challenge; therefore, the assistance of a native interpreter is crucial in this matter. However, because of the close deadlines, it is not easy to provide an interpreter before the trial or hearing. Although online tools might give a better chance to organise the trial and hearings more smoothly, it also represents a challenge, since online communication is often less effective than face-to-face communication. This is because the requested person has to be able to see the metacommunications of the interpreter, as it helps with understanding.

d. Discussion of findings

Findings demonstrate that interpretation is adequate and of good quality in the EAW cases at the trials or court hearings. The experiences of the interviewees are based mostly on the EAW execution process.

It seems that all interviewees from the judicial authorities and two of the lawyers define the EAW cases as formalities and they consider the quality of the procedure to be fine. The other two lawyers formulated criticism regarding the access to interpretation in the lawyer-client consultations. While the law (CPA) provides for the right to use one's mother tongue throughout the entire criminal proceeding, this seems to apply only to specific procedural acts (e.g., hearings). Between these (e.g., when the lawyer consults with the client to get prepared for the hearing/trial, for instance while in detention), the state-appointed interpreters are usually not available. In EAW cases, the EU Criminal Cooperation Act specifically indicates two procedural acts when an interpreter must be assigned to defendants who do not know the Hungarian language: when the authorities inform the defendant on the content of the alert placed in the SIS, and at the hearing on the execution of the EAW issued by another Member State.

3. Right to access to a lawyer

a. Legal overview

Access to a lawyer and legal aid

Hungary ensures that access to a lawyer is available to defendants and other interested parties involved in criminal proceedings, including EAW proceedings (Article 3 of the CPA). As a consequence of the right stipulated in Article 3 of the CPA (right to effective defence), Hungarian law distinguishes between two scenarios:

- In cases when the involvement of a defence lawyer is not mandatory, the defendants may hire a lawyer or may ask the authorities to appoint a defence lawyer to them.
- The second scenario is when defence is mandatory in the criminal proceedings (Article 44 of the CPA) due to the personal circumstances of the defendant (e.g. the person is deprived of liberty) or to the gravity of the criminal offence. In such cases, the authorities are obliged to appoint a defence lawyer for the defendants unless they already have one. The fees and costs of the mandatory defence lawyer are automatically advanced by the state regardless of the financial situation of the defendant. This ensures the defendant has a right to effective and immediate legal assistance irrespective of their financial situation.

Article 44(b) of the CPA prescribes for mandatory legal representation if the defendant is subject to a measure that deprives them of their liberty. The decision on appointing a defence lawyer is made by the authorities involved in the criminal proceedings. Based on this decision, the regional section of the bar association appoints a lawyer for the defendant (Article 46(1) of CPA). As in all other cases of mandatory defence, the costs and fees of the defence lawyer are advanced by the state; however, the defendant may turn to the Legal Aid Services to ask for full payment of these expenses.

In both scenarios (when the defendant asks the authorities to appoint a defence lawyer and in case the appointment of a defence lawyer is based on the mandatory defence provisions of Article 44 of the CPA), Hungarian legislation refers to the defence lawyer appointed under the legal aid scheme as 'appointed defence counsel', and Article 17(1)(b) of the Act on Legal Aid¹⁰ stipulates that the costs and fees of the appointed defence lawyer are advanced or paid by the state. This does not include when the defendants themselves hire a defence lawyer. In the latter situation, the costs and fees of the hired defence lawyer are borne by the defendant.

Dual legal representation

When **Hungary is the executing state**, Article 7(1)-(2) of the EU Criminal Cooperation Act stipulates that a defendant arrested in the territory of Hungary must be detained and brought before a court if a European Arrest Warrant has been issued against them or if a Member State has ordered an international detention against them. Detention can last for seventy-two hours. If the defendant does not have a hired lawyer, the detaining authority shall appoint a defence lawyer immediately after the defendant is arrested.

Article 4 of the Order of the National Chief Police Officer no. 22/2018¹¹ requires that, in case the

¹⁰ Hungary, [Act LXXX of 2003 on legal aid](#) (2003. évi LXXX. törvény a jogi segítségnyújtásról), 1 April 2004.

¹¹ Hungary, [Order of the National Chief Police Officer no. 22/2018 on the procedure to be followed when a hit is found in the Schengen Information System](#) (22/2018. (VI. 12.) ORFK utasítás a Schengeni Információs Rendszerben elért talált esetén követendő eljárásról).

person is arrested based on the EAW, the national SIRENE office¹² must be informed by sending a copy of the decision on arrest to this office. In this information, the police must include the details concerning the appointment of a defence lawyer to the defendant.

In line with Article 7(4) of EU Criminal Cooperation Act, the defendant must be informed that they have the right to a lawyer in the issuing Member State as well, in accordance with the rules of that Member State, and to request assistance from the competent authority of the issuing Member State to that end. The defendant must also be informed that the lawyer in the issuing Member State has the possibility to contact the lawyer in the executing Member State and to assist the defendant in the exercise of their procedural rights by providing information. The competent authority must record in written minutes the fact that the defendant was informed about their right to a lawyer in the issuing Member State, as well as any statement made by the defendant concerning the appointment of a lawyer in the issuing Member State. If the defendant wishes to have a lawyer in the issuing Member State, the competent authority, through the Minister of Justice, must immediately inform the issuing Member State's authority of the defendant's statement.

When **Hungary is the issuing state**, Article 26(2) of the EU Criminal Cooperation Act stipulates that upon receipt of the notification on the defendant's arrest, the Minister of Justice shall immediately send the EAW to the executing Member State. In addition, upon receipt of the notification of the defendant's arrest

(a) the court, the prosecutor or the investigating authority before which the proceedings are pending, or

(b) in the case when the EAW was issued for the purpose of enforcing a custodial sentence or measure involving deprivation of liberty, the authority

shall immediately appoint a lawyer if the defendant does not have one and shall, at the same time, notify the Minister of Justice thereof. The Minister shall inform the competent authority of the executing Member State on the identity and contact details of the defence lawyer in order to inform the defendant.

Hungarian law, however, does not provide for rules on the cooperation between lawyers dealing with a case in an executing and issuing Member State.

Remedies

Remedies are the same as those elaborated under point 1.a.

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?		
Hungary	YES ¹³	NO

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

Free of cost lawyer	When your country is an executing state	When your country is an issuing state (e.g. to assist the lawyer in the executing state)
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¹² SIRENE stands for supplementary information request at the national entries. Each country that uses SIS has set up a national SIRENE Bureau, operational 24 hours a day, 7 days a week, that is responsible for exchanging information and coordinating activities connected to SIS alerts. See information on the European Commission's [website](#).

¹³ EU Criminal Cooperation Act, Article 7(4).

provided in law		
Hungary	YES ¹⁴ /NO	YES ¹⁵ /NO

b. Right to access to a lawyer in practice

- Information about legal assistance (including on dual representation)

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

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judicial auth. 1	Judicial auth. 2	Judicial auth. 3	Judicial auth. 4	Total
YES	X	X	X	X	X	X	X	X	8
In writing	-	-	-	-	-	-	-	-	0
Orally	-	-	X	X	X	-	X	X	5
In writing and orally	X	X	-	-	-	X	-	-	3
NO	-	-	-	-	-	-	-	-	0
Don't know/re member	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	0

The interviewed lawyers stated that it is **mandatory to have a lawyer present** at the court hearings and trials. Before the trial, when they are first detained and in the detention centres, the lawyers **assume** (as they are not present at these stages) that the requested persons are informed about their rights, including the right to access a lawyer. Most of the interviewees believed that this information is provided by the police orally, but some interviewees also indicated that it might happen both in writing and orally.

Table 8: Information on dual representation, interview findings

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Judicial auth. 1	Judicial auth. 2	Judicial auth. 3	Judicial auth. 4	Total
YES	X	-	X	-	X	X	X	X	6
NO	-	X	-	X	-	-	-	-	2
Don't know/remember	-	-	-	-	-	-	-	-	0
Did not answer	-	-	-	-	-	-	-	-	0

Most of the interviewees assumed that the information on rights also includes information on dual legal representation. Two lawyers considered that this information is not provided.

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

¹⁴ CPA, Article 44(b).

¹⁵ CPA, Article 44(b).

In EAW execution cases in Hungary, state-appointed lawyers are always present at the court hearing or trials, as according to the law, the appointment of a defence lawyer is mandatory immediately after the requested person is detained, if they do not have their own lawyer. According to all judicial authority representatives, most of the requested persons choose a state-appointed lawyer; only in a few cases do they have their own lawyers. A lawyer stated that this is partly due to the systemic problems of the Hungarian detention system: it is not possible to reach out from a detention facility to a lawyer. If a detained person does not have family to help, it is almost impossible for them to hire a lawyer on their own.

[EN] „When it comes to a lawyer of choice, since he or she [the detained person] is restricted in his or her freedom, it is always the relatives who contact the lawyer. If there are no relatives, then the right to choose a lawyer is not practically exercised, because he or she cannot choose a lawyer.” (Hungary, lawyer)

[HU] „Ha kiválasztott ügyvédről van szó, akkor mivel ő korlátozva van a szabadságában, ezért mindig a hozzátartozók keresik fel az ügyvédet. Hogyha ilyen nincs hozzátartozó, akkor gyakorlatban nem érvényesül az ügyvéd választási joga, mert bentről ő egyáltalán nem tud válogatni ügyvédek közül.”

When it comes to state-appointed lawyers, a lawyer explained that in theory, according to the general rules, the lawyer should be appointed by the relevant authority. In line with these general rules, the court should notify the Hungarian Bar Association that a need for a public defender has arisen. The Bar Association then appoints a lawyer by means of an IT system and informs the court of the person and the case in question. However, this lawyer highlighted that this is not how it works in practice, because the Budapest-Capital Regional Court works with their small team of ‘in-house lawyers’ in EAW execution cases. This means that there are fewer than ten lawyers in Budapest who take EAW cases and work with them before the court. According to the interviewee, this is not considered a procedural violation.

[EN] “The fact that the criminal procedure legislation is circumvented means that the bar does not appoint the defence lawyer, they [the courts] do. There is no consequence that would make this a procedural violation. So, if these facts are brought to light on appeal, either by the accused or by the subsequently appointed defence counsel, there is no consequence that would particularly concern the courts, they are free to do so. In that sense, this rule is more of a recommendation. (Hungary, lawyer)

[HU] “Annak, hogy a büntetőeljárás jogszabályokat megkerülve, nem a kamara jelöli ki a védőt, hanem ők, nincs olyan következménye, ami miatt ez eljárási szabálysértést lenne. Tehát, hogyha ezek a tényeket a fellebbezéssel, akár a terhelt, akár a később megbízott meghatalmazott védő [felhozza], annak nincs olyan következménye, ami különösebben izgatná a bíróságokat, nyugodtan megtehetik ezt is. Ebben az értelemben inkább ez a szabály csak egy ilyen ajánlás.”

Another lawyer also indicated that the right of the requested person to have a lawyer be present at the hearings at all times is not guaranteed. First of all, the process is fast, and the requested person does not have a lawyer at the first hearing, when taken into custody. Second, it is not compulsory to have the lawyer at all the hearings.

Furthermore, this lawyer noted that, in theory, the lawyer and the requested person are able to meet in private. They can talk prior to the court hearing at the detention facility. In the interviewee’s experience, the lawyer and the requested person meet at the latest at the arrest trial. Since most of

the trials take place remotely, the lawyer and the requested person can talk in private through a separate phone during the trial. Prior to the trial, it is difficult for the arrested persons to meet with their lawyers in private, but it is possible through an online consultation. However, the state-appointed lawyers usually meet their client at the arrest trial for the first time, and there is very limited time available to consult their clients before the hearing; it is rather a formality. According to two lawyers, this is not ideal as there is not enough time to communicate with the client - with the help of the interpreter – and get well prepared for the trial. This argument contradicts what three judicial authority representatives claim. From their perspective the given time, space, and opportunity to consult before the trial are sufficient.

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	
Judicial authority 1	-	X	
Judicial authority 2	-	X	
Judicial authority 3	X		
Judicial authority 4	-	X	
Total	1	7	0

Lawyers unanimously stated that contacting a lawyer in the issuing Member State is not facilitated by the Hungarian authorities. Three interviewees from the judicial authorities also indicated that the authorities do not provide help in this process. However, the other interviewee from the judicial authorities pointed out that the requested person has a right to ask for this assistance and if they do, the Ministry of Justice informs the authorities of the issuing Member State about it. What happens with this request, however, is based on the legal framework applied in the issuing Member State.

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

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
Judicial authority 1	-	-	X
Judicial authority 2	-	-	X
Judicial authority 3	-	-	x
Judicial authority 4	-	-	X
Total	0	0	8

Generally, interviewees did not talk about this issue (assistance provided in appointing a lawyer in Hungary, as the issuing Member State). Legally, the Hungarian authorities must appoint a defence lawyer when they are informed about the defendant's arrest.

- Communication between the lawyers in both states

Usually, communication between lawyers in both states happens when lawyers are hired by the requested person (or their family) as opposed to lawyers appointed by the state. Hired lawyers then reach out to the lawyer in the issuing state to collect more information about the case, through digital means. State appointed lawyers do not have the time to reach out to lawyers in the other Member State due to the tight deadline and resources (since their fee is very low). As a lawyer explained, in their experience communication between lawyers in both states happens when the requested person already has a lawyer in the other Member State.

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

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)	
	YES	-	YES	-
Lawyer 1	YES	-	YES	-
Lawyer 2	YES	-	YES	-
Lawyer 3	YES	-	YES	-
Lawyer 4	YES	-	YES	-
Judicial authority 1	YES	-	YES	-
Judicial authority 2	YES	-	YES	-
Judicial authority 3	YES	-	YES	-
Judicial authority 4	YES	-	YES	-
TOTAL	8	0	8	0

In Hungary, state-appointed lawyers are available, the requested persons have access to legal aid free of charge.

- c. Additional best practices or challenges

Challenges

Two lawyers mentioned the poor compensation of state-appointed defence lawyers, as they are paid a compensation of 6000 HUF/hour (approximately EUR 15), while a lawyer hired by the requested person receives a minimum fee of EUR 1000. This entails that appointed defence lawyers put little effort into the EAW process. One of these lawyers also pointed out that the state-appointed lawyer only gets compensation for the participation in the arrest court hearing, but not for the preparatory work.

[EN] „...[T]he state-appointed lawyer does not receive any compensation for the client consultations or for drafting the pleadings, so in fact he is only paid to be present at the court hearing, but what is needed for the substantive work of the defence is not paid at all, and even if it was, it would only be this pitiful hourly rate of 6 thousand forints.” (Hungary, lawyer)

[HU] „...[A]z ügyvédi beszélőért nem kap a kirendelt védő semmilyen kompenzációt, a beadványok szerkesztéséért sem kap, tehát tulajdonképpen csak azt fizetik, hogy ő jelen legyen a bírósági tárgyaláson, de ami az érdemi védői munkához kell, azt egyáltalán nem fizetik, ha pedig fizetnék, akkor is csak ez a szánalmas, 6 ezer forintos óradíj lenne.”

On the other hand, as mentioned in the sub-sections above, requested persons may face challenges in trying to contact lawyers of their own choice, especially when the family is not present and able to support this process.

Another main challenge is that, since EAW is considered to only be a 'formality', lawyers do not really have a way to 'win' their cases. One lawyer explained that the possibilities are very narrow: either the requested persons consent to surrender and are transferred to the issuing state within 10 days, or they remain in Hungary for months before anything happens. Furthermore, due to the time frame and the structure of EAW proceedings, there is no room to examine the content of the case, only its formal/procedural aspects. The lawyer gave an example of a case, where the arrested person wanted the details of the case to be discussed in the court, but the lawyer clarified that they can only plead on procedural grounds and cannot go into the merits of the case.

[EN] "The options are very limited. It's almost impossible to win [an EAW case]. Because most of them [requested persons] want to be released immediately, and that's not possible. Or they're handed over within ten days, if he/she surrenders, agrees to a simplified procedure. If not, they'll have to rot here for months...[T]echnically, if you have a warrant, it's more of a formal process. At least for me, that's the problem. We don't even examine it in the same way as extradition. So the problem I had in the [case I talked about] was that he said that he had not committed anything [...]. And then I said that we cannot take a position on this before the court. You can discuss it there [in the issuing state]. But he felt completely innocent in this, and I cannot go into the merits of his case. That is the rule, so I can only plead on normal [i.e. formal] grounds, on procedural grounds which could possibly be grounds for refusal."
(Hungary, lawyer)

[HU] "Nagyon szűkre szabottak a lehetőségek. Szinte lehetetlen nyerni benne. Mert ugye a legtöbben azt szeretnék, hogyha rögtön szabadlábra helyeznénk őket. Az meg nem megy. Vagy rögtön átadják tíz napon belül ugye, hogyha ez hozzájárul az egyszerűsített átadáshoz, vagy ha nem, akkor meg itt kell rohadnia hónapokig. ...[G]yakorlatilag, ha megvan az elfogatóparancs, akkor inkább formális az eljárás. Nekem legalábbis ez a probléma. Ugye eleve nem is vizsgáljuk úgy, mint a kiadatásnál. Tehát most az volt a problémám itt [az ügyben amelyről beszéltem], hogy ő azt mondta, hogy ő nem követett el semmit [...]. És akkor azt mondtam, hogy ebben a bíróságon nem tudunk ebben állást foglalni. Ezt majd ott vitassák meg. De hát ő ebben teljesen ártatlannak érezte magát, és érdemben nem tudok belemenni az ügyébe. Ez a szabály, szóval csak normális okokra hivatkozva tudok eljárási okokra lehet hivatkozni, amiben lehet esetleg a megtagadást el lehet érni."

d. Discussion of findings

One of the main findings is **that legal representation/assistance is always provided at the court hearings**. When the requested person does not have a lawyer of their own choice, the state appoints one. However, the low compensation of lawyers does not motivate state-appointed lawyers to put effort in the cases.

Another finding is the difficulty caused by **the short deadlines, and the formal nature of the procedure**. Often, it seems to lawyers that they do not have any room for maneuver in these cases.

While the requested person legally has the right to dual legal representation, according to interviewees, the Hungarian state does not provide help in contacting a lawyer in the issuing Member State.

4. Issuing and Execution of the EAW

a. Legal overview

Articles 25-33 of the EU Criminal Cooperation Act provide for rules on the issuing of the EAW by Hungary. The court may issue the EAW in parallel to or after the issuance of a national arrest warrant against the defendant. In case a national arrest warrant has not been issued by a judge, the EAW is issued based on the arrest warrant made by the prosecutor or by the investigating authority with the approval of the prosecutor. The general condition to issue the EAW is that the possible sanctions for the criminal offence in question, under Hungarian law, include imprisonment of at least one year. Where the verdict finding the requested person guilty or the decision on the coercive measure that aims to deprive the defendant's liberty has already been made, the length of the imprisonment or of the coercive measure foreseen must be at least four months (Article 25(2)).

Where the defendant is detained in another Member State, the court can only issue an EAW if the presence of the defendant cannot be ensured by other means (e.g. through an application for diplomatic legal assistance at the foreign authority). When deciding on this, the Hungarian court must examine the gravity of the criminal offence and the general assessment of all circumstances of the case (Article 25(3a)). This latter provision ensures the application of the proportionality principle.

Prior to the indictment, the investigating judge has the competency to issue the EAW. Where a final decision on sentencing the defendant to imprisonment or to a coercive measure depriving the defendant of their liberty has been made, the power to issue the EAW belongs to the sentencing judge (Article 25(4)).

Article 25(9) requires the judge to withdraw the EAW immediately if the underlying reasons for issuing it no longer exist.

Article 28 stipulates that the duration of the detention which took place in another Member State resulting from the execution of an EAW shall be counted in the duration of the custodial sentence.

Article 13(3)-(4) of the EU Criminal Cooperation Act stipulates the possibility to challenge a decision on surrender based on an EAW issued by another Member State. The Budapest-Capital Regional Court (*Fővárosi Törvényszék*) has an obligation to organise a hearing when deciding on the execution of the EAW issued by another Member State. The court formally decides on the surrender of the requested person or on the refusal to comply with the execution of the EAW. The prosecutor, the defendant and the defence lawyer are subpoenaed to the hearing. The prosecutor, the defendant and the defence lawyer may appeal against the decision directly at the hearing. This requires the prosecutor, the defendant or the defence lawyer to immediately communicate the intention to appeal against the decision (Article 13(3)). As the decision on surrender based on the EAW is considered a decision not made on the merits of the case, even the possibility for appeal is exceptional in the Hungarian criminal procedural law. In case of a national arrest warrant, the CPA excludes the possibility to appeal against the issuing of the warrant (Article 119(4) of the CPA). The EU Criminal Cooperation Act, however, allows for appeal. If the appeal is not communicated on the spot (immediately after the court communicates the decision at the hearing), the right to appeal is no longer available. Upon appeal, the Budapest-Capital Regional Court must send the documents related to the case to the Budapest-Capital Court of Appeal (*Fővárosi Ítéltábla*) within three days (Article 13(4)). The Appellate Court will decide on the appeal solely based on the documents.

Hungarian law, however, does not provide for formal legal remedies to challenge the issuing of the EAW or to ask for its withdrawal. Article 25(9) of the EU Criminal Cooperation Act requires the authority to withdraw the EAW if the underlying reasons for issuing it no longer exist. Prior to the

indictment, the court may withdraw the EAW *ex officio*. This presumes that the requested person may request the court to withdraw the EAW; however, Hungarian law does not provide any special procedural rules for this. Where the EAW was issued prior to the indictment, and the prosecutor does not propose the penalty of imprisonment in the indictment, the EAW must be withdrawn immediately. If the defendant is arrested based on the EAW, and the conditions for issuing the EAW are met, the court can only withdraw the EAW after the defendant is surrendered.

Proportionality is reflected through the general conditions on executing the EAW. Article 3(1) of the EU Criminal Cooperation Act provides for the general obligation to execute the EAW issued by another Member State for the purpose of conducting criminal proceedings against the requested person, or executing a sentence of imprisonment or other coercive measure that results in the deprivation of liberty of the requested person. The general condition to execute an EAW is that the maximum threshold of the imprisonment envisaged for the commission of the criminal offence is at least 12 months in the issuing Member State, or the length of the imprisonment or the deprivation of liberty ordered is at least four months.

As a general rule, Article 3(2) of the EU Criminal Cooperation Act orders the Hungarian authorities to execute the EAW irrespective of whether there are grounds for double criminality. There are, however, two exceptions to this rule (Article 3(3) of the EU Criminal Cooperation Act):

- Criminal offences listed in Annex 1 of the EU Criminal Cooperation Act that are threatened by less than three years of imprisonment in the law of the issuing Member State, and
- Criminal offences not listed in Annex 1 of the EU Criminal Cooperation Act, irrespective of the length of the proposed imprisonment in the law of the issuing Member State.

When the offence in question falls under one of these exceptions, the Hungarian criminal authorities must, prior to the execution of the EAW, examine whether the criminal offence in question is also punishable under Hungarian law. In the above mentioned two instances, if the criminal offence is not punishable also under Hungarian criminal law, the double criminality requirement is not fulfilled, and the EAW shall not be executed.

Article 5 lists the grounds to **refuse the execution** of the EAW:

- a) the criminal offence on which the EAW is based is subject to Hungarian jurisdiction and the offence is covered by pardon under Hungarian law,
- b) a decision has already been made in a Member State against the defendant on the basis of which the EAW was issued, which precludes the initiation of criminal proceedings or on the basis of which the sentence has already been executed or cannot be executed under the law of the Member State that issued the final judgment,
- c) is not punishable due to the young age of the defendant,
- d) according to Article 3(4) of the Act, double criminality must be examined and the offence on which the EAW is based is not a criminal offence under Hungarian law,
- e) the defendant is a Hungarian citizen or a citizen of another Member State of the European Union who is domiciled in Hungary and the judicial authority of the issuing Member State does not provide an adequate legal guarantee that, in case of a custodial sentence or measure involving deprivation of liberty, the defendant will be returned to the territory of Hungary to serve the sentence or measure, or
- f) the execution of the EAW would seriously infringe the fundamental rights of the defendant as enshrined in an international treaty or an act of the European Union.

Point (f) indicates that the potential **violation of fundamental rights** of the defendant is an obstacle to executing an EAW. While the law does not elaborate on this, Hungarian jurisprudence unanimously interprets the violation of the defendant's procedural rights as a fundamental right.¹⁶ These rights include the right to fair trial, the right to information, the right to access to a lawyer, and the safeguards that are in place to ensure that the conditions of detention are up to the legal standards respecting the rights of the defendant. Therefore, the Hungarian criminal authorities may obtain **information on the proceeding** that served as the basis for issuing the EAW **and on the conditions of detention** and, if fundamental rights concerns persist, they have a legal obligation and no discretionary power to refuse to execute the EAW.

However, Fundamental Decision no. 23/2018 of the Criminal College of the Supreme Court of Hungary (23/2018. számú büntető elvi döntés) stated: the fact that a foreign national has been subject to forced interrogation during the criminal proceeding abroad, and criminal proceedings have therefore been initiated against the police officers conducting the interrogation does not alone lead to the conclusion that the execution of the European Arrest Warrant against the person would seriously violate the fundamental rights of the defendant enshrined in an international treaty or in an act of the European Union, and that the execution of the EAW should therefore be refused.¹⁷

b. Issuing and execution of the EAW in practice

- Factors considered when issuing the EAW

Legal requirements

First of all, the main factors considered in the decision-making on the issuance of an EAW are the formal requirements, based on the legislation. According to the legal framework, the presence of a national arrest warrant, the seriousness of the crime, and whether the sentence might involve imprisonment are the most important factors. However, it is also important that issuing an EAW is not the first step in summoning a requested person, as other options should be exhausted before applying this tool. According to a judge, the circumstances in which the requested person lives are also important: if they live an orderly life (e.g. have a job, registered address, etc.), the judges might apply other tools. If the double criminality requirement applies and the relevant offence is not defined as a crime in Hungary, or the offence is time-barred, the execution of the EAW will be denied.

Proportionality

Proportionality partly appears in the formal rules, i.e., the conditions for issuing an EAW already contain the principle of proportionality (e.g., the seriousness of the offence). Proportionality should also be taken into account in evaluating whether there is any physical obstacle which might prevent the requested person from participating in the process (e.g. pregnancy, disability, etc.). In practice, however, the latter happens only rarely. Two lawyers confirmed that there are very few personal factors which would prevent the judges from issuing an EAW.

- Factors considered when executing the EAW

¹⁶ Lichtenstein, A. (2018), '[Fundamental rights of the defendant and certain principles of criminal proceedings](#)' (*A terhelt emberi jogai és a büntető eljárás egyes alapelvei*), Forum. Publicationes discipulorum iurisprudentiae, Vol. 1. no. 1., pp. 305-337.; Fantoly, Zs. – Budaházi, Á. (2019), '[Studies in criminal procedural law](#)' (*Büntető eljárásjogi ismeretek*), Dialóg Campus, Budapest, p. 24.

¹⁷ [Fundamental Decision no. 23/2018 of the Criminal College of the Supreme Court of Hungary](#) (23/2018. számú büntető elvi döntés).

Proportionality

Proportionality is the main factor, which is taken into consideration when the authorities decide on an execution of an EAW. Two judges mentioned that proportionality is the main factors which should and must be analysed during the process. According to a judicial authority interviewee:

[EN] *“If the EAW is issued before the trial, we don’t investigate. If the trial has already happened [in absentia of the requested person], and the requested person complains, we further investigate the matter [if there are proportionality or any other concerns in the case], and if necessary, we refuse the EAW or we ask for guarantees. There are some important questions to clarify, including whether the requested person was informed before the trial, or otherwise knew about the trial; whether the authorities of the issuing state did everything to inform them; if retrial is an option. If the requested person knew about these aspects and nonetheless failed to show up, we do not investigate the case further.”* (Hungary, judicial authority representative)

[HU] *„Ha tárgyalásra kérik nem vizsgálódunk annyira, ha már a tárgyalást lefolytatták és az ügyfél panaszkozik, akkor alaposabban vizsgáljuk a kérdést és ha kell megtagadjuk EEP-t vagy garanciákat kérünk. Értesítették e tárgyalás előtt, tudott e róla, miket tettek meg azért, hogy értesítsék, biztosítanak e neki újratárgyalást, ezek fontos kérdések. Ha terhelt tudta és nem jelent meg, akkor nem vizsgálódunk”.*

Conditions of detention

According to all interviewees, the conditions of detention are not taken into consideration in the execution process. In the EU, the conditions of detention are considered acceptable based on the principle of mutual trust in the EU, meaning they are not a cause to deny the execution of an EAW. At the international level, however, conditions of detention are analysed substantially, and the FRA database is used in this procedure. All the interviewees agreed that the Hungarian detention conditions are harsh, so it is the best interest of all requested persons to be transferred to the issuing country.

Rights to a fair trial (rule of law)

In the decision-making of the execution of an EAW, the right to fair trial is taken very seriously. Violation of this fundamental right can be the cause for denying an EAW. If the execution of an EAW is allowed to continue, guarantees are requested in order to ensure this right. According to a judicial authority representative:

[EN] *“We take all complaints into account, consult with the issuing authority and, if needed, we ask for guaranties. There was a [...] case, where the requested person complained that he did not even know about the procedure and was not properly informed. We contacted the [other state’s] authorities that sent us the confirmation that he had personally received the notice of the trial.”* (Hungary, judicial authority representative)

[HU] *„Minden panaszt figyelembe veszünk, egyeztetünk kibocsájtó hatósággal és ha kell kérünk garanciát. Volt egy francia ügy, ahol érintett arra hivatkozott, hogy ő nem is tudott eljárásról és nem értesítették megfelelően. Felvettük a kapcsolatot a francia hatóságokkal, akik elküldték az igazolást, arról, hogy személyesen vette át a tárgyalásra vonatkozó értesítést.”*

Individual situation

According to all interviewees from the judicial authorities, the approach is similar to that in relation to the conditions of detention. The decision-makers in the Hungarian legal system proceed on the

basis of mutual trust, and the procedure is the same in every EU country. At international level, this is examined differently and not on the ground of mutual trust. A judicial authority representative and one of the lawyers mentioned some special cases when, after consulting with the authorities of the issuing state, the EAW was withdrawn. These cases concerned a woman almost in labour and a terminally ill cancer patient. According to another lawyer, personal circumstances in general do not play a role when executing EAWs:

[EN] "When the authorities cannot decide over something in the absence of documents, which is often the case, personal circumstances are considered when deciding on whether or not the person should remain detained or should be moved to house arrest, but in deciding over the execution of an EAW, personal circumstances play no role." (Hungary, lawyer)

[HU] „Amikor nem tudnak egy körben dönteni és általában nem tudnak, mert hiányzik valami dokumentum, akkor a letartóztatás fenntartása vagy házi őrizet elrendelésénél számít az egyéni élethelyzet, magának a elfogatóparancsnak az elutasításában nem.”

c. Additional challenges

Since the process is often only a formality, factors outside the strict legal conditions of issuing an EAW are not taken into consideration.

A lawyer mentioned a particular problem with the issuance of the EAWs, namely that many arrest warrants are issued only because the suspects do not report an address change, e.g., that they have moved abroad. It sometimes happens that the suspect of a crime does not know that they are a suspect, moves to another address/country and fails to report their new address to the authorities, not knowing that this might cause a problem. For the authorities it seems it is easier to start the EAW process than searching for the suspects, though they could simply find out the location and address of the suspects, for example, by checking in the EU Member States whether or not they registered in another country. In such cases, the suspects might be informed about the arrest warrant through the website of the police, where a list with persons generally wanted by the police is published.

[EN] "[...] very many arrest warrants are issued only because the suspects do not fulfil their obligation to report a change of address within three days, and then they are searched, a summons is sent out once or twice, and if the person is not found, especially if the person moves abroad, the warrant is automatically issued. And because it's a public record, in the sense that people who are wanted on warrants are available on police.hu, people who are afraid they're on it, they can look at it. Here, very often the client knows what the situation is, and so they look for us [lawyers] in advance." (Hungary, lawyer)

[HU] „[...] nagyon sok elfogatóparancs kibocsátására azért kerül csak sor, mert nem teljesítik azt a kötelezettségüket a terheltek, hogy a lakcím-váltást három napon belül jelentsék be, és akkor keresik őket, kiküldenek egyszer-kétszer egy idézést és ha nincs meg, főleg, ha kiköltözik az ember külföldre akkor automatikusan kibocsájtják ezt az elfogatóparancsot. És mivel ez egy nyilvános adat olyan értelemben, hogy a police.hu oldalán elérhetőek azok, akiket köröznek elfogatóparancs alapján, azok a személyek akik félnek hogy rajta vannak meg tudják nézni. Itt nagyon gyakran az ügyfél tudja, hogy mi a helyzet, és úgy keresnek minket előre.”

Another interviewed lawyer was very critical of the EAW. They thought that it might endanger the double criminality principle (*kettős büntethetőség*) or lead to the extradition of the state's own

citizens. For instance, the authorities of other Member States issue EAWs for offences which are not criminal in Hungary, setting aside the principle of double criminalisation. Proportionality is also not guaranteed, as 95 % of the cases fall under the EAW framework, under which the authorities might issue an EAW, even in the case of minor crimes. The deadlines are also very strict and make it impossible to work on the cases substantially.

[EN] "I am very critical of the European Arrest Warrant [...] in general; [...] what it was actually used for, and what fundamental rights guarantees were sacrificed, whether it was the extradition of own nationals or the almost exclusive abolition, or almost total abolition, of double criminality. This is not, of course, about the procedure itself, but about the substantive assessment of the European Arrest Warrant. [...] I think that these deadlines are too short in relation to the European Arrest Warrant, the time in which the suspect has to be handed over, and these are not very good from the point of view of the defence. The other thing is that I am obviously a defence lawyer, so my concern is to make my job as easy and efficient as possible, and there is hardly any defence that can be made against the European Arrest Warrant."
(Hungary, lawyer)

[HU] "Nagyon kritikus vagyok az európai elfogatóparanccsal kapcsolatban [...] úgy általában, [...] hogy ez az egész tulajdonképpen mire szolgált, és milyen alapjogi garanciák kerültek beáldozásra, akár a saját állampolgárok kiadatását, akár a kettős büntethetőségnek a szinte kizárólagos eltörlésére, vagy szinte teljes körű eltörlésére gondolok. Ez ugye nem magára az eljárásra, hanem az európai elfogatóparancs érdemi elbírálására. [...] Szerintem ezek a határidők, ezek túlságosan rövidek az európai elfogatóparanccsal kapcsolatban, hogy mennyi idő alatt kell átadni a gyanúsítottat ezek azért a védelem szempontjából nem túl jók. A másik meg, hogy hát nyilván védő vagyok egyébként, tehát nekem az a szempontom, hogy az én munkám minél könnyebb és eredményesebb legyen, és az európai elfogatóparanccsal szemben alig lehet védekezni."

d. Discussion of findings

According to interviewees, the EAW procedure, in both issuing and executing states, is a formality in the EU. On the ground of mutual trust and criminal cooperation, usually the judges would not examine the detention conditions, or possible lack of fair trials in the issuing Member States. Individual reasons or conditions of detention cannot be the basis for refusing the execution of an EAW. Thus, on the one hand, one could say that the regulation is applied strictly to the process in Hungary. On the other hand, this leads to a very formal understanding of the EAW process, which leaves only a little room for individual decisions for the judges, or no room for the defence lawyers to challenge the EAW process.

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

The CPA, upon entry into force on 1 July 2018, widened the scope of the application of digital tools in the criminal proceeding. Contact between the defendant and the defence lawyer is also possible through electronic means and the obligation of the authorities to grant unsupervised contact between the defendant and the lawyer is extended to the use of digital tools (Article 39(2)(c)).

The CPA also allows for the use of electronic data as evidence in the criminal proceedings. Electronic data means any representation of facts, information and terms that are suitable for being technically

processed by an information system, including software that ensures some function of the information system (Article 205).

The CPA allows the use of telecommunication devices at any stage of the criminal proceedings (including the execution of the EAW), by any person participating in the criminal proceeding and for the full or partial execution of any procedural act (Article 120(1)). The CPA does not provide for a definition on telecommunication devices, but foresees two ways of using such devices:

- making audio and video recordings, or
- using a continuous voice recording (Article 120(2)).

The main rule is to use audio-visual technology, while the voice transmission is only allowed to interrogate witnesses, ensuring the presence of an interpreter, and – only in the investigation stage – the hearing of experts and the defendant (Article 120(3)).

While neither the CPA, nor the EU Criminal Cooperation Act contains special rules on the communication between lawyers in the issuing and the executing Member States throughout the EAW proceedings, the broad scope of recognising the use of telecommunication devices entitles even the lawyers to communicate with each other by such means.¹⁸

Table 12: Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an executing state)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing state).	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing state)	Facilitating access to a lawyer in the executing Member State (when an issuing state)
Hungary	YES	YES	YES	YES	YES	YES	YES
TOTAL							

b. Interview findings

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)

¹⁸ Róth, i.m., p. 171.

	ng state)		issuing state).	issuing states).	executing)	State (when an executin g state)	Member State (when an issuing state)
Lawyer 1	YES	YES	YES	YES	YES	YES	YES
Lawyer 2	YES	YES	YES	YES	YES	YES	YES
Lawyer 3	NO	N/A	NO	NO	YES	NO	NO
Lawyer 4	YES	YES	YES	YES	YES	YES	YES
Judicial authority 1	YES	YES	YES	YES	YES	NO	NO
Judicial authority 2	YES	YES	YES	YES	YES	NO	NO
Judicial authority 3	YES	YES	YES	YES	YES	NO	NO
Judicial authority 4	YES	YES	YES	YES	YES	YES	YES
TOTAL	7/8	7/8	7/8	7/8	8/8	7/8	7/8

All the interviewees mentioned that digital tools are increasingly used in Hungary. Only one interviewee held that it did not affect the EAW process. Although the digitalisation process began earlier, the COVID-19 pandemic gave a huge impetus to the process. Only one interviewee did not have experience of using online/remote tools during an EAW case.

Digitalisation has two main areas, according to the interviewees. Basically, every interviewee mentioned that receiving/sending documents is much easier since the digitalisation of the procedure. One lawyer described that they receive the documents from the authorities and courts electronically, which is much faster than before:

[EN] „We have an electronic system, a mandatory firm portal. That means they send [the documents] to the repository. That's where they send the material that I download, and then it's not that I'm confronted with it there in the court, I don't have to read it there, I've read it beforehand. And when the arrest warrant arrives translated, or its material, I receive that too.”
(Hungary, lawyer)

[HU] „Hát, nálunk van egy elektronikus rendszer, cégkapu. Tehát ez azt jelenti, hogy elküldik a tárhelyen. Ide küldik az anyagot, amit én letöltök, és akkor nem az, hogy ott szembesülök vele a bíróságon, nem ott kell olvasni, hanem már előtte elolvastam. És amikor megjön az elfogatóparancs lefordítva, vagy az anyaga, akkor azt is megkaptam.”

Furthermore, another lawyer stated that contacting lawyers in the other Member State is much easier than before, and a judge emphasised that requesting information is a lot easier and faster than before.

The other area is the online lawyer-client consultation, as well as the remote access to the process, hearings, trials, etc. In this regard, opinions are twofold. On the one hand, the interviewees coherently emphasised that the process is often easier and faster because of the application of digital tools. When Hungary is an executing state, judges can hold hearings online, which means that the requested person might not need to be transferred to Budapest physically, but remains at the place where they were apprehended (for example, at Röske, close to the border). Moreover, as indicated by two

judges, online communication is sometimes easier for lawyers too and makes it easier to keep deadlines.

On the other hand, two lawyers gave voice to their concerns. They see remote tools as possibly limiting the rights of the requested persons. Even though they have a phone to contact the lawyer, without the lawyer's personal presence, the requested person may struggle to understand the information provided, or what is happening at the hearing. Thus, digitalisation may hamper the exercise of individual rights.

[EN] „*The court hearings and remote hearings/trials are helpful, almost without exception. Now, whether or not this actually helps his [the requested person's] defence? Obviously, it does not, because in the absence of personal contact, he understands much less what is happening in the courtroom, when he actually sees the judge on a monitor, his lawyer on a monitor, and the lawyer can only call him by telephone. So digitalisation helps the execution of the European arrest warrant, but it does not necessarily help his individual rights. Well, the fact that the two defenders can communicate better in the case of a dual representation is obvious.*” (Hungary, lawyer)

[HU] „*A bírósági meghallgatás során és táv tárgyalás útján, szinte kivétel nélkül, ez segíti. Most az, hogy tulajdonképpen ez az ő védekezési lehetőségét elősegíti-e, vagy sem, hát nyilván inkább nem, hiszen egy személyes kontaktus hiányában ő sokkal kevésbé érti, hogy mi történik a tárgyalóteremben, amikor tulajdonképpen egy monitoron látja a bírót, az ügyvédjét is egy monitoron látja, illetve az ügyvéd telefonon tudja őt csak felhívni, ezért az európai elfogatóparancs végrehajtását segíti, az ő egyéni jogait nem feltétlenül segíti a digitalizáció. Hát az, hogy a kettős védelem esetén a két védő jobban tud kommunikálni, hát az egyértelmű.*”

On the positive side, digital tools might also result in fewer EAWs being issued, since it becomes possible to hold hearings without physically summoning someone from another country; allowing requested persons to participate in the proceedings remotely. According to a judicial authority interviewee:

[EN] “*Digitalisation could help make the legal cases and hearings faster and easier. With today's tools, these can very well be held online, so why separate the people concerned from their families just to be present in person [the interviewee talked in general, not only about EAW cases]. There was a defendant who asked why he couldn't have a remote hearing because he had heard about it. Instead, they requested his extradition, and he was taken away from his family for months while the procedure took place.*” (Hungary, judicial authority representative)

[HU] „*A digitalizáció felgyorsíthatná és megkönnyíthetné a jogi ügyeket, meghallgatásokat. A mai eszközök mellett már online is nagyon jól meg lehet ezeket valósítani, minek elszakítani az érintetteket a családjuktól csak azért, hogy személyesen legyenek jelen? [az interjú alany nem csak EAW ügyekről beszélt, hanem általában]. Volt olyan terhelt, aki kérdezte miért nem lehet táv meghallgatás mert hallott róla. Ehelyett kérték kiadatását, és távol volt családjától hónapokig amíg lement a procedúra.*”

c. Discussion of findings

The COVID-19 pandemic gave an impetus to the application of online tools. This covers lawyers' consultations with their client, online hearings and the communication between lawyers and both domestic and foreign authorities.

The overall view of the interviewees was that digitalisation has had a positive impact on EAW proceedings. First, it may decrease the number of EAW cases initiated, and second, it makes the process faster and helps the parties to keep the deadlines. Two lawyers, however, raised concerns with the application of online tools: their perception is that during an online hearing, communication between the defence lawyer and the client is not as effective as in person, and that requested persons may struggle to understand the situation when online tools are used in the context of hearings.

CONCLUSION

It seems that there is a large information gap between the police on the one side, and lawyers, judges, and prosecutors, on the other. The interviewees did not have hands-on information about the detention phase of EAW proceedings (at the police station and in detention facilities), and what is really happening there, including whether the rights of requested persons are respected or violated. Hence, for better understanding the EAW process before the arrest trial takes place, interviewing police officers and authorities of detention facilities would be necessary.

During the court hearings and trial, the requested persons are informed of their rights appropriately. Legal defence and interpretation are always provided when it is needed. In general, from the fundamental rights perspective, lawyers are satisfied with the quality of the EAW process.

However, there were several concerns raised by the interviewees. First of all, the process seems very formal, in which defence lawyers do not have much room to manoeuvre. Second, the timeframe is very short. Where requested persons hire their own lawyers, they often do not have the time to arrive at the court until the arrest trial starts. The very short deadlines are an obstacle from the point of view of the client's ability to make deliberate decisions. Thus, although there is effort to make the requested persons understand the situation, their mental status – stemming from for instance finding themselves, sometimes surprisingly, in detention – is not well suited to make quick decisions about surrender under such pressure.

Dual legal representation is a legal possibility; however, assistance by a lawyer in the issuing Member State is rarely ensured, as due to lack of time, the Hungarian authorities usually do not provide support to the requested person to obtain legal services in the issuing Member State.

Both judicial authorities and lawyers considered that the quality of interpretation at court hearings is adequate and of good quality. Some criticisms were formulated regarding the lack of availability of state-appointed interpreters for the lawyer-client consultations in detention facilities or during the preparation for the trial. The interviews also revealed that it is not possible for the court to translate written documents before the hearing due to the short time available. Written translation is therefore replaced by oral translation by an interpreter during the court hearing. The EAW is the main document that is usually translated after the court hearing into a language that the requested person understands. The requested person has the right to ask for other documents to be translated; however, this rarely happens in practice.

The main result of the research is that in the interviewees' view, the EAW procedure in both issuing and executing states is a formality in the EU. The formal nature of the EAW process leaves limited space to consider individual factors in issuing or executing an EAW. Thus, proportionality is taken into consideration by means of formal aspects, such as the seriousness of the crime or possible sentence which are minimum legal requirements. These do not appear to be weighed against other factors, such as the harm caused to the requested person or the chances of a guilty verdict at trial.

The use of digital tools has helped the EAW process. It helps the parties involved to meet the deadlines and expedites the process. However, some lawyers raised concerns that without the physical presence of a lawyer, understanding the situation and meaningful communication between lawyers and clients is less likely.